



Department of Justice  
Canada

Ministère de la Justice  
Canada

# Shifting the Paradigm:

## Exploring Opportunities for Community Justice Help

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A Review of Access to Justice Literature and Activity

January 2021

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Canada 



This report is the result of research undertaken by Julie Mathews, Executive Director of Community Legal Education Ontario, and Professor David Wiseman, University of Ottawa Faculty of Law, from late 2019 to late 2020. The research was commissioned by the Department of Justice and supported (in-kind) by Community Legal Education Ontario.

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# Shifting the Paradigm:

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# Executive Summary

## 1. Overview

This report provides a review of recent developments in regulatory action and program activity aimed at improving access to justice through assistance provided by non-lawyers in community-based not-for-profit settings. We call this type of assistance “community justice help”. The purpose of this report is to explore and identify the potential for supporting and expanding the roles for community justice help in Canada.

The primary focus of our review is Canada, but recent developments in comparative jurisdictions are also considered. The report identifies some relevant regulatory action with potential to expand the scope for non-lawyer roles in general and community justice help more particularly. It also identifies a significant level of program activity in the realm of community justice help.

The report addresses recent developments in regulatory action and program activity from both descriptive and evaluative perspectives. Based on our review of the available evaluative information, we conclude that community justice help is generally of good quality, responding to people’s multifaceted needs, and is no more prone to deficiencies in quality or effectiveness than lawyers’ services. Consequently, this report recommends that next steps in relation to community justice help should aim to support and enable it.

## 2. Methodology

This report initially used a research methodology centering on review of primary legal sources (legislation on the regulation of the legal profession in the jurisdictions considered), primary regulatory literature (reports and other documents produced by regulators of the legal profession), and secondary academic literature. When we discovered that the secondary literature was somewhat limited, we expanded our methodology to selectively incorporate less formal literature generated by organizations involved in community-based not-for-profit non-lawyer activities and programs. We also conducted select telephone interviews to clarify certain information about program activity.

## 3. Terminology: Law-related assistance, law-related problems, and community justice help

This report uses the term “law-related assistance” to refer to the full range of forms of assistance relating to the legal element of problems that frequently arise in the course of people’s lives. That assistance spans a range, from the types of assistance that community justice helpers often provide, such as legal issue spotting and legal information, referral to lawyers, form-filling guidance, process navigation, and accompaniment, to the types of assistance that lawyers and other licensed legal professionals typically provide, such as document drafting, legal advice, and representation in court or other dispute resolution proceedings. At times, the report also

uses the term “legal services” to distinguish the types of assistance that are typically associated with lawyers and are the subject of the greatest regulatory control.

Rather than the term “everyday legal problem”, this report uses the term “law-related problem” or “life-affecting problem with a legal element” in order to better reflect the reality that the problems people experience are often multidimensional (involving, say, health or financial elements) and therefore, not merely or singularly “legal” problems. In addition, our preferred terms assist in avoiding the assumption that the resolution of a “legal” problem must or should rely upon engagement with the formal legal system.

What distinguishes community justice help as a form of non-lawyer law-related assistance is that it is provided in community-based not-for-profit settings as part of a holistic approach to meeting the needs of marginalized people and communities. When it comes to our focused discussion of community justice help, we use the term “community worker” as a general label for the non-lawyers who provide law-related assistance for people’s life-affecting problems in community-based not-for-profit contexts.

#### 4. The current lawyer-centric paradigm in Canada

Against the backdrop of the generally accepted objectives of regulation of the legal profession, all jurisdictions in Canada use a regulatory framework for the legal profession and the provision of legal services that is founded on a general lawyer-centric restriction. This foundational restriction is “lawyer-centric” because it prohibits all people other than licensed lawyers (or, in the case of Quebec, advocates) from engaging in the practice of law or, in the different language with similar scope of some regulatory frameworks, the provision of legal services. This general restriction is foundational in the sense that it has built upon it a variety of extensions and exemptions that permit a range of non-lawyers – people other than licensed lawyers – to engage in some or all activities that comprise the practice of law or the provision of legal services. At the same time, it should be noted that the provision of general legal information is not regarded as the practice of law or the provision of legal services.

We identify two types of extensions to the provision of legal services: one that authorizes other licensed legal professionals (such as paralegals) and another that authorizes employees or other supervisees of lawyers and other licensees (such as law clerks and law students). We identify five types of exemptions that permit law-related assistance activities undertaken by a range of people:

- people undertaking law-related activities for themselves;
- people occupying specified non-lawyer roles (e.g. public officers and traditional notaries);
- members of non-legal professions and occupations acting in the normal course of their work (e.g. accountants and social workers);
- people offering law-related assistance for “no fee, gain or reward”; and



- people in some personal relationships (e.g. a friend or family member).

The use of these extensions and exemptions varies significantly from jurisdiction to jurisdiction.

We also note that non-lawyer roles can be based on the discretionary exercise of the inherent power of courts to control their proceedings, as well as the related rules of courts. In a number of Canadian jurisdictions, courts (or court rules) permit non-lawyers to represent parties in certain types of proceedings (primarily, in family law proceedings) or to act as support persons during court proceedings (so-called “McKenzie Friends”).

As the legal profession is primarily regulated at the sub-national level in Canada, there is no general regulatory framework applicable to legal professionals at the federal level. However, in some areas of federal jurisdiction, the federal government has enacted laws that impact the provision of law-related assistance, including by authorizing non-lawyers to appear as representatives in dispute resolution proceedings.

Given the range of exemptions and extensions that allow non-lawyers to participate in the provision of law-related assistance, the current regulatory paradigm for legal services in Canadian jurisdictions cannot be characterized as “lawyer-exclusive”. Nevertheless, the current paradigm remains substantially lawyer-centric, both in structure and practice. Yet the regulatory paradigm has long contained a range of permissions for delivery of a variety of legal services by different types of non-lawyers. This means that the provision of law-related assistance by non-lawyers has for some time been recognized to be both justifiable and feasible. Two long-standing examples are Indigenous Court Workers (nationally) and Community Legal Workers (in Ontario).

We see significant untapped potential in the regulatory schemes to support and expand the provision of non-lawyer assistance in the form of community justice help. Our recent paper, *Community Justice Help: Advancing Community-based Access to Justice*, suggests that the nature of community justice help makes it difficult to place within the category of legal services that are appropriate for regulation by law societies. And we further argue that community justice help is consistent with Canadian regulators' access to justice goals and should be supported and enabled, rather than undermined or subject to further regulation by lawyers.

The existing exemptions for provision by non-legal professions and occupations and for no-fee provision, noted above, offer apparent authority for community justice help – to the extent it may be seen to be the provision of legal services – to be provided in Ontario, British Columbia, Manitoba, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. In Manitoba and Saskatchewan, it could in the future be permitted – again, to the extent that it is viewed as legal services – on the basis of the extension recently introduced to grant limited licenses on a case-by-case basis. In Alberta, it might arguably be permissible on the same informal basis that the current legal service provision by independent unlicensed paralegals is tolerated.

While the focus of this report is on the potential to support and expand the roles for law-related assistance to be provided by community-based not-for-profit non-lawyers, we note that regulators across Canada have undertaken a number of regulatory reforms and initiatives in recent years that are aimed at improving access to justice via lawyers, or mechanisms closely associated with or similar to lawyers. Examples of these regulatory actions include permitting licensed paralegals, unbundling of legal services (a.k.a. limited scope retainers), modifying conflict rules for pro bono legal service providers, and allowing civil society organizations to employ lawyers to serve their clients. These steps forward, however, have limitations in terms of their impact on increasing access to justice for communities and people experiencing social disadvantage.

### **Regulatory frameworks in comparative jurisdictions**

This report reviews the regulatory frameworks of the comparative jurisdictions of the United States, Australia, and England and Wales in order to contextualize the situation in Canada. In our analysis, both the United States and Australia use a lawyer-centric paradigm for the regulation of the provision of legal services that is broadly similar to the Canadian paradigm. Of particular note is that the regulatory regimes in all three jurisdictions maintain a place for a range of types of non-lawyers to deliver a variety of types of law-related assistance, although it appears that Canada's regulatory framework has probably gone the furthest in this respect. It also appears that regulators in the United States are presently devoting some attention to the potential of expanding types of non-lawyer law-related assistance that are available at no cost to users. Such attention is less apparent in the literature we have been able to review for Australia.

England and Wales is significantly less lawyer-centric than the other three jurisdictions reviewed here, in two ways. First, for a long time it has restricted non-lawyers from engaging in only a specific "reserved" sub-set of legal activities. Second, it has more recently allowed a range of designated licensed non-lawyer professionals to also engage in differing bundles of these reserved activities, along with lawyers. Outside those areas, there are few regulatory restrictions on non-lawyers providing legal services and they have been doing so for a long time, including offering services to community justice. This is not to say that there are not still practical barriers to community justice help in England and Wales, at least in the sense of ongoing and increasing lack of access to adequate funding and other resources.

## **5. Access to justice, community justice help and legal empowerment**

Several research reports have identified common challenges for delivering law-related assistance to people living on low-incomes or experiencing other forms of social disadvantage and marginalization. When it is this demographic that is the focus of concern, the emphasis in this report on the potential role of non-lawyers in community-based not-for-profit settings is not accidental.

The nature and context of the life circumstances and needs of marginalized people and communities means that non-lawyer forms of law-related assistance may be particularly important in terms of practicality and effectiveness. The practicality lies in the assistance

being available at no cost from sources already embedded in and trusted and accessed by the community. The effectiveness lies in the assistance being available from helpers who are skilled in understanding and engaging the challenging social context of people living on low incomes or otherwise experiencing marginalization. We note that there is some limited evidence that access to justice may be relatively more available in the less lawyer-centric regulatory system of England and Wales, compared to Canada and the United States.

We argue that the problem of lack of access to justice can be reframed as a problem of lack of legal empowerment and that this reframing reinforces the justifiability and feasibility of expanding community justice help. Just as it can be argued that there is a need to move beyond lawyer-centrism in the regulation and delivery of law-related assistance, so too must we be aware that the ideal of access to justice, and ideas on how to improve it, may also be prone to lawyer-centrism. When the concepts and approaches of legal capability and legal empowerment are applied, the understanding of access to justice becomes more people-centered and empowerment-oriented, rather than lawyer- or system-centered. This leads us to exploring better support for the role of community justice help, in advancing access to justice, especially in contexts of social disadvantage.

## 6. Looking at community justice help

This report provides an overview of program initiatives involving community-based not-for-profit non-lawyer provision of law-related assistance or, in other words, community justice help. We identify a spectrum of law-related assistance provided by community-based organizations that covers three main types of tasks and services:

- tasks and services relating to identifying legal issues, accessing legal information, and making connections to legal services;
- tasks and services to assist with navigating processes, understanding options, and completing forms; and
- tasks and services to provide support, including mentoring and moral support, support in organizing documents, and accompaniment to meetings and adjudicative proceedings.

While there is no basis upon which to quantify the extent of these programs, we speculate that there are many hundreds of examples across Canada, and in the US, the UK, and Australia, of not-for-profit community-based organizations providing law-related assistance across the general groupings of tasks and services on the spectrum. It appears that these jurisdictions have seen considerable, and increasing, activity in the realm of community justice help across these groupings in recent years.

Noting that it is virtually impossible to neatly categorize the range of organizations and the services they provide, we decided to illustrate the range by selecting and briefly discussing a sampling of programs in these jurisdictions. The mandates of the organizations delivering these programs, and the nature of the programs they provide,

vary widely. The report also references program evaluations, for the programs we give as examples, where they are publicly available.

In describing the program activities in Canada and comparative jurisdictions, we divide them into three categories that roughly correspond to the three service groupings, as follows.

**1. Community-justice partnerships, including library-justice and health-justice partnerships**

Partnerships in this group take many forms. Library-justice partnerships focus on training library staff on how to recognize a legal issue and on finding and accessing reliable, relevant legal information for library patrons.

Health-justice partnerships provide training and support to health care workers to increase their capacity to help patients identify legal issues and access relevant legal information. Many offer warm referrals and have legal services integrated directly into the health care setting.

Faith-justice partnerships offer members of faith-based or religious groups or institutions, or people who attend particular places of worship, direct connections with legal professionals. A number of such partnerships have emerged recently in the United States.

Cross-sectoral partnerships offer opportunities to connect people with a range of social services, including law-related assistance. In Ontario, Connecting Ottawa is a partnership-based network of over 50 community health, legal, immigration, disability, and social services. The initiative supports frontline workers in giving useful, accurate legal information to their clients, facilitates connections to other services, and provides a range of training programs for partner agencies to build their law-related knowledge and skills.

**2. Community services that integrate law-related assistance, including services in the areas of workers' rights, support for recent immigrants, support for survivors of intimate partner violence, and navigators and community guides**

Many grassroots, worker-led, community-based organizations have been at the forefront of advocating for the legal rights of their members, undeterred by the absence of a lawyer on staff. Community-based organizations in Canada and the US that focus on supporting workers provide a range of assistance, including helping workers in applying for benefits, helping workers to understand their rights and address employment issues, and advocating for fair, decent, and safe conditions of work.

Community-based organizations in Canada and the US that work in the area of immigration and refugee asylum support newcomers in their efforts to obtain legal status, permission to work or study, health care, and other legal documentation and entitlements that they need to remain in the country and live

decently. Assistance varies across organizations and jurisdictions and may be provided by social workers, case workers, trained volunteers, coordinators, or students.

In the process of extricating themselves from an abusive relationship, survivors of intimate partner violence may have to engage with various legal processes, including criminal, family, and housing law, as well as income support. Organizations in Canada that serve survivors of intimate partner violence train legal or court support workers to provide a range of assistance, including accompanying women to court and lawyer appointments, providing education about the court process and how to complete legal documents, and connecting them to family law lawyers.

In recent years, navigator programs have emerged in Canada and other jurisdictions, in court-based and community-based settings, to provide process-related assistance to people engaged in a legal matter. Navigator programs in courts and tribunals vary across jurisdictions. Some use trained volunteers; others use specifically trained staff. They provide a range of support to self-represented litigants that can include assistance to help them physically navigate the courts, obtain legal and procedural information, understand their options, complete court paperwork, and get referral information.

Community-based organizations have also begun to adopt the “navigator” terminology to describe the process-oriented, law-related assistance that they provide. Some organizations provide, peer-to-peer support by training community members to serve as “community guides” and “peer educators”.

### **3. McKenzie Friends and court support persons**

The concept of support persons has gained attention in Canada in recent years, building on the existence of McKenzie Friends in the UK. The UK allows for a layperson, known as a “McKenzie Friend”, to provide “reasonable assistance” to self-represented litigants in court.

The role of McKenzie Friends and court support persons varies across jurisdictions. They can provide a range of assistance, including moral and emotional support, guidance in organizing documents and evidence, help understanding the legal court process and adjudicative forum, and accompaniment to a lawyer meeting or court, tribunal or other proceeding. Many community organizations in Canada that give law-related assistance also provide what might be considered “McKenzie Friend-type” assistance.

The report also discusses the different model of community justice help represented by the extensive network of independent charities in the UK called Citizens Advice. Citizens Advice offices are entry points for many people who need assistance and support on a wide range of issues, including those relating to benefits and pensions, debt and consumer matters, employment, housing, immigration, and numerous others.

Highly trained advisors working out of local Citizens Advice provide information about processes, help clients communicate with the institutions they are dealing with, translate their stories to meet the requirements of claim forms or tribunals, negotiate informally with employers, and gather evidence to support their claims.

As well, the report briefly addresses the use of technology to support community justice help. Technology has played a variety of positive roles for the provision of community justice help in the form of online platforms, tools and channels for information sharing and service support; in the form of training; and in the form of mentoring and peer support, and referrals support.

## 7. Community Justice Help and Quality

Questions are sometimes raised about the quality of community justice help provided by community organizations, and how it compares in quality and efficacy to the services from a lawyer or paralegal. There appears to be only a modest body of relatively recent academic literature relevant to these issues, which we consider at some length.

We note the following key findings from the evaluative literature:

- Not-for-profit community organizations with trained and specialized staff are able to provide, within the specialized scope of their organizations' services, as high-quality legal services as lawyers;
- Law-related assistance provided by not-for-profit community-based organizations, including individualized services provided person-to-person, can have a positive impact on case outcomes;
- Non-lawyers who provide law-related assistance are not subject to more professional misconduct or sanctions than lawyers;
- Specialization is a key ingredient of quality with respect to law-related assistance, and community workers are able to develop that specialization; and
- An experienced lawyer may be important where legal matters are complex, or where "relational expertise" – familiarity with a court or tribunal setting and the personnel in the court – comes into play.

## 8. Conclusion: Key findings, knowledge gaps, recommendations, and next steps

A number of **key findings** are identified in the conclusion to the report:

- i. As non-lawyers already provide law-related assistance that aligns with the lawyer-centric paradigm, efforts and initiatives to shift the paradigm towards greater roles for non-lawyers in general and community justice help in particular are to some extent about a shift in degree rather than kind.
- ii. Some recent regulatory actions, although not reflective of a shift in the paradigm of lawyer-centricity, are at least nudging the orientation of the paradigm towards

modes of service delivery that more people may be able to access. But, insofar as these modes of service delivery operate on a for-profit basis, even if at a lower cost, they are unlikely to offer much of an advance in access to justice for people living on low incomes or experiencing other forms of social disadvantage and marginalization.

- iii. A newer approach to and understanding of access to justice, that is people-centred and empowerment-oriented, may be altering the ground upon which the lawyer-centric paradigm has been erected and will likely only continue to exert pressure to shift that paradigm. We anticipate that this will lead to more deliberate regulatory action – formal or informal – to enable and support community justice help.
- iv. The breadth and vigour of community justice help activity reflects the reality of where and how people address their multifaceted problems, including problems that may have a law-related element. Acknowledging and supporting this reality holds considerable promise for advancing meaningful access to justice.
- v. The adoption of a supportive and enabling approach to community justice help (by regulators, governments, and others) is a sound approach based on the evidence. There is not a body of evidence that indicates that doing so would put the public at risk of harm.

We also identify two main **knowledge gaps**:

1. First, there is a lack of detailed information on the true extent of community justice help programs and activities in Canada and comparative jurisdictions.
2. Second, and more significantly, there is a lack of publicly available evaluations of the effectiveness of current programs and activities involving delivery of law-related assistance by not-for-profit community-based organizations. Our review has considered the limited literature available in this area and it supports the usefulness of such research. We would emphasize, though, that, to be productive and constructive, not-for-profit organizations providing community justice help need to be heavily involved in, if not lead, these evaluation efforts.

In keeping with the key findings in this report, and others, that existing community justice help activity appears to be of good quality, we **recommend** that it be reinforced and expanded via an approach that focuses on supporting and enabling it, rather than on controlling and regulating it. Drawing on other work, we offer a framework for this approach that articulates many of the good practices already in place in community-based settings. The framework centres on three features of good quality community

justice help and provides a set of indicative markers for each feature. We propose that community justice help is of “good quality” when:

1. **Community justice helpers have the knowledge, skills and experience they need** to assist people with the legal elements of their problems and to navigate relevant legal processes.
2. **Community justice helpers work within a not-for-profit organization and an ethical infrastructure** that protects the dignity, privacy, and consumer welfare of the people they are assisting.
3. **Community justice helpers provide support that responds to their clients’ needs in a holistic way**, based on an understanding of the multidimensional nature of their needs, the social context of their lives, and the availability of other appropriate services in the community. In a nutshell, community workers know their clients and know their communities inside out.

In turn, we propose that next steps on community justice help be informed by the “supporting and enabling” approach we recommend.

With respect to the range of possible **next steps** for the Department of Justice, we make the following suggestions:

1. Investigate the potential for supporting and enabling community justice help to improve access to justice in areas of federal jurisdiction and in areas covered by intergovernmental program partnerships and related funding frameworks.
2. Identify and rectify current barriers to or restrictions on community justice help in areas of federal jurisdiction, in particular, in the area of assistance related to immigration and refugee law provided by not-for-profit organizations.
3. Fund and otherwise facilitate research to better understand the current extent of community justice help and to constructively and contextually assess its quality and potential areas of improvement.
4. Fund and otherwise facilitate research to better understand how community-based not-for-profit organizations that provide community justice help internally and collectively support the quality of their work.
5. Fund and otherwise facilitate sector-specific or organization-specific projects, pilots or other initiatives, aimed at elaborating, establishing, maintaining,



evaluating or improving the quality of community justice help.

6. Fund and otherwise facilitate research that explores, with particular focus and depth, the actions taken and help sought by people living on low incomes or experiencing other social disadvantages to address their multifaceted life problems that may include law-related elements, as well as the efficacy of the actions, help and challenges associated with them.
7. Foster domestic and international inter-jurisdictional information and knowledge exchange on community justice help activity and best practices.

# 1. Introduction

This report provides a review of recent developments in regulatory action and program activity aimed at improving access to justice through assistance provided by non-lawyers in community-based not-for-profit settings. We call this type of assistance “community justice help”. The purpose of this report is to explore and identify the potential for supporting and expanding the roles for community justice help in Canada.

The primary focus of our review is Canada, but recent developments in comparative jurisdictions are also considered. The report identifies some relevant regulatory action with potential to expand the scope for non-lawyer roles in general and community justice help more particularly. It also identifies a significant level of program activity in the realm of community justice help.

As developments in Canada head further along the path of enabling and providing community justice help, they incrementally contribute to shifting the currently predominant lawyer-centric paradigm of the regulation and delivery of law-related assistance in Canada. The current paradigm has long permitted non-lawyers in a specified range of roles to provide law-related assistance, including some roles involving community justice help. But the paradigm has remained lawyer-centric in the sense that permission for non-lawyer roles and community justice help has always been the exception rather than the rule, both in terms of the structure of regulatory frameworks and the quantitative provision of law-related assistance in the formal legal system.

To the extent that it is occurring, the shift away from a lawyer-centric paradigm matches and, indeed, can be associated with, a shift in the understanding of access to justice itself. This latter shift exists in the switch to a focus on defining and understanding access to justice in terms of the experience of the general public with so-called “everyday legal problems”, rather than in terms of the operation of the formal justice system.<sup>1</sup>

A key insight of the ongoing research in Canada and elsewhere on everyday legal problems is that people take a variety of pathways in addressing their problems (including taking no action at all), of which lawyers and the formal justice system are only one and, crucially, not necessarily the one that should be the predominant priority of efforts to improve access to justice. This may be especially the case for people living on low incomes and experiencing other forms of social disadvantage and marginalization. In other words, as the approach to understanding access to justice has become less centered on lawyers and the formal justice system, so too has the lawyer-centricity of the regulation and delivery of law-related assistance, as well as alternative and supplementary assistance options (including community justice help), become a focus of attention.

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<sup>1</sup> Ab Currie, *Nudging the Paradigm Shift: Everyday Legal Problems in Canada* (Toronto: Canadian Forum on Civil Justice, 2016), online (pdf): *Canadian Forum on Civil Justice* [www.cfcj-  
fcjc.org/sites/default/files/publications/reports/Nudging%20the%20Paradigm%20Shift%2C%20Everyday%20Legal%20  
Problems%20in%20Canada%20-%20Ab%20Currie.pdf](http://www.cfcj-<br/>fcjc.org/sites/default/files/publications/reports/Nudging%20the%20Paradigm%20Shift%2C%20Everyday%20Legal%20<br/>Problems%20in%20Canada%20-%20Ab%20Currie.pdf) [Currie, *Nudging the Paradigm Shift*].

The attention that this report devotes to recent developments in regulatory action and program activity in the realm of community justice help seeks to be both descriptive and evaluative. We review recent developments in community justice help and what limited literature and other information is available about the quality and effectiveness of non-lawyer assistance in general and community justice help more particularly, especially to the extent they have been compared to the services provided by lawyers. On the basis of the review of the available evaluative information, this report concludes that community justice help is generally of good quality, responding to people's multifaceted needs, and is no more prone to deficiencies in quality or effectiveness than lawyers' services. Consequently, this report recommends that next steps in relation to community justice help should aim to support and enable it.

This report is organized into eight sections, including this introduction. Section 2 explains the methodology used for researching this report. Section 3 provides some foundational definitions of forms of law-related assistance and situates non-lawyers and community justice help on that definitional landscape.

Section 4 examines the objectives and components of the regulatory framework for the legal profession and the provision of legal services in Canada and the comparative jurisdictions of the United States, Australia, and England and Wales. The first part of this section focuses on explaining the "lawyer-centric" nature of the current regulatory paradigm in Canadian jurisdictions, while noting the place for non-lawyers and community justice help within that paradigm. As part of this overview of the current Canadian situation, the section identifies the ways in which a selection of reforms and other initiatives are nudging lawyers towards improving access to justice. The section then moves to a review of the regulatory paradigms in the comparative jurisdictions, including consideration of the scope for non-lawyers and community justice help.

Section 5 seeks to explore the relationships between access to justice, lawyer-centricity and community justice help. The section offers a definition of access to justice and a snapshot of research findings on so-called everyday legal problems and the extent to which people achieve access to justice in addressing those problems. The section then explains how non-lawyers can be an important element of efforts to improve access to justice for marginalized communities. This leads into a consideration of indications that relatively greater lawyer-centricity is associated with relatively less access to justice. The final part of the section briefly reviews the concepts of legal capability and legal empowerment as they relate to access to justice and community justice help.

Section 6 canvasses the spectrum of law-related assistance and services provided by workers in not-for-profit community-based organizations – or community justice help – and gives examples from Canada and comparative jurisdictions that illustrate the breadth and nature of community justice help. It also notes where community justice help programs have undergone program evaluations. Finally, it includes a brief review of how organizations providing community justice help take advantage of technology to support their work.

Section 7 considers available literature that sheds evaluative light on the quality of law-related assistance provided by community justice helpers and looks at the comparative quality of services provided by lawyers and non-lawyers.

Section 8 is the conclusion to this report. It identifies knowledge gaps and next steps consistent with the recommended approach of supporting and enabling community justice help into the future.

An appendix provides more detailed overviews of the regulatory frameworks in Canadian jurisdictions.

## 2. Methodology

This report initially used a research methodology centering on the review of primary legal sources (legislation on the regulation of the legal profession in the jurisdictions considered), primary regulatory literature (reports and other documents produced by regulators of the legal profession), and secondary academic literature. When we discovered that the secondary literature was somewhat limited, we expanded our methodology to selectively incorporate less formal literature generated by organizations involved in community-based not-for-profit non-lawyer activities and programs.

The primary source literature included legislation impacting the regulation of the legal profession and the provision of legal services in all Canadian jurisdictions, as well as comparative jurisdictions. A review was also undertaken of key provisions of regulations put in place by self-regulatory oversight bodies of the legal profession, such as the Law Society of Ontario. Other primary source literature included annual reports and similar documents produced by organizations engaged in the provision of legal services, or their funders, especially in community-based not-for-profit contexts. Relevant primary source literature was identified by searching online open access repositories of legislation and regulations, as well as public materials of regulatory and provider organizations available online.

The secondary literature was mostly comprised of scholarly research providing explanations, analysis and evaluations of regulatory concepts, frameworks, and activity, as well as legal services programs. An extensive body of literature on the regulation of legal services and access to justice issues was identified, but only a very small body of literature engages in evaluation of community-based not-for-profit non-lawyer programs. Relevant secondary literature was identified by searching online academic research databases (some open access and some only accessible via institutional subscription), as well as searching for literature otherwise available online or in university library collections. With assistance of the Department of Justice, this included a dedicated search of French-language materials. After initial identification and categorization of the secondary literature according to the research questions, the authors and research assistants drafted descriptive annotations of each source. The collected annotations were assessed for key content and common themes, and these formed the basis of this report.

Given the limited quantity of secondary academic literature, we then expanded our scope to attempt to identify and incorporate information from less formal literature generated by organizations involved in community-based not-for-profit non-lawyer activities and programs. This literature is largely held at the level of individual organizations, of which there are a vast number just in Canada, and many multiples more across the comparative jurisdictions. This literature is also not consistently or comprehensively accessible online, which was our only practical means of access. It was not feasible within the scope of this project to attempt to systematically collect this information. Consequently, our incorporation of this less formal literature is necessarily

selective and our consideration of it only provides a partial picture of relevant activities and programs. In some instances, we gathered supplementary or clarifying information about program activities from telephone interviews.

### 3. Definitions: The Landscape of Forms of Law-related Assistance

In this section, we set out brief definitions of the main forms of provision of law-related assistance that will provide a reference point for subsequent explanation and discussion of the current paradigm and alternative approaches. Our definitions mostly focus on the identity of providers, but also include technology-enabled provision as an emerging stand-alone source of assistance.

At the outset, we should clarify our use of the term “law-related assistance”. Our objective in using this term is to allow room for inclusion of all forms of assistance relating to everyday legal problems. That is, assistance that spans the range from the types of assistance that community justice helpers often provide, such as legal information, referral to lawyers, form-filling guidance, and process navigation or accompaniment, to the types of assistance that lawyers and other licensed legal professionals typically provide, such as document drafting, legal advice, and representation in court or other dispute resolution proceedings.

As is explained more fully in Section 4, a key reason why this latter range of assistance is typically provided by lawyers and other licensed legal professionals is that other types of service providers are usually foundationally prohibited by applicable regulatory frameworks. These regulatory frameworks have led to an exclusionary boundary being drawn around the range of assistance classified as comprising “the practice of law” or “the provision of legal services”. This boundary is often referred to as creating a dividing line between the provision of “legal services” and the provision of “legal information” (which is not generally regulated), with the line theoretically located at the point where the assistance requires the application of legal knowledge, principles and judgment to an individual’s specific circumstances or, in a more shorthand formulation, at the point where the assistance involves “legal advice”.

Since this indicator for the dividing line is unclear, and potentially widely encompassing, it casts a shadow over the range of law-related assistance that community justice helpers can provide, without potentially running the risk of “crossing the line” into the unauthorized practice of law or provision of legal services. At times then, in this report, we use the term “legal services” to refer to the range of law-related assistance that is typically associated with lawyers (and other licensed legal professionals) because others (non-lawyers/non-licensees) are often foundationally prohibited from providing them.

In addition, we should note here that we prefer the term “law-related problem” (or, sometimes, “life-affecting problem with a legal element”) rather than the term “everyday legal problem”. We prefer the former because it better reflects the reality that the problems that people experience in their lives are often multidimensional (involving, say, health or financial elements) and so not merely or singularly “legal” problems. Also,

our preferred term assists in avoiding the assumption that the resolution of a “legal” problem must or should rely upon engagement with the formal legal system.

### 3.1 Lawyers as primary legal service providers

Lawyers are a primary vehicle for the provision of legal services. In all Canadian jurisdictions, and in comparative international jurisdictions, only people who have met specific educational and other requirements are eligible to be licensed as lawyers and permitted to call themselves lawyers (or, in Quebec, advocates). Further, all Canadian jurisdictions have in place a foundational general restriction that permits only lawyers to engage in “the practice of law”. In some jurisdictions the restriction is framed not in terms of the general all-encompassing activity of “the practice of law” but, instead, is framed in terms of an expansive list of more specific activities that fall into the general category of “the provision of legal services”. All activities that have been specified as involving the provision of legal services would also fall into the category of “the practice of law”. Regardless of the terminology, lawyers have the most expansive “scope of practice” rights in the sense that they are authorized to engage in the full range of activities that are categorized as legal services and can undertake those activities across the full range of substantive areas and adjudicative processes of law.

For the purpose of this report, within the category of lawyers, we are most interested in the lawyers who provide legal services to marginalized people and their communities. Some of these lawyers are in private practice settings and provide legal services on the basis of legal aid certificates. They operate in a for-profit framework, although their potential for profit generation is, of course, limited by the extent to which they engage in legal aid work, which is generally understood to offer remuneration at below-market rates. Others are staff lawyers employed by legal aid programs, including community legal clinics, or civil society organizations, who are offering their services in a not-for-profit setting. Some lawyers, in both settings, also engage in pro bono (no-fee) provision of legal services. Some lawyers in private practice, whether or not they accept legal aid certificates, provide some legal services at “low bono” (reduced fee) rates.

### 3.2 Non-lawyer forms of law-related assistance

Technically, any person other than a lawyer who is entitled to engage in the provision of law-related assistance is a “non-lawyer” provider. But there are a variety of types of non-lawyer providers, with varying requirements for authorization and varying scopes of permitted practice. In what follows, we define the main types of non-lawyer providers, beginning with those who are most like lawyers. Although, consistent with much literature in this area, we use the term “non-lawyer” throughout this report, we acknowledge that it is itself a lawyer-centric term and that, ideally, the set of providers of law-related assistance who are not lawyers would be identifiable by a different label.



### 3.2.1 Generalist non-lawyer legal service providers: paralegals, notaries and “no-fee” providers

Paralegals are people who provide a limited range of legal services and can usually only do so across a limited range of substantive legal areas. Dependent paralegals are those who can only provide legal services as employees of lawyers and under their supervision. Independent paralegals can provide legal services in their own right, independent of lawyers. In some jurisdictions, independent paralegals can only practise if licensed through a regulatory regime (which is often similar in its general components to that applied to lawyer licensing). Ontario and Quebec are examples of such jurisdictions, although in Quebec they apply the label “notaries”. In those jurisdictions, their scope of practice is set out in the regulatory regime and they form a second type of “independent legal professional licensee”, alongside lawyers.

That Quebec uses the label “notary” for a role akin to a paralegal is apt to confuse and requires brief explanation. In most Canadian jurisdictions other than Quebec, “notaries” traditionally have a much more confined role than paralegals, with authority to provide only a very limited range of “procedural” legal services, such as witnessing oaths, signing affidavits and certifying true copies of documents. Typically, all lawyers (and, where they exist, licensed paralegals) are also notaries, but people other than lawyers can be licensed as notaries under dedicated legislation. Given their confined role, traditional notaries are not typically akin to paralegals. For the purposes of this report, since typical notaries can only provide a very limited range of procedural legal services, we do not include them in the category of independent licensed legal professionals.

In other jurisdictions, paralegals are not regulated or licensed and their authorization to practise is based either on statutory allowances for people to receive legal services in relation to dispute resolution proceedings from “agents” or on the informal tolerance of regulators of lawyers (who police the boundaries of the “unauthorized practice of law”). Most independent paralegals provide legal services on a private-practice for-profit model and legal aid certificates are available for some areas within their scope of practice. Some paralegals are employed in legal aid programs, community legal clinics and civil society organizations.

In some jurisdictions there are no limitations on the provision of legal services when provided “for no fee, reward or gain”. These jurisdictions thus authorize what we will refer to as “no-fee” non-lawyer legal services provision. We note though that our research has not identified any express reliance on this authorization, in jurisdictions where it exists, by non-lawyers in general or by organizations involved in community justice help more specifically.

### 3.2.2 Sector-specific non-lawyer legal service providers

In some jurisdictions there is authorization for non-lawyers to provide a full or significant range of legal services but only relating to a particular sector or substantive area of law. A prime example is immigration consultants who can provide legal services

in relation to a range of immigration and refugee matters. Immigration consultants can practise on a for-profit basis.

### 3.2.3 Non-legal profession or occupation non-lawyer legal services providers

In some jurisdictions there is authorization for members of non-legal professions or occupations to provide legal services when doing so in the course of their normal professional or occupational activities. Usually, this type of authorization is not restricted as to basis of delivery, in the sense that it can be for-profit or provided on a no-fee basis.

### 3.2.4 Non-lawyer community justice help

What distinguishes community justice help as a form of non-lawyer law-related assistance is that it is provided in community-based not-for-profit settings as part of a holistic approach to meeting the needs of marginalized people and communities. To the extent that community justice help may, in some aspects, be viewed as the provision of “legal services”, it is not expressly authorized as such, but can be regarded as permitted on the basis of more general authorizations for non-lawyer provision of legal services that can cover community-based not-for-profit holistic service settings. When it comes to our focused discussion of community justice help in Section 6, we use the term “community worker” as a general label for the non-lawyers who provide law-related assistance for people’s life-affecting problems in community-based not-for-profit contexts.

## 3.3 Technology-enabled law-related assistance

Technology is increasingly playing a role in the provision of law-related assistance. In terms of situating technology-enabled legal resources and tools in the broader landscape, it is useful to distinguish between what can be called “direct-to-public” technology and “support-to-provider” technology. The former makes legal information and other forms of legal resources or assistance directly accessible to the general public, via a technological interface. The latter is targeted at existing providers of legal assistance – primarily lawyers – and seeks to provide technological tools that improve the efficiency and effectiveness of the work that lawyers need to do to provide legal assistance.

For the purpose of this report, we confine our exploration of technology-enabled legal assistance to the role that technology can play in facilitating the provision of community justice help.

## 4. Context: The Current Paradigm in Canada and Comparative Jurisdictions

In this section, we provide:

- an overview of the main objectives and features of the current regulatory regimes in Canada and comparative jurisdictions;
- a definition of access to justice and a review of some key findings in research on the prevalence of so-called “everyday legal problems”, the extent to which lawyers and other sources of help are used to resolve those problems, and the apparent shortfall in access to justice;
- an analysis suggesting a relationship between degrees of inaccessibility of justice and degrees of regulatory focus on the provision of services by lawyers, and challenges for accessibility and effectiveness of legal services for disadvantaged and vulnerable groups if legal assistance can only be accessed through lawyers; and
- an overview of recent initiatives that seek to improve access to justice via means other than non-lawyers.

### 4.1 The current paradigm in Canada and comparative jurisdictions

#### 4.1.1 Objectives of regulation of legal assistance

Scholarly analysis of the regulation of the legal profession has identified a range of key regulatory objectives.<sup>2</sup> In a survey and analysis of regulatory approaches in Canada and comparable international jurisdictions – the United States, England and Wales, New Zealand, and Australia – it is argued by Noel Semple that the regulation of legal services generally invokes three justificatory principles:<sup>3</sup>

1. Consumer/client protection – primarily for clients who are the immediate recipients of legal services;
2. Minimization of negative externalities – primarily for third parties to the licensee-client relationship, both individuals and society-as-a-whole, who may be

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<sup>2</sup> Michael J Trebilcock, “Regulating the Market for Legal Services” (2008) 45:5 Alberta L Rev 215; Gillian K Hadfield & Deborah L Rhode, “How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering” (2016) 67:5 Hastings LJ 1191; Noel Semple, *Legal Services Regulation at the Crossroads: Justitia’s Legions* (Gloucestershire: Edward Elgar Publishing Ltd, 2015) [Semple, *Legal Services Regulation at the Crossroads*]; Richard Devlin & Porter Heffernan, “The End(s) of Self-Regulation” (2008) 45:5 Alberta Law Review 169 [Devlin & Herrnan, “The End(s) of Self-Regulation”].

<sup>3</sup> Semple, *Legal Services Regulation at the Crossroads*, *supra* note 2 at 18-44.

- negatively affected by the delivery of poor quality or otherwise detrimental legal services; and
3. Encouragement of positive externalities – again, primarily for third parties to the licensee-client relationship, both individuals and society-as-a-whole, who may be positively affected by the delivery of good quality or otherwise beneficial legal services.

As Semple notes, at the society-wide level, the concern for positive and negative externalities can include the objectives of preserving the rule of law and improving access to justice.<sup>4</sup>

At the same time, scholars have also identified a self-interested bias in the rule-making actions, if not the justifications, of self-regulating lawyers.<sup>5</sup> Further, bias has also been detected in regulatory monitoring and enforcement actions.<sup>6</sup>

Legal regulatory bodies themselves generally acknowledge a similar range of objectives. For some of those bodies, such as the Law Society of Ontario (LSO), these objectives are identified in their enabling legislation. Under the *Law Society Act*, the LSO's primary function is to ensure that all people who practise law or provide legal services in Ontario "meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide".<sup>7</sup> This mission would appear to automatically give rise to two corresponding primary regulatory principles: the provision of legal services must meet appropriate standards of quality/competence and the provision of legal services must meet appropriate ethical standards.

The *Law Society Act* goes on to provide that the LSO, in "carrying out its function, duties and powers ... shall have regard to"<sup>8</sup> the following five principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.

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<sup>4</sup> *Ibid.* at 32–33.

<sup>5</sup> For an overview of arguments for and against lawyer self-regulation, see Devlin & Herrnan, "The End(s) of Self-Regulation" *supra* note 2 at 185–195. See also Harry Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33:4 Alberta L Rev 800.

<sup>6</sup> See: Richard L Abel, *Lawyers in the Dock: Learning from Attorney Disciplinary Proceedings* (Oxford University Press: New York 2008); Joan Brockman, "Money for Nothing, Advice for Free: The Law Society of British Columbia's Enforcement Actions against the Unauthorized Practice of Law" (2010) 29 Windsor Rev L & Soc Issues 1; Alice Woolley, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation" (2011) 4:8 UBC L Rev 145; and, Alice Woolley, "Regulation in Practice: The 'Ethical Economy' of Lawyer Regulation in Canada and a Case Study in Lawyer Deviance" (2012) 15:2 Leg Ethics 243.

<sup>7</sup> *Law Society Act*, RSO 1990, c L 8, s 4.1.

<sup>8</sup> *Ibid.*, s 4.2.

5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. 2006, c. 21, Sched. C, s. 7.

At the same time, informed by these principles and the objectives, the LSO has articulated a more specific set of criteria for assessing regulatory reform proposals. This is particularly evident, for instance, in the regulatory reports of the LSO on the issue of whether to allow so-called “alternative business structures” (ABS) in Ontario. As further discussed in Section 4.1.2-h below, allowing ABS amounts to allowing entities and organizations that are not owned or controlled by lawyers to deliver legal services to the public. In the course of its work on the issue, the ABS Working Group identified the following seven criteria to guide its assessment of proposals: access to justice, responsiveness to the public, professionalism, protection of solicitor-client privilege, promotion of innovation, orderly transition, and efficient and proportionate regulation.<sup>9</sup>

The enabling legislation for other Canadian law societies do not generally go as far as the Ontario legislation in expressing regulatory principles, but those law societies commonly acknowledge a similar range of principles and other criteria. For example, in its Strategic Plan 2019-2021, the mission statement of the Law Society of Saskatchewan says that it “serves the public interest and advances the administration of justice by regulating the competence and integrity of the practice of law in a flexible and innovative manner, ensuring the independence of the legal profession, and promoting access to justice.”<sup>10</sup>

#### 4.1.2 The lawyer-centric regulatory schemes in Canadian jurisdictions

In what follows, we summarize the general approach to regulation of the legal profession and the delivery of legal services across Canadian jurisdictions. The general approach is founded on a common “lawyer-centric” restriction on who may provide legal services, but also involves a variety of extensions and exemptions that provide opportunities for people other than lawyers to provide some legal services in specified circumstances. In the Appendix to this report, we provide more detailed summaries of the approach taken in each Canadian jurisdiction (generally, citations to specific statutes and by-laws are left to the Appendix). In doing so, our main objectives are to both identify and situate the extent to which community justice help might be allowed within each jurisdiction’s approach.

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<sup>9</sup> See “Report of the Alternative Business Structures Working Group” in Margaret Drent, Professional Regulation Division, *Report to Convocation* (Ontario: Law Society of Upper Canada, June 2017) at 179, online (pdf): *Law Society of Ontario* <[www.lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-june2017-professional-regulation-committee-report.pdf](http://www.lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-june2017-professional-regulation-committee-report.pdf)>.

<sup>10</sup> Law Society of Saskatchewan, “*Strategic Plan 2019-2021*”, online (pdf): *Law Society of Saskatchewan* <[www.lawsociety.sk.ca/wp-content/uploads/2020/03/lssstrategicplan2019-2021.pdf](http://www.lawsociety.sk.ca/wp-content/uploads/2020/03/lssstrategicplan2019-2021.pdf)>.

### a. Common foundational “lawyer-centric” general restriction

All jurisdictions in Canada use a regulatory framework for the legal profession and the provision of legal services that is founded on a general lawyer-centric restriction. This foundational restriction is “lawyer-centric” because it prohibits all people other than licensed lawyers (or, in the case of Quebec, advocates) from engaging in the practice of law or the provision of legal services. The activities that constitute the practice of law are essentially the same as those that constitute the provision of legal services. Whether the restriction is framed in terms of “the practice of law” or “the provision of legal services”, or both, differs from jurisdiction to jurisdiction.

At the same time, it should be noted that, across Canada, the provision of legal information is not regarded as the practice of law or the provision of legal services. Along the spectrum of law-related assistance, and as already mentioned in Section 3, above, this creates what is often referred to as a regulatory “dividing line” between “legal information” (on the largely unregulated side of the line) and “legal advice” or, more broadly, “legal services” (on the regulated side). Generally speaking, a dividing line may be theoretically drawn by reference to a point at which law-related assistance requires the application of legal knowledge, principles, and judgment to specific circumstances. As such, the dividing line is both blurry and potentially widely encompassing; nevertheless, the common structure of the lawyer-centric regulatory frameworks in Canada attempts to restrict activity on the legal services side of the line by requiring regulatory authorization or permission to engage in those activities.

This general restriction is foundational in the sense that it has built upon it a variety of extensions and exemptions that permit a range of non-lawyers to engage in some or all activities that comprise the practice of law or the provision of legal services. We identify and explain these extensions and exemptions in what follows.

### b. Jurisdictionally varying extensions to availability of legal services

We use the term “extension” to refer to two types of authorizations, both of which operate to extend the availability of legal services associated with licensed legal professionals. The first type does this by extending the scope of the licensed legal profession through the authorization of the activities of lawyer-like independent licensees. This “independent legal professional licensees” extension is part of the regulatory frameworks in:

- Ontario – which has licensed paralegals;
- Quebec – which has licensed notaries who are akin to paralegals in Ontario (although with a different scope of practice);
- British Columbia – which has licensed notaries with a somewhat broader scope of practice than the traditional procedural legal services;

- Saskatchewan and Manitoba – which have recently introduced a power for their law societies to grant limited licenses on a case-by-case basis; and
- Nunavut – which has had a limited license power in force since 2017 (but it does not appear to have been used).

Alberta takes a unique approach to the role of independent legal professionals. Its regulatory scheme does not expressly allow them, let alone license them, as a general type of legal services provider, but there are a variety of specific authorizations for non-lawyer “agents” spread across a range of legislative enactments relating to particular areas of law and legal processes. The services provided by independent paralegals in Alberta are based on these ad hoc authorizations, but also often appear to extend beyond them. The Law Society of Alberta acknowledges this and has essentially adopted a position of regulatory tolerance.

The second type of extension expands the service capacity of lawyers and other licensed legal professionals by authorizing their employees or others whom they supervise, such as articled clerks and law students, to participate in the provision of legal services. This “supervised legal services provision” extension is part of the regulatory framework in all jurisdictions, although in the case of law students there is some variation in the range of contexts in which the extension applies. In particular, in some jurisdictions it is limited to employed law students, while in other jurisdictions it extends to law students who are participating in supervised clinical or experiential learning programs.<sup>11</sup>

### c. Jurisdictionally varying exemptions from the lawyer-centric restriction

We use the term “exemption” to refer to types of authorizations that enable people other than licensed legal professionals to undertake a limited range of activities that fall into the practice of law or provision of legal services, or to undertake any such activities but only in particular circumstances or to a limited extent. We identify five main types of exemptions:

1. “Self-help” exemption: Authorizes people to do any activities on their own behalf. We also include in this exemption the authorization for employees to prepare “in-house” documents for their employer.
  - All Canadian jurisdictions provide this exemption.
2. “Non-lawyer roles” exemption: Authorizes people serving in particular roles to undertake, for others, some or all activities that fall into the categories of practice of law or provision of legal services. This type of exemption typically covers several of the following specified roles: public officers, traditional notaries, insurance adjusters, trade union representatives, and elected representatives.

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<sup>11</sup> For example, Ontario includes students who are participating in supervised clinical or experiential learning programs (see Appendix for more details).

- All Canadian jurisdictions use this type of exemption, although there are differences between jurisdictions in the precise roles that are included.
  - This category often includes specific allowance for or power to authorize Indigenous Court Workers.
3. “Non-legal professions or occupations” exemption: Authorizes members of non-legal professions or occupations to perform law-related tasks when undertaken in the course of their normal professional or occupational activities, such as accountants and social workers.
    - This exemption is used in Ontario, New Brunswick, and Yukon.
  4. “No-fee provision” exemption: Authorizes anyone to provide legal services if they do so for no fee, gain, or reward or, in other words, an exemption for the “no-fee” provision of legal services.
    - This exemption is part of the regulatory frameworks in Manitoba, PEI, Nova Scotia, Nunavut, and British Columbia, although it does not appear to be expressly relied upon or put to any systematic use by any provider of law-related assistance in any of these jurisdictions. It is also worth noting that the precise wording of this exemption differs in each jurisdiction where it appears, and this may mean that the scope of the exemption varies from jurisdiction to jurisdiction.
  5. “Personal-relationship” exemption: Allows people in some personal relationships, specifically, family, friends, or neighbours, to assist with or provide representation in select legal proceedings, provided they do so on a no-fee basis and, in some cases, for only a limited number of times per year.
    - This exemption is used in Ontario.

The table on the following page provides a compilation of extensions and exemptions by jurisdiction.



FIG. 1: Summary Table of Extensions and Exemptions by Canadian jurisdiction

Jurisdiction	ON	AB	BC	MB	SK	NS	QC	NB	NF&L	PEI	YK	NVT
Lawyer-centric foundational restriction	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>Extensions</b>												
Independent legal professional licensees	Y	Y <sup>^</sup>	Y	Y <sup>*</sup>	Y <sup>*</sup>		Y					Y <sup>*</sup>
Supervised legal services provision	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>Exemptions</b>												
Self-help	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Non-lawyer roles	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Non-legal professions or occupations	Y								Y		Y	
No-fee provision			Y	Y		Y				Y		Y
Personal relationship	Y											

\* For these jurisdictions, refers to legislated power for limited licensing

<sup>^</sup> Independent paralegals, but unlicensed

The foregoing range of exemptions are grounded either in the foundational statutes granting self-regulatory powers to lawyers or in the by-laws of the self-regulatory bodies themselves. As noted, in many jurisdictions there is express recognition that other provincial, territorial, and federal statutes provide authorizations to non-lawyers to appear on behalf of parties in specified dispute resolution proceedings before courts, tribunals or other decision-making institutions. A survey of these authorizations has been undertaken by Lisa Trabucco as part of a broader review of the extent to which the idea of a “lawyers’ monopoly” is a misperception, both in relation to representation in legal proceedings and other types of legal assistance.<sup>12</sup> These ad hoc statutory authorizations are too numerous to summarize here, but it is important to recognize that they exist and serve a significant and useful function in their particular contexts, even though lawyers continue to be the predominant providers of legal representation in Canada.

#### d. A note on judicial power to approve non-lawyer representatives and McKenzie Friends

It should also be noted that there is one other component of the legal regulatory framework relevant to roles for non-lawyers, which is the inherent power of courts to control their proceedings, as well as the related rules of courts. This component is relevant because, in a number of Canadian jurisdictions, courts (or court rules) permit non-lawyers to represent parties in certain types of proceedings (primarily, in family law proceedings) or to act as support persons during court proceedings (so-called “McKenzie Friends”). Non-lawyers are permitted to act as representatives in family law matters, with the approval of the court, in Ontario, Newfoundland and Labrador, and Nova Scotia.<sup>13</sup>

“McKenzie Friends” is the label commonly applied to unpaid trusted helpers of people involved in court proceedings, who are permitted to provide support and assistance during the proceedings, sometimes including speaking to the court, but are typically not permitted to act as the representative of the person being assisted before the court. McKenzie Friends are permitted by court rules or have been approved by courts in Ontario, Alberta, British Columbia, Manitoba, and Newfoundland and Labrador,<sup>14</sup> but

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<sup>12</sup> Lisa Trabucco, “Lawyers’ Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada” (2018) 96 Canadian Bar Review 460 at 471-7 [Trabucco, “Lawyers’ Monopoly”].

<sup>13</sup> As identified in Trabucco, “Lawyers’ Monopoly”, *supra* note 12 at 462, referring to: *Family Law Rules*, O Reg 114/99, s 4 (Ontario); *Provincial Court Family Rules*, NLR 28/07, s 5.04 (Newfoundland and Labrador); and, NS, *Nova Scotia Civil Procedure Rules*, 2009, s 34.08(1) (Nova Scotia).

<sup>14</sup> National Self-Represented Litigants Project, “The McKenzie Friends: Canadian Cases and Additional Research” (modified June 2020), online (pdf): *National Self-Represented Litigants Project* <[www.representyourselfcanada.com/wp-content/uploads/2020/10/The-McKenzie-Friend-Canadian-cases-and-additional-research.pdf](http://www.representyourselfcanada.com/wp-content/uploads/2020/10/The-McKenzie-Friend-Canadian-cases-and-additional-research.pdf)>. In British Columbia, this form of law-related assistance is referred to as the assistance of a “Support Person” and the Provincial Court has issued specific guidelines on it; see Provincial Court of British Columbia, “Support Person Guidelines” (last updated October 2020), online: *Provincial Court of British Columbia* <[www.provincialcourt.bc.ca/about-the-court/court-innovation/SupportPersonGuidelines](http://www.provincialcourt.bc.ca/about-the-court/court-innovation/SupportPersonGuidelines)>.

in all jurisdictions their appointment occurs case-by-case and is always at the discretion of the presiding judge.

#### e. A note on federal jurisdiction

As the legal profession is primarily regulated at the sub-national level in Canada, there is no general regulatory framework applicable to legal professionals at the federal level. However, as just mentioned, in some areas of federal jurisdiction, the federal government has enacted provisions that impact the delivery of legal services, including by authorizing non-lawyers to appear as representatives in dispute resolution proceedings, in those specific areas.<sup>15</sup>

These specific authorizations expand the scope of the potential for non-lawyers to meet legal needs, but there is a general lack of data and literature on the extent to which this potential is realized in practice.<sup>16</sup> There is also a substantial degree of variation in the specific regulatory structure and operation of these various decision-making institutions, which affects the significance of the authorization for non-lawyers. For instance, in the area of veterans' affairs, people seeking review of departmental decisions on benefits entitlements, which are heard by the Veterans' Review and Appeal Board (VRAB), are authorized to be represented by non-lawyers before the Board. However, via the Bureau of Pensions Advocates, the government of Canada provides free access to legal assistance, including representation, by staff lawyers. Consequently, the VRAB observes that claimants before it are only occasionally represented by non-lawyers.<sup>17</sup>

Given the focus of this report, the most relevant example of non-lawyer authorization in the federal sphere is the authorization in the *Immigration and Refugee Protection Act (IRPA)* for legal services to be provided by immigration consultants, who are non-lawyer professionals who have recently been subjected to more extensive regulation.<sup>18</sup> The *IRPA* also appears to contain a "no-fee provision" exemption, that allows people such as refugee support workers to provide law-related assistance as well, although there is currently controversy in the sector over a contrary interpretation of the relevant

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<sup>15</sup> A number of examples are provided in Trabucco, "Lawyers' Monopoly", *supra* note 12 at 477.

<sup>16</sup> Trabucco, "Lawyers' Monopoly", *supra* note 12 at 476.

<sup>17</sup> Veterans' Review and Appeal Board, "Practice Note – Conduct of Representatives" (last modified 15 January 2015) at para 2, online: *Veterans' Review and Appeal Board* <[www.vrab-tacra.gc.ca/Practice-pratique-eng.cfm](http://www.vrab-tacra.gc.ca/Practice-pratique-eng.cfm)>.

<sup>18</sup> Immigration consultants have been authorized under the authority vested in the Minister to designate bodies that can approve law-related assistance by non-lawyers under s. 91(2)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The authorization established the Immigration Consultants of Canada Regulatory Council via *Regulations Designating Body for the Purposes of Paragraph 91(2)(c) of the Immigration and Refugee Protection Act*, SOR/2011-142. In response to concerns about inadequate quality of assistance, the federal government has since enacted legislation, not yet in force, establishing a regulatory framework for immigration and citizenship consultants: *College of Immigration and Citizenship Consultants Act*, SC 2019, c 29, s 292.

provision put forward by legal counsel in the Department of Immigration, Refugees and Citizenship Canada.<sup>19</sup>

#### f. Situating “access-oriented” non-lawyer law-related assistance and community justice help in the current paradigm

Given the range of exemptions and extensions that allow non-lawyers to participate in the provision of legal assistance, the current regulatory paradigm for legal services in Canadian jurisdictions cannot be characterized as “lawyer-exclusive”.<sup>20</sup> Nevertheless, we maintain that the current paradigm remains substantially lawyer-centric, both in terms of the common foundational prohibition on people other than lawyers engaging in the practice of law and in terms of the dominant quantitative and qualitative role that lawyers continue to play in the day-to-day delivery of legal services in Canada.

It is important to recognize though that the regulatory paradigm has long contained a range of permissions for delivery of a variety of legal services by different types of non-lawyers. This is important because it indicates that, within the current lawyer-centric paradigm, at the most general level, the provision of legal assistance by non-lawyers has for some time been recognized to be both justifiable and feasible. While the focus of the present report is on recent developments and trends in community-based not-for-profit non-lawyer assistance, in this part, we briefly describe some long-standing examples of what we will call “access-oriented” non-lawyer law-related assistance programs and providers and situate them in relation to community justice help. These examples are “access-oriented” in the sense that their assistance is typically targeted at particular communities experiencing social disadvantage and is available at low or no cost (often because government-funded). At the same time, these examples are distinguishable from community justice help because they are typically associated with or embedded in the formal legal system, including legal aid programs.

A long-standing example of an access-oriented form of non-lawyer assistance, which is included in Trabucco’s review, are Indigenous Court Workers in the criminal justice system. The current intergovernmental framework for the Indigenous Court Worker (ICW) program (as it is now called) dates back to the late 1970s. According to a 2018

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<sup>19</sup> The apparent authority for ‘no-fee’ law-related assistance (framed in terms of no compensation) is contained in s. 91 of the *Immigration and Refugee Protection Act*. This issue underlying the controversy was discussed in Standing Committee hearings. See *Starting Again: Improving Government Oversight of Immigration Consultants. Report of the Standing Committee on Citizenship and Immigration*. Immigration, Refugees and Citizenship Canada (IRCC) has attempted to respond to the settlement sector’s concerns over its interpretation by clarifying the types of assistance that workers in not-for-profit agencies can provide. See <https://ocasi.org/section-91-questions-and-answers-ircc>. However, in our view, the clarification falls short of providing useful guidance to settlement agencies and fails to address the difficulties created by IRCC’s interpretation of section 91.

<sup>20</sup> For present purposes, we prefer the term “lawyer-exclusive” to Trabucco’s term “lawyers’ monopoly,” but the meaning is basically the same. Trabucco argues that the idea of a “lawyers’ monopoly” is a “useless fiction” in that it not only fails to reflect reality but can also unjustifiably hinder attempts to expand the scope for non-lawyer assistance: see Trabucco, “Lawyers’ Monopoly”, *supra* note 12 at 482.

evaluation report, “over 190 full time and part time”<sup>21</sup> court workers provided a wide range of assistance to “Indigenous persons (clients) involved with the criminal justice system (whether as accused persons, victims, witnesses, family members, others)”.<sup>22</sup> The report summarized the range of assistance provided by ICWs as follows:

They provide information on charges, court procedures, rights and responsibilities, bail, diversion, restorative justice and Indigenous community justice alternatives; offer support in accessing legal resources, as well as appropriate community programming including wellness, trauma, housing, family and employment services; and facilitate communication with court officials, accused persons, family members and communities to ensure understanding and collaboration. As “Friends of the Court”, they also provide critical background and contextual information on the accused, make the court aware of alternative measures and options available in the Indigenous community, and ensure that the accused comprehends the court process.<sup>23</sup>

Generally speaking, the formal descriptions of the role of ICWs by the local organizations where they are based note that they are not providers of legal advice, but it seems clear from the evaluation report that there is much they do that goes beyond the mere provision of general legal information. And the fact that they are the subject of express exemptions and allowances in the legal services regulatory regimes of some provinces and territories reinforces the notion that at least some of their services could be regarded as the provision of legal services – otherwise, the exemptions and allowances would be redundant. Among the important points to note about the ICW program is that it was evaluated as both effective and efficient and it was recommended that consideration be given to expanding the scope of services and activities of ICWs.<sup>24</sup> In addition, it should be noted that ICWs can be embedded in community-based organizations.

Since the ICW program has been operating for decades, it does not represent a recent development that falls within the focus of the current report. However, its long history, continuing effectiveness, and potential for expansion, illustrates the ongoing justifiability and feasibility of non-lawyer assistance in the nature of community justice help. It is an example of a program of no-fee non-lawyer assistance that is provided at the community level, in a holistic way, for people experiencing social disadvantage. Indeed, Indigenous people are generally understood to experience the most significant social disadvantages in Canadian society.

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<sup>21</sup> Department of Justice, “Evaluation of the Indigenous Courtwork Program” (last modified 25 July 2018), s 1.1., online: Government of Canada Department of Justice: <[www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2018/icp-papa/p2.html](http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2018/icp-papa/p2.html)>.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.* at Executive Summary, s 4.2, 4.3, 5.

Another example, also discussed by Trabucco, are the Worker Advisors (and Employer and Appeals Advisors) employed by governments in many Canadian jurisdictions to provide free law-related assistance to people involved in the workplace injury compensation system. Worker Advisors are not community-based to the same extent as ICWs, but the allowances for their services can nevertheless be justified as contributing to access to justice for the vulnerable population of injured workers. Similarly, non-lawyer trade union representatives are also commonly exempted from prohibitions on providing legal services. This exemption can be regarded as promoting access to justice by alleviating the need to retain licensed legal professionals for day-to-day issues of labour relations. Trade union representatives are community-based in the sense of being embedded in the community of employees they serve.

A final example of a long-standing non-lawyer source of access-oriented law-related assistance are Ontario's Community Legal Workers (CLWs). The primary role of CLWs is to engage local communities on their legal needs and to serve as liaisons between communities and the legal clinics that serve them. CLWs can perform a range of tasks, including public legal education, community organizing and assisting with various legal tasks such as preparing affidavits. To some extent, CLWs work under the supervision of clinic lawyers, especially when it comes to playing a role in providing legal advice, so to an extent they are not an independent source of non-lawyer assistance. But, as employees of community legal clinics funded by Legal Aid Ontario, Community Legal Workers are exempted from the prohibition on non-lawyers providing legal services and, again, this exemption would be redundant if CLWs did not ever cross the line from providing legal information to providing other forms of legal assistance. While the exemption for CLWs is long-standing, the extent of their presence in the Ontario community legal clinic system has fluctuated and, for a variety of reasons (not, apparently, related to effectiveness), has decreased over time.<sup>25</sup> Moreover, since the introduction of licensing for paralegals, some CLWs have become licensed paralegals. Nonetheless, the exemption for CLWs can also be regarded as grounded in a concern to improve access to law-related assistance in a community-based way.

It is clear then that the current paradigm for the regulation of legal services in Canada, while lawyer-centric, has a long-established place for non-lawyers to provide a variety of forms of law-related assistance. Some significant examples of these allowances for non-lawyers can be regarded as justified by a need to improve access to justice for people experiencing social disadvantage and, in turn, are "access-oriented" in their mode of delivery. In other words, in our terms, the current paradigm already expressly recognizes and allows the provision of some specific forms of non-lawyer law-related assistance that are similar to community justice help. In our analysis though, there is significant untapped potential in the current paradigm to expand the scope of non-lawyer assistance in the form of community justice help. In the next part of this section, we briefly identify the regulatory bases upon which community justice help (to the

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<sup>25</sup> For a discussion of the important early role of Community Legal Workers, see Michael Blazer, "The Community Legal Clinic Movement in Ontario: Practice and Theory, Means and Ends" (1991) 7 *Journal of Law and Social Policy* 49.

extent that it might be characterized as involving the provision of legal services) could be authorized into the future.

#### [g. Regulatory bases for further developing community justice help](#)

To the extent that community justice help may involve provision of forms of law-related assistance that may be viewed as “crossing the line” into legal services, the structure of regulatory frameworks in Canada requires authorization or permission to provide that assistance. As we have already mentioned, the location of that line is blurry, and also potentially widely encompassing. In our view, the need to improve access to justice is an important reason not to attempt to identify or enforce the point at which a particular form of law-related assistance becomes a provision of legal services, especially in contexts where the assistance is good quality. As our discussion in Sections 6 and 7 below will address, community justice help appears to be such a context.

Nevertheless, given the prevailing regulatory frameworks and ongoing potential for regulatory action against aspects of community justice help that might be seen as crossing the line, we draw attention here to two general bases upon which it could be regarded as permitted, within the existing regulatory frameworks in Canadian jurisdictions. These are the exemptions in the current regulatory frameworks for, first, “non-legal professions or occupations” and, second, for “no-fee provision”. Not all Canadian jurisdictions include these exemptions in their regulatory frameworks, but most include at least one of them. More specifically, one or both of these exemptions appears in the regulatory frameworks of Ontario, British Columbia, Manitoba, Nova Scotia, PEI, and Newfoundland and Labrador. In these jurisdictions, therefore, there is apparent authority, and untapped potential, for community justice help to be maintained and expanded. It would not be permitted, on either of those bases, in Alberta, Quebec, Saskatchewan and New Brunswick. However, in Saskatchewan, it could in the future be permitted on the basis of the extension of the limited license scheme. Also, in Alberta, it might arguably be permissible on the same informal basis that the current legal service provision by independent unlicensed paralegals is tolerated. This current and future scope for authorized community justice help underpins our exploration of the ways in which it is being undertaken in many Canadian jurisdictions, discussed in Section 6 of this report.

#### [h. Nudging the paradigm: recent Canadian initiatives to improve access to justice via means other than community justice help](#)

In what follows, we provide a brief overview of recent Canadian initiatives aimed at improving access to justice via lawyers, or mechanisms closely associated with or similar to lawyers, that are not in the nature of community justice help. While community justice help is the focus of this report, it is important to situate recent developments and emerging trends in relation to more general initiatives that maintain a central role for lawyers, both in for-profit and pro bono contexts. Ontario provides examples of a range

of these initiatives that are aimed at making lawyers themselves more accessible and so we will structure this review by reference to developments in that jurisdiction.

A first initiative of this type is the authorization for limited scope retainers, otherwise known as “unbundling” of legal services, which was introduced in an effort to enable clients to engage lawyers for only certain aspects of a legal matter, thus reducing overall costs for clients who were capable of handling the other aspects of their matter. The Ontario family bar recently launched a program to support the provision of unbundled service, offering training to family law lawyers relating to this type of service provision, and making dedicated efforts to spread the word about the availability of these services to the broader public.<sup>26</sup> All other Canadian jurisdictions now authorize limited scope retainers.<sup>27</sup>

A second initiative of this type introduced in Ontario is a modified conflict standard for lawyers offering pro bono services in specified pro bono contexts.<sup>28</sup> Similar modifications exist in British Columbia, Alberta, and Manitoba.

Third, the Law Society of Ontario (LSO) has incrementally expanded the allowances for law and paralegal students to perform tasks, under supervision of licensed legal professionals, associated with their practice of law or their provision of legal services.

Fourth, the LSO has gone some way down the path of allowing alternative business structures (ABS) for the delivery of legal services. As briefly mentioned in the review of regulatory objectives, this allowance alters the traditional rule that only entities that are controlled and owned by lawyers may deliver legal services. According to the argument in favour of allowing ABS, the efficiency and accessibility of legal services is likely to be improved if the business expertise, technological innovation and financing capacity of non-lawyers can be applied to the delivery of legal services. Under the regular version of ABS, lawyers must still be the primary deliverers of legal services and must take professional responsibility within the entity for legal service delivery. But they will do so, it is argued, in a more efficient and effective context that will improve access to justice, at least for those people with some ability to pay.

As will be addressed shortly on comparative jurisdictions, the regular version of ABS is allowed in England and Wales and in Australia (although the extent to which those

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<sup>26</sup> “Ontario’s Family Law Limited Scope Services Project” (accessed 18 January 2021), online: *Ontario’s Family Law Limited Scope Services Project* <[www.familylawlss.ca/](http://www.familylawlss.ca/)>.

<sup>27</sup> For example, Law Society of Nunavut, *Model Code of Professional Conduct, May 2016*, Rule 3.2-1.A, online (pdf): *Law Society of Nunavut* <[www.lawsociety.nu.ca/sites/default/files/website-general/LSN%20Consolidated%20Rules%20Nov%2026%202020%20SM%20v3%20final.pdf](http://www.lawsociety.nu.ca/sites/default/files/website-general/LSN%20Consolidated%20Rules%20Nov%2026%202020%20SM%20v3%20final.pdf)>.

<sup>28</sup> Law Society of Ontario, *Rules of Professional Conduct*, Rule 3.4-16.2 to 3.4-16.6, online: *Law Society of Ontario* <[www.lso.ca/about-lso/legislation-rules/rules-of-professional-conduct](http://www.lso.ca/about-lso/legislation-rules/rules-of-professional-conduct)>. According to the definition of “lawyer” relating to the expanded, modified standard, it is available to lawyers in the following contexts: (i) a volunteer lawyer who provides short-term legal services to clients under the auspices of a short-term provider; (ii) a lawyer providing services under the auspices of a Pro Bono Ontario program; (iii) a lawyer providing short-term legal services under the auspices of a Legal Aid Ontario program or clinic; or (iv) a lawyer providing short-term legal services under the auspices of a clinical education course or program.



allowances have improved access to justice remains contested).<sup>29</sup> ABS has been repeatedly rejected in the United States, but now appears to be emerging in some jurisdictions. After a significant period of deliberation, the LSO opted not to allow the regular version of ABS. Instead, it has allowed a limited and targeted form of ABS that enables only not-for-profit civil society organizations (CSOs) to employ licensee lawyers and paralegals to provide legal services directly to the clients whom those CSOs typically serve. This is a notable development because it indicates an appreciation of the need to situate lawyers and the legal services they provide in community-based contexts. To date, most other Canadian jurisdictions have given some attention to the issue of whether to allow some form of ABS, but none have yet done so.<sup>30</sup>

Ontario also provides an example of how the paradigm is being nudged by expanding the scope of the legal profession through licensing of lawyer-like providers of legal services. The introduction of paralegal licensing in Ontario was partly justified on the basis that their regularization would contribute to access to justice.<sup>31</sup> More recently, following the Family Legal Services Review,<sup>32</sup> a potentially significant regulatory change is currently under consideration – an expansion to include specified tasks in family law matters in the scope of authorized activities permitted to be undertaken by paralegals. Quebec has long had its notary profession, which has a broad scope of practice, though different to the Ontario paralegal profession. So far, no other Canadian jurisdiction has followed suit in creating a second category of legal professional, but two provinces – Saskatchewan and Manitoba – have now introduced legislative authorization for limited licensing on a case-by-case basis that can respond to specific local needs.

### i. The current Canadian paradigm: summing up

In summary, the current Canadian paradigm for the regulation and delivery of legal services is lawyer-centric. The current paradigm has a common foundational prohibition on all people other than licensed lawyers (or, in the case of Quebec, advocates) from

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<sup>29</sup> For instance, in refusing to recommend the introduction of an allowance for ABS in New York State, the Regulatory Innovation Working Group argued that the likely impact on access to justice remained unknown, while also citing an oral report on a study from England that “the creation of ABSs in England and Wales has had no appreciable effect on the access-to-justice gap”: see Regulatory Innovation Working Group of the Commission to Reimagine the Future of New York’s Courts, “Report and Recommendations of the Working Group on Regulatory Innovation” (3 December 2020) at 49, online (pdf): *New York Courts* <[www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation\\_Final\\_12.2.20.pdf](http://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf)> [Commission to Reimagine the Future of New York’s Courts].

<sup>30</sup> See, for example, Law Society of British Columbia, Independence and Self-Governance Advisory Committee, *Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations* (LSBC: Vancouver, October 2011), online (pdf): *Law Society of British Columbia* <[www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf](http://www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf)>.

<sup>31</sup> For a discussion of the introduction of the paralegal licensing regime that raises questions about the extent to which paralegals improve access to justice for disadvantaged groups, see David Wiseman, “Paralegals and Access to Justice for Tenants: A Case Study”, in Trevor C W Farrow & Lesley A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) [Wiseman, “Paralegals and Access to Justice for Tenants”]. For a more general discussion of paralegals, see Alice Woolley, & Trevor C W Farrow, “Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges” (2016) 3:3 *Texas A & M Law Review* 549.

<sup>32</sup> Hon. Annemarie E. Bonkalo, *Family Legal Services Review Report* (Toronto: Ministry of the Attorney General, 2016), online: <[www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family\\_legal\\_services\\_review/](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/)> [Bonkalo].

engaging in the practice of law or the provision of legal services. This general prohibition has built upon it a variety of extensions and exemptions that permit a range of non-lawyers to engage in some or all activities that comprise the practice of law or the provision of legal services. These extensions and exemptions are primarily contained in the provincial and territorial legislation, which regulates the legal profession in each jurisdiction but is supplemented by regulations of the various jurisdictional law societies, as well as by ad hoc provisions in federal, provincial, and territorial legislation, and by the inherent power of courts and associated rules of court.

It is clear that non-lawyer provision of law-related assistance is a long-standing and well-established component of the lawyer-centric paradigm. Importantly, for the purposes of the present report, the forms of approved non-lawyer assistance include no-fee or not-for-profit providers and programs that are situated in community-based contexts and are aimed at improving access to justice for people living on low incomes or experiencing other forms of social disadvantage.

In recognition of a need to continue to improve access to justice for disadvantaged people and communities, all Canadian jurisdictions have taken steps in recent years to make the services of lawyers, or other types of licensed legal professionals, more accessible. These steps can be understood to be “nudging” lawyers closer to disadvantaged communities and in this sense, are “nudging the paradigm” in the direction of improving access to justice. But this nudging is not alone likely to solve the problem of lack of access to justice for those experiencing social disadvantage, in part because many of these steps are still associated with market-based, user pays, for-profit delivery of legal services, which remains unaffordable for many people and communities.

Consequently, it is necessary to consider whether access to justice can be improved for those people and communities by shifting the paradigm away from lawyer-centricity and expanding the availability of non-lawyer assistance in the nature of community justice help. As we have outlined above, this expansion is consistent with and permitted by the existing regulatory frameworks in most Canadian jurisdictions.

Before getting to our review of recent developments in community justice help, we first review the regulatory schemes and scope for non-lawyer roles, and community justice help, in comparative jurisdictions.

### 4.1.3 Regulatory schemes and non-lawyer roles in comparative jurisdictions

In what follows, we provide an overview of the regulatory frameworks for the legal professions and providers of legal services in three jurisdictions of comparative interest: the United States (US), Australia, and England and Wales. Both the US and Australia use a lawyer-centric approach similar to that used across Canada. In England and Wales, there is also a degree of lawyer-centrism, but within a broader approach that allows far

greater scope for non-lawyer provision of law-related assistance. We describe the approaches in these jurisdictions, while noting the extent to which roles for non-lawyers in general and community justice help more particularly are authorized or apparent.

### a. United States

The regulation of the provision of legal services in the US is primarily the responsibility of the sub-national state jurisdictions. In some states, this responsibility belongs to the judiciary and the courts, while in other states it belongs to the legislature.<sup>33</sup> In most states though, either the courts or the legislatures have delegated some or all primary responsibility to self-regulatory bar associations.<sup>34</sup>

Regardless of which governmental entity is primarily responsible, in all US jurisdictions, a relatively strict lawyer-centric prohibition on the practice of law by non-lawyers is used. At the same time, it has been recognized that the precise extent and content of the “monopoly” enjoyed by lawyers in the US is unclear.<sup>35</sup> As well, there is a limited range of exemptions and authorizations for non-lawyers to provide some legal services, in some contexts, in some jurisdictions.<sup>36</sup> Importantly, these exemptions and authorizations appear to be increasing in recent times in response to access to justice concerns.<sup>37</sup> Some of these newly authorized roles take the form of newly created forms of licenses or certifications to deliver a confined set of for-fee legal services to clients who can afford to pay, for example, Limited License Legal Technicians in Washington (now to be discontinued)<sup>38</sup> and Certified Legal Document Preparers in Arizona (who cannot provide legal advice).<sup>39</sup> As such, these roles are not in the nature of community justice help.

Other permitted roles for non-lawyers who provide law-related assistance at no cost, are situated in court- or community-based not-for-profit service contexts and so will be considered in Section 6. One example is the use of court navigators in a number of jurisdictions, including the state of New York. A recent report by the Regulatory

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<sup>33</sup> See generally: Deborah L Rhode, “Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions” (1981) 34:1 *Stanford L Rev* 1 at 42; W Bradley Wendel, “Foreword: The Profession’s Monopoly and Its Core Values” (2014) 82:6 *Fordham L Rev* 2563.

<sup>34</sup> Lauren Moxley, “Zooming Past the Monopoly: A Consumer Rights Approach to Reforming the Lawyers’ Monopoly and Improving Access to Justice” (2015) 9-2 *Harvard L & Policy Rev* 553.

<sup>35</sup> Laurel Terry, “Putting the Legal Profession’s Monopoly on the Practice of Law in a Global Context” (2014) 82:6 *Fordham L Rev* 2903 at 2905-2909.

<sup>36</sup> For consideration of some long-standing representational activity by non-lawyers, see Herbert M Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work*, (University of Michigan Press: 1998) [Kritzer].

<sup>37</sup> A selected overview of recent authorizations for non-lawyers in a variety of roles is provided in Rebecca L Sandefur & Thomas M Clarke, “Designing the competition: A future of roles beyond lawyers? The case of the USA” (2016) 67:5 *Hastings L J* 1467 [Sandefur & Clarke, “Designing the competition”].

<sup>38</sup> Lyle Moran, “How the Washington Supreme Court LLLT program met its demise” *ABA Journal* (9 July 2020), online: *ABA Journal* <[www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise](http://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise)>.

<sup>39</sup> Certified under the Arizona Codes of Judicial Administration; see: Arizona Courts, “Legal Document Preparer Program” (accessed 17 January 2021), online: *Arizona Courts* <[www.azcourts.gov/cld/Legal-Documents-Preparer-Program](http://www.azcourts.gov/cld/Legal-Documents-Preparer-Program)>.

Innovation Working Group of the Commission to Reimagine the Future of New York's Courts (the RIWG-NY) recommended expanding the scope and substance of the Court Navigators program.<sup>40</sup> Of particular significance for present purposes is a further recommendation of the RIWG-NY to allow "the provision of certain "legal" services and advocacy by trained and certified social workers".<sup>41</sup>

US jurisdictions, and the membership of the American Bar Association (ABA), have repeatedly resisted efforts to allow alternative business structures (ABS) – that is, to allow entities providing legal services to be owned or controlled by people other than lawyers – although that issue regularly returns for reconsideration, in part because allowing ABS is supported by the ABA Center for Innovation.<sup>42</sup> In the face of continuing resistance to approval of a national endorsement of ABS, the Center for Innovation settled for adoption of a watered-down resolution, at the 2020 midyear meeting of the ABA governing body, to encourage state-level innovation in the regulation of legal services to improve access to justice.<sup>43</sup> The resolution itself expressly disclaimed an intention to advance ABS, which may mean that the issue will remain dormant at the national level for the time being, but the issue is being considered further in individual states. In its recent report, the RIWG-NY recommended against allowing ABS in the state of New York but noted that a form of it is currently allowed in the District of Columbia and that it is on the cusp of being allowed in Utah, Arizona and California.<sup>44</sup>

US jurisdictions have also been wrestling with whether and how to apply unauthorized practice of law concepts and rules to technology-enabled providers of legal document assembly tools and other law-related tools that could be characterized as legal services.<sup>45</sup> Authorization for unbundled legal services is also occurring in some jurisdictions.<sup>46</sup>

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<sup>40</sup> Commission to Reimagine the Future of New York's Courts, *supra* note 29 at 3.

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

<sup>42</sup> The ABA Center for Innovation was created as a result of a recommendation in the report of the ABA Commission on the Future of Legal Services, which supported allowing ABS: American Bar Association Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States*, (ABA, August 2016) at 42, online (pdf): *American Bar Association* <[www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf)> [American Bar Association Commission on the Future of Legal Services]. A brief review of the history of the consideration of the issue of allowing ABS in the US is provided in the report of the Regulatory Innovation Working Group in New York: Commission to Reimagine the Future of New York's Courts, *supra* note 29 at 46 (Appendix A).

<sup>43</sup> American Bar Association, *Resolution 115* (adopted 17 February 2020), online: <[www.americanbar.org/groups/centers\\_commissions/center-for-innovation/Resolution115/](http://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/)>.

<sup>44</sup> Commission to Reimagine the Future of New York's Courts, *supra* note 29 at 53.

<sup>45</sup> See discussions in: Moxley, *supra* note 34. For an overview of recent innovations in Utah, see Hon. Deno G Himonas & Tyler J. Hubbard, "Democratizing the Rule of Law" (2020) XVI *Stanford Journal of Civil Rights & Civil Liberties* 261.

<sup>46</sup> American Bar Association Commission on the Future of Legal Services, *supra* note 42 at 30.

## b. Australia

The regulation of the provision of legal services in Australia is the responsibility of the sub-national state and territory jurisdictions.<sup>47</sup> Similar to Canada, there is a common overall approach, but some differences in details. There have been attempts to establish a uniform approach across Australian jurisdictions, most recently with the development by the Council of Australian Governments of a model National Law and National Rules for the legal profession, but the uniform approach has only been formally implemented in New South Wales (NSW) and Victoria.<sup>48</sup>

All Australian jurisdictions use a common foundational lawyer-centric restriction that prohibits anyone other than lawyers (barristers and solicitors) from practising law or providing legal services. There is jurisdictional variation in the definitions of practising law, but generally speaking, an all-encompassing array of activities are included and therefore restricted.<sup>49</sup>

An extension to the availability of legal services that authorizes employees of lawyers to participate in the provision of legal services, as well as other persons who are appropriately supervised by lawyers, is available in all Australian jurisdictions.<sup>50</sup> Some Australian jurisdictions use a narrow form of the extension of licensing of lawyer-like professionals in that they authorize licensed conveyancers to provide legal services for real estate transfers and related transactions.<sup>51</sup> All Australian jurisdictions allow for legal services to be delivered by corporations that are not owned or controlled by lawyers. These are referred to as “incorporated legal practices” in Australia, but in Canada and other jurisdictions this is commonly referred to as an allowance for “alternative business structures”. In Australia, the legal services still need to be provided by or under the professional responsibility of a lawyer.<sup>52</sup>

A number of other exemptions from the lawyer-centric restriction are also part of the regulatory frameworks throughout Australia. A self-help exemption exists in all jurisdictions. There are varying scopes of “non-lawyer roles” exemptions covering, for example, public trustees, authorized government employees and land agents. Under the Uniform Law, implemented in NSW and Victoria, there is no use of a “no-fee provision”

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<sup>47</sup> A primary source for the overview provided in this section is Emma Beames, “Technology-based legal document generation services and the regulation of legal practice in Australia” (2017) 42:4 *Alternative L J* 297 [Beames].

Another useful source is Semple, *Legal Services Regulation at the Crossroads*, *supra* note 2.

<sup>48</sup> Beames, *supra* note 47 at 298-9. *Legal Profession Uniform Law Application Act 2014 No 16 (NSW)* and *Legal Profession Uniform Law Application Act 2014 Act No 17/2014(Vic)*.

<sup>49</sup> Beames, *supra* note 47 at 298-9.

<sup>50</sup> *Ibid.*

<sup>51</sup> According to the Australian Institute of Conveyancers, there are currently licensing or registration regimes in New South Wales, the Northern Territory, South Australia, Tasmania, Victoria and Western Australia: Australian Institute of Conveyancers, “About Us” (accessed 17 January 2021), online: *Australian Institute of Conveyancers* <[www.aicnational.com.au/index.php/about/](http://www.aicnational.com.au/index.php/about/)>.

<sup>52</sup> For discussion of the introduction of incorporated legal practices in New South Wales, the first Australian jurisdiction to allow them, see Steven Mark & Georgina Cowdroy, “Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales” (2004) 22 *Penn State International Law Review* 672.

exemption, but that exemption is used in South Australia, Western Australia, the Northern Territory and the Australian Capital Territory.<sup>53</sup> No jurisdiction appears to use a “non-legal profession or occupation” type of exemption or a “personal-relationship” type of exemption, although Australian courts have generally affirmed their power to permit McKenzie Friends and, on occasion, to permit non-lawyers to act as representatives.<sup>54</sup>

In addition, and similar to Canada, the Australian regulatory framework includes authorization, from the federal government, for non-lawyers to be registered as migration agents and to provide law-related assistance, including representation before a court or tribunal, for a range of immigration matters. The regulatory standards applicable to migration agents are the responsibility of the Office of the Migration Agents Registration Authority (OMARA).<sup>55</sup> OMARA enables migration agents to be registered as providing their services on a commercial or non-commercial (not-for-profit) basis. Information in OMARA annual reports indicates that the vast majority of agents operate on a commercial basis and so do not provide an example of community justice help as understood in this report. Information on the OMARA website also indicates that there is regular concern about quality of service and regular inquiries into how best to arrange regulatory structures so as to protect the public interest.

The use of the “no-fee provision” exemption in some jurisdictions in Australia provides some scope for the provision of legal services by non-lawyers in community-based not-for-profit settings. To date, our research has not identified any sources that identify or describe service providers operating under this exemption in any relevant Australian jurisdiction. Our research indicates that, to the extent that access to community-based legal services is an area of activity in Australian jurisdictions, efforts are focused on supporting and enabling so-called outreach services by lawyers – that is, integrating access to the provision of legal services by lawyers into community-based not-for-profit settings.<sup>56</sup>

This focus is reflected in the recently updated National Strategic Framework (NSF) on government-funded legal assistance released by the Council of Attorneys-General representing all jurisdictions of government in Australia (applicable from mid-2020 to mid-2025).<sup>57</sup> The NSF sets out “overarching objectives and aspirational principles to

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<sup>53</sup> Beames, *supra* note 47 at 300. In some of these jurisdictions, this exemption deems no-fee provision not to be legal practice, in others it is a defence to prosecution for unauthorized practice.

<sup>54</sup> For a recent example of the approval of an application to use a McKenzie Friend, see *Keskin & Keskin and Anor* [2019] FamCA 384 (19 June 2019) (AustLII)

<sup>55</sup> See “Office of the Migration Agents Registration Authority” (accessed 18 January 2021), online: *Office of the Migration Agents Registration Authority* <[www.mara.gov.au/](http://www.mara.gov.au/)>.

<sup>56</sup> A leading Australian study that specifically focuses on evaluations of effectiveness of such efforts is Suzie Forell & Abigail Gray, “Outreach legal services to people with complex needs: what works?” (October 2009) 12 *Justice Issues* 1 [Forell & Gray, “Outreach legal services to people with complex needs”].

<sup>57</sup> Council of Attorneys-General, *National Strategic Framework for Legal Assistance (2020-2025)* (Commonwealth of Australia, 2019), online: *Australian Government* <[www.ag.gov.au/legal-system/legal-assistance/national-strategic-framework-legal-assistance](http://www.ag.gov.au/legal-system/legal-assistance/national-strategic-framework-legal-assistance)>.

guide legal assistance policy development, service delivery and sector planning”.<sup>58</sup> The six principles set out in the NSF reinforce the efforts to support and enable outreach services and other mechanisms for improving access to justice at the community level, including the expansion of non-lawyer roles, but there is no specific mention of non-lawyers. Instead, the emphasis is on better focusing and integrating lawyers’ services at the community level.<sup>59</sup>

Nevertheless, the widespread health and justice partnership initiative in Australia, discussed in Section 6.3.1, that integrates lawyers into health care teams, does appear to involve non-lawyer health care workers in providing a degree of law-related assistance, but it is unclear to what extent, if any, it goes beyond mere provision of legal information. Further, studies of pathways to justice in Australia indicate that community service organizations and workers play a significant role as a “first port of call” for people seeking help with life affecting problems with a legal element.<sup>60</sup> The studies also indicate that some forms of assistance provided in these non-lawyer settings may involve forms of community justice help,<sup>61</sup> although it is also reported that there is a strong awareness of a need to avoid straying into the provision of legal advice.<sup>62</sup>

This suggests that it is likely that, beyond health-justice partnerships, some community justice help is being provided in Australian jurisdictions and that, in turn, the predominant lawyer-centric paradigm may have potential to shift. Notably, a report authored by a lawyer-researcher in the Victorian community legal service sector has called for community legal centres to explore the possibilities for advancing community empowerment through programs involving non-lawyer peer educators and community paralegals, based on models used in legal empowerment projects for justice-seeking groups in lower-income countries, such as South Africa, the Philippines and Kenya.<sup>63</sup> The report mentions some examples of peer support programs in Australia, but we have not been able to identify any other such programs having been established in Australia.

### c. England and Wales

For the purposes of this report, for comparative analysis of the approach to regulation of legal services in common law Europe,<sup>64</sup> we will confine ourselves to the jurisdiction of

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<sup>58</sup> *Ibid.* at 3.

<sup>59</sup> The six principles are: 1) Focus service delivery on people facing disadvantage; 2) Client centred and appropriate services; 3) Collaboration and integrated approaches; 4) Appropriately timed responses and preventative action; 5) Empowerment and resilience; and 6) Continuous learning and improvement: Council of Attorneys-General, *supra* note 57 at 4.

<sup>60</sup> Sophie Clarke & Suzie Forell, “Pathways to justice: the role of non-legal services” (1 June 2007) 1 *Justice Issues* 1 [Clarke & Forell].

<sup>61</sup> *Ibid.* at 4.

<sup>62</sup> *Ibid.* at 8.

<sup>63</sup> Jacinta Maloney, *I feel empowered, I know my rights: Communities empowered by peer educators and paralegals* (Victoria Law Foundation, CLC Fellowship Report, 2014), online: *Victoria Law Foundation* <[www.victorialawfoundation.org.au/sites/default/files/1034%20CLC%20Report\\_JacintaMaloney.pdf](http://www.victorialawfoundation.org.au/sites/default/files/1034%20CLC%20Report_JacintaMaloney.pdf)> [Maloney].

<sup>64</sup> Countries in Europe are predominantly civil law jurisdictions. Ireland and the United Kingdom are common law jurisdictions, although Scotland has a mixed system of common and civil law.

England and Wales. We will first review the overall regulatory approach, with an emphasis on continuity and changes following new legislative action in 2007. This overview will reveal that non-lawyers have long been entitled to provide a range of legal services.

The regulatory framework applicable to the legal profession in England and Wales was significantly overhauled with the introduction of the *Legal Services Act 2007*,<sup>65</sup> but a fundamental component remained the same. The Act maintained the long-standing approach in England and Wales of only restricting non-lawyers from engaging in a specific sub-set of legal activities, referred to as “reserved” legal activities. At the same time though, it allowed a range of other designated (non-lawyer) licensed professionals, such as conveyancers and patent attorneys, to engage in differing bundles of specific reserved activities, along with lawyers. The “reserved” legal activities are:

- exercise of a right of audience (representation in legal proceedings);
- conducting litigation;
- preparation of instruments of transfer or charging property;
- preparing papers relating to grants of probate or letters of administration;
- notarial activities; and
- administering oaths.

The first two of these reserved activities are quite broad, albeit only relating to dispute resolution, while the remaining four are quite narrow. A recent review has observed that the basis upon which these six activities are reserved is “largely an accident of history or the result of political bargaining”<sup>66</sup> and that there is “no modern, risk-based foundation for what is reserved or not reserved”.<sup>67</sup>

Be that as it may, the approach in England and Wales thus remains that a significant array of law-related assistance activities may be undertaken by non-lawyers (who are also not designated non-lawyer licensed professionals), subject only to general laws regulating the provision of consumer services or other such general matters. It is on this basis that the long-established community-based not-for-profit agency Citizens Advice, most of whom rely on volunteers to provide a range of law-related assistance, has operated in the UK.<sup>68</sup> That England and Wales have long-enabled community-based not-for-profit provision of law-related assistance by non-lawyers makes it a potentially interesting comparator. In particular, it raises the question of whether there is any

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<sup>65</sup> A primary source for the overview provided in this section is Stephen Mayson, “Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework” (2019) UCL Centre for Ethics and Law Working Paper LSR-0 [Mayson]. Another useful source is Semple, *Legal Services Regulation at the Crossroads*, *supra* note 2.

<sup>66</sup> Mayson, *supra* note 65 at 8.

<sup>67</sup> *Ibid.*

<sup>68</sup> For a recent review of the sustainability and effectiveness of Citizens Advice and similar services, following government cutbacks and other policy reforms, see Samuel Kirwan, ed, *Advising in Austerity: Reflections on Challenging Times for Advice Agencies* (Great Britain: Policy Press, 2017).



evidence that this enablement has translated into any difference in access to justice in England and Wales. We explore the extent of evidence on that question later in this section. First though, we briefly explain what changed with the enactment of the *Legal Services Act 2007*.

A key change introduced by the *Legal Services Act* was to take a step away from the traditional approach of self-regulation in the legal profession with the creation of the Legal Services Board (LSB) as an overarching regulator with a chair and a majority of members who are non-lawyers. The LSB oversees a collection of “frontline” regulatory organizations that are primarily responsible for licensing and regulation of lawyers and the other designated non-lawyer professions who are authorized to engage in some or all of the range of “reserved” legal activities.<sup>69</sup>

As a precondition to regulatory authority, the establishment of these frontline regulators had to abide by a new statutory dictate that regulatory functions applying to particular professions had to be undertaken independently of (self-interested) representative functions. For example, a Solicitors Regulatory Authority was created as a separate regulatory arm of The Law Society. Members of these professions are authorized to engage in some or all reserved activities, and the regulatory frameworks to which they are subject tend to impose general requirements on how they provide their services. The regulatory requirements apply to all service provision by the member of the profession, not merely to their provision of services falling within the range of reserved legal activities.

The *Legal Services Act* also established the Office for Legal Complaints and the Legal Ombudsman, as well as the Legal Services Consumer Panel.

A final key change introduced by the *Legal Services Act* was the authorization of alternative business structures. Prior to this change, the only type of business organizations authorized to deliver reserved legal services was a law firm that was wholly owned by qualified lawyers. After the change, law firms could be partly or wholly owned by non-lawyers. In addition, other types of business organizations, with non-lawyer owners, managers or investors, were permitted to deliver reserved legal services. The new regulatory requirements mandated participation of lawyers in service delivery, oversight mechanisms and professional responsibility obligations. This change opened the door for community-based not-for-profit organizations, if appropriately (re-)structured, to employ lawyers to provide legal services falling into the categories of reserved legal activities.

With community-based not-for-profit provision of law-related assistance by non-lawyers long-enabled in England and Wales, one issue we address in the next part of

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<sup>69</sup> There are currently 10 frontline regulators: Solicitors Regulation Authority, Bar Standards Board, CILEx Regulation, Master of the Faculties, Council for Licensed Conveyancers, Intellectual Property Regulation Board, Costs Lawyers Standards Board, Institute of Chartered Accountants in England and Wales, Institute of Chartered Accountants in Scotland, and Association of Chartered Certified Accountants.

this report is whether there is any evidence that this enablement has translated into any difference in relative access to justice.

#### d. Current paradigms in comparative jurisdictions: summing up

Both the United States and Australia use a lawyer-centric paradigm for the regulation of the provision of legal services that is broadly similar to the Canadian paradigm, albeit with differences of detail between each. Of particular note is that all three jurisdictions maintain a place for a range of types of non-lawyers to deliver a variety of types of legal assistance, although it appears that Canada has probably gone the furthest in this respect. It also appears that regulators in the US are presently devoting some attention to the potential of expanding types of non-lawyer law-related assistance in the nature of community justice help. Such attention is less apparent in the literature we have been able to review for Australia.

England and Wales is significantly less lawyer-centric than the other three jurisdictions reviewed here, in the sense that it confines its lawyer-centrism to the “reserved” areas of legal services delivery. Outside those areas, there are few regulatory restrictions on non-lawyers providing law-related assistance and they have been doing so for a long time, including provision in the nature of community justice help. This is not to say that there are not still practical barriers to community justice help in England and Wales, at least in the sense of ongoing and increasing lack of access to adequate funding and other resources.

Having thus mapped the current regulatory paradigms relating to the provision of law-related assistance and legal services in Canada, the United States, Australia and England and Wales, we now turn to a consideration of the issue of the general state of access to justice in these comparative common law jurisdictions. In doing so, we explore the role of lawyers, non-lawyers and community justice help in advancing access to justice.

## 5. Access to Justice, Community Justice Help and Legal Empowerment

In this section, we consider:

- the general state of access to justice in the comparative common law jurisdictions of Canada, the United States, Australia, and England and Wales. (It is beyond the scope of this report to explore the details of each jurisdiction but it is also not entirely necessary to do so because research on so-called “everyday legal problems” across the jurisdictions has revealed that, at the broad level of our consideration, the state of access to justice is generally similar in many respects);
- some of the challenges that have been identified for delivering legal assistance to people living on low incomes or experiencing other forms of social disadvantage, and the ways in which non-lawyers can be better situated to manage those challenges;
- the limited evidence that access to justice may be relatively more available in the less lawyer-centric regulatory system of England and Wales, compared to Canada and the United States; and
- the emergence of new approaches to defining and understanding access to justice, involving the concepts of legal capability and legal empowerment and how they reinforce the justifiability and feasibility of expanding community justice help.

### 5.1 (In)Access to justice and lawyer assistance in Canada and comparative jurisdictions

“Access to justice” is a broad term that has been defined in a variety of ways and can encompass a range of factors and issues. For the purpose of this report, we offer this definition:

“Access to justice” exists when people can pursue their goals and address their law-related problems in ways that are consistent with fair legal standards and processes; and can obtain, understand, and act on information and services related to the law, where necessary, to achieve just outcomes.<sup>70</sup>

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<sup>70</sup> This definition was developed for our report: Julie Mathews & David Wiseman, “Community Justice Help: Advancing Community-Based Access to Justice” (Community Legal Education Ontario, June 2019) at 11, online (pdf): *CLEO Connect* <[www.cleoconnect.ca/resource/research/community-justice-help-advancing-community-based-access-to-justice/](http://www.cleoconnect.ca/resource/research/community-justice-help-advancing-community-based-access-to-justice/)> [Mathews & Wiseman]. Our definition draws on a variety of sources, including, in particular, T. C. W.

The need for and lack of access to justice has been identified, explained and analyzed in numerous recent reports in Canada.<sup>71</sup> These reports usually draw on a body of evidence that has developed from periodic surveys, many originating from the research branch of the Department of Justice, on the prevalence of so-called “everyday legal problems”, the pathways that people take to address those problems, and their assessments of the process and outcomes.<sup>72</sup> These surveys generally follow a model pioneered in England and Wales and are now applied in numerous countries. The Canadian findings are generally consistent with findings in comparative international jurisdictions.<sup>73</sup>

Across jurisdictions, there is a generally similar level of prevalence of civil legal problems, although some differences in which types of problems are more prevalent. There are also similar indicators of clustering of problems, legal and non-legal, as well as of triggering effects. Heightened prevalence of particular types of problems, or numbers of problems, is generally evident among people experiencing social marginalization. At the same time, there are some potentially material differences in relation to some findings of particular relevance to this report, namely, findings on the extent of advice-seeking behavior and the sources of legal and non-legal assistance. These differences are seen in comparing findings from England and Wales, where the regulation of legal services is significantly less lawyer-centric, with findings in the US and Canada. In this part of the section, we will provide a brief overview of Canadian findings that shed a general light on access to justice in a lawyer-centric system.

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Farrow, “What is Access to Justice?” (2014) 51:3 Osgoode Hall Law Journal 957 at 983; Karen Cohl, *Access to Justice Themes: “Quotable Quotes”*, (background paper for the Law Society of Ontario’s Access to Justice Symposium: Creating a Climate for Change, Toronto, Treasurer’s Advisory Group on Access to Justice, 2013), online (pdf): *Law Society of Ontario* <[www.lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/q/quotable\\_quotes.pdf](http://www.lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/q/quotable_quotes.pdf)>; and Rebecca L. Sandefur, “Access to What?” (2019) 148:1 Daedalus 49 at 50 [Sandefur, “Access to What”].

<sup>71</sup> Canadian Bar Association, *Reaching equal justice report; An invitation to envision and act* (Ottawa: Canadian Bar Association, November 2013), online (pdf): *Canadian Bar Association* <[www.cba.org/Publications-Resources/Resources/Equal-Justice-Initiative/Reaching-Equal-Justice-An-Invitation-to-Envisi-\(1\)](http://www.cba.org/Publications-Resources/Resources/Equal-Justice-Initiative/Reaching-Equal-Justice-An-Invitation-to-Envisi-(1))> [CBA, *Reaching equal justice*]; Canadian Bar Association, *Canada’s Crisis in Access to Justice*, Submission to the United Nations Committee on Economic, Social and Cultural Rights (Ottawa: Canadian Bar Association, April 2006). See also: Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013), online (pdf): *Canadian Forum on Civil Justice* <[www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf) > [Action Committee on Access to Justice].

<sup>72</sup> Currie, *Nudging the Paradigm Shift*, *supra* note 1; Michael J Trebilcock, Anthony Duggan & Lorne Sossin, *Middle Income Access to Justice*, (Toronto: University of Toronto Press, 2012).

<sup>73</sup> For consideration of general consistency of findings, see Jamie Baxter, Michael J Trebilcock, & Albert H Yoon, “The Ontario Civil Legal Needs Project: A Comparative Analysis of 2009 Survey Data” in Michael J Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice*, (Toronto: University of Toronto Press, 2012) [Baxter, Trebilcock & Yoon]. See also, Pascoe Pleasence, Christine Coumarelos, Suzie Forell & Hugh M McDonald, *Reshaping Legal Assistance Services: Building on the Evidence Base: A Discussion Paper* (Sydney: Law and Justice Foundation of New South Wales, April 2014), online (pdf): *Law and Justice Foundation of New South Wales* <[www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping\\_legal\\_assistance\\_services\\_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)> [Pleasence, Coumarelos, Forell & McDonald].

For the purpose of framing access to justice in the context of this report, the following reproduces a summary of key findings of the most recent national survey conducted in Canada which are of most relevance to community justice help:<sup>74</sup>

- **Civil legal problems<sup>75</sup> are prevalent in many people’s everyday lives**, in particular, problems related to family, housing, employment, and debt and consumer issues. The survey found that, over a given three-year period, 11.4 million or almost half of adult Canadians will experience at least one everyday legal problem<sup>76</sup> that they consider serious.<sup>77</sup>
- **Social disadvantage can increase the risk and prevalence of experiencing legal problems, which can also occur in clusters**, with one problem triggering others.<sup>78</sup> This is particularly true with respect to legal problems experienced by people with lower incomes.<sup>79</sup> Law-related problems are also frequently interwoven with other problems or needs, such as those related to health, social issues, finances, and housing.<sup>80</sup>
- **Affordable and accessible legal services (i.e. legal advice and representation from a licensed legal service provider) are lacking for many common civil legal problems<sup>81</sup>**, including problems that have potentially serious consequences. The survey found that only about 19 percent of people with everyday legal problems seek formal legal advice and only about seven percent engage courts or tribunals.<sup>82</sup> The report on the survey results notes that it is “well established in the literature that perceived high cost is a significant impediment to consulting a lawyer”.<sup>83</sup>
- **In taking action to resolve their legal problems, people often seek assistance from non-legal organizations in their community.** About 28 percent of people with everyday legal problems consult non-legal sources of assistance, including

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<sup>74</sup> The summary originally appears in Mathews & Wiseman, *supra* note 70 at 12-13. The survey data is available in Canadian Forum on Civil Justice, *Everyday Legal Problems and the Cost of Justice in Canada, Cost of Justice Survey Data* (Toronto: Canadian Forum on Civil Justice, 2018), online (pdf): *Canadian Forum on Civil Justice* <[www.cfcj-fcjc.org/wp-content/uploads/Everyday-Legal-Problems-and-the-Cost-of-Justice-in-Canada-Cost-of-Justice-Survey-Data.pdf](http://www.cfcj-fcjc.org/wp-content/uploads/Everyday-Legal-Problems-and-the-Cost-of-Justice-in-Canada-Cost-of-Justice-Survey-Data.pdf)>. The statistics reported in what follows are drawn from the analysis of survey data in Currie, *Nudging the Paradigm Shift*, *supra* note 1.

<sup>75</sup> Our discussion paper primarily considers civil, rather than criminal, legal problems.

<sup>76</sup> The term “everyday legal problem” is used by the survey.

<sup>77</sup> Currie, *Nudging the Paradigm Shift*, *supra* note 1 at 4.

<sup>78</sup> *Ibid.* at 7-15.

<sup>79</sup> *Ibid.* at 8.

<sup>80</sup> *Ibid.* at 7-15 and 24-28. See also Pleasence, Coumarelos, Forell & McDonald, *supra* note 73 at 5-17.

<sup>81</sup> Action Committee on Access to Justice, *supra* note 71 at 14.

<sup>82</sup> Currie, *Nudging the Paradigm Shift*, *supra* note 1 at 15.

<sup>83</sup> *Ibid.* at 17.

government agencies, voluntary associations, unions, and advocacy groups.<sup>84</sup>

- **There is a high level of satisfaction with both legal and non-legal sources of assistance.** People who received help from licensed legal service providers regarded it as somewhat or very helpful — about 79 percent of people for a first problem and 83 percent of people for a second problem.<sup>85</sup> For help from non-legal sources, the corresponding percentages were about 68 percent for a first organization consulted for both a first and a second problem, and 79 to 84 percent for a second organization consulted for the same problems.<sup>86</sup>
- **There is a high level of dissatisfaction with the outcomes.** The survey found that a little over half of respondents said that their problems were resolved,<sup>87</sup> with almost half of them indicating that they felt the outcome was unfair.<sup>88</sup>
- **People would prefer to receive one or more types of assistance in trying to resolve problems.** Over 40 percent of people (“self-helpers”) who did not seek assistance from either lawyers or non-legal organizations believed they would have achieved a better outcome with some assistance.<sup>89</sup> Still, about 70 percent of these self-helpers expressed a preference to deal with their problem on their own, as much as possible.<sup>90</sup> They identified different types of assistance that they thought would have been useful: “better information” (80 percent); “someone to explain legal aspects and help with forms” (68 percent); “an advocate to intervene on their behalf” (69 percent); and “a lawyer to handle the problem through the legal system” (33 percent).<sup>91</sup>

This collection of findings provides only a partial picture of the access to justice landscape, but it provides a solid basis for the view that one aspect of the problem of lack of access to justice is lack of availability of accessible and affordable help from lawyers.

It is important to note that it does not necessarily follow that the best or only way to improve access to justice is to find ways to make lawyers more accessible and affordable.

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<sup>84</sup> *Ibid.* at 15. See also Trevor C W Farrow, Ab Currie, Nicole Aylwin, Les Jacobs, David Northrup and Lisa Moore, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016), online (pdf): *Canadian Forum on Civil Justice* <[www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf](http://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf)> at 107.

<sup>85</sup> Currie, *Nudging the Paradigm Shift*, *supra* note 1 at 23.

<sup>86</sup> *Ibid.* at 22-23.

<sup>87</sup> *Ibid.* at 20.

<sup>88</sup> *Ibid.* at 21.

<sup>89</sup> *Ibid.* at 18.

<sup>90</sup> *Ibid.* at 19.

<sup>91</sup> *Ibid.* at 18.

As a leading access to justice scholar has emphasized, it should not be presumed that the assistance of lawyers, nor participation in formal legal processes, is necessarily required or desired to secure all legal entitlements or to resolve all legal problems (or to resolve the entirety of a legal problem) consistently with legal norms.<sup>92</sup> As the survey findings demonstrate, people use a variety of pathways for addressing everyday legal problems and a significant proportion of people express a preference for improved availability of forms of assistance other than having a lawyer to handle their problem. This is not to say that the assistance of lawyers is not valuable; indeed, in many circumstances, it can be crucial. The point is only that the assistance of lawyers may not always be necessary or desirable. In Section 7 we give some consideration to research on the issue of when the assistance of lawyers is most important.

This suggests a need to recognize that accessing justice should be distinguished from accessing the formal legal system, that is, accessing the assistance of lawyers or other licensed legal professionals and participating in formal legal processes. While people should be able to access *both* justice and the formal legal system, it is useful to distinguish them for two reasons: first, because people ought to be able to access justice even when they cannot access the formal legal system; and second, accessing the formal legal system may not be necessary or may not be sufficient or may not be the most effective way to access justice. The legal standards, processes and outcomes of the formal legal system, when fair and just, must always be a reference point for defining when justice has been accessed, but accessing justice cannot and should not always be equated with accessing the formal legal system.<sup>93</sup>

In keeping with that recognition, this report focuses on the role that non-lawyers in community-based not-for-profit settings are playing. To assist in explaining that focus, we next situate lawyer-centricity, and alternatives, in relation to the justice needs of marginalized communities.

## 5.2 Non-lawyers and the justice needs of marginalized communities

The nature and context of the life circumstances and needs of marginalized people and communities mean that non-lawyer forms of law-related assistance may be particularly important in terms of practicality and effectiveness. The practicality lies in the assistance being available at no cost from sources already embedded in and accessed by the community. The effectiveness lies in the assistance being available from helpers who are

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<sup>92</sup> Sandefur, *supra* note 40.

<sup>93</sup> We refer here to “fair and just” legal standards, processes and outcomes in order to preserve space for contesting the fairness and justness of prevailing legal norms. We acknowledge that many communities experiencing social disadvantage are treated unfairly and unjustly in the current legal system. We also acknowledge that First Nations, Métis and Inuit communities have justifiable claims to using their own Indigenous legal norms as the relevant reference point.

skilled in understanding and engaging the challenging social context of people living on low incomes or otherwise experiencing marginalization.

Many people have life-affecting problems that include a legal dimension, either in how the problem is defined or how the problem might be resolved, or both – the legal right of a tenant to a habitable apartment; the legal obligation of a separating parent to pay child support; the legal protection against discrimination in employment; the legal entitlement to employment insurance. Often, life-affecting problems will have other dimensions as well – social, financial, health-related, and so on. The legal dimension of a problem may be dominant or it may be minor or somewhere in between; indeed, the “legal” aspect of a life-affecting problem may be difficult to extricate or identify.

People whose problems are multidimensional may want – and need – a range of assistance, including help accessing social services or services relating to settlement, family support, health care or financial matters. And they may want and need help with a variety of types of tasks, such as help in making inquiries, discussing a problem with another “party”, writing a letter, or completing a form.

The need to explore the role of non-lawyers in community-based not-for-profit settings thus in part arises from recognition of the fact that people may need assistance across a range of legal and non-legal dimensions, as well as a range of types of assistance.

The need is then compounded by recognizing that the social context of marginalized people and communities creates particular challenges for providing and obtaining effective assistance. These challenges have been identified in research exploring the reach and effectiveness of legal services provided by lawyers to people who live in social circumstances of disadvantage or what is also referred to as people with “complex needs”.<sup>94</sup> One key challenge is simply reaching people with complex needs – that itself requires particular approaches. The other key challenge is then providing appropriate help.

These dual challenges are reflected in a study emanating from Australia,<sup>95</sup> but situated in comparative literature and experience, that explains that implementing access to justice in this context tends to require approaches to the delivery of legal services that exhibit four key themes or features:<sup>96</sup>

1. targeted to those in need, including proactive outreach;
2. joined-up with non-legal services;
3. timely to minimize problem impact and maximize service utility; and
4. appropriate to the needs and capabilities of the users.

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<sup>94</sup> Forell & Gray, “Outreach legal services to people with complex needs”, *supra* note 56.

<sup>95</sup> Pleasence, Coumarelos, Forell & McDonald, *supra* note 73.

<sup>96</sup> *Ibid.* at iii.



More specifically on the challenge of appropriate provision, another study from Australia<sup>97</sup> that undertook a review of studies on effectiveness of outreach legal services explains:

As well as actually reaching “hard-to-reach” clients, several findings of the review identified the importance of providing legal assistance in a way which is appropriate for clients with complex needs. Clients with complex needs may have multiple intersecting legal and non-legal issues. While they may only come to an advisor or lawyer about one issue, this issue may well be bound up with other issues in their lives. In addition, due to the nature of their disadvantage, these clients tend to have difficulties in working with lawyers and dealing with their legal issues. They may have cognitive impairment or literacy issues which affect their interactions with lawyers and others. They may feel intimidated and lack trust in the prospect of dealing with lawyers and may feel embarrassed about seeking assistance (particularly for debt related problems). They may not always attend appointments, may not have necessary documentation and may be difficult to locate for follow up assistance.<sup>98</sup>

A Canadian report produced in the context of a review of the provision of civil legal aid in Ontario has noted a collection of other factors that contribute to the challenges of reach and effectiveness: a lack of resources – both in the form of legal information and in the form of social power – for developing legal consciousness; a need to assert rights in contexts of dependency and vulnerability; physical barriers; and language barriers.<sup>99</sup> An academic report on two modest empirical studies, conducted in British Columbia and Saskatchewan, of lawyering competencies for improving access to justice for marginalized clients, emphasizes the need for providers of legal assistance to invest time and energy in building trust with marginalized communities.<sup>100</sup> Another report from British Columbia notes that, while access to lawyers is fundamentally desirable and important, non-lawyer community-based advocates were generally regarded as having certain advantages:

Clients are more likely to speak to advocates about their legal problems, which allows advocates to offer better quality assistance. Advocates have greater compassion and sensitivity for client circumstances, do not use technical language, and are more approachable and flexible.<sup>101</sup>

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<sup>97</sup> Forell & Gray, “Outreach legal services to people with complex needs”, *supra* note 56.

<sup>98</sup> *Ibid.* at 10.

<sup>99</sup> Janet E Mosher & Ian Morrison, “Barriers to Access to Civil Justice for Disadvantaged Groups” in Ontario Law Reform Commission, *Rethinking Civil Justice: Research Studies for the Civil Justice Review*, vol 1 (Toronto: Ontario Law Reform Commission, 1996) 637.

<sup>100</sup> Sarah Marsden & Sarah Buhler, “Lawyer Competencies for Access to Justice: Two Empirical Studies” (2017) 34:2 Windsor YB Access to Justice 186.

<sup>101</sup> Andrea Long & Anne Beveridge, *Delivering Poverty Law Services: Lessons from BC and Abroad* (Vancouver: Social Planning and Research Council BC, August 2004) at 18.

A more recent Canadian report has drawn attention to the challenges associated with living in rural and remote communities.<sup>102</sup> A further factor, at a time when legal information and resources are increasingly available online, is lack of internet access and lack of digital literacy.<sup>103</sup> Another Canadian study has also drawn attention to the fact that many people may not have a level of functional or technical literacy to understand and complete forms relating to legal claims and processes.<sup>104</sup> In these contexts, enabling law-related assistance from non-lawyers may be the most practical and effective way forward.

### 5.3 Lawyer-centricity as a damper on access to justice

The potentially important role of non-lawyer assistance appears to be reinforced by comparison of findings on advice-seeking behavior in England and Wales, where non-lawyers are more broadly permitted to provide law-related assistance, compared to the US and Canada. Two studies indicate that justice may be relatively more accessible in England and Wales than in Canada and other more “lawyer-centric” jurisdictions.

One study compares everyday-legal-problems survey findings in the US and England and Wales and argues that access to justice is more unequal in the lawyer-centric US context and, correspondingly, that people there are more likely, across all social demographics, to “do nothing” about their problems.<sup>105</sup>

Another study that is referred to in a Canadian volume of essays on middle income access to justice,<sup>106</sup> draws attention to the findings in a 2009 survey that almost 60 percent of people in England and Wales sought formal legal advice for a difficult-to-solve justiciable issue, but that only 13 percent of that advice came from lawyers. A significant proportion of the remaining legal advice came from so-called “alternative” sources, including “Citizen’s Advice Bureaux, local authorities, trade unions, social workers, the police, politicians, and clerics”.<sup>107</sup> In comparison, in Canada, the findings of a comparable 2007 survey were that only about 12 percent of people sought formal legal advice, the bulk of which had to have come from lawyers, given the then prevailing

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<sup>102</sup> Karen Cohl & George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Toronto: The Law Foundation of Ontario, December 2008).

<sup>103</sup> Roger Smith, “Digital Delivery of Legal Services to People on Low Incomes” (Winter 2016), online (pdf): *The Legal Education Foundation* <[www.thelegaleducationfoundation.org/wp-content/uploads/2017/01/Digital-Technology-Winter-2016.pdf?x57167](http://www.thelegaleducationfoundation.org/wp-content/uploads/2017/01/Digital-Technology-Winter-2016.pdf?x57167)>. See also Tea Hadziristic, *The State of Digital Literacy in Canada: A Literature Review* (Toronto: Brookfield Institute for Innovation and Entrepreneurship, 2017).

<sup>104</sup> Amy Salyzyn, Lori Isaj, Brandon Piva & Jacquelyn Burkell, “Literacy Requirements of Court Documents: An Under-Explored Barrier to Access to Justice” (2016) 33:2 Windsor YB Access to Justice 263. See also Amy Salyzyn, Jacquelyn Burkell, Emma Costain & Brandon Piva. “What Makes Court Forms Complex? Studying Empirical Support for a Functional Literacy Approach” (2019) 15:1 Journal of Law & Equality 31.

<sup>105</sup> Rebecca L Sandefur, “Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy” (2009) 42:1 Loyola Los Angeles L Rev 949 [Sandefur, “Fulcrum Point of Equal Access to Justice”].

<sup>106</sup> Pascoe Pleasance, Nigel J Balmer & Stian Reimers, “Horses for Courses? People’s Characterization of Justiciable Problems and the Use of Lawyers” (conference paper, not currently available to the authors) as discussed and quoted in Baxter, Trebilcock & Yoon, *supra* note 73 at 71-2.

<sup>107</sup> Baxter, Trebilcock & Yoon, *supra* note 73 at 72.

regulatory frameworks, while about 22 percent sought advice from non-legal sources such as trade unions, politicians' offices and social workers. This indicates that the overall level of advice-seeking behavior was lower in Canada, even though about the same proportion of people sought advice from lawyers.

Although these comparative assessments are modest in number and depth, they clearly and consistently suggest that where legal advice can be obtained from non-lawyers, relatively more people will seek that advice. In turn, this suggests that expanding community justice help may be both practical and effective as a means of improving access to justice.

## 5.4 Community justice help, legal capability, and legal empowerment

In the final part of this section, we briefly consider the ideas of legal capability and legal empowerment as alternative or supplementary reference points for framing the justifiability and feasibility of expanding community justice help in order to improve access to justice for those most in need of it. We do so because, in reviewing available literature and programs on the role of non-lawyers in improving the reach of law-related assistance, we found these concepts to be useful in understanding how best to advance access to justice for people and communities experiencing poverty and other forms of social disadvantage.

In keeping with the argument that improving access to justice requires moving beyond lawyer-centric regulation, we want to suggest that it may also be useful to reframe or, at least, to supplement, "access to justice" as the guiding ideal and objective. More specifically, available recent literature on the role of non-lawyers in improving the reach of law-related assistance emphasizes the concepts of "legal capability" and "legal empowerment".

The concept of legal capability has been integrated into research on how people respond to legal problems that they frequently experience, including in the most recent Canadian survey, as well as into research on public legal education. In a report surveying development of the concept, Community Legal Education Ontario (CLEO) defined legal capability as "the knowledge, skills and personal characteristics and circumstances needed to deal with legal problems on one's own".<sup>108</sup> The CLEO report notes that the concept of legal capability has been traced to foundational work on "capabilities", by economist Amartya Sen, in the context of development, freedom and human rights.<sup>109</sup>

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<sup>108</sup> Community Legal Education Ontario, *Building an Understanding of Legal Capability: An online scan of legal capability research* (Toronto: Community Legal Education, Ontario, September 2016) at 17, online (pdf): [CLEO Connect <www.cleoconnect.ca/wp-content/uploads/2019/06/online-scan-legal-capability.September-2016.final\\_.pdf>](http://www.cleoconnect.ca/wp-content/uploads/2019/06/online-scan-legal-capability.September-2016.final_.pdf) [CLEO, *Building an Understanding of Legal Capability*].

<sup>109</sup> *Ibid.* at 2. See also Martin Jones, *Legal Capability* (London: PLENET, 2010), online (pdf): [Law For Life <www.lawforlife.org.uk/wp-content/uploads/2013/05/legal-capability-plenet-2009-147-1-147.pdf>](http://www.lawforlife.org.uk/wp-content/uploads/2013/05/legal-capability-plenet-2009-147-1-147.pdf).

This and another CLEO report<sup>110</sup> also observe that the concept of legal capability has overtaken the concept of legal literacy as an organizing idea in relation to access to justice. They also explain how the concept of legal capability can be understood as performing a similar role to the concept of social determinants of health in drawing attention to the significant role that poverty and other forms of social disadvantage play in determining the extent to which people can enjoy health or justice. In this sense, legal capability is regarded as a particularly valuable concept to the extent that it is necessarily attuned to social context and circumstances; whereas legal literacy has been seen as a somewhat acontextual concept.

The most recent Canadian legal problems survey sought information from respondents on their self-perceptions of legal capability by asking them to assess themselves in terms of five aspects of legal capability: recognition and understanding of the seriousness or potential seriousness of the problem; awareness of any legal implications related to the problem; knowledge of where to go to obtain reliable information about resolving the problem; knowledge of what sort of assistance is needed to resolve the problem; and overall knowledge to deal confidently with the problem.<sup>111</sup> Consistent with other studies,<sup>112</sup> the Canadian survey found that there was significant variation in levels of legal capability across these five aspects and, generally speaking, that higher legal capability was associated with better outcomes and greater likelihood to obtain legal advice.<sup>113</sup>

The significance of the increasing focus on legal capability for contemporary efforts to advance access to justice has been encapsulated by two of the lead researchers associated with the most recent Canadian study.<sup>114</sup> In their view, access to justice literature and activity is now emphasizing a new alternative conception of “meaningful” access to justice that “measures access for a person not necessarily in terms of access to lawyers and adjudicated decisions but rather by how helpful the path is for addressing and

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<sup>110</sup> Community Legal Education Ontario Centre for Research & Innovation, “Don’t smoke, don’t be poor, read before signing: Linking health literacy and legal capability” (Toronto: Community Legal Education Ontario, April 2015), online (pdf): *CLEO Connect* <[www.cleoconnect.ca/resource/research/dont-smoke-dont-be-poor-read-before-signing-linking-health-literacy-and-legal-capability/](http://www.cleoconnect.ca/resource/research/dont-smoke-dont-be-poor-read-before-signing-linking-health-literacy-and-legal-capability/)> [CLEO, “Don’t smoke”].

<sup>111</sup> Currie, *Nudging the Paradigm Shift*, *supra* note 1 at 29.

<sup>112</sup> For instance, as cited in Currie, “Nudging the Paradigm”, *supra* note 1; Nigel J Balmer, Alexy Buck, Ash Patel, Catrina Denvir, Pascoe Pleasence, *Knowledge, capability and the experience of rights problems* (London: PLENET & Legal Services Research Centre, March 2010), online (pdf): *Law For Life* <[lawforlife.org.uk/wp-content/uploads/2010/05/knowledge-capability-and-the-experience-of-rights-problems-src-may-2010-255.pdf](http://lawforlife.org.uk/wp-content/uploads/2010/05/knowledge-capability-and-the-experience-of-rights-problems-src-may-2010-255.pdf)>; and Hugh M McDonald & Julie People, “Legal capability and inaction for legal problems: knowledge, stress and cost” *Updating justice* 14 (June 2014), online (pdf): *Law and Justice Foundation of New South Wales* <[www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_41\\_Legal\\_capability\\_and\\_inaction\\_for\\_legal\\_problems\\_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_41_Legal_capability_and_inaction_for_legal_problems_FINAL.pdf)>. More recently, see Legal Services Board (UK), February 2020), online (pdf): <[www.legalservicesboard.org.uk/wp-content/uploads/2020/02/PLE-Reshaping-Legal-Services.pdf](http://www.legalservicesboard.org.uk/wp-content/uploads/2020/02/PLE-Reshaping-Legal-Services.pdf)>.

<sup>113</sup> Currie, *Nudging the Paradigm Shift*, *supra* note 1 at 30, 35 and 38.

<sup>114</sup> Trevor Farrow & Les Jacobs, “Introduction, Taking Meaningful Access to Justice in Canada Seriously” in Trevor Farrow & Les Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Justice* (UBC Press: Vancouver, 2020) [Farrow & Jacobs, “Introduction”].

resolving that person’s legal problem or complaint”.<sup>115</sup> In turn, as they analyze it, meaningful access to justice has four pillars: it is problem-focused, people-centred, mobilization-oriented, and acknowledges the role of systemic injustices.<sup>116</sup> It is especially in the understanding and interaction of the second and third pillars that the significance of attending to legal capability is revealed. This is encapsulated in the following passage, although the authors use the term “legal consciousness” instead of legal capability:

The second pillar [of meaningful access to justice] is that it is person-centred, as opposed to service-provider or system-centred. The point is that legal services that promote meaningful access to justice are designed to serve the person in need, not the service provider or the legal profession. The third pillar is that how these actors understand and make sense of legal rights – their legal consciousness – is of fundamental importance to their legal mobilization. The important idea underlying this pillar is that legal consciousness affects when and whether people recognize their problems as legal and the decisions they make about how to address those problems.<sup>117</sup>

For present purposes, what is important here is the emphasis on the pivotal role that legal capability (or legal consciousness) plays in enabling people to “mobilize” themselves (to take action) to address their legal issues and problems and, in so doing, to pursue access to justice. This reframing is significant for efforts to advance access to justice because it focuses attention more fully on exploring how to support people to take action to pursue access to justice, rather than focusing on what the formal legal system is willing to offer as access to justice. In a nutshell, the reframing can prompt our understanding of access to justice to be more people-centered, rather than lawyer- or system-centered. This reframing can be enhanced by then making connections between the idea of supporting people’s legal capability to take action (or mobilize) and the concept of legal empowerment.

The proximity of the concept of legal empowerment to legal capability has been noted in a UK report that informs the CLEO reports discussed above:

Legal capability can be defined as the abilities that a person needs to deal effectively with law-related issues. These capabilities fall into three areas: knowledge, skills, and attitudes, emphasising that capability needs to go beyond knowledge of the law, to encompass skills like the ability to communicate plus attitudes like confidence and determination.

The concept of legal capability is explicitly about empowerment, looking at the abilities people need in order to deal effectively with law-related issues.<sup>118</sup>

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<sup>115</sup> *Ibid.* at 7.

<sup>116</sup> *Ibid.* at 8–9.

<sup>117</sup> *Ibid.* at 8 [footnotes omitted].

<sup>118</sup> Jones, *supra* note 109 at 1.

The concept of legal empowerment itself originates from research and advocacy on law and development, where it was initially put forward by Stephen Golub as a counter to what he regarded as the misplaced emphasis on system-oriented reforms for improving justice in global development contexts. Golub defines legal empowerment as “the use of rights and laws specifically to increase disadvantaged populations’ control over their lives”.<sup>119</sup> Generally speaking, legal empowerment initiatives seek to focus directly on the needs of disadvantaged populations and to develop programs that proactively serve those needs. As such, legal empowerment approaches are contrasted with traditional “rule of law” approaches in law and development, which focus more on the operation of legal institutions, such as courts, and only meet the needs of disadvantaged populations indirectly, if at all.<sup>120</sup> A key example of a legal empowerment initiative is so-called “barefoot” or “community” paralegals, who are typically non-lawyers who are embedded in justice-seeking communities and are trained to support those communities in recognizing and addressing legal problems.<sup>121</sup> Other strategies include legal literacy and capability programs and community legal education.<sup>122</sup>

While the concept and approaches of legal empowerment originate in the global development context, over the past decade they have been recognized as relevant to and useful for improving access to justice for disadvantaged communities in high-income countries such as Canada and the comparative jurisdictions considered in this report. For example, after reviewing a variety of programs of legal empowerment internationally, including programs using community paralegals, Jacinta Maloney concluded that they ought to be considered for disadvantaged communities in Australia.<sup>123</sup> Similarly, a collection of papers associated with a summit on access to justice at Fordham University School of Law included a brief paper that framed non-lawyer initiatives in the United States and Canada in terms of the concept and approaches of legal empowerment.<sup>124</sup>

We have briefly reviewed the attention given to the concepts of legal capability and legal empowerment in literature on access to justice because they provide reference points for supplementing our understanding of how to improve access to justice for people and communities experiencing social disadvantage. The emphasis that these supplementary concepts place on people-centred approaches, using community-based sources of

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<sup>119</sup> Stephen Golub, “Introduction: Legal Empowerment’s Approaches and Importance”, *Justice Initiative* (Autumn 2013) 5, online (pdf): *Open Society Justice Initiative* <[www.opensocietyfoundations.org/publications/justice-initiatives-legal-empowerment](http://www.opensocietyfoundations.org/publications/justice-initiatives-legal-empowerment)> [Open Society Justice Initiative].

<sup>120</sup> See Stephen Golub, “Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative” (2003) Rule of Law Series: Democracy and Rule of Law Project Working Paper No. 41, online (pdf): *Carnegie Endowment for International Peace* <[www.carnegieendowment.org/files/wp41.pdf](http://www.carnegieendowment.org/files/wp41.pdf)>.

<sup>121</sup> For a review of a number of legal empowerment initiatives involving community paralegals, see Open Society Justice Initiative, *supra* note 119.

<sup>122</sup> For a comprehensive meta-review of legal empowerment programs and strategies, see Laura Goodwin and Vivek Maru, “What do we know about legal empowerment? Mapping the Evidence” (2014) 8 *Namati Working Paper*, online (pdf): *Namati* <[www.namati.org/wp-content/uploads/2014/05/Evidence-Review2.pdf](http://www.namati.org/wp-content/uploads/2014/05/Evidence-Review2.pdf)>.

<sup>123</sup> Maloney, *supra* note 63 at 69.

<sup>124</sup> Peter Chapman, “The Legal Empowerment Movement and Its Implications” (2018) 87: 1 *Fordham Law Review Online* 183.

assistance, reinforces our focus in this report on the potential to expand community justice help. Just as it can be argued that there is a need to move beyond lawyer-centrism in the regulation and delivery of law-related assistance in general, and legal services more particularly, so too must we be aware that the ideal of access to justice, and ideas on how to improve it, may also be prone to lawyer-centrism. When the concepts and approaches of legal capability and legal empowerment are applied, the understanding of access to justice becomes more people-centered and empowerment-oriented, rather than lawyer- or system-centered. This leads us to exploring better support for the role of community justice help, in advancing access to justice, especially in contexts of social disadvantage.

## 6. Looking at Community Justice Help

In this section we consider:

- program initiatives involving community-based not-for-profit non-lawyer provision of legal assistance or, in other words, community justice help. We begin by situating the expansion of assistance provided by not-for-profit community-based organizations, or community justice help, as an access to justice strategy;
- the spectrum of law-related assistance provided by community-based organizations;
- examples of organizations or programs that illustrate the shape and variety of community justice help, including related program evaluations, in Canada and comparative jurisdictions; and
- how community-based organizations are taking advantage of technology to improve or expand their efforts to provide community justice help.

### 6.1 Setting the context: community justice help as an access to justice strategy

As discussed in Section 5 of this report, much literature notes the increasing recognition of the role and importance of knowledgeable and skilled people embedded in the community, working through not-for-profit agencies, who assist people who come to them with multi-faceted problems. Those problems often include financial, health, settlement, housing, employment, family, and other matters of everyday life, some of which are serious and some less so, and some of which may involve a legal element.

In line with the varied and multifaceted nature of people's problems for which they're seeking help, community-based workers in various occupations and professions give community-grounded assistance. This includes social workers, family advice counsellors, faith leaders, educators, library staff, settlement workers, advocates for women experiencing intimate partner violence, and many others. Sometimes these community-based helpers are called "trusted intermediaries" or "trusted helpers" due to the unique nature of their relationship with clients, characterized by trust.

For the purposes of this report, we are using the more common term, "community workers" to capture the range of professions and occupations working in these areas. These workers, employed in various occupations and professions, provide services in a range of not-for-profit settings. Not surprisingly, the types of services that community workers carry out, and the nature of the activities and tasks they perform, vary widely.



Workers at community organizations have long provided law-related assistance, but the last decade has seen an increased recognition of, and support for, this role. This increased recognition can be explained, in part, by an increased acknowledgement – by governments, legal aid providers, and other legal services providers – of the reality, and extent, of the access to justice crisis. Among other things, these entities have responded to the crisis by providing a greater number and range of “do-it-yourself” (or “self-help”) supports for people in the midst of a legal problem, including fillable forms, self-help guides for navigating tribunals and courts, and other resources intended to enable people to act as their own lawyer. Technological advances have assisted with the emergence of this “do-it-yourself” trend.

This “self-help” phenomenon can be characterized, in some aspects, as the increased democratization of the law: empowering people to take informed action on their own behalf. This characterization, though, is quite incomplete and thus misleading: people are “empowered” to act on their own behalf – to navigate a system that was designed for use by and for highly trained legal professionals – but are restricted in the type of help they can access when they lack the knowledge and skills to make a decision or take action on their own or, depending on the jurisdiction, with the support of a friend or family member. People who lack the personal resources or connections to help themselves – those who face various forms of disadvantage – are unlikely to be assisted by approaches that rely heavily on “self-help”.<sup>125</sup>

People can, of course, turn to the range of general legal information that is available to them, including a plethora of information now available through the Internet; and high-quality, accessible information can – and often does – give people a basic understanding of their legal rights and how to exercise them. Supported by technological advances, interactive information now provides people with more customized tools, including document preparation programs. Making use of these resources and tools turns, again, on a person’s resources, including their literacy levels (in the languages in which the information is produced) and digital access and skills.<sup>126</sup>

In this context, the importance of people struggling to address a law-related problem being able to access a “helping hand” has been well documented. In Canada and other jurisdictions, not-for-profit community-based organizations serve as this “helping

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<sup>125</sup> CLEO, “Don’t smoke”, *supra* note 110. And see generally Community Legal Education Ontario Centre for Research & Innovation, “A framework for Ontario: Introducing a working legal capability matrix” (September 2016), online (pdf): *CLEO Connect*

<[www.cleoconnect.ca/tcodownloads/working-legal-capability-framework-report-2016](http://www.cleoconnect.ca/tcodownloads/working-legal-capability-framework-report-2016)>.

<sup>126</sup> As discussed in previous reports, information that is selected, curated, or considered with respect to an individual’s situation is usually of greater use than more generic information: Jennifer Bond, David Wiseman, Emily Bates, “The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector” (2016) 25 *Journal of Law and Social Policy* 1; Mathews & Wiseman, *supra* note 70. The more ‘individualized’ the information, the more useful it is – as long as it’s accurate and accessible. Supported by technology, the opportunities to provide more individualized information are rapidly increasing. Instead of policing a line between legal information and legal advice (which is, we would argue, individualized information), we encourage the justice sector to focus its efforts on supporting good-quality community justice help, among other needed advances.

hand”, playing various roles and carrying out a range of tasks as “justice partners”. These organizations do not provide assistance as a legal services provider (although they may connect people with licensed legal services), even though their support might be seen, on occasion, to be edging into what might be considered “legal services” or the “practice of law”. Whether there has been an increase in the number of community-based organizations doing this type of work, or an increase in the provision of justice-related programs or services by these organizations, is difficult to determine, given the diffuse and varied nature of not-for-profit community-based sectors.

Many if not most of these organizations receive funding from government or agencies of government that impose accountability requirements, and many organizations have staff that are subject to professional accreditation or licensing regimes (such as social workers). Most of these organizations evaluate their programs on a regular basis, even if they lack the funding and resources to retain external evaluators and conduct independent evaluations. This section brings in program evaluations where they are publicly available. Academic, empirical research that provides evaluative-type analysis relevant to this report is discussed in Section 7.

## 6.2 The spectrum of community justice help

Staff at community organizations provide law-related assistance and support along a spectrum, ranging from basic services that support people in identifying law-related problems and accessing sources of help, to services and tasks that support people in understanding and exercising their legal rights. The latter require greater familiarity and interaction with the law and legal processes (explaining options, assisting with process navigation, accompanying to hearing).<sup>127</sup>

The spectrum is not linear; in reality, community workers do not carry out these tasks in discrete sets. Categorizing an organization or program along the spectrum does not indicate that these are the only tasks carried out by the organization; rather, its categorization suggests the focus of an organization’s or program’s activities. For example, organizations that give more robust, individualized help (explaining options, assisting with process navigation, help with the completion of forms) also are well versed in, and give assistance relating to, legal issue spotting and warm referrals.

As noted elsewhere, it appears that hundreds of community organizations provide help with law-related problems in one way or another; in this scan, we focus on examples of organizations along the spectrum that focus on providing intentional community justice help – whether that help primarily focuses on legal issue spotting (library-justice

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<sup>127</sup> As discussed in Mathews & Wiseman, *supra* note 70, community organizations integrate law-related assistance into their roster of services when:

- their staff have the knowledge and skills – supported by such practices as regular training, mentorship, and supervision – to provide quality services that ‘match’ the type of help sought
- there is a need to do so: experienced help from a legal professional is not accessible for the particular law-related issue or for the particular community members

partnerships); the intentional integration of legal services (health-justice partnerships); or more robust, individualized help.

This raises a last point. In undertaking this research, it has been difficult to discern which organizations are, in fact, providing more individualized information and robust assistance. Community organizations providing more customized, individualized help – pushing the blurry boundary between information and advice – do not describe those practices as such, at least in the public forum of the Internet. Our sense is that this is because they do not want to risk attracting the attention of regulators or funders who continue to quietly monitor the dividing line between legal information and advice. The monitoring by regulators, and others, takes place despite the absence of a body of evidence that indicates that not-for-profit community organizations generally provide “bad” help.<sup>128</sup>

In what follows, we identify and explain the spectrum of tasks and services apparent in community justice help, categorized into three broad groups.

- 1. Tasks and services relating to identifying legal issues, accessing legal information, and making connections to legal services**

Many people with problems relating to work, housing, or family matters do not realize that their problem has a legal element. In recent years, there has been an increasing recognition of the importance of people with law-related problems being able to identify them as such.<sup>129</sup> Unless a person is able to understand that their problem involves a “legal right” (or “legal responsibility”) that is enforceable by law, they are unable to understand or take advantage of the options and remedies available to them under the law.<sup>130</sup>

Many legal organizations now train or provide guidance to community workers on how to help a client identify the legal element of a problem, how to identify and find legal information that they can point a client to, and how to give good referrals to local, accessible legal services. Public libraries, for example, have increasingly recognized that helping library patrons identify the legal element of their problem is a task that they are often asked to perform, and library-justice partnerships have emerged to meet this need, as discussed in Section 6.3.1 below.

In many jurisdictions, not-for-profit organizations have also built connections with local, accessible legal services providers so that they can connect their clients to those services as seamlessly as possible.<sup>131</sup> Community-justice partnerships have emerged in recent years, reflecting an intentional commitment by frontline organizations to offer

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<sup>128</sup> Mathews & Wiseman, *supra* note 70.

<sup>129</sup> Karen Cohl, Julie Lassonde, Julie Mathews, Carol Lee Smith & George Thomson, “Trusted Help: The role of community workers as trusted intermediaries who help people with legal problems” (2018) at 15, online (pdf): *CLEO Connect* <[www.cleoconnect.ca/resource/research/trusted-help-role-community-workers-trusted-intermediaries-help-people-legal-problems/](http://www.cleoconnect.ca/resource/research/trusted-help-role-community-workers-trusted-intermediaries-help-people-legal-problems/)> [Cohl, Lassonde, Mathews, Smith & Thomson, “Trusted Help”].

<sup>130</sup> Sandefur, “Access to What”, *supra* note 70 at 50-53.

<sup>131</sup> Cohl, Lassonde, Mathews, Smith & Thomson, “Trusted Help”, *supra* note 129 at 45.

integrated or “joined-up” services. In these partnerships, frontline organizations help their patrons or clients identify their legal issue, access relevant information, and seamlessly connect with accessible legal services.<sup>132</sup> These community-justice partnerships typically involve legal experts conducting training to help build the knowledge and skills of frontline organization staff so that they’re better equipped to spot legal issues, give relevant information, and provide warm referrals.<sup>133</sup>

## 2. Tasks and services to assist with navigating processes, understanding options, completing forms

Many community organizations, however, do more than help clients identify the nature of their law-related problems, access relevant information, and access expert legal services; they help them understand their problem, what legal rights they may have, the options that are available to them, and how to take next steps, including navigating a legal or court process. They may also help them complete a government form, or a form needed in a tribunal or court proceeding.

This type of assistance, while not new, has been gaining increasing attention and recognition in recent years. The fact that many Canadians are unable to access licensed legal services providers for help with their law-related problems,<sup>134</sup> and the extent and vitality of the not-for-profit service sector in many communities throughout Canada, have no doubt contributed to this increased recognition.

The nature, depth, and breadth of the law-related assistance that community workers are providing to their communities depends on a number of factors including, importantly, the availability of accessible services<sup>135</sup> from legal professionals in the

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<sup>132</sup> Patrick Dunleavy, “The Future of Joined-up Public Services” (2010), online (pdf): *LSE Research Online* <[www.eprints.lse.ac.uk/28373/1/The\\_Future\\_of\\_Joined\\_Up\\_Public\\_Services.pdf](http://www.eprints.lse.ac.uk/28373/1/The_Future_of_Joined_Up_Public_Services.pdf)>; Forell & Gray, “Outreach legal services to people with complex needs”, *supra* note 56 at 15; Suzie Forell, Hugh M McDonald, Stephanie Ramsey and Sarah A Williams, *Review of Legal Aid NSW outreach legal services: Stage 2 report: Evolving best practice in outreach – insights from experience* (Sydney: Law and Justice Foundation of New South Wales, 2013) at 76; Clarke & Forell, *supra* note 60 at 9; Mary Anne Noone & Kate Digney, *The Key Features of an Integrated Legal Service Delivery Model: Research Report* (Victoria: Legal Services Board, September 2010); Allison Fenske and Beverly Froese, Public Interest Law Centre, *Justice Starts Here: A One-Stop Shop Approach for Achieving Greater Justice in Manitoba* (Winnipeg: Canadian Centre for Policy Alternatives Manitoba, 2017), online: *Canadian Centre for Policy Alternatives* <[www.policyalternatives.ca/publications/reports/justice-starts-here](http://www.policyalternatives.ca/publications/reports/justice-starts-here)> [Fenske & Froese, *Justice Starts Here*].

<sup>133</sup> Warm referrals are a proactive type of referral where another service is contacted on the client’s behalf, rather than leaving the client to contact the service on their own; it may also involve preparing a case history or report on the client for the service: Clarke & Forell, *supra* note 60 at 5.

<sup>134</sup> Action Committee on Access to Justice, *supra* note 71 at 4; Currie, *Nudging the Paradigm Shift*, *supra* note 1; CBA, *Reaching equal justice*, *supra* note 71 at 22 and 36; John Howard Society of Ontario, “Legally Bound: Addressing the Civil Legal Needs of Justice-Involved Ontarians” (July 2020) at 23, online (pdf): *John Howard Society of Ontario* <[www.johnhoward.on.ca/wp-content/uploads/2020/07/Legally-Bound-The-Civil-Legal-Needs-of-Justice-Involved-Populations.pdf](http://www.johnhoward.on.ca/wp-content/uploads/2020/07/Legally-Bound-The-Civil-Legal-Needs-of-Justice-Involved-Populations.pdf)>; Julie MacFarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report” (May 2013) at 12, online (pdf): *National Self-Represented Litigants Project* <[www.representingyourselfcanada.com/wp-content/uploads/2016/09/srreportfinal.pdf](http://www.representingyourselfcanada.com/wp-content/uploads/2016/09/srreportfinal.pdf)> [MacFarlane, “The National Self-Represented Litigants Project”].

<sup>135</sup> ‘Accessible’ refers to services that people can afford, understand (language), connect with (premises and location), be comfortable with (grounding in the problem context), and have confidence in (relevant experience and expertise).

community. At a more micro level, the nature, depth, and breadth of the assistance relate to the mandate and priorities of the community organization, and the resources it has available to devote to its various priorities.

**3. Tasks and services to provide support, including mentoring and moral support, support in organizing documents, and accompaniment to meetings and adjudicative proceedings (for example, arbitration hearings, tribunal, or court)**

Community organizations also respond to the demand for law-related assistance from members of their communities who are engaged in a legal process through programs and services that focus on providing moral and emotional support, support in organizing documents and evidence, and accompaniment services, where the support person accompanies someone with a legal problem to a meeting or hearing. Many of the services described above also include one or more of these elements.

## 6.3 Surveying examples of community justice help

As noted above, numerous community-based organizations carry out tasks and provide services in one or more of the service areas outlined above. In what follows, we highlight community-based organizations that are carrying out this work, in Canada,<sup>136</sup> the United States, the United Kingdom, and Australia. While there is no basis upon which to quantify the extent of these programs, we speculate that there are many hundreds of examples across the country of community-based organizations providing some of these law-related services.

Each of the groupings below has seen considerable, and increasing, activity in the realm of community justice help in recent years. We focus on community workers in the not-for-profit sector, but we also briefly mention other programs when they have some bearing on the emergence of community justice help.

- 1. Community-justice partnerships:** services relating to identifying legal issues, accessing legal information, and making connections to legal services
  - a. Library-justice partnerships (Can, Aus, US)
  - b. Health-justice partnerships (Can, US, Aus, England and Wales)
  - c. Faith-justice partnerships (US)
  - d. Cross-sectoral partnerships (Can)

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<sup>136</sup> As discussed in Section 4, the legal services regulators in many provinces have created exceptions for the provision of some specified legal services in some settings by non-lawyers, including provision by some community-based organizations. For example, Indigenous Court Workers based at Indigenous organizations are permitted to provide law-related assistance in Ontario.

2. **Community services that integrate law-related assistance:** services to assist with navigating processes, understanding options, and completing forms
  - a. Workers' rights support (Can, US)
  - b. Support for recent immigrants (Can, US)
  - c. Support for survivors of intimate partner violence (Can)
  - d. Navigators and community guides (US, Can, England and Wales)
3. **McKenzie Friends and court support persons:** services to provide moral support and document organizing support, and accompaniment services (UK, Can)
4. **Another model: Citizens Advice (UK)**

### 6.3.1 Community-justice partnerships

Many jurisdictions, in Canada and in other countries, have seen the emergence of partnerships between not-for-profit community-based organizations and legal organizations, or groups of lawyers. Various forms of informal collaboration between community-based organizations and lawyers have existed for many years and continue to flourish.

It appears that, in recent years, many of these collaborations have become more formal, with identified goals, deliverables, and evaluation plans: they are more intentional. Sometimes, the partnerships focus on training activities, and primarily serve to build the knowledge and skills of community workers to help their clients identify legal issues and give them relevant legal information and referrals to accessible legal services. Other partnerships go further, offering “joined-up” services: these partnerships enable people who are seeking help with a law-related problem from a community worker to be connected, seamlessly, with a lawyer who can help them address their problem. These partnerships may involve pro bono lawyers or other associations of lawyers.

Below we discuss these more formal community-justice partnerships in four areas: library-justice partnerships, health-justice partnerships, faith-justice partnerships, and cross-sectoral partnerships.<sup>137</sup>

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<sup>137</sup> Another example of an innovative community-justice partnership is “Beyond Legal Aid” in Chicago, IL. In this collaboration, community organizations that provide services to people with immigration, job-related, and other law-intersecting problems offer free legal services, provided by lawyers, through their offices, but the community organizations set the priorities and determine the cases handled by the lawyers. The model is intended to get beyond the “funding and impact limitations in legal aid programs”. It appears to be similar to Ontario’s community legal clinic model, where community members set priorities; with “Beyond Legal Aid”, though, community organization partners set the priorities: Beyond Legal Aid, “About” (accessed 18 January 2021), online: *Beyond Legal Aid* <[www.beyondlegalaid.org/about](http://www.beyondlegalaid.org/about)>.

## a. Library-justice partnerships

(Can, Aus, US)

One form of partnership that has emerged is between public libraries – including some law libraries that serve the general public – and legal organizations or groups of legal professionals. These library-justice partnerships are premised on the recognition that many people go to public libraries to find information to help them address their law-related problems.<sup>138</sup>

These partnerships often focus on training public library staff on how to spot legal issues – a challenge when law-related elements are buried in a multifaceted problem – and how to find and access reliable and relevant legal information. When a library staff has the knowledge and skills to help a patron understand that they have a problem that may have a legal response, they can point to relevant legal information and give them good referrals to local, accessible legal services.<sup>139</sup>

A major initiative – LawMatters – is an early example of a partnership between public libraries and a law-related organization. This initiative is a partnership between Courthouse Libraries BC, which runs the LawMatters program, and public libraries across BC. Since its creation in 2007, LawMatters staff have provided training, on an ongoing basis, to more than 70 public libraries across the province. The training includes segments on identifying legal issues and accessing relevant, up-to-date legal information resources.<sup>140</sup> Public libraries in rural and remote parts of the province – one of the few sources of expert help in a region – are often called on to provide more robust help, and LawMatters supports those efforts.<sup>141</sup>

*Evaluation note:* According to reviews of the impact of the LawMatters program, public library staff report that training helps them feel more confident and equipped to take on legal questions from patrons.<sup>142</sup>

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<sup>138</sup> Beth Bilson, Brea Lowenberger, & Graham Sharp, “Reducing the ‘Justice Gap’ Through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries” (2018) 34:2 Windsor YB Access Just 99, online (pdf): *University of Windsor* <[www.ojs.uwindsor.ca/ojs/leddy/index.php/WYAJ/article/view/5020/4334](http://www.ojs.uwindsor.ca/ojs/leddy/index.php/WYAJ/article/view/5020/4334)> [Bilson, Lowenberger & Sharp]; Meg Kwasnicki, MKDA Consulting, “Public Legal Information in BC’s Rural and Remote Community Libraries: Recommendations for LawMatters” (February 2019), online (pdf): *Courthouse Libraries BC* <[www.courthouselibrary.ca/sites/default/files/inline-files/LawMatters\\_Legal\\_Information\\_RemoteBCLibraires\\_Summary\\_Feb2019\\_0.pdf](http://www.courthouselibrary.ca/sites/default/files/inline-files/LawMatters_Legal_Information_RemoteBCLibraires_Summary_Feb2019_0.pdf)> [Kwasnicki].

<sup>139</sup> Bilson, Lowenberger & Sharp, *supra* note 138.

<sup>140</sup> “Reference tools” Courthouse Libraries BC (accessed 14 January 2021), online: *Courthouse Libraries BC* <[www.courthouselibrary.ca/how-we-can-help/our-library-services/lawmatters-public-libraries/reference-tools](http://www.courthouselibrary.ca/how-we-can-help/our-library-services/lawmatters-public-libraries/reference-tools)>.

<sup>141</sup> Kwasnicki, *supra* note 138; Courthouse Libraries BC, “LawMatters Overview + Evaluation” (August 2017) at 3, online (pdf): *Courthouse Libraries BC* <[www.courthouselibrary.ca/sites/default/files/inline-files/final---lawmatters-evaluation\\_0.pdf](http://www.courthouselibrary.ca/sites/default/files/inline-files/final---lawmatters-evaluation_0.pdf)> [Courthouse Libraries BC, “LawMatters Overview + Evaluation”].

<sup>142</sup> Nancy Hannum, “Talking to Librarians about Law Matters: Promising Practices” Courthouse Libraries BC, (September 2011) at 9, online (pdf): *Courthouse Libraries BC* <[www.courthouselibrary.ca/sites/default/files/inline-files/LawMatters\\_Promising\\_Practices\\_Report\\_2011.pdf](http://www.courthouselibrary.ca/sites/default/files/inline-files/LawMatters_Promising_Practices_Report_2011.pdf)>; Courthouse Libraries BC, “LawMatters Overview + Evaluation”, *supra* note 141 at 3, 4 & 5.

In Ontario, community legal clinics regularly partner with local public libraries to support the libraries' efforts in helping people who come to them looking for information relating to their law-related problem. For example, the Community Advocacy & Legal Centre (CALC) in Belleville led a multi-partner initiative involving several public libraries to support the needs of the public libraries in the area.<sup>143</sup>

More recently, and building on the CALC initiative, Community Legal Education Ontario (CLEO) worked with the Southern Ontario Library Service, an association of public libraries in southern Ontario, to develop an eight-week online course to train staff at public libraries on several topics relating to the law. The course requires participants to complete interactive quizzes and exercises and is facilitated by a skilled instructor who gives feedback on the participants' work. Participants who complete the course receive a "Legal Information and Referral Specialist" certificate upon completion.<sup>144</sup>

Other provinces have long seen partnerships between law-related organizations – often the primary public legal education and information organization in the province – and public libraries.<sup>145</sup> A recent initiative in Saskatchewan enables self-represented litigants who need legal information or help with research to consult with a Law Society of Saskatchewan librarian through Zoom appointments during set hours, or by phone or email, in a partnership with the Saskatoon Public Library.<sup>146</sup>

Library-justice partnerships have also sprung up in other countries. For example, Victoria Legal Aid, in Australia, runs a Public Law Library, where librarians assist patrons in locating legislation, case law and other legal material.<sup>147</sup> In the US, a law librarian from the Minnesota State Law Library visits a branch of the St. Paul Public Library twice a month to meet with library patrons who need legal information, connecting them to resources "already available to them in a way that makes things easier".<sup>148</sup> In California, a law librarian service called AskNow enables people looking for legal resources to ask questions through a live chat function and a similar service also exists in Massachusetts.<sup>149</sup> A broader training initiative for librarians that is part of a

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<sup>143</sup> Michele Leering, "Librarians & Access to Justice Outreach" (October 2015), online (pdf): *Community Advocacy & Legal Centre* <[www.communitylegalcentre.ca/wp-content/uploads/2018/03/Librarians-and-access2justice-report.pdf](http://www.communitylegalcentre.ca/wp-content/uploads/2018/03/Librarians-and-access2justice-report.pdf)>.

<sup>144</sup> Community Legal Education Ontario, "CLEO 2017-2018 Annual Report" (2018) at 3, online: *Community Legal Education Ontario* <[www.cleo.on.ca/sites/default/files/docs/CLEO%202017-18%20Annual%20Report.pdf](http://www.cleo.on.ca/sites/default/files/docs/CLEO%202017-18%20Annual%20Report.pdf)> ["CLEO 2017-2018 Annual Report"].

<sup>145</sup> Bilson, Lowenberger & Sharp, *supra* note 138; CREATE JUSTICE, "Saskatchewan Access to Legal Information Project" (accessed 14 January 2021), online: *University of Saskatchewan* <[www.law.usask.ca/createjustice/projects/Saskatchewan-Access-to%20Legal-Information.php](http://www.law.usask.ca/createjustice/projects/Saskatchewan-Access-to%20Legal-Information.php)>.

<sup>146</sup> Law Society of Saskatchewan, "Zoom Legal Research Help" (accessed 14 January 2021), online: *Law Society of Saskatchewan* <[www.lawsociety.sk.ca/uncategorized/zoom-legal-research-help/](http://www.lawsociety.sk.ca/uncategorized/zoom-legal-research-help/)>.

<sup>147</sup> Victoria Legal Aid, "Our law library" (accessed 14 January 2021), online: *Victoria Legal Aid* <[www.legalaid.vic.gov.au/about-us/our-law-library](http://www.legalaid.vic.gov.au/about-us/our-law-library)>.

<sup>148</sup> Erica Melko, "Minnesota State Law Library Partners with Saint Paul Public Library to Promote Access to Justice" *WebJunction: The learning place for libraries* (16 January 2020), online: *WebJunction* <[www.webjunction.org/news/webjunction/minnesota-access-to-justice.html](http://www.webjunction.org/news/webjunction/minnesota-access-to-justice.html)>.

<sup>149</sup> Fresno County Public Law Library, "Ask Now" (accessed 14 January 2021), online: *Fresno County Public Law Library* <[www2.co.fresno.ca.us/9899/AskNow.asp](http://www2.co.fresno.ca.us/9899/AskNow.asp)>; California County Law Libraries, "Ask a Law Librarian" (accessed 16



project aiming to improve access to civil justice through public libraries has been launched, based on a partnership between the Legal Services Commission and a US-based global library cooperative (OCLC).<sup>150</sup>

## b. Health-justice partnerships

(Canada, US, Australia, England and Wales)

Health-justice partnerships, also referred to as medical-legal partnerships, have emerged in the last decade in Canada and comparative jurisdictions as models of joined-up services. Health-justice partnerships recognize that a person's resources and circumstances – the security and level of their income, housing, and employment, or “the social determinants of health” – have a direct impact on their health, and that many people rely on “the law” to secure or maintain decent living and working conditions.<sup>151</sup> Health-justice partnerships have emerged hand-in-hand with the growing recognition of the critical importance of the social determinants of health.<sup>152</sup>

Health-justice partnerships, like library-justice partnerships, focus on training and supporting health care workers to help patients identify legal issues and access relevant legal information. But, significantly, health-justice partnerships have gone beyond this; many offer some form of warm referrals and some have integrated legal services directly into the health care setting.

Some health-justice partnerships may simply provide a lawyer on staff who can offer some form of triage, robust legal information, or summary legal advice to patients and families in a health care setting. Deeper initiatives involve integrated partnerships between health care offices and legal aid clinics, law school clinics, or other not-for-profit law-related legal service providers.

These innovative partnerships reflect the notion of “joined-up” services, in which the health care professional is able to help a patient identify a legal issue – often a legal entitlement to a benefit (such as government income support relating to a disability) – and connect the patient in a seamless way to an expert legal professional, either a staff lawyer or a warm referral.

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January 2021), online: *California County Law Libraries* < <https://calcountylawlib.libanswers.com/> > [California County Law Libraries].

<sup>150</sup> See, online: <[www.webjunction.org/news/webjunction/partnership-to-improve-access-to-civil-legal-justice.html](http://www.webjunction.org/news/webjunction/partnership-to-improve-access-to-civil-legal-justice.html)>.

<sup>151</sup> See the following foundational report on the social determinants of health prepared by the World Health Organization: Commission on Social Determinants of Health, “Closing the gap in a generation: Health equity through action on the social determinants of health” (2008), online (pdf): *World Health Organization* <[www.who.int/publications/i/item/WHO-IER-CSDH-08.1](http://www.who.int/publications/i/item/WHO-IER-CSDH-08.1)>.

<sup>152</sup> CLEO, “Don’t smoke”, *supra* note 110 at 51.

## Canada

In Ontario, Pro Bono Ontario (PBO) as well as a number of community legal clinics have led the way in setting up these partnerships. (Our research did not uncover health-justice partnerships in other Canadian provinces, although it is likely that they exist.) A scan of health-justice partnerships recently conducted by the Community Advocacy & Legal Centre (CALC) has identified 33 Ontario-based partnerships involving eight community legal clinics, PBO, and Legal Aid Ontario.<sup>153</sup> Depending on the locations, health care partners range from hospitals, community health centres, family health teams, addiction and mental health support services, and one nurse practitioner. These clinic-led partnerships are intended to respond to specific local conditions and needs; they vary considerably in the extent of formality and collaboration.

*Evaluation note:* According to the early findings from CALC's scan, at least one of these partnerships has undergone evaluation.<sup>154</sup> CALC deems evaluation efforts generally as works in progress, demonstrating the fluidity of the evolution of justice partnerships in Ontario.<sup>155</sup>

In addition to more traditional lawyering tasks, legal partners in these health-justice partnerships train health care workers on areas of law affecting marginalized patients, detecting health (and life) problems with a legal component, and giving referrals to legal clinics and other legal services providers. The partnerships may also arrange for a lawyer to be available for urgent consultations with health care workers.

An example of an early health-justice partnership is rooted in a high-needs downtown Toronto area.<sup>156</sup> Until recently,<sup>157</sup> the partnership between St. Michael's Hospital and local community legal clinics involved an embedded staff lawyer who provided legal

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<sup>153</sup> New partnerships are now being started up or led by two additional community legal clinics. See CALC's PowerPoint presentation at the International Legal Aid Group in June 2019: Michele M Leering, "Innovating, Intervening & Transforming: Justice and Health Partnerships in Ontario" (presentation delivered at the International Legal Aid Group Conference, June 2019), online (pdf): *Community Advocacy & Legal Centre* <[www.communitylegalcentre.ca/wp-content/uploads/2019/08/ILAG-2019-JHP-Ontario-CoP-version-1.pdf](http://www.communitylegalcentre.ca/wp-content/uploads/2019/08/ILAG-2019-JHP-Ontario-CoP-version-1.pdf)>.

<sup>154</sup> Gina Agarwal, Melissa Pirrie, Dan Edwards, Bethany Delleman, Sharon Crowe, Hugh Tye & Jayne Mallin, "Legal needs of patients attending an urban family practice in Hamilton, Ontario, Canada: an observational study of a legal health clinic" (2020) 21 *BMC Family Practice* 267, online (pdf): *BMC Family Practice* <[www.bmcfampract.biomedcentral.com/articles/10.1186/s12875-020-01339-y](http://www.bmcfampract.biomedcentral.com/articles/10.1186/s12875-020-01339-y)>.

<sup>155</sup> Research paper forthcoming in 2021.

<sup>156</sup> St. Michael's Unity Health Toronto, "Department of Family and Community Medicine and St. Michael's Academic Family Health Time: Health Justice Program" (accessed 14 January 2021), online: *St. Michael's Unity Health Toronto* <[www.stmichaelshospital.com/programs/familypractice/health-justice-program.php#:~:text=The%20Health%20Justice%20Program%20is,Ontario%20and%20Neighbourhood%20Legal%20S,ervices](http://www.stmichaelshospital.com/programs/familypractice/health-justice-program.php#:~:text=The%20Health%20Justice%20Program%20is,Ontario%20and%20Neighbourhood%20Legal%20S,ervices)> [St Michael's Unity Health Toronto].

<sup>157</sup> Legal Aid Ontario discontinued funding for this project in April 2019 as part of a number of wider cuts to community legal clinic work. As of October 2019, there is no longer a staff lawyer embedded at the St. Michael's site, although a local legal clinic continues to support the partnership. Staff lawyers from the clinic now provide the assistance previously provided by the embedded lawyer.

information, referrals, and brief services directly to patients living on low incomes.<sup>158</sup> The staff lawyer also delivered training sessions to a large group of hospital clinicians.

Pro Bono Ontario (PBO), an early leader in Ontario's health-justice partnerships, has triage lawyers embedded at all five children's hospitals in Ontario, in partnership with hospital foundations.<sup>159</sup> The PBO lawyers train hospital clinicians on how to identify legal issues that may harm patient health or a family's ability to manage their child's medical care and help keep clinicians updated on changes to the law.<sup>160</sup>

*Evaluation note:* An evaluation of the first PBO pilot program at SickKids Hospital in Toronto showed favourable legal and health outcomes and significantly helped minimize families' stress, which led to the rollout of similar projects to other hospital sites.<sup>161</sup>

Innovative practices as well as promising practices are emerging in Ontario as this work progresses. For example, health-justice partnerships helped to prompt the development of the "legal health checklist", a tool used by many organizations to help staff uncover legal issues that might otherwise be buried in other problems, recognizing the importance of addressing legal issues before they escalate.<sup>162</sup>

## United States

According to the US National Centre for Medical-Legal Partnerships website, there are presently more than 440 medical-legal partnership projects in operation across 48 US states.<sup>163</sup> This website also provides numerous reports and guides for organizations wishing to set up their own health-justice initiatives.<sup>164</sup>

According to the National Centre website, "a few health organizations directly employ attorneys to address patients' health-harming social needs. The vast majority partner with a local legal services agency or academic legal clinic in their community. Several of these legal organizations partner with multiple health organizations to provide medical-legal partnership services".<sup>165</sup>

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<sup>158</sup> St Michael's Unity Health Toronto, *supra* note 156.

<sup>159</sup> Pro Bono Ontario, "Pro Bono Ontario Funding Backgrounder and History" (17 May 2019) at 12-13, online (pdf): *Pro Bono Ontario* <[www.probonoontario.org/voices-for-pro-bono/wp-content/uploads/2019/05/PBO-Funding-Backgrounder-and-History-May-17-2019.pdf](http://www.probonoontario.org/voices-for-pro-bono/wp-content/uploads/2019/05/PBO-Funding-Backgrounder-and-History-May-17-2019.pdf)> [Pro Bono Ontario].

<sup>160</sup> They also perform more "traditional" lawyering functions such as giving advice, conducting brief services, and consulting with clinicians and families of patients. And Pro Bono Ontario also hosts periodic power of attorney clinics or advice sessions in at least three general hospitals in Toronto: Pro Bono Ontario, *supra* note 159 at 13.

<sup>161</sup> Health Standards Online, "Leading Practices: Pro Bono Law Ontario (PBLO) at SickKids" (accessed 14 January 2021), online: *Health Standards Online* <[www.healthstandards.org/leading-practice/pro-bono-law-ontario-pblo-at-sickkids/](http://www.healthstandards.org/leading-practice/pro-bono-law-ontario-pblo-at-sickkids/)>.

<sup>162</sup> CBA, *Reaching equal justice*, *supra* note 71 at 70; Cohl, Lassonde, Mathews, Smith & Thomson, "Trusted Help", *supra* note 129 at 43.

<sup>163</sup> National Center for Medical-Legal Partnership, "National Center for Medical-Legal Partnership" (accessed 14 January 2021), online: *National Center for Medical-Legal Partnership* <[www.medical-legalpartnership.org/partnerships/](http://www.medical-legalpartnership.org/partnerships/)> [National Center for Medical-Legal Partnership].

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

*Evaluation note:* The American Association of Medical Colleges undertook evaluations (not publicly available) of the impact of these health-justice initiatives on a person's health and has developed metrics that can be used to evaluate the impacts of medical-legal partnerships.<sup>166</sup>

## Australia

The health-justice partnership movement has also been very robust across Australia. A survey conducted by Health Justice Australia in 2018 indicated that there were at least 73 projects in operation across the country, and that this seems to be a growing movement.<sup>167</sup> These partnerships have seen legal help embedded into health care services and teams for the purpose of improving health and wellbeing for individuals (through direct service provision), communities vulnerable to complex needs (by integrating services around their needs and capabilities), and vulnerable populations (through advocacy for systemic change to policies and practices).<sup>168</sup> A key component to health and justice work in Australia involves training by lawyers of health care staff on issues such as family violence and spotting legal issues.<sup>169</sup>

For example, the Loddon Campaspe Community Legal Centre and the Bendigo Community Health Services formed a health-justice partnership in 2014 to better reach vulnerable clients who were less likely to get legal help to resolve their legal problems.<sup>170</sup> Health professionals are trained as intermediaries in identifying legal issues that may arise for their clients and can consult about their clients' legal issues with a lawyer (both on-site and off-site).

*Evaluation note:* An evaluation reviewing the first three years of this partnership found that the partnership had significantly increased the capacity and confidence of health professionals to identify issues that may have a legal solution.<sup>171</sup> The evaluation also found that clients reported a reduction of their stress and anxiety.<sup>172</sup>

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<sup>166</sup> Association of American Medical Colleges, "Evaluating the Impact of Medical-Legal Partnerships on Health and Health Inequities" (accessed 14 January 2021), online: *Association of American Medical Colleges* <[www.aamc.org/what-we-do/mission-areas/medical-research/health-equity/medical-legal-partnerships](http://www.aamc.org/what-we-do/mission-areas/medical-research/health-equity/medical-legal-partnerships)>.

<sup>167</sup> Health Justice Australia, "Joining the dots: 2018 census of the Australian health justice landscape" (October 2019), online (pdf): *Health Justice Australia* <[www.healthjustice.org.au/wp-content/uploads/2019/10/Health-Justice-Australia-Joining-the-dots.pdf](http://www.healthjustice.org.au/wp-content/uploads/2019/10/Health-Justice-Australia-Joining-the-dots.pdf)> [Health Justice Australia, "Joining the dots"].

<sup>168</sup> Suzie Forell and Tessa Boyd-Caine, "Service models on the health justice landscape: A closer look at partnership" (November 2018) at 11, online (pdf): *Health Justice Australia* <[www.healthjustice.org.au/?wpdmdl=2682](http://www.healthjustice.org.au/?wpdmdl=2682)>; Health Justice Australia, "Health justice partnership" (2018), online (pdf): *Health Justice Australia*. <[www.healthjustice.org.au/wp-content/uploads/2018/12/Health-Justice-Australia-HJP-definition-summary.pdf](http://www.healthjustice.org.au/wp-content/uploads/2018/12/Health-Justice-Australia-HJP-definition-summary.pdf)>.

<sup>169</sup> Health Justice Australia, "Joining the dots", *supra* note 167.

<sup>170</sup> Elizabeth Curran, Australian National University, "A Research and Evaluation Report for the Bendigo Health-Justice Partnership: A partnership between Loddon Campaspe Community Legal Centre and Bendigo Community Health Services, (Abridged Final Report)" (October 2016) at 18, online: *Loddon Campaspe Community Legal Centre* <[www.lcclc.org.au/wp-content/uploads/2017/11/HJP-full-and-final-report.pdf](http://www.lcclc.org.au/wp-content/uploads/2017/11/HJP-full-and-final-report.pdf)> [Curran].

<sup>171</sup> *Ibid.* at 135.

<sup>172</sup> *Ibid.*

## England and Wales

In England and Wales, there has also been wide recognition that health-justice partnerships are well placed to deliver law-related assistance where and when people might need it most.

One 2018 report identified more than 380 services providing “social welfare advice” in health care settings. The majority of these partnerships involved embedding legal services at health care sites or sending legal workers to health care sites for regular drop-in hours, while other partnerships relied on link workers, navigators, or other intermediaries<sup>173</sup>.

For example, the Great Yarmouth and Waveney Social Prescribing service was a two-year project that aimed to provide non-medical sources of support more directly to patients in primary medical care.<sup>174</sup> Through this service, non-medical partners came directly to medical “surgeries”, or offices, to provide support, including legal advice, to patients.

### c. Faith-justice partnerships

(US)

Very recently, the US has seen a number of partnerships that offer members of faith-based or religious groups or institutions, or people who attend particular places of worship, direct connections with legal professionals. The North Carolina Faith and Justice Alliance<sup>175</sup> and the Tennessee Faith and Justice Alliance<sup>176</sup> are two examples of initiatives that aim to connect people who live on low incomes, and are involved with local faith-based institutions, with free legal expertise available at or through the faith-based institution.

### d. Cross-sectoral partnership

(Canada)

Ontario is also home to an innovative, cross-sectoral partnership in Ottawa. Connecting Ottawa is a partnership-based network of over 50 community health, legal, immigration,

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<sup>173</sup> Sarah Beardon and Hazel Genn, *The Health Justice Landscape in England & Wales: Social welfare legal services in health settings* (London: UCL Centre for Access to Justice, 2018) at 4, online (pdf): <[www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/lef030\\_mapping\\_report\\_web.pdf](http://www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/lef030_mapping_report_web.pdf)>. See also page 19 and pages 31-36 for several examples of health-justice partnerships in England and Wales.

<sup>174</sup> *Ibid.* at 33.

<sup>175</sup> “North Carolina Faith and Justice Alliance” (accessed 14 January 2021), online: *North Carolina Judicial Branch* <[www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission/north-carolina-faith-and-justice-alliance](http://www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission/north-carolina-faith-and-justice-alliance)>.

<sup>176</sup> Justice for All, “The Tennessee Faith & Justice Alliance” (accessed 14 January 2021), online: *Justice For All* <[www.justiceforalltn.com/i-can-help/faith-based-initiative](http://www.justiceforalltn.com/i-can-help/faith-based-initiative)>.

disability, and social services agencies in the Ottawa region.<sup>177</sup> Led by Community Legal Services of Ottawa, a community legal clinic, the partnership aims to increase access to justice for linguistic minorities, people who are not proficient in English or French, and those with communication challenges due to a disability or sensory impairment.

Connecting Ottawa supports frontline workers in numerous community partner agencies in giving useful and accurate law-related information to their clients and facilitates connections to other services and resources.<sup>178</sup> It facilitates a range of training programs for partner agencies to build their law-related knowledge and skills. Connecting Ottawa has two lawyers on staff who are available and mobile to advise frontline workers on law-related cases they're handling.<sup>179</sup>

*Evaluation note:* An evaluation found that the Connecting Ottawa partnership helped clients to achieve better results (than they would have achieved without the partnership), and that Connecting Ottawa was responsive to community needs.<sup>180</sup> These achievements were realized primarily through case consultations, capacity building efforts such as training and educational events, and enhanced coordination of services and improved relationships among service providers.<sup>181</sup>

In particular, the evaluation identified several best practices of the Connecting Ottawa model:

- a mobile and flexible team that can go to the community agencies;
- using multiple holistic approaches and strategies to provide service tailored to individual needs; and
- building relationships through ongoing outreach to raise awareness among partners about legal issues and access to resources.<sup>182</sup>

The evaluation described the Connecting Ottawa model of training, capacity building, and network connecting as one that “appears to have long-lasting impact through the training and capacity building, and through the connections and relationships that are built”.<sup>183</sup> The evaluation noted, however, that there is still a need to ensure clients do not fall through the cracks where there are unmet legal needs due to gaps in legal services.<sup>184</sup>

<sup>177</sup> Connecting Ottawa, “About” (accessed 14 January 2021), online: *Connecting Ottawa* <[www.connectingottawa.com/about](http://www.connectingottawa.com/about)>; Judit Alcalde & Karen Hayward, CAP Consulting, “The Law Foundation of Ontario Connecting Region: Final Evaluation Report” (May 2018) at 4, online (pdf): *Law Foundation of Ontario* <[www.lawfoundation.on.ca/download/connecting-region-final-evaluation-report-2018/](http://www.lawfoundation.on.ca/download/connecting-region-final-evaluation-report-2018/)> [Alcalde & Hayward].

<sup>178</sup> Alcalde & Hayward, *supra* note 177 at 4.

<sup>179</sup> *Ibid.* at 5 and 37; Community Legal Services of Ottawa, *Connecting Region Initiative, Activity Report #13*, (December 30, 2018), at 7 and 9.

<sup>180</sup> Alcalde & Hayward, *supra* note 177 at 15, 43, and 61.

<sup>181</sup> *Ibid.* at 63.

<sup>182</sup> *Ibid.* at 42.

<sup>183</sup> *Ibid.* at 48.

<sup>184</sup> *Ibid.* at 44.

### 6.3.2 Community services with integrated law-related assistance

As noted earlier, numerous organizations in Canada, and in other countries that are part of this review, offer services to specific communities that integrate, as part of their services, robust, individualized assistance with law-related problems. The assistance may involve:

- discussion and guidance about the law that may apply;
- options for addressing the problem;
- navigating the legal and court process;
- identifying the relevant court or tribunal forms, and help with completing forms; and
- speaking on someone’s behalf or accompanying them to a meeting with an employer, landlord, or family member.

Although there is a lack of hard evidence on the extent to which this type of assistance is available across Canada and elsewhere, it is likely that it is integrated into the work of many of the hundreds of community-based not-for-profit organizations that currently exist. Not-for-profits in some sectors are more likely than others to provide assistance with law-related problems, due to their organizational mandate; some organizations have mandates that focus on communities whose lives are likely to intersect with the law. Examples include people experiencing work-related problems, recent immigrants, and survivors of gender-based intimate partner violence.

In recent years, some jurisdictions have benefitted from the establishment of centralized funding programs for the embedding of community-based support workers or advocates providing services in a particular subject matter area or for particular communities. These funding programs typically offer opportunities for community-based organizations to apply for funding to retain and support specifically-mandated advocates, “support persons” or navigators. These programs have a specific focus, and often include some form of centralized support, such as regular training and mentoring. Typically, community organizations apply to host such a position, and receive accompanying funding, at their organization.

Canada’s Indigenous Courtwork Program is an early example of a centralized funding program – in this case, the federal government – that supports embedded advocates.<sup>185</sup> BC’s Advocates Program, funded and supported by BC’s Law Foundation, has existed for many years.<sup>186</sup> More recent examples are Ontario’s Family Court Support Worker

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<sup>185</sup> Section 4 discusses this further.

<sup>186</sup> The Law Foundation of BC funds 50 poverty law and 24 family law advocate programs in more than 70 not-for-profit organizations across the province. The advocates are supported and trained by the Law Foundation, and their work is supervised by experienced external contract lawyers. See generally The Law Foundation of British Columbia, “Public Legal Resources Contact List” (accessed 17 May 2021), online: *The Law Foundation of British Columbia*

Program (discussed below), funded by the Ontario government and supported by Luke's Place,<sup>187</sup> and Illinois' Community Navigators Program (also discussed below), operated through Illinois Access to Justice, which in turn is funded by the Illinois state government.

In what follows, we give examples of programs, in Canada<sup>188</sup> and elsewhere, whose services to specific communities integrate assistance with law-related problems.

#### a. Workers' rights support

(Canada, US)

Many grassroots, community-based organizations support workers in their efforts to achieve fair, decent, and safe conditions of work, and to access benefits in the event of injury, disability, or unemployment. These organizations, many with historic roots in labour rights activism and labour unions, are typically led by the community and engage in community organizing and advocacy as key tools in advancing their goals. Because their efforts are grounded in the power of worker-led action, these organizations have often been at the forefront of advocating for the legal rights of their members, both collectively and on an individual basis, undeterred by the absence of lawyers on staff.

Le Mouvement Action-Chômage (MAC), a Montreal-based workers' rights organization, was formed in the 1970s at a time of rising unemployment; it was one of the first workers' rights organizations established in Canada.<sup>189</sup> The MAC helps workers navigate employment insurance processes, providing individual consultations as well as presenting information sessions led by social workers.<sup>190</sup>

The Community Unemployed Help Centre (CUHC) in Manitoba was established in 1980,<sup>191</sup> based on the MAC model. The CUHC provides information, assistance, advice, and representation free of charge to individuals navigating the processes relating to

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[www.lawfoundationbc.org/public-resources/contact-list/](http://www.lawfoundationbc.org/public-resources/contact-list/); For a fuller description, see Mathews & Wiseman, *supra* note 70 at 73.

<sup>187</sup> Luke's Place, "Family Court Support Worker Program," (accessed 14 January 2021), online: *Luke's Place* [www.lukesplace.ca/systemic-work/family-court-support-workers-training-initiative/](http://www.lukesplace.ca/systemic-work/family-court-support-workers-training-initiative/); Mathews & Wiseman, *supra* note 70 at 71.

<sup>188</sup> This section does not include discussion of Quebec's network of "Centres de justice de proximité", part of Quebec's justice sector. The network includes 10 Centres; each is an independent not-for-profit that provides legal information, support, and referrals to people in their community. Staffed by lawyers as well as trained volunteers, they provide services in a number of areas of law but are limited to "legal information". They provide information and support through their websites and publications, and via in-person and phone meetings: "Centres de justice de proximité" (accessed 18 January 2021), online: *Centres de justice de proximité* [www.justicedeproximite.qc.ca/en/centres/outaouais/](http://www.justicedeproximite.qc.ca/en/centres/outaouais/).

<sup>189</sup> Paul R. Newman & Neil Cohen, "Confronting Leviathan: The Community Unemployed Help Centre" in Errol Black and Jim Silver, eds, *Hard Bargains: The Manitoba Labour Movement Confronts the 1990s*, Manitoba Labour History Series (Winnipeg: Manitoba Federation of Labour, 1990) 205 at 209 [Newman & Cohen].

<sup>190</sup> Syndicat des étudiants et étudiantes employé-e-s l'UQAM, "Séances d'information gratuites du Mouvement Action-Chômage" (25 August 2011), online: *Syndicat des étudiants et étudiantes employé-e-s l'UQAM* [setue.net/seances-dinformation-gratuites-du-mouvement-action-chomage/](http://setue.net/seances-dinformation-gratuites-du-mouvement-action-chomage/).

<sup>191</sup> Newman & Cohen, *supra* note 189 at 212.



employment insurance and other income assistance. Staff are specialized experts in the area of employment benefits; they are not lawyers and do not work under the supervision of lawyers.<sup>192</sup> CUHC staff represent workers in appeal hearings on their claims, including researching the case, applying case law and government policy, and either representing or preparing the client for the appeal.<sup>193</sup> The CUHC also helps self-represented litigants assess the merits of their cases.<sup>194</sup>

In Regina and Saskatoon, the Unemployed Workers Help Centre provides similar services, with their non-lawyer staff offering information and advocacy services relating to workers' claims for employment insurance. This includes communicating, explaining and mediating the employment insurance process, preparing claimants, providing representation for appeals, and providing referrals to other help.<sup>195</sup>

*Evaluation note:* An evaluation that reviewed the first two years of the Centre's work (1995-1997) found that the Centre's interventions increased the likelihood of an employment insurance appeal being successful, with a success rate of almost three out of every four appeals, three times the Canadian average and five times the Saskatchewan average. The evaluation estimated that in one year of operation, the Centre's interventions saved the provincial government approximately \$50,000 in reduced Saskatchewan Assistance Plan expenditures, more than enough to offset the Centre's initial grant of \$36,500. The evaluation found that demand for employment insurance advocacy services was strong and increasing in Saskatchewan.<sup>196</sup>

In Alberta, caseworkers at the Workers' Resource Centre help people access a variety of employment-related benefits and entitlements through public education and advocacy and serve as agents representing their clients in small claims court proceedings.<sup>197</sup>

Ontario's Workers' Action Centre (WAC) supports workers engaged in low-wage and precarious work. In addition to advocating for labour law reform, WAC provides a Workers' Rights Information PhoneLine that offers information to workers about their rights and helps them identify strategies to resolve their issues. They also hold support clinics to provide information and one-on-one support on workplace issues. WAC also

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<sup>192</sup> Fenske & Froese, *Justice Starts Here*, *supra* note 132 at 47.

<sup>193</sup> Community Unemployed Help Centre, "About Us" (accessed 14 January 2021), online: *Community Unemployed Help Centre* <[www.cuhc.mb.ca/about-us/](http://www.cuhc.mb.ca/about-us/)>; Interview of Neil Huber, Executive Director of the Community Unemployed Help Centre, by Gloria Song (4 December 2020) [Interview of Neil Huber]; Newman & Cohen, *supra* note 189 at 214.

<sup>194</sup> Interview of Neil Huber, *supra* note 193.

<sup>195</sup> Unemployed Workers Help Centre, "Services" (accessed 14, January 2021), online: *Unemployed Workers Help Centre* <[www.unemployedworkerscentre.org/](http://www.unemployedworkerscentre.org/)>; Interview of Mark Crawford, Executive Director and Advocate for the Unemployed Workers Help Centre, by Gloria Song (9 December 2020).

<sup>196</sup> Saskatchewan Social Services, Research and Evaluation Branch, *Evaluation of Unemployment Insurance Advocacy Services Provided by the Unemployed Workers Help Centre* (January 1997) at 8.

<sup>197</sup> "Workers' Resource Centre" (accessed 14 January 2021), online: *Workers' Resource Centre* <[www.helpwrc.org/](http://www.helpwrc.org/)>.

offers workers' rights workshops and training sessions for frontline workers who assist community members with their workplace problems.<sup>198</sup>

The United States has a multitude of workers' rights organizations that, similar to Canada's, are led by community members and rely on community organizing and advocacy as key tools. Many are rooted in immigrant communities. The law-related assistance provided by these organizations often extends beyond workers' rights and immigrants' rights. Pro bono lawyers or legal aid offices in the community may assist with some of the provision of legal support.

Two examples in just one state, Texas, among numerous similar organizations in the state, give an indication of the range of community work in this area. La Union del Pueblo Entero (LUPE) in south Texas' Rio Grande Valley carries out work that ranges from "fighting deportations, to providing social services and English classes, to organizing for streetlights and drainage".<sup>199</sup>

And, in Houston, Texas, the Faith and Justice Worker Center serves low-wage workers through research, case resolution services, peer-support networks and advocacy campaigns.<sup>200</sup> Recognizing a spectrum of exploitation in workplaces across the greater Houston area,<sup>201</sup> the Center has "worker empowerment counselling staff" who work with pro bono lawyers to help low-income and under-served immigrant workers gain legal status and work authorizations through its Community Consultation Legal Center.<sup>202</sup> The Center also helps workers recover unpaid wages in court.<sup>203</sup>

## b. Support for recent immigrants

(Canada, US)

People who have recently arrived in a new country are often enmeshed in efforts to obtain legal status, permission to work or study, health care, and other legal documentation and entitlements they need to enable them to remain and live decently. A range of organizations in Canada and other countries support newcomers in achieving these often-daunting goals.

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<sup>198</sup> Workers' Action Centre, "About us" (accessed 14 January 2021), online: *Workers' Action Centre* <[www.workersactioncentre.org/about/](http://www.workersactioncentre.org/about/)>; Workers' Action Centre, "Workers' Action Centre Annual Report April – December 2019" (2019) at 4, online (pdf): <[www.workersactioncentre.org/wp-content/uploads/2020/11/WAC-Annual-Report\\_Apr-Dec-2019.pdf](http://www.workersactioncentre.org/wp-content/uploads/2020/11/WAC-Annual-Report_Apr-Dec-2019.pdf)>.

<sup>199</sup> La Union del Pueblo Entero, "About us" (accessed 14 January 2021), online: *La Union del Pueblo Entero* <[www.lupenet.org/about-us/](http://www.lupenet.org/about-us/)>.

<sup>200</sup> M Acuna Arreaza, K Baldazo-Tudon, & M I M Torres, "A Year of Labor Abuse: A Visual Report of Rights Violations Faced by Houston Workers" (2019), online (pdf): *Fe y Justicia Worker Center* <[www.houstonworkers.org/learn](http://www.houstonworkers.org/learn)> [Arreaza, Baldazo-Tudon & Torres]; Fe y Justicia Worker Center, "Faith and Justice Worker Center" (14 January 2021), online: *Fe y Justicia Worker Center* <[www.houstonworkers.org/about](http://www.houstonworkers.org/about)>.

<sup>201</sup> Arreaza, Baldazo-Tudon & Torres, *supra* note 200 at 5.

<sup>202</sup> Fe y Justicia Worker Center "What We Do" (accessed 14 January 2021), online: *Fe y Justicia Worker Center* <[www.houstonworkers.org/](http://www.houstonworkers.org/)>.

<sup>203</sup> Arreaza, Baldazo-Tudon & Torres, *supra* note 200 at 8.

In Toronto, for example, refugees and others at risk due to their immigration status get help from trained workers at the FCJ Refugee Centre.<sup>204</sup> The Centre's services include explaining the refugee process to clients, helping clients fill out forms and make applications relating to their status, supporting them in gathering evidence, and organizing translation and interpretation. These services are provided by lawyers (who train volunteers and law students, provide pro bono work, and monitor and review the work of law students), case workers, coordinators, students, and volunteers. The Centre also provides refugee hearing orientation sessions,<sup>205</sup> and other training, seminars, workshops, and publications.

In Montreal, Services Communautaires pour Réfugiés et Immigrants (SCRI) provides a range of services to help immigrants settle in Quebec.<sup>206</sup> SCRI provides assistance to immigrants in finding housing and jobs, learning a language (French, English, and Spanish), and setting up a small business. SCRI's services include a legal clinic, a collaborative project with McGill University, which provides free legal help to refugees who are seeking work permits and permanent resident status.<sup>207</sup>

At the Edmonton Mennonite Centre for Newcomers, social workers help people navigate complex systems, including the legal system, the health care system, and child services. The Centre also provides programs and services to integrate newcomers into the local community, find employment, access counselling, and acquire English language skills.<sup>208</sup>

In Prince Edward Island, the PEI Association for Newcomers to Canada (PEIANC) offers settlement services to help newcomers access information about immigration status, arrange appointments with immigration officers, apply for and obtain Canadian documents, and register for available government programs and services.<sup>209</sup> PEIANC also provides assistance with obtaining new work permits and information on employment law for temporary foreign workers.<sup>210</sup>

The Multicultural and Immigrant Services Association of North Vancouver Island runs the Immigration Welcome Centre in Campbell River, British Columbia. The Centre

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<sup>204</sup> "FCJ Refugee Centre" (accessed 14 January 2021), online: *FCJ Refugee Centre* <[www.fcjrefugeecentre.org/](http://www.fcjrefugeecentre.org/)>.

<sup>205</sup> "FCJ Refugee Centre" (access 12 February 2021) online *FCJ Refugee Centre* [www.fcjrefugeecentre.org/](http://www.fcjrefugeecentre.org/).

<sup>206</sup> "Community Services for Refugees and Immigrants" (accessed 18 January 2021), online: *Community Services for Refugees and Immigrants* <[www.migrantmontreal.org/en/index.php](http://www.migrantmontreal.org/en/index.php)>.

<sup>207</sup> Community Services for Refugees and Immigrants, "Rapport Annuel" (Montreal: Community Services for Refugees and Immigrants, 2019), online: *Community Services for Refugees and Immigrants* <[www.migrantmontreal.org/RAPPORT\\_SCR1\\_2019.pdf](http://www.migrantmontreal.org/RAPPORT_SCR1_2019.pdf)>.

<sup>208</sup> "EMCN" (accessed 14 January 2021), online: *EMCN* <[www.emcn.ab.ca/](http://www.emcn.ab.ca/)>.

<sup>209</sup> PEI Association for Newcomers to Canada "Newcomer Settlement Services" (accessed 14 January 2021), online: *PEI Association for Newcomers to Canada* <[www.peianc.com/en/newcomer-settlement-services](http://www.peianc.com/en/newcomer-settlement-services)>.

<sup>210</sup> PEI Association for Newcomers to Canada "Support and Services for Temporary Foreign Workers" (accessed 14 January 2021), online: PEI Association for Newcomers to Canada <[www.peianc.com/en/temporary-foreign-workers-support](http://www.peianc.com/en/temporary-foreign-workers-support)>.

provides free services for international newcomers in areas such as help with processing immigration forms and documents, and refugee protection support.<sup>211</sup>

In the United States, the Recognition and Accreditation Program allows non-lawyers at recognized not-for-profit organizations to represent people at immigration hearings as “accredited representatives”.<sup>212</sup> The purpose of this program is to increase the availability of competent immigration legal representation for people living on low incomes.<sup>213</sup> Not-for-profit organizations must apply to the program to be “recognized”; recognized organizations are allowed to practise immigration law through their accredited representative.<sup>214</sup> The organization must demonstrate that it provides immigration legal services primarily to low-income and indigent clients within the United States.<sup>215</sup>

The organization must apply on behalf of the non-lawyer staff member for them to become an accredited representative; the organization must demonstrate that the person has “broad knowledge and adequate experience in immigration law and procedure”, which must include at least one formal course on the fundamentals of immigration law, procedure and practice.<sup>216</sup> According to one report, “over 2000 federally accredited nonlawyer immigration representatives are employed by approved non-profit organizations across the country that deploy these nonlawyer services in dealing with legal matters faced by their clients”.<sup>217</sup>

### c. Support for survivors of intimate partner violence

(Canada)

Survivors of intimate partner violence, in the process of extricating themselves from an abusive relationship, are likely to have to engage with various legal processes, including processes relating to criminal law (restraining orders, for example); family law (child

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<sup>211</sup> Immigrant Welcome Centre “Free Professional Services” (accessed 14 January 2021), online: Immigrant Welcome Centre <[www.immigrantwelcome.ca/services](http://www.immigrantwelcome.ca/services)>.

<sup>212</sup> In the US, ‘notaries’ often provide advice on immigration law matters. Much literature discusses the problems, including fraud, with the provision of services by notaries, but a complete picture of the services they provide, and the quality of their services, is lacking. See Rebecca L Sandefur, “Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms” (2020) 16 *Stanford J of Civil Rights & Civil Liberties* 283 at 303, 304, online (pdf): <[www.law.stanford.edu/wp-content/uploads/2020/06/04-Sandefur-Website.pdf](http://www.law.stanford.edu/wp-content/uploads/2020/06/04-Sandefur-Website.pdf)> [Sandefur, “Legal Advice from Nonlawyers”].

<sup>213</sup> United States Department of Justice, “Recognition & Accreditation Program” (accessed 14 January 2021), online: *United States Department of Justice* <[www.justice.gov/eoir/recognition-and-accreditation-program](http://www.justice.gov/eoir/recognition-and-accreditation-program)>; Ammy Bliss Tenney, World Relief & Catholic Legal Immigration Network, “DOJ Recognition and Accreditation: A Step-by-Step Guide for Non-Profit Community-Based Agencies” (February 2019) at 2, online (pdf): *CLINIC* <[www.cliniclegal.org/file-download/download/public/1359](http://www.cliniclegal.org/file-download/download/public/1359)> [Tenney].

<sup>214</sup> Office of Legal Access Programs, “Recognition and Accreditation Program: Frequently Asked Questions” (August 2019) at 21, online (pdf): *United States Department of Justice* <[www.justice.gov/eoir/file/olap-ra-faqs/download](http://www.justice.gov/eoir/file/olap-ra-faqs/download)> [“Recognition and Accreditation Program: FAQ”].

<sup>215</sup> *Ibid.* at 18; Tenney, *supra* note 213 at 5.

<sup>216</sup> “Recognition and Accreditation Program: FAQ”, *supra* note 214 at 25-26; Tenney, *supra* note 213 at 4, 6, and 8.

<sup>217</sup> Sandefur, “Legal Advice from Nonlawyers”, *supra* note 212 at 290.

custody or support, possession of matrimonial home, for example); housing law (renting a new place to live, for example); and income support. A range of community-based organizations in Canada, the US,<sup>218</sup> and other jurisdictions support survivors of intimate partner violence in their interactions with the law – usually as part of their other support services, such as safety planning.

In Ontario's Durham region, Family Court Support Workers at Luke's Place help women who have been subjected to abuse and their families in navigating the family law process. Services for women include accompanying women to court and lawyer appointments, providing education to women about court processes and how to complete legal documents, connecting women to family law lawyers for free summary legal advice, and providing family law information workshops. Luke's Place also offers training and resources for court support workers embedded in other organizations, who support abused women navigating the family court process, through the Family Court Support Worker Program.<sup>219</sup>

A number of Ontario organizations serve French-speaking women who are experiencing or have survived intimate partner violence. Many of these organizations are members of an association that supports their work: Action ontarienne contre la violence faite aux femmes (Action ontarienne).<sup>220</sup> Among other activities, Action ontarienne provides support and training to Francophone organizations in Ontario that have legal or court support workers.<sup>221</sup>

An example of such an organization is Le Centre juridique pour femmes de l'Ontario, which has legal support workers who help women experiencing violence understand the law-related elements of their case.<sup>222</sup> The Centre also has a summary legal advice service, provided by lawyers.<sup>223</sup>

Other community organizations in Canada also provide advocacy and court accompaniment services for survivors of intimate partner violence, such as the Family Violence Prevention Services in Prince Edward Island.<sup>224</sup> In British Columbia, the

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<sup>218</sup> Rebecca Sandefur and Thomas Clarke provide a table of non-lawyer assistance programs operating in the US in 2015: Sandefur & Clarke, "Designing the competition", *supra* note 37 at 1471. The table indicates that non-lawyer programs in the US offer 'domestic violence advocates', trained and sponsored by not-for-profit advocacy groups, who provide information related to legal proceedings and accompaniment services to victims of domestic violence.

<sup>219</sup> "Luke's Place" (accessed 14 January 2021), online: *Luke's Place* <[www.lukesplace.ca/](http://www.lukesplace.ca/)>; Mathews & Wiseman, *supra* note 70 at 71.

<sup>220</sup> "Action ontarienne contre la violence faite aux femmes" (accessed 14 January 2021), online: *Action ontarienne contre la violence faite aux femmes* <[aocvf.ca](http://aocvf.ca)>.

<sup>221</sup> Action ontarienne contre la violence faite aux femmes, "Le Centre De Services Juridiques d'Action Ontarienne contre la violence faite aux femmes — Vers un accès à la justice pour les femmes francophones victimes de violence" (2015) at 193, online (pdf): <[www.erudit.org/fr/revues/ref/2015-v21-n1-ref02021/1032553ar.pdf](http://www.erudit.org/fr/revues/ref/2015-v21-n1-ref02021/1032553ar.pdf)> [Action ontarienne contre la violence faite aux femmes, "Le Centre De Services Juridiques"].

<sup>222</sup> "Centre juridique pour femmes de l'Ontario" (accessed 14 January 2021), online: *Centre juridique pour femmes de l'Ontario* <[cjfo.ca](http://cjfo.ca)>.

<sup>223</sup> *Ibid.*

<sup>224</sup> PEI Family Violence Prevention Services, "Outreach Services" (accessed 14 January 2021), online: *PEI Family Violence Prevention Services* <[www.fvps.ca/outreach-services/](http://www.fvps.ca/outreach-services/)>.

Cowichan Women Against Violence Society provides support to women and children affected by abuse, including support from the Poverty Law Advocate who provides information on navigating systems relating to income security, debt issues, tenant rights, income assistance, disabilities, workers' compensation, and employment standards.<sup>225</sup>

#### d. Navigators and community guides

(US, Canada, England and Wales, Australia)

In recent years, navigator programs have emerged to provide process-related assistance to people engaged in a legal matter. "Navigator" is a term that is now often used to describe people who have been trained to help people understand and work through a court or tribunal process.<sup>226</sup> Community-based organizations that provide law-related assistance to their clients frequently integrate navigation support into their work, even though they may not describe the program or staff as navigators.

#### **Navigator programs in courts and tribunals**

The United States has seen an increasing number of programs, in courts and tribunals, that provide navigator-type assistance to people walking through their doors who are not represented by a lawyer or paralegal (often called "self-represented litigants"). Court-based navigator programs usually require that the navigators – often volunteers – undergo training. Depending on the program, navigators carry out a range of activities, often explaining a court process or identifying relevant forms, and sometimes assisting with the completion of a form. Programs sponsored by courts or tribunals are typically overseen by lawyers.

In the US, there are at least 23 programs in over 15 states that offer court-based navigators.<sup>227</sup> These navigators provide direct person-to-person, same-day assistance to self-represented litigants.<sup>228</sup> The navigators are neither lawyers nor court staff but are trained to provide a range of support: they help self-represented litigants physically navigate the courts, obtain legal and procedural information, understand their options, complete court paperwork, and get referral information. They are careful not to provide

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<sup>225</sup> Cowichan Women Against Violence Society, "Poverty Law Advocate" (accessed 14 January 2021), online: *Cowichan Women Against Violence Society* <[www.cwav.org/?page\\_id=462](http://www.cwav.org/?page_id=462)>.

<sup>226</sup> The term is commonly used in the context of 'patient navigators' who assist patients in making their way through complicated health care systems. Evaluations of patient navigator programs have been positive; see, for example, Kerry A McBrien, Noah Ivers, Lianne Barnieh, Jacob J Bailey, Diane L Lorenzetti, David Nicholas, Brenda Hemmelgarn, Richard Lewnczuk, Alun Edwards, Ted Braun & Braden Manns, "Patient navigators for people with chronic disease: A systematic review" (2018) 13:2 *PLOS One*, online: *US National Library of Medicine National Institutes of Health* <[www.ncbi.nlm.nih.gov/pmc/articles/PMC5819768/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5819768/)>. York University in Toronto offers a program that results in participants earning a "Patient Navigation Certificate"; see York University, "Patient Navigation Certificate" (accessed 18 January 2021), online: *York University* <[www.hlln.info.yorku.ca/fundamentals-of-patient-navigation/](http://www.hlln.info.yorku.ca/fundamentals-of-patient-navigation/)>.

<sup>227</sup> We discuss three US court-based navigator programs in Section 7. These programs, in New York City courts, are the subject of a lengthy evaluation by Rebecca Sandefur and Thomas Clarke; see Sandefur & Clarke, "Designing the Competition", *supra* note 37.

<sup>228</sup> Mary E. McClymont, "Nonlawyer Navigators in State Courts: An Emerging Consensus" (2019) at 11, online (pdf): <[www.srln.org/system/files/attachments/Final%20Navigator%20report%20in%20word-6.11.hyperlinks.pdf](http://www.srln.org/system/files/attachments/Final%20Navigator%20report%20in%20word-6.11.hyperlinks.pdf)> [McClymont].

legal advice.<sup>229</sup> Navigators are also able to accompany self-represented litigants to court proceedings.

*Evaluation note:* A recent survey of navigator programs in the United States found that these services facilitate access to justice for self-represented litigants with respect to addressing procedural fairness concerns and helping self-represented litigants be better prepared, understand and trust the process, and tell their stories.<sup>230</sup> These services also enhance court effectiveness, including enhancing the accuracy and completion of court documents.<sup>231</sup> This survey is discussed more fully in Section 7.

Responding to cuts to legal aid and the closure of many Citizens Advice offices, a charity in the UK – Support Through Court – has been created to provide court-based assistance to people who are unrepresented. Support Through Court relies on trained volunteers to provide support to people with civil and family law problems in 20 courts in England and Wales. Volunteers provide “emotional and practical support through the court process, explaining what happens in court, assisting with the completion of legal forms, and helping people plan what they want to say in court”.<sup>232</sup>

Canada’s Social Security Tribunal recently launched a navigator program<sup>233</sup> to assist people with appeals before the tribunal who are not represented by lawyers. Navigators are tribunal staff who have received specialized training on how to guide people through the appeal process; they are not lawyers.<sup>234</sup> Navigators give one-on-one guidance throughout the appeals process<sup>235</sup> and answer questions about preparing for hearings and how hearings work.<sup>236</sup> Navigators do not provide legal advice, act as advocates or representatives, or accompany people to hearings.<sup>237</sup>

The Legal Information Society of Nova Scotia (LISNS) offers a variety of navigator programs to assist people using LISNS web-based apps. The navigators are community volunteers and students from a variety of disciplines who receive online training. The navigators generally do not have legal backgrounds.<sup>238</sup> Small Claims Court Navigators assist self-represented litigants with using the LISNS Small Claims Court App in preparing for small claims court, including gathering evidence, filling forms, and

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<sup>229</sup> *Ibid.* at 14, 17 & 19.

<sup>230</sup> *Ibid.* at 34.

<sup>231</sup> *Ibid.* at 33.

<sup>232</sup> Support Through Court, “Our Charity” (accessed 18 January 2021), online: *Support Through Court* <[www.supportthroughcourt.org/about/our-charity/](http://www.supportthroughcourt.org/about/our-charity/)>.

<sup>233</sup> Government of Canada, “Navigator service” (accessed 14 January 2021), online: *Government of Canada* <[www1.canada.ca/en/sst/innovation/nav.html](http://www1.canada.ca/en/sst/innovation/nav.html)> [Government of Canada, “Navigator service”].

<sup>234</sup> Email from Social Security Tribunal Outreach Team to Gloria Song on 5 January 2021.

<sup>235</sup> Government of Canada, “Navigator service”, *supra* note 233.

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*

<sup>238</sup> Email from Heather De Berdt Romilly, Executive Director of the Legal Information Society of Nova Scotia to Gloria Song on 18 December 2020 [Romilly].

accessing legal information. They can also assist with attending at small claims court hearings with the self-represented litigants to offer support.<sup>239</sup>

Navigators do not draft documents or speak on behalf of a litigant in court; rather, they are meant to build confidence.<sup>240</sup> Navigators provide assistance by phone to seniors who require assistance with using the LISNS apps to make a personal directive, will, or power of attorney. LISNS has an online matching platform where people looking for navigator help can automatically be matched with a navigator.<sup>241</sup>

In British Columbia, teams at Justice Access Centres are available in Nanaimo, Surrey, Vancouver, and Victoria to help people access legal information, and to refer them to services and resources including self-help information services, dispute resolution and mediation options, community resources, and legal services. Justice Access Centres are funded by the provincial Ministry of the Attorney General, and are provided by the Ministry and partner agencies, including Mediate BC Society,<sup>242</sup> Legal Aid BC,<sup>243</sup> Family Maintenance Enforcement Program,<sup>244</sup> Credit Counselling Society,<sup>245</sup> and BC's Access Pro Bono Society. These Centres provide help with family and civil law issues such as income security, employment, housing, debt, and separation or divorce, but do not deal with criminal law or small claims court.<sup>246</sup>

*Evaluation note:* An evaluation of the Vancouver Justice Access Centre (VJAC) in 2014 reported a strong degree of client satisfaction with respect to VJAC's services; clients reported that the Centre's services helped them clarify their issues and identify ways to resolve their justice problems.<sup>247</sup> VJAC services were found to be particularly helpful for self-represented litigants.<sup>248</sup> Nearly half of the clients surveyed reported that the VJAC "helped them resolve their justice problem so that they did not need to go to court".<sup>249</sup> Of the clients surveyed who did go to court, the majority indicated that their case went

<sup>239</sup> Legal Info Nova Scotia, "Small Claims Court Navigators" (accessed 14 January 2021), online: *Legal Info Nova Scotia*, <[www.legalinfo.org/navigator/small-claims-court-navigators](http://www.legalinfo.org/navigator/small-claims-court-navigators)>; The Courts of Nova Scotia, "Representing Yourself in Court" (accessed 14 January 2021), online: *Legal Info Nova Scotia* <[www.courts.ns.ca/Self\\_Reps/self-rep\\_home.htm](http://www.courts.ns.ca/Self_Reps/self-rep_home.htm)>; Romilly, *supra* note 238.

<sup>240</sup> Donalee Moulton, "New program helps self-represented navigate small claims court in Nova Scotia," *The Lawyer's Daily* (30 September 2019), online: *The Lawyer's Daily* <[www.thelawyersdaily.ca/articles/14918/new-program-helps-self-represented-navigate-small-claims-court-in-nova-scotia](http://www.thelawyersdaily.ca/articles/14918/new-program-helps-self-represented-navigate-small-claims-court-in-nova-scotia)>.

<sup>241</sup> Romilly, *supra* note 238.

<sup>242</sup> "Mediate BC" (accessed 14 January 2021), online: *MediateBC* <[www.mediatebc.com/](http://www.mediatebc.com/)>.

<sup>243</sup> "Legal Aid BC" (accessed 14 January 2021), online: *Legal Aid BC* <[lss.bc.ca/](http://lss.bc.ca/)>.

<sup>244</sup> "Family Maintenance Enforcement Program" (accessed 14 January 2021) online: *Family Maintenance Enforcement Program* <[www.fmep.gov.bc.ca/](http://www.fmep.gov.bc.ca/)>.

<sup>245</sup> "Credit Counselling Society" (accessed 14 January 2021) online: *Credit Counselling Society* <[www.nomoredebts.org/](http://www.nomoredebts.org/)>.

<sup>246</sup> Government of British Columbia, "Justice Access Centres" (accessed 14 January 2021), online: *Government of British Columbia* <[www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac](http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac)>.

<sup>247</sup> Justice Services Branch, Family Justice Services Division, "Vancouver Justice Access Centre Evaluation Report: Summary of Evaluation Activities and Results" (3 September 2014) at 12, online: *Government of British Columbia* <[www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/vjac-evaluation-report.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/vjac-evaluation-report.pdf)> [Justice Services Branch].

<sup>248</sup> *Ibid.* at 11.

<sup>249</sup> *Ibid.* at 12



more smoothly and was shorter than if they had not received support from VJAC, and that they were better prepared.<sup>250</sup> The evaluation also noted that the VJAC had an impact on court use and justice processes, in that VJAC clients were diverted from the court; those clients who engaged in court activities or processes made fewer court applications and spent less time in court than people who were not VJAC clients.<sup>251</sup>

### **Navigator programs in community-based organizations**

Community-based organizations have begun to adopt the “navigator” terminology to describe the process-oriented assistance that they provide. In these community-based programs, navigators provide a range of process-focused, law-related assistance. They are expected to remain within the confines of providing legal information but are not typically overseen by a lawyer in the office.

Community navigator programs are beginning to emerge in communities in the United States.<sup>252</sup> Illinois’ Community Navigators program, supported by Illinois Access to Justice and the Illinois state government, provides funding to community organizations to train, coordinate, and deploy community navigators in communities impacted by incarceration, and in communities impacted by immigration policies. The volunteer navigators are tasked with educating, connecting, and supporting community members.<sup>253</sup> They provide public education workshops, accompany clients from marginalized communities to court cases or meetings with government agencies, and help them prepare court documents.<sup>254</sup> All community navigators are trained in the “unauthorized practice of law”. In the first six months of 2020, 600 community members were trained as community navigators.<sup>255</sup> After COVID-19 hit, 916 emergency community navigators were also trained to share information and resources with the hardest hit community areas, including information about rights to health care and COVID-19 treatment and testing, as well as travel rights and restrictions.<sup>256</sup>

### **Community guides and peer educators**

Many organizations providing community justice help include peer-to-peer support as one feature of the services they provide. Recently, more dedicated initiatives focus on training people to serve as “community guides” and “peer educators” – members of communities who are trained to support other people within the community;

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<sup>250</sup> *Ibid.* at 12.

<sup>251</sup> *Ibid.* at 15 & 16.

<sup>252</sup> See website for national association in US that supports community navigators, which describes community navigators who support recent immigrants: National Partnership for New Americans “Our Members” (accessed 14 January 2021), online: *National Partnership for New Americans* <[www.partnershipfornewamericans.org/about-npna/our-members/](http://www.partnershipfornewamericans.org/about-npna/our-members/)>.

<sup>253</sup> Illinois Access to Justice, “About Us,” (accessed 14 January 2021), online: *Illinois Access to Justice* <[www.ilaccessjustice.com/about-us/](http://www.ilaccessjustice.com/about-us/)>.

<sup>254</sup> Access to Justice, “Access to Justice Grants: Notice of Funding Opportunity” (accessed 14 January 2021) at 21-22 and 24-25, online: *Access to Justice Illinois* <[www.resurrectionproject.org/wp-content/uploads/2020/04/FY21-NOFO-New-Grantees-1.pdf](http://www.resurrectionproject.org/wp-content/uploads/2020/04/FY21-NOFO-New-Grantees-1.pdf)> [“Access to Justice Grants: Notice of Funding Opportunity”].

<sup>255</sup> *Ibid.* at 21-22.

<sup>256</sup> *Ibid.* at 21-22.

community guides and peer educators provide trusted, accessible support to people who are often the most marginalized.

Australia is the home of several initiatives that rely on trained community guides and peer educators, particularly in marginalized communities, to share legal information with their peers.<sup>257</sup> These initiatives are based on the premise that people are likely to turn to friends and family within their own community – that is, trusted and accepted peers with similar experiences or backgrounds – to discuss their legal problems. The initiatives train and equip peer educators to provide accurate and reliable information about the law to others within their community.<sup>258</sup>

For example, Footscray Community Legal Centre trained community guides to help their peers in the newcomer and refugee community to address legal issues in areas such as family law, consumer contracts and police powers.<sup>259</sup> Similarly, the Legal Aid Commission in Australia trained community guides from the Karen and Bhutanese refugee communities to support their peers in providing legal information and referrals in areas such as police, consumer, housing, employment and family issues.<sup>260</sup>

### 6.3.3 McKenzie Friends and court support persons

(UK, Canada)

Some organizations offer support services to their clients, which may include offering moral and emotional support, assistance and guidance in organizing documents and evidence, and information about the legal and court process and adjudicative forum. Staff from an organization may accompany a person who is engaged in a legal process (often a self-represented litigant) to a meeting with lawyers, or to a court, tribunal, or other proceeding.

The concept of support persons has gained attention in Canada in recent years, building on the existence of McKenzie Friends in the UK. The UK allows for a layperson, known as a “McKenzie Friend”, to provide “reasonable assistance” to litigants in court. The vast majority of McKenzie Friends in the UK do not charge for their assistance, but a few do.<sup>261</sup>

McKenzie Friends in the UK are permitted to provide moral support for the litigant, take notes, help with case papers, and quietly give advice on any aspect of the conduct of the

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<sup>257</sup> Maloney, *supra* note 63 at 30.

<sup>258</sup> *Ibid.* at 10.

<sup>259</sup> *Ibid.* at 30.

<sup>260</sup> *Ibid.* at 31.

<sup>261</sup> A 2016 legal services market study found that there may only be as few as 40 to 50 active McKenzie Friends who charge fees: Competition & Markets Authority, “Legal services market study: final report” (15 December 2016) at 175, online: *Government of the United Kingdom* <[www.assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf](http://www.assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf)>.

case. Practice guidance documents have strived to distinguish this role from that of a barrister; McKenzie Friends are not permitted to conduct litigation, act as the litigant's agent, manage the case outside court (such as by signing court documents), or exercise a right of audience by addressing the court or examining witnesses (unless authorized by the court in very exceptional circumstances).<sup>262</sup>

*Evaluation note:* A report prepared for the Legal Services Board cautioned that without adequate training and skill, there could be a risk to the quality of advice provided by a McKenzie Friend.<sup>263</sup>

However, a 2016 legal services market study found that while the evidence is mixed, there do not seem to be significant issues with respect to the quality of the assistance provided by McKenzie Friends. The report recognized that McKenzie Friends “may provide an important service to the vulnerable and those who cannot afford to instruct a solicitor or barrister” and recommended that any reforms relating to McKenzie Friends should consider unmet demands.<sup>264</sup>

Assistance that is similar to McKenzie Friends exists in Canada but, in some parts of the country, there is confusion about their role, and in many places, their role is left to the discretion of judges.<sup>265</sup> Section 4 briefly identifies some of the applicable rules and approaches in various provinces relating to McKenzie Friends and court support persons who may accompany parties to adjudicative proceedings.

Many community organizations in Canada that give law-related assistance also provide what might be considered “McKenzie Friend-type” assistance. For example, the Community Unemployed Help Centre, the Unemployed Workers Help Centre, Luke's Place, court-based navigators in the US, and Illinois' Community Navigators, all discussed above, include accompaniment in their roster of services.

#### 6.3.4 Another model: Citizens Advice

In England and Wales, Scotland, and Northern Ireland (UK), an extensive network of independent charities, called “Citizens Advice” (offices or bureaux), are entry points for many people who need assistance and support on a wide range of issues that frequently arise in people's lives – issues relating to benefits and pensions, debt and consumer

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<sup>262</sup> Declan Morgan, Lord Chief Justice of N. Ireland, Practice Note 3/2012: McKenzie Friends (Civil and Family Courts), N. IRELAND COURTS & TRIBUNALS SERV. (Sept. 5, 2012), online (pdf):

<[www.judiciaryni.uk/sites/judiciary/files/decisions/Practice%20Note%2003-12.pdf](http://www.judiciaryni.uk/sites/judiciary/files/decisions/Practice%20Note%2003-12.pdf)>; Lord Neuberger of Abbotsbury, Master of the Rolls & Sir Nicholas Wall, President of the Family Division, *Practice Guidance: McKenzie Friends (Civil and Family Courts)*, Courts and Tribunals Judiciary (12 July 2010), online: *Courts and Tribunals Judiciary* <[www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf](http://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf)>.

<sup>263</sup> Frontier Economics, “Understanding the supply of legal services by ‘special bodies’” (London: July 2011) at 52.

<sup>264</sup> Competition & Markets Authority, *Legal services market study: final report*, (15 December 2016) at 175.

<sup>265</sup> MacFarlane, “The National Self-Represented Litigants Project”, *supra* note 134 at 12, 79 and 119.

matters, employment, housing, immigration, and numerous other matters.<sup>266</sup> Advisors working out of local Citizens Advice provide information about processes, help clients communicate with the institutions they are dealing with, translate their stories to meet the requirements of claim forms or tribunals, negotiate informally with employers,<sup>267</sup> and gather evidence to support their claims.<sup>268</sup>

Citizens Advice provide independent and confidential assistance – or advice<sup>269</sup> – to people one-on-one. Assistance from Citizens Advice, largely provided by volunteers, is not means-tested, is provided free of charge, and is delivered in person as well as via telephone advice lines and live chat. Citizens Advice work in collaboration with other local social services agencies in their geographic areas. Canada, the US, and Australia do not offer similar countrywide entry point services, available to the general public.<sup>270</sup>

Looking specifically at England and Wales, the 270 Citizens Advice rely on a total of almost 21,000 volunteers and over 6,000 local staff to provide advice.<sup>271</sup> The volunteers are highly trained; according to one report:

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<sup>266</sup> Although staffed primarily by volunteer non-lawyers, Citizens Advice doesn't necessarily fit the definition of trusted intermediaries. Many in the UK appear to consider Citizens Advice as legal offices that are part of the justice or legal system.

<sup>267</sup> Adam Sales, "Precarity and 'Austerity': Employment Disputes and Inequalities" in Samuel Kirwan, ed., *Advising in austerity: Reflections on challenging times for advice agencies* (Bristol: Bristol University Press & Policy Press) 105 at 110-111.

<sup>268</sup> Alison Kite, "Power and Legality in Citizens Advice" in Samuel Kirwan, ed., *Advising in austerity: Reflections on challenging times for advice agencies* (Bristol: Bristol University Press & Policy Press) 127 at 137.

<sup>269</sup> The difference between 'advice' and 'legal advice' is not as heavily emphasized in the UK as in Canada or the US, perhaps because non-lawyers are not prohibited from providing 'legal advice' in the UK. Under the UK's regulatory scheme for the provision of legal services, 'legal advice' is not an area reserved to lawyers. A similar distinction does arise in the UK context: volunteers provide generalist assistance ('advice') and specialists, typically paid staff (lawyers at Law Centres), provide 'specialist' services ('legal advice'). The distinction – and the importance of a highly skilled specialist providing legal advice in certain situations – is a topic of discussion in the UK. See Gail Bowen-Huggett and Samuel Kirwan, "The Advice Conundrum: How to satisfy the competing demands of clients and funders" in Samuel Kirwan, ed., *Advising in austerity: Reflections on challenging times for advice agencies* (Bristol: Bristol University Press & Policy Press) 43 at 47 and 48.

<sup>270</sup> In "The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy", Rebecca Sandefur discusses the 'auxiliary' services available in the UK, including Citizens Advice offices, and the implications of this widely available assistance for how people go about trying to resolve their justice problems. She posits that, because the UK's institutions of remedy are relatively inclusive, they draw in more people and "everyone is likely to do something to try to resolve their justice problems": Sandefur, "Fulcrum Point of Equal Access to Justice", *supra* note 105 at 975. In contrast, US institutions of remedy are relatively exclusive, and "discourage action both in general and on the part of certain groups – the poor in particular": Sandefur, "Fulcrum Point of Equal Access to Justice", *supra* note 105 at 975. Per Sandefur: "Institutions of remedy shape – or, more aptly, create – inequality in access to substantive justice ... The fulcrum point in equalizing access to justice is institutional design ... We can begin to imagine institutions of remedy that are remedial and give members of unequal groups in an unequal society more common and more equal experiences with their justice problems" Sandefur, "Fulcrum Point of Equal Access to Justice", *supra* note 105 at 975, 976, and 977.

<sup>271</sup> Citizens Advice, "Annual report 2019/20" (accessed 14 January 2021) at 7, online: *Citizens Advice* <[www.citizensadvice.org.uk/Global/CitizensAdvice/Governance/Annual%20Report-2019-20.pdf](http://www.citizensadvice.org.uk/Global/CitizensAdvice/Governance/Annual%20Report-2019-20.pdf)> [Citizens Advice, "Annual report 2019/20"].

It takes nine months to turn a new volunteer into an adviser: an extensive (usually six-month) training programme and then a period of observation before being allowed to take on casework.<sup>272</sup>

Typically, volunteer staff provide “generalist” advice, often supported by salaried, specialist advisors who provide oversight in the “backroom” of the Citizens Advice.<sup>273</sup> Citizens Advice also provides helplines for their advisors to ensure they are able to provide accurate and up-to-date advice.<sup>274</sup>

Citizens Advice are part of the ecosystem of publicly-supported legal assistance available in England and Wales, and indeed, across the UK, which includes legal aid. Key components of that system are Law Centres, independent not-for-profits supported by government funding; some Citizens Advice receive legal aid funding as Law Centres and provide specialist legal services.<sup>275</sup> Similar to community legal clinics in Ontario, Law Centres provide specialist legal services in “social welfare” law to people who cannot afford a lawyer. Law Centres, and legal aid in general in the UK, have undergone substantial cuts over the last several years, and many Law Centres have closed their doors. The legal aid cuts have also had a major impact on Citizens Advice, many of which had to close, cut their services (sometimes replacing a salaried person with a volunteer), or saw an increased demand for their services.<sup>276</sup>

Local Citizens Advice are members of national associations – one for England, Wales, and Northern Ireland; and another for Scotland – that provide resources and support for the local training of volunteers. The national associations also set and maintain standards, conducting regular audits of casework. A system for recording data on clients’ inquiries, “enables Citizens Advice to draw upon data from the several million clients they see annually to identify changing trends in the advice needs of the population and launch policy campaigns based upon them. The data provides unique and unrivalled evidence of shifting societal needs, data that is particularly powerful in a climate that puts considerable weight on evidence backed up by big numbers”.<sup>277</sup>

*Evaluation note #1:* A study measuring the outcome and impact of advice provided by Citizens Advice offices in Banes and North East Somerset found that the majority of the clients studied had reported positive outcomes of advice provided by Citizen Advice, in terms of financial outcomes, as well as significant increases in wellbeing.<sup>278</sup> Citizens

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<sup>272</sup> Morag McDermont, “Citizens Advice in Austere Times” Samuel Kirwan, ed, *Advising in austerity: Reflections on challenging times for advice agencies* (Bristol: Bristol University Press & Policy Press) 29 at 38 [McDermont].

<sup>273</sup> *Ibid.*

<sup>274</sup> Citizens Advice, “Annual report 2019/20”, *supra* note 271 at 18–19.

<sup>275</sup> McDermont, *supra* note 272 at 37.

<sup>276</sup> *Ibid.* at 37–38.

<sup>277</sup> *Ibid.* at 35–36.

<sup>278</sup> Michelle Farr, Peter Cressey, SE Milner, N Abercrombie, & Beth Jaynes, “Proving the value of advice: A study of the advice service of Bath and North East Somerset Citizens Advice Bureau” (2014) at 56, 57, and 61, online

Advice services were found to result in substantial savings to individuals; for every one pound spent on Citizens Advice services, there was a benefit of 50 pounds to a client, reflecting a high ratio.<sup>279</sup>

*Evaluation note #2:* An independent evaluation reviewed Citizens Advice’s ASK Routine Enquiry Programme. The Programme trains and supports advisors to ask a proactive question inviting clients to disclose instances of gender-based or domestic violence (“the Routine Enquiry question”) when providing face-to-face advice in specific settings. Once a disclosure was made, advisors could then provide improved advice about the issue that the client had presented with. The evaluation found that the Citizens Advice local offices in the program had successfully supported thousands of clients that had disclosed violence.<sup>280</sup> The Citizens Advice work was not found to have competed with or displaced work by specialist charities offering services in gender-based violence, given Citizens Advice’s expertise in different areas (for example, welfare, debt, housing).<sup>281</sup> As such, Citizens Advice’s assistance for survivors of violence to access welfare, debt, legal, and housing assistance helped enhance the outcome for clients.<sup>282</sup>

## 6.4 The use of technology to support community justice help

Community organizations providing community justice help often turn to technology-based resources and tools to support their work, and this section briefly reviews some of the ways in which they do so. Although there is a lack of formal literature on this specific topic, our research has identified several examples of community organizations taking advantage of technology-based tools to expand, improve, or otherwise support their provision of community justice help.

In this part, we focus our attention on the ways in which technology has played a positive role for the provision of community justice help, that is, in the form of online platforms, tools and channels for information sharing and service support; in the form of training; and in the form of mentoring and peer support, and referrals support. We include a few examples of initiatives or programs that have made strategic use of technology to support their provision of community justice help.

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(pdf): *University of Bath* <[www.researchportal.bath.ac.uk/en/publications/proving-the-value-of-advice-a-study-of-the-advice-service-of-bath](http://www.researchportal.bath.ac.uk/en/publications/proving-the-value-of-advice-a-study-of-the-advice-service-of-bath)> [Farr, Cressey, Milner, Abercrombie & Jaynes].

<sup>279</sup> *Ibid.* at 56–57.

<sup>280</sup> Susie Balderston, “Citizens Advice Programme: ‘ASK: Routine Enquiry in Gender-Based Violence Abuse’: Lancaster University Independent Research Evaluation” (2018) at 10, online (pdf): *Citizens Advice* <[drive.google.com/file/d/0BzA6EbMQFJ6oM3hTZU1nYk16OUMzYW55RzFiQTFmc2NPLXpj/view](https://drive.google.com/file/d/0BzA6EbMQFJ6oM3hTZU1nYk16OUMzYW55RzFiQTFmc2NPLXpj/view)> [Balderston].

<sup>281</sup> *Ibid.* at 9.

<sup>282</sup> *Ibid.* at 10.

### a. Online platforms, tools, and channels

Many community-based organizations – with the notable exception of very small organizations, and organizations working in rural and remote communities – use a variety of online resources, tools, and forums to learn about or keep current on the law. They look to websites they trust, including aggregator or portal-type sites;<sup>283</sup> sign up to email subscription lists, email list serves,<sup>284</sup> and blogs;<sup>285</sup> join online community forums;<sup>286</sup> and participate in social media platforms (such as Instagram, Facebook, and Twitter)<sup>287</sup> to share and spread information about the law.

Community organizations providing community justice help, and whose mandates include supporting other organizations in their field, use many of these tools and channels to “push out” information about the law to their partner organizations. And many province-based public legal education and information organizations use these online tools and channels to share updates on the law with community-based organizations.

### b. Training and courses

Technology also plays a significant role in supporting training and professional development for community justice help. This role has recently intensified with the ongoing COVID-19 pandemic.

Technology is used to enable online real-time participation in webinars and educational events. Technology is also used to provide and access on-demand educational resources. Spurred by the pandemic, resource and event developers are increasingly exploring the use of interactive tools for virtual live and on-demand education so as to enhance the technology-based learning experience and to maintain and foster the role of educational gatherings in promoting communities of practice.

In terms of substance, with the growth in recognition of the role of community justice helpers, resource and event developers have responded with offerings that seek to build and support relevant knowledge and skills. For example, CLEO developed a suite of educational modules specifically for staff in public libraries to assist them in responding to inquiries about law-related issues. The modules address the nature and sources of

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<sup>283</sup> See, for example, “ClickLaw” (accessed 18 January 2021), online: <[www.clicklaw.bc.ca/](http://www.clicklaw.bc.ca/)> and “Steps to Justice: Your Guide to law in Ontario” (accessed 18 January 2021), online: *Steps to Justice* <[www.stepstojustice.ca/](http://www.stepstojustice.ca/)>.

<sup>284</sup> For example, CLEO makes extensive use of list serves, including list serves that focus on reaching community justice help organizations – see *CLEO Connect* (accessed 20 January 2021), online <[www.cleoconnect.ca/subscribe/](http://www.cleoconnect.ca/subscribe/)>.

<sup>285</sup> Courthouse Libraries BC, “Law Matters, for public libraries” (blog) (accessed 18 January 2021), online: *Courthouse Libraries BC* <[www.courthouselibrary.ca/how-we-can-help/our-library-services/lawmatters-public-libraries](http://www.courthouselibrary.ca/how-we-can-help/our-library-services/lawmatters-public-libraries)>.

<sup>286</sup> See the discussion below, of forums offered by PovNet and Luke’s Place.

<sup>287</sup> These social media platforms are relied on by the major public legal education and information organizations across Canada; see the PLEAC website for a list of these organizations. Public Legal Education Association of Canada, “Current Members” (accessed 18 January 2021), online: *Public Legal Education Association of Canada* <[www.pleac-aceij.ca/membership/current-members/](http://www.pleac-aceij.ca/membership/current-members/)>.

legal information, techniques for spotting a legal issue, and resources and techniques for effective referrals.<sup>288</sup>

Similarly, as direct-to-public technology-enabled resources and tools expand and are publicly accessible on a no-fee basis, online training is being designed and delivered to community workers to support them with the specific task of helping their clients to use direct-to-public technology-based tools, such as guided pathways.

### c. Mentoring and peer support, and referrals support

Another important role for technology in relation to community justice help is in facilitating mentoring, peer-to-peer support, and communities of practice among community justice helpers and with other service providers, including other providers of law-related assistance, as well as supporting inter-agency referral and service integration.

#### **Mentoring and peer support**

PovNet is an online community of poverty law advocates in BC, including community workers and pro bono lawyers. PovNet aims to enhance the capacity of poverty law advocates to assist their clients with administrative law problems.<sup>289</sup>

PovNet was an early innovator in the strategic use of technology, using technology and digital activism since it was first established in 1997. Poverty law advocates who are members of PovNet use discussion boards to communicate and share ideas and strategies. Starting in 2004, PovNet has been providing online training for frontline workers through its PovNetU training network.<sup>290</sup>

Luke's Place, the organization mentioned earlier that provides a range of assistance to women who have been subjected to intimate partner violence, offers another example of a technology-driven initiative that supports workers giving community justice help. Luke's Place provides training, resources, and other supports to Family Court Support Workers (FCSWs) embedded in local community organizations across Ontario. FCSWs provide support to survivors of intimate partner violence who are involved in the family court process.<sup>291</sup>

Luke's Place uses technology in a number of different ways to augment and support its services, including its hosting of an online community of practice for FCSWs to communicate with and learn from each other.<sup>292</sup>

The community of practice, facilitated by Luke's place, is set up as a discussion board in Moodle and includes three categories of activity:

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<sup>288</sup> "CLEO 2017-2018 Annual Report", *supra* note 144 at 3.

<sup>289</sup> PovNet, "Our Purpose" (accessed 18 January 2021), online: *PovNet* <[www.povnet.org/purpose-1](http://www.povnet.org/purpose-1)>.

<sup>290</sup> PovNet, "History of PovNet" (accessed 18 January 2021), online: *PovNet* <[www.povnet.org/history](http://www.povnet.org/history)>.

<sup>291</sup> Interview of Pamela Cross, Legal Director at Luke's Place, by Julie Mathews (21 January 2021) [Cross].

<sup>292</sup> *Ibid.*



- a “What’s New”, which includes weekly updates on relevant issues, including updates on the law and practice directions, and upcoming events and training;
- a moderated online discussion forum, divided into topic areas, that enables FCSWs to ask questions, share information, brainstorm, and give support to each other – it also enables Luke’s Place legal director to give guidance; and
- a continually renewed resources section, on which Luke’s Place shares new resources it has created (about a dozen each year) that address developments in the sector and in the law and respond to FCSW needs.<sup>293</sup>

### **Referrals and service integration**

Community agency networks in two Ontario communities, working collaboratively, offer an example of how community organizations can leverage technology to support people, particularly those who are marginalized, with their law-related problems.

In 2011 and 2012, agencies in northern Simcoe County<sup>294</sup> and in Toronto’s Parkdale neighbourhood came together, in their respective communities, for the purpose of coordinating and improving the law-related assistance they were providing to their (respective) shared client groups. More specifically, each network of agencies decided to work together to ensure that, once a client sought support – law-related, social services or other – from one of their agencies, that client would, in fact, be connected with responsive, relevant assistance at other agencies in the network. Problems relating to clients slipping through the cracks and referral fatigue would be minimized.<sup>295</sup>

Both groups of agencies set up technology-based inter-agency referral systems, using an online interactive platform to support frontline workers who were serving the same community, but at different agencies. The agency that first saw a client completed a brief online survey of the client’s situation and needs, helping to identify legal issues. With the client’s consent, the agency then used the platform to electronically refer the client to all the other agencies whose services the client might require, including the community legal clinic.

As a party to a common consent, these agencies then shared information and coordinated services. If a client did not attend at an agency, others in the information loop followed up if they made contact with that client. The local community legal clinic, in addition to being part of the network, acted as the data steward, hosting the software and associated data for the rest of the network.

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<sup>293</sup> *Ibid.*

<sup>294</sup> In Simcoe, the agency network was part of the regional Alliance to End Homelessness, organizations serving those who are homeless or at risk. In Toronto, the network was part of a Local Immigration Partnership, a group of newcomer settlement service providers.

<sup>295</sup> Community Legal Clinic - Simcoe, Haliburton, Kawartha Lakes, “Community Legal Clinics and A2J Guided Interviews – October 2016” (2016), online (pdf): *CLEO Connect* <[www.cleoconnect.ca/wp-content/uploads/2017/03/a2j-guided-interviews-oct-2016.pdf](http://www.cleoconnect.ca/wp-content/uploads/2017/03/a2j-guided-interviews-oct-2016.pdf)>.

These technology-based referral networks operated in these communities for a number of years. They ceased to operate when resources and support for the centralized platform ran out of funding. Anecdotal accounts indicate that the approach was promising, though challenging to implement.<sup>296</sup>

## 6.5 Looking at community justice help: summing up

A large number of not-for-profit community-based organizations – in Canada, the United States, the UK, and Australia – provide assistance to people who come to them with problems that may include a legal element. The mandates of these organizations, and the nature of the services they provide, vary widely. Noting that it is virtually impossible to neatly categorize the range of organizations and the services they provide, we decided to illustrate the range by selecting and briefly discussing a sampling of programs in these jurisdictions.

Although most organizations assess or evaluate their programs periodically, many (if not most) lack the resources to conduct independent, formal evaluations. We referenced program evaluations, for the programs we give as examples, where they are publicly available.

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<sup>296</sup> *Ibid.*

## 7. Community Justice Help and Quality

Scholarly studies in the last 10 – or even 20 years – have evaluated and often compared the effectiveness of assistance provided by various authorized providers of legal services, focusing on the effectiveness of services delivered by lawyers, paralegals, licensed immigration consultants (Ontario), licensed legal technicians (US), law students, and court staff or staff working out of courthouses.

But there is not a large body of academic literature that investigates the quality and effectiveness of law-related assistance provided by not-for-profit organizations, particularly with respect to robust, individualized assistance that may skirt the boundary between legal information and legal advice. As noted earlier in this report, community organizations that provide critical law-related assistance, and do not accept direct payments for their services, are generally not yet acknowledged – by regulators, bar associations, and other groups led by legal professionals – as important partners in the provision of justice services.<sup>297</sup>

What do we know, then, about the effectiveness of community justice help? How does it compare to the services from a lawyer or paralegal? This section considers, at some length, the small body of relatively recent academic literature relevant to these questions.

In this section, we discuss:

- the small body of literature that considers the quality of law-related assistance provided by not-for-profit community-based organizations;
- a small number of reports that assess the quality of legal services provided by licensed legal professionals who are not lawyers; and
- a selection of other significant research that explores the roles of lawyers and non-lawyers, and “where lawyers matter”.

We include the latter two points because, in light of the dearth of academic literature on the quality of law-related assistance provided by not-for-profit community-based organizations, we believe that literature that considers the quality of other forms of non-lawyer assistance, and looks at “where lawyers matter”, helps to shed light on the question of where assistance from a highly trained and licensed legal professional is not critical for the protection of the public.

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<sup>297</sup> There is some indication that this may be slowly changing; see: Cohl, Lassonde, Mathews, Smith & Thomson, “Trusted Help”, *supra* note 129 at 15; Mathews & Wiseman, *supra* note 70; and Commission to Reimagine the Future of New York’s Courts, *supra* note 29.

## 7.1 Evaluation of law-related assistance by not-for-profit community organizations

In the previous section, we gave examples of organizations and programs that provide community justice help, noting program evaluations where publicly available. This section considers the academic literature that evaluates community justice help – law-related assistance provided by not-for-profit community-based organizations.

### Study in England and Wales

In 2003, researchers conducted an in-depth study<sup>298</sup> of the difference in lawyer and non-lawyer activity and outcomes in England and Wales, using a range of quantitative and qualitative methods. The study compared service provision by three different groups of solicitors as well as one group of not-for-profit agencies. It found that the services provided by the not-for-profit agencies were as high quality as the services provided by the groups of solicitors.

The study considered the provision of advice and assistance in welfare benefits, debt, housing, and employment cases, including cases that did not involve a legal proceeding.<sup>299</sup> It looked at three types of assessments to determine the relative quality of lawyers and non-lawyers: assessments of client satisfaction, of peer reviewers, and of outcomes. It found that, “NFP [not-for-profit] agencies had clients with slightly higher satisfaction ratings and got significantly better results, and their work on cases was more likely to be graded at higher levels of quality by experienced practitioners working in their field”.<sup>300</sup>

The study found that, “taken as a group, non-lawyers perform to higher standards than lawyers”.<sup>301</sup> And, even taking into account the possibility that there were factors that the researchers could not analyze or control, they found that the “results show that it is *possible* for non-lawyer agencies to perform at the same or higher levels of quality than lawyers, and that in itself undermines a key claim of the profession to exclusive knowledge”.<sup>302</sup> Echoing an earlier foundational study in the UK,<sup>303</sup> the researchers emphasized the importance of specialization as a predictor of quality.<sup>304</sup>

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<sup>298</sup> Richard Moorhead, Avrom Sherr, & Alan Paterson, “Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales” (2003) 37:4 Law & Society Review 765 [Moorhead, Sherr & Patterson].

<sup>299</sup> *Ibid.* at 796.

<sup>300</sup> *Ibid.* at 789.

<sup>301</sup> *Ibid.* at 795.

<sup>302</sup> *Ibid.* at 795.

<sup>303</sup> Hazel Genn & Yvette Genn, “The Effectiveness of Representation at Tribunals: Report to the Lord Chancellor” (July 1989), online (pdf): *University College London* <[www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/effectiveness\\_of\\_representation\\_at\\_tribunals.pdf](http://www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/effectiveness_of_representation_at_tribunals.pdf)>.

<sup>304</sup> Moorhead, Sherr & Patterson, *supra* note 298 at 795. The study also found that the non-lawyer not-for-profit agencies spent more time on comparable cases than the solicitors’ groups and, from that point of view, were more costly: Moorhead, Sherr & Paterson, *supra* note 298 at 783 and 784.

## US evaluation research

Rebecca Sandefur, a lead researcher in the access to justice field, has conducted several research initiatives that explore, in the US context, what a “legal” problem looks like. Her reports frequently note the intersection of the law in almost every aspect of people’s lives, including housing, work, finances, benefits, and the care of dependent family members. She cautions against framing problems of this nature – with multifaceted aspects – as solely “legal”; doing so means that the focus of the possible responses to the problem are similarly legal solutions. Her research points out that, for many of these problems, legal solutions are not necessarily the only, or best, response.

On a related theme, Sandefur, with Thomas Clarke, has conducted research that evaluates the range of lawyer and non-lawyer services that people access for assistance with their justice-related problems. Much of their evaluation work focuses on services provided by people who are authorized to provide legal services who are not licensed as lawyers. This research classifies programs staffed by people who are carrying out work traditionally available only through lawyers – but who are not, in fact, fully qualified lawyers – as “Roles Beyond Lawyers” programs, or “RBL” programs.<sup>305</sup>

Sandefur and Clarke propose a three-part evaluation framework<sup>306</sup> to support future assessments of programs that rely on new roles being performed by non-lawyers. The framework involves three broad categories for evaluation: appropriateness, efficacy, and sustainability; in other words, “[e]ssentially, researchers want to know if a program does the right thing, does it effectively, and is capable of doing it into the future”.<sup>307</sup>

The framework can “both make a material difference” and be “competently performed by someone without full legal training”. Programs that are efficacious are both “competently performed” and “positively impactful”. Programs that are sustainable are those that have durable models of training, supervision, and regulation to ensure consistent quality, and are able to maintain legitimacy among a range of stakeholders.<sup>308</sup>

This framework was applied by Sandefur and Clarke in their 2019 evaluation of three pilot navigator projects offered through New York City courts.<sup>309</sup> The study finds that one of the navigator programs overseen by a local not-for-profit agency – the only

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<sup>305</sup> Sandefur & Clarke, “Designing the Competition”, *supra* note 37 at 1469.

<sup>306</sup> Rebecca L Sandefur & Thomas M Clarke, “Increasing Access to Justice Through Expanded ‘Roles Beyond Lawyers’: Preliminary Evaluation and Classification Frameworks: Discussion Draft” (April 2015), online (pdf): *American Bar Foundation*

<[www.americanbarfoundation.org/uploads/cms/documents/rbl\\_evaluation\\_and\\_program\\_design\\_frameworks\\_4\\_12\\_15.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/rbl_evaluation_and_program_design_frameworks_4_12_15.pdf)>; Sandefur & Clarke, “Designing the Competition”, *supra* note 37.

<sup>307</sup> Rebecca L Sandefur & Thomas M Clarke, “Preliminary Evaluation of the Washington State Limited License Legal Technician Program” (March 2017) at 5, online: <[www.papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2949042](http://www.papers.ssrn.com/sol3/papers.cfm?abstract_id=2949042)> [Sandefur & Clarke, “Preliminary Evaluation”].

<sup>308</sup> Sandefur & Clarke, “Designing the Competition”, *supra* note 37 at 1472.

<sup>309</sup> Rebecca L Sandefur & Thomas Clarke, “Roles beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and Its Three Pilot Projects” (8 December 2016), online: SSRN: <[www.ssrn.com/abstract=2949038](http://www.ssrn.com/abstract=2949038)> [<http://dx.doi.org/10.2139/ssrn.2949038>] [Sandefur & Clarke, “Roles beyond Lawyers”].

program that provided ongoing, “for the duration” assistance – had a significant impact on case outcomes, compared to outcomes where no assistance was provided.

The navigators in the three pilot navigator programs assessed in the study provided assistance to people who came to the court. This included providing information about the legal process; assisting them with the organization of their documents; helping them to access and complete court forms (accompanying them to “do-it-yourself” kiosks and helping them to use software to complete court forms, many of which were standard forms that included codified law, for example, a list of defenses in a housing case); and accompanying them to meetings, negotiations, and into the courtroom (answering factual questions the judge may address to them).

All of the navigators in the three programs received training and were supervised, but the extent of training and supervision, and the nature of the supervision (provided by a lawyer or someone else) varied. All received training on the difference between legal information and legal advice, including what they should *not* do so as to avoid crossing the line into giving legal advice. All of the navigators provided assistance to tenants arriving in their courts on housing and eviction issues; one also provided assistance with debt and consumer issues.

Of the three navigator programs, one – the Access to Justice Navigators Project – was court-operated, staffed by volunteers overseen by court staff or court lawyers, and gave only in-court “navigator for the day” services. A second – the Housing Court Answers Navigators Project – also gave only in-court “navigator for the day” services and was staffed by volunteers; it was overseen by a local not-for-profit, Housing Court Answers.

The navigators in the third program – operated by another local not-for-profit, University Settlement – were paid employees at University Settlement, and were “navigators for the duration”, handling cases from intake through to resolution and beyond, distinguishing their assistance from the other two navigator programs. The University Settlement navigators program coordinated its intake activities with the Housing Court Answers project, taking on cases that had already been screened for eligibility and had characteristics to suggest that additional navigation assistance could have an impact on case outcomes. In addition to in-court assistance, they provided a range of ongoing support outside of court, such as assistance in accessing benefits and other services.<sup>310</sup> The aim of the program was to prevent tenants from getting evicted – an ambitious goal not shared by the other two navigator-for-the-day programs.

In their evaluation study, Sandefur and Clarke find that, across the three navigator programs, all met the measures of “appropriateness” as set out in their evaluation framework. With respect to efficacy – assistance that is competently performed and has a positive impact – and particularly with respect to case outcomes, the findings vary across the three pilot sites, reflecting the different goals and activities of the programs. Both the Housing Court Answers and University Settlement navigator programs were

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<sup>310</sup> *Ibid.* at 5 & 37.

intended to affect case outcomes on non-payment of rent cases, a goal that was not in place for the Access to Justice Navigators Program.

The evaluation also considers the sustainability of the programs, including markers relating to legitimacy, perceived value by navigators and stakeholders, and financial sustainability. Here, the researchers find that the three navigator pilot programs have the potential for sustainability, but cannot be expanded without greater financial investment, even though their costs are much less than providing legal aid lawyers to the same people.

Key findings relating to case outcomes, per the three pilot projects, include the following:

- The tenants who received in-court and ongoing out-of-court assistance from the University Settlement navigators program were much more likely to be assigned a court interpreter.<sup>311</sup> The tenants assisted by these navigators, who first were assisted by Housing Court Answers navigators, raised significantly more defenses than unrepresented tenants, were more likely to have their defenses recognized, and were more likely to see the judge order repairs.<sup>312</sup> Their assistance is “associated with statistically significant differences in case outcomes”: zero percent of the tenants assisted by University Settlement navigators were evicted from their homes, compared to one formal eviction for about every nine non-payment cases filed in the city.<sup>313</sup>
- The tenants who received assistance from the Housing Court Answers navigators program raised significantly more defenses in their answers than unassisted tenants and were more likely to have their defenses recognized by the court. They were also more likely than unassisted tenants to see the judge order repairs.<sup>314</sup>
- The cases that received assistance from the court-operated Access to Justice navigators were significantly more likely to end with formal judgments than cases that were not assisted, but otherwise the navigator program did not have an impact on case outcomes.<sup>315</sup> (As noted above, this program was not intended to affect case outcomes.)

A recent US study conducted by Mary McClymont for The Justice Lab at Georgetown Law Centre surveyed 23 navigator programs run out of state courts.<sup>316</sup> The survey was conducted through outreach and interviews with more than 60 informants involved in

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<sup>311</sup> *Ibid.* at 37.

<sup>312</sup> *Ibid.* at 37.

<sup>313</sup> *Ibid.* at 5.

<sup>314</sup> *Ibid.* at 37.

<sup>315</sup> *Ibid.* at 37. People assisted by Access to Justice navigators did report that the navigators were helpful in other ways: people assisted by these navigators were 56 percent more likely than those who did not receive this assistance “to say they were able to tell their side of the story”: *Ibid.* at 4.

<sup>316</sup> McClymont, *supra* note 228.

the creation, oversight, or management of the navigator programs. The report defines navigators as people with legal credentials or training who assist people who are not represented by lawyers with their civil law problems. The navigators do not operate as part of a lawyer-client relationship and are not part of a formal program or institution that provides specialized training.

About half of the navigator programs were overseen by not-for-profit organizations. Unlike the navigation services provided by University Settlement in the New York City navigators study, the navigator programs surveyed by McClymont did not extend beyond same-day assistance.

The purpose of McClymont's survey was to canvass the features of the range of programs, including types of cases handled by the programs, the range of tasks performed by the navigators in the various programs, the topics and methods of training, the range or extent of supervision, and the availability of back up and support. Although the survey was not intended to look at the outcomes or impacts of the various programs, it does provide data about the informants' perceptions of impact, and weaves in data from several user satisfaction surveys conducted by a few of the programs.

The survey indicates that:

- navigators help to improve the accuracy and completion of forms;<sup>317</sup>
- people felt that they were better prepared on what to do next, and their anxiety was reduced, after receiving assistance from navigators;<sup>318</sup> and
- people appreciated that speaking with a navigator enabled them to tell their stories and to be heard.<sup>319</sup>

The report notes that the leaders of the navigator programs are well aware of the admonition against navigators providing legal advice and indicates that the navigators are carrying out their roles without running afoul of the rules against the unauthorized practice of law. Like Sandefur and Clarke's study of navigators in New York City, the study raises a strong concern about the longer-term institutionalization and sustainability of many of the navigator programs.<sup>320</sup>

### Canadian evaluation research

Canada does not have a body of academic literature that evaluates the quality or impact of law-related assistance provided by staff or navigators at not-for-profit community-

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<sup>317</sup> *Ibid.* at 33.

<sup>318</sup> *Ibid.* at 34.

<sup>319</sup> *Ibid.* at 34 & 35.

<sup>320</sup> *Ibid.* at 39.



based organizations.<sup>321</sup> Some academic research, though, speaks to the effectiveness of such services.

For example, research conducted by Suzanne Bouclin, at the University of Ottawa Faculty of Law, describes the success of Ottawa's Ticket Defence Program (TDP) in assisting street-involved people.<sup>322</sup> Using a case study approach, the study discusses the TDP – a program that, between 2003 and 2007, saw trained and mentored frontline volunteers provide law-related assistance to street-involved people charged with minor provincial or municipal offences.

The TDP liaisons and agents provided information and resources to enable street-involved people to defend tickets themselves; referred them to other programs and to “sympathetic lawyers” when a street-involved person had a legal question beyond the scope of the TDP's mandate or the agent's training; and helped street-involved people navigate the process for responding to or defending their receipt of a ticket. They assisted with first appearances and, in a minority of cases, went to trial, working with lawyers and law students to develop legal arguments.

The report describes the “high rate of success” of the TDP in having tickets dismissed or charges withdrawn. The TDP was also successful in advocating for changes in the law's treatment of “panhandling”, and in discouraging the issuance of tickets for passive panhandling.<sup>323</sup> Despite its successes, the TDP was forced to close its doors because the TDP liaisons and agents were not licensed as lawyers or paralegals – even though, according to the research, for a number of years, street-involved people in Ottawa could not “afford paralegals in any event”,<sup>324</sup> and legal aid and pro bono legal services were generally not available.<sup>325</sup>

## 7.2 Evaluation of legal services provided by non-lawyer licensed legal professionals

In what follows, we canvass a small number of reports that consider the quality and effectiveness of services provided by paralegals or legal technicians, authorized in Canada and in the US to provide defined services in limited areas.

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<sup>321</sup> Program evaluations of such initiatives are conducted by the responsible organizations and are generally not publicly available. Section 6 includes notes on several program evaluations that are publicly available.

<sup>322</sup> Suzanne Bouclin, “Regulated Out of Existence: A Case Study of Ottawa's Ticket Defence Program” (2014) 11 JL & Equality 35 [Bouclin].

<sup>323</sup> *Ibid.* at 59–64.

<sup>324</sup> *Ibid.* at 80.

<sup>325</sup> The University of Ottawa Faculty of Law later resumed the Ticket Defence Program, relying on law students to provide much of the assistance, based on changes to the regulatory framework to expand the scope for permissible legal services from students, under supervision.

## Canadian evaluation research

As noted in Section 4 of this report, Ontario’s rules permit paralegals to provide services, without requiring supervision by a lawyer, in certain areas of law, for defined activities, and before specific adjudicative bodies. In 2012, the Law Society of Ontario (LSO) retained Strategic Communications to research and report on Ontario’s experience with paralegals over the first five years in which they were operating pursuant to the LSO’s paralegal licensing regime. Based on results from a survey of 1001 paralegal user respondents, the research found that there was a “general degree” of satisfaction with the paralegal services.<sup>326</sup>

A recent Canadian study by Lisa Trabucco explores the reality of the provision of legal services by non-lawyers in Canada and suggests that non-lawyers already provide a range of legal services in a variety of settings. Trabucco reviews studies that consider the effectiveness of legal services provided by non-lawyers, including paralegals in Ontario and licensed legal technicians in US states, and looks at available information relating to misconduct or sanctions against non-lawyer representatives. Based on data from the Law Society of Ontario, covering about two and a half years, she finds that,

The number of paralegal professional misconduct matters compared to lawyer misconduct matters at hearings was proportionately no greater than the number of paralegal licensees relative to lawyer licensees. Further, the range of matters was similar for both lawyers and paralegals. This suggests that the professionalism and competence of regulated paralegals is about equal to, and certainly no less than, that of lawyers, or at least that paralegal conduct is the subject of disciplinary hearings to roughly the same extent that lawyer conduct is.<sup>327</sup>

Other research focuses less on the quality of services provided by paralegals and more on their impact on the ability of people to access trained legal assistance. One case study<sup>328</sup> on the prevalence of paralegals in Ontario’s Landlord and Tenant Board proceedings indicates that the use of paralegals has increased, but only as substitutes for experienced non-lawyer representatives on the landlord side of proceedings; the cost point for paralegal services is not low enough to be accessible for many if not most tenants.

## US evaluation research

As noted in Section 4, a few US states have begun to establish programs that authorize Licensed Limited Legal Technicians (LLLTs) to provide limited legal services in

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<sup>326</sup> David Kraft et al, *Five Year Review of Paralegal Regulation: Research Findings – Final Report for the Law Society of Upper Canada* (Toronto: Strategic Communications, 2012) at 41–46.

<sup>327</sup> Trabucco, *supra* note 12 at 481-482.

<sup>328</sup> Wiseman, “Paralegals and Access to Justice for Tenants”, *supra* note 31.

specified areas of law. One of the first programs, established by the Washington Supreme Court in 2012, enabled LLLTs to provide services relating to family law. In mid-2020, the Washington Supreme Court decided to sunset the program, citing the costs of sustaining the program and the small number of program applicants.<sup>329</sup>

A couple of years earlier, Rebecca Sandefur and Thomas Clarke conducted a preliminary evaluation of the program. According to the 2017 evaluation, clients reported that LLLTs were able to provide competent assistance, and that using the services of an LLLT improved their legal outcomes.<sup>330</sup>

## 7.3 Other studies relating to lawyers and non-lawyers, including “where lawyers matter”

### US and UK research

Several US studies in the last 10 years have reviewed the evidence about the effectiveness of legal services provided by lawyers, particularly in comparison with non-lawyers. Many of these studies include a discussion of “where lawyers matter”, drawing from data that compares outcomes achieved by legal services provided by lawyers and non-lawyers.

In research published very recently,<sup>331</sup> Rebecca Sandefur reviews the empirical evidence on three questions relevant to the consideration of the provision of legal advice by non-lawyers:

- evidence relating to the consumer demand for legal advice;
- evidence relating to the quality of legal advice provided by non-lawyers; and
- evidence of harms that result from the current restrictions on the provision of legal advice by non-lawyers.<sup>332</sup>

Although Sandefur’s review does not specifically consider legal advice provided by staff working at community-based not-for-profit organizations, her review and analysis of the empirical evidence relating to the quality of legal advice provided by non-lawyers is relevant. On this question, she summarizes the evidence as follows:

The available evidence reveals that nonlawyers can provide competent and effective legal advice. Nonlawyer sources of assistance make mistakes, but when working on appropriate matters usually make no more mistakes than lawyers

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<sup>329</sup> Lyle Moran, “Washington Supreme Court sunsets limited license program for nonlawyers” *ABA Journal* (8 June 2020), online: *ABA Journal* <[www.abajournal.com/news/article/washington-supreme-court-decides-to-sunset-pioneering-limited-license-program](http://www.abajournal.com/news/article/washington-supreme-court-decides-to-sunset-pioneering-limited-license-program)>; letter of Debra L Stephens, Chief Justice, Washington State Supreme Court (5 June 2020), online (pdf): *ABA Journal* <[www.abajournal.com/files/Stephens\\_LLLT\\_letter.pdf](http://www.abajournal.com/files/Stephens_LLLT_letter.pdf)>.

<sup>330</sup> Sandefur & Clarke, “Preliminary Evaluation”, *supra* note 307.

<sup>331</sup> Sandefur, “Legal Advice from Nonlawyers”, *supra* note 212.

<sup>332</sup> *Ibid.* at 285.

do. As this research review shows, nonlawyers do a great deal of effective and high-quality work [...]. At the same time, nonlawyer assistance is not always sufficient. In some situations that raise complex issues of law, nonlawyers as currently trained may not be fully equipped to provide adequate service.<sup>333</sup>

The research and evidence reviewed by Sandefur spanned several indicators of the quality of non-lawyer legal advice, including consumer satisfaction, consumer complaints, case outcomes, and expert review. With respect to studies based on consumer satisfaction, Sandefur finds that “nonlawyers are highly rated, sometimes even more highly rated than attorneys”.<sup>334</sup> Studies on consumer complaints were the source for her finding, mentioned in the quotation above, as to equivalency in frequency of mistakes between non-lawyers and lawyers.<sup>335</sup> In terms of the body of research on case outcomes, while noting that lawyers may be more appropriate for contexts of legal complexity, Sandefur finds that:

If the measure is prevailing in some kind of case before a court or hearing body, the general finding is that nonlawyer advocates perform as well or better than lawyers when nonlawyers are specialized and experienced.<sup>336</sup>

Over recent years, several studies have analyzed the impact of lawyers by employing randomized control trials. Russell Engler, in “When Does Representation Matter?” reviews and examines a number of empirical studies relating to the impact of a lawyer on a client’s outcomes, in a number of different forums.<sup>337</sup>

In his review of the body of research, Engler points out that several factors affect the outcome of cases beyond whether a party is represented.<sup>338</sup> Those factors include the quality of the representatives:

Where the representation is provided by lay advocates, including law students, the effectiveness of the representation will turn on whether the representatives have received specialized training for advocacy in the particular context.<sup>339</sup>

Rebecca Sandefur also conducted a meta-analysis of studies that investigate research relating to the impact of substantive and procedural law on case outcomes in adjudicative proceedings.<sup>340</sup> Here she finds that people who are represented by lawyers at an adjudicative proceeding are more likely, on average, to win than those who are unrepresented. But she also observes, “how much more likely varies ... widely across

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<sup>333</sup> *Ibid.* at 308.

<sup>334</sup> *Ibid.* at 301.

<sup>335</sup> *Ibid.* at 308.

<sup>336</sup> *Ibid.* at 305.

<sup>337</sup> Engler, Russell, “When Does Representation Matter?” in Samuel Estreicher & Joy Radice, eds, *Beyond Elite Law: Access to Civil Justice in America* (Cambridge: Cambridge University Press, 2016) 71 [Engler].

<sup>338</sup> Engler also discusses the importance of the individual decision-maker and features of the forum before which a case is being heard, in case outcomes: *Ibid.*

<sup>339</sup> *Ibid.* at 81.

<sup>340</sup> Rebecca Sandefur, “The Impact of Counsel: An Analysis of Empirical Evidence” (2010) 9:1 *Seattle Journal for Social Justice* 51 [Rebecca Sandefur, “The Impact of Counsel”].

different kinds of civil justice problems and different studies of lawyers' impact" and concludes that the one factor that seems to affect the variation in lawyers' impact is procedural complexity, including the complexity of documents and procedures.<sup>341</sup>

An earlier study in the UK – referenced frequently by Sandefur and others – looked at the will-writing services provided by solicitors as well as by will-writing companies. The 2011 UK study found that, although there were high overall levels of customer satisfaction of services provided by will-writing companies as well as by solicitors, there was also much "evidence of consumer detriment".<sup>342</sup> The poor quality of wills was of particular concern due to the potential harm this can cause. And the study found that, with respect to this concern about quality, "the same proportion of wills prepared by solicitors and will-writing companies were failed",<sup>343</sup> and the wills were almost as "likely to fail when the client had simple or complex circumstances".<sup>344</sup> Key problems included, "cutting and pasting of precedents; unnecessary complexity; and use of outdated technology".<sup>345</sup>

Also worthy of note is an earlier landmark study conducted in the US context that is referenced in almost all subsequent literature that considers the quality of non-lawyers' services. In 1998, in "Legal Advocacy: Lawyers and Nonlawyers at Work", Herbert Kritzer analyzed and compared the differences in results achieved by lawyer and non-lawyer advocates in the US (where advocates are representing people before a tribunal, commission, or arbitrators) in four different venues.<sup>346</sup> Drawing from his investigations, Kritzer found that expertise is a critical factor, and that formal legal training does not necessarily denote expertise. Instead, the main difference with respect to effectiveness was that advocates with specialized technical expertise tended to bring crucial insider knowledge to support presenting a client's case.<sup>347</sup>

Kritzer also concluded that formal legal training played less of a role than substantial experience with the setting, and that lawyers could move across settings, including where the settings differed both substantively and procedurally.<sup>348</sup>

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<sup>341</sup> *Ibid.* Also see Rebecca Sandefur, "Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact" (2015) 80:5 American Sociological Review 909 [Sandefur, "Elements of Professional Expertise"]. This study, which also includes a meta-analysis of other research, discusses the importance of "relational expertise" that experienced lawyers typically possess: "their relationship to the court as professionals who understand how to navigate a rarefied interpersonal world" (page 926).

<sup>342</sup> Legal Services Consumer Panel, "Regulating Will-Writing" (July 2011) at para 11.1, online (pdf): *Legal Services Consumer Panel*

<[www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ConsumerPanel\\_WillwritingReport\\_Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf)> [Legal Services Consumer Panel].

<sup>343</sup> *Ibid.* at para 1.10.

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.* After reviewing this and other evidence, the LSB recommended that will-writing activities be added to the list of 'reserved legal activities' as the best way to protect consumers.

<sup>346</sup> Kritzer, *supra* note 36.

<sup>347</sup> *Ibid.*

<sup>348</sup> *Ibid.*

## Canadian research

Canadian research published in 2011 examined the role of legal counsel in the outcomes of refugee determination cases.<sup>349</sup> This research, conducted by Sean Rehaag at Osgoode Hall Law School of York University, was based on a review of over 70,000 refugee decisions from 2005 to 2009.<sup>350</sup> The study compared outcomes in cases in which refugee claimants were represented by lawyers, immigration consultants, or pro bono representatives, focusing primarily on the services provided by lawyers and immigration consultants. (The study included categories for “none” or “other”, but they comprise a very small percentage of the cases.)

The study’s major finding is that “access to qualified and competent lawyers is a major factor in claimants successfully navigating the refugee determination process”;<sup>351</sup> claimants represented by competent lawyers were much more likely to succeed and were less likely to withdraw their claims or have their claims declared abandoned than those represented by immigration consultants. The research also found that refugee claimants are successful more often when they are represented by immigration consultants than if they are unrepresented.<sup>352</sup>

In addition, the study found that claimants’ success rates were higher when they were represented by experienced counsel:

Lawyers who represented significant numbers of claimants during the period of the study had higher success rates than lawyers who represented a smaller number.<sup>353</sup>

Therefore, it would appear that what matters at Refugee Protection Division hearings is not merely the ability of claimants to secure lawyers to serve as counsel, but also the ability to secure lawyers experienced in refugee law.<sup>354</sup>

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<sup>349</sup> Immigration law issues and problems are often complicated. We came across several reports in the US context that explore and discuss the effectiveness of non-lawyer services in this area, such as services from *notarios*, but the time required to review and discuss those studies take them outside the scope of this literature review.

<sup>350</sup> Sean Rehaag, “The Role of Counsel in Canada’s Refugee Determination System: An Empirical Assessment” (2011) 49:1 *Osgoode Hall Law Journal* 71 [Rehaag]. Since the study was published, the regulatory scheme for immigration consultants has been overhauled; the federal government has established the Immigration Consultants of Canada Regulatory Council to oversee immigration and citizenship consultants and international student advisors.

<sup>351</sup> *Ibid.* at 86.

<sup>352</sup> The study did not examine the law-related assistance that not-for-profit community-based organizations may provide refugee claimants; in Ontario, legal aid certificates are available to pay for lawyers’ services relating to many aspects of the refugee determination process.

<sup>353</sup> Rehaag, *supra* note 350 at 92.

<sup>354</sup> *Ibid.* at 89.

## 7.4 Community justice help – what the evaluation literature tells us: summing up

The body of academic literature – small though it is – indicates that community workers, working in a not-for-profit setting, are able to provide good quality assistance to people with their law-related problems. The studies suggest that the nature of the law-related problem – for example, its procedural complexity – and the nature of the services that are provided – for example, services provided “for the duration” – may make a difference.

In summary, the studies reviewed in this section suggest the following:

- not-for-profit community organizations, with trained specialized staff, are able to provide as high-quality law-related assistance as lawyers within the specialized scope of their organizations’ services;
- law-related assistance provided by not-for-profit community organizations, including individualized services provided one-on-one, can have a positive impact on case outcomes;
- non-lawyers who provide law-related assistance are not subject to more professional misconduct or sanctions than lawyers;
- specialization is a key ingredient of quality with respect to law-related assistance, and community workers are able to develop that specialization;
- trained frontline community workers, situated to support highly marginalized communities, and trained and mentored to ensure high-quality services, can have high rates of success in effectively dealing with their clients’ law-related problems; and
- an experienced lawyer may be important where legal matters are complex, or where “relational expertise” – familiarity with a court or tribunal setting and the personnel in the court – comes into play.

The body of evaluation literature – program evaluative literature as well as academic evaluative literature – is thin, particularly in Canada. It would be helpful to have more Canadian research in order to identify and support good practices in the provision of community justice help (including potential areas for improvement), and to demonstrate effectiveness. This recommendation is picked up in the next section.

## 8. Conclusion: Advancing Community Justice Help

Our report considers the current paradigm that, in Canada and most comparative jurisdictions, has seen a strong focus on the provision of legal services by lawyers. We consider the implications of that paradigm on access to justice, primarily on people living on low incomes or facing other social disadvantages who are experiencing law-related problems. We suggest that framing access to justice to include the concept of legal empowerment could lead to a more meaningful approach that encompasses support for community justice help.

Our report also canvasses the spectrum of community justice help, giving examples that illustrate its breadth and nature in Canada and comparative jurisdictions. We include notes on program evaluations of those services. And we consider, briefly, how community organizations take advantage of technology to improve or expand their community justice help. The report also reviews relevant academic literature that evaluates or speaks to the quality of community justice help.

In this section, we offer concluding thoughts on our review of the literature. We reflect on and identify key findings, highlight knowledge gaps, and suggest next steps.

### 8.1 Key findings and reflections

Our review shows that existing regulatory frameworks in Canada, although lawyer-centric, include long-established permissions for non-lawyer roles, some of which can be associated with community justice help. Further, there are other permissions within the current regulatory frameworks that provide bases for community justice help activity.

This leads to our **first finding**: Efforts and initiatives to shift the lawyer-centric paradigm towards greater roles for non-lawyers in general and community justice help in particular are to some extent about a shift in degree rather than kind.

Our review also indicates that, over recent years, regulators of the legal profession and the provision of legal services in Canada have taken some regulatory actions aimed at improving access to justice. While few of these actions are directly related to enabling or supporting community justice help, they may represent an incremental shift in the lawyer-centric paradigm of regulation. The action most potentially relevant to community justice help is the introduction of a power for limited licensing in Saskatchewan and Manitoba that has been specifically justified as a way to support not-for-profit provision of law-related assistance by non-lawyers in community-based organizations.



This leads to our **second finding**: Some recent regulatory actions, although not reflective of a shift in the paradigm of lawyer-centricity, are at least nudging the orientation of the paradigm towards modes of service delivery that more people may be able to access. But, insofar as these modes of service delivery operate on a for-profit basis, even if at a lower cost, they are unlikely to offer much of an advance in access to justice for people living on low incomes or experiencing other forms of social disadvantage and marginalization.

Although the lawyer-centric paradigm is therefore only gradually shifting towards expanded roles for non-lawyers and community justice help, it is important to note that the justifications for these regulatory actions are informed by a newer approach to researching and understanding access to justice. That newer approach brings increased focus to people-centered and empowerment-oriented, rather than lawyer- or system-centered, approaches.

This leads to our **third finding**: The newer approach to and understanding of access to justice may be altering the ground upon which the lawyer-centric paradigm has been erected and will likely only continue to exert pressure to shift that paradigm. We anticipate that this will lead to more deliberate regulatory action – formal or informal – to enable and support community justice help.

Our report also describes a spectrum of law-related assistance provided by not-for-profit community-based organizations and gives examples of organizations that illustrate the range of community justice help services, in Canada and other comparative jurisdictions. Community-justice partnerships are proliferating; many organizations serving marginalized communities are integrating law-related assistance into their range of services; court-based as well as navigator programs are offering process-oriented community justice help; and McKenzie Friends and court support persons provide moral, emotional, and other forms of support to people involved in a legal proceeding.

This leads to our **fourth finding**, echoing similar findings in other reports (including our own report in July 2020): The breadth and vigour of community justice help activity reflect the reality of where and how people address their multifaceted problems, including problems that may include a law-related element. Acknowledging and supporting this reality holds considerable promise for advancing meaningful access to justice.

Finally, our report discusses the growing body of evidence that indicates that not-for-profit community-based organizations, and non-lawyers in general, are, in the right circumstances, able to provide good quality and effective law-related assistance and are no more prone to deficiencies than lawyers.

This leads to our **fifth finding**: The adoption of a supportive and enabling approach to community justice help (by regulators, governments, and others) is a sound approach based on the evidence. There is not a body of evidence that indicates that doing so would put the public at risk of harm. We will return to this recommendation shortly.

## 8.2 Knowledge gaps

While a key finding is that community justice help programs and activities as surveyed in this report appear to be meeting real needs and there is no evidence that they are ineffective or are causing any harm (indeed, to the contrary), there are some clear knowledge gaps in relation to community justice help.

To begin with, there is a lack of detailed information on the true extent of community justice help programs and activities in Canada and comparative jurisdictions. To some extent this is understandable, because the organizations that are the primary providers of community justice help are myriad, diverse, local, and constantly evolving. And the law-related assistance they give is typically interwoven with other services they provide; these community organizations may not view their assistance as “legal” in nature. It would be challenging to maintain a comprehensive and current picture of the vast “community justice help” landscape.

More significantly, and more amenable to responsive action, is a knowledge gap in relation to the lack of publicly available evaluations of the effectiveness of current programs and activities involving delivery of law-related assistance by not-for-profit community-based organizations. Our review has considered the limited literature available in this area and it supports the usefulness of such research.

Both program evaluations and independent, academic evaluations – qualitative and quantitative – can provide rich evidence that supports learning and improvement in the realm of community justice help. We would emphasize that, to be productive and constructive, not-for-profit organizations providing community justice help need to be heavily involved in, if not lead, these evaluation efforts. They are highly attuned to the needs of their communities and the broader problem of lack of access to justice faced by their communities.

On a related note, we suggest that the quality and effectiveness of community justice help should be evaluated in terms of benchmarks informed by the real-world alternatives offered by providers of legal services (e.g. what lawyers or paralegals actually deliver) and the alternative of no help at all. To put this the other way around, it will not necessarily be useful to evaluate community justice help acontextually and against an idealized standard.

## 8.3 Recommended approach and next steps

The preceding discussion and analysis have identified a range of current programs and activity that involve staff in community-based not-for-profit settings providing a variety of types of law-related assistance. The discussion has also revealed that there are two general approaches that regulators may take with respect to community justice help.

One approach involves legal regulators integrating these community justice helpers into their regulatory frameworks by issuing limited licences that authorize their activities,

subject to various regulatory requirements and oversight mechanisms. In our view, this approach carries multiple problems, and has significant implications for the work carried out by these helpers. The other approach does not attempt to fetter or obstruct community justice help, instead recognizing it as part of the broader justice ecosystem, acknowledging the importance of its community-based integrated services, and actively supporting that role.

We strongly recommend the second approach, for a number of reasons that are outlined in a separate study we have undertaken.<sup>355</sup> To begin with, the reality of how and where people access help with many of their multifaceted problems, and the general lack of accessibility of licensed legal services providers, means that a supportive “gate-opening” approach, rather than a restrictive “gate-keeping” approach, will be more effective in improving people’s access to the various forms of help they may need. Further, given that the not-for-profit community-based sector is already overworked and under-resourced, any significant additional regulatory burden may be counter-productive.

In addition, it should be recognized that, when people are experiencing work-related, housing, income support, and immigration problems, they are experiencing problems that intersect with human rights guarantees, both domestic and international. Indeed, access to justice is an element of the adequate protection of human rights and a human rights-based approach should be adopted in efforts to improve access to justice. In short, restricting community-based supports that people seek to access to address these problems – when other services are generally not accessible – undermines human rights and offends the notion of a human rights-based approach.

Our recommended approach, then, focuses on supporting and enabling the real-world practice of “good quality” community justice help. In keeping with the key finding in this, and other, reports that existing community justice help activity appears to be of good quality, we have articulated, in our separate work,<sup>356</sup> a framework that articulates many of the good practices already in place in community-based settings. The framework centres on three features of good quality community justice help and provides a set of indicative markers for each feature. For present purposes, we will reproduce only our formulation of the three features here:

We propose that community justice help be regarded as “good quality” when the following three features are present:

1. **Community justice helpers have the knowledge, skills and experience they need** to assist people with the legal elements of their problems and to navigate relevant legal processes.
2. **Community justice helpers work within a not-for-profit organization and an ethical infrastructure** that protects the dignity, privacy and consumer welfare of

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<sup>355</sup> Mathews & Wiseman, *supra* note 70.

<sup>356</sup> *Ibid.*

the people they are assisting.

3. **Community justice helpers provide support that responds to their clients' needs in a holistic way**, based on an understanding of the multidimensional nature of their needs, the social context of their lives, and the availability of other appropriate services in the community. In a nutshell, community workers know their clients and know their communities inside out.<sup>357</sup>

In turn, we propose that next steps on community justice help be informed by the “supporting and enabling” approach we recommend.

With respect to the range of possible next steps for the Department of Justice, we suggest the following possibilities:

1. Investigate the potential for supporting and enabling community justice help to improve access to justice in areas of federal jurisdiction and in areas covered by intergovernmental program partnerships and related funding frameworks.
2. Identify and rectify current barriers to or restrictions on community justice help in areas of federal jurisdiction, in particular, in the area of assistance related to immigration and refugee law provided by not-for-profit organizations.
3. Fund and otherwise facilitate research to better understand the current extent of community justice help and to constructively and contextually assess its quality and potential areas of improvement.
4. Fund and otherwise facilitate research to better understand how community justice helping organizations internally and collectively support the quality of their work.
5. Fund and otherwise facilitate sector-specific or organization-specific projects, pilot, or other initiatives, aimed at elaborating, establishing, maintaining, evaluating, or improving the quality of community justice help.
6. Fund and otherwise facilitate research that explores with particular focus and depth the actions taken and help sought by people living on low incomes or experiencing other social disadvantages to address their multifaceted life problems that may include law-related elements, as well as the efficacy of the actions and challenges associated with them.

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<sup>357</sup> *Ibid.* at 22.

7. Foster domestic and international inter-jurisdictional information and knowledge exchange on community justice help activity and best practices.

# Appendix: Canadian Regulatory Frameworks: Jurisdiction by Jurisdiction

## A. Ontario

Ontario recognizes and licenses two types of legal professionals: lawyers and paralegals. Given the status of paralegals, Ontario's approach is not as lawyer-centric as most other Canadian jurisdictions,<sup>1</sup> yet it is still lawyer-oriented in the sense that lawyers retain a significant area of generally restricted practice from which even paralegals are excluded. As in all other Canadian jurisdictions, Ontario's regulatory framework provides exemptions from the restrictions for various people who are neither lawyers nor paralegals.

In relation to lawyers and paralegals, the Ontario approach employs a distinction between the practice of law (which is restricted to lawyers) and the provision of legal services (which is selectively allowed for paralegals). What activities constitute the "practice of law" are not expressly defined in the *Law Society Act* or the by-laws of the Law Society of Ontario (LSO) – reference is simply made to practising law as a "barrister and solicitor",<sup>2</sup> which results in a circular definition that rests on an implicit understanding of the activities that lawyers typically and traditionally engage in.

In contrast, the provision of legal services is expressly defined as engaging in conduct "that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person".<sup>3</sup> By way of further guidance, doing any of the following is expressly deemed to be providing legal services: giving a person advice with respect to their legal interests, rights or responsibilities (or those of another person); selecting, drafting, completing or revising, on behalf of a person, a document that affects their legal interests, rights or responsibilities, and any document for use in an adjudicative proceeding; representing a person before an adjudicative body; and, negotiating the legal interests, rights or responsibilities of a person.<sup>4</sup> As such, and as compared to comparable lists in other Canadian jurisdictions, the definition of activities is stated at quite a general level, but is capable of capturing a very broad range of more specific activities – which are thereby deemed to involve the provision of legal services. Although what constitutes the "practice of law" is left undefined, it presumably encompasses at least all of that range. It should be noted though that it is generally accepted, in Ontario and across Canada, that the provision of only legal information does not constitute an activity falling into the categories of the practice of law or the provision of legal services.

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<sup>1</sup> At present, only Quebec takes a similar approach to Ontario in that, in addition to lawyers (advocates), Quebec also licenses "notaries" who have a much more substantial breadth and depth of permitted legal practice than do their namesakes in Ontario and other Canadian jurisdictions. As is explained further in section J of this Appendix, Quebec notaries are more akin to Ontario paralegals.

<sup>2</sup> *Law Society Act*, RSO 1990, c L 8, s 1(1) [*Law Society Act* (Ontario)].

<sup>3</sup> *Ibid.*, s 1(5).

<sup>4</sup> *Ibid.*, s 1(6). Further, ss. (7) provides more detail on what activities are included in "representing a person in a proceeding".

While the provision of legal services is the reference point for the authorized activities of paralegals, they are only entitled to undertake a selected range of the activities that would involve provision of legal services. Specifically, in defining the conditions of the only type of paralegal licence (Class P1), the LSO has imposed three inter-related restrictions (based on the scope of practice of independent paralegals prior to the introduction of licensing). First, paralegals are only authorized to provide advice, document preparation and negotiation activities that relate to adjudicative proceedings<sup>5</sup> – thus, excluding the provision of those types of legal services when they relate to what has been called “transactional” law (e.g. preparation of contractual documents relating to commerce or employment, preparation of personal or corporate business documents, and preparation of wills). Second, paralegal licensees are only authorized to represent people before a limited number of specified adjudicative bodies.<sup>6</sup> Third, that limited number of specific adjudicative bodies is the reference point for limiting the range of adjudicative proceedings in relation to which they can provide their legal services.

The foundation of the Ontario regulatory framework is thus that only licensed legal professionals (lawyers and paralegals) can practise law or provide legal services. However, the regulatory framework also includes a range of explicit exceptions that allow various types of “non-licensees” to engage in activities that would otherwise be treated as unauthorized practice of law or unauthorized provision of legal services. The exceptions are set out in four bundles, as follows, with somewhat different ambits.

1. The first bundle is specified in the *Law Society Act* and deems various people not to be practising law or providing legal services: a person acting on their own behalf; a person acting in the normal course of carrying on a statutorily regulated non-legal profession or occupation; an employee or officer of a corporation performing “in-house” activities; an employee or volunteer representative of a trade union acting for the union or a union member in relation to a labour matter.<sup>7</sup>
2. The second bundle is specified in the Law Society By-Laws and also deems various people not to be practising law or providing legal services: a person acting as a court worker as part of the Aboriginal Courtwork Program; a person acting in the normal course of carrying on a non-legal profession or occupation, regardless of whether statutorily regulated, but excluding representation in adjudicative proceedings, except in relation to a committee of adjustment proceeding.<sup>8</sup>
3. The third bundle is also specified in the Law Society By-Laws and authorizes various people to provide only the legal services that can be provided under a paralegal (P1) licence: an employee providing “in-house” services; an employee of a Legal Aid Ontario funded legal clinic; an employee of a government-funded not-for-profit legal services organization; a friend, neighbour or relative (whose

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<sup>5</sup> Law Society of Ontario, By-Law 4, *Licensing* (1 May 2007), s 6(2) [Law Society of Ontario, By-Law 4].

<sup>6</sup> As set out in s. 6(2)2: Small Claims Court, Ontario Court of Justice (provincial offences proceedings), summary conviction court (Criminal Code proceedings), provincial and federal tribunals, and claims dealt with by other persons.

<sup>7</sup> *Law Society Act* (Ontario), *supra* note 2, s 1(8).

<sup>8</sup> Law Society of Ontario, By-Law 4, *supra* note 5, s 28.

profession or occupation is non-legal), acting on a no-fee basis and, for friends and neighbours, only up to three times per year; an MPP or their designated staff; a certified human resources professional; a public servant employed in the Office of the Worker Adviser or Office of the Employer Adviser or a volunteer with an injured workers' group, with scope limited (for all) to workplace safety and insurance; a trade union representative or designate, for workplace issues or disputes only; a student-at-law, under supervision.<sup>9</sup>

4. The fourth bundle is specified under the LSO By-Laws as well and authorizes the performance of tasks and functions by a Canadian or Ontario law student, an Ontario paralegal student, or other people who are employees of licensees, when connected to the practice of law or the provision of legal services of a licensee who employs or directly supervises the person in the following particular contexts: a licensee's professional business; a licensee firm; the Governments of Canada or Ontario; a municipal government; a First Nation, Métis or Inuit government; a Legal Aid Ontario funded legal clinic; Legal Aid Ontario; a Pro Bono Students Canada program; an in-house legal department; a student legal aid services society; and, a clinical education course or program.<sup>10</sup>

In anticipation of contrasting the Ontario approach with the approaches in some other provinces, it should be noted that Ontario does not provide any exemption for no-fee activity by non-lawyers and non-paralegals.

An avenue for community justice help, to the extent it can be characterized as involving the provision of legal services, exists in the exemptions for people who are acting in the normal course of activity of a non-legal profession, or occupation, and this is considered in Section 4 of this report. There is also a specific legal assistance service for Francophone women in Ontario operated in collaboration with the umbrella organization *Action ontarienne contre la violence faite aux femmes*. Non-lawyers are integrated into this service as "legal support workers" and program activity of this type is considered in Section 6. In addition, as discussed in Section 4, the Ontario courts have confirmed their power to allow McKenzie Friends, at least in family law matters.

In recent years, the LSO has also introduced various adjustments to the regulatory framework in an effort to increase the ability of licensees to contribute to access to justice. These adjustments have been briefly reviewed in Section 4 of this report and so will be only briefly repeated here. The introduction of paralegal licensing was partly justified on the basis that their regularization would contribute to access to justice. The other main adjustments have been, first, an authorization for limited retainers, otherwise known as "unbundling" of legal services, which was introduced in an effort to enable clients to engage lawyers for only certain aspects of a legal matter, thus reducing overall costs for

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<sup>9</sup> *Ibid.*, s 30 and s 31.

<sup>10</sup> Law Society of Ontario, By-Law 7.1, *Operational Obligations and Responsibilities* (25 October 2007). Only Ontario law students, not law students in the rest of Canada, and Ontario paralegal students, have authorization in the context of student legal aid services societies and clinical education courses or programs [Law Society of Ontario, By-Law 7.1].



clients who were capable of handling the other aspects of their matter.<sup>11</sup> The Ontario family bar recently launched a program to support the provision of unbundled service, offering training to family law lawyers relating to this type of service provision, and making dedicated efforts to spread the word about the availability of these services to the broader public.<sup>12</sup> Second, the LSO has introduced a modified conflict standard for lawyers offering pro bono services in specified pro bono contexts.<sup>13</sup> Third, the LSO has incrementally expanded the allowances for law and paralegal students to perform tasks associated with the practice of law and the provision of legal services.<sup>14</sup> Fourth, as an initial, limited and targeted form of Alternative Business Structure (ABS) for the delivery of legal services, the LSO has implemented a regime to enable not-for-profit civil society organizations (CSOs) to employ licensees to provide legal services directly to the clients whom those CSOs typically serve.<sup>15</sup> Finally, following the Bonkalo Review,<sup>16</sup> a potentially significant regulatory change is currently under consideration – an expansion to include specified tasks in family law matters in the scope of authorized activities permitted to be undertaken by paralegals.<sup>17</sup>

## B. Alberta

Alberta appears to follow the traditional lawyer-exclusivity approach, but with the important real-world difference that it has a significant number of practising independent paralegals – that is, non-lawyers providing legal services, for a fee, who are not employed by, in business with, or supervised by lawyers, nor regulated by the Law Society of Alberta, or any other body. The basis upon which this independent paralegal sector operates, and the scope of its operations, is not entirely clear. To a certain extent, it appears to be based upon a collection of express statutory authorizations for people to be represented by an “agent” (who is typically a non-lawyer) in relation to certain types of proceedings within provincial jurisdiction. But the scope of services offered by at least some segments of the independent paralegals sector in Alberta appears to go beyond those express authorizations of agency. Yet this scope is well known to and, indeed, encouraged by, the Law Society of Alberta, at least in relation to matters that are low in

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<sup>11</sup> The LSO “authorized” unbundling in 2011 by amending the *Rules of Professional Conduct* to specifically address “limited scope retainers”: Law Society of Ontario, *Rules of Professional Conduct*, rule 3.2-1A, online: *Law Society of Ontario* <[www.lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/complete-rules-of-professional-conduct](http://www.lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/complete-rules-of-professional-conduct)> [Law Society of Ontario, *Rules of Professional Conduct*].

<sup>12</sup> “Ontario’s Family Law Limited Scope Services Project” (accessed 18 January 2021), online: *Ontario’s Family Law Limited Scope Services Project* <[www.familylawlss.ca/](http://www.familylawlss.ca/)>.

<sup>13</sup> Law Society of Ontario, *Rules of Professional Conduct*, *supra* note 11, rule 3.4-16.2. For purposes of the modified standard, a “pro bono lawyer” means “(i) a volunteer lawyer who provides short-term pro bono services to clients under the auspices of a Pro Bono Ontario program.”

<sup>14</sup> For the current framework, see Law Society of Ontario, By-Law 7.1, *supra* note 10 s 2.1.

<sup>15</sup> Law Society of Ontario, By-Law 7, *Business Entities* (1 May 2007), Part IV.

<sup>16</sup> Hon. Annemarie E. Bonkalo, *Family Legal Services Review Report* (Toronto: Ministry of the Attorney General, 2016), online: <[www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family\\_legal\\_services\\_review/](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/)>.

<sup>17</sup> In June 2020, the LSO released a Call for Comment on a proposal to introduce a Family Legal Services Provider Licence.

complexity and risk.<sup>18</sup> This suggests an apparent regulatory understanding that non-lawyers are not prohibited from providing legal services for matters that are low in complexity and risk. In turn, this regulatory understanding appears to be based on an idea that “practising law” (which only lawyers may do) can be distinguished from merely “providing legal services” (which non-lawyers may do) at the point where the provision of legal services begins to involve a level of complexity and risk that should only be handled by a lawyer who is appropriately trained and experienced – in legal analysis, drafting, and representation – and who is subject to ethical rules and has liability insurance.

The starting point under the *Legal Profession Act* (LPA) is that only active members of the Law Society of Alberta may practise as a barrister or solicitor, act as a barrister or solicitor in any court, act on behalf of a person to “commence, carry on or defend” any court action, or settle a tort claim (or negotiate the settlement of a tort claim).<sup>19</sup> These restrictions are set out in a provision headed “Practice of Law”, yet no part of the provision, or the LPA, provides a definition of “practice of law”. Nor does the LPA at any point use the term “lawyer”.

Under another provision of the LPA, headed “Misrepresentation of Professional Status”, no person other than an active member of the Law Society may hold themselves out to be an active member or to be “a person lawfully entitled to practise law or to carry on the practice or profession of a barrister or solicitor”.<sup>20</sup>

The legislative framework in Alberta thus establishes a foundational monopoly over the practice of law – which appears to be equated to practising as a barrister or solicitor. At the same time, the LPA provides a number of exceptions that include some “non-lawyers”. Subject to some conditions, exceptions exist for: students-at-law, university law students, licensed legal professionals from other Canadian jurisdictions and from foreign jurisdictions, notaries, officers or employees of corporations, partnerships or unincorporated bodies preparing in-house documents, self-representing people, public officers, licensed insurance adjusters, and persons authorized by statute to appear as agents before a justice of the peace, the Provincial Court, or a provincial judge.<sup>21</sup>

Our review of Alberta’s rules indicates that there does not appear to be any exceptions that authorize the provision of law-related assistance in the nature of community justice help (to the extent that it can be characterized as the provision of legal services). But a relatively recent regulatory initiative may offer a step in that direction. In mid-2019, amendments to regulatory rules allowed the Law Society of Alberta to establish a

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<sup>18</sup> Law Society of Alberta, “Alternative Delivery of Legal Services Final Report” (February 2012) at 16 and 25, online: *Canadian Bar Association* <[www.cba.org/CBA/cle/PDF/JUST13\\_Paper\\_Billington.pdf](http://www.cba.org/CBA/cle/PDF/JUST13_Paper_Billington.pdf)>.

<sup>19</sup> *Legal Profession Act*, RSA 2000, s 106(1).

<sup>20</sup> *Ibid.*, s 107(1).

<sup>21</sup> *Ibid.*, s 106(2).

program for registration of Approved Legal Services Providers (ALSP).<sup>22</sup> By virtue of this initiative, as set out in the official guide to it,<sup>23</sup> the Law Society seeks to recognize:

... the key role of pro bono organizations in the delivery of legal services to the public in Alberta ...[and] ... to address the increasing demand for accessible legal services for underserved individuals and organizations across Alberta by encouraging pro bono initiatives in Alberta.<sup>24</sup>

The basic criteria for eligibility for approval to operate under the ALSP program are as follows:

In order to operate, an Approved Legal Services provider must be an entity, organization or program, excluding for-profit endeavours, delivering or facilitating the delivery of pro bono legal services to the public in Alberta. Pro bono legal services are services delivered for the public good. The public good is achieved in a variety of ways, including making legal services accessible to those who might otherwise not have access to such services.<sup>25</sup>

In terms of potentially enabling community justice help, the crucial thing to note about this program is that it does not restrict ALSPs to only using lawyers to provide pro bono legal services. While it does appear that there needs to be a designated “responsible lawyer” within the organization, other non-lawyer employees and volunteers of the organization are permitted to participate in the delivery of pro bono legal services. Depending upon the internal structure of an ALSP, the day-to-day activity of providing pro bono legal services may involve greater or lesser degrees of community justice help in the form of community workers providing frontline assistance with law-related problems. Having said that, it appears that most of the organizations that have been registered as ALSPs to date use lawyer-centric service delivery models.<sup>26</sup> Ultimately then, the Alberta scheme may end up operating very similarly to the allowance for CSO-ABS in Ontario.

## C. British Columbia

British Columbia uses a modified lawyer-centric approach that includes a for-fee service focus and therefore a no-fee service exemption. British Columbia generally prohibits any person other than a practising lawyer from engaging in the practice of law, but also exempts various people from that prohibition, including an exemption for non-lawyers to

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<sup>22</sup> Law Society of Alberta, *The Rules of the Law Society of Alberta* (December 3, 2020), Part 1, s 2 (1.1) and (1.2), online (pdf): *Law Society of Alberta* <[www.documents.lawsociety.ab.ca/wp-content/uploads/2017/01/04144612/Rules.pdf](http://www.documents.lawsociety.ab.ca/wp-content/uploads/2017/01/04144612/Rules.pdf)>.

<sup>23</sup> Law Society of Alberta, “Approved Legal Services Provider – Application Guide” (accessed 20 January 2021), online: *Law Society of Alberta* <[www.documents.lawsociety.ab.ca/wp-content/uploads/2019/06/ALSP-Application-Guide.pdf](http://www.documents.lawsociety.ab.ca/wp-content/uploads/2019/06/ALSP-Application-Guide.pdf)>.

<sup>24</sup> *Ibid.* at 1, para 1.

<sup>25</sup> *Ibid.* at 2, para 7.

<sup>26</sup> See Law Society of Alberta, “Approved Legal Service Providers for the Public” (20 January 2021), online: *Law Society of Alberta* <[www.lawsociety.ab.ca/resource-centre/public-resources/approved-legal-services-providers-for-the-public/](http://www.lawsociety.ab.ca/resource-centre/public-resources/approved-legal-services-providers-for-the-public/)>.

engage in “practice of law” activities when they do so “not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed”.<sup>27</sup> The “practice of law” is expressly defined by reference to a list of activities that, in effect, appears to be as broad as the all-encompassing list that defines “provision of legal services” in Ontario.

The exempted people, other than non-lawyers acting on a no-fee basis, are: a person acting on their own behalf; a person authorized under the *Court Agent Act*;<sup>28</sup> an articulated student; an individual or articulated student employed by the Legal Services Society and supervised by a lawyer; lawyers from other Canadian jurisdictions or foreign lawyers holding an applicable permit; and, if permitted, non-practising lawyers.<sup>29</sup> In addition, the *Legal Profession Act* also exempts public officers, notaries, and insurance adjusters.<sup>30</sup> Agreements under prepaid legal services plans and other liability insurance programs are also protected.<sup>31</sup> In relation to the general issue of access to justice, it should be noted that notaries in British Columbia have a broader scope of lawful practice than in other Canadian jurisdictions.<sup>32</sup>

The permission for non-lawyers acting on a no-fee basis might have formed part of the basis for the establishment of the BC Advocates Program that has seen the placement of trained advocates providing law-related assistance in community organizations across the province; the advocates are supervised by lawyers on contract.

The Law Society of British Columbia (LSBC) recognizes and allows delivery of legal services by lawyer-supervised paralegals, who are referred to as “designated paralegals”. The scope of activities that these supervised paralegals are permitted to engage in is wider in BC than in other Canadian jurisdictions.<sup>33</sup> More recently, the LSBC explored the possibility of whether supervised paralegals ought to be permitted to appear in court by staging a pilot project in family law matters in selected registries of the provincial and superior courts. While such appearances are allowed with approval of the presiding judge, the uniform policy in the courts has been to refuse permission. The aim of the pilot

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<sup>27</sup> *Legal Profession Act*, RSBS 2007, s 1(1) definition of “practice of law”, ss (h) [*Legal Profession Act* (BC)].

<sup>28</sup> This allowance is extremely narrow – it only allows a non-lawyer representative when there are no lawyers practising in the geographic vicinity.

<sup>29</sup> *Legal Profession Act* (BC)], *supra* note 27, s 15(1).

<sup>30</sup> *Ibid.*, s 1(1) definition of “practice of law”, ss (i), (j), (k).

<sup>31</sup> *Ibid.*, definition of “practice of law”, ss (l).

<sup>32</sup> The Society of Notaries Public of British Columbia, “The Society of Notaries Public of British Columbia” (accessed 20 January 2021), online: *The Society of Notaries Public of British Columbia* <[www.snpbc.ca/](http://www.snpbc.ca/)>; *Notaries Act*, RSBC 1996, c 334, ss 28, 55; Lisa Trabucco, “Lawyers’ Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada” (2018) 96 *The Canadian Bar Review*, 460 at 478, stating: “British Columbia’s notaries are self-regulating and provide non-contentious legal services relating to the purchase and sale of a business, contracts, health care declarations, insurance loss declarations, notarization of documents, real estate transfers, wills preparation, and powers of attorney.” [Trabucco].

<sup>33</sup> Designated paralegals are permitted by the LSBC to provide legal advice, appear at tribunals and participate in family law mediations, see The Law Society of British Columbia, *Code of Professional Conduct for British Columbia (the BC Code)*, Law Society of BC, 2013, ch 6 and Law Society of British Columbia, *Law Society Rules 2015* (updated December 2020), Rule 2-13., online: *Law Society of British Columbia* <[www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules/](http://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules/)>.

project was to assess whether that policy should be eased, but the pilot was discontinued when it became clear that too few supervised paralegals were seeking to participate.

The LSBC has also given some attention to the issue of whether to allow and license independent paralegals to provide legal services. With the encouragement of the LSBC, the BC legislature enacted legislation to permit licensing of independent paralegals. However, the membership of the LSBC passed a resolution to block implementation. Currently, according to the LSBC, the issue is being examined by the Licensed Paralegal Task Force, which is due to report soon.<sup>34</sup>

Very recently, the LSBS has announced a new “Innovation Sandbox” initiative that may enable exploration of community justice help services. In the words of the LSBC, the innovation sandbox “will provide a structured environment that permits individuals and organizations which are neither lawyers nor law firms to provide effective legal advice and assistance to address the public’s unmet legal needs”.<sup>35</sup>

## D. Manitoba

Manitoba also uses a for-fee service-focused approach that generally restricts the practice of law to lawyers, but exempts various people from that restriction and also “negatively permits” non-lawyers to engage in a set of activities that fall within the “practice of law”, so long as they do not do so “directly or indirectly, for or in the expectation of a fee or reward”.<sup>36</sup> This is a “negative permission” in the sense that specified legal activities are only deemed to fall within the category of the “the practice of law”, which is generally reserved for lawyers, where the activities are undertaken for or in expectation of a fee or reward.

The exempted people are: public officers; notaries; district registrars and deputy registrars;<sup>37</sup> a person acting on their own behalf or representing themselves; and, officers or employees of incorporated or unincorporated organizations preparing “in-house” documents.<sup>38</sup> In addition, *The Legal Aid Manitoba Act* empowers organizations to employ non-lawyers to provide legal services, provided they do so under a solicitor’s supervision.<sup>39</sup>

The set of activities is broad and covers: providing legal advice; drawing, revising or settling various types of documents, including for use in any judicial or extra-judicial proceeding or relating to proceedings under any statute of Canada or Manitoba; settling or negotiating the settlement of a tort claim; and agreeing to provide a lawyer’s services to anyone except in certain contexts (such as a prepaid legal services plan). This set of

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<sup>34</sup> See information online: Law Society of British Columbia, “Licensed Paralegals” (accessed 20 January 2021), online: *Law Society of British Columbia* <[www.lawsociety.bc.ca/our-initiatives/legal-aid-and-access-to-justice/licensed-paralegals/](http://www.lawsociety.bc.ca/our-initiatives/legal-aid-and-access-to-justice/licensed-paralegals/)>.

<sup>35</sup> Law Society of British Columbia, “Innovation Sandbox” (accessed 20 January 2021), online: *Law Society of British Columbia* <[www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/](http://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/)>.

<sup>36</sup> *Legal Profession Act*, CCSM c L107, s 20(3) [*Legal Profession Act* (Manitoba)].

<sup>37</sup> In relation to the *Real Property Act* only.

<sup>38</sup> *Legal Profession Act* (Manitoba), *supra* note 36, s 20(4).

<sup>39</sup> *The Legal Aid Manitoba Act*, CCSM c L105, s 15(1).

activities appears ultimately to be as all-encompassing as the set of activities comprising the scope of “legal services” as defined in Ontario.

The “negative permission” therefore permits a wide range of legal activities falling within the “practice of law” to be undertaken for no fee by non-lawyers, but it does not appear to extend to appearing as a representative in court or otherwise acting for another person in relation to court actions. This is because these activities are prohibited to any person (other than a lawyer) separately from the restriction on the practice of law, and so these separate prohibitions do not appear to be overridden by the permission for no-fee practice of law activities.<sup>40</sup> At the same time, assisting someone appearing on their own behalf for no fee is permissible (as opposed to appearing on their behalf for no fee), but subject to judicial scrutiny.<sup>41</sup>

Aside from these non-lawyer activities, some other lawyer-centric initiatives to improve access to justice have also been undertaken in recent years. One is the Family Law Access Centre, an initiative of the Law Society of Manitoba, which aims to provide lawyers to people with family law issues whose income is above the Legal Aid Manitoba financial eligibility cut-offs.<sup>42</sup> The people who are assisted have to agree to pay the cost of the legal assistance, but this is charged at reduced rates by lawyers who have agreed to participate in the program. The service quickly hit maximum capacity, had to institute a waiting list, and has not been accepting new applications. It has been reported<sup>43</sup> that the Law Society would like it to become a permanent program, but offered by an entity other than itself, since its principal mandate is regulation, not service provision.

The Law Society of Manitoba recently explored the issue of whether to advance access to justice by “giving up the profession’s monopoly over the delivery of legal services”.<sup>44</sup> This exploration was undertaken by a President’s Special Committee on Alternative Legal Service Providers. In its *Report and Recommendations Memorandum*, the Committee was willing to acknowledge that “despite the statutory prohibition against the unauthorized practice of law, the reality is that many legal services are being provided to the public through service providers other than lawyers”.<sup>45</sup> The Committee went on to observe that,

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<sup>40</sup> *Legal Profession Act* (Manitoba), *supra* note 36, s 20(3). In *R v Stagg*, 2011 MBQB 294, the Manitoba Court of Queen’s Bench recognized that, in accordance with the Criminal Code of Canada, paid non-lawyer agents are permitted to represent people in summary conviction matters in the Provincial Court, but it has held that that it does not have inherent jurisdiction to circumvent the general prohibition in the *Legal Profession Act* on non-lawyers acting as paid representatives.

<sup>41</sup> In *Moss v NN Life Insurance Co*, 2004 MBCA 10 (CanLII), the Manitoba Court of Appeal held that an unpaid non-lawyer may provide assistance to a person acting on their own behalf in legal matters, including during court proceedings, without violating the separate prohibitions. This holding relies upon a distinction between assisting someone who is acting on their own behalf and appearing on behalf of someone or otherwise acting on their behalf in relation to court proceedings.

<sup>42</sup> Allison Fenske and Beverly Froese, Public Interest Law Centre, *Justice Starts Here: A One-Stop Shop Approach for Achieving Greater Justice in Manitoba* (Winnipeg: Canadian Centre for Policy Alternatives Manitoba, 2017) at 43-44, online: *Canadian Centre for Policy Alternatives* <[www.policyalternatives.ca/publications/reports/justice-starts-here](http://www.policyalternatives.ca/publications/reports/justice-starts-here)> [Fenske & Froese].

<sup>43</sup> *Ibid.*

<sup>44</sup> President’s Special Committee on Alternative Legal Service Providers, *Report and Recommendations Memorandum* (11 April 2018) (Law Society of Manitoba) (on file with authors) at 1.

<sup>45</sup> *Ibid.* at 7.

although such activity was “technically”<sup>46</sup> in breach of prohibitions on unauthorized practice, the Law Society had not sought to stop this activity because “in most cases, service providers: provide an important service (that lawyers don’t seem to provide); are competent at what they do; and, do not harm members of the public”.<sup>47</sup> Ultimately, the Committee recommended a set of legislative amendments that would enable the Law Society to authorize a variety of access-to-justice-oriented legal services arrangements, as follows: further exceptions from the restrictions on the practice of law for categories of legal services providers who practise on an unregulated basis, including those already doing so; provision of prescribed legal services in family law or other areas by non-lawyers acting under the supervision of lawyers or acting independently under a new power to issue a limited licence for such provision; and delivery of legal services through mechanisms akin to the CSO-ABS approach in Ontario. Legislation taking up the recommendation on empowering limited licensing has recently been passed but is not yet in force.<sup>48</sup> As far as we are aware, no legislative action has been taken in relation to the other recommendations.

A recent report published by the Manitoba Office of the Canadian Centre for Policy Alternatives on improving access to justice in Manitoba was one of the sources of information relied upon by the Committee. The report identifies a variety of community-based organizations who appear to use non-lawyer staff or volunteers to provide varying types and degrees of legal assistance on a no-fee basis.<sup>49</sup>

## E. Saskatchewan

Saskatchewan has very recently amended key components of its *Legal Profession Act*, in response to the recommendations of a Task Team established by the Law Society of Saskatchewan. The overall approach in Saskatchewan remains lawyer-centric, but there is now power to grant “limited licenses” to non-lawyers that authorize them to engage in activities that fall within the practice of law. In addition, the recent amendments, when fully in force, will offer greater clarity on what constitutes the restricted practice of law. As with all other Canadian jurisdictions, Saskatchewan provides exemptions for some non-lawyers. At the same time, the recent amendments have revoked provisions that appeared to allow some scope for no-fee activities by non-lawyers.<sup>50</sup>

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

<sup>47</sup> *Ibid.*

<sup>48</sup> This is Bill 28, *The Legal Profession Amendment Act*, 2nd Sess, 42nd Legislature, 2019-2020, online: <http://web2.gov.mb.ca/bills/42-2/b028e.php>.

<sup>49</sup> Fenske & Froese, *supra* note 42.

<sup>50</sup> This apparent allowance was a product of the wording of the pre-amendment s. 30 of the *Legal Profession Act*, which defined the “Authority to practise law”. The pre-amendment wording stated that no person other than a certified member of the Law Society could “practise at the bar of any court ... in Saskatchewan”, “sue out any writ or process”, “commence, carry on or defend any action or proceeding in any court” or, and this is the apparent allowance, “advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law of Saskatchewan or any jurisdiction outside Saskatchewan”. Further, the section prohibited anyone who purported to represent another person in court proceedings from recovering any fee, reward or disbursement and deemed them to be guilty of contempt of court. The upshot of this appeared

Saskatchewan has long imposed a restriction on the practice of law that generally prohibits any person who is not a member of the Law Society of Saskatchewan from doing so.<sup>51</sup> It is only with the recent amendments that Saskatchewan has defined the practice of law and in doing so has used wording that is similar to the wording used for the definition of the provision of legal services in Ontario.<sup>52</sup> Interestingly, Saskatchewan also chose, in keeping with a recommendation of the Task Team, to explicitly exempt from the ambit of the practice of law the provision of legal information to members of the public.<sup>53</sup> Saskatchewan also exempts a variety of people from the restrictions on the practice of law, with some exemptions authorized by the *Legal Profession Act* and others by the *Law Society Rules*. Under the Act, the exemptions cover: a person acting on their own behalf; an articulated student-at-law; a police officer appearing for the Crown; an employee of the Saskatchewan or Canadian governments prosecuting summary conviction cases under federal statutes; a sheriff; and any other person authorized in the *Law Society Rules*. Under the Rules, as recently amended, the following further exemptions are provided: a mediator or conciliator; a participant in collective bargaining negotiations or dispute resolution; statutorily authorized adjudicators; legislative lobbyists; a public officer (acting within scope); government-employed lay representatives for administrative agencies and tribunals; notaries; persons delivering Indigenous Court Worker services; persons authorized to practise law under provincial or federal statutes; “in-house” providers; law students; and persons approved by an administrative tribunal to provide representation in administrative adjudicative proceedings.<sup>54</sup>

A further exemption, sought by the Law Society on the recommendation of its Task Team, has been enacted but is not yet in force.<sup>55</sup> The exemption would apply to people who have been specially licensed by the Law Society to engage in particular limited activities that fall within the practice of law, despite not being lawyers. This exemption is built upon other new provisions that empower the Law Society to issue limited licenses and authorize limited licensees. The Task Team recommended this approach as a means of enabling so-called alternative legal services providers on a case-by-case basis, rather than creating a new general category of legal professional, as was done in Ontario with paralegals. This power of limited licensing could potentially be used to authorize the provision of community justice help, although we would argue that there may be drawbacks to imposing an additional licensing regime, set and monitored by lawyers, on providers of community justice help.

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to be that a non-lawyer was negatively permitted to undertake activities on a no-fee basis in the practice of law, other than relating to court proceedings.

<sup>51</sup> *The Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 30.

<sup>52</sup> *Ibid.*, s 29.1.

<sup>53</sup> *Ibid.*, s 30(3).

<sup>54</sup> Law Society of Saskatchewan, *Rules*, Regina, LSS, 2020, r 1002.

<sup>55</sup> This will be s 31 (h) of the *Legal Profession Act*, as amended by the *Legal Profession Amendment Act, 2019*, c 7, s 19 (b).



## F. Nova Scotia

The approach in Nova Scotia is similar to the modified lawyer-centric approach with a for-fee service focus taken in Manitoba in the sense that there is a general restriction but also a negative permission for no-fee activity. In Nova Scotia, the practice of law is expressly defined as “the application of legal principles and judgement with regard to the circumstances or objectives of a person that requires the knowledge and skill of a person trained in the law”.<sup>56</sup> This is supplemented with a list of specified conduct, when undertaken on behalf of another in relation to their legal rights or responsibilities, that covers advice and counsel, preparation of documents and agreements, representation before adjudicative bodies, and negotiation.<sup>57</sup> This amounts to a range of activity that appears to be as broad as the range encompassed by the definition of “legal services” in Ontario.<sup>58</sup> The Nova Scotia regime expressly prohibits people other than licensed lawyers (members of the Barristers’ Society, which is the self-regulatory body for lawyers in Nova Scotia), approved foreign jurisdiction lawyers, articled clerks, or law students participating in supervised legal aid or clinical programs, from practising law “for fee, gain, reward or other direct or indirect compensation”.<sup>59</sup> Consequently, the Nova Scotia regime negatively permits any person to engage in practice of law activities on a no-fee basis. While this could enable community justice help (to the extent that it can be characterized as legal services), we have been unable to identify any programs or providers of no-fee legal services in Nova Scotia.

In addition, persons representing themselves are exempted from the general restriction, as are various other types of people and entities in relation to their roles and functions: public officers; relevantly empowered incorporated loan or trust companies; accountants in relation to the accounting affairs of persons employing them; agents representing corporations where statutorily authorized; a law corporation; an insurance agent or adjuster; mediators and arbitrators; trade union employees in relation to arbitration or administrative proceedings; elected representatives (federal, provincial and municipal); Senators; and others as otherwise designated.<sup>60</sup>

Under the *Code of Professional Conduct* of the Nova Scotia Barristers’ Society, lawyers are generally permitted to assign tasks associated with their practice of law to non-lawyer staff and assistants, but only while maintaining direct supervision, and some activities are excluded.<sup>61</sup>

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<sup>56</sup> *Legal Profession Act*, SNS 2004, c 28, as amended by SNS 2010, c 56, s 16(1) [*Legal Profession Act* (Saskatchewan)].

<sup>57</sup> *Ibid.*, s 16(1).

<sup>58</sup> The range in Ontario includes activities in relation to not only legal rights or responsibilities but also legal interest, which may mean it is broader.

<sup>59</sup> *Legal Profession Act* (Saskatchewan), *supra* note 56, s 16(2).

<sup>60</sup> *Ibid.*, s 16(4).

<sup>61</sup> Nova Scotia Barristers’ Society, *Code of Professional Conduct* (Halifax: Nova Scotia Barristers’ Society, 2011), ch 6.1, online: *Nova Scotia Barristers’ Society* <[hnsbs.org/wp-content/uploads/2019/11/CodeofProfessionalConduct.pdf](https://hnsbs.org/wp-content/uploads/2019/11/CodeofProfessionalConduct.pdf)>.

## G. New Brunswick

New Brunswick's approach generally restricts the practice of law to licensed lawyers (members of the Law Society of New Brunswick, as well as licensees from other Canadian jurisdictions), but also permits professional corporations, students-at-law and law students participating in supervised legal aid and clinical programs to do so.<sup>62</sup> In addition, various types of people are exempted: people acting on their own behalf; paid and supervised staff and assistants of lawyers; public officers; trustees in bankruptcy; insurance adjusters; and providers of mediation or arbitration services.<sup>63</sup> Further, a range of activities are expressly not prohibited: drawing or revising a power of attorney or a transfer of stock (without a trust or limitation); witnessing or certifying an instrument or proceeding; and practising an occupation or profession that is authorized or licensed under provincial statute or regulations.<sup>64</sup>

The practice of law is expressly defined as "applying legal principles and procedures for the benefit of or at the request of another person",<sup>65</sup> and this definition is supplemented with an exhaustive list of included activities, one of which could serve as something of a catch-all, that is, "providing legal services".<sup>66</sup>

As such, the regulatory framework in New Brunswick does leave some room for non-lawyers to undertake practice of law activities. That room is provided by the specific exemptions for non-lawyers performing specified roles, but also by the specifically enumerated non-prohibited activities and the non-prohibition of the practices of other regulated occupations and professions. In this last respect, there is a similarity to the exemption in the Ontario scheme that we have argued provides a basis for community justice help in that jurisdiction. We have not been able to identify any literature on activities in the nature of community justice help being undertaken by members of regulated occupations or professions, such as social workers, in New Brunswick.

Following inquiries with the Law Society, it appears that the non-prohibited activities, in particular relating to drafting powers of attorney, are only being undertaken by non-lawyers in the limited and most immediately relevant contexts of personal banking and personal health care management.

## H. Prince Edward Island

The regulatory framework in Prince Edward Island (PEI) is in general terms similar to those in Manitoba and Nova Scotia, in the sense of a general restriction on the practice of law to lawyers but with various exemptions and also a negative permission for no-fee activities (therefore, a for-fee service-focused approach). The PEI framework revolves

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<sup>62</sup> *Law Society Act*, SNB 1996, ch 89, as amended by SNB 2009, ch 25, s 33(1).

<sup>63</sup> *Ibid.*, s 33(2).

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*, s 2.

<sup>66</sup> *Ibid.*

around a restriction on practising as a “barrister, solicitor or attorney”<sup>67</sup> and defines the scope of such practice and professions by reference to a wide-ranging enumerated list of activities, when undertaken “for fee, gain, reward or otherwise, directly or indirectly”.<sup>68</sup> While this could enable community justice help (to the extent that it can be characterized as legal services), we have been unable to identify any programs or providers of no-fee legal services in PEI.

The PEI framework provides exemptions from the general restriction for people occupying various roles: employees who prepare “in-house” documents; employees of labour relations organizations (for appearances before public boards or commissions); any person appearing on behalf of another before a Labour Arbitration Board; before public officers (acting within scope); notaries; and articulated clerks.<sup>69</sup>

## I. Newfoundland and Labrador

Newfoundland and Labrador use the version of the modified lawyer-centric approach that includes a for-fee service focus. The practice of law is generally restricted to lawyer-members of the Law Society of Newfoundland and Labrador or their professional corporations.<sup>70</sup> The restriction expressly does not apply to some others: people acting on their own behalf (except collectors of assigned debts); people appearing as agents where authorized; employees of lawyers; and students, where authorized by the Law Society.<sup>71</sup> In addition, the restriction does not apply to “drawing, preparing, revising or settling” legal documents for oneself or for others “without receiving or expecting to receive a fee, gain, reward or benefit”.<sup>72</sup> While this could enable a dimension of community justice help (to the extent that it can be characterized as legal services), we have been unable to identify any programs or providers of no-fee legal services in Newfoundland and Labrador.

The practice of law is expressly defined by reference to an enumerated list of activities, including what might be regarded as the catch-all of “acting as a barrister or solicitor”.<sup>73</sup> There are exemptions for people in various roles: public officers; real estate agents; insurance adjusters; notaries; and students, where authorized by the Law Society.<sup>74</sup> There

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<sup>67</sup> *Legal Profession Act*, RSPEI 1988, c L-6.1, ss 20, 21.

<sup>68</sup> The specific wording of this phrase, and the framing of the broader clause, is different to the framing and wording used in similar provisions in other jurisdictions, such as Nova Scotia, where the phrase is “... for no fee, gain, reward or other direct or indirect compensation.” In *Ayangma v. Charlottetown (City) et al.*, 2016 PESC 16, the Supreme Court of PEI had held that, phrased as it is in PEI, ‘otherwise’ had to be read to contrast with ‘for fee, gain, reward’ and therefore had to include providing services on a no-fee basis. This had the effect of nullifying the apparent negative permission for no-fee provision and led to holding that a father preparing litigation documents for his son, for free, had violated the prohibition on the unauthorized practice of law. This interpretation was overturned on appeal to the Court of Appeal of PEI (see *Ayangma v. Charlottetown (City) et al.*, 2017 PECA 15).

<sup>69</sup> *Legal Profession Act*, RSPEI 1988, c L-6.1, ss 21 (2) & (4).

<sup>70</sup> *Law Society Act*, SNL 1999 c L-9.1, s 76 [*Law Society Act (Newfoundland)*].

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*, s 76(1)(b).

<sup>73</sup> *Law Society Act (Newfoundland)*, *supra* note 70, s 2(2).

<sup>74</sup> *Ibid.*, s 2(2).

is also protection for arranging for the delivery of legal services under a pre-paid legal services plan.

## J. Quebec

In Quebec, the regulatory framework has an important similarity to the approach in Ontario in that the performance of practice-of-law activities is permitted to both advocates, who are equivalents to licensed lawyers in other Canadian jurisdictions, and notaries, who have a scope of practice that is similar but different to that of paralegals in Ontario (and, therefore, is much broader than the scope of permitted practice of traditional notaries in most other Canadian provinces). In contrast to the approach in Ontario, where paralegals are regulated by the Law Society, Quebec notaries have their own self-regulatory body.

The Barreau du Quebec is responsible for regulating advocates (Quebec-licensed lawyers) and also solicitors (out-of-Quebec licensed lawyers and some others, as authorized).<sup>75</sup> The activities reserved to advocates and solicitors are broadly defined and include “to give advice and consultations on legal matters”.<sup>76</sup> Also, the activity of representing a person before a tribunal, with some exceptions, is generally restricted to advocates only (that is, prohibited to solicitors).<sup>77</sup>

The Chambre des Notaires du Quebec is responsible for regulating notaries.<sup>78</sup> Subject to the permission for advocates and solicitors to engage in practice-of-law activities, no person other than a notary is permitted to perform various activities, including the traditional activity of notarizing documents, as well as a specified list of other activities relating to specific legal documents, but also extending to “give legal advice or opinions”.<sup>79</sup> The website of the Chambre explains the scope of practice of notaries as follows:

Many people think that notaries only draft wills and settle successions or that they only handle the buying and selling of property, but today's notaries practise in areas that go beyond the traditional fields of notarial activities.

As legal advisors, notaries are authorized to provide advice in all areas of law within their expertise, including: family law; real estate law; law of succession; business law; tax law; co-ownership; agricultural law; financial planning; commercial mediation; family mediation; environment issues; arbitration; air law; maritime law; immigration and adoption procedures; and, etc.<sup>80</sup>

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<sup>75</sup> *Act Respecting the Barreau du Quebec*, ch B-1, s 128.

<sup>76</sup> *Ibid.*, s 128(1)(a).

<sup>77</sup> *Ibid.*, s 128(2).

<sup>78</sup> *Notaries Act*, ch N-3.

<sup>79</sup> *Ibid.*, s 15, 16.

<sup>80</sup> Chambre des notaires du Québec, “Role of the Notary” (accessed 20 January 2021), online: *Chambre des notaires du Québec* <[www.cnq.org/en/role-notary.html](http://www.cnq.org/en/role-notary.html)>.

This represents a much broader scope of substantive practice areas than Ontario paralegals. On the other hand, notaries have somewhat more limited permission to represent people in adjudicative proceedings than do Ontario paralegals.

Notaries provide a substantial amount of legal service in Quebec and constitute an important supplement to the level of service available from advocates. As licensed legal services providers though, and with licensing requirements that are more robust and time consuming than for paralegals in Ontario, Quebec notaries are not the type of community-based not-for-profit non-lawyers that are the focus of this research.

There does not appear to be much express scope for community-based not-for-profit non-lawyers to provide legal services within the regulatory regime in Quebec. But that is not to say that improving access to justice has not been a concern in Quebec in recent years. In particular, beginning with a pilot project in 2012, the government of Quebec has incrementally established 10 Community Justice Centres (CJC)<sup>81</sup> throughout the province. The scope of service of CJs is limited to the provision of legal information and referrals. CJC staff include advocates, notaries and law students.

At the level of potential future regulatory reform, it should be noted that the Barreau du Québec produced a report in 2011 on the issue of deregulating the private practice dimension of the legal profession to improve economic efficiency and to foster interdisciplinarity.<sup>82</sup> The report offers a framework of regulatory reform to be implemented by 2021. The proposed reforms would be intended to improve access to legal services, but more for businesses and middle- or higher-income individuals than for people living on low incomes, who are the primary concern of this research.

## K. Yukon

In Yukon the regulatory approach is similar to New Brunswick, with a general lawyer-centric restriction that prohibits any person other than lawyers (or others authorized by the *Legal Profession Act*, such as articling students and lawyers from other Canadian jurisdictions, or the Law Society of Yukon), from delivering legal services,<sup>83</sup> but with an allowance for “the lawful practice of a prescribed regulated profession”.<sup>84</sup> The scope of legal services is explicitly and broadly defined.<sup>85</sup> There are exemptions for other people occupying various roles: public officers; elected representatives; and Indigenous Court Workers.<sup>86</sup> (The regulatory framework empowers the responsible Minister and the Law

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<sup>81</sup> “Centres de justice de proximité” (accessed 20 January 2021), online: *Centres de justice de proximité* <[www.justicedeproximite.qc.ca/en/](http://www.justicedeproximite.qc.ca/en/)>. See also: Centre De Justice De Proximité Grand Montréal, *Pour Une Justice Plus Accessible: Rapport Annuel* (Montreal: Centre De Justice De Proximité Grand Montréal, 2018), online (pdf): *Centre De Justice De Proximité Grand Montréal* <[www.justicedeproximite.qc.ca/wp-content/uploads/2019/06/Rapport\\_annuel\\_CJPGM\\_2019.pdf](http://www.justicedeproximite.qc.ca/wp-content/uploads/2019/06/Rapport_annuel_CJPGM_2019.pdf)>.

<sup>82</sup> Barreau du Québec, “Les Avocats De Pratique Privée En 2021: Rapport Du Comité Sur Les Problématiques Actuelles Reliées À La Pratique Privée Et L'avenir De La Profession” (June 2011), online (pdf): *Banq Numérique* <[numerique.banq.qc.ca/patrimoine/details/52327/2221504](http://numerique.banq.qc.ca/patrimoine/details/52327/2221504)>.

<sup>83</sup> *Legal Profession Act, 2017*, c-12, s 45.

<sup>84</sup> *Ibid.*, s 31(c).

<sup>85</sup> *Ibid.*, s 30(1).

<sup>86</sup> *Ibid.*, s 31(1).

Society to authorize Indigenous Court Workers and to specify the range of legal services they may offer.)<sup>87</sup> Employees of lawyers, a legal professional corporation or an authorized government office may also provide legal services, under supervision.<sup>88</sup> The Rules of Conduct of the Law Society of Yukon empower it to authorize Quebec notaries to provide legal services as Canadian Legal Advisors.<sup>89</sup> Other sections of the Rules authorize licensed legal services providers other than lawyers from other Canadian provinces to provide legal services in the Yukon.

## L. Nunavut

In Nunavut the regulatory framework for the legal profession adopts an approach that blends together a variety of components used in other Canadian jurisdictions. Similar to every other jurisdiction, Nunavut generally prohibits anyone but members of the Law Society of Nunavut from engaging in the practice of law.<sup>90</sup> The practice of law is defined explicitly and broadly.<sup>91</sup> People performing roles of public officers, elected representatives or notaries are deemed not to be practising law. In addition, and similar to British Columbia, the framework deems legal services activity undertaken for no fee, gain or reward not to fall within the practice of law.<sup>92</sup> Other provisions provide that specified other people are exempted from the restriction on practising law, including: people acting on their own behalf in proceedings and in preparing legal documents; insurance adjusters; authorized agents; and students-at-law.<sup>93</sup> In addition, since 2017, the Law Society of Nunavut has been empowered, similar to Manitoba and Saskatchewan, to create limited licenses.<sup>94</sup> We are not aware of any instances of the Law Society's use of this power.

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<sup>87</sup> *Ibid.*, s 32(1).

<sup>88</sup> *Ibid.*, s 40(1).

<sup>89</sup> Law Society of Yukon, *Rules of the Law Society of Yukon*, updated January 2020, ss 72, 73.

<sup>90</sup> *Legal Profession Act* (consolidated to 2014), RSNWT (Nu) 1988, c L-2, s 68.

<sup>91</sup> *Ibid.*, s 1 (Definitions – “practice of law”).

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, s 68(2).

<sup>94</sup> *An Act to Amend the Legal Profession Act*, 2017, c 27, s 4(1) amending s 8(1).

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