



Memo

To: Community Clinics
From: Lenny Abramowicz
Date: July 25, 2019
Re: ACLCO Update on the State of “Legal Aid Modernization”

Beyond the devastating cuts made to the clinic system this year, and the potential of further cuts to legal aid in the next couple of years, the government has announced its Legal Aid Modernization Project (Project). This Project was identified as the vehicle through which the legal aid system, including the clinic model, would be “improved”. As indicated in previous memos, the ACLCO saw this Project as a serious potential threat to the community clinic system and the practice of clinic law services. These concerns were only exacerbated by comments made by some LAO employees, including the VP for Clinic Law Services, about the need to “restructure” the clinic system, and the “nightmare involved in managing 72 independent community clinics”.

As a result of these concerns, the ACLCO Executive Director and the ACLCO Executive has had meetings with LAO’s board chair and LAO staff to discuss clinic “modernization”, and the Project. Most recently, the ACLCO Executive met with LAO’s senior managers (David Field, David McKillop, Rod Strain) on July 25th to discuss these matters. These meetings have provided the following information.

The main message is that the government’s approach towards legal aid modernization is very fluid, and changing on almost a daily basis. This is likely a very good thing, given that the government’s approach to legal aid only a few weeks ago was fixed and unhelpful. At that time the government appeared committed to a path of further cuts to legal aid and significant restructuring of the clinic system. However, this fixed path is becoming less certain. The pushback campaign has had an impact. The government is re-examining some of its approaches to legal aid. The cabinet shuffle, leading to a new Attorney General, has created an opportunity for a different approach to legal aid modernization. We, and LAO, are hearing a new tone from both MAG bureaucrats and political staff.

To be clear, no-one in the government is talking about rolling back the cuts that have already been made. However, for the first time, we are hearing that the government recognizes that future cuts and a fundamental restructuring of legal aid, are not givens. Rather, the AG and his staff are now talking about the importance of hearing from stakeholders and considering options for moving forward.

Regarding Modernization, this new approach is manifesting itself in a few important ways.

First of all LAO has indicated that statements that the VP for Clinics, and others at LAO, have made about clinic restructuring were made in a different context, when the government's intentions for legal aid appeared more clear. This is no longer the case, and those statements should not be considered as current.

Secondly, the process of the Modernization Project appears to have significantly shifted. It now appears that the initial focus of the Project will be on reform of the *Legal Aid Services Act* (LASA). In fact, the current plan is for new legislation to be introduced in either the fall or winter legislative sessions. Once new legislation is in place then attention will turn to what the future of legal aid services should look like.

Third, LAO's role in the Project appears to have increased. In fact, only yesterday it was announced that Denise Cole, the head of the Project, has moved on to a different ministry, and her position at MAG will not be filled. Although specifics of the role LAO will now play have not been made clear, it seems quite likely that LAO will play a larger role in the Project, and the ministry may play a smaller one.

Clinics will be given the opportunity to provide direct input into the Project. LAO will be setting up a consultation process over the next few weeks. Although the details have not been yet determined, we have been told that the consultation will likely include in-person meetings, web conferences and written submissions. And the input will be given directly to LAO's board chair, Charles Harnick, to senior MAG officials and to the AG. The focus of this input will be primarily on the legislative reform. Consultation processes will be set up for other areas of law (ie: criminal, family, etc...) as well.

Overall, there is optimism to be found in some of these changes. But there are challenges as well. Changes to LASA could have a big effect on community clinics. LASA currently contains express protections for the clinic model of legal services. LASA includes:

- Recognition of community clinics and clinic law
- Recognition of community clinics as the foundation of the provision of clinic law services
- Recognition of clinics as independent organizations governed by community boards of directors
- Recognition of the obligation of clinic boards to assess the needs of their communities and to determine the appropriate services to meet those needs
- A detailed funding process, including a funding appeals mechanism.

These protections, currently contained in the statute, are critical. They ensure the existence of independent community clinics with the ability to provide a broad range of services to meet the needs of their communities. Loss of these protections could lead to the loss of the clinic model.

LAO has advised us that it believes that MAG is looking for the new legislation to be less "prescriptive" than LASA, and contain far fewer details. The legislation would only be at a high level, leaving it up to LAO to determine how legal aid services would be provided and who will provide them.

The ACLCO believes that protections for community clinics and for our clients need to be retained in any future legislation. The ACLCO believes that the fundamental principles of independent community clinics, with the ability of providing a broad range of services including law reform, must be recognized. The ACLCO will provide clinics with background materials and key messages to ensure that this input is received by LAO and MAG throughout this consultation process. The Friends of the Community Clinics will also be active in this work. And, as a system, we will need to find a way to ensure that our clients and communities' voices are heard on these issues as a vital part of this process.

On a related note, the ACLCO wants to ask clinics to avoid engaging in any discussions about clinic restructuring while this initial consultation process is proceeding. At this moment we need to focus on a consistent message of preserving the fundamental elements of the community clinic model. Once these protections have been enshrined in legislation and/or regulations, we can then safely turn our attention to discussions about possible changes in the delivery of clinic law services. But until then the situation is much too fluid and perilous to open that door.

And it is important that, while this consultation process proceeds, our *Stop the Cuts: Access to Justice for All* campaign continues. As indicated above, there has been some shifting in the government's approach towards legal aid. This is because of the work of clinics and our allies on this campaign. The July 30th Day of Action will be an important moment to show the government that community clinics and legal aid are a critical part of Ontario's justice system. The campaign must continue.