

12 June 2020

Mr. Roman Baber, Chair
Standing Committee on Justice Policy
Legislative Assembly of Ontario
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2

Dear Mr. Baber:

Re: Submission to the Standing Committee on Justice Policy
Bill 161

Injured Workers Community Legal Clinic has been providing legal advice and assistance to Ontario's injured worker community for 50 years now. We represent primarily workers with permanent disabilities who are not able to return to their employment and whose injuries have not been fully recognized by the workers' compensation system. We joined Ontario's community legal clinic system in the 1970's and endorse the model of independent, community based poverty law services.

Our comments are limited to Schedules 15 and 16 of the Bill. We add our voice to the supporters of community-based legal services as the most effective way to promote access to justice throughout Ontario for low-income individuals. We strongly endorse and support the recommendations that the Association of Community Legal Clinics of Ontario has made on our behalf. We would like to comment further on some of the issues of concern to our community.

Loss of community control

The current legislation provides that the board of directors 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." (Legal Aid Services Act, s.39(2))

Under Bill 161, Legal Aid Ontario would determine the legal needs of individuals and communities in Ontario for legal aid services (Sched 16, s.6). They only need to “have regard” for the community determination of its legal needs. The reduction of community control is a concern for several reasons.

We urge the government to build on the historic foundations of legal aid by retaining the current role of the board of directors in community legal clinics.

The Ontario government’s 1978 Report of the Commission on Clinical Funding by the Honourable Samuel Grange stated:

“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.”
(page 21, 22)

The current legislation is based on the Ontario government’s 1997 Report of the Ontario Legal Aid Review by Prof. John McCamus which stated:

“...we have concluded that independent community boards are an important component of the community-clinic model and are essential to the delivery of “poverty law” services in Ontario. Well-run independent community boards are an important bulwark protecting the independence of clinic operations and are invaluable tools for identifying and prioritizing local needs within a capped budget.”
(Volume 1, p. 194)

Resources for legal aid services are limited. The most effective way to rationally allocate those scarce resources to meet the most pressing needs is through a Board of Directors that represents the community being served.

The proposed shift in decision making power reflects a ‘government knows best’ approach that is not consistent with the message we have heard from the government, that it is

listening to the people. The change also threatens the trust that exists now between the community and the legal clinic. The legal problems of many clinic clients arise from decisions made by government agencies. Bill 161 ignores the conflict of interest people will see when LAO, a government agency, determines their need for legal assistance to contest the decisions of other government agencies.

The proposed change in decision making authority will also undermine community legal clinics' ability to recruit Board members. It takes the power to direct the community legal clinic away from the people in the community and gives the power to central bureaucrats in Toronto. This reduces the role of the community in determining local needs. Under the current legislation, community legal clinics have been fortunate to recruit community members who are dedicated to helping their communities, including community leaders, community organizations and local professionals.

In our clinic, our board members reflect various parts of the province, they have a wide range of knowledge and experience: disability research, labour studies, workers compensation law, education, information management, construction, health care, and many have lived experience with the workers' compensation system. This stands in contrast to a government agency without community knowledge and lived experience.

Our community board members support an integrated approach to justice based on their appreciation of individual and systemic needs. In addition to legal advice and representation, our clinic addresses the legal needs of our community through a variety of services such as education and outreach sessions across the province, running an injured worker speaker school, providing meeting space for injured worker support groups and working with researchers looking at the mental health consequences of work injury.

Community members volunteer many hours, without any compensation, serving on the board of directors because in this role they have been able to make a meaningful difference in their community for those who most need the legal services. If their role is reduced to carrying out the decisions of a government agency, community members will look for other places to volunteer to serve their community.

Will there be Access to Justice?

The current Legal Aid Services Act says in s.1 "The purpose of this Act is to promote access to justice throughout Ontario for low-income individuals..." And in s.13 "The Corporation shall provide legal aid services in the areas of criminal law, family law, clinic law and mental health law." (emphasis added) This is a clear and reasonable commitment that has served Ontario well.

Schedule 16, p. 54 of the Bill states (s. 1) "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-focused and accountable manner while ensuring value for money.” In s.4 the Bill says “The Corporation may, subject to the regulations, provide legal aid services.

This is vague, process oriented and non-committal. Removing ‘providing access to justice for low-income individuals’ from the legislation, or changing ‘shall provide legal aid’ to “may provide” suggests an intention by the government to reduce legal aid services. If that is not the plan, these changes are not necessary and not helpful.

Legal Clinics Should Not Operate on a Fee for Service Basis

We encourage the government not to bring fee for service into legal clinics because only the very poor are eligible. In s.2 of the existing Legal Aid Services 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.” That is accurate.

The proposed section 13 of Schedule 16 provides that if someone recovers any money in a matter for which he or she received legal aid services, the cost of the legal aid services shall be deducted and paid to Legal Aid Ontario.

The Tribunals that decide most of the cases of legal clinic clients have no authority to award anything for legal costs in favour of a successful clinic client. They can only grant entitlement to minimal income supports. It would be very unfair to ask those who were wrongly denied social assistance, workers compensation or disability benefits to pay those benefits to the government for helping to get a correct decision from another government agency.

Termination of Clinic Funding in 6 Months

In Schedule 15 the new s.72.3 of the Bill says that 6 months after the new law is in force all community legal clinic funding agreements are terminated. Legal Aid Ontario “may” enter into new funding agreements with clinics during the 6 months.

This is a very short time for LAO to negotiate new agreements with 72 community legal clinics. The past 6 months have shown that the future is very uncertain. The task of negotiating new agreements within 6 months may easily become impossible.

Community legal clinics are at a great disadvantage because they are automatically closed down if LAO does not offer an agreement, or if they do not immediately accept LAO’s terms. We recommend that the government create a process for extending existing funding agreements and for mediation where a new agreement has not been reached within the 6 months so that community legal clinics will not be closed down arbitrarily.

No Appeal for Clinic Funding Decisions

The proposed section 35 in Schedule 16 provides that every decision of Legal Aid is final and not subject to review. This suggests that the government is not willing to listen to the people, which is not consistent with the government's statements to the public. Our clinic recently experienced the importance of a review process when Legal Aid Ontario staff cut our funding by about 25%. That would have made it impossible to maintain clinic services. The clinic exercised the right to a review by Legal Aid Ontario's Clinic Committee which decided the budget would only be reduced by 10%, not 25%.

The right to an appeal or review process is an important principle in our justice system. It is the main body of legal work that clinics do: appeals of decisions about social assistance, disability benefits, workers compensation, employment insurance etc. A community legal clinic should be able to apply for a review of a funding decision that has a direct impact on the clinic's ability to provide legal aid services.

We thank you for the opportunity to provide our views on the proposed legislation and we look forward to your continued support for legal aid and the work of community legal clinics.

Respectfully Submitted,
Injured Workers Community Legal Clinic,
per:



John McKinnon
Executive Director



Mary Hanson
Board Chair