

# ***Northumberland Community Legal Centre***

*(Funded by Legal Aid Ontario)*  
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BY EMAIL to:

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Roman Baber, MPP  
Chair, Standing Committee on Justice Policy  
99 Wellesley Street West  
Room 1405, Whitney Block  
Queen's Park  
Toronto, Ontario M7A 1A2

Dear Mr. Baber:

RE: BILL 161 (SMARTER AND STRONGER JUSTICE ACT, 2020)

On behalf of the Northumberland Community Legal Centre, I am writing to provide our comments on omnibus Bill 161 (Smarter and Stronger Justice Act, 2020).

## **The Northumberland Community Legal Centre's Response to Bill 161**

The Northumberland Community Legal Centre (NCLC) stands with and supports the submissions of the Association of Community Legal Clinics of Ontario (ACLCO) concerning Bill 161. The new *Legal Aid Services Act* contained in Bill 161 would fundamentally alter the manner in which legal clinics in Ontario currently provide services to disadvantaged communities. Among other things, the *Act* creates the opportunity for a subset of marginalized individuals to be ineligible to receive legal services.

Legal clinics across Ontario, in urban and rural settings, as general service clinics and as specialty clinics, provide invaluable access to justice service to their clients and communities, and this needs to be protected within the Bill. Accordingly, the NCLC echoes both the objections and recommendations outlined in the ACLCO February 4, 2020 report.

With that said, the NCLC approaches its critique of Bill 161 with its own clientele and community in mind. The NCLC recognizes they are not unique in raising this point. Many of our province's great clinics provide services to rural communities – amplifying the need for amendments to Bill 161.

Northumberland Community Legal Centre's catchment area is primarily a rural one where there are limited other social support services for low-income people, no transportation system between the small towns in the County or to population centres outside the County, and where internet service connectivity is patchy, unreliable and slow.

As noted, Northumberland Community Legal Centre supports the ACLCO's submission on changes needed within Bill 161. However, we wish to provide additional detail and emphasis on the need for the following changes to the Bill:

**1) Immediate cancellation of agreements between Legal Aid Ontario and legal clinics (Sch 15, s.6)**

The Bill allows for the immediate cancellation of agreements between Legal Aid Ontario and community legal clinics once 6 months have passed from the Bill's coming into force, if new agreements are not in place. As noted in the ACLCO submission, this would make it nearly impossible for clinics to continue to provide service. We agree with that statement and with the revisions proposed by the ACLCO, and want to provide additional reasons for why the clause should not remain in its current form.

The clock would start ticking as soon as the Bill is passed, putting each legal clinic and their clients in limbo waiting to learn if the funding to their clinic is to continue. This clause does not consider the impact on clients that legal clinics have on their caseload.

Clinics are not just administrative bodies that receive funding. Legal clinics have hundreds of clients at each clinic at any one time, and more clients coming in each day, whose legal needs and the professional obligations of the clinic staff who serve them cannot just be shut off with the closure of the funding tap. Hearings continue to be scheduled, evidence deadlines continue to exist, legal obligations and responsibilities carry on.

The professional obligations of the legal clinic staff to those existing clients cannot cease on a moment's notice. There are no alternative legal resources available to those clients, particularly in rural and remote areas, so there is no other place to "transfer" the files.

The clause cannot stand as is, as it does not consider the impact on the low-income clients of all legal clinics.

**2) 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 in the provision of legal services.

Community legal clinics are vital in access to justice for low income residents in Ontario. Indeed, in rural and remote areas of the province, legal clinics may be the only local source of legal assistance for clients experiencing legal issues in poverty law. Legal clinics ARE

the foundation of legal services in poverty law, with a wealth of specialized knowledge of the law and of the communities that they serve. The Bill must reflect that reality in order to ensure that the poverty law needs of the low-income and disadvantaged residents of Ontario are met.

### **3) Broaden the definition of ‘poverty law’ as laid out in s. 4 of the Act**

S. 4 of the *Act* narrowly defines poverty law as law pertaining to ‘housing and shelter, income maintenance or social assistance.’ This leaves out such basic poverty law areas such as human rights law, health law, employment law, and education law – which constitute poverty law under the 1998 legislation.

The poverty law definition in the LASA 2019 needs to retain the current focus on low-income persons and disadvantaged communities and current definitions, and be broadened to ensure that clinics can undertake casework, systemic legal advocacy and provide other legal services in areas of law other than housing/shelter, income maintenance and social assistance, in accordance with the legal needs of their communities.

If Bill 161 diminishes the capability of the clinic and results in its inability to provide services to specific individuals, many of our clinic’s clients will have nowhere to turn given the scarcity of resources in rural areas for legal services or, indeed, for any other social or support services.

### **4) The responsibility of determining legal needs should remain with individual clinics**

In its current form, Bill 161 allocates decision-making power regarding clinic legal needs to the LAO, rather than to individual clinics.

The NCLC believes that local clinic boards are equipped with more relevant information pertaining to their community than a central bureaucracy. Alterations are therefore required to place the responsibility of determining legal needs onto the legal clinics as they have an ‘on the ground’ perspective.

### **5) Legal Aid Ontario need not consider the financial impact on service providers (Sch 15, s.5(6))**

This clause sets out that Legal Aid Ontario does not have to consider the financial impact on the service provider in making funding decisions. While we agree with the ACLCO submission on this point as to the effect on legal clinics themselves, we would emphasize that the clause as drafted does not take into account the effect on the clients that legal clinics serve.

Changes in funding decisions do not just have an administrative effect on legal clinics. The “financial impact” on legal clinics as service providers cannot be divorced from the legal impact on the clients who are already being served by the clinics nor from the legal needs of the community served by the legal clinics. Legal clinic clients have complex, specialized legal issues that are not easily transferable to some other legal resource, even in regions where such other resources exist. For clients in rural settings, there are no other legal resources with this knowledge.

The clause needs to be re-drafted to take into account the reality that the “financial impact” for community legal clinics is directly tied to “legal services impact” for the low-income clients that legal clinics serve.

**6) Statutorily require Legal Aid Ontario to provide legal services**

By stating ‘The Corporation may provide legal aid services that it considers appropriate’ in s. 3 & 4 of the *Act*, Bill 161 grants LAO discretion over the provision of legal services. This leaves it open to LAO to decide to fund specific areas of law or to leave other areas without service.

The NCLC agrees with the ACLCO submissions that these sections should be amended to state that the Corporations shall provide legal aid services in specific areas and that the specific areas must include poverty law.

The provision of poverty law services by legal clinics is an essential service for access to justice for low-income Ontarians. It cannot be left to the discretion of Legal Aid Ontario as to whether the fundamental rights of low-income clients in regards housing, income and other areas of poverty law should continue to as a legal service funded by LAO. Low-income residents of Ontario have few to no other options for legal assistance other than legal clinics, and this is particularly true for those clients in rural or remote areas of the province.

Thank you for the opportunity to make comments on this important piece of legislation. We would be pleased to provide any additional information to the Committee and look forward to your consideration of the submissions from our legal clinic as well as those from the ACLCO and from other legal clinics.

Yours truly,

Lois Cromarty  
Barrister and Solicitor  
Executive Director