

Memo

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

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 "review" of the community clinic model itself), the ACLCO identified three immediate and longer-term goals:

- Preservation of the fundamental components of the community clinic model in the new legislation
- A roll back of planned further cuts for legal aid in the 2020 budget
- 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.

This morning the provincial government introduced for first reading, an omnibus justice bill (Bill x) containing provisions that will amend the current Legal Aid Services Act (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.

However, the shift in LASA2 away from statutory guarantees and prescriptive legislative rules, and towards greater discretion for LAO to run legal aid was not complete. In response to our proposals, most of the fundamental principles of the community clinic model were taken from LASA1 and retained in LASA2. Specifically, LASA2 contains:

- A reference to community clinics
- 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, essentially replicates those that were contained in LASA1. And it 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 precisely what clinics have been fighting for over the last few months.

Having said that, we must also recognize that, even on an initial review, LASA2 is not perfect in some ways:

- 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...”) have not been reproduced
- Although “poverty law” is expressly referred to, and community clinics are identified as the foundation of poverty law services, the actual definition of poverty law is less broad than in LASA1. This has already been pointed out to 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 issue through amendment or regulation
- The sections in LASA1 identifying the process through which clinics are funded and how clinics can seek reconsideration of funding decisions are not in LASA2. Instead, clinics and LAO will need to develop these processes through bylaws and policies pursuant to the Act, over the coming months.
- LASA2 makes it imperative that these bylaws and policies 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 also recognizes that LAO could also fund these services through “community legal agencies”, which could also be community clinics.

The ACLCO has struck a Legislation Review Committee which will is already beginning to go through LASA2 with a fine-toothed comb. Undoubtedly we will identify some other gaps or problems with the Bill. We will work with the government and opposition in the legislature and on committee to ensure that these issues 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/measurement, etc..... It was our position that it would be possible to “modernize” legal aid and the clinics while preserving the community clinic model, and now we will need to work with legal aid on these modernization initiatives. These will likely be challenging conversations, but we will be aided by the fact that LASA2 places express 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, we can gain comfort from the fact that there remains in place statutory protection for the community clinic model in Ontario. Therefore we 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 longer term goal of obtaining 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 contribution of our friends and allies, changed 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, and we utilize all of our strengths including our connections to our communities our ability to mobilize them for a just cause.

There is still much difficult work to be done. Proposing 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 be in communication 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.

The ACLCO has provided a supportive statement. Did this because MAG has come a long way from the starting point regarding this legislation and the "clinic model". This AG listened to clinics and came to the conclusion that we are an important part of the legal aid system in Ontario. It is our belief that when decision-makers do the wrong thing that they must be taken to task (publicly) for those errors, but it is also important that when they do the right thing, they are recognized for doing that as well. Not only do we believe that this is the right way to deal with decision-makers, but given that we will likely need further support from MAG and this AG over the coming months regarding both funding and modernization issues, it is also the strategic approach to take.

Will hold a conference call on....