

°Submission to Justice Policy

June 11, 2020

Good afternoon and thank you to the committee for giving the Ontario Network of Injured Workers Groups (ONIWG) a chance to present. ONIWG, which was formed in 1991, is the umbrella organization for about 25 injured workers groups across the province – from Thunder Bay, where president Janet Paterson resides in the north, to Niagara where I live in the south. And we have a group in Ottawa in the east and two groups in the Windsor area in the west and groups in various areas in between. ONIWG is the political body for these groups.

Our first area of concern is the changing of language as to what is legal aid. In S.1 of the current Legal Aid Services Act, it states, “The purpose of this act is to promote access to justice throughout Ontario for low income individuals.” And in S.13, it states, “The corporation shall provide legal aid services in the areas of criminal law, family law, clinic law and mental health law.”

But in S.16, page 54 of the proposed Bill, S1 states, “The purpose of this act is to facilitate the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services throughout Ontario in a client-focus and accountable manner while ensuring value for money.” On page 54 in S.4, this Bill states, “The corporation may, subject to the regulations, provide legal aid services.” Why does this Bill remove “access to justice for low-income individuals?” As far as I can see, the Bill does not envision removing financial qualifications to receive services, so why remove who legal aid was created for? More worrisome is why does this bill change “shall provide legal aid” to “may provide?” Call us cynical, but “may” and “shall” have completely different meanings. We are worried that this provides an out for the government to stop funding legal aid.

Is the government planning to turn legal aid into a fee for service corporation? In s.2 of the existing Act, a legal clinic is defined as an independent community organization that “provides legal aid services to the community it serves on a basis other than fee for service.”

On page 58 of the proposed Bill, Section 13 says that if someone recovers any money in a manner for which they received legal aid services, the cost of the legal aid services shall be deducted and paid to L.A.O. So if the legal clinic helps someone get Workers Compensation or social assistance, does this mean that this individual has to give the money to Legal Aid? Why bring fee for service into Legal Aid when only the very poor qualify in the first place?

For the vast majority of injured workers, by the time they get any money from the Workplace Safety and Insurance Board (W.S.I.B.), they have already lost their home and exhausted any savings they may have had. Expecting them to now remit what they have been able to get from the W.S.I.B., simply adds a lot of salt to the wound. We’ve always advised injured workers to save any back money a legal clinic worker has won for them for their post-65 years when W.S.I.B. no longer provides any loss of earnings.

We’ve worked with injured workers who didn’t qualify for legal aid and had to hire a private paralegal or lawyer and to A-one, they are always disappointed by what they have left after their legal fees have been paid. The result is they are now looking at permanent poverty. We thought Legal Aid was supposed to be different.

When I went to a legal clinic for assistance with my case, the community legal worker who ended up successfully helping me had explained that while Legal Aid provided their services for free because of my income level at the time, she said the clinic did ask people to donate \$75 to the clinic to help with some of the costs. I was more than happy to make a donation of \$125. A nominal fee like this isn't going to create negative feelings and can be supported, but requiring the very poor to pay for their legal services is only going to turn injured workers against legal clinics. We ask the government to truly re-consider this proposal. By the time an injured worker reaches the point that they require a legal clinic's help, they've already lost any patience for government. They view the W.S.I.B. as government. And before going to a legal clinic, many have turned to their MPP, only to be told by most that the W.S.I.B. is an arms-length agency so they are unable to assist. And while I, and others, can understand why an MPP doesn't want to assist constituents with their workers' comp case, this only turns them against government further.

The lawyers, paralegals and community legal workers at the three community legal clinics that specialize in workers compensation across the province will tell you that part of their task during the first meeting is convincing the clients that they are not part of the government; that they are independent from government. It will be impossible to convince them of this if they are told they will have to pay L.A.O. for their legal costs if they win.

I worry this will only convince a wronged injured worker that it simply isn't worth the time (the wait for an appeal to the tribunal can take up to a decade) or the money to pursue their case. And although they may regret that decision down the road, what you can be sure of is there will be a bitter individual who thinks government is useless, so why bother caring about politics or voting.

As a past chair or vice chair of the former Niagara North Legal Clinic, the biggest concern with this Bill is the proposed loss of community control. S.39(2) of the current legislation states that the board of a clinic "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 law in accordance with those needs." But on page 53, Section 16, S.6, Bill 161 proposes LAO will determine the legal needs of individuals and communities for legal aid services. They need only to "have regard" for the community determination of its legal needs. From the injured worker perspective, their legal problems arise from decisions made by government agencies, so imagine how they will view another government agency telling their legal clinic what they will now be concentrating on?

From a clinic perspective, I can tell you that this will make it even harder to convince members of the community to sit on a community legal aid board. Most boards strive to include one or two legal professionals from outside the clinic to sit on the board. These people often have busy lives to begin with, so if the power to direct the clinic in what area(s) of law is going to offer is now going to be determined by anonymous bureaucrats in downtown Toronto who have probably never set foot in their community instead of this community board, many are going to ask what else is there to do on this board? When I served on Niagara North's board about a decade ago, many were already grumbling that L.A.O. had too much control. We lost a few good people due to various power moves by L.A.O. at the time. This will help end community involvement in legal clinics, I fear.

I would be happy to expand upon our concerns or answer any questions you may have after the other presentations have concluded. Thank you again for allowing us to present.