

Legal aid brain drain

Lawyers leaving for new human rights centre

By Robert Todd | Publication Date: Monday, 11 August 2008

The creation of Ontario's new Human Rights Legal Support Centre in Toronto may be good news for those facing discrimination, but the lure of dramatically higher salaries for essentially the same work has caused a brain drain of lawyers from legal aid clinics in the area.

"The impact on the community in terms of access to justice has been dramatic," says Judy Welikovitch, executive director of West Toronto Community Legal Services. Her clinic has lost both of its staff lawyers and one support worker to the legal support centre.

"It's got to be affecting other clinics as well, because I know of at least a half-dozen other lawyers from clinics who have left for the Human Rights Legal Support Centre."



'The impact on the community in terms of access to justice has been dramatic,' says Judy Welikovitch, whose legal aid clinic has lost both of its staff lawyers and a support worker to the Human Rights Legal Support Centre.

The centre has hired lawyers from the Advocacy Centre for Tenants Ontario, the Industrial Accident Victims' Group of Ontario, the North Peel & Dufferin legal aid clinic, the Legal Aid Ontario clinic resource office, and the African Canadian Legal Clinic, says Welikovitch. All of those clinics are funded by LAO.

"That's a lot of people to be losing from the clinic system," she says.

"Clinics provide service to the marginalized communities across the province. In order for those communities to have high-quality access to justice, we need good lawyers, we need committed lawyers."

But, she says, "It's gotten to the point now where we're so uncompetitive that even the most committed of lawyers are taking second looks and leaving for other opportunities. We need to even the playing field here."

In his recently released report on the province's legal aid system to the Ministry of the Attorney General, University of Toronto Faculty of Law Prof. Michael Trebilcock focused largely on an immediate increase to the legal aid tariff to \$110 per hour from the current \$73 to \$92 per hour in terms of lawyer remuneration.

But he also made reference to the fact that fewer young lawyers are going into legal aid work, and found that recruitment and retention of legal aid lawyers, duty counsel, and clinic lawyers is due to low salaries.

He noted the “under-compensation of service providers, on the supply-side, cannot be fully realized without a substantial infusion of additional financial resources into a system that has been chronically underfunded for decades.”

The salary comparison is stark between legal aid clinic workers and the new legal support centre.

Association of Community Legal Clinics of Ontario executive director Lenny Abramowicz says the amount paid to clinics from LAO for staff members is based on a funding formula. The formula is based on a lawyer’s year of call to the bar or, for support workers, the number of years’ experience in the legal clinic system, he says.

Boards of directors of individual clinics decide what workers will be paid, but the LAO funding formula effectively operates as a salary grid, as clinics would be “robbing Peter to pay Paul” if they deviated from it, Abramowicz says.

He says LAO’s funding for clinic positions is as follows:

- Clinics receive \$87,000 for executive directors called to the bar in 2007. The upper end of the “grid” is \$123,000 for a 1960 call to the bar.
- \$58,000 for staff lawyers called to the bar in 2007, \$106,000 for those called in 1960.
- \$50,000 for community legal workers in the system since 2007, and \$65,000 for those in the system since 1960.
- \$36,000 for support staff in the system since 2007, and \$44,000 for support staff in the system since 1960.

Abramowicz notes that the upper ranges are basically irrelevant, as the vast majority of workers it recruits are recent graduates.

Kathy Laird, executive director of the HRLSC, gave the following information regarding salary ranges for the centre’s employees:

- Legal counsel are paid \$80,000 to \$110,000.
- Staff lawyers are paid \$72,000 to \$90,000.
- Intake workers, called “legal service representatives,” are paid \$56,000 to \$70,000. She says there is an additional pay level for interns, who are 2008 graduates. They are paid \$44,000 to \$55,000 as intake workers.

Laird says an outside consultant retained by the Ministry of the Attorney General recommended the salary ranges for employees at the support centre.

The employees will be doing “the same work” there versus the clinics, she says.

The legal support centre opened on June 30, and Laird says advertisements for jobs started running in May. She says 40 employees have been hired on a staggered basis over the summer, including 19 lawyers and two paralegals.

About 50 per cent of the lawyers have been hired from legal aid clinics or other organizations funded by LAO, she says. Of four intake staff members, three came from clinics, she says. Most of the workers were hired from the Toronto area, but some have come from outside the area, says Laird, who worked in the clinic system for about 15 years.

It’s not surprising that legal aid clinic workers were successful in the job application process, she says. “They have experience dealing with human rights issues that arise in a number of different legal forums and legal fact situations,” she says. “They have excellent experience in

frontline legal work.”

Laird says she appreciates that the clinics will have to fill the positions lost to the support centre, but says it creates opportunities for more recent grads interested in social justice work, which can be hard to find.

Welikovitch describes the West Toronto clinic as “a small clinic that serves a very large catchment area. It’s a very busy clinic. To say that we’re understaffed in terms of lawyers would be an understatement.”

In addition to Welikovitch, who can’t carry a full caseload due to other responsibilities, the clinic has two staff lawyer positions.

But on July 17, both left to work at the legal support centre, which also hired the clinic’s intake worker, who also worked as a Spanish translator.

For Welikovitch, the reason for the exodus is clear. One of the lawyers left for a salary increase of about 45 per cent and the ministry pension. The other received a 35-per-cent salary increase, along with the pension.

Welikovitch, who has been working in the legal aid system since 1987, says the pension is a big pull. Clinic lawyers must rely on self-directed RRSPs for retirement, and many long-term clinic staff can’t afford to stop working when they would like to.

Welikovitch says the clinic is referring out at least five people each day, including clients the clinic has been retained to represent and who have hearings scheduled between now and the end of September.

“It’s been very stressful not just for the rest of the staff here. It’s been very stressful for the clients who had retained us and now find themselves without representation,” she says, adding that group consists of 22 clients.

Welikovitch says those individuals must deal with the added stress of a possible hearing postponement of up to five months if their new lawyer can’t get up to speed in time.

She has been forced to search for replacements for her lost lawyers in the summer months, when it is difficult to get new people on board. She doesn’t expect to have any new staff until the end of September.

“That’s left the community we serve without the legal service it requires, and we’re having to delay disability hearings, which means that people have to wait longer for their benefits,” she says.

Welikovitch says she normally gets about 125 applications for jobs when she posts available positions, but has so far received only 30 for the current vacancies at her clinic. She’s twice had to extend the deadline, and expects to further push it back.

She says it has become progressively more difficult to recruit staff to her clinic, and believes the only solution is an infusion of government cash. “The fact is that clinic positions are so

non-competitive with every other sector that I'm aware of, that they're not considered attractive jobs to applicants."

Abramowicz says the government has made a policy decision over the past decade to direct new funding to areas other than legal aid clinics. "When it decides to give the Crowns a 40-per-cent increase, as it did to some Crown positions a couple of years ago, that's a policy decision," he says. "Sure it's negotiated and everything else, but at the end of the day they made the decision and didn't do the same on the clinic side."

He says, "The government, unfortunately, over the years has made the decision that legal aid is not a priority. And that, long term, has an impact. It leads to diminution of access to justice, and there's no way around that."

He says, "It's not the fault of the Human Rights Legal Support Centre. That has just become the flashpoint that has ignited the issue."

Welikovitch is part of the steering committee of the Ontario Association of Legal Aid Lawyers, and says the group has scheduled a meeting with Attorney General Chris Bentley in September to discuss "the impact of underfunding" on the clinic system. She says the discussion will involve talks about salaries.