



Memo

To: Community Clinics
From: ACLCO
Date: December 9, 2019
Re: Introduction of New *Legal Aid Services Act* and Legal Aid's Budget for 2020/'21

In the wake of the provincial government's spring budget (containing cuts to legal aid in 2019 and further cuts in 2020), and its announcement of "Legal Aid Modernization" (including a statutory review and a specific "review" of the community clinic model itself), the ACLCO identified three vital goals:

1. Preservation of the fundamental components of the community clinic model in the new legislation
2. A roll back of planned further cuts for legal aid in the 2020 budget
3. Reinvestment of resources into clinics in response to the disastrous cuts that flowed from the 2019 budget.

Today we witnessed the achievement of the first two of these goals.

The provincial government introduced for first reading, an omnibus justice bill (*The Smarter and Stronger Justice Act* bill) containing provisions that will amend the current *Legal Aid Services Act, 1998* (LASA1). The amended statute (LASA2), once passed, will be significantly different from the current legislation in many ways. Generally, it eliminates many of the detailed provisions in the current Act, and instead leaves much of the governance and operation of legal aid in Ontario primarily in the hands of Legal Aid Ontario (LAO).

While LASA2 provides greater discretion to LAO to run legal aid, the shift away from statutory guarantees and prescriptive legislative rules was not complete. In response to the ACLCO's proposals, most of the fundamental principles of the community clinic model were taken from LASA1 and remain in LASA2. In fact, LASA2 contains:

- Specific reference to community clinics as a means of providing legal aid services in Ontario
- The recognition that community clinics are independent organizations
- The recognition that independent community clinics are governed by boards of directors drawn from the communities the clinics serve.
- The inclusion of "poverty law" in the list of services that LAO provides.

- The recognition that community clinics are the foundation of poverty law services
- The recognition that community clinics have the role of assessing the legal needs of their communities and determining the services that their communities require.

This package of provisions, although not identical in wording, essentially replicates the protections for the clinic model that were contained in LASA1. And LASA2 contains no new restrictions on what work clinics can do or what tools we can employ in doing our work. This is tremendous news, and is the primary goal that clinics have been fighting to achieve over the last few months.

Having said that, we must also recognize that, even on an initial review, LASA2 contains a number of problematic sections:

- Some of the general provisions contained in LASA1 regarding the purpose of the Act (ie: “to promote access to justice throughout Ontario for low-income individuals...”) are not contained in LASA2
- Although “poverty law” is expressly named, and community clinics are identified as the foundation of poverty law services, the definition of poverty law is less broad than in LASA1. We have already raised this issue with the government and MAG has assured the ACLCO that it is not their intention to limit the areas of law the clinics can practice in, and that they are open to fixing this problem through amendment of the Bill or through regulation
- The sections in LASA1 identifying the process through which clinics are funded and how clinics can seek reconsideration of funding decisions are not reproduced in LASA2. Instead, clinics and LAO will need to develop these processes through Rules pursuant to the new Act, over the coming months.
- LASA2 makes it imperative that these new Rules are developed right away by stating that current funding agreements will expire 6 months after LASA2 is proclaimed
- Although community clinics are recognized as the foundation of poverty law services, LASA2 recognizes that LAO may also fund these services through “community legal agencies”, which could also be community clinics.

The ACLCO has struck a Legislation Review Committee which is already beginning to review LASA2 in detail. Undoubtedly this process will identify some other gaps or problems with the Bill. We will work with the government and opposition in the legislature and in committee to ensure that these concerns are dealt with. The Attorney General and his staff have expressly advised the ACLCO that they are open to doing this.

And, as we are working with the government on improving the Bill, we will also need to begin work with LAO on many issues including the funding process, dispute resolution, consultation, quality assurance/performance measurement, etc..... It has been our consistent position that it is possible to “modernize” legal aid and the clinics while preserving the community clinic model; we will now need to work with LAO on these modernization initiatives. These will be challenging conversations, but we will be aided by the fact that LASA2 places express new obligations on LAO to consult appropriately with stakeholders and to operate transparently.

But most importantly, as we work on this new Bill, and on the new relationship between clinics and LAO, there remains in place statutory protection for the community clinic model in Ontario. Therefore clinics face the future from a position of strength and relative security.

Moreover, with the introduction of LASA2 today in the legislature, the Attorney General, Doug Downey, has announced that the planned cuts to the legal aid budget for next year have been eliminated. Although we now must turn our attention to the next goal of securing a reinvestment of funds in the

clinic system in response to this year's cuts, the elimination of next year's cuts at least creates an environment where we can feel relatively secure and plan for the future.

These are tremendous accomplishments. In fact, only a few months ago the preservation of the community clinic model in this province, let alone statutory protection, was very much in doubt. It is absolutely without question that the result we achieved today happened only because of the efforts by clinics in every part of this province over the last few months. Your work, in combination with the work of the ACLCO and the critical support of our friends and allies, shifted the tide and led to this result. We know this for a fact. It is important that we recognize what we, as a system of community clinics, can accomplish when we act in a coordinated and strategic fashion. Drawing on all of our collective strengths, including our connections to our communities and our ability to mobilize them for a just cause, we achieved what didn't seem possible just a short while ago.

There is still much difficult work to be done. Advocating for amendments to LASA2. Working on clinic modernization with LAO. Fighting for reinvestment of resources in the clinic system. The ACLCO will take the leadership on this work, and will communicate soon with clinics with a plan on how we can achieve these goals together. But with the statutory protections in place, and with our demonstrated ability to act in a coordinated and strategic fashion, clinics are well-positioned to thrive and to continue to provide social justice to the most disempowered and marginalized members of our society for years to come.

It is the ACLCO's intention to hold a web conference sometime in the next couple of weeks to discuss all of these developments, and to answer any questions clinics may have.

We also want to advise clinics that the ACLCO Executive has agreed to provide the Attorney General with a supportive statement to be included with the Minister's media release today. It will read:

We are very pleased that Attorney General Downey continues to recognize the foundational role community legal clinics play in creating a strong Ontario justice system that protects vulnerable members of our communities and provides them with the legal services they need. This new legislation will improve the delivery of Legal Aid services in Ontario while ensuring that independent community legal clinics continue to work closely with the communities they serve in identifying their needs and in providing poverty law services to their clients.

Association of Community Legal Clinics of Ontario (ACLCO)

Trudy McCormick, Co-Chair (Executive Director, Northwest Community Legal Clinic)

Gary Newhouse, Co-Chair (Board Member, Kensington-Bellwoods Community Legal Services)

The ACLCO has provided this statement because it highlights the continued role of community clinics in Ontario, and because MAG has listened and come a long way in adopting our message regarding the need to preserve the community clinic model in the new legislation. This AG came to the conclusion that we are an important part of the legal aid system in Ontario; one that is worth preserving. It is our belief that when decision-makers do the wrong thing they must be taken to task (sometimes publicly) for those errors, but it is also important that when they do the right thing, they are recognized for doing that as well. Moreover, given that we will likely need further support from MAG and the AG over the coming months regarding both reinvestment and modernization issues, it is also the most strategic approach to take at this time.

This is the message the ACLCO will be sharing with the media in the wake of today's announcements. In addition to supporting the portions of the Bill that refer to community clinics, and to the AG's decision to roll back further legal aid funding cuts, we will also point out the damage done by this year's cuts and speak to the importance of reinvestment. It is our hope that clinics that are contacted by local media will take a similar approach. And of course, feel free to refer media enquiries to Lenny Abramowicz (416-204-5380 or abramowl@lao.on.ca), or to speak to Lenny to discuss your response.

ACLCO's Media Message:

- We are pleased that the new legislation recognizes the important role independent community clinics continue to play in providing crucial poverty law services to Ontario's most vulnerable communities.
- We are also pleased to hear that further budget reductions to legal aid have been taken off the table.
- It is now time for the government and Legal Aid Ontario to begin work on repairing the damage done by this year's legal aid budget cuts.