REPORT

OF

THE COMMISSION ON CLINICAL FUNDING

The Honourable S.G.M. Grange

Commissioner

October 25, 1978.

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Clinical Funding
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Commission on
Clinical Funding

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October 25, 1978.

The Honourable Roy McMurtry, Q.C.,
Minister of Justice and
Attorney General of Ontario,
18th Floor,
18 King Street East,
TORONTO M5C 1C5.

Dear Mr. Attorney:

In response to your letter of June 27th, 1978, I have the honour to submit my report on Clinical Funding.

Yours very truly,

S.G.M. Grange,
Commissioner.

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1. HISTORY

Legal Aid in Ontario in a formal way started as a voluntary service by the Profession in 1951. In 1966 the Legal Aid Act was passed and its salient features are well known. It provides for service by the private Bar on a fee for service basis, the fee being paid out of the Legal Aid Fund, and most of that Fund is provided by the Government of Ontario. The procedure over-simplified is that the indigent client applies to the Area Director for assistance and if he qualifies financially, and his problem is within the coverage provided by the Act, he is permitted to choose his own lawyer to serve him, provided, of course, his lawyer has volunteered to serve generally. The lawyer's fee, according to a prescribed tariff, is then paid out of the Fund.

The Plan, to the extent that it has brought legal assistance to the poor applicant has, in serious criminal matters and in traditional civil litigation matters, been a spectacular success. Shortly after the inception of the Plan, however, it became apparent to the discerning and it later became universally accepted that there were in the Plan serious gaps. These gaps may be described as follows:

(a) The poor were not always aware of the assistance available under the Plan, or even of their legal rights, and if they were, they were not always willing to seek out that

assistance and those rights.

(b) The coverage under the Plan was for reasons of economy and legal efficiency limited to serious problems. But the problems of the poor, though not serious in the traditional sense, have for them very serious consequences indeed. For example, a tenant's dispute with his landlord might involve very little in terms of dollars, but for him might be a matter of survival.

(c) The problems of the poor too often by their very nature fall outside the traditional skills of the private Bar and have come to be known as Poverty Law. They include such matters as Unemployment Insurance, Welfare, Pensions, Immigration, Workmen's Compensation, where not only advice but advocacy is sorely needed and vital.

(d) The private Bar and its clients know that it is sometimes not sufficient merely to resolve the immediate problem. Often the client's welfare dictates much more. He must know the dangers in order to avoid them in the future and if they cannot be avoided, he may have to combine with others to attack the root of the problem which perhaps can only be done in the councils or legislatures of the land. Services such as these are well within the field of the private Bar and if the aim of Legal Aid as

often stated is the rendering to the poor of the same legal benefits as those available to their more fortunate brothers some method needed to be found to provide them.

(e) The coverage provided by a Legal Aid certificate is limited to assistance in respect of a specific legal problem. But often the legal problems of the poor are associated with and cannot be divorced from their social, economic and personal concerns. What was needed was a system which could take a more comprehensive approach to the problems of the poor.

It was to plug these gaps that the clinical movement was born. It started in this Province with the establishment of Parkdale Community Legal Services. I will have more to say about the types of clinics, but Parkdale became the model for most and remains the largest and most comprehensive clinic in Ontario.

While Parkdale was a project of Osgoode Hall Law School of York University designed in part to further the education of the law students, it contained also a large clinical component and because of it it obtained grants from among others the Federal Departments of Justice and Health and Welfare. These grants enabled it to experiment and to grow, but they were never intended to be permanent and, indeed, came to an end in 1974-75. Other

clinics had also been established, all with government or charitable grants (some of the charity came from the founders), and if the movement was to survive it was obvious that some permanent form of funding was needed.

In the meantime the Task Force on Legal Aid, under the chairmanship of Mr. Justice John H. Osler, had been established and submitted its first Report in November, 1974. It made many recommendations regarding the operation of the Plan generally, but for our purposes the important ones involved the recognition of "Neighbourhood Legal Aid Clinics" and their funding through Legal Aid. No apparatus for that funding was available and after consultation between the Attorney General, the Legal Aid Committee and Convocation, the present legislation regarding clinical funding was passed in January of 1976 and became effective the following month. These are Sections 146-151 of Regulation 537 under the Legal Aid Act and are reproduced in the Appendices as Appendix D.

2. PRESENT OPERATION OF THE CLINICAL SYSTEM

Under the present Regulation the funding of clinics is administered by a Clinical Funding Committee (hereinafter called the "Committee"), composed of three persons, two appointed by Convocation from the Legal Aid Committee and one by the Attorney General. The two members appointed by Convocation were Mr. James H. Chadwick and Mr. Lee Ferrier, and the member appointed by the Attorney

General was first, Mr. Archie Campbell, and then Mr. Graham Scott. All these gentlemen are lawyers, and Mr. Chadwick, who has been Chairman of the Committee since its inception, is also a bencher and Vice-Chairman of the Legal Aid Committee. Mr. Ferrier is a member of that Committee.

Lest I suffer an unforgivable lapse later in this report, let me say now that all members of the Committee have given unstintingly of their time to the services of the Committee and have been fair, intelligent, resourceful and even inventive in their performance of the tasks imposed upon them. The profession, the Government, the clinics and the public stand greatly in their debt.

The moneys required to fund the clinics are designated annually by the Attorney General from the Legal Aid Fund established under the Act. Funds are then provided to eligible clinics by means of a clinical certificate issued by the Director of the Legal Aid Plan upon the recommendation of the Committee. The Committee's recommendations are subject only to the approval of Convocation.

In January of 1976 the Committee recommended and Convocation approved the provision of funds for some eight clinics to carry them over until March 31st of that year. These funds were paid out of money specifically provided for the purpose by the Government of Ontario. In April and May of 1976, the Committee obtained

from the Government $950,000 and recommended its distribution among 13 clinics for the fiscal year 1976/7. In March of 1977, the sum of $1.7 million was distributed among 25 clinics and for 1978/9 the sum of $2.5 million was distributed among 31 clinics. Appendix E sets forth the names of the clinics and the amounts by which they have been funded for the fiscal years 1976/7, 1977/8, and 1978/9.

These figures amply demonstrate the growth of the movement and it can be readily understood that the task of the Committee in attempting to provide for orderly growth and to ensure the proper expenditure of public funds was a difficult one. The most public problem was that dealing with People & Law, an outgrowth of a downtown law firm which had continued as a publicly funded clinic and had indeed been funded by the Committee in 1976/7 and 1977/8. However, in considering the application of that clinic for funding for the year 1978/9 the staff of the Committee entertained doubts that People & Law was still eligible for funds, partly based on the clinic's newly stated objectives and partly based on investigation of its activities. I make no comment on the validity of the charge but, in any event, the Committee, after discussing the question with People & Law, recommended to Convocation that the funding be discontinued. People & Law disputed the report before Convocation and that latter body, perhaps considering itself ill-equipped to decide a matter largely of fact, referred it to the Legal Aid Committee. That latter Committee never heard argument on the

merits, but a new application was presented to the Clinical Funding Committee on August 26, 1978. After further consultation with the clinic, the Committee was still of the view that People & Law was not generally fundable and recommended only that sufficient funds be advanced to complete one particular project. People & Law has now decided to wind up its affairs.

There is no question that the People & Law decision has been viewed with alarm by many clinics, some of whom regarded it as a gross interference with the autonomy of the Board of Directors of People & Law, or a policy decision not to fund law reform activities, or both. As I have said, I make no comment on the propriety of the decision. I have made no investigation of the facts and I have not set out here the facts which would enable the reader to make an intelligent assessment. I can say that some of the staff of People & Law appeared before me, and I was impressed with their sincerity. I can also say that the Committee's decisions on both the applications in 1978 were not arbitrary, but made only after the most careful consideration. It is unfortunate, in my opinion, that there was not formal notice of the intention to defund given to the clinic and a formal hearing held, but I hasten to add that under the present Regulation neither notice nor a hearing is required.

In January, 1978, the Committee called a meeting of the clinics to discuss their common problems. It was apparent at that meeting that many differences

existed and it was originally intended to continue the discussions after the 1978/9 funding problems had been resolved. On reflection however, and after the People & Law problem and some others had arisen, the Committee decided it was best to ask for an independent inquiry. The Chairman accordingly wrote to the Attorney General by letter dated May 10, 1978, which is attached as Appendix F, and the Attorney General's letter to me which is Appendix A, followed on June 27, 1978.

3. THE PLACE OF CLINICS

If there is one demonstrable fact evident from the briefs and the hearings, it is that the clinical movement is here to stay. Whatever misgivings may have been held at the start by the Profession or by government have dissipated - indeed all but disappeared. One of the initial fears was that the clinics would subvert the Ontario Legal Aid Plan, either by taking away its clients or by taking away those of the private Bar. This simply has not happened. What has happened is that the clinics have brought the law and its remedies to countless citizens of this province who otherwise would never have known its benefits. There has been much co-operation between the two branches of Legal Aid and essentially no competition between the clinics and the private Bar. The reasons, certainly in hindsight, are obvious; the clientele is often

different and the problems are almost always different; such is the rush of business each time a clinic is opened that there is no temptation ever to trespass upon other fields, but more importantly, the clinics are designed and their legal and para-legal workers are qualified to take on problems that are, generally speaking, outside the practice of the private Bar. The Osler Task Force recognized the true position at page 25, as follows:

> "We do not, therefore, see the private office, the staffed neighbourhood legal aid clinic or the rotating panel as competing but rather as complementary models, all of which are designed to remedy the chronic under-utilization of the profession and the law by the poor. Clinics, it seems to us, may be appropriate where the presence of Legal Aid in a forthright and obvious way is desirable in the interests of the poor of the community and where the patterns of private law practice have created a sense of psychological and physical inaccessibility. What we seek is not to maximize the use of one technique or the other, but rather to maximize the chance that the Plan will be used by its intended beneficiaries."

The Attorney General made the position of the government clear in his address at the 10th Anniversary Legal Aid Seminar, May 26, 1977, where he spoke of "a deep commitment to the concept of community law and to the further development of community clinics". He also stated: "It is also obvious that these clinical delivery systems are meeting a need which has not traditionally been well served by lawyers" and, finally, "It should therefore be obvious that community based law projects have a vital role to play in the future development of Ontario's legal aid system".

The Law Society of Upper Canada in a formal resolution expressed its view as follows:

> "'While the current certificate system will remain a principal method for delivery of Legal Aid, the plan has been modified by the involvement of community clinics in the delivery of legal services. The Government is committed to extension of these community services as they reach a clientele not readily reachable by the Legal Aid program. The Government regards the formal Legal Aid program and the community clinics as complementary to each other in the efficient delivery of legal services.
> .....The delivery of legal aid in this province is strengthened and stimulated by these two different but important components of the program' and
> Whereas this statement represents a summarization of the current evolution of Legal Aid policy in this province upon which The Law Society should express an opinion
> Be it resolved that this Annual Meeting of The Law Society of Upper Canada records its approval of the policy positions outlined above."

The activities of the Clinical Funding Committee since its formation bear eloquent testimony to this policy. If there ever was a battle for survival the victory of the clinical movement is complete. There are no more dragons to slay. Everyone recognizes the need for further expansion; the sole limitation is funds.

4. THE TYPES OF CLINICS

Section 147 of the Regulation makes provision for the funding of "independent community based clinical delivery systems" and I approve of the term "independent" because it recognizes that clinics are to be

free from any governmental control and are to be allowed to run their affairs, in effect, like a private law firm (subject to their duty to account for public funds).

The first difficulty arises out of the use of the term "community based" from which one might infer that all clinics are to be found in a particular community, serving that community, and governed by members of that community somewhat after the Parkdale model. Indeed, that seems to be the contemplation of the Osler Task Force when it refers in its recommendations to the establishment of "a neighbourhood legal aid clinic" (italics my own). It is perhaps also the impression of clinics held by most members of the profession and of the public. But such impression is certainly not completely accurate. The Attorney General recognized in his speech of May 26, 1977, that:

> "The term community also need not be restricted to its narrow geographic sense. Geographically diverse groups of immigrants, single parents, tenants, consumers, cultural associations and others all form communities which frequently need specialized and readily accessible legal assistance.
> Wherever there is a community of interest with legal needs but with limited resources, there is a potential home for a community law project."

Many clinics with a limited clientele which appeared at the hearings, such as Injured Workers Consultants, Landlord's Self-Help, Metro Tenants Legal Services, Tenant Hotline, are functioning very satisfactorily; they have a community of interest but no geographical community.

I support a broad recognition of the word "community" so as to include both "geographic community" and "community of interest".

Even this, however, is not the end of the problem in relation to the definition of community. The Committee has funded the Toronto Community Law Program (now to be called Community Legal Education Ontario), which conducts legal education programmes for students and other members of the public on many subjects and in many languages. It has also funded the Canadian Environmental Law Association, one of whose stated purposes is to act in environmental matters on behalf of individuals or groups who otherwise could not afford the litigation. I commend the Committee for funding them, but it is difficult to justify that funding unless community be defined to mean in some instances the public at large.

But even this may not cover all the clinics that are at present funded since there are several which are not "community based" in the sense of being controlled or governed by the community, whatever that community might be. For example, the University of Windsor Law School for Windsor and the University of Western Ontario Law School for London have established clinics for these cities under the directorship of a professor of law who is advised by others but is under the control of the Dean. Similarly, Queen's University has established the Queen's Correctional Law Programme, serving the inmates of the Federal penal

institutions in the Kingston area and also Rural Legal Services serving the northern part of Frontenac County (technically not a clinic but a branch of the Student Legal Aid Societies, of which I will say more later). In both cases it would be difficult to have community control, the former for obvious reasons, and the latter because there would be great difficulty in finding members of the scattered community who would be prepared to take control. A community base and community control may be the ideal and, indeed, appear to be the goal of the present Committee, but I doubt if that goal will always be attainable and it would be a tragedy, in my opinion, if it were to be established as a pre-condition to funding. The object is legal services to the poor; community control is only a method of delivery - and quite conceivably the most desirable method - ; it is not an end in itself. I would recommend the elimination of the word "based" in "community based" because that word has implications of control. In so doing I do not wish to be taken as discouraging community control or the conversion of clinics to community control. I wish only to give statutory recognition to an existing fact, to make possible the establishment of clinics where the community is not yet ready to take the initiative and to avoid the defunding of clinics which have served the public well.

Section 148 which defines "clinical delivery system" also gave me some trouble. The inclusion of "preventive law programmes and educational and training

programmes" was no doubt intended to ensure the clinics could legitimately engage in such activities, but my fear is that their very inclusion might inhibit the funding of other activities which are recognized as being necessarily ancillary to, if not actually part of, a law firm's services to its clients. The words at the end "calculated to reduce the cost of delivering legal services" are not easy to interpret and are more difficult still to apply. They have been ignored in practice and, in my view, can be eliminated.

It is my view in summary that the Committee should have discretion to fund any independent community clinic delivering legal or para-legal services by any method other than by way of fee for service. "Community" should include "geographical community", "community of interest" and "the community of the public at large", and "legal and para-legal services" should include any activities reasonably designed to encourage access to such services or to further such services and should include also services that are designed solely to promote the legal welfare of the public at large.

The matter of vital importance is to retain flexibility in this expanding field and to enable the Committee to fund where, in its opinion, it is in the public interest. The discretion will always remain to deny the application and it may be exercised when the proposed clinic's activities stray too far from the delivery of legal services which must always remain the basic aim.

It may be that in practice the definitions so broadly defined may prove impractical and, if so, they can be restricted but for the present it is my view that broad definitions are essential. Subject only to the limitation of funds and what restrictions broad definitions impose, the Committee should determine the direction of clinical funding.

For example, there appeared before me representatives from Public Interest Advocacy Centre, an organization of a largely federal nature, but concerned with the public interest in regulatory matters in which the Ontario public would be much affected, and there also appeared a representative proposing a clinic to assist unrepresented parties in Toronto Family Court matters. The former has already been refused funding and the latter might well suffer the same fate at this time. I would not, however, like to see either forever barred.

I cannot leave this subject without some discussion of law reform. As I have stated earlier, the field is not unknown to the private Bar in its service to its clients and it is perhaps even more the proper concern of lawyers who serve the poor because the poor are less articulate and their concerns less often heard by the legislators. While there may have once been doubt of the propriety, it does not exist now. Many clinics, to a greater or lesser degree, engage in some form of law reform activity including lobbying of legislatures and organizing of their clients for the purpose. I will deal later with control of the subject matter of clinical activities but it is clear that in any

event the classification of that activity as law reform does not now disentitle a clinic to funding. The suspicions of some clinics that the People & Law decision was motivated by a desire to defund law reform is, in my view, unfounded. The opinion of the Committee, as I understand it, was that the law reform activities undertaken no longer were based upon the delivery of legal services. Whether or not the opinion was valid I cannot and would not make any finding, but the principle is unassailable. However broadly legal services should be interpreted (and I approve of a broad interpretation), where the legal services base disappears, there can be no justification for funding under the Legal Aid Act. The definition of "legal and para-legal services" I have set out above is intended to encompass law reform.

The Student Legal Aid Societies which are established under section 74 et seq. of the Regulation and separately funded must be distinguished, although their work is very similar. They are, generally speaking, staffed by law students who can at best perform para-legal services under the supervision of a lawyer. They can by no means be considered either independent or community based as they are by the terms of the Regulation under the control of the Dean of the Law School and often the largest segment of their clientele comes from the university of which they are a part. By their very nature they must be confined to the locality or city of their university which necessarily

limits their effectiveness. The students of a Student Legal Aid Society are volunteers, in contrast to the students in a university-sponsored clinic who are often earning credits for their clinical experience.

At the University of Toronto, the Student Legal Aid Society has been abandoned in favour of an expanded clinical system with volunteer students supplementing the community law workers and credit-earning students. At Queen's on the other hand, the Student Legal Aid Society provides the only form of clinical service for the Kingston area, other than the Correctional Law Project (also of Queen's University), which, as its name implies, is available to the inmates of prisons only.

I cannot tell whether the Student Legal Aid Societies will continue to thrive or will generally decline. Much will depend upon the attitude of the University with which they are associated. Certainly, some sort of clinical association is a valuable experience for the students. While they can be at best only a partial answer to the clinical problem, they have performed good service. Their funding is no part of the Committee's concern. It cannot, therefore, be mine in this report.

5. THE PROBLEMS

(a) The Need for Funds

As I have said before, the only bar to the expansion of clinics is the lack of funds. I suppose it is only realistic to concede there will never be enough funds, and that the clinics being dependent on the public purse must always be subject to consideration of political priorities. Nevertheless, there are certain propositions that to me seem self-evident and certain questions which, if asked, must appear rhetorical. The need for clinics has been demonstrated, if only by the volume of business generated each time one is opened; and if the need is there why should a large part of the province go unserved? Moreover, those who are served must be served properly. The lawyers and para-legals working in clinics are generally speaking dedicated people committed to the service of the poor, but because of this must they serve for less reward than their colleagues in government or the private Bar? Will this not inevitably lead to turn-over and inefficiency? Must they who litigate often against the government or persons represented by the private Bar do so in many cases without the facilities of the other side? I think these questions answer themselves. There may have been some justification at the beginning for the inadequacy of equipment and salary, but surely as the movement develops we must try to reduce the disparity.

The brief of the Metro Tenants Legal Services provided a chart drawn from the Public Accounts since the commencement of clinical funding in 1975/6. These statistics are reproduced as Appendix G and I am satisfied they are substantially accurate. They show that the funds provided for clinical funding have indeed increased (not surprisingly when one considers that the number of clinics funded has increased in 2½ years from 8 to 31), but also show that the Attorney General's share of the total provincial budget has not increased and is still slightly less than 1% of the total, and that the total Legal Aid portion of that budget has similarly not increased and is still less than 20% of the Attorney General's share. Finally, the funds provided for clinics are still not 10% of the total Legal Aid allotment. Perhaps I venture too far into a foreign field but I commend these figures to those concerned with political spending priorities. I have stated before (and it was probably not original then) that it is sometimes easier to tolerate a splitting headache than an abiding sense of injustice. When priorities of government spending are being considered, I can only hope that this expanding field to which the government is committed (and in my view rightly so) will be one of the first.

(b) Manner of Funding

I shall deal later with the manner of funding between the Committee and the clinics. What I am here concerned with is the manner of obtaining the funds from the Attorney General's budget for distribution among the clinics. What now happens is that the Committee estimates in November the requirements for the following fiscal year which commences the 1st of April. It makes this estimate based on the allotment to clinics of the previous year and its knowledge or prediction of future requirements including provision for new clinics. Then it tempers the request to the Attorney General with a consideration of what is available or what it is likely to get and submits its funding request accordingly. To date the Attorney General has been able to meet the full request.

The procedure in my view has two deficiencies. Firstly, there is a certain degree of blind guesswork in the calculations in submitting the total budget because the individual budgets are not known until they are submitted in March, whereas the submission to the Attorney General is necessarily made in November of the year before. Because of governmental practices that latter date cannot be changed, but I can see no reason why the clinics cannot be required or at least encouraged to submit a tentative budget for the following year prior to the application to the Attorney General for funds. That way some of the

guesswork will be eliminated and the clinics can justifiably be refused some particular funding, the request for which was made only in the final budget submission.

Another difficulty, in my view, is the political tempering of the budget. I think the role of the Committee should not be a political one. Its task, as I see it, is to estimate the need and then if the funds are inadequate for that need, to establish priorities among the applicants. It may be that political consideration will always affect the allotment. I cannot see why it should affect the request; the amount requested should represent the amount genuinely considered by the Committee to correspond with the need.

(c) Role of Governing Board of Clinics

Most of the clinics are indeed community based and community controlled, generally by a board of directors elected or drawn from the community served by the clinic. The object is two-fold: first, to give the community, the intended beneficiaries, some control over the delivery of legal services; and second, to involve the deliverers of those services in the affairs of the community. If there are to be effective services to the poor, the traditional distrust felt by the poor towards lawyers, the legal profession and even towards the law itself, must be reduced. I will have

more to say later about this continuing distrust but to the extent that the poor have now placed their confidence in the clinics, much of the credit must go to the strong role played in their development and operation by the boards of directors. If the movement is to develop and progress with the continuing confidence of the clients, that role must not be eroded. The boards must continue to govern the affairs of the clinics, both as to policy and administration, subject only to accountability for the public funds advanced and for the legal competence of the services rendered. The public which advances the funds for the delivery of legal services has a legitimate interest in ensuring that they are spent for that purpose and that the services rendered are of an acceptable professional level. I think the matter should be viewed in this light: the Boards have control over the operations of their clinics and the Committee may interfere in that control only if it can bring the interference within one or other of the public's legitimate spheres of interest.

(d) Accountability and Supervision

(i) Financial

I have discussed earlier the manner of obtaining the total clinical fund from the government.

By the nature of government fiscal practice, this procedure must be conducted annually and the

clinics must accordingly be funded for the same period. This causes some understandable concern among the clinics for their financial security. The only amelioration of that concern I can offer is the provision hereafter for an automatic appeal when an allotment to an established clinic is reduced in a subsequent year.

It remains to discuss the manner of allotment of the total annual fund. What happens at present is that each clinic is required to submit an individual budget. That budget includes schedules setting out in detail the personnel employed with job titles and proposed salaries, the estimated costs of transportation and communication, and the estimated costs of accommodation, supplies and services. It is a fairly sophisticated document but there is general acceptance that something of the nature is necessary if the Committee is to make an intelligent allotment of funds. The manner of allotment by the Committee and the control of the clinics' expenditures have caused some difficulties as follows:

(a) The allotment made to each clinic is broken down under the three major expense categories referred to above, personnel, transportation and communication, accommodation, supplies and services. The policy of the Committee is to require each clinic to stay within the budget for each of the three categories and, if a transfer of funds between the categories is contemplated, to seek approval of the Committee first. Even within the salary

category the Committee will not permit a change in the mix of the staff without prior consultation. The main reason for the restriction, as I understand it, is the fear that a clinic might in the salary category raise the number of staff or their wages at the expense of the other categories and then face the Committee in the ensuing year with the fait accompli of a vastly increased salaries budget which could not be reduced except under the demoralizing effect of a reduction in staff.

The clinics, while accepting the need for a detailed budget request, wish the moneys to be allotted in one lump sum (which they describe as "global funding"). They consider that the control of expenditures by categories and the requirement of prior approval for any change in spending is an unwarranted intrusion on the autonomy of the clinics and is inconsistent with the principle of community control.

I think the position of the clinics has merit. The occasions when the clinics will transfer between categories will be rare and made after due deliberation and the controls are simple. The clinics must periodically report their expenditures in detail and any transfers should

be justified in those reports. Suspicion can be allayed by an inspection of the books of account at any time, something that no clinics object to. Finally, if there is an unjustifiable transfer, the Committee can always impose category funding or some method more stringent and with a particularly large or exceptional capital expenditure can ensure the application of funds to that purpose by making it a condition in the certificate. As a general rule however, I would recommend that "global funding" be the practice.

(b) The present practice calls for a financial report to be rendered four times per year and many of the clinics find that oppressive. I must confess I have some sympathy for their position, but I have been persuaded by the Committee that it is essential. Public funding requires public trust and it would take but one scandal in one clinic to destroy public confidence, without which the movement cannot survive. I cannot say that anything less than four reports annually is safe. I therefore recommend that the manner of reporting remain in the discretion of the Committee or its staff.

(ii) Competence

The Osler Task Force, in recommending the establishment of clinics, stated at page 54:

> "Regardless of the mix of staff employed, every clinic will be under the immediate direction of a lawyer."

It has proved a counsel of perfection. Some of the clinics catering to special interests, almost all of which are located in Metropolitan Toronto, are too small and perhaps also too specialized to justify a lawyer on staff. Nevertheless, all of them have a duty counsel in regular attendance or on call and the policy (rightly in my opinion) is to move towards the Osler view.

The role and responsibility of duty counsel may be hard to define, but I have no trouble with the role of the lawyer on staff. Some of the clinics and their lawyers seem to think that the ultimate legal responsibility lies with the clinic itself. One staff lawyer stated that he and all the community law workers were paid an equal salary and for that I could only commend him for his altruism; but when he also said that he accepted no responsibility for the legal and para-legal work of the clinic, except that which he performed himself, I was appalled. The public, who are recipients of legal or para-legal services and the public, who fund such services, have the right to expect that somewhere in the organization there is a professional taking responsibility, a professional

who is concerned about that responsibility and will ensure that the legal services rendered are at the very least adequate. Only the lawyer on staff can take this responsibility. Neither the para-legals, no matter what their expertise, nor the Board of Directors, however many experts, including legal experts, may be among them, are qualified to take it. One may call this elitist - and some have - but I would call anything else unprofessional. What is more, and worse, it is a breach of trust. The Board of Directors may hire the lawyer and discharge him, may direct him what cases to take and how far he may go in the prosecution or defence of those cases. It may be impossible to prevent the Board from telling the lawyer in exceptional cases how to conduct a case, but the lawyer must appreciate that he and he alone is responsible for the quality of the work performed, whether it be legal or para-legal, whether it be done by him or another. The clinics must live by this rule and the Committee, while it cannot interfere with the internal management of the clinics, owes a duty to the public in an extreme case to defund a clinic that does not.

The size of some clinics militates against the employment of a full-time lawyer on staff, but I think it is an objective which the Committee should always have in mind. Certainly, the employment of duty counsel is better than nothing but it seems to me there are two inherent difficulties in the practice. Firstly, super-

vision of the para-legals becomes very difficult and the quality of the work may consequently suffer. Secondly, duty counsel are paid out of the fee for service share of the total Legal Aid Fund and, consequently, are responsible neither to the Boards of the clinics nor to the Committee. Additionally, there may be an accentuation of the problems of confidentiality and insurance to which I will refer later.

The solution, in my view, is to aim to follow the Osler recommendation for a full-time lawyer on staff. With some of the smaller clinics it may be necessary to require one lawyer to do double or triple duty. I concede that it may be impractical to implement this recommendation in full immediately.

(iii) Training

The first thing that should be said under this subject head is that many of the community law workers in established clinics have already acquired an expertise unequalled in their specialty in any law office. It is also apparent that new employees of those clinics can probably obtain no better training for the tasks they are to perform than on the job with the clinic and its trained workers. In-house training (if it can be so described), if the clinic has the personnel and can spare the time,

should be encouraged and, if necessary and appropriate, funded. But that is not to say there is no role for the Committee. The establishment of a new clinic demands the training of its staff, if possible before it opens its doors. What's more, that training because of local conditions generally, requires that the training take place in the area of the new clinic. The smaller clinics too may often require assistance in training. Even the Boards of Directors may need instruction in their responsibilities. As all lawyers know, the law is always in a state of change (and perhaps much of the change relating to poverty law has been brought about by the efforts of the clinics), and constant refresher courses may be required. There is a need for co-ordination of the supply of information, precedents and materials. While the clinics can be of tremendous assistance in supplying the personnel to teach and the materials to teach with, only the Committee can supply the direction and co-ordination.

Fortunately, much of the training needed has already either been made available or is in contemplation by the Committee. As part of the Law Society's brief to me, there was presented a paper from the Committee and clinic staff on a "Training and Resources Development Centre", setting forth the facilities and plans for workshops for new clinics and continuing education workshops and proposing the establishment of a resource centre for the collection, storage and distribution of information and materials. The paper also describes the training programmes

that were conducted by the Committee (with much assistance from the established clinics) for the benefit primarily of the Halton Hills Community Legal Clinic and the Thunder Bay District Native Legal Counselling Service, both of which were conducted in the areas of those clinics.

Most of the clinics have welcomed this development, but the approval has not been unanimous. One clinic in particular rejects the whole programme and uses words and phrases like, "we are offended by this paper", "we find it arrogant in the extreme", "an appalling lack of sensitivity", "contempt for our clinic's efforts over the years", "it is insidious and potentially deadly".

Entirely apart from the extravagance of the language, it is my opinion that this particular clinic has missed the point entirely. It is not a programme designed to subvert the authority of the Board of Directors; it is designed to assist the Boards in improving the level of competence of their staffs. It is not designed, at least for established clinics, to be compulsory. If it is claimed the workers can be better trained within the clinic, so let it be. I do not think that the staff of any established clinic should be forced to undergo any formalized training. I should think, however, that the Board of any clinic would encourage its staff to take advantage of the programme and any that refused to permit its staff to do so might have much to account for.

I recommend the continuation of the programme proposed by the Committee with as much consultation with the clinics as possible and as much contribution by them as they are able and willing to make. The training of community legal workers under that programme may, at the discretion of the Committee, be a condition precedent to the certification of a new clinic.

(iv) Subject Matter

The most delicate question is the problem of control of the nature of the services to be rendered to the public. The principle of community control dictates that, generally speaking, control must be with the community board which must know best what are the community needs and how those needs can best be met. Yet this control cannot be absolute; it cannot be said too often we are dealing with public funds. There may come a time when the work proposed has lost its necessary base, the connection with legal services. There may also come a time, perhaps not until clinics are much more numerous, when there may be a duplication of services between clinics. In such circumstances the Committee may well be bound to remedy the situation.

It should be noted that the only manner in which the remedy or any control can be exercised lies in the actual funding process. For example, a financially irresponsible clinic may be required to budget more strictly and a clinic that purports to carry on work unrelated to

the supply of legal services may be partially defunded and a clinic that has ceased to be worthy of the public trust may be defunded entirely. It is to be remembered that the day-to-day operation of the clinics is the responsibility of the Boards. The Committee is the funder of the clinics and while it must in the public interest exercise some control over the clinics, that control, in my view, should be limited to a funding one. It is not a disciplinary or regulatory body imposing its will upon the clinics and directing their operations; it has no right to issue orders. Although it must be conceded that a threat to defund will have a very chastening effect, I do not contemplate that the ultimate weapon of defunding will be used at least until there has been an opportunity to air and resolve the dispute.

(e) The Committee and Its Staff

The present composition of the Committee, as we have seen, is three lawyers, two appointed by the Law Society, and one by the Attorney General. The present composition of the staff is four, Mr. Dermott McCourt, the Deputy Director of Ontario Legal Aid Plan, Mr. Harvey Savage, an Associate Provincial Director of Ontario Legal Aid Plan, Mrs. Annette Vaughan, Clinical Liaison Officer, and Ms. Susan Tanner, recently engaged in connection with the training programme above described.

The staff appears to be engaged by the Law Society but the Committee defines their roles; in practice it seems all members of the staff have been concerned in almost all of the problems. Mr. McCourt spends approximately one half of his working time on clinical affairs, while the others are virtually entirely so occupied. I asked the Committee members what portion of their time was so spent and while they had kept no accurate records, they estimate that time as approximately 300 hours per year each, an enormous contribution when you consider that two of them are volunteers and all are very busy elsewhere.

The Committee was established and its composition determined at a time of emergency when immediate funding action was necessary. As I have earlier stated the Committee has served as well as could possibly be imagined, but now two and a half years and an additional 23 clinics later, its composition and function might legitimately be reviewed and its deficiencies repaired. These deficiencies, as I see them, are three in number, as follows:

1. Firstly, there is no member of the Committee whom the clinics see as representative of their interest. One might well doubt that any member should be representative of any interest at all, but I have come to the conclusion that this is a legitimate concern. The clinics (some of them) still see the benchers and the government, if not as the enemy itself, as the protectors of those opposed to their clients' interests, the landlords, the finance

companies, the government agencies. In pursuing this thought, Professor R.J. Gathercole, Director of the Clinic Programme at the University of Toronto Faculty of Law, stated, "Whether such conflict, in fact, exists there is no doubt that it is perceived." I must agree with him that with some clinics, there is such a perception of the members of the Committee as now constituted. We should try to reconstitute the Committee to eradicate it.

2. When the Committee was first appointed, it is to be remembered it was the only body concerned in the administration of clinics. Originally, it had no staff except those it could borrow from the fee for service branch of the Plan. Inevitably then it became immersed in detail and the burden of that detail combined with the increased workload resulting from the increased number of clinics, has become more than one can expect of a volunteer or, indeed, any busy person whether volunteer or not, to bear. We must try to lift that burden.

3. There is a need for an appellate body to resolve disputes, that is a body that will give a second look to decisions affecting clinics and will give that second look in the form of a hearing with proper notice and opportunity to appear. Such a body might not have changed the final decision in the People & Law matter, but would have done much to relieve the adverse reaction to that decision.

(v) The Proposals to Remedy the Deficiencies

Almost all of the briefs had proposals to reconstitute the Committee to remedy these deficiencies or other deficiencies perceived and there is an almost infinite variety of changes that could be made. The great problems are the size of the Committee and whether the members should be elected or appointed and, in either case, by whom. It is possible to go at it from either direction, but it seems to me that the first thing to decide is whether the appellate body should be the Committee itself or whether it should be separate, because if it is to be the Committee, it will have a great bearing on its composition.

I was first of the view that what was needed was a separate appellate body interposed between the Committee and Convocation, or even standing above Convocation itself. One of the reasons that moved me was what I considered to be the impossibility of separating the Committee from its staff. I am persuaded, however, by the briefs and the presentations (including those of both Parkdale and the Law Society) that another bureaucratic or quasi-judicial level is both unnecessary and undesirable, and that the Committee can and should handle that role.

To make the appeal process work, we must first do all we can to separate the Committee and its staff in the decision-making process. The staff should make all the funding and defunding decisions in the first instance. If for any reason the staff wish to consult

with the Committee upon a funding problem with a clinic before making a decision, it should do so only on notice to the clinics and the problem should be resolved in a hearing. Otherwise, all funding and defunding decisions should be taken by the staff after negotiations, if it sees fit, with the clinic concerned. Thereafter, the clinic may appeal the decision to the Committee (or seek leave to appeal as hereafter described). It will be difficult to attain the appearance and reality of justice, but I have come to the conclusion that it is better than attempting to create a separate body. It will save time and expense for one thing and will remove from the Committee's concern all initial funding decisions. More important however, it will give the final decision to a reconstituted body upon which the clinics will see representatives of their own.

There still remains for consideration the number of the Committee and the manner of their appointment and the resolution of those problems has given me the greatest difficulty in this report. The Law Society proposes that the number remain as it is and be appointed much as now provided in Section 146, although the Treasurer stated that he would not object if all three were appointed by the Attorney General, which would allow for clinical representation. Parkdale, in its brief, recommends a Committee of 11, consisting of 3 persons appointed by the Law Society, 1 by the Attorney General, 4 non-lawyers elected by clinics, 1 lawyer elected by clinics, and 2 persons (only 1 of whom will be a lawyer) appointed jointly by the Attorney General, the Law

Society, and the clinics. In between the two, there are many other proposals, most of which are for a larger Committee with clinical representation, and they are about equally divided between election and appointment.

As I said I have had great difficulty with these problems, but I have come to the conclusion that the proper number is five and that all should be appointed by the Attorney General or by the Lieutenant Governor in Council upon his advice. I now record my reasons for reaching this conclusion.

(a) as to numbers, I have already stated my belief that the clinics must be represented, and I cannot see how one person alone can be seen to do that. The interests of the clinics are too disparate for one representative and there are different interests, or at least different perspectives, to be found even within one clinic. I see no reason to interfere with the present representation of the Law Society which is charged with the administration of the Ontario Legal Aid Plan, or with the representation of the Attorney General, who is the representative of the public, so much concerned with the application of the fund which is, after all, the public's money. We start, therefore, with a minimum of five and the question is whether there should be more. There is no question that to increase

the number would enable us to make the Committee more representative and to imbue it with more diverse interests and viewpoints. I reject an increase, however, for two major reasons. Firstly, however much we may strive to lift the burden of detail from the Committee, we must remember that the movement is still in its formative stage and the Committee will inevitably be required to make policy decisions on very short notice. A committee of more than five would in these circumstances, in my view, be too unwieldy; its assembly would be too difficult and even informal consultation among themselves would be well nigh impossible. Whenever you increase the size of a committee, it follows that you must increase the size of the staff to serve it. Secondly, I do not think that it could exercise its appellate function with any larger number. All members, in my view, should be present for and take part in all appeals if we are to have consistency and if we are to avoid complaints of an unbalanced tribunal. I do not think a board of more than five could readily and consistently be assembled.

(b) As to appointment and election, I think it brings us to a consideration of what the word "representative" means. I do not see a

representative of the clinics as one coming to the deliberation with a commitment to a particular cause. He is after all one of those concerned in the delivery of legal services and bound to see to the proper expenditure of public funds. I see him as a person knowledgeable in clinical matters, one who has worked in a clinic and understands the clinics' workings and aspirations, but one who will vote according to his conscience, as the circumstances of the particular case may dictate. If he is elected, I fear he may feel too much the pressure of his constituents. Perhaps even more important, however, is the embarrassment that election may cause him in the appellate process. If he is elected it seems likely that he will be currently involved with a particular clinic. This may well lead to a conflict if his own clinic's funding is in issue or there is a question of funding between his and another clinic. In such circumstances he could not serve and the clinics' "representatives" would be reduced by half. At the present stage in their development there is no clinical body capable of making nominations to the Committee and if the clinics cannot nominate their own representatives, I

doubt if they could see the justice in permitting the Law Society to do so either.

This is my proposal for this time, but I am quick to concede that time may prove me wrong or make my reasoning invalid. As the movement develops and more and more clinics are funded and the policy becomes established, it may be that a larger and more representative committee will be feasible and it may even be that a system of elections can be worked out that will give the appearance of justice. If so, the Regulation can and should be amended.

Before making his nominations and appointments, the Attorney General should consult with the Law Society and as many persons associated with clinics as is practicable, but the decision must be his. I do not presume to tell the Attorney General whom to appoint or nominate. I offer my own views only in the hope they might be of assistance.

1. I think all the appointees should be sympathetic to the clinical movement. As I indicated earlier, it will not be difficult to find persons with those qualifications.

2. I think the two clinical representatives should be ones who have been in the past, but preferably are not now, associated with a particular clinic. I also think at least one of them should be a non-lawyer. Lay persons make up the bulk of the employees of clinics. I do not, of course, accept the proposition that all lawyers, or even a large portion of them, think alike and act together, but there does exist in some quarters a suspicion of lawyers as some sort of monolithic self-interest group and that suspicion is best allayed by having a layman on the Committee.

3. On the other hand, the presence of a substantial number of lawyers on the committee is, in my view, essential. There are bound to be many questions of law arising in both the policy making and appellate function. No matter what may be one's opinion of lawyers, they are surely the people best qualified (except possibly Judges) to make a decision on a matter of law. As I have stated, many of the proceedings before the Committee shall be by way of a hearing and the provisions of The Statutory Powers Procedure Act would accordingly apply. The presence of lawyers on the Committee would help to ensure a proper and legal hearing.

4. There should be not only a proper mix of lawyers and laymen, but also a proper geographical balance as well.

This probably means that there should be at least two members from outside Metropolitan Toronto. I do not share the suspicion of self-interest against Torontonians any more than that against lawyers but there are different interests and, once again, it is the perception with which we are concerned.

5. I think all members should be appointed for at least a three year term and there should be provision for re-appointment.

6. In the present Chairman's letter to the Attorney General (Appendix F), he in effect submitted the resignation of the whole Committee. In the interest of continuity as well as efficiency and dedication, I hope that at least one of the present members can be persuaded to stay on.

I gave some thought to recommending a per diem allowance to the members of the Committee. It is, however, against the tradition of the Law Society to make payment other than expenses to members of its committees and so long as this Committee is a committee reporting to Convocation, any remuneration would seem inappropriate. It is all the more reason for lightening the burden upon the Committee.

(vi) Role of the Staff

As I have indicated above, I believe the staff should make all initial funding decisions. It may be that the staff will be reluctant to make a major funding decision but if it wishes to consult with the Committee on a matter of funding, it should consult with the whole Committee and only after notice to the clinic concerned and after the clinic is given an opportunity to be heard. Any decision defunding an established clinic or reducing its funding from the previous year should be subject to appeal and should not take effect until the appeal has been heard, and any other decisions of the staff affecting a clinic should be subject to appeal with leave of the Committee. For the purposes of this report, I would suggest defining an "established" clinic as one that has been funded for 2 successive years.

There will be many tasks for the staff not directly associated with funding and these will be assumed under the direction of the Committee. I see no reason to attempt to set them forth nor do I see any reason to propose a hierarchy among the staff as has been proposed in some briefs. I think it is entirely for the Committee to determine the duties of particular members of its staff, the titles they are to bear, and how disputes are to be resolved among them.

(vii) Role of Clinical Funding Committee

I suggest that the following be some of the tasks to be performed by the Committee. I doubt if it is possible to draw up an exhaustive list.

(a) to direct its staff in the administration of the Regulation;

(b) to prescribe its own procedure on hearings and appeals, subject to The Statutory Powers Procedure Act;

(c) to make policy with respect to funding or ancillary matters on its own initiative or when requested to do so by its staff. If the rights of the clinics may be affected, it is to be hoped that such policy decisions will be made only after consultations with the clinics. The broad definition of "legal and para-legal services" that I have proposed will, I should think, require refinement in the light of experience. The task of setting out guidelines of what types of clinics and what services will or will not be funded should, in my view, be a very early concern of the Committee;

(d) to entertain appeals as of right from any decision defunding an established clinic, or from any decision reducing the funding of an established clinic from that of the previous year;

(e) to entertain a reference from the staff on any funding matter affecting a clinic. I contemplate here the possible reluctance of the staff to make a decision. In such event, however, the matter should proceed as if it were an appeal with a proper hearing;

(f) to entertain any other appeals from funding decisions of the staff and to hear and resolve any other disputes between any clinic and the staff, if it considers it appropriate that such appeals and disputes be heard;

(g) to review on its own motion any decision of the staff. If such a review might affect a clinic's rights, once again a proper hearing should be held;

(h) to entertain complaints from the clients of clinics or from others affected as set forth later;

(i) to direct its staff in the planning and the development of the clinical delivery system in Ontario and in the development of resource and training facilities for clinics;

(j) to determine the amount of money required for clinical funding in each year and to advise the Attorney General accordingly.

6. THE ROLE AND RELATIONSHIP OF THE LEGAL AID COMMITTEE

It is difficult to describe the present relationship of this Committee to the Legal Aid Committee. Convocation is required to appoint its two members from that Committee, but otherwise that Committee has no direct role; the Clinical Funding Committee makes its recommendations to the Director, who obtains the approval of Convocation. I understand that the Legal Aid Committee receives the reports of the Committee, but it seems to do so only for information and has no power over or control of the Committee's actions.

I agree that, at least for the time being, the Committee should be separate from the Legal Aid Committee. There is enough distinction between the two branches of Legal Aid to justify different bodies being in charge. I do not, however, believe they should grow up strangers to each other. As the Osler Task Force has said, they are "complementary models....designed to remedy the chronic underutilization of the profession and the law by the poor". It is essential that there be co-operation between clinics and Area Directors and others administering the fee for service aspect. The Osler Task Force recommended that clinics be obliged to receive applications for Legal Aid certificates. Perhaps we need not go quite so far but, clearly, clinics should refer clients who qualify for certificates to the Area Director, and Area Directors should refer applicants who do not qualify, under the subject

coverage for certificates, but have a legal or para-legal problem, to the appropriate clinic. And this does happen now; indeed, the London Legal Clinic has its headquarters in the same premises as the Area Director's, to the great benefit of both. To prevent the ruling bodies of the two branches coming apart at the top, I recommend that every member of the Committee be, by virtue of his office, a member of the Legal Aid Committee and that reports of the Committee's proceedings and recommendations continue to be sent to the Legal Aid Committee. I appreciate that the composition of the Legal Aid Committee is a matter for the Law Society and I respectfully commend to the Treasurer and Benchers an appropriate amendment to the rules under The Law Society Act if they should concur with this proposal.

I am not sure what useful function is served by the intervention of the Director. However, it is important to inform the administrative head of the Plan of developments on the clinical side and, as the intervention is purely formal, it could be preserved.

7. THE ROLE OF CONVOCATION

The Law Society is charged with the administration and control of Legal Aid in Ontario and the clinics, of course, are a part of Legal Aid. The Osler Task Force recommended that control be transferred to a new body composed almost equally of persons nominated by the Law Society and persons nominated by the government,

but this proposal has not yet been accepted; nor is there any immediate prospect of its being accepted.

Convocation is the governing body of the Law Society and as such has the ultimate control of all legal aid matters. In that role Convocation receives all recommendations of the Committee and acts upon them as it sees fit. In practice, all recommendations have been approved and confirmed except for the reservation referred to above on People & Law. There is no question that Convocation can reject a recommendation or on its own motion raise any matter, but the subject is a very delicate one and I am sure Convocation will continue to exercise its admirable restraint. The Law Society in its brief has specifically asked that there be no further appeal from any appellate decision of the Committee. I am happy to concur in that recommendation.

8. INCIDENTAL PROBLEMS

(a) Statutory Basis

Nowhere in the Legal Aid itself is there any specific reference to clinics or to clinical funding. The legislative authority for Sections 146-151 of the Regulation is said to be found in S. 26(1)(e) of the Act, which provides:

> "S. 26(1) Subject to the approval of the Lieutenant Governor in Council, the Law Society may make regulations respecting the establishment and administration of a legal aid plan and, without limiting the generality of the foregoing, may make regulations.....

(e) providing for committees, their composition and organization and prescribing their functions;"

I note only that there is concern on the part of some that the clinical delivery system and its funding do not clearly come within the scheme of the Act.

Another concern relates to the use of a "clinical certificate" to provide funds to individual clinics. This term was no doubt used in s. 149 of the Regulation because under the Act it is only by means of a legal aid certificate that a person can obtain financial assistance. It could, however, be fairly argued that a "clinical certificate" is not a "certificate" as defined by the statute and that a broader definition of that word is required.

These matters are not before me and I make no finding on them. They are raised only to suggest that it might be appropriate at some future date to eliminate any doubt concerning the statutory basis for clinical funding.

(b) Contracts and Certificates

As already indicated the formal relationship between a clinic and the Committee is at present governed by a clinical certificate. In the normal case this certificate provides for the payment of funds to a clinic for one year, subject to its agreeing to a number of specified terms and conditions, (relating to, for example, salaries and benefits, confidentiality,

ownership of capital assets, quarterly financial reports, etc.). The certificate is issued by the Director and signed by the clinic. Some submissions were made to me as to the desirability of having the funding of clinics governed by a written contract between the Committee and the clinic instead of a certificate. As I understand it, those in favour of a contract were concerned that the certificate implied a lack of continuity and equality in the relationship and that it did not make particular the services to be rendered by the clinic. Those supporting the use of a certificate considered a contract was overly formal and was inappropriate in that it embodied the idea of the Committee "purchasing" services from the clinic.

To my mind the distinction is more semantic than real. Whether the document is called a contract or a certificate, its purpose is to set out the terms under which the clinic is to receive its funds. The term "certificate" may well have been used because of the statutory authority referred to earlier and I do not see a pressing need for change.

The real problem, however, is the extent to which conditions attached to a certificate can be imposed. Broadly speaking, they should not be used solely to interfere in the operation of a clinic. I can, however, see legitimate funding controls being exercised and I would not, therefore, prohibit the imposition of these conditions. Examples I can think of would include the requirement to retain a staff lawyer, to purchase a

particularly expensive piece of equipment, to carry out some particular project. The staff would, of course, in the first instance, impose the condition and the provision for appeal to the Committee with leave would always apply.

(c) Seed Money

Several clinics argued for the necessity for the Committee to provide "seed moneys" to assist in the development of new clinics. These moneys would be in the nature of preliminary funding (usually for travel or publicity) to enable a community to investigate the idea of starting a new clinic, and, if feasible, to prepare the appropriate application.

I am of the view that there should be no obligation on either the staff or the Committee to provide such funding in relation to new clinics. In most cases clinics will develop if there is a need in the community and sufficient interest. There is no better way to demonstrate that interest than by volunteering time and effort in the initial stages of the formation of a clinic. I concede, however, there may be a rare instance when some limited funding could usefully assist in the establishment of a new clinic. Such a case was Thunder Bay District Native Legal Counselling Services, where the Committee provided travel moneys in order to assemble representatives of the native peoples from remote areas of the province.

The staff should have the authority to disburse funds in such special cases, but the matter

should be left to its discretion and the discretion of the Committee to deal with as they see fit.

(d) Advertising

Advertising of legal services has, generally speaking, been considered unprofessional. Early in its clinical life Parkdale sought and obtained from the Professional Conduct Committee a dispensation from the rule against advertising so that it could tell the people of Parkdale of the services available. That Committee and Convocation recognized that clinics needed to make themselves known to their community and there was nothing untoward or unprofessional in a non-profit organization announcing its availability and even promoting its services. That Committee retains control over the situation and can always reimpose the ban if the advertising departs from truth or good taste, but I am told that, to date, complaints have been minimal. The only difficulty is that there appears to be a lack of consistency in the clinical advertising situation. Some clinics have followed Parkdale's lead and obtained dispensation; others have not or their applications have become lost in a procedural tangle. I suggest the Clinical Funding Committee staff should make applications for dispensation for all clinics and should, as a matter of course, make application when a clinic is first funded.

(e) Client Eligibility

In theory, of course, the clinic's services are designed for those (a) who cannot afford a lawyer, and (b) whose problems do not come within the coverage of the Act. In practice, as I have stated, there has been with respect to cases taken remarkably little conflict between the clinics and either the fee for service aspect of the Plan or the private Bar, partly because the clinics have established a very specialized expertise and partly because the pressure of case work has been such that there is no temptation to branch out.

On the question of determining financial eligibility, the procedure of the clinics has been anything but standard, ranging from fairly strict tests to no tests at all, but I do not consider that it is a serious problem. Rarely will a person of substantial means seek out a clinic's services. I think the matter can be left to the clinics.

I appreciate that in matters of public education, preventive law and law reform, there will be many beneficiaries who would not, if they had a private problem, qualify for clinic assistance. That fact does not disturb me.

There are, however, certain financial problems arising out of the particular functions of clinics, viz., those relating to group actions, costs and disbursements, and I shall deal with them in the following paragraphs.

(f) Group Actions

There has been some reluctance to fund group actions in the fee for service branch of Legal Aid, notwithstanding a favourable recommendation for issuance of certificates to groups by the Osler Task Force, but there has been none on the clinical side. Group actions are a developing field and because clinics are community or special-interest based, such actions are more likely to arise in their affairs. Indeed, the Osler Task Force recognized that group actions might be one of the priorities of clinics. The only consideration might be to give the present practice some firm statutory basis. I repeat, however, it is not at present a problem.

(g) Costs

A problem does arise, however, if a test case is to be taken either by a group or an individual with a consequent risk of costs. The Osler Task Force recommended that the courts themselves should in group proceedings lean to a policy of not imposing costs against an unsuccessful group where a public issue of substance is involved. I would be more inclined to seek to protect the group or individual from a crippling imposition of costs. That protection is available to the fee for service client under section 129 of the Regulation, reading as follows:

> "129.-(1) Where proceedings have been taken or defended by a client and the costs thereof have been awarded by a court against him, he may apply to the Director for payment out of the Fund of the costs so awarded.
>
> (2) Where the client refuses or fails to apply for payment within a reasonable time, the person to whom such costs are awarded may make such application."

That protection does not appear to be available to the clinics. Client is defined in 1(d) of the Regulation, as follows:

> "(d) 'client' means a person holding a valid legal aid certificate."

In my view the clinic's client is particularly in need of protection and the Regulation should be amended to provide it.

A question was raised as to the collection and disposition of costs awarded to a client of a clinic. In my view Section 19 of the Act applies and the costs should be collected and paid into the Fund pursuant to that section.

(h) Disbursements

Legal disbursements are a continuing problem for clinics, partly because they are unpredictable at budget time, and partly because some clinics may legitimately want to become involved in litigation requiring large disbursement outlays for which they have no funds available either in their budgets or from the group. One solution would be to

permit the clinics in such circumstances to receive a fee for service certificate for disbursements only. However, the Committee reasonably preferred that all clinical funding come from the same source. I therefore recommend that the Committee maintain a separate fund for large disbursements and receive applications from clinics and fund them separately as required for the purpose. Non-exceptional legal disbursements may continue to be dealt with as part of the clinic's general budget.

(i) Unions

Unionization of some of the workers in some of the clinics has brought with it some special problems. In some cases the Boards of Directors have negotiated with the unions what they described as a fair contract reached in good faith, only to find that the Committee, adhering to a lower salary scale, would not supply them with sufficient funds to honour the contract. It has been suggested that perhaps the Committee, or a member thereof, should participate in negotiation, but the Committee does not want to be so involved and I see no reason why it should be, particularly as the ultimate source of funds is the government. All I can suggest is that the clinics report any contracts entered into at the time of submitting a tentative budget and the Committee,

if it accepts those contracts as fair and honourably made, take them into consideration when submitting its total funding request to the Attorney General.

(j) Confidentiality and Insurance

I shall deal with these two matters together because, in my view, they have a common element. The problem of confidentiality is essentially the protection of the clients' secrets. Indeed, there was at one time a fear that the Committee was empowered and would exercise the power to examine files without the consent of the clients, but the Committee has now disclaimed any such right. The problem still remains of protection of the clients' secrets where the work done is para-legal, in that it might not automatically be protected under the solicitor and client evidentiary privilege.

The same problem may exist in the insurance field. Are the community legal workers covered under the Law Society's Errors and Omissions policy? And, if not, can coverage be obtained?

Both problems seem fortunately to be academic to date because I have heard of no attempt to pry a clinic's clients' secrets; nor have I heard of a claim for negligence brought by a client against a clinic, its para-legal workers or its Board of Directors, or for that matter, its lawyers. Nevertheless, they remain of considerable concern.

It seems to me that both problems cease to be of importance once we recognize the principle that the legal and para-legal work done in a clinic is under the quality control of the lawyer on staff. If that be so, I would think the files and the secrets have the privileges which are attached to the solicitor/client relationship and the para-legal worker is covered by the solicitor's errors and omissions policy compulsorily carried by every lawyer under the rules of the Law Society. Perhaps an opinion should be obtained or perhaps a clause added to the particular lawyer's policy so there will be no doubt. Perhaps also, some thought should be given to protecting the clinic's lawyer in regard to the deductible portion of the policy for he is in a somewhat different position from that of the lawyer in private practice.

There is the further problem already alluded to of coverage for the para-legals when there is only a duty counsel in attendance. The Law Society has concluded that the public is entitled to protection for the negligence of lawyers. It is difficult to argue that such protection should not also be available when the negligence is that of any clinical employee.

These problems are not easy to resolve. I can only commend them for consideration by the staff. I understand that consideration is already under way.

(k) Complaints

I think the Committee has a role to play in the handling of complaints if the clinical movement is to develop accompanied by public confidence. Complaints can, of course, be in many forms and on many subjects, but in my opinion, the handling of complaints should be perhaps different depending on their origin. First of all, I think complaints from clients should not be heard at all until as a pre-condition the problem has been heard by the Board of Directors of the clinic. It is that Board that must survive in the community of the client and is most concerned; it is that independent board that is charged with the task of supplying the services to the client. There may well be occasions when a complaint will be lodged directly with the Law Society and that body will consider the matter one requiring immediate action, but I do not think the Committee should ever, even when the matter is referred to it by Convocation or some committee of Convocation, seek to deal with it, unless there is already a decision on the merits by the Board of Directors.

When the complaint emanates from someone other than a client, I do not think the same condition need apply. There appeared before me certain merchants and other residents complaining of the conduct of a certain clinic in their area. I express no view on the merits of these complaints, but I do think there should

be some place for them to be taken. As the problems will generally arise out of litigation between the complainant and a client of the clinic, the Board of Directors will understandably be unlikely to give the questions quite the same sympathetic consideration that the complainant would like. In such circumstances he should be permitted to take his complaint directly to the Committee. All proceedings conducted by the Committee arising out of complaints should, of course, be in the nature of a hearing with due notice to and representation by the clinic. I again emphasize that the Committee has no disciplinary powers. It may, of course, make recommendations to a clinic but its only power is to defund. I have no doubt that an adverse reaction to a clinic's conduct drawn by the Committee and communicated to the Board of Directors will in most cases be enough.

9. SUMMARY OF RECOMMENDATIONS

1. Sections 147 and 148 should be amended so as to provide for the following:

(a) the funding should be of independent community clinics delivering legal or para-legal services by any method other than fee for service;

(b) "community" should be defined so as to include geographical community, community of interest, and the community of the public at large;

(c) "legal and para-legal services" should be defined to include other activities reasonably designed to encourage access to such services or to further such services, and also services designed solely to promote the legal welfare of the public at large.

(pages 10-16)

2. The clinics should be encouraged to submit tentative budgets to the Committee before the latter submits its request to the government for funds. The Committee should seek from the government what is needed, not what it thinks it can get.

(pages 20-21)

3. The allotment to the clinics should be on the footing of "global funding" with the Committee or its staff having the right to impose stricter funding requirements in an individual case for a specific reason at any time. The clinics will render financial reports as required by the Committee or its staff.

(page 25)

4. The aim should be to ensure that each clinic has a lawyer on staff. In some cases one lawyer will have to serve more than one clinic. The provision of duty counsel only to a clinic should be discouraged.

(page 28)

5. The ultimate responsibility for the quality of legal and para-legal work must rest with the lawyer on staff.

(page 27)

6. In-house training should be encouraged and, in the discretion of the Committee or its staff, funded. The Committee and its staff should continue their plans for training and for a resource centre and, in so doing, they should consult and co-operate with the clinics. Except with new clinics, attendance by the staff of a clinic at Committee-conducted programmes should not be compulsory.

(page 31)

7. Neither the Committee nor its staff should issue orders to clinics. The sole control of clinics is in the funding process.

(page 32)

8. The staff should make all initial funding decisions. If the staff wishes to consult with the Committee on a funding matter, it should do so on notice to the clinic concerned and there should be a hearing.

(pages 35-36;
page 43)

9. The Committee should be re-constituted so as to be a body of five members, two representing the Law Society, two representing the clinics, and one representing the Attorney General and the public. All should be appointed by the Attorney General or by the Lieutenant Governor in Council upon his nomination. Before making his appointments or nominations, the Attorney General should consult with the Law Society and as many persons associated with clinics as practicable.

(pages 37-40)

10. All decisions of the staff defunding an established clinic or decreasing its funding from the previous year should be subject to appeal to the Committee and should not take effect until the appeal has been heard.

All other decisions of the staff should be subject to appeal to the Committee only with leave of the Committee. There should be no further right of appeal from the Committee to any other body.

(pages 43, 44, 48)

11. All members of the Committee should be by virtue of their office members also of the Legal Aid Committee and reports of the Committee should continue to be sent to the Legal Aid Committee for information.

(page 46)

12. The Committee should make policy with regard to funding and ancillary matters and, particularly, the Committee should seek to establish and publish in consultation with the clinics guidelines as to what types of clinics and what services will and will not be funded.

(page 44)

13. The Committee should have authority to advance seed money but the authority should only be exercised in special cases.

(page 51)

14. The Committee should consider making application on behalf of all clinics to the Professional

Conduct Committee of the Law Society for dispensation from or relaxation of the rule with respect to legal advertising.

(page 52)

15. A client of a clinic against whom an order as to costs has been made should be enabled to apply for payment out of the Fund with the costs so awarded and if he fails to do so, the person to whom the costs were awarded should be enabled to make the application. If it is felt undesirable to pay such costs out of the general Legal Aid Fund, a contingency fund should be set up by the Committee.

(page 55)

16. The Committee should maintain a fund from which payment can be made to clinics for exceptional legal disbursements.

(page 56)

17. The Committee should entertain complaints from the clients of clinics and from others upon notice to the clinic concerned, but no complaint should be entertained from a client until the complaint has first been dealt with by the Board of Directors of the clinic.

(pages 59-60)

EPILOGUE

I cannot end this report without thanking all the people who have contributed to it. First of all, I should acknowledge that almost every idea and almost every proposal had its origin in a brief or in an oral representation made at the hearings. I would like to thank all those people whose ideas I have stolen with neither remorse nor even, in most cases, attribution.

Particularly, I should thank my counsel, Mr. John I. Laskin, who so ably conducted the hearings. He struggled manfully to acquaint me with the issues and fought with me, sometimes successfully, about the solutions.

Finally, I must thank the Commission secretary, Miss Andrea Hind, who, besides her other duties, typed this report through its many drafts. Her task was certainly not made easier by having to decipher some very illegible handwriting made necessary by the fact that until almost the end, none of the transcription machinery offered to us worked. As neither she nor I make any pretension to mechanical aptitude, perhaps I should say, worked for us.

Ontario

APPENDIX "A".

Office of the Minister

Ministry of the Attorney General

416/965-1664

18 King Street East
Toronto Ontario
M5C 1C5

June 27, 1978

Honourable Mr. Justice S. G. Grange
Supreme Court of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario.

Dear Mr. Justice Grange:

Whereas the Clinical Funding Committee has expressed concerns to me about the procedures and structures relating to the operation of the current Clinical Funding Regulation and the relationships between the various elements of the present clinical system and the clinical funding process, this letter serves to appoint you to review the operation and administration of the Clinical Funding Regulation and to make recommendations with respect thereto and without restricting the generality of the foregoing:

1. To review the operation of the Clinical Funding Regulation being O. Reg. 160/76, and to make recommendations for improvements to the Regulation and its administration by the Law Society of Upper Canada.

2. To provide, in addition to recommendations with respect to the Regulation, recommendations for firm guidelines to govern the working relationship between the clinical delivery systems and the Clinical Funding Committee.

3. In all of the foregoing to consult with the Clinical Funding Committee, the clinics presently funded under the Clinical Funding Regulation and other interested parties to ensure their concerns are fully considered.

...2/

4. To have regard in all of the foregoing to the need for the independence of clinical delivery systems, funded under the Regulation, the need for accountability for the expenditure of public funds, the need to maintain good standards of service to the public, the need to deliver service at a reasonable cost to the taxpayer, and the need for orderly growth and development of the clinical portion of the Ontario Legal Aid Plan.

5. To report as early as possible in the fall of 1978 so that a new Regulation may be in place by December 1, 1978, one month before the commencement of the next funding cycle.

Yours very truly,

R. Roy McMurtry
Attorney General

APPENDIX "B"

LIST OF CONTRIBUTORS OF WRITTEN SUBMISSIONS TO THE COMMISSION ON CLINICAL FUNDING

1. Association of Commercial & Technical Employees
2. Joint Brief
3. Canadian Environmental Law Association
4. Correctional Law Project (Queen's University)
5. Community & Legal Aid Services Program
6. Professor R.J. Gathercole
7. Parkdale Business Association
8. Halton Hills Community Legal Clinic
9. Injured Workers Consultants
10. Landlord's Self-Help Centre
11. Legal Assistance of Windsor
12. London Legal Clinic
13. Law Society of Upper Canada
14. Metro Tenants Legal Services
15. Multiple Dwelling Standards Association
16. McQuesten Legal & Community Services
17. Neighbourhood Legal Services
18. Ontario Native Council on Justice
19. Ontario Legal Aid Plan
20. Orillia Law Association
21. Problem Central Incorporated
22. People & Law
23. Parkdale Community Legal Services
24. Public Interest Advocacy Centre
25. Queen's Law Students' Legal Aid Society;
    Queen's Belleville Legal Aid;
    Queen's Rural Legal Services

LIST OF CONTRIBUTORS OF WRITTEN SUBMISSIONS TO THE COMMISSION ON CLINICAL FUNDING

26. Rexdale Community Information Directory

27. Ruston, Mr. Robt. James

28. Riverdale Socio-Legal Services

29. Toronto Community Legal Assistance Services

30. Toronto Community Law Program (now called Community Legal Education Ontario)

31. Thunder Bay District Native Legal Counselling Services

32. Tenant Hotline

33. York County Law Association

APPENDIX "C"

LIST OF APPEARANCES BEFORE

CLINICAL FUNDING COMMISSION

1. ASSOCIATION OF COMMERCIAL & TECHNICAL EMPLOYEES
   (J. Greatbach; W. Robinson)

2. BLACK RESOURCES INFORMATION CENTRE
   (Sri-Skanda-Rhaja; S. Whitzman)

3. CANADIAN ENVIRONMENTAL LAW ASSOCIATION
   (C.C. Lax; J.Z. Swaigen; A.G. Lancaster; G. Patterson)

4. CLINICAL FUNDING COMMITTEE
   (J.B. Chadwick, Q.C.; G.W. Scott; L.K. Ferrier, Q.C.)

5. COMMUNITY LEGAL EDUCATION ONTARIO
   (G.E. Rivard; W. Geyer; M. Lane)

6. COMMUNITY & LEGAL AID SERVICES PROGRAM
   (B. Nixon; S. Sperdakos; T. Zizys)

7. MR. RICHARD GATHERCOLE

8. INJURED WORKERS' CONSULTANTS
   (W. Robinson)

9. KENORA COMMUNITY LEGAL CLINIC
   (P. Kirby)

10. LANDLORD'S SELF-HELP CENTRE
    (L. Wisman)

11. THE LAW SOCIETY OF UPPER CANADA
    (G.D. Finlayson, Q.C.; J.B. Chadwick, Q.C.)

12. LEGAL ASSISTANCE OF WINDSOR
    (Dean R.W. Ianni, Q.C.; M.C. Ray; D. Blondes; D. Starr)

13. LONDON LEGAL CLINIC
    (G.M. Dickinson)

14. METRO TENANTS LEGAL SERVICES
    (M. Hogan; S. Atkinson; D. Hunt)

15. MULTIPLE DWELLING STANDARDS ASSOCIATION
    (R. Burton)

16. McQUESTEN LEGAL SERVICES
    (J. Kuras; D. Brown; S. Collins; D. Mitchell)

17. NEIGHBOURHOOD LEGAL SERVICES
    (P. Graham; D. Chaisson; K. DeLuca)

LIST OF APPEARANCES BEFORE

CLINICAL FUNDING COMMISSION

18. ONTARIO NATIVE COUNCIL ON JUSTICE
(X. Michon)

19. PARKDALE COMMUNITY LEGAL SERVICES
(M.J. Mossman; S.R. Ellis; N. Clarke)

20. PARKDALE BUSINESS ASSOCIATION
(T. Gaibisels; E. Getz; E. Wons; S. Panczyszyn)

21. PEOPLE & LAW
(R. Nelles; R. Tait)

22. PROBLEM CENTRAL
(C. Webber; A. Aggozino)

23. PUBLIC INTEREST ADVOCACY CENTRE
(C.G. Watkins; I. Waddell; A.J. Roman)

24. QUEEN'S CORRECTIONAL LAW PROJECT
(R.R. Price; A. Manson)

25. QUEEN'S LAW STUDENTS' LEGAL AID SOCIETY and THE QUEEN'S RURAL LEGAL AID PROJECT (J.R.C. Dewhurst)

26. RIVERDALE SOCIO-LEGAL SERVICES
(C. Stewart; R. Firth; P. Libman; V. Laverne)

27. REBECCA SHAMAI

28. TENANTS' HOTLINE
(K.J. Hale; A. Mason-Apps; W. Robinson; A. Harriman)

29. THUNDER BAY LEGAL CLINIC
(J. Moore)

30. TORONTO COMMUNITY LEGAL ASSISTANCE SERVICES
(A. Page; T. Herman)

31. WINDSOR STUDENT LEGAL AID SOCIETY
(L. Kolyn)

APPENDIX "D"

REGULATION 557 MADE UNDER THE LEGAL AID ACT
R.S.O. 1970, c. 239 AS AMENDED

CLINICAL FUNDING COMMITTEE

"146. There shall be a Committee known as the Clinical Funding Committee composed of,

(a) two members appointed by Convocation from the Legal Aid Committee; and

(b) one member appointed by the Attorney General. O. Reg. 160/75, s. 1, part.

147. The Clinical Funding Committee shall make recommendations to the Director regarding the Funding, and the terms and conditions of funding, of independent community based clinical delivery systems. O. Reg. 160/75, s. 1, part.

148. 'Clinical delivery system' means any method for the delivery of legal or para-legal services to the public other than by way of fee for service, and includes preventive law programmes and educational and training programmes calculated to reduce the cost of delivering legal services. O. Reg. 160/75, s. 1, part.

149. Upon the recommendation of the Clinical Funding Committee and with the approval of Convocation, the Director may issue a clinical certificate for any period not exceeding one year directed to the named clinical delivery system setting forth the terms and conditions of approval and funding and such a certificate may be issued retroactively. The Director may issue a provisional clinical certificate without the approval of Convocation but such certificate may not be issued nor have effect after March 31st, 1975. O. Reg. 160/75, s. 1, part.

150. The moneys required for the purposes of this Regulation shall be paid out of the moneys designated for the general purpose of this Regulation. O. Reg. 160/75, s. 1, part.

151. A Clinical certificate shall not be issued unless moneys have been designated for the general purposes of this Regulation. O. Reg. 160/75, s. 1, part."

APPENDIX "E"

ANALYSIS OF COMMUNITY LEGAL SERVICE PROJECTS ACCOUNT (#045)

YEAR ENDED MARCH 31, 1977

Name of Clinic	Amount	
Canadian Environmental Law Association	$ 29,986.56	
Injured Workmen's Consultants	62,300.00	
Legal Assistance of Windsor	113,712.00	
London Legal Clinic	80,465.37	
Metro Tenants Legal Services	21,504.00	
Neighbourhood Legal Services	63,996.00	
New Welfare Action Centre	18,000.00	
People & Law Research Foundation	69,600.00	
Problem Central	72,000.00	
Tenant Hot Line	47,000.00	
Toronto Community Law School	30,000.00	
Strathcona Community Project	26,256.09	
Parkdale Community Legal Services	277,305.00	912,125.02
Administrative Expenses		2,986.84
TOTAL PER GENERAL LEDGER		915,111.86

APPENDIX "E"

ANALYSIS OF COMMUNITY-BASED CLINICS ACCOUNT (A/C 8045)

YEAR ENDED MARCH 31, 1978

Name of Clinic	Amount
Injured Workers' Consultants	$103,415.50
Problem Central	72,000.00
Canadian Environmental Law Association	53,999.92
New Welfare Action Centre	23,547.96
Toronto Community Law Programme	62,164.92
Tenant Hotline	78,047.81
Thunder Bay District Native Legal Counselling Services	36,838.00
Legal Assistance of Windsor	129,203.09
Metro Tenants Legal Services	55,745.00
Neighbourhood Legal Services	111,584.66
Strathcona Community Centre	49,999.92
London Legal Clinic	54,357.70
Parkdale Community Legal Services	314,994.96
People & Law Research Foundation	82,999.92
McQuesten Legal & Community Services	11,586.00
Queen's Correction Law Project	48,499.92
Riverdale Socio-Legal Services	40,670.02
Preventive Law Programme, Ottawa	9,999.96
Industrial Accident Victims Group of Ontario	34,080.00
Oshawa Tenants Educational & Legal Services	23,809.00
Rexdale Community Information Directory	11,090.00
Injured Workers Legal Assistance Group - Hamilton	35,000.00
Mississauga Tenants Action Centre	18,954.00
Landlord's Self Help	27,450.00
Halton Hills Legal Clinic	17,844.00
Black Resources & Information Centre	6,000.00
Bloor-Bathurst Information Centre	7,002.00
Kenora Community Legal Aid Clinic	5,000.00
Sub-total	1,525,784.26
Equipment purchases for clinics	6,902.84
Administrative Expenses, including staff salaries, travelling and meeting expenses and clinic audit fees	110,389.35
Per General Ledger	1,643,076.45

Note:

Total authorised in Budget	$1,700,000.00
Less: Spent, as above	1,643,076.45
Carried forward in Fund Balance at March 31, 1978	$ 56,923.55

APPENDIX "E"

COMMUNITY-BASED CLINIC FUNDING
YEAR ENDING MARCH 31, 1979

ESTIMATE OF FUNDS COMMITTED — AS AT SEPTEMBER 30, 1978

Name of Clinic	Amount $
Black Resources	16,287
Bloor-Bathurst	15,745
Canadian Environmental Law	113,175
C.N.I.B.	1,093
Centre for Spanish Speaking Peoples	15,458
COSTI	9,000
Halton Hills	41,694
Hamilton Injured Workers	56,675
Industrial Accident Victims Group	56,625
Injured Workers Consultants	122,343
Kenora	48,450
Landlord's Self Help	42,689
Legal Assistance of Windsor	167,181
London Legal Clinic	93,185
McQuesten	91,640
Metro Tenants	93,060
Mississauga Tenant Action Centre	14,925
Mississauga Community Legal Services	55,045
Neighbourhood Legal Services	122,852
New Welfare Action	30,826
Oshawa Tenants	15,944
Parkdale	374,732
Preventive Law, Ottawa	14,295
Queen's Correctional	62,295
Queen's Rural	27,521
Rexdale	24,480
Riverdale	73,638
Strathcona	56,004
Sudbury Community Legal Services	38,508
Tenant Hotline	103,184
Thunder Bay (Note 1)	114,355
Toronto Community Law Programme	104,930
Toronto Community Legal Assistance	115,710
York Community Services	13,348
People & Law	11,882
Sub-total	2,358,774
Administrative Expenses	156,500
Total	2,515,274

NOTES: 1. The Thunder Bay commitment will be reduced by an amount up to $50,000 by virtue of a cost-sharing agreement with the Department of Justice.

2. Total funds available for 1978-79:

Balance forward from last year	$ 56,923
Designated this year	$2,540,000
	$2,596,923

CLINICAL FUNDING COMMITTEE
THE ONTARIO LEGAL AID PLAN

APPENDIX "F"

TELEPHONE
361-0786

May 10, 1978

SUITE 1000
145 KING STREET WEST
TORONTO M5H 3L7

The Honourable R. Roy McMurtry, Q.C.,
Attorney General,
18th Floor,
18 King Street East,
Toronto,
Ontario.
M5C 1C5

Dear Mr. McMurtry,

Re: Clinical Funding Regulations

The current Clinical Funding Regulation served the major function of saving the Clinics from extinction in 1975 and provided a basis not only for their preservation but for the development of much needed new Clinics.

As we have discussed with you in the past, the current regulation governing Clinical Funding has outlived its original purpose and no longer meets the requirements of the Clinical delivery system. In recognition of this situation, we undertook to carry out a review of the current regulation and to make recommendations to you. We have accumulated information from various jurisdictions and we have had a preliminary meeting with the Clinics to discuss the process of reform of the procedures governing this relationship.

The experience of the last two years has demonstrated the need to have a clearly defined relationship between all elements of the system; the Clinics' employees, the Clinics' Board, the Clinical Funding Committee, the Legal Aid Plan, the Law Society and the Attorney-General.

On January 7, 1978, we commenced this process of consultation with the Clinics. We are, of course, prepared to continue and report to you as soon as possible. We believe it reasonable, however, to recommend for your consideration another alternative to our central role in carrying out the process of recommending structural reform. We would suggest that you consider the appointment of an independent Commissioner to recommend the changes required in the system to guarantee sound personal service, the protection of public investment and the continued growth and development of Ontario's unique Clinical system.

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APPENDIX "G"

PUBLIC ACCOUNTS 1975 - 1977. ESTIMATES 1977 - 1979

Year	Total Provincial Budget	% Change	Total Budget, Attorney-General	% of Total Provincial Budget	% Change	Total A.G. Transfer to O.L.A.P.	% of Total Ministry Budget	% Change	Total Clinical Funding	% Total CLAP	% Change
1978/79	$14,005,000,000	8	$136,047,000	0.97	5	$26,466,700	19	4	$2,500,000	9	47
1977/78	12,922,000,000	10	128,717,400	0.99	10	25,322,200	19	7	1,700,000	6	75
1976/77	11,743,000,000	11	116,272,958	0.99	16	23,554,500	20	29	970,000	4	355
1975/76	10,490,000,000,		99,668,235	0.95		18,225,400	18		213,000*		

* September 1975 - Parkdale Legal Services interim funding

January 1976 - Clinical funding regulation passed.

We would suggest that the Commissioner should have terms of reference as follows:

- to carry out such investigation as is necessary to make recommendations to the Attorney-General for a new regulation/regulations governing the delivery of clinical legal aid;

- to provide, in addition to the regulation, firm guidelines to govern the operation relationship between the Clinics and the Clinical Funding Committee;

- to consult with both the Clinical Funding Committee, the Clinics and other interested parties in an appropriate manner to ensure their concerns are fully considered as to the future of the system;

- to examine the structures utilized in other provinces in Canada;

- to report no later than August 31, 1978.

Our reasons for this recommendation of an independent Commissioner are several:

1. The process of reform should not extend over a long period of time. Under the current circumstances, the relationships are strained between the Committee and a few of the Clinics and, until the rules of the relationship are defined, full co-operation between all parties will not be realized.

2. The vast bulk of background material on other jurisdictions is available and the credibility of the report is the central ingredient in putting together a final report to ensure the new rules are in effect for the 1979/80 fiscal year.

3. The issue of time is important and the process should be finalized in order to have the new structure in effect by October, 1978 if it is to affect the new year.

4. The system would be impaired if the Clinical Funding Committee and the Clinics were forced to continue their relationship under the current regulation into another fiscal year.

5. Although the Clinical Funding Committee is ready, willing and able to carry on the process, there can be little doubt that progress would be slow because of some of the strains which have developed over the past two years.

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6. The issues are well defined and, in order to deal finally with this matter, it would be helpful to have a neutral figure hear both the Clinical Funding Committee and the Clinics and issue his/her recommendations.

While we believe the issues are quite clear, we would not believe it is realistic to expect the Commissioner, even if he or she is acceptable to all parties, to be able to make a report that would be universally acclaimed. Indeed, the issues will likely require tough decisions. Delay in the pursuit of a universal solution can only worsen the situation.

We would be pleased to meet with you to discuss this proposal or others at your earliest convenience, as we believe that the future of the Clinical delivery system in this province requires a quick resolution of the operational problems which have grown under the current regulation.

Finally, subject to your pleasure, we are prepared to remain as members of the Committee and carry out our responsibilities until such time as you proceed with the new regulation and operational arrangements. At that time, we believe it would be beneficial to the system to have a new Clinical Funding Committee which would then be able to start with a clean slate.

Yours sincerely,

James Chadwick
Chairman
Clinical Funding Committee