



Memo

To: Community Clinics
From: ACLCO
Date: August 16, 2019
Re: Update on Modernization and the Clinic Campaign

Consultations on the Provincial Government's Legal Aid Modernization Project (Project) have begun. Interestingly, it appears that there will be two separate streams of this Project, one led by Legal Aid Ontario (LAO) and one led by the Ministry of the Attorney General (MAG). Although the details of how this will work are not yet clear, and the sands continue to shift on almost a daily basis, the Attorney General, Doug Downey, has advised the Alliance for Sustainable Legal Aid (ASLA) that the dual streams will be "complementary" and not duplicative, and that clinics will have the ability to provide input into both.

This Project will be critical to clinics because it will include a review of the *Legal Aid Services Act* (LASA). LASA currently contains a recognition of clinics and clinic law services, and includes provisions that ensure that clinics are independent, community-based organizations, with the right to determine the needs of their communities and the appropriate services to meet those needs (including systemic services such as law reform, community development, test cases and public legal education). LASA also contains guarantees regarding the funding of clinics, ensuring that we are core-funded organizations, and that our funding is not easily discontinued. A legislative review that removes these statutory provisions, would mean that in the future, community clinics as we know them would continue to exist only at the whim of governments and/or central bureaucrats.

Our main goal at this stage, which is focusing on the legislative reform, must be to ensure that the Project, and the new legislation that will flow from it, continues to recognize the fundamental components of the community clinic model. This is even more critical given that both government officials, and leaders at LAO, have publicly and privately raised questions about the value of the fundamental building blocks of the clinic model, and questioned the need to have them enshrined in new legislation.

LAO has launched its clinic consultation process, announcing 3 distinct consultation opportunities:

- A clinic “roundtable” hosted by LAO’s board chair, Charles Harnick that occurred on August 14th. Mr. Harnick invited a dozen clinic representatives to meet with him, a few other LAO board members, and senior LAO managers. He also invited the Attorney General to attend this 3.5 hour meeting.
- Two virtual roundtable meetings open to all clinics to participate in, on August 20th and 21st.
- The opportunity to provide LAO with written submissions by September 6, 2019.

Recap of August 14th Meetings

On August 14th Mr. Harnick hosted the clinic roundtable with the AG in attendance. Later that same day, the AG met with the ASLA. Most of the clinic reps attending the clinic roundtable met in advance to prepare for the August 14th meeting. ASLA members also touched base in advance of their meeting. Both groups felt it was important that we come into those meetings with a clear and consistent message, and to stick to that message as much as possible.

Most of the clinic reps at the clinic roundtable were successful in doing this. We focused on ensuring that both Mr. Harnick and the AG heard, in no uncertain terms, that the clinic system is so effective and efficient because of the fundamental characteristics of the clinic model. Specifically:

- Clinic independence from government and from funders;
- Local governance of clinics through community (both geographic and otherwise) boards of directors;
- Determination by the community boards of the needs of these communities, and the appropriate legal services to meet those needs (including systemic services such as law reform and advocacy);
- The provision of core, presumptive funding.

Clinic representatives repeatedly explained to Mr. Harnick, who chaired the meeting, that it is these fundamental characteristics that have made clinics so successful and the “jewel in LAO’s crown”. We did not follow LAO’s questions or background materials, but instead focused on ensuring that everyone in attendance understood how critical clinics are in the provision of legal services to low income Ontarians, and how it is vitally important that the fundamental characteristics of the clinic model continue to be enshrined in statute.

In fact, rather than specifically responding to LAO’s questions, instead the group did a great job in showing how the characteristics of a “modernized” legal aid system (ie: “client-centered”, “nimble”, “flexible”, “sustainable”, accountable, etc...) are precisely the goals and outcomes of the community clinic model. We were able to remind Mr. Harnick that the Report he commissioned when he was the Attorney General, the *Report of the Ontario Legal Aid Review* (the McCamus Report) expressly stated that the community clinic model “meets many of the goals we have identified for the larger legal aid system”. So, rather than changing the fundamentals of the clinic model, perhaps LAO and MAG should look at making all of legal aid more like community clinics?

Of course no-one took the position that clinics were perfect. No organization or system is, and we know that we have some challenges. But we pointed out that the clinic *model* was sound, and that if the fundamental characteristics of that model continued to exist, we would be happy to work with LAO on ways to improve and strengthen both community clinics, and other legal aid services. For the most part though, we avoided getting distracted into detailed discussions of how to change the clinic system; instead focusing on the fundamentals of the clinic model and the need to enshrine them in the legislation.

We ended by insisting on an open and collaborative process for this Project. We indicated our appreciation for the opportunity to meet, but made it clear that this meeting, and two virtual roundtables, and written submissions, were not the appropriate process to achieve “modernization”. Rather, we needed LAO and MAG to engage in a comprehensive two-way dialogue with clinics on both legislative and system reform.

At its meeting with the AG, ASLA focused on this process issue as well. ASLA members also spoke to the AG about the terrible impact of this year’s cuts and the need to set aside next year’s planned cuts and to repair the damage done this year. ASLA then pointed out that the new legislation must not give MAG and LAO “carte blanche” in the operation of legal aid. Finally, ASLA insisted on a legislative reform process that was open and included all stakeholders.

We did not get much feedback from either LAO or the AG at these meetings. They made it clear that they were there to listen. Which is good, but unfortunately it does not help us understand what specific goals LAO and MAG want to achieve through this Project. This is why both the clinic reps, and ASLA, have requested that the process become more interactive and open. The AG indicated that this was his preferred approach as well.

During the clinic meeting, we received some insight to the issues LAO is contemplating by some of the questions that Mr. Harnick asked. He asked about:

- The value and effectiveness of community clinic boards
- The importance of clinics engaging in law reform and other systemic advocacy work, and whether these activities should be “defined”
- Whether clinics should be more “integrated” into LAO
- Whether there a role for “centralized intake” as opposed to local/community intake
- Should LAO dictate minimum service standards at clinics
- Should LAO play a direct role in test case litigation decisions

Repeatedly, the clinic reps at the meeting responded by referring to the fundamental characteristics of the clinic model, and how these must be preserved in legislation.

Upcoming Virtual Roundtables and Written Submissions

It is important that the message provided by the clinic reps on August 14th be reinforced by clinics throughout this consultation process. We need LAO and MAG to understand that the entire clinic system supports the fundamentals of the clinic model. We are certainly prepared to engage in discussions of how to improve clinic and legal aid services, but any such discussions must begin with the basic building blocks firmly in place. And that a one hour roundtable with the entire clinic system is not the appropriate forum to discuss how to change/improve community clinics. Rather any such discussion needs to be a two-way dialogue taking place over an extended period of time that allows clinic boards to fully engage and participate.

To ensure that these messages are clear and consistent, the ACLCO prepared a Memo on “Modernization”, which contains the Key Messages that we believe LAO needs to hear from all clinics over the next few weeks. First, at the virtual roundtables, and then in written submissions. A copy of this Memo accompanies this document.

We are also in the process of producing an ACLCO Submission, which will incorporate these Key Messages and respond directly to LAO’s questions. Our plan is to provide all member clinics with a copy of this Submission, which you can use in developing your own submission, by August 23rd.

Campaign

The Stop the Cuts campaign has been very successful in raising the profile of the legal aid cuts and their impact on clinics and our communities. These cuts are now part of the ongoing discussion regarding the spring provincial budget, along with the cuts to the autism program, education and public health. The media regularly refer to the cuts to legal aid, and the negative public reaction to it. The July 30th Day of Action reinforced the importance of this issue in the public consciousness. Clinics should be proud of the work that you have done in this campaign so far.

The negative public reaction to the spring budget is a big part of the reason why the provincial government has shifted gears in many ways; why they have had a significant cabinet shuffle, why there are new people running the Premier's Office, why the legislature isn't coming back until after the federal election, why the Premier has adopted a lower profile, and why new cabinet ministers are taking a different tone and approach. It is why the new AG is meeting with clinic and ASLA reps and why MAG is no longer on a clear and unwavering track to slash legal aid and harm the clinic system.

One of the by-products of this change in approach by the provincial government appears to be more latitude for individual MPP's and less control from the Premier's office. We have been approached by Tory MPP's who are now telling us that they were not happy with the cuts to legal aid and clinics, but couldn't say anything about it until now. But now, they say, things may be changing. They believe that there are many Tory MPP's who are ready to become supporters. They encourage us to reach out to them in an effort to get them on board.

We agree with this advice. We believe that it is an appropriate moment for clinics to once again reach out to their local MPP's to educate them on the legal aid issues. Specifically we believe that clinics should meet with their MPP's to discuss:

- The Legal Aid Modernization Project and the need for any new legislation to preserve the clinic model;
- The need to avoid further cuts to the legal aid budget;
- The damage already done by this year's cuts and the need to repair that damage;
- The request that, if they are supportive, they reach out to the new AG to indicate that support.

The ACLCO believes that these meetings should take place before the end of September, while the legislature is not yet sitting. This should give you better access to your MPP, and will give them enough time to reach out to the AG if they want to be supportive. By the beginning of September, the ACLCO will provide clinics with background materials and talking points for these meetings.

Although it is important to reach out to every Tory MPP, it is also vital to speak to the opposition members. We will particularly need NDP and Liberal support as the legislative review process begins. The opposition can play an important role in the legislature in ensuring that any new statute recognize the community clinics and preserves our fundamentals.

We encourage every clinic to engage in this outreach initiative. Clinics that share MPP's should coordinate their efforts. Specialty clinics should reach out to the MPP's that are most connected to their community, and coordinate with the local clinic. We are also strongly suggesting that clinic board members participate in this outreach. One of the responses to the campaign from the Premier has been that, it's all about "lawyers protecting their own interests". Having board members involved in the meetings with MPP's makes it very difficult to fall back on this excuse. MPP's pay attention when community volunteers speak to them about issues that are important to them.

We will follow up with all clinics throughout September to see how things are going. Please advise the ACLCO's Trudi Reaume once you have met with your MPP(s), and what the outcome of the meeting was. If you need assistance with this initiative, the ACLCO's Committee to Support Local Campaigns will be happy to help you.

With the start of this "Modernization Project" we are entering a critical point in our campaign, and in the history of our clinic system. But, because of our hard work and coordinated efforts so far, we are well-positioned to ultimately succeed.