

**CLINIC COMMITTEE OF THE
BOARD OF DIRECTORS, LEGAL AID ONTARIO**

In the matter of

**THE IMPOSITION OF LEVEL THREE REMEDIAL RESPONSE,
PURSUANT TO S.22 OF THE DISPUTE RESOLUTION POLICY
FOR THE AFRICAN CANADIAN LEGAL CLINIC**

Committee members: John D. McCamus, Chair
Nancy Cooper
Michelle Haigh
John Liston
James McNee
James Yakimovich

DECISION

Pursuant to the authority conferred upon Legal Aid Ontario ("LAO") by Sections 34(5), 38(1) and 39(4) of the *Legal Aid Services Act* ("LASA"), and by Part VI of the Dispute Resolution Policy, such authority having been delegated to this Committee pursuant to Section 61(1) of LASA by resolution of the Board of Directors of LAO and pursuant to the authority conferred upon this Committee by Section 35 of LASA, this Committee decides as follows:

- a) That the African Canadian Legal Clinic ("ACLC") is in fundamental breach of its obligations as defined in Section 25 of the Dispute Resolution Policy and, accordingly, must comply with the Conditions of a Level Three Remedial Response set out further below, and
- b) That, pursuant to Sections 34(5), 35 and 38(1) of LASA, this Committee's approval of the 2014-15 Funding Application of the ACLC is conditional upon the ACLC's compliance with the Conditions of the Level Three Remedial Response set out further below, and
- c) That if, in the opinion of LAO staff, the ACLC fails to comply with the Conditions of the Level Three Remedial Response, the LAO staff may recommend to this

Committee that continued funding of the ACLC be reduced or suspended pursuant to Section 39(4) of LASA.

Condition 1:

ACLC will notify LAO staff in writing of all ACLC Board of Directors meetings as soon as they are scheduled and will permit an LAO observer to attend all ACLC Board of Directors meetings. The observer would not be a Board member or have voting rights, but he or she will be provided with Board meeting materials in advance of the meetings and be permitted to provide LAO staff perspectives on the issues discussed. Confidential client information may be redacted from the Board materials prior to providing them to the LAO staff observer. Further, the ACLC Board may meet in camera, without the LAO staff observer present, to discuss (1) matters pertaining to the Dispute Resolution Process in which the ACLC and LAO are adverse in interest, and (ii) matters pertaining to the Association of Community Legal Clinics of Ontario (ACLCO). The Chair of the ACLC Board of Directors will meet with the LAO observer on a monthly basis or on some other schedule mutually agreed to by the Board Chair and the LAO observer in order to ensure that the observer is kept abreast of activities at the ACLC. This condition will remain in force during the fulfillment of the other conditions and then for one year after the fulfillment of the other conditions.

Condition 2:

ACLC is required to comply with its obligation in Section 10 of its Funding Agreement with LAO, that it make reasonable efforts to have a Board that includes "persons with financial skills" and "lawyers", and that the ACLC report to LAO staff, when requested to do so, on such reasonable efforts to ensure that there are at least two persons with financial skills and two lawyers on the Board of Directors of ACLC. The reasonable efforts will include identifying at least five suitable candidates for each vacant position each month and approaching them by telephone or in person in addition to a written approach. This condition will be met on the date on which all four of the described Board positions have been filled.

Condition 3:

The ACLC Board of Directors will organize within six months of the Committee's decision and will successfully complete within nine months of the Committee's decision an approved appropriate training experience for all members of the ACLC Board of Directors on the duties and responsibilities of board members including duties of monitoring, oversight and risk management. The organization of the training experience will be done in collaboration with LAO staff and it will be approved by LAO staff before it is conducted. Its expense will be borne by LAO. Successful completion will be demonstrated by a written report by the facilitator(s) of the training experience to LAO staff on the attendance and outcomes of the training experience.

Condition 4:

Within 60 days of the Clinic Committee's decision, ACLC will submit a financial restructuring plan to LAO for approval, which stabilizes the clinic's financial position and

improves its financial management. In order to obtain LAO approval the plan must include:

- The write-off the \$50,009.00 accounts receivable from LAO shown in the ACLC's March 31, 2013 Financial Statements.
- The elimination of the \$139,340.00 deficit in the Legal Aid Ontario Funds by March 31, 2016 and any other deficit that may be incurred by the ACLC in their 2013/14 fiscal year
- The production of all documentation related to the write-off of the accrued liability related to accrued vacation and compensatory time. The documentation is to be attested by the ACLC Board Chair for completeness and accuracy.
- The elimination of any remaining accrued compensation liability for all employees without compromising client service

Condition 5:

Within sixty (60) days of the Clinic Committee's decision, the ACLC will have adopted the following policies, directives, best practices and reporting systems:

- Full implementation of the following policies and directives, which apply to all clinics:
 - Travel, Meals and Hospitality Directive
 - Procurement Directive
- Implementation of best practices financial controls including:
 - Corporate Credit Cards:
 - Having only one corporate credit card in the name of the Executive Director, that all other credit cards be cancelled, that no other staff can use the card without prior written authorization for the transaction from the Executive Director, and requiring subsequent review and approval by the Executive Director
 - That the payment of the credit card be done within 30 days of receipt of the credit card invoice
 - That no cash advances be made from the corporate credit card
 - Full compliance with PwC recommendations governing the use of the corporate credit card including preparation of expense reports that are reviewed and approved by the Executive Director, a process for reviewing and approving expenditures by all staff including the Executive Director, and quarterly monitoring of expenditures by the Board of Directors to ensure compliance with all applicable policies
- Implementation of the following financial reporting systems:
 - Establishment of detailed budgets for the expenditure of funds within both the LAO General Fund and the LAO Legal Disbursement Fund
 - That the ACLC Board of Directors approve these budgets
 - Report quarterly to LAO on the actual expenses against the approved budget and the reasons for the variances
 - That any inter-fund transfers between the Legal Aid Ontario funds and other programs managed by the ACLC be reported to LAO monthly
 - No bonuses are to be paid to ACLC employees out of Legal Aid Ontario funding unless approved by LAO

- LAO to be present at the ACLC Board of Directors' meeting when the external auditors present the annual Audited Financial Statements to the ACLC Board
- Providing LAO's Internal Audit Unit the right to contact ACLC's external auditors
- Change external audit firms every five years through a competitive procurement process and that LAO participate in this process

Condition 6:

ACLC will co-operate with an independent audit of the compensation time accrual reduction by an auditor of LAO's choice, to be conducted within fifteen business days of the Clinic Committee's decision.

Condition 7:

LAO will provide monthly funding based on:

- a monthly schedule of recurring expenses such as rent, salaries and equipment leases in a format approved by LAO
- receipt of invoices and expense reports for all other expenditures which ACLC will submit, and which LAO will review, in a timely manner.

LAO approval will be based on its assessment of whether expenses are permitted and comply with the LAO-Clinic Funding Agreement, applicable policies and directives.

Condition 8:

Within 60 days of the Clinic Committee's decision, ACLC will implement all PwC Forensic Review recommendations. Compliance will be verified by LAO's Internal Audit and Compliance Division within 15 days thereafter. ACLC will fully co-operate with LAO's Internal Audit and Compliance Division, including providing timely and complete access to all documents and background materials requested, and making staff and ACLC Board members available to meet with Division staff upon request, to confirm compliance with the recommendations.

REASONS FOR DECISION

Part I – Introduction

The Clinic Committee of the Board wishes to preface this Statement of Reasons for the decision set out above, by making clear and reaffirming the strong commitment of Legal Aid Ontario ("LAO") to the provision of access to justice to members of the African Canadian community in Ontario through the funding of legal services available to them through our certificate and Duty Counsel programs and the poverty law services provided by seventy-six community legal clinics across the province including, of course, the African Canadian Legal Clinic ("ACLC"). At the same time, LAO has a statutory obligation under the *Legal Aid Services Act*, 1998, S.O. 1998, c.26 ("LASA"), to ensure that the public moneys entrusted to LAO are managed and disbursed in a transparent, accountable and proper manner. This is also true of the public moneys entrusted by LAO to the seventy-six community legal clinics across the province. LAO is accountable

to the Government of Ontario and the people of Ontario for responsible management of its fiscal resources. The community legal clinics are, in turn, accountable to LAO for responsible fiscal management of the moneys entrusted to them by LAO. To that end, LAO enters into Funding Agreements and Memoranda of Understanding with each of the clinics which impose constraints on their expenditure of such funds and create a number of requirements or instruments of transparency and accountability. Obligations of transparency and accountability are also imposed on the clinics by Sections 37, 38 and 39 of the *LASA*. In situations where LAO develops concerns as to whether a particular clinic is living up to these obligations, LAO will investigate the perceived problem and engage in a remediation exercise with the clinic in question pursuant to the provisions of LAO's Dispute Resolution Policy (DRP), which is more fully described below.

On April 3, 2014, Legal Aid Ontario ("LAO") Vice-President Janet Budgell forwarded a two-volume document titled *Dispute Resolution Policy: Level Three Report – African Canadian Legal Clinic ("L3 Staff Report")*. The L3 Staff Report requested that the LAO Clinic Committee make the following decision:

- (i) That the Clinic Committee of the LAO Board of Directors impose a Level Three remedial response under the Dispute Resolution Policy on the basis that LAO's concerns about the ACLC have not been resolved at Level One or Level Two, and that the ACLC is in fundamental breach of its obligations as defined in Section 25 of the Dispute Resolution Policy.
- (ii) That the Clinic Committee of the LAO Board of Directors receives for consideration the Level 3 remedial response options outlined in Part III of this report.
- (iii) That the Clinic Committee of the LAO Board of Directors consider ACLC's 2014-15 Funding Application under Section 35 of the *Legal Aid Services Act (the "Act")* and attach as a term and condition of funding the requirement that ACLC immediately comply with the remedial responses imposed under Level 3 of the Dispute Resolution Policy, failing which its funding will be denied under Section 33 of the *Act*.

The Funding Agreement entered into between LAO and the African Canadian Legal Clinic ("ACLC") and the Memorandum of Understanding ("MOU") between LAO and the ACLC both provide that any reduction or suspension of LAO funding of the ACLC shall be done in accordance with the Dispute Resolution Policy ("DRP") appended to the MOU. The MOU further provides more generally, that:

"Where LAO believes that a clinic is not complying with its obligations under the *Act*, this MOU or the Funding Agreement, disputes will be resolved in accordance with the Dispute Resolution Policy."

In its opening paragraphs, the DRP describes the purpose and basic structure of the DRP in the following terms:

“The purpose of this policy is to establish a clear, comprehensive and equitable framework for addressing and resolving situations in which LAO believes that a Clinic is not complying with its obligations.

The policy attempts to balance LAO’s legitimate interest in ensuring that the Clinic fulfils its obligations with the Clinic’s legitimate interest that it be notified of LAO’s concerns and be given a fair opportunity to respond and, if necessary, remedy the situation on its own or with LAO assistance.

The policy establishes a three-level dispute resolution process: Investigation and Informal Settlement; Support and Management Assistance; and Formal Resolution. The policy sets out LAO’s and the Clinic’s rights and responsibilities at each level. The levels are graduated – the process becomes progressively more formal at each subsequent level. Barring urgent circumstances, LAO undertakes to complete one level of response before proceeding to the next level.

Both parties agree that disputes should be resolved in a constructive, timely, and supportive manner. It is expected that most matters will be resolved at the first level. LAO will only exercise its authority to reduce or suspend funding of the Clinic as a last resort.”

Section 22 of the DRP provides:

“If, in the opinion of LAO staff, the matter is not resolved at Level One or Level Two, and if LAO staff believe that a Clinic has committed a fundamental breach of its obligations, as defined below, LAO staff may recommend to the LAO Board of Directors that LAO impose a Level Three remedial response.”

In turn, Section 25 of the DRP defines “fundamental breach” in the following terms:

A “fundamental breach” of the Clinic’s obligations shall include:

- a) a failure, without reasonable grounds, to participate in a Level Two remediation plan;
- b) a refusal or failure by the Clinic to carry out its responsibilities under the Act or the Memorandum of Understanding; or
- c) an inability on the part of the Clinic to carry out its responsibilities under the Act or the Memorandum of Understanding which results in serious financial mismanagement, serious professional misconduct or negligence, misrepresentation of statistical, financial or other information provided to LAO, significant reduction in the provision of clinic law services, significant personnel problems or significant board governance problems.

Section 26 indicates that where LAO staff conclude that a Level Three Response is justified, a written report outlining the basis for such a response shall be prepared and

filed with LAO Board and copied to the Clinic in question. The L3 Staff Report filed with this Committee and copied to the ACLC on April 3, 2014 is a Section 26 report.

Section 27 then permits the Clinic to make a written response to such a report within thirty (30) days. On June 9, 2014, the ACLC filed a document titled "Responding Submissions of the African Canadian Clinic" with the LAO Board of Directors ("ACLC Response").

In the concluding paragraph of the ACLC Response, the ACLC requested that there be an opportunity to make oral submissions pursuant to Section 28 of the DRP, which provides that the "LAO Board may decide to hold an oral hearing" where a Section 26 report has been filed with the Board. Counsel for LAO and the ACLC spoke with Richard Steinecke, counsel to the Clinic Committee, to discuss the possibility of permitting oral submissions and agreed that if such submissions were to be entertained, the parties would be limited to oral submissions no greater than one (1) hour in length.

On July 11, 2014, the Clinic Committee met to consider ACLC's request for oral submissions and determined that it should grant the request of the ACLC and schedule a further meeting of the Clinic Committee on Friday, August 8, 2014 for the purpose of entertaining oral submissions of the ACLC and LAO. Subsequently, the Clinic Committee entered upon its deliberations on the basis of both the written material filed by the parties and the oral submissions.

Part II – Brief Chronology

The materials filed indicate that LAO began to develop concerns with respect to the financial management of the ACLC in 2009. At a meeting held on September 8, 2009, LAO staff provided detailed written information regarding LAO's concerns to the ACLC Board of Directors and a series of meetings ensued over the following twelve (12) months. During this period, on March 10, 2010, LAO Vice-President, Heather Robertson, received copies of two emailed letters of resignation from the ACLC Board of Directors from two lawyers who had been serving as members of the Board: [REDACTED] and [REDACTED]. The emails contained a series of troubling allegations concerning the management of the ACLC. The email from [REDACTED] stated in part, as follows:

"Unfortunately due to what I perceive to be gross misconduct and illegalities being allowed to continue with the African Canadian Legal Clinic after repeatedly being brought to its attention, I will have to tender my resignation from the Board. While I support the official mandate of the board and of the clinic itself I have grave concerns regarding the financial irregularities which have been repeatedly questioned with no responding materials or explanation being provided. I also have many concerns regarding the grievances and the content of material in the grievances relating to financial irregularities.

I have concerns regarding budget and fund allocation, mismanagement of funds, the actual case load in relation to the funding, the fact that Legal Aid proclaims

that the clinic is running at a deficit but the original financial information we were provided does not reflect this. In fact, the original financial documentation provided was replaced with "new materials" with little information provided as to the differences and explanation of why it was being amended. The financial irregularities have repeatedly been questioned by more than one board member: we have been advised that "we just need to trust" the executive director. This is not acceptable".

██████ also indicated a reluctance to detail other alleged concerns on the following basis:

"I have many other concerns which I will not outline here due to concerns of vexatious litigation on the part executive director, however further to the above, I do have a professional obligation, for which I will be contacting senior counsel and determining how to fulfill this obligation in due course. I hope that the clinic can manage to resolve its various issues and once again become an organization which effectively services the community, instead of specific individual interests".

The email from ██████ made similar allegations as follows:

"I have been a Board member for less than six months, and during that time, I have raised concerns about financial and governance matters of the ACLC, and have been less than satisfied with the way in which these concerns were addressed.

The current Board of Directors inherited a series of personnel grievances, and although I can appreciate that some Board members felt that these matters were at a stage where the responsibility for further action rested with LAO and not the ACLC Board, I have been disappointed at the Board's lack of collective concern and action to address the common root cause of these staff complaints.

....

As much as I believe in the potential of the ACLC to do good work and bring about substantive change in enhancing access to justice for members of the community it serves, I do not see that this is possible if the Board continues on its current course of not being able to properly direct and manage the ACLC management without manipulation, interference or intimidation. Furthermore, given the lack of oversight that other members of the Board are willing to exercise over the financial and management-staff relations matters of the ACLC, I can no longer continue to put my professional reputation and liability at risk by remaining as a member of the Board".

On September 7, 2010, LAO Vice-President Robertson wrote to the ACLC and advised that in light of LAO's unresolved concerns about various issues of financial management and in light of the concerns expressed in the letters of resignation of Board members ██████, LAO was invoking Level One of the DRP. Further, she requested additional financial reports and advised the ACLC that it would be retaining an auditor to conduct a forensic audit of the clinic's finances. Subsequently, PricewaterhouseCoopers

LLP (“PwC”) was retained by LAO to conduct the forensic audit which commenced in June, 2011. A draft of the PwC audit titled “Forensic Review of the African Canadian Legal Clinic” (“the Forensic Audit Report”) was completed in January of 2012. In early 2012, LAO requested a further audit relating to certain credit card expenditures incurred by the ACLC. This separate audit is contained in an “Addendum” to the Forensic Audit Report prepared by PwC. Final versions of the Forensic Audit Report and the Addendum are dated April 18, 2013. Certain aspects of the findings of PwC will be briefly summarized below.

PwC met with the ACLC Board of Directors to present a draft of the Forensic Audit Report on May 16, 2012. LAO requested feedback on the draft report by June 6, 2012. In the absence of a response from ACLC to the draft Forensic Audit Report and in the absence of a request for an extension of time in which to do so, LAO Vice-President Janet Budgell wrote to ACLC summarizing the findings of the report, proposing four remedial measures, inviting the ACLC to meet with LAO to discuss the proposed measures and inviting the ACLC to suggest additional measures. The four measures proposed were: (1) that an LAO observer attend all clinic Board meetings, (2) LAO pre-approval of ACLC expenditures over \$500.00, (3) all funding for vacant positions be held in escrow by LAO, and (4) discussion of the regularity or not of the bonus payments made to staff.

On June 25, 2012 LAO staff met with the ACLC Board of Directors in order to discuss the findings in the draft Forensic Audit Report and to discuss the proposed set of remedial measures. LAO requested the ACLC to confirm by July 4, 2012 that it would agree to the proposed remedial measures. The ACLC did not so confirm but, rather, retained counsel and challenged LAO’s authority to impose such remedial measures at Level One of the DRP.

On July 12, 2012, LAO Vice-Present, Budgell, wrote to the ACLC Board chair identifying various findings from the draft Forensic Audit Report and invoking Level Two of the DRP. In that letter, LAO Vice-President Budgell imposed the following four remedial measures as part of the Level Two process:

1. An LAO observer will attend all clinic board meetings. The LAO observer is not a board member and will not have voting rights, but he or she will be provided with board meeting materials in advance of meetings. Confidential human resources or client information may be redacted from the board materials prior to providing them to the LAO observer. The LAO observer will be invited to all board meetings including Executive Committee meetings, whether regularly scheduled or special meetings. The purpose of having an LAO observer at the clinic board meeting is to improve communications between LAO and the board, and the LAO observer will be available to answer questions and act as a resource to the board.
2. Pre-approval for any single clinic expenditure using LAO funds over the amount of \$500.00.

3. All funding for vacant positions will be held in escrow by LAO and will only be forwarded to the clinic to cover actual costs when the positions are filled on either a contract or permanent basis. The clinic will notify LAO whenever there is turnover of LAO-funded staff, the date on which positions become vacant, and the start date for new staff.
4. LAO has very serious concerns about the lump sum payments made to staff in the total amount of \$170,000.00, and the process by which the clinic board approved those payments. We would like to have a further discussion with the board to discuss our concerns, the process followed, and any next steps which may be required.

In response, the ACLC refused to participate in the proposed Level Two remediation plan and on August 31, 2012 served LAO with a Statement of Claim commencing a lawsuit against LAO seeking substantial damages and other forms of relief. As far as this Committee knows, the lawsuit remains pending.

The ACLC ultimately provided an extensive written response to the PwC draft reports authored by its counsel, Sean Dewart, on November 16, 2012. In that letter, Mr. Dewart offered several criticisms of the findings made by PwC. Although he concluded that the PwC reports had identified a number of useful suggestions on which the ACLC Board is acting, he nonetheless further observed: "In the main, however, the reports are so obviously biased and in the nature of advocacy that they are of no utility". LAO counsel, Gideon Forrest, replied to the November 16, 2012 letter from Mr. Dewart on December 14, 2012 identifying a number of issues raised in the PwC draft reports that had not been, in his view, adequately responded to by Mr. Dewart in his letter of November 16, 2012. The response by ACLC to the draft PwC reports was reviewed by PwC and the Forensic Audit Report and its Addendum were finalized in April, 2013.

On July 3, 2013, LAO Vice-President Budgell notified the ACLC Board of Directors that with respect to its funding application for the 2013/14 fiscal year, LAO would agree to provide the ACLC with funding for three months and then on a month-to-month basis until the DRP process had been completed. The ACLC's audited financial statements were due on July 31, 2013. When they were not submitted on that date, LAO made a number of requests for them and ultimately received the 2013 ACLC audited financial statements and four of the ten policies that the ACLC was required to develop and implement as a result of the recommendations in the PwC forensic audit report.

On November 28, 2013, LAO Vice-President Budgell, having reviewed the material forwarded by the ACLC, wrote a letter to the ACLC Board of Directors identifying a number of unresolved concerns and questions concerning "ACLC's financial management, accumulated deficit, policies and Board governance". The letter also identified some of the recommendations made by PwC that had not been implemented by the ACLC. The letter requested full implementation of the Forensic Audit Report recommendations and a meeting with the ACLC Board of Directors and its auditors to be

held by December 10, 2013. On December 30, 2013, the ACLC proposed February 12, 2014 as a date for such a meeting to which LAO agreed, even though it had not yet received the information LAO had requested in the letter of November 26, 2013. On February 10, 2014 – two days before the scheduled meeting – the ACLC advised LAO that its auditors would not be able to attend. The meeting took place, however, though it is LAO's position that the ACLC failed to provide the information required to respond to its November 26, 2013 letter. Shortly after the meeting, the ACLC wrote to LAO Vice-President Budgell proposing a further meeting with LAO to continue the discussions and made a similar request on March 12, 2014. On March 18, 2014 Vice-President Budgell acknowledged receipt of the March 12, 2014 letter but was unresponsive to the request for a meeting. As noted above, the L3 Staff Report was filed by Vice-President Budgell a few weeks later on April 3, 2014.

Part III – Evidence of Fiscal Mismanagement

The L3 Staff Report alleges that the ACLC is in fundamental breach of its obligations under *LASA* and its MOU resulting from financial mismanagement, potential misuse of public funds for personal benefit, inadequate governance by the ACLC Board of Directors and lack of accountability to LAO as its funder. In general terms, the ACLC responds that many of these issues have been addressed and as a result some are of mere historical interest. The ACLC further asserts that it has been or will be making sufficient progress with respect to the remaining issues such that a Level Three Response is rendered excessive in all the circumstances.

Much of the evidence relied upon by LAO with respect to fiscal mismanagement is drawn from the Forensic Audit Report materials and the Addendum report on Visa transactions prepared by PwC.

1. Large Accumulated Deficit in the LAO Fund

The L3 Staff Report asserts that there is a large accumulated deficit in the ACLC/LAO general fund which increased from \$179,340.00 in 2007 to \$233,631.00 in 2011. The 2013 ACLC audited financial statements show a deficit of \$139,340.00. The L3 Staff Report further asserts that, in its view, the latter amount is understated by \$50,009.00 on the basis that the ACLC claims as an account receivable from LAO, money that is not payable by LAO.

In its written and oral submissions, the ACLC acknowledges that deficit reduction is essential but further claims that the deficit is largely attributed to unanticipated expenses with respect to a particular project and further, that substantial steps have already been taken to reduce the deficit. Further, the ACLC challenges the extent of the deficit at various points in time and further, asserts that the account receivable is in fact payable by LAO. Further, the ACLC submits that the fact that it has a deficit does not warrant a Level Three Remedial Response. For the purposes of making a decision in the present matter, it is not necessary, in our view, to resolve the differences of opinion between LAO staff and the ACLC on the precise extent of the deficit at various points in time. The essence of the dispute

is the proper treatment of \$50,009.00 of surplus funds relating to the vacant Director of Legal Services position. LAO withheld these funds and the ACLC treated the moneys as a receivable. This had the effect of reducing the ACLC's deficit in its 2013 audited financial statements to \$139,340.00. Vice-President Budgell, in a letter to the ACLC Board on November 26, 2013, explained that, in her view, the Board was not authorized to do this and that the deficit was therefore understated by that amount. Be that as it may, the L3 Staff Report recommends the imposition of a condition on the ACLC that it be required to provide a plan to eliminate its deficit at the reduced amount of \$139,340.00 and that, at the same time, the ACLC write-off the alleged receivable of \$50,009.00. This has the effect, as best we can determine, of reducing the deficit by the amount of \$50,009.00 of surplus funds. As this was the result sought by the ACLC in treating the amount as a receivable, we assume that this result is satisfactory to both parties.

Further it is not necessary, in our view, to determine whether the deficit in itself would be a sufficient basis for a Level Three Response. Unquestionably, however, the fact that the deficit exists and has been continuing for some period of time provides a signal of the possibility of financial mismanagement and provides a context within which to consider the other points of difficulty identified in the L3 Staff Report as evidence of inadequate management of the clinic's financial resources.

2. \$170,000.00 Lump Sum Bonuses

Thus, for example, notwithstanding the existence of a large accumulated deficit, the ACLC awarded bonuses to staff between fiscal years 2008 and 2011 totalling \$170,000.00. The L3 Staff Report asserts that the bonuses were paid using funding provided by LAO for the ACLC Director of Legal Services, a position that had remained vacant since 2006. According to the L3 Staff Report, such use of these funds is inconsistent with the ACLC's obligations under Section 26 of the funding agreement, under which the funds may be used only to hire "replacement staff" unless LAO approved otherwise. Under that section, surplus funds shall be held by the clinic as a surplus to be applied to the clinic's annual budget for the following fiscal year. The use of the funds to pay bonuses to existing staff members is said to be an improper use of those surplus funds.

Further, the L3 Staff Report asserts that the ACLC does not have a policy establishing an approval process for such bonuses and asserts that the PwC review of ACLC Board minutes did not find Board approval for the bonuses. Although bonuses paid to members of the staff range from a total of \$2,000.00 to \$15,000.00, the bonuses paid to the Executive Director range from 25% to 38% of her annual salary for a total of \$121,000.00, an amount which the L3 Staff Report claims is "in excess of public sector norms".

The ACLC responds that the bonuses were paid with LAO funds only on two occasions, 2008 and 2010, and moreover, asserts that at least part of the justification for the payment of such bonuses was that additional work performed

by the remaining staff may be associated with the existence of vacant positions and therefore can sometimes be considered to be “replacement” in nature. We do not find this to be a convincing justification for such use of surplus funds. The meaning of the phrase “replacement staff” is clear, i.e. a staff member, not already paid for by LAO funds who, in this instance, replaces the missing Director of Legal Services. The use of surplus funds to pay bonuses to several existing LAO-funded staff members is, in our view, a clear breach of Section 26 of the Funding Agreement.

The ACLC also asserts that it does in fact have a policy relating to bonuses and that all of the bonuses were properly approved by the Board at in-camera sessions. It further asserts that PwC did not seek access to in-camera minutes, although advised by the ACLC that they were in existence. For its part, PwC claims that it asked for all of the Board minutes and that none of them recorded decisions concerning bonus payments. We note in passing that it is surprising that once the existence of bonus payments became a matter of contention, the ACLC would not have made additional efforts to ensure that such minutes were made available to PwC. Nor indeed, were they made available to this Committee. Be that as it may, the payment of substantial bonuses in the context of an accumulated deficit in itself raises an important question of responsible fiscal management even if the Board did approve such bonuses.

3. Accrued Compensatory Time and Liability

In the same vein, the fact that a significant component in the ACLC’s accumulated deficit in the amount of \$155,107.00, results from a liability owed to members of ACLC staff for compensatory or overtime payments is a cause for concern especially as 97% of that amount, that is \$150,513.00 for 2,566 hours, was owed to the Executive Director. Although the PwC report claimed that the liability to the Executive Director was inconsistent with existing ACLC policy on payment for overtime, which imposes a cap on such liability, the ACLC responded in Mr. Dewart’s letter of November 16, 2012, that PwC had misread the policy and that the provisions concerning overtime did not appear to apply to the Executive Director. Moreover, it is asserted in the ACLC Response that on March 11, 2014, the ACLC Board approved revisions to the applicable policy that, among other things, requires the Executive Director’s compensatory time to be approved by the ACLC Board on a monthly basis. In Mr. Dewart’s view, then, the problem has been addressed. Mr. Dewart further submitted that, “the Board has also resolved to ensure strict compliance with the Personnel Policy in order to ensure that there is no accumulating liability for compensatory time”.

In its written and oral submissions LAO asserts that the ACLC response is unsatisfactory in a number of respects. First, LAO noted that not only had PwC been critical of the accumulation of accrued compensatory time liability, but that the ACLC’s own auditors had drawn the ACLC’s attention to this problem in years gone by. Nonetheless, it was to take another two years for the ACLC Board to revise this policy. Moreover, the treatment of the Executive Director’s accrued

liability by the ACLC has been the subject of contradictory explanations by the ACLC and its counsel. It was first claimed by the ACLC that the problem had been resolved by the receipt of a donation in the 2012 fiscal year by a donor who wished to remain anonymous. Counsel for LAO suggests that this explanation does not make sense as it does not appear to be reflected in the record keeping of the ACLC, nor is the ACLC in a position to provide a charitable receipt for tax purposes to a donor of such money. During the oral submissions on August 8, 2014, however, Mr. Dewart offered an alternative and inconsistent explanation that the liability to the Executive Director has been forgiven by the Executive Director and was no longer owed to her. The first explanation – donation by an anonymous donor – suggests that the liability has been discharged by payment of the anonymously donated funds to the Executive Director. The second explanation does not involve such a payment. The inconsistency in these explanations and the lack of supporting documentation of something alleged to have occurred in the 2012/13 fiscal year is troubling. In our view, LAO was entitled to a clear and documented explanation of the handling of this substantial liability.

4. Co-Mingling of Funds

The PwC forensic audit report was critical of the ACLC's practice of inter-fund transfers. The ACLC receives funding not just from LAO, but from a variety of other funding sources. The L3 Staff Report asserts that in December, 2013, ACLC's auditors "noted that the ACLC continues to operate by managing working capital across funds and that the ACLC's reliance on the timing of cash flow to finance the accumulated deficit must be addressed immediately". The auditors further stated, according to the L3 Staff Report, that "the practice has led to over-expenditures and an accumulated deficit, and that it will be difficult for the ACLC to return to a surplus fund position". In effect, it is alleged, the ACLC has been borrowing money from one program to cover over-expenditures in another. It was further alleged in the L3 Staff Report that in the fiscal year 2013, the ACLC had borrowed \$138,922.00 from another funder to cover liabilities to the ACLC's LAO General Fund, thus creating a debt now owed by the LAO fund to another funder. The ACLC response to this concern is that, acting on the advice of its auditor, ACLC transferred the surplus in its operating fund, "to reduce the deficit" in the LAO general fund.

The PwC Forensic Audit Report made recommendations on this topic requiring that a policy on inter-fund transfers should be established along with monitoring procedures to ensure that the clinic is in compliance with the funding agreement with LAO and its own policies as it relates to inter-fund transfers. No such policy has yet been established although the ACLC claims that LAO has been unhelpful by failing to provide a precedent for such a policy. In a letter dated November 26, 2013, LAO Vice-President, Budgell, did provide guidance on the content of an acceptable inter-fund transfer policy. More particularly, Ms. Budgell requested that the ACLC adopt a policy regarding inter-fund transfers which includes:

- Proper support for all inter-fund transfers including provisions of the LAO-

Clinic Funding Agreement and Funding Agreements from other funders where transfers take place.

- Detailed explanation of all inter-fund transfers on financial reports provided to LAO.
- Board monitoring provisions which ensure Board oversight and approval of all inter-fund transfers.
- Evidence of Board review and approval of the policy itself.

No such policy has been adopted notwithstanding the passage of a substantial period of time since this matter has been drawn to the attention of the ACLC Board, both by its auditors and by the PwC Forensic Audit Report. This Committee remains very concerned by the use of LAO funds for purposes not contemplated by the Funding Agreement.

5. Use of Clinic Funds to Hire Outside Counsel

As noted above, the LAO-funded position of Director of Legal Services has been vacant since 2006 (and only very recently filled). In order to represent clinic clients in what the clinic considers to be test case litigation, the ACLC retained outside counsel using LAO funding for the Director of Legal Services position. The expenditures incurred in this way were substantial. In the letter of June 10, 2011 to LAO, the ACLC Executive Director disclosed that actual expenses incurred by the clinic for outside counsel in fiscal 2011 totalled \$307,586.00, broken down in the following fashion:

- \$283,905.00 for a case [REDACTED] involving a [REDACTED] (after the retained firm wrote down \$200,000.00 of its billings)
- \$15,855.00 for racial profiling/use of force case
- \$7,826.00 for racial profiling case

The ACLC purports to defend this use of the surplus funds created by the vacancy on the tenuous basis that it constitutes the hiring of "replacement staff" within the meaning of Section 26 of the ACLC Funding Agreement. Even if one accepts this argument (and the Committee does not), it appears very difficult to justify the first item on this list. The first item concerns [REDACTED]

[REDACTED] The L3 Staff Report asserts that the costs incurred by the clinic on outside counsel were excessive, created a large over-expenditure and were an irresponsible use of public funds. Leaving aside the question of whether the [REDACTED] was financially eligible for legal aid clinic representation, the allegation that the costs incurred were excessive is difficult to rebut.

6. Inappropriate Use of Clinic Credit Cards

The PwC Forensic Audit Report Addendum examined the use of the ACLC credit cards and found a number of inappropriate and/or unexplained purchases and practices. As the L3 Staff Report notes, a random audit of the clinic's Visa transactions revealed charges at various retail stores totalling \$2,281.00, including:

- Stillwater Spa, \$100.00
- La Senza Lingerie, \$112.00
- William Ashley, \$240.00 and \$62.00 (the \$62.00 item was subsequently returned)
- STC gift certificate (Scarborough Town Centre), \$150.00
- Just Miss (prom dress store), \$142.00
- Lavalife (online dating) \$32.00 and \$31.00
- Rogers and Bell charges, \$1,474.00

In response to the draft audit addendum report, the ACLC indicated that these purchases were made by a particular former employee and that the charges in question were deducted from the employee's salary. PwC asserts that it was unable to verify that such deductions were in fact made. The PwC Visa audit also identified a number of unexplained purchases totalling \$3,989.00, including:

- \$155.00 at Exceptions Writing Instruments
- \$510.00 at Best Buy
- \$487.00 at Wal-Mart grocery
- Four purchases of alcohol totalling \$115.00
- \$1,629.00 at Bell
- \$164.00 at Rogers
- \$456.00 at Final FX
- \$150.00 at Mars Blinds
- \$86.00 at Paypal
- Four purchases at The Bay totalling \$237.00

Whether any of these purchases were for personal rather than clinic purposes is difficult to discern in the absence of appropriate documentation of the expenditures.

A more troubling illustration of the phenomenon of the use of clinic credit cards for personal purchases involves the purchase of a ring for \$754.00 from The Diamond Shop by the Executive Director on March 30, 2007. The materials filed, including a letter from Mr. Dewart to Mr. Forrest on December 18, 2012, indicate that when this matter was raised by PwC, the Executive Director reported that she had explained to the ACLC Board that on the same day that she made the purchase, she had withdrawn an equivalent amount of cash from her own bank account and immediately reimbursed the clinic. Further, she asserted that she had failed to ask for a receipt when she did so. She also said that she indicated to the ACLC Board that she would be willing to make a further repayment of the money if necessary. It is alleged that the Board declined to require repayment at that time. In the exchanges between counsel prior to the present proceeding, Mr. Forrest invited Mr. Dewart to provide banking records of the Executive Director from March and April, 2007, that would demonstrate that funds had, at the appropriate time, been withdrawn from the Executive Director's bank account in order to facilitate the alleged repayment. Mr. Dewart replied on January 10, 2013 that such a request

was “grossly insulting to [the Executive Director], asking her to prove the truth of information she provided to the board”. The bank records were not provided. Nor was a statement from the bank provided to the effect that such documents cannot be produced if that was indeed the case. With all due respect to Mr. Dewart, this request for documentation of repayment, given the other findings in the PwC audit Addendum, does not seem unreasonable and the refusal to provide the relevant documentation cannot fail to generate suspicion.

The PwC Addendum also reports that between 2008 and 2011, the ACLC’s credit card was used on 34 occasions to obtain cash advances totalling \$6,950.00. In the absence of reporting documentation for all but \$300.00 of those cash advances, the vast majority of the advances are unaccounted for. The circumstances under which the cash advances were obtained are a matter of dispute. The Executive Director, according to the L3 Staff Report, denies knowledge of them. A former office manager, however, has made an allegation that the advances were obtained on her direction in order to facilitate purchases on behalf of the ACLC when no director was available to sign a cheque. If true, such a practice would obviously be unacceptable. What appears to be undeniable, in any event, is that the cash advances appeared on the monthly Visa statements and were paid by the ACLC without any documented explanation for their existence. The cash advances would have been reflected in such statements. This suggests that either the Executive Director and the director responsible for signing the cheques to pay the monthly accounts either neglected to review the underlying documentation with sufficient care or that they approved payment for these advances.

7. Excessive and Inappropriate Spending on Meals, Travel, Accommodation and Gifts

The L3 Staff Report asserts that the ACLC Board of Directors “failed to institute policies and procedures governing meals, accommodation and travel expenses that comply with LAO policy requirements for all clinics”. Moreover, the L3 Staff Report notes that the ACLC Board appears to have taken no action in response to “variances and over-expenditures in the ACLC’s travel, meal and hospitality budget”. The L3 Staff Report goes on to suggest that, in light of the budgetary deficit of the ACLC, expenditures on such items appear to be excessive. The L3 Staff Report and supporting documentation suggest that substantial sums were spent at Toronto restaurants on staff lunches and dinners, some including alcohol that contravened the LAO policy that came into force in September, 2010 prescribing limits on such expenditures. Other expenditures asserted to be excessive or inappropriate in the L3 Staff Report include expenditures on accommodation and catering for staff meetings and planning days, unexplained domestic and international travel, Christmas parties and gifts of various kinds which appear to be of a celebratory nature for members of staff. The ACLC response to this complaint is that many of the expenditures involved did not use LAO funds and that the expenditures are unfairly criticized by LAO. In response to the recommendations of PwC and LAO to adopt appropriate policies with respect

to expenditures of this kind, the ACLC submitted a Travel Policy to LAO on October 22, 2013. According to the L3 Staff Report, however, the ACLC Travel Policy did not fully comply with the PwC recommendations on this topic, nor with LAO's Clinic Travel, Meal and Hospitality Expenses Directive of September, 2010. On the basis of the materials filed it is difficult for the Committee to determine the extent to which such expenditures utilized LAO funds and/or were excessive or inappropriate. Regardless of whether or not LAO funds were used for the expenditures in question, the Committee does not find it acceptable that the ACLC's policy is not compliant with the recommendations of PwC and with LAO's Directive.

8. Expenditures on Taxis within Toronto

The PwC forensic audit disclosed that between 2008 and 2011, \$39,007.00 was spent on taxi fares in the Greater Toronto Area by staff, often between the ACLC premises and various residential addresses. The PwC audit report offered the view that these taxi expenditures appear high in light of the number of staff employed by the ACLC. More particularly, taxis were utilized by the Executive Director on a frequent basis. Although the ACLC does have a policy concerning the use of taxis, the L3 Staff Report asserts that the policy is deficient in various respects. On the basis of the materials filed, though the assessment in the PwC forensic audit that the use of taxis appears to be unusually high is a source of concern, it is difficult for the Committee to make a determination with respect to the appropriateness of the extent of taxi expenditures. The more important point for present purposes is that the Committee agrees with the L3 Staff Report to the effect that a satisfactory policy concerning taxi utilization should be adopted by the ACLC.

9. ACLC's Steps to Improve Financial Controls on Credit Cards

The ACLC has taken a number of steps to achieve greater control over credit card use. Thus, the number of credit cards available to ACLC staff has been reduced from five to one. Further, in September, 2013, the ACLC developed a Credit Card Policy. In the November 16, 2012 response to the draft PwC forensic audit, Mr. Dewart indicated that the clinic would develop a new Credit Card Policy corresponding to "all but the 3rd, 6th and 10th bullet points" recommended by PwC. He did indicate, however, a willingness on the part of the clinic to discuss the 3rd and 6th bullet points. In the L3 Staff Report, it is alleged that the ACLC Credit Card Policy does not comply with PwC's recommendations in various respects. In its ACLC Response, the ACLC concedes that although it has complied with the majority of LAO's directives, it is reluctant to implement certain other recommendations. By way of illustration, the ACLC indicated that it has not adopted LAO's recommendation to prohibit prepayment of its credit card, "because it would limit the clinic's purchasing power, especially with respect to capital purchases", e.g., office equipment for non-LAO funded programs. It is not obvious, however, that the policy of permitting pre-payment on a credit card is either necessary or desirable. PwC had also recommended that pre-payment of the Visa card be prohibited in order "to ensure that the clinic's spending limit is

adhered to”.

As noted above, the L3 Staff Report also asserts that the ACLC “has not implemented policies that fully comply with LAO’s Clinic Travel, Meals and Hospitality Expense Directive” of September, 2010 and that the ACLC has not fully implemented PwC’s recommendations on these topics. Accordingly, it is suggested in the L3 Staff Report, that “the risk of improper use of public funds and excessive spending on meals, gifts and travel remains”. The response to this concern by the ACLC is that the problems identified are essentially historical in nature and that there is “no evidence of continuing concern about improper expenditures nor is there any evidence that the board is failing to conduct meaningful oversight of expenses”. The position taken in the L3 Staff Report that the ACLC should comply fully with the recommendations of PwC and the current policies at LAO does not, in our view, appear to be unreasonable. The Committee concurs with this recommendation given past concerns and the lack of fully compliant policy.

10. High Levels of Office Manager Turnover

The L3 Staff Report indicates that there has been a remarkably high level of turnover in the Office Manager position at the ACLC. Since February of 2007, six individuals have held the position, the shortest tenure being two months and the lengthiest, twenty months. From the material filed, it is very difficult to make an assessment of why such a remarkably high rate of turnover has been experienced by the ACLC, nor is there any indication of measures taken by the Board to minimize the risk of recurrence. Whatever the correct explanation for the rapid turnover of incumbents in this position, the phenomenon is obviously a disruptive one that is likely to undermine effective administration of the finances of the ACLC and, in our view, is a matter that requires the attention of the ACLC Board of Directors.

11. Failure to Report Staff Vacancies

The L3 Staff Report asserts that the ACLC has, from time to time, failed to report staff vacancies in LAO-funded staff positions. All clinics are required by LAO to do so in order to ensure that LAO is aware of the existence of surplus funds and to ensure that they are properly handled by the clinic in question. The L3 Staff Report, with respect to this matter, notes that “failing to provide notice of staff turnover is particularly problematic given ACLC’s past conduct of using funding from vacant positions to pay staff bonuses and hire outside counsel to represent its clients at a cost far in excess of delivering the services through staff.” The Committee agrees with this observation. It is important for LAO to receive accurate and timely reports of staff vacancies and it is for this reason that the ACLC is obliged to provide them.

12. Board Composition

As noted above, in March, 2010, two lawyer members of the ACLC Board of Directors resigned and provided copies of their emailed letters of resignation to

LAO. The allegations made in the letters of resignation are very troubling and suggest a lack of capacity and willingness on the part of the Board to exercise appropriate oversight of the performance of ACLC staff in matters of financial management and of management-staff relationships.

The letters of resignation are also troubling with respect to their implications for the composition of the ACLC Board. Section 10 of the Funding Agreement between LAO and the ACLC, consistently with the MOU between the parties, provides the following with respect to the composition of the Board of Directors of the clinic:

“As set out in the Memorandum of Understanding, the clinic will have a board of directors which is reflective of the diversity of the communities to be served by the clinic and will make reasonable efforts to have a board that includes:

- a) persons representative of the low-income community;
- b) persons with experience working with community agencies
- c) persons with financial skills;
- d) persons with management skills; and
- e) lawyers.”

Obviously, this provision is designed, in part, to ensure that by including persons with financial skills and management skills and lawyers, the Board has the capacity to engage in effective oversight of the administration of the clinic. In our view, it is especially important to have persons with these skills on the Board.

██ there are no longer any lawyers on the ACLC Board of Directors.

In our view, it is especially important, given the problems alluded to above, that the Board of ACLC is composed in the manner set out in Section 10 and that the Board include at least two persons with financial skills and two lawyers. Quite apart from the fact that Section 10 uses the plural form to refer to “persons with financial skills” and “lawyers”, it is our view that a minimum of two in each category would be desirable in order to ensure that informed dialogue can take place on such matters within the deliberations of the Board and further, that at least one individual with each of the relevant fields of expertise would normally be available if the other were unable to attend a particular meeting of the Board. Accordingly, it is our view that it is important that the ACLC live up to its obligations under Section 10 and make “reasonable efforts” to appoint such persons to the Board. In its ACLC Response, the ACLC explained the absence of any lawyers on the board on the basis that, “since 2010, no lawyers have expressed an interest on serving on ACLC’s volunteer Board of Directors”. At the meeting on August 8, 2014, Mr. Dewart was pressed to provide further information on what efforts to recruit lawyers had been made and he undertook to provide further information in due course. In a subsequent email of August 15, 2014, Mr. Dewart reported as follows:

“Please advise the committee that I am instructed that ACLC approached three lawyers directly within the last five years to ask that they consider sitting on the board, and that all three expressed support for the clinic but indicated that their other responsibilities made this impossible.

In addition, the clinic maintains a list of lawyers in private practice to whom clients are referred. There are presently 197 lawyers on this list. After the direct approach to the three lawyers failed to produce results, an email was sent to all lawyers on the referral list, to solicit expressions of interest, but none were received.”

In our view, these efforts to recruit for the Board did not meet the standard of “reasonable efforts” required by Section 10 of the Funding Agreement. Although we understand that recruitment of volunteer Board members in the non-profit sector can be a challenging task, success is more likely to be achieved, in our view, through direct approach rather than mass emails.

With respect to persons on the Board with financial skills, the ACLC reported that the, now former, Chair of the Board and current member, Mr. Holder, holds a university degree in financial accounting and management. As far as we are aware, however, no other member of the ACLC Board has such expertise or qualifications. Accordingly, in our view, reasonable efforts should be made to ensure that there are at least two Board members with financial and/or accounting skills.

13. Lack of Cooperation

The L3 Staff Report also asserts that various members of the LAO staff, in their dealings with ACLC have experienced delays in responding to enquiries from LAO and a lack of transparency with respect to financial matters. For its part, the ACLC similarly asserts that it has experienced delays and lack of cooperation in its dealings with LAO staff and that LAO staff timelines provided to ACLC were unreasonably short. In our view, on the basis of the material filed, it is difficult to make explicit findings with respect to particular incidents. Although some of the deadlines imposed by LAO do appear to be short, we are not persuaded that any significant prejudice resulted from them. The brief chronology of events set out above in Part II of these Reasons and in Part III, points 3, 4, 6, 11 and 12 does recount situations in which there was a lack of timely responsiveness to concerns expressed by LAO, and more particularly, with respect to the implementation of the recommendations made by PwC and LAO with respect to policies to be implemented by the ACLC. The L3 Staff Report also indicated some reluctance to cooperate fully with PwC in its forensic audit by refusing, for example, to provide electronic versions of its financial information available, and by insisting that the Executive Director be present for all interviews between PwC and ACLC staff, including the bookkeeper and members of the ACLC Board of Directors. What is undeniable, certainly, is that from the initial expression of concern in 2009 until the present time, various attempts by LAO staff to get to the bottom of concerns and

complaints directed to their attention with respect to financial management and accountability at the ACLC have absorbed an enormous amount of LAO staff resources and have not resulted in a resolution which is satisfactory from LAO's perspective during the ensuing five years.

Particularly noteworthy in this regard is the refusal of the ACLC to participate in the Level Two Remedial plan communicated to the ACLC Board of Directors by Vice-President Budgell on July 12, 2012. In light of somewhat alarming findings of PwC's forensic audit report and other concerns that had emerged over the previous three years, the measures proposed, in our view, were reasonable and the refusal of the ACLC to participate in the remedial plan was not.

Part IV – Conclusion

The DRP requires, as a prerequisite to invoking a Level Three Remedial process, that it be established that the clinic in question "has committed a fundamental breach of its obligations". As noted above, the concept of "fundamental breach" is defined in Section 25 of the DRP in the following terms:

A "fundamental breach" of the clinic's obligations shall include:

- a) a failure, without reasonable grounds, to participate in a Level Two remediation plan;
- b) a refusal or failure by the clinic to carry out its responsibilities under the Act or the Memorandum of Understanding; or
- c) an inability on the part of the clinic to carry out its responsibilities under the Act or the Memorandum of Understanding

which results in serious financial mismanagement, serious professional misconduct or negligence, misrepresentation of statistical, financial or other information provided to LAO, significant reduction in the provision of clinic law services, significant personnel problems or significant board governance problems."

A number of problems identified above constitute, in our view, a fundamental breach of the obligations imposed on the ACLC with respect to the management and expenditure of public funds provided to the clinic by LAO. Thus, for example, the refusal of ACLC to participate in the Level Two Remedial plan without reasonable grounds to do so constitutes a clear fundamental breach as defined in Section 25 of the DRP. A number of instances outlined above constitute failures to comply with LAO policy pertaining to the use of funds it provided to the ACLC and, in turn, constitute a refusal or failure of the clinic to carry out its responsibilities under the MOU entered into between LAO and the ACLC. For example, the various uses of the funding allocated to the vacancy in the Director of Legal Services position constitutes such a breach. Similarly, the failure of the ACLC Board to make reasonable efforts to ensure that its composition reflects the undertakings given in the MOU constitutes such a breach. A number of instances outlined above indicate a failure to "effectively and efficiently manage the services, finances and personnel of the clinic in a manner consistent with the responsible and cost-effective expenditure of public funds" in breach of Section 10(b) of the MOU. The failure

of the ACLC to fully implement policies and guidelines recommended by PwC and LAO constitute a breach of the obligations under Section 10(c) to “develop such policies, procedures and guidelines as are necessary for the effective and efficient operation of the Clinic”. What is clearly established, in our view, is that each of these deficiencies in performance constitutes a fundamental breach which has resulted in serious financial mismanagement and Board governance problems at the ACLC, and that a basis for a Level Three Remedial Response in accordance with the requirements of the DRP has been established. The Committee has concluded that there was a demonstrable lack of governance oversight by the clinic Board as it pertained to financial matters. The terms and conditions of that Level Three Response will be further described below.

An alternative statutory basis for the imposition of the conditions further described below arises from the statutory authority conferred upon LAO, and delegated to this Committee by the LAO Board of Directors, by Sections 34(5) and 38(1) of LASA to impose conditions on the funding of clinics. As well, Section 35 of LASA directly confers authority upon this Committee to make decisions with respect to funding applications of clinics. The aforementioned fundamental breaches of the obligations imposed on the ACLC with respect to the management and expenditure of public funds engages, in our view, the statutory standard of a failure to “meet the terms and conditions of its funding” within the meaning of Section 38(1) of the LASA. In light of this Committee’s finding that there was a demonstrable lack of governance oversight by the ACLC Board as it pertained to financial matters, the Committee has decided to impose the Conditions of the Level Three Remedial Response set out below as a condition of its approval of the 2014-15 Funding Application of the ACLC.

Part V – Nature of the Level Three Remedial Response

The Committee, in fashioning a Level Three Remedial Response, wishes to establish a set of conditions that are practical and achievable by the ACLC and that will, when fulfilled, enable the ACLC to fully discharge its obligations under the MOU, the Funding Agreement it entered into with LAO and LASA.

The authority of the LAO Board and this Clinic Committee to fashion a Level Three Remedial Response is set out in the following terms in Section 24 of the DRP.

“A Level Three remedial response may include any one or more of the following measures:

- a) the imposition of special terms and conditions on the funding of the Clinic, in accordance with s. 34(5) of the Act;
- b) the issuance of a directive to the clinic to do anything that the LAO Board of Directors considers appropriate to ensure that the clinic complies with the Act and the terms and conditions of its funding and, generally, for the more effective operation of the clinic, in accordance with s. 38 of the Act;
- c) the reduction or suspension of funding to the clinic in accordance with s. 39 of the Act.”

For clarification of the breadth of the discretion conferred by section 24, it may be useful to reproduce section 38(1) of the Act referred to above in section 24(b) of the DRP. Section 38(1) provides as follows:

“If a clinic fails to comply with this Act or to meet the terms and conditions of its funding, the board of directors of the Corporation may direct the clinic to do anything that the board of directors of the Corporation considers appropriate to ensure that the clinic complies with this Act and the terms and conditions of its funding and, generally, for the more effective operation of the clinic.”

It follows from these provisions that this Committee is not constrained to either accept or reject the proposals for remedial measures put forward by either LAO in the L3 Staff Report, or by the ACLC in its written or oral submissions to this Committee. Thus, in fashioning what the Committee believes to be an appropriate Level Three Response, we have accepted some, but not all of the remedial measures proposed in the L3 Staff Report. Additionally, there are measures that the Committee itself has conceived with a view to strengthening the capacity of the Board, both in terms of its composition and in terms of its governance capacity to effectively discharge its responsibilities to oversee the financial management of the public resources allocated to the ACLC by LAO.

The principal departures from the recommendations proposed in the L3 Staff Report which have not been adopted by this Committee relate to the retroactive correction of past misdeeds, for example, the L3 Staff Report suggestion in proposed Condition 6, that the ACLC reimburse LAO for lump-sum bonuses inappropriately paid to members of the staff in fiscal 2008 and 2010. As well, LAO disputes the claim by ACLC that money from other sources was used to pay the bonuses in 2009 and 2011 and recommends, as a remedial measure, a further audit relating to this issue and if, as LAO suspects, LAO funds were used to this purpose in 2009 and 2011, that the ACLC be required to reimburse this amount as well. We do not favour this remedial condition as we are of the view that it will create a very substantial burden for the ACLC which is likely to have a negative impact on its ability to successfully deliver its programs and achieve full reduction of its operating deficit in the near future. Such a measure would also create pressure to unwind payments that have already been made to members of the ACLC staff as compensation for services rendered.

Similarly, the L3 Staff Report recommends that the ACLC will produce evidence of repayment from employees or will reimburse LAO with respect to personal and inappropriate use of public funds discussed above. While we would encourage the Board of ACLC to deal responsibly with that issue, we do not think that it is appropriate to include in a Level Three Remedial Response a condition explicitly requiring such measures by the ACLC.

Our focus, rather, in devising a Level Three Remedial Response and, in the alternative, a Section 34(5) and Section 38(1) order and a conditional approval of the ACLC's Funding Application for 2014-15, is on the future, in the sense that we wish to ensure the enhancement of ACLC's capacity to properly govern itself and for the Board to effectively

oversee the appropriate management of public funds allocated to ACLC by LAO. In this regard, we are of the view that the conditions proposed by the L3 Staff Report that involve the adoption of financial management policies and best practices should find a place in the Level Three Remedial scheme. In this regard, however, we think it would be unduly burdensome to adopt the proposed Condition 7 which would require the “entire ACLC Board of Directors to attend monthly meetings with LAO staff to monitor compliance with the terms and conditions” imposed. Rather, we have proposed monthly meetings between the Chair of the Board of the ACLC and an LAO official to engage in a similar exercise. As well, we propose inviting an LAO observer to all meetings of the ACLC Board.

We do agree with the recommendations in the L3 Staff Report that the ACLC should be required to file a financial plan with LAO which includes the elimination of its existing financial deficit, together with any increased deficit incurred in the current financial year, by March 31, 2016. In light of Mr. Dewart’s submissions that the deficit has been substantially reduced in recent years and might even be eliminated in the next fiscal year, this objective does not appear to be unrealistic or unachievable by the ACLC. We also agree with the L3 Staff Report proposal that the ACLC cooperate with an audit of the compensatory time accrual reduction which has been the subject of inconsistent and undocumented explanations by the ACLC. Further, we agree with the L3 Staff Report recommendation that the ACLC be required to promptly adopt the recommendations set out in the PwC Forensic Audit Report.

To the extent that we have imposed conditions that differ from those suggested by LAO in the L3 Staff Report or by the ACLC, we have informed counsel for both parties of the fact that we were considering doing so and invited comments from them both on the proposed measures. Their comments have been taken into account in finalizing the Conditions of our Level Three Remedial Response.

A further departure from the Conditions proposed in the L3 Staff Report is that it is our view that should ACLC in the opinion of LAO staff, fail to comply with the Level Three Remedial Conditions hereby imposed, a decision to defund the ACLC should not be made by the LAO staff, but should be proposed to this Committee for an ultimate decision as to whether or not to do so.

Part V: Decision

For the foregoing reasons, this Committee’s decision with the respect to this matter is as follows:

Pursuant to the authority conferred upon Legal Aid Ontario (“LAO”) by Sections 34(5), 38(1) and 39(4) of the *Legal Aid Services Act* (“LASA”), and by Part VI of the Dispute Resolution Policy, such authority having been delegated to this Committee pursuant to Section 61(1) of LASA by resolution of the Board of Directors of LAO and pursuant to the authority conferred upon this Committee by Section 35 of LASA, this Committee decides as follows:

- a) That the African Canadian Legal Clinic (“ACLC”) is in fundamental breach of its obligations as defined in Section 25 of the Dispute Resolution Policy and, accordingly, must comply with the Conditions of a Level Three Remedial Response set out further below, and
- b) That, pursuant to Sections 34(5), 35 and 38(1) of LASA, this Committee’s approval of the 2014-15 Funding Application of the ACLC is conditional upon the ACLC’s compliance with the Conditions of the Level Three Remedial Response set out further below, and
- c) That if, in the opinion of LAO staff, the ACLC fails to comply with the Conditions of the Level Three Remedial Response, the LAO staff may recommend to this Committee that continued funding of the ACLC be reduced or suspended pursuant to Section 39(4) of LASA.

Condition 1:

ACLC will notify LAO staff in writing of all ACLC Board of Directors meetings as soon as they are scheduled and will permit an LAO observer to attend all ACLC Board of Directors meetings. The observer would not be a Board member or have voting rights, but he or she will be provided with Board meeting materials in advance of the meetings and be permitted to provide LAO staff perspectives on the issues discussed. Confidential client information may be redacted from the Board materials prior to providing them to the LAO staff observer. Further, the ACLC Board may meet in camera, without the LAO staff observer present, to discuss (i) matters pertaining to the Dispute Resolution Process in which the ACLC and LAO are adverse in interest, and (ii) matters pertaining to the Association of Community Legal Clinics of Ontario (ACLCO). The Chair of the ACLC Board of Directors will meet with the LAO observer on a monthly basis or on some other schedule mutually agreed to by the Board Chair and the LAO observer in order to ensure that the observer is kept abreast of activities at the ACLC. This condition will remain in force during the fulfillment of the other conditions and then for one year after the fulfillment of the other conditions.

Condition 2:

ACLC is required to comply with its obligation in Section 10 of its Funding Agreement with LAO, that it make reasonable efforts to have a Board that includes “persons with financial skills” and “lawyers”, and that the ACLC report to LAO staff, when requested to do so, on such reasonable efforts to ensure that there are at least two persons with financial skills and two lawyers on the Board of Directors of ACLC. The reasonable efforts will include identifying at least five suitable candidates for each vacant position each month and approaching them by telephone or in person in addition to a written approach. This condition will be met on the date on which all four of the described Board positions have been filled.

Condition 3:

The ACLC Board of Directors will organize within six months of the Committee’s decision and will successfully complete within nine months of the Committee’s decision an approved appropriate training experience for all members of the ACLC Board of Directors

on the duties and responsibilities of board members including duties of monitoring, oversight and risk management. The organization of the training experience will be done in collaboration with LAO staff and it will be approved by LAO staff before it is conducted. Its expense will be borne by LAO. Successful completion will be demonstrated by a written report by the facilitator(s) of the training experience to LAO staff on the attendance and outcomes of the training experience.

Condition 4:

Within 60 days of the Clinic Committee's decision, ACLC will submit a financial restructuring plan to LAO for approval, which stabilizes the clinic's financial position and improves its financial management. In order to obtain LAO approval the plan must include:

- The write-off the \$50,009.00 accounts receivable from LAO shown in the ACLC's March 31, 2013 Financial Statements.
- The elimination of the \$139,340.00 deficit in the Legal Aid Ontario Funds by March 31, 2016 and any other deficit that may be incurred by the ACLC in their 2013/14 fiscal year
- The production of all documentation related to the write-off of the accrued liability related to accrued vacation and compensatory time. The documentation is to be attested by the ACLC Board Chair for completeness and accuracy.
- The elimination of any remaining accrued compensation liability for all employees without compromising client service

Condition 5:

Within sixty (60) days of the Clinic Committee's decision, the ACLC will have adopted the following policies, directives, best practices and reporting systems:

- Full implementation of the following policies and directives, which apply to all clinics:
 - Travel, Meals and Hospitality Directive
 - Procurement Directive
- Implementation of best practices financial controls including:
 - Corporate Credit Cards:
 - Having only one corporate credit card in the name of the Executive Director, that all other credit cards be cancelled, that no other staff can use the card without prior written authorization for the transaction from the Executive Director, and requiring subsequent review and approval by the Executive Director
 - That the payment of the credit card be done within 30 days of receipt of the credit card invoice
 - That no cash advances be made from the corporate credit card
 - Full compliance with PwC recommendations governing the use of the corporate credit card including preparation of expense reports that are reviewed and approved by the Executive Director, a process for reviewing and approving expenditures by all staff including the Executive Director, and quarterly monitoring of expenditures by the Board of Directors to ensure compliance with all applicable policies

- Implementation of the following financial reporting systems:
 - Establishment of detailed budgets for the expenditure of funds within both the LAO General Fund and the LAO Legal Disbursement Fund
 - That the ACLC Board of Directors approve these budgets
 - Report quarterly to LAO on the actual expenses against the approved budget and the reasons for the variances
 - That any inter-fund transfers between the Legal Aid Ontario funds and other programs managed by the ACLC be reported to LAO monthly
 - No bonuses are to be paid to ACLC employees out of Legal Aid Ontario funding unless approved by LAO
 - LAO to be present at the ACLC Board of Directors' meeting when the external auditors present the annual Audited Financial Statements to the ACLC Board
 - Providing LAO's Internal Audit Unit the right to contact ACLC's external auditors
 - Change external audit firms every five years through a competitive procurement process and that LAO participate in this process

Condition 6:

ACLC will co-operate with an independent audit of the compensation time accrual reduction by an auditor of LAO's choice, to be conducted within fifteen business days of the Clinic Committee's decision.

Condition 7:

LAO will provide monthly funding based on:

- a monthly schedule of recurring expenses such as rent, salaries and equipment leases in a format approved by LAO
- receipt of invoices and expense reports for all other expenditures which ACLC will submit, and which LAO will review, in a timely manner.

LAO approval will be based on its assessment of whether expenses are permitted and comply with the LAO-Clinic Funding Agreement, applicable policies and directives.

Condition 8:

Within 60 days of the Clinic Committee's decision, ACLC will implement all PwC Forensic Review recommendations. Compliance will be verified by LAO's Internal Audit and Compliance Division within 15 days thereafter. ACLC will fully co-operate with LAO's Internal Audit and Compliance Division, including providing timely and complete access to all documents and background materials requested, and making staff and ACLC Board members available to meet with Division staff upon request, to confirm compliance with the recommendations.

DATED at TORONTO this 5th day of September, 2014



John D. McCamus, Chair
Clinic Committee of the Board of Directors
Legal Aid Ontario