

MPP Roman Baber, Chair  
Standing Committee on Justice Policy

RE: **Bill 161 – Smarter and Stronger Justice Act, 2020**

Dear Mr. Baber,

I am writing to submit my personal concerns about Bill 161, which is under review by the Standing Committee on Justice Policy.

I am concerned about some of the bill's proposed changes to Ontario's *Legal Aid Services Act, 1998* and the province's *Class Proceedings Act, 1992*.

In particular, I object to the following:

- Schedule 4, insofar as it amends section 5 of the *Class Proceedings Act, 1992* to require that a class proceeding only be considered the preferable procedure where"
  - o It is superior to all reasonably available means of determining entitlement to relief; and
  - o The common issues of fact and law predominate over individual ones.
- Schedule 15, insofar as it:
  - o Changes the purpose of legal aid services legislation to qualify the mandate of providing high-quality legal services with an emphasis on value for money;
  - o Cancels any existing instrument or memorandum of understanding with a community legal clinic;
  - o Permits a Board composition that is not reflective of the community a legal aid clinic or organization serves and/or
  - o Has the effect of limiting the scope of legal clinic services; disempowering legal clinics from researching and addressing systemic inequalities; or otherwise constraining the ability of legal clinic lawyers to serve their clients or engage in law reform activities.
- Schedule 16, insofar as it repeals the *Legal Aid Services Act, 1998*, replaces it with the *Legal Aid Services Act, 2019* and makes corresponding changes to other acts.

I demand that Schedule 4 be changed to **eliminate the new requirements that a class action be superior to all reasonably available alternatives and that common issues predominate over individual ones.**

Further, I endorse the demands made by the Hamilton Community Legal Clinic with respect to Schedules 15-16, which are as follows:

1. **Reinstate “access to justice” for low-income and disadvantaged communities to the Purpose of the legislation.**
2. **Community legal clinics must be recognized as the foundation for the provision of clinic law services.**
3. **Reinstate obligations to provide legal aid services across Ontario.**
4. **Define community legal clinics as:**
  - “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.*

I'm objecting to changing two rather different statutory regimes. But the single theme running through my objections can be summarized in two simple words: **community accountability**. Currently, both regimes serve to further accountability by increasing access to justice, and making sure those who need it most are equipped to assert their legal rights. Undermining these regimes will undermine accountability of the state and wealthy corporations to communities across our province.

**Bill 161 contains provisions the sole purpose of which will be to reduce state and corporate accountability to our province's communities.**

The availability of community legal clinics allows access to legal information and legal services for low income and disadvantaged community members who would otherwise be forced to forgo representation, or who otherwise would not be able to access the information needed to understand their legal rights.

The class actions regime is intended to promote access to justice for plaintiffs, as well as judicial economy and behavioural modification for wrongdoers. The procedure allows plaintiffs to access remedies as a group where doing so individually would not be feasible from a resources perspective.

What the legal aid and class actions statutes have in common is that they are both mechanisms to enhance access to justice. The objectionable provisions of Bill 161 kneecap these essential regimes, and **make it easier for society's most powerful to imprison, injure, neglect, separate, swindle, and gouge those who are least likely to have the resources to meaningfully assert their legal rights.**

And while this is all being done in the name of efficiency or cost-efficiency, the testimony we heard today makes it clear that the proposed amendments will create delays and waste the court's time in some cases, while increasing litigation stemming from a multiplicity of similar proceedings in others.

This is a critical access to justice issue. I urge the Standing Committee and the Legislature more generally to prioritize access to justice and accountability to communities over the interests of industry associations and those in power.

Sincerely,

Aylin Manduric

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The above comments represent my own views on Bill 161.