

LEGAL AID ONTARIO'S SUBMISSION ON BILL 161
TO THE
STANDING COMMITTEE ON JUSTICE POLICY

JUNE 12, 2020

Submitted by:

Charles Harnick, Board Chair, Legal Aid Ontario
David Field, President and CEO, Legal Aid Ontario

Legal Aid Ontario, 40 Dundas Street West, Suite 200, Toronto ON M5G 2H1

LEGAL AID ONTARIO'S SUBMISSION ON BILL 161
TO THE
STANDING COMMITTEE ON JUSTICE POLICY

June 12, 2020

Sent via email to: comm-justicepolicy@ola.org

Standing Committee on Justice Policy

Legislative Assembly of Ontario

99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2

Attention: Christopher Tyrell, Committee Clerk

Legal Aid Ontario (LAO) is pleased to make this submission in support of new client-focused legislation supporting a modernized legal aid system in Ontario. We welcome the opportunity to provide the Standing Committee with our perspective on how the *Legal Aid Services Act, 2019* (LASA 2019) will enable LAO and those who provide legal aid services to:

- improve access to justice for Ontarians;
- maintain and build on the strengths of the current system;
- provide more responsive, coordinated and client-focused services;
- become more flexible and adaptable to changing client needs
- work more collaboratively and effectively with Indigenous communities to ensure that their unique justice needs are being met;

- continue to engage and listen to our staff, service providers and justice sector partners; and
- ensure that legal aid services are sustainable by being accountable, efficient and providing value for money.

LAO has been on the frontlines for two decades serving millions of clients. Our court-based duty counsel, client service centre staff, staff working in our refugee law and family law offices, and too many other staff to name, provide front line service to thousands of clients, hearing first-hand the issues that clients face. This direct knowledge of client experience, combined with our strong track record consulting with and listening to clients, service providers and stakeholders, has led to our development of and organizational commitment to core client strategies and gives us a singular understanding of the needs of clients and communities across the province, in all areas of law. Being focused on our clients is not new, but will grow even stronger under the new legislation, which puts clients at the centre of what we do and gives us the flexibility we need to respond to their needs.

Bill 161, *An Act to enact the Legal Aid Services Act, 2019 and to make various amendments to other Acts dealing with the courts and other justice matters* (Bill 161, or the Bill) is also known as the Smarter and Stronger Justice Act. Smarter and stronger justice was already a good idea and in fact sorely needed when the Bill was introduced on December 9, 2019. Six months later, as the justice system undergoes rapid transformation in response to a global pandemic, the need has never been greater. LAO has already taken important steps towards modernization and is keen to do more with the flexibility that this new legislation will provide. Because we are part of and must operate within the wider justice system, modernization of legal aid must go hand in hand with modernization of the justice system as a whole. We look forward to continued progress, which will support our own ability to serve clients.

About LAO

LAO provides legal aid services in many areas of law for those who need our help, and we will continue to do so in the future. Established over 20 years ago by the *Legal Aid Services Act, 1998*, as an independent statutory agency, we are not only Canada's largest but also its oldest formal legal aid plan, going back to 1967 when Ontario passed the first *Legal Aid Act*. We provide legal assistance to those who would otherwise have nowhere to turn.

Our clients include the most vulnerable in society and are increasingly diverse. We are leaders in providing informed, responsive services and solutions and our deep policy and legal expertise is widely recognized and sought after in justice system consultation, policy development or implementation processes. Our strategic approach to delivering effective service models is informed not only by our many years of experience in providing legal services but also, increasingly, by a modern client-focused and

evidence-based approach that responds to Ontario's changing demographics, recognizes the intersections between poverty and legal need, and builds on the understanding that clients often have multiple legal problems that are exacerbated without timely access to legal aid services. LAO is the only actor in the justice system that collects race based data and intends to use this data to continue to develop programs and services that respond to client need.

LAO is committed, through its Equity, Diversity and Inclusion initiative and its core client strategies—the Racialized Communities Strategy, the Aboriginal Justice Strategy, the Mental Health Strategy, the Domestic Violence Strategy, and the Prison Law Strategy—all of which were developed by, and through extensive consultation with, members of these communities, to improve access to justice for our most vulnerable and marginalized clients, and to better reflect in our staff, executive and Board, the clients and communities we serve. We recognize the importance of our role to communities such as the Indigenous, Black and racialized communities, and we continue to work collaboratively with them to ensure that their justice priorities are built into our organizational accountability structures.

Legal aid services also provide strong value for money across the justice system. Every dollar spent on legal aid provides on average a \$6 return on investment. High quality and cost effective legal aid services help courts and tribunals operate more efficiently by assisting low-income persons who would otherwise lack legal assistance to navigate the complexities of the justice system. Support for legal aid contributes directly to reducing the number of unrepresented litigants in the criminal and family court systems, and thus to reducing court system delay. In helping low-income accused to get released from pre-trial detention, LAO helps to prevent some of the high costs of housing an accused in jail from being spent. Legal aid also provides value for money by helping low income people with basic legal problems, so that these problems do not spiral into more expensive legal and social needs.

Maintaining and building on the strengths of the current system

Ontario has a strong legal aid system, one that in many ways is the envy of the world. It is something to be proud of. The fact that room for improvement is acknowledged does not mean that we should or would cast away the strengths of the existing system, and there are many. LASA 2019 carries these and many other existing strengths forward, including LAO's independence from government as a board-governed corporation, and delivery of a wide range of legal aid services to meet client need, through a mixed model that relies on a variety of methods and service providers.

Legal aid is access to justice

Access to justice describes legal aid. The availability of legal aid services means that low income people who otherwise would not be able to obtain assistance with their legal issues have access to justice. They will be able to get legal help to exercise their rights,

resolve family law matters, secure the basics of housing and income support, and defend themselves against criminal charges and other actions by the state, such as child protection and mental health proceedings. This is particularly vital for members of the Indigenous, Black and racialized communities who continue to be overrepresented in all areas and levels of the system. As a statutory agency whose purpose is to provide legal aid services, LAO remains committed to providing access to justice to low income people and sees these as important principles. LAO also remains committed to maintaining legal services in all of the areas of law currently within its portfolio including Criminal Law, Family Law, Clinic or Poverty Law, and Immigration and Refugee Law, and other areas of law including Consent and Capacity and Mental Health Law.

Some have expressed concern that fiscal demand for court-ordered legal services, which under LASA 2019 will statutorily become the responsibility of LAO, could eclipse the other services currently provided, consuming much of the organization's budget. LAO notes the Minister's commitment to funding these cases separately and assurances that they will therefore not erode LAO's commitment to providing legal aid services in our traditional areas of coverage.

With LASA 2019, LAO will have the flexibility to provide better, and more, legal aid services to more people. Access to justice begins with access to legal aid. Our consultations with clients and client groups tell us that access to legal aid and to a good legal aid service provider can be difficult. LASA 2019 will make it easier for clients to access legal aid and get the services they need:

- The legal aid application and eligibility determination processes that are embedded in LAO's current statutory and regulatory framework are not client focused and were not designed for modern processes that would best serve legal aid clients today. The application process is compartmentalized based on "classes of applicants" and differs depending on what type of service a person is seeking. We know that clients often have multiple legal problems, and yet the current LASA is very focused on service provision through distinct types of service providers, creating silos and barriers to client access, and inhibiting LAO's flexibility to address client need.
- If there is uncertainty about whether an individual is eligible or if an eligibility determination is disputed, LASA 1998's statutory review processes are lengthy, cumbersome and time consuming. Everyone is kept waiting on the answer, including the court and other parties to the case.
- Once someone finds out that they qualify for legal aid, they often face another access hurdle: finding a lawyer. Those who do not already have a relationship with a lawyer are prevented by the current legislation from being referred by LAO to a good service provider who can give them the help they need. Too often, they choose a lawyer randomly and the relationship breaks down. Often the client needed a lawyer with experience in assisting persons who have experienced

domestic violence or mental health issues, or an understanding of cultural diversity or gender identity issues, but could not find someone with this experience on their own. The result can be devastating for the client, costly for LAO, and delays the progress of the client's legal matter through the system. LASA 2019 will allow LAO to better help clients who do not have a lawyer and would like help in finding one.

Putting the client at the centre

It has been said many times that services need to be designed first and foremost for those who will use them, not those who provide them. Legal aid services need to be client-focused. LASA 2019 makes that directive very clear. As LAO modernizes, clients, including those from the Indigenous, Black and racialized communities, will be at the very centre of our improvements to services and processes.

Two decades have passed since LASA 1998 was drafted, and in the intervening years, our public agencies and services are increasingly expected to be focused on their users, for whom they exist, and to be able to show results for the money invested in them. At the same time technological advances unthought-of at the time when LASA 1998 and LAO itself came into being, now make it possible to approach service delivery in a more system-wide, intuitive and accessible way, with the proper legislative tools for doing so.

Today, a less prescriptive and more permissive act, founded on clients and accountability for public funds, is both possible and preferable. The new Act enables LAO to focus on a holistic, seamless approach to service delivery, through the lens of the client receiving services, rather than who provides the service, and without mandating a siloed approach based on type of service, modality of service provision, or area of law. LAO's new legislation puts the client at the centre; its primary focus is on client service, whereas the current legislation focuses more on types of service providers and methods of service delivery.

Being flexible: responding to a rapidly changing world, and addressing client need

LASA 2019 is permissive legislation. It will be a tool for LAO to be flexible in offering help to clients using a variety of services and service providers, and will enable LAO to give clients more choice and better, faster access to services. LASA 2019 will give LAO the flexibility to provide more integrated services that identify and respond to our clients' intersecting needs, with intake systems that quickly and effectively connect clients with the services they require so that their legal problems do not cascade into larger and more intractable problems.

It will also authorize LAO to make new rules to govern many aspects of its services and operations that have fallen out of date but which are difficult to adjust because they are set in regulation. Detailed regulated processes have impeded LAO's ability to modernize operations and provide services in ways that are more efficient, for LAO's clients and service providers alike. Because the old processes were enshrined in regulations it was very difficult for LAO to introduce more efficient forms of billing, make adjustments to the tariff to reflect changes in legal practice and incent earlier resolution, or revise its antiquated paper-based needs testing processes for determining eligibility.

LAO needs to be able to design and introduce change when and as it is needed, as opposed to having to struggle with barriers and constraints in its own enabling statute and regulatory framework. Flexibility to quickly and nimbly change its operations in response to changing client need, unexpected events, and other factors, and to move to modernized processes and service models is important to LAO's ability to serve clients and operate effectively. The events of the past few months, including the rapid movement of courts and tribunals to remote service delivery, have demonstrated the importance of being able to adapt and change.

These more recent developments, precipitated by the COVID-19 pandemic, could hardly have been predicted when LASA 2019 was introduced last December. What they have done, however, is demonstrate clearly how necessary it is for services that people depend on, and the systems that provide those services, to be flexible, adaptable and capable of rapid change if necessary.

Listening to our clients, our service providers, our staff and our justice system partners

Stakeholder engagement is integral to LAO's ability to stay up to date on developments that affect clients and the justice system as we design and deliver services that will effectively address client need. We listen to and learn from our staff across the province, our service providers, others in the justice sector, and directly from clients. We are transparent in our decision making processes and we invite input from others.

Examples include:

- Regular client surveys, which indicate a high satisfaction with LAO's services and help LAO identify gaps and areas for improvement
- Meetings with clients and frontline agencies to hear directly from them about the services they need and barriers to accessing legal aid, including clients who are incarcerated and those who are highly vulnerable and marginalized, such as those experiencing domestic violence, significant mental health issues and homelessness

- Hearing from our staff who serve clients directly on the ground, including staff who provide services in family and criminal courthouses across the province, staff who provide services onsite in correctional institutions and immigration detention centres, and staff who work directly with some of the most vulnerable communities, including people experiencing mental health issues, homelessness, and addictions issues.
- Meetings and ongoing consultations with Indigenous communities, service providers, lawyers and clients across the province to ensure that the unique cultures, geographies and social conditions are all addressed appropriately and effectively within our service model
- Frequent meetings with lawyers' associations, including the Criminal Lawyers' Association, the Ontario Bar Association, the Federation of Ontario Law Associations, the Mental Health Legal Committee, the Law and Mental Disorder Association, the Family Lawyers Association, the Ontario Association of Child Protection Lawyers, and the Refugee Lawyers Association
- Meetings with the Association of Community Legal Clinics of Ontario
- Meetings with community legal clinics
- Annual surveys of private bar lawyers who are members of legal aid panels, LAO-funded legal clinics, and legal aid clients
- Ongoing engagement with access to justice groups including the Alliance for Sustainable Legal Aid
- Dialogue with justice system and government partners
- Twice-annual meetings of nine Board Advisory Committees, which are comprised of subject matter experts in all areas of legal aid practice, and include an advisory committee focused on Indigenous communities and another focused on racialized communities
- Meetings with local community stakeholders and agencies in each of LAO's districts, to obtain advice and input at the local level
- Issue-specific consultation processes that feed into the development of LAO client strategies, service improvement initiatives, panel standards development processes and other matters.

We estimate that over the past 5 years we have held roughly 300 scheduled consultation meetings, plus many more "informal" consultations, and have received nearly 200 written submissions in response to formal consultations.

LAO's strong history of consultation has yielded concrete results for clients. As noted above, over the past decade LAO has consulted with clients, client groups, service

providers, justice sector stakeholders, and other partners, and as a result of these consultations, LAO has improved the way we serve clients, overall and those that are particularly vulnerable. Through consultations, we heard that we needed to develop specific client strategies for Indigenous clients, racialized clients, victims of domestic violence, clients with mental health issues, clients seeking bail, and incarcerated clients, and we have done so, and continue to listen to the voices of these clients and their communities in an open and transparent way as we modernize and design new rules as authorized under LASA 2019 and deliver effective and meaningful legal aid services.

Accountability, efficiency, and value for money

Accountability, efficiency and value for money are more than words. They are vital to LAO's viability and sustainability, and LAO could not operate for long without them. They are crucial to being able to provide clients with high quality legal aid services within available funding.

LAO has a province-wide mandate and in order to carry out that mandate, requires a significant budget. With that budget comes a responsibility to ensure that the public funds provided to it are used well, efficiently, effectively, and for the purpose intended.

LAO plays an integral role in providing access to justice and helping the administration of justice to function effectively. In carrying out that role it relies on staff, the private bar, student legal aid services societies, and clinics to deliver legal aid services. It needs to do so in accordance with its mandate and in alignment with today's norms of value for money and accountability for public funding. LAO is accountable to the taxpayers of Ontario to ensure that the monies it receives are properly dispersed in accordance with its statutory authority.

LASA 2019 supports LAO in being more accountable, more efficient and providing greater value for money by:

- putting the focus on clients and services to clients rather than on cumbersome administrative processes and red tape
- moving from outdated clinic framework documents and funding arrangements to new agreements which will better align with public sector accountabilities for transfer payments, reflect risk-based oversight, and focus on client-centered results and outcomes for public funds, while respecting and supporting the voices of diverse communities. The time necessary to ensure a smooth and workable transition, informed by feedback, will be very important. LAO remains committed to providing poverty law services, and to community legal clinics.
- being able to streamline, modernize and coordinate a system that provides services to a diverse range of clients living in urban, rural and remote areas across the province

- having stronger requirements and processes to ensure that limited funding is used to assist those who are demonstrably eligible for services
- establishing new service provider oversight and management mechanisms that support high quality services and value for money and allow LAO to act quickly to address problems like poor client service and improper billing. LAO is fortunate in having so many dedicated and hardworking service providers who care deeply about clients and who consistently provide high quality services. No one wants to think about the cases of inadequate client service, mismanagement of funds, or fraud, but an organization like LAO has to think about them because the reality is that in a system as large as ours, they can and do exist. LAO needs, and with LASA 2019 will have, tools that it needs to act effectively when it has to deal with problems

Now more than ever, LAO must have a system that supports good stewardship to ensure that every available dollar is well spent. Although it is hard to predict what the coming months may bring, the one thing that can be predicted is that many priorities will compete for scarce public funding while at the same time the demand and need for legal aid services will increase. This point was made in a letter to the Attorney General from the Alliance for Sustainable Legal Aid (ASLA), dated April 29th this year:

Once social distancing ends and the province fully re-opens the courts and tribunals, there will be an even greater need for efficient dispute resolution, as parties seek to resolve long-delayed matters. Beyond the problems presented by backlogs, we expect to see an increased need for legal assistance as certain issues become exacerbated by the current crisis. Many workers, who have been laid off, need assistance to ensure they receive government benefits and other entitlements. As many tenants struggle to pay rent due to loss of income, legal assistance will be required to help them avoid eviction. Because of lockdown conditions, we have seen an increase in domestic violence and familial breakdowns. The onset of an economic downturn can also lead to increased crime rates and disputes related to mental health and addictions.

LAO's client-centred legislation and modernized approach will help to support increased vigilance to ensure that these needs can be met.

Ensuring transparency as we transition to a new system

Under LASA 2019, many matters that are currently the subject of regulation, such as assessment and determination of financial eligibility, will be dealt with in rules approved by LAO's Board. LAO is responsible for drafting the new rules, obtaining feedback, and posting its proposed rules for public comment after receiving Board approval. It will be important for those who will need to interact with these new rules to be aware of them and have an opportunity to provide input. A smooth transition that ensures transparency

and introduces and implements changes in a workable way will be very important, not only to LAO but also to our clients, service providers, and justice system partners.

Conclusion

On May 27, 2020, the Toronto Star published [an opinion authored by LAO's Board Chair](#). The conclusion of that piece sums up the tremendous opportunity for modernization and improvement that is before us now:

If there's anything we've learned in the justice sector in Ontario during COVID-19, it's that it is possible to make important strides in access to justice. To be sure, there are encouraging signs as the attorney general continues to work with justice partners to take decisive action to modernize the justice system. We need to continue this work in partnership. It will take resources and the will to persevere to keep up these important leaps of faith.

With new enabling legislation for LAO, along with a new openness to change in the justice sector born out of the crisis of COVID-19, we can make a real difference as access to justice truly and at last moves into the 21st century. All Ontarians, and particularly those who rely on legal aid services, stand to benefit as a result.