



Bill 161, An Act to enact the Legal Aid Services Act, 2019

ACLCO Analysis

February 4, 2020

INTRODUCTION

On December 9, 2019, the provincial government introduced Bill 161, an Act to enact the *Legal Aid Services Act, 2019* and to make various amendments to the *Legal Aid Services Act, 1998*. The Association of Community Legal Clinics of Ontario (ACLCO) applauded the statutory inclusion of independent community legal clinics, governed by boards of directors, providing poverty law services, in Bill 161. As well, the ACLCO supported the announced roll back of the 2020-21 budget cuts as a first step towards the investment of adequate funding for legal aid services.

The ACLCO also appreciates that the Attorney General has assured us that he supports the clinic system continuing to do the high quality and important work it currently does, utilizing the tools currently at its disposal.

However, even with these assurances, several serious concerns remain about the new Bill itself. The ACLCO believes that there is room for significant improvement in the new legislation, including in the sections that expressly recognize and support the community legal clinic model. The ACLCO believes that the new Bill inadvertently removes some of the important provisions in LASA 1998 that allowed clinics to provide high quality services to our communities.

The following is our analysis of Bill 161, based on the goal of maintaining a robust community legal clinic model that provides poverty law services for Ontario's most disadvantaged in a manner that is effective, community-based, responsive and adaptive to the legal needs of people who live in poverty, yet retains appropriate accountability to Legal Aid Ontario for the expenditure of public funds. This analysis is based on a consultation with community clinics, and the feedback of external experts and trusted advisors.

PRELIMINARY COMMENTS - BILL 161 SCHEDULE 15 TRANSITION PROVISIONS

Bill 161 provides that LAO may attempt to enter into discussion with each clinic that is currently a party to a memorandum of understanding with LAO for the purpose of entering into a new agreement with the clinic respecting the provision of legal aid services.¹ This section leaves the decision as to whether or not to enter into discussions with a clinic entirely up to LAO.

¹ Bill 161, Schedule 15, s.72.3 (1)

While the ACLCO is ready and eager to see new agreements reached between LAO and clinics, the discretionary nature of this section and the relatively short timeframe within which to reach new agreements, causes serious concern for clinics. This is particularly so because Bill 161 provides for cancellation of existing memoranda of understanding, funding agreements, and indeed any instrument between LAO and clinics, after six months from the day on which the new legislation comes into force.² The cancellation of these instruments, without replacement agreements, would render the continued provision of services virtually impossible for clinics.

When Bill 161 comes into force, clinics and LAO will be entering into a new legislative framework for the provision of legal aid services. Discussions regarding funding documents within that framework will take time and concerted effort. Clinics should not be compelled to accept any agreement for fear of having no agreement within the legislated timeframe.

The ACLCO recommends that the Bill be amended to require LAO to enter into discussion with each clinic for the purpose of entering into a new funding document, within a certain period of time after the coming into force of the new legislation.

A provision should be included that would cover the eventuality of no agreement having been reached within the six-month time frame, such as the appointment of a third party to facilitate reaching an agreement.

BILL 161 SCHEDULE 16

Our analysis of the *Legal Aid Services Act, 2019* is presented in two sections. The first section addresses those parts of the Bill that are fundamental to sustaining community legal clinics and legal aid services in general within a robust and responsive legal aid system.

The second section highlights certain additional areas where the new legislation could be improved.

SECTION I

1. Purpose

i) Access to Justice for low income Ontarians

The omission from the Purpose clause of “access to justice”, “low-income Ontarians” and “disadvantaged communities” raises serious concern. The Purpose in the current legislation acknowledges the very reason we have a comprehensive legal aid system in Ontario; that is, to ensure that everyone is equal before the law, regardless of ability to pay.

The Purpose section matters in any legislation. The Purpose clause will be used to interpret the legislative intent of the law. It will also be considered in any dispute over other sections of the legislation. In legal aid legislation that establishes independence

² Bill 161, Schedule 15, s.72.3 (5); s.72.3 (6)

from government in providing legal aid services, the Purpose serves as a roadmap for decision-makers, including boards of directors of community legal clinics, who often have to make difficult decisions that entail setting priorities within finite resources.

The use of different words in the Purpose section will give rise to the assumption that different words in the new statute intend different legal effects. The overriding general approach to statutory interpretation is that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object to the Act and the intention of Parliament. (E. Dreidger, *Construction of Statutes* (2nd Ed. 1983))

The change in the purpose section of Bill 161 omitting that the new legislation is intended to promote access to justice for low income people, and removing the reference to the legal needs of disadvantaged communities, in and of itself, could be interpreted as an intention to weaken the fundamental equality guarantees enshrined in LASA 1998. The ACLCO understands that this is not the government's intent and recommends that the Purpose section be redrafted as follows:

1 The purpose of this Act is to promote access to justice throughout Ontario for low-income individuals and disadvantaged communities by means of:

- (a) the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services throughout Ontario in a client-focused and accountable manner while ensuring value for money; and,*
- (b) identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario.*

ii) Clinics as the Foundation of clinic law or poverty law

The Purpose section contained in Bill 161 omits the recognition of clinics as the “foundation for the provision of legal aid services in the area of clinic law”.

Removing the provision establishing clinics as “the foundation” for clinic law and, requiring only that LAO “have regard to” the “foundational role” of clinics, fundamentally weakens the role of the community legal clinics.³ Being statutorily recognized as having a foundational role is something quite less than being seen as the foundation for a class of services.

The ACLCO recommends that Bill 161 be amended to include the following in section 5(5):

In determining how to provide legal aid services in the area of poverty law as defined in section 4, the Corporation shall have regard to,

- (a) community legal clinics being the foundation for the provision of legal aid services in the area of poverty law; and*
- (b) determinations by community legal clinics of the legal needs of the communities they serve.*

³ Bill 161, Schedule 16, s. 5(5)(a)

2. “Shall fund” versus “may fund”

The *Legal Aid Services Act, 1998* requires LAO to provide legal aid services. The statutory language is that the Corporation “shall” provide legal aid services in the areas of criminal law, family law, clinic law and mental health law.⁴ LAO is permitted (the Corporation “may”) to provide legal aid services in areas of civil law not referred to in s. 13 (1).⁵

Bill 161 would permit LAO to provide legal aid services but would not require it do so.

s. 3: “The Corporation may provide legal aid services” it considers appropriate, and,

s. 4: “The Corporation may provide legal aid services” in certain areas of law that include Poverty Law.

The concern here is that LAO would be acting within its authority to stop providing poverty law services (or any other legal aid services for that matter). In the *Legal Aid Services Act 1998*, the only discretionary services are in the area of “other” civil law areas. Under the new legislation, no services are mandatory (other than, arguably, legal aid services where legally required, as listed in section 15 of Bill 161 Schedule 16.)

Section 4 could well remove the protection for clinics that was the basis for the ACLCO’s support for the Bill. If the section becomes law, and LAO were under significant pressure to fund another area of law, it could decide not to continue funding poverty law services. Or, if LAO were under pressure from parties that are commonly opposite clinic clients, nothing in the new legislation would compel it to continue funding clinics.

Also, Bill 161 contains a confusing section under the heading of the “Manner of providing legal aid services” that allows LAO to authorize community legal organizations to provide services as a service provider⁶ but says that LAO “shall not” consider the financial impact of the determination on a service provider⁷. This section requires clarification for clinics, particularly because clinics rely on LAO funding to cover all of their regularly occurring financial liabilities such as personnel expenses and rent. If clinics are not adequately funded, the quality of service will be impacted. The Corporation should take into consideration the financial impact on clinics to ensure that the purpose of high-quality and sustainable service delivery is maintained.

Accordingly, we recommend that section 4 of Bill 161 be redrafted as follows:

4 The Corporation shall, subject to the regulations, provide legal aid services in the following areas of law: criminal law; family law; poverty law (as defined in the proposed definition below); mental health law; and child protection law.

⁴ Legal Aid Services Act, 1998, s. 13(1).

⁵ Legal Aid Services Act, 1998, s. 13(2).

⁶ Bill 161, Schedule 16, s. 5(2)(b)

⁷ Bill 161, Schedule 16, s. 5(6)

3. Poverty Law Definition

Bill 161 has significantly narrowed the scope of “poverty law” services when compared to the current definition of “clinic law” services. In statutorily defining this area of law, it is important to note that poverty law is not merely a subset of different areas of legal practice but rather, poverty law addresses the myriad legal issues that arise simply because a person of low-income lacks means. While these areas typically involve the necessities of daily living, such as housing and income maintenance, they can also involve other legal issues, for example, those that arise because a person is precariously employed or is refused disability accommodation.

This understanding of the nature of poverty law is reflected in the definition of “clinic law” in the current LASA 1998. Clinic law is defined as meaning areas of law “which particularly affect low-income individuals or disadvantaged communities”.⁸

In Bill 161, “poverty law” is restricted to “housing and shelter, income maintenance or social assistance”. Other areas of law currently within “clinic law” namely: human rights law, health law including mental health law, employment law and education law, are listed as areas of law in which LAO may provide services⁹ – separate and distinct from poverty law, in which clinics are named as having a foundational role.¹⁰ All of these areas of law are currently included in the definition of clinic law.

Removing human rights law, health law, employment law and education law from the areas of law included in the proposed definition of poverty law could eliminate several current areas of clinic practice. It could also circumscribe the scope of community boards to identify these, and other, areas of law as among the legal needs of their communities, and to ensure these needs are met by their clinics.

Removing from the definition areas of law that “particularly affect disadvantaged communities”, could curtail the current valuable work of ethno-racial and specialty clinics that address legal needs systemically.

The ACLCO recommends that “poverty law” be included in the Definitions contained in section 2 of Bill 161, Schedule 16 as follows:

“poverty law” means those areas of law which particularly affect low-income individuals or disadvantaged communities, including legal matters related to:

- (a) housing and shelter, income maintenance, social assistance and other similar government programs, and*
- (b) human rights, health including mental health, employment and education.*

⁸ Legal Aid Services Act, 1998 s. (2).

⁹ Bill 161, Schedule 16, s. 4

¹⁰ Bill 161, Schedule 16, s. 5(5)(a)

4. Community Legal Clinic Definition

The current LASA 1998 defines “clinic” as an “independent community organization structured as a corporation without share capital that provides legal aid services to the community it serves on a basis other than fee for service”.¹¹

Bill 161 would define “community legal clinic” as a “community legal organization that is structured as an independent corporation without share capital whose members of its board of directors are members of the community or communities it serves”.¹²

The phrase “on a basis other than fee for service” is central to the clinic model and should be maintained. The nature of clinic practice is to address the legal needs of highly vulnerable clients. Our clients present with complex circumstances which require specialized attention when dealing with those who have very little means; who are inadequately or precariously housed; who are racialized; who often do not speak English or French; who are isolated; and, who often are contending with mental health issues. Our clients often face multiple, cascading legal issues, which are interwoven with social and health challenges. Clinics are able to provide the attention needed, and achieve the required solutions, because we are not funded on a fee for service basis.

Clinics also provide a broad range of services in a holistic and comprehensive manner intended to maintain the legal health of a community. The nature of these services renders them difficult to provide on a fee for service basis. In fact, the provision of assistance on a basis other than “fee for service” is one of the reasons the clinic model was created. For this reason, clinics have always been funded on an annual basis, pursuant to the submission of a detailed funding application.

The ACLCO recommends that the definition of “community legal clinic” include the phrase, “*on a basis other than fee for service*”. Specific wording is provided at the end of the next section.

5. Determining need for legal aid services and how services are provided

Bill 161 makes express provision for only LAO to “determine the legal needs of individuals and communities in Ontario for legal aid services”.¹³ Although LAO is required to have regard to “determinations by community legal clinics of the legal needs of the communities they serve..”, under the Bill, it is still LAO that makes the determination.

By contrast, LASA 1998 provides that the board of directors of a clinic funded by LAO “shall determine the legal needs of the individual communities served or to be served by the clinic and shall ensure that the clinic provides legal aid services in the area of clinic

¹¹ Legal Aid Services Act, 1998 s. (2).

¹² Bill 161, Schedule 16, s. 5(1)

¹³ Bill 161, Schedule 16, s. 6

law in accordance with those needs”.¹⁴ Indeed, all of section 39 of the current Act sets out the specific duties of a clinic board.

Any reference to specific duties of a clinic board of directors, as well as the mandated role for clinic boards to determine the legal needs of its community, have been removed from the new Bill.

The current Act, providing for a role for both clinics and LAO in determining the needs of a community, has ensured the voice of independent and community-based stakeholders in deciding where to deploy scarce resources. Priority setting is structured to take into account actual community need, on the ground. Clinic boards must account to LAO that they have in fact assessed the needs of their communities and are providing services in accordance with those needs. This leaves service determination in the hands of the local organization, which is closest to the service recipient, and appropriately leaves oversight to the central funder. Bill 161 moves the determination of need and priority setting to a central bureaucracy, far removed by the local concerns of low-income people.

LAO has only to have regard to determinations made by community legal clinics of the legal needs of the communities they serve in “determining how to provide legal aid services in the area of poverty law”¹⁵. Based on our reading of the Bill 161, determining which legal needs are addressed would remain completely in the purview of LAO.

Bill 161 provides that clinics can determine the needs of communities in the area of poverty law only, and not in other areas of law. Coupled with the narrower definition of poverty law in Bill 161, this provision curtails the current mandate of clinic boards of directors to determine the legal needs of the individuals and communities to be served by the clinic and to ensure that the clinic provides legal aid services in accordance with those needs.

The ACLCO recommends that the definition of “community legal clinic” in section 5(1) be amended as follows:

5 (1) In this section,

“community legal clinic” means a community legal organization structured as an independent corporation without share capital:

- (a) whose board of directors are members of the community or communities served, or who have a substantial association or interest in the community or communities served;*
- (b) that provides legal aid services for the community it serves on a basis other than fee for service; and,*
- (c) that determines the legal needs of the individuals and communities served by the community legal clinic.*

¹⁴ Legal Aid Services Act, 1998, s. 39(3)

¹⁵ Bill 161, Schedule 16, s. 5(5)(b)

Read with subsection 5 (5), this change recognizes the continuing role of clinic boards in determining local needs, while maintaining LAO's role in the provision of poverty law services.

6. The importance of community based poverty law services

An acknowledged strength and fundamental characteristic of the Ontario community legal clinic model has been responsiveness to the community that each clinic serves. This has been accomplished through community-governance and assessments by communities of their actual legal needs. Poverty law services that are current, responsive and relevant to the communities served are considered the hallmark of Ontario's community legal clinics. Setting priorities based on community need has also contributed to efficiencies and the most effective return on the investment of scarce resources.

Reference to community has been removed from Bill 161 in several places. In order to maintain the community base that is integral to poverty law services, the ACLCO recommends:

- reference to disadvantaged communities be included in the Purpose clause of Bill 161; (see section 1 of this memo above)
- reference to "the areas of law that particularly affect disadvantaged communities" be included in the definition of poverty law; (see section 3 above)
- reference to the legal needs of communities in a new section that outlines the duty of the boards of directors of community legal clinics to determine the legal needs of the individuals and communities served or to be served by the clinic; (see section 5 above)

7. Review of LAO Decisions

Bill 161 would give more authority over legal aid services to LAO. While there are several provisions that require LAO to develop a public consultation policy and make public the rules that it proposes to make, the provision allowing clinics to request a reconsideration of a decision on its application for funding has been completely removed. There is no recourse for clinics to ask for a review of an LAO decision even if the decision has serious implications for the clinic.

The Reconsideration Requests that were filed and considered by the LAO Board Clinic Committee regarding the recent 2019-20 budget reductions to clinics resulted in several clinics' budgets being reconsidered and changed. The Clinic Committee determined that several decisions of LAO warranted reconsideration and that some measures used in calculating the clinic budgets were imprecise. Even though reconsideration requests have been seldom used in the history of community legal clinics, these recent decisions are a testament to the need for a review or reconsideration process for LAO's decision regarding clinic funding.

At the very least, there should be a right for clinics to request a review of funding decisions that would have a significant impact on the clinic's ability to provide legal aid

services. The details of that review process need not be contained in the Bill, and could be dealt with in the Rules.

Bill 161 provides for review processes of decisions regarding individuals who are denied legal aid services. A similar process should be designed for decisions regarding clinics.

The ACLCO recommends the addition to the new legislation of the following section:

46 (2) The board shall make rules governing the funding of community legal clinics to provide legal aid services, including providing for the review of determinations made by the Corporation with respect to the funding of community legal clinics.

8. Appropriate Notice Period for Postings of LAO Rules

Bill 161 provides for expanded rule-making powers for Legal Aid Ontario.¹⁶ Given these expanded powers, the ACLCO supports the requirements in the Bill with respect to public consultation by LAO and posting of newly proposed rules.¹⁷

We read the Bill 161 provisions that outline LAO's powers to make rules as contemplating that consultations, as described in section 33 of the Bill 161, will precede the making of rules by the LAO board and the posting of the proposed rule under section 46(3).

However, the precondition regarding posting for 14 days¹⁸ of a proposed rule on LAO's website is far too short a timeframe for receiving meaningful consultation from community legal clinics. Clinics are governed by volunteer boards of directors drawn from the communities served. Clinic boards meet typically once a month. Accordingly, the posting period for new proposed rules by LAO should be at least 45 days, except in circumstances of demonstrated urgency.

SECTION II

9. Community Legal Clinic Definition

The new definition of "community legal clinic" in Bill 161 strikes us as awkward and somewhat odd.¹⁹ Clinics are recognized but as a subset of a "community legal organization".

The Bill modifies the clinic "corporation" as "independent". LASA 1998, instead, modifies the clinic "organization" as "independent".²⁰ This is a change which is significant by virtue that it has been changed.

It would be helpful to know what the drafters had in mind with these two changes.

¹⁶ Bill 161, Schedule 16, s.46

¹⁷ Bill 161, Schedule 16, s. 33; s.46 (3)

¹⁸ Bill 161, Schedule 16, s.46 (3)

¹⁹ Bill 161, Schedule 16, s. 5(1)

²⁰ Bill 161, Schedule 16, s. 5(1)

The definition of “community legal clinic” includes that the members of the board of directors of the “community legal organizations” are “*members of the community or communities*” they serve. Currently, clinics have persons serving on their boards who may not live in the community but who contribute to the well-being of the community in a variety of ways. For example, they may work in the community at an agency that assists the same clients served by the clinic, or bring particular expertise regarding an issue of concern to the clinic clientele.

The definition could provide for boards to recruit members from beyond the community served by adding to it: “*are members of the community or communities served, or who have a substantial association or interest in the community or communities served.*”

10. Eligibility

Bill 161 sets eligibility to receive legal aid services, if the individual “demonstrates” that he or she meets any financial and other eligibility requirements.²¹ Currently, LASA 1998 says that a person is eligible if they “meet” the requirements.²²

Clinics have, in general, not required proof of eligibility for many potential clients, especially those already receiving means-tested benefits. If clinics have to make their potential clients actively “demonstrate” eligibility, a relatively streamlined process will now require more administratively onerous processes.

Clarification is needed with respect to what precisely is meant by an individual “demonstrating” eligibility.

Clinics are currently permitted, under exceptional circumstances, to provide services to clients who may not qualify.²³ These have to be approved by the clinic’s board and reported to LAO. An example of the services that have been extended in these exceptions are services for temporary foreign workers. It is important for clinics to be able to exercise the discretion that clinics currently have to extend services to disadvantaged communities.²⁴

The ACLCO recommends that the section in Bill 161 on Eligibility for Legal Aid Services be amended to read:

7(1) An individual is eligible to receive legal aid services, in the manner the Corporation considers appropriate, if the individual meets any financial and other eligibility requirements that are specified in the rules.

²¹ Bill 161, Schedule 16, s. 7(1)

²² Legal Aid Services Act, 1998, s. 16(1)(b)

²³ Legal Aid Ontario, Clinic Financial Eligibility Test, Version 1.2, 26/08/2016, <http://thesource.lao.on.ca/resources/manuals/Attachments/38/Financial-Eligibility-for-Clinic-Law-Services.pdf>

²⁴ Bill 161, Schedule 16, s.46(1)(f)

11. Confidentiality

While LASA 1998 requires the disclosure of “financial” information for the purposes of determining eligibility and ability to contribute towards the cost of legal aid services, clinics can now withhold other confidential information.²⁵

There is no section in the new Act that protects a clinic’s ability to withhold a client’s confidential information that is not relevant to financial eligibility. This could lead to a conflict with our professional obligations as licensees of the Law Society, and treats clinic clients differently from clients who pay their lawyers directly.

The ACLCO recommends incorporating a new section in Bill 161 on Confidentiality that reads:

The clinic may withhold from the information to be provided to the Corporation any information that is confidential to an individual to whom the clinic has provided legal aid services, unless the individual consents to the disclosure, or unless the information pertains to the financial eligibility of the individual to receive legal aid services.

12. Recovery of money from low-income clients

Bill 161 provides that, for an individual who recovers any sum of money in a matter for which they received legal aid services, the amount of the cost of legal aid services are “a charge on the recovered sum and shall be deducted from the recovered sum and paid to the Corporation”²⁶. Clinics frequently recover benefits for their clients; benefits that the clients should have received from various benefit schemes, such as ODSP and workers’ compensation benefits. Often these awards are retroactive to when the benefits should have flowed.

To date, clinics have not recovered the cost of clinic services from benefits attained for their clients, save for the costs of legal disbursements. This is because low-income clinic clients depend on the basic benefits they receive to survive, and they cannot afford to pay any legal fees. Indeed, social assistance legislation specifically provides that benefits cannot be garnished for any purpose and that recovery of any overpayment is limited, in recognition of the particular needs of low-income Ontarians.

In the interest of access to justice, low-income clients should not be required to repay LAO for the costs of their cases. Moreover, in certain instances, clinics pursue leading cases that set precedent to clarify the law for the benefit of many people with low-incomes, and it would be unfair and unfeasible to expect one low-income client to repay the costs of the legal aid services.

We propose that all clinic clients be exempted from any provision in the new legislation pursuant to which LAO may recover the cost of legal aid services.

²⁵ Legal Aid Services Act, 1998, s.37(3)

²⁶ Bill 161, Schedule 16, s.13(1)

13. LAO Board of Directors

i) Appointment Process

LASA 1998 provides for an appointment process for the LAO Board that gives a stronger voice to the Law Society of Ontario than that contemplated in Bill 161. Under the current Act²⁷, five members of the Board are recommended by the Attorney General; and five are selected by the Attorney General from a list of persons recommended by the Law Society. The new Bill provides that the AG has to select at least three but no more than five appointees from the Law Society's list.²⁸ Bill 161 provides that the AG has only to consult with the Law Society when recommending the appointment of the LAO Board Chair.²⁹ Under the current process, the AG selects the Chair from a list of persons recommended by a committee comprised of the AG, the Treasurer of the Law Society and a third party agreed on by them.³⁰

Taken together, these changes will be seen as the government seeking far greater and undue influence on access to justice through the provision of legal aid services in Ontario.

ii) Selection Criteria

Also of concern, is the removal of criteria for selection to the LAO Board that included knowledge, skills and experience related to "the special needs of and the provision of legal services to low income individuals and disadvantaged communities"; "the operation of clinics"; and, "the social and economic circumstances associated with the special legal needs of low-income individuals and of disadvantaged communities". As indicated earlier, poverty law services are the response of a fair and democratic society to certain inequities that arise for those who lack financial resources. A solid understanding of the circumstances that give rise to the need for poverty law services as well as effective justice-system responses to those needs, can only strengthen the decision-making of the body that governs the provision of legal aid services. This is particularly so given LAO's expanded powers under Bill 161.

Knowledge and understanding of the operation of clinics by LAO board members are critical criteria for selection to the Board. Clinics do not operate as typical law offices and their nature and operations are not generally well understood within the justice sector.

LASA 1998 requires that the LAO board establish an advisory committee in the area of clinic law. The LAO board is also required to establish a clinic committee. In addition to functions assigned by the board, the clinic committee is mandated to recommend

²⁷ Legal Aid Services Act, 1998, s.5(2)

²⁸ Bill 161, Schedule 16, s.21 (3) 1.

²⁹ Bill 161, Schedule 16, s. 21 (3) (4)

³⁰ Legal Aid Services Act, 1998, s. 5(2) 1.

policies and guidelines regarding the funding of clinics; and, recommend standards to the board for the operation of clinics. Bill 161 would remove the requirement to establish these committees and as well as the assigned duties.

Without these committees that currently reflect the specific needs and circumstances of community legal clinics and their clients, selecting LAO board members who have the knowledge, skills and experience in the operations of clinics is essential.

The ACLCO recommends that the appointment process for the LAO board be that the Attorney General recommend an equal number of members of the board to those selected from a list of persons recommended by the Law Society; and, that the Attorney General select the Chair of the LAO board from a list of persons recommended by a committee comprised of the Attorney General, the Treasurer of the Law Society and a third party agreed on by them.

The ACLCO also recommends that Bill 161 Section 21(3) be amended as follows:

Section 21(3) Appointments made under subsection (2) are subject to the following restrictions:

- 1. Five of the appointees shall be selected by the Minister from a list of persons recommended by the Law Society of Ontario.*
- 2. No more than five practising lawyers may be members of the board.*
- 3. The Attorney General shall ensure that the board as a whole has knowledge, skills and experience in the operation of clinics.*

14. Objects of LAO Changed

While the objects of the new Corporation that would be created by Bill 161 are essentially the same as those contained in LASA 1998 with respect to LAO, there is one troubling omission. LASA 1998 lists as first among the Corporation's objects: "*to establish and administer a cost-effective and efficient system for providing high-quality legal aid services to low-income individuals in Ontario*".³¹ Bill 161 would omit from the objects of the Corporation providing "high-quality" legal aid services and does not define individuals as "low-income" individuals.³²

The object of providing legal services that are high-quality carries with it the requirement that LAO ensure the quality of the legal aid services it funds. This is an exceptionally significant duty related to persons of low-income who are seldom able to choose their service provider. Ensuring the high-quality of legal aid services provided to low-income individuals is another mechanism for ensuring their equality before the law regardless of ability to pay. Ensuring the high-quality of legal aid services also mandates appropriate levels of funding to accomplish the object.

³¹ Legal Aid Services Act, 1998, s. 4 (a)

³² Bill 161, Schedule 16, s.17 (1)

There is little doubt that Ontario has developed an internationally renowned legal aid system. This world-class system is rooted in the *Legal Aid Services Act, 1998* and its objective of promoting access to justice by means of high quality legal services for low income individuals and disadvantaged communities.

The ACLCO recommends that the first object of the Corporation be:

to establish and administer a cost-effective and efficient system for providing high-quality legal aid services to low-income individuals in Ontario.