

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 ON REQUEST FOR RECONSIDERATION DATED
OCTOBER 7, 2014**

Part I – Introduction

On September 5, 2014, the Clinic Committee of the Board of Legal Aid Ontario (“LAO”) released its Decision with respect to the imposition of a Level Three Remedial Response pursuant to Section 22 of the Dispute Resolution Policy (“DRP”) for the African Canadian Legal Clinic (“ACLC”) and Reasons in support of its decision to do so. That decision outlines several Conditions imposed as part of the Level Three Response, fulfillment of which by the ACLC will be necessary for successful compliance with the Level Three Response by the ACLC.

On October 7, 2014, the Chair of the Clinic Committee received a letter from Rosie Basa of the Dewart Gleason LLP law firm on behalf of the ACLC raising a number of “concerns and requests for the consideration of the Clinic Committee” concerning conditions set out in the Level Three Response. On October 15, 2014 the Clinic Committee Chair forwarded a letter to Ms. Basa and to Gideon C. Forrest of Fasken Martineau DuMoulin LLP, who has been acting for LAO Staff in this matter, noting that the Clinic Committee had come to the conclusion that Ms. Basa’s letter amounted to a Request for Reconsideration of the Conditions in the Decision in this matter pursuant to Section 32 of

the DRP.

Sections 31 and 32 of the DRP provide as follows:

- 31) The board of directors of the Clinic may ask the LAO Board of Directors to reconsider its original decision, made pursuant to sections 34(5), 38(1) or 39(4) of the Act and Part VI of this policy. The decision with respect to the imposition of a Level Three remedial response shall not be effective until the time period for requesting reconsideration has expired or the LAO Board of Directors has made a decision on the Clinic's request for reconsideration, whichever is later.
- 32) The Clinic board of directors' request for reconsideration must be made within 21 days of receiving the LAO Board of Directors' decision. The request must be in writing and explain why the Clinic believes that a Level Three response is not justified or is unnecessary.

The Chair's October 15, 2014 letter further indicated that although Ms. Basa's request had been made after the 21 day period specified in Section 32, the Committee was tentatively inclined to accept the Request for Reconsideration despite its lateness for various reasons. The letter further requested that counsel deliver further written submissions both on the issue of whether the Clinic Committee should accept the Request for Reconsideration despite its lateness and, as well, on the merits of the Request for Reconsideration by Wednesday, October 22, 2014 in the case of Mr. Forrest and by Wednesday, October 29, 2014 in the case of Ms. Basa. Such written submissions were received and considered by the Clinic Committee. This decision sets out the Clinic Committee's response to the ACLC Request for Reconsideration. We note in passing that although Section 33 of the DRP provides that "the Board may decide to provide an oral hearing to the Clinic if one is requested", no request for an oral hearing was made by the ACLC with respect to this Reconsideration.

Section 35 of the DRP indicates that the LAO Board of Directors "may confirm, vary or revoke the original decision". The submissions of Ms. Basa requested a series of variations of the conditions set out in the Committee's decision with respect to the Level Three Response.

PART II – Analysis of the Issues Raised by the Request for Reconsideration

1. Reconsideration or Clarification?

In her letter to the Clinic Committee of October 29, 2014, Ms. Basa stated that it was her view that her letter of October 7, 2014 did not amount to a Request for Reconsideration but, rather, was a request for "clarification of some of the conditions imposed and relief with respect to the timeframes imposed so that it [the clinic] can ensure compliance". Ms. Basa further noted that Section 32 of the DRP, set out above, indicates that a Request for Reconsideration "must be in writing and explain why the Clinic believes that a Level Three response is not justified or is unnecessary". She further noted that "the ACLC is not challenging

the Clinic Committee's decision to impose a Level Three Response".

In the Committee's view, Ms. Basa's letter of October 7, 2014 is more appropriately characterized as a Request for Reconsideration rather than a request for "clarification" since the letter requests that conditions imposed in the original Decision be varied or altered in material respects and indeed, withdrawn in some cases. In other words, her letter does not seek clarification of the meaning of particular conditions, but rather substantive changes in them. Accordingly, the Committee has decided to consider the request as a Request for Reconsideration pursuant to Section 32 of the DRP that has not been made in a timely fashion. Nonetheless, in light of the extenuating circumstances set out by Ms. Basa in her October 7, 2014 letter and in the absence of strenuous objection to our doing so by Mr. Forrest, the Committee has decided that it should waive the 21 day time limit set out in Section 32 of the DRP and consider this Request for Reconsideration on its merits.

2. The Conditions Contained in the Level Three Response that are Subject to Requested Variations by the ACLC.

The ACLC requested variations or changes with respect to Conditions 1, 4 (bullet point 3), 5, 6 and 7. The Clinic Committee describes these conditions and then sets out these requests and the reasons for its decision with respect to each of them in order below. Condition 4 (bullet 3) and Condition 6 deal with the same matter and will be considered together. Finally the ACLC requested extensions of the time deadlines for compliance set out in Conditions 4, 5, 6 and 8. This request will also be further considered below

3. Condition 1

This Condition required the ACLC to permit an LAO observer to attend all meetings of the ACLC Board of Directors, subject to an exception with respect to certain matters concerning which the ACLC Board could meet *in camera* without the LAO observer being present. The Condition also requires, however, the ACLC to provide the LAO observer with Board meeting material in advance of the Board meetings. The ACLC Request for Reconsideration of Condition 1 is as follows:

- The ACLC seeks clarification as to whether confidential human resources information may be redacted from Board materials prior to providing them to the LAO staff observer. The ACLC notes that this is what was sought by LAO staff in the remedial measures outlined in its June 27, 2012 letter to the clinic chair.
- The ACLC Board ought to be permitted to meet *in camera* in respect of:
 - a) Confidential human resources matters;
 - b) Confidential client matters; and
 - c) Any other subject to which solicitor-client privilege applies.

In his submissions of October 22, 2014, in response to this request, Mr. Forrest, on behalf of LAO Staff, opposed any attempt to redact "confidential human resources matters" from Board material or to permit *in camera* sessions to discuss these matters. In support of his position, he observed that many of the problems giving rise to the Level Three Response deal with human resources matters, "including the significant turnover in office managers, the lengthy vacancy in the Director of Legal Services position, significant staff bonuses and very significant staff compensatory accruals".

In his view, these problems suggest inadequacies in Board governance and the desirability of a requirement that the LAO observer be permitted to be present for ACLC Board discussions of human resources matters. Mr. Forrest further noted that Section 37 of the *Legal Aid Services Act* ("LASA") provides for access by LAO to clinic information concerning various matters including under subsection (d) "any other financial or other information relating to the operation of the clinic that the Corporation may request". As Mr. Forrest noted, Section 37 contains no exception for "confidential human resources matters".

It is the Committee's view that Mr. Forrest's points are well taken and that the LAO observer should have access to all Board materials including materials relating to "confidential human resources matters" and should be invited to be present for Board discussions of such matters. As is indicated by the illustrations mentioned by Mr. Forrest of human resources issues that have been the subject of discussion in this proceeding, human resources issues can impact the ACLC's ability to operate effectively and to meet its obligations to LAO.

The ACLC also requests with respect to Condition 1, that the Board be permitted to meet *in camera* with respect to "confidential client matters". With respect to this request, Mr. Forrest submitted that LAO Staff is not at the present time requesting disclosure of the details of any client matters beyond:

- The financial eligibility of particular clients, and
- Disclosure as to the amount of LAO's resources that have been devoted to particular individual cases.

Mr. Forrest further noted that Section 37(3) of LASA specifically grants access to information concerning financial eligibility. Mr. Forrest noted that with respect to the question of the extent of LAO resources devoted to a particular client, the nature of the resources devoted by the ACLC to a case involving a [REDACTED] which was the subject of discussion in the LAO Staff Report supporting its request for the imposition of the Level Three Response, demonstrated the potential importance of the second category of information regarding such resource allocation. Further, Mr. Forrest noted that in the event of a Quality Assurance Audit under Section 92 of LASA, LAO is entitled to information concerning services provided to ACLC clients and that pursuant to Section 89(3) of LASA, "disclosure of privileged information to the Corporation that is required under this

Act does not negate or constitute a waiver of privilege”.

It may be useful to set out Section 37 of LASA in its entirety:

37. (1) The Corporation shall monitor the operation of a clinic funded by it to determine whether the clinic is meeting the Corporation’s standards for the operation of clinics, and the Corporation may conduct audits of such clinic, as it considers necessary for that purpose.

Reports to Corporation

(2) A clinic funded by the Corporation shall provide the Corporation, in the form and at the times requested by the Corporation,

- (a) audited financial statements for the funding period;
- (b) a summary of the legal aid services provided by the clinic during the funding period, specifying the number of each type of case or proceeding handled by the clinic;
- (c) a summary of the complaints received by the clinic from individuals who received or were refused legal aid services from the clinic, and from persons affected by the legal aid services provided by the clinic and a description of the disposition of each such complaint;
- (d) any other financial or other information relating to the operation of the clinic that the Corporation may request.

Confidential information withheld

(3) The clinic may withhold from the information provided under clause (2) (c) any information that is confidential to an individual to whom the clinic has provided legal aid services, unless the individual consents to the disclosure or unless the information pertains to the financial eligibility of the individual to receive legal aid services.

Corporation to have access to clinic records

(4) For the purpose of verifying any information provided under clause (2) (b) or (d), the Corporation may require that the clinic provide the board of directors of the Corporation, or any person or persons designated by the board of directors of the Corporation, with access to the premises of the clinic at any reasonable time and to all its books, accounts, financial records, reports, files and documents, but the clinic may withhold any of them that is confidential to any individual to whom the clinic has provided legal aid services, unless the individual consents to such access, or unless the information pertains to the financial eligibility of the individual to receive legal aid services.

As can be seen, Section 37 grants LAO extensive access to clinic information in order to enable it to carry out its statutory mandate to “monitor the operation of a clinic funded by it to determine whether the clinic is meeting the Corporation’s standards for operation of clinics”.

With respect to the desire of LAO Staff to have access to information concerning client eligibility and resource allocation to particular clients, Ms. Basa, in her October 29, 2014 submissions indicated that the ACLC “agrees to provide information about financial eligibility and disclosure as to how much of LAO resources are being devoted to individual cases”, but that the ACLC does not agree that the effect of Section 89(3) implies that the ACLC ought to be required to disclose privileged communications.

These submissions raise two related but distinct issues. First, to what extent should LAO staff have access to client confidential information? Second, to what extent should the ACLC Board be permitted to meet *in camera* when discussing

client confidential information?

With respect to the information access issue, the parties appear to be agreed that LAO Staff should have access to financial eligibility and resource allocation information concerning individual cases. Accordingly there is no present dispute between the parties with respect to access to confidential client information that requires resolution. Further, it is the Committee's view that it is both unnecessary and unwise for the Committee to speculate on what further, if any, requests might be made by LAO Staff for access to additional confidential information and, in effect, provide advice or advance rulings to the parties as to the application of Sections 37, 92 and 89(3) to any such future requests for access to information that the ACLC might consider to be either confidential or privileged. Nor is it the Committee's view that this is a role this Committee should perform in the future. Condition 1 is to be amended, however, to indicate that LAO Staff is to have access to financial eligibility and resource allocation information concerning particular clients and that such information is not to be redacted from Board materials made available to the LAO Staff observer.

On the second and related issue, that is, whether the ACLC Board should be able to meet *in camera* to discuss confidential client matters, this Committee does not favour a broad exclusion of the LAO Staff observer for such discussions. Deliberations of the ACLC Board considering such matters as, for example, whether to fund or continue funding a particular case, may involve disclosure of confidential information concerning an existing or proposed client. Nonetheless, observing and participating in such deliberations may be material to the functions to be performed by the LAO Staff observer. If such deliberations were to involve the disclosure of information subject to solicitor-client privilege that the ACLC cannot or will not waive, however, it would be permissible to conduct such deliberations *in camera* in the absence of the LAO observer. The treatment of information and deliberations involving information subject to solicitor and client privilege is, however, a more general issue, to which we now turn.

Finally, with respect to Condition 1, the ACLC has requested that it be permitted to meet *in camera* with respect to "any other subject to which solicitor-client privilege applies". In response to this request, Mr. Forrest submitted that LAO Staff is concerned that the concept of solicitor-client privilege might be applied by the ACLC "in an overly broad manner". Accordingly, LAO Staff requests that if the ACLC wishes to withhold material or meet *in camera* with respect to such matters, it must provide, before doing so, "sufficient description of the information and/or subject matter of discussion" for LAO Staff to determine whether, in its view, solicitor-client privilege appears to apply "without, of course, disclosing details that would result in disclosure of the contents of such privileged communications". For its part, the ACLC indicates in its October 29, 2014 letter from Ms. Basa, that "the ACLC is concerned that the proposed process for determining whether solicitor-client privilege attaches to any given document will be misused by LAO staff" and further advised that the ACLC "will take all steps necessary to protect any

privileged communications from disclosure”.

In the Committee’s view, there does appear to be some room for disagreement between the ACLC and the LAO Staff as to whether particular information or matters are, in fact, subject to solicitor-client privilege. Accordingly some mechanism for resolving such disputes is desirable. In this regard, the request put forward by Mr. Forrest requiring the ACLC to provide a sufficient description of the information or documentation and/or the subject matter of the proposed *in camera* discussions to enable the LAO Staff to determine whether it agrees that ACLC’s claim of privilege is a reasonable one in all the circumstances. These arrangements would apply where the ACLC Board proposed to conduct “ deliberations concerning confidential client information subject to solicitor and client privilege or concerning any other information alleged by the ACLC to be privileged.

In summary, then, with respect to the ACLC’s request for variation of Condition 1, the Committee has concluded that the ACLC should not be permitted to redact from Board materials, any “confidential human resources information” prior to providing the material to the LAO staff observer. Further the Committee concludes that the ACLC Board not be permitted to meet *in camera* with respect to confidential human resources matters. Further the Committee concludes that, since the parties have agreed that the LAO staff should have access to information concerning financial eligibility of particular clients and disclosure as to how much of LAO resources have been or are being devoted to individual cases and further, since LAO staff are not, at the present time, making further requests for client information, it is unnecessary for this Committee to speculate as to what other types of client information LAO Staff might eventually request and whether such information must be made available by the ACLC to LAO Staff pursuant to the provisions of Sections 37, 38, 89(3) and 92 of the LASA. Condition 1 should be amended, however, to indicate that LAO Staff are to have access to client information concerning financial eligibility and the resources devoted to particular cases and that such information is not to be redacted from ACLC Board material made available to the LAO Staff observer. Finally, with respect to ACLC’s request that it be permitted to meet *in camera* with respect to “any other subject to which solicitor-client privilege applies”, the Committee is of the view that before conducting such *in camera* meetings or withholding materials on this basis, the ACLC must provide a sufficient description of the information in question and/or the subject matter of the proposed *in camera* discussion to enable LAO Staff to determine whether, in its view, solicitor-client privilege appears to apply, provided that such description should not disclose details that would have the effect of disclosing the content of privileged solicitor-client communications.

4. Conditions 4 (bullet 3) and 6

These conditions relate to a controversy concerning substantial accruals of compensatory time liability to various members of staff including the Executive

Director to whom, it was alleged, the ACLC at one point in time owed \$150,513.00 for 2,566 hours of overtime payments. The controversy arose from the fact that the forensic audit report claimed that such an accrual was inconsistent with existing ACLC policy and from the fact that inconsistent explanations have been given by the ACLC for the fact that this liability has apparently been either covered by an anonymous donation, or, alternatively, forgiven by the Executive Director.

In Condition 4 (bullet 3) this committee imposed on the ACLC the following requirement:

- 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.

In Condition 6, this Committee required:

- 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.

In her letter of October 7, Ms. Basa, on behalf of the ACLC, objected to the disclosure requirements set out in these conditions on the following basis:

- The ACLC advises that some of the documentation related to the write-off of the accrued liability for vacation and compensatory time is protected by solicitor-client privilege and will be guarded accordingly.

In his written submissions of October 22, 2014, Mr. Forrest, on behalf of the LAO Staff, asserted that "LAO Staff is concerned that the audit not be compromised by withholding documents required by the independent auditors to determine whether the liability for compensatory time has been properly resolved". He noted, however, that to the extent that documents protected by solicitor-client privilege are required to be provided to an auditor, this does not result in a waiver of privilege that would facilitate disclosure to third parties¹.

This Committee remains of the view, as stated in our initial decision in this matter, that LAO is entitled to a clear and documented explanation of the handling of this substantial liability and that all relevant information and documentation should be provided to the independent auditors that will be appointed by LAO to undertake the audit of this compensatory time accrual reduction. In the event, that there exists material information and documentation subject to solicitor and client privilege that the ACLC cannot or will not waive, the ACLC should provide the LAO Staff with a sufficient description of the information or documentation to

¹ See *Canada (National Revenue v. Thornton*, 2012 FC 1313 (CanLII); *Philip Services Corp. (Receiver of) v. Ontario Securities Commission* [2005] O.J. No. 4418 (Div. Ct.)

enable the LAO Staff to determine whether it agrees that ACLC's claim of privilege is a reasonable one in all the circumstances without disclosing, of course, details that would result in disclosure of the privileged communications. Even in such cases, however, the ACLC should attempt to disclose relevant information and documentation by redaction of the privileged information where possible.

5. Condition 5

This condition imposes a series of policies, directives, best practices and reporting systems concerning financial controls and reporting including the requirement that the ACLC "change external audit firms every five years through a competitive procurement process and that LAO participate in this process". In her letter of October 7, 2014 on behalf of the ACLC, Ms. Basa requested that this condition be withdrawn on the following basis:

"The ACLC submits that it is onerous and unfair for it to be required to change its external audit firm every five years. Its present auditors have an internal policy that requires a change in the personnel and senior partner assigned to a particular account every 3 years, which ought to address the concern underlying this condition. Moreover, the ACLC notes that the majority of LAO clinics have consistently used Hillborn Ellis Grant for auditing services for over two decades".

In his submission of October 22, 2014, Mr. Forrest sought to support imposition of this condition on the basis that the ACLC has a "history of accounting irregularities" and that rotating auditors would bring "fresh due diligence" and "objectivity" to the audit exercise. He added that a repetitive audit by the same auditor "may result in complacency" and, further, that "an established auditor may become reluctant to make decisions that indicate that past decisions were incorrect". Mr. Forrest further noted that the office of the Auditor General of Ontario, which conducts audits of agencies and Crown Corporations, including LAO, through retainers of private audit firms, routinely rotates auditors on a periodic basis.

In her further written submissions of October 29, 2014, Mr. Basa asserts that "other clinics who have been placed in dispute resolution as a result of financial concerns or 'accounting irregularities', have not been required to change auditors every five years". She further suggests that the concerns raised by Mr. Forrest should be allayed by the current practice of requiring a fresh audit team every three years.

Although this Committee remains of the view that it would be useful to introduce a fresh set of auditing eyes from time to time in the auditing of clinics, including the ACLC, we agree with the ACLC that the practice of the current auditor, Hillborn Ellis Grant, of rotating personnel and senior partners assigned to the ACLC account every three years is a satisfactory means of meeting this objective.

Accordingly, the Committee has decided to withdraw this requirement in Condition 5.

6. Condition 7

This condition provides as follows:

"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.

In her written submission of October 7, 2014, Ms. Basa requests a more precise timeline with respect to the release of funds and reasons for denial in cases where particular expenses are denied. More particularly, in her letter of October 29, 2014, her request is as follows:

"The ACLC requests that LAO be directed to release its monthly funding in a reasonable period of time, i.e. within five business days, so as to not create any financial burden or hardship on the ACLC. If certain expenses are denied, the ACLC requests that it be provided with the reasons for the denial".

An alternative proposal was put forward by Mr. Forrest in his submissions of October 22, 2014. LAO Staff proposed that it would release recurring expenses "such as rent and salaries" on the first of each month, as is its current practice. With respect to other expenses LAO staff has advised that funds could be released within seven business days of receipt "by email" of the appropriate supporting documentation (i.e., invoices or receipts clearly showing date of expense, what was purchased or expensed and what the purchase expense was for), "assuming that there are no questions or concerns with respect to the expenses". LAO Staff proposes that in order to reduce the administrative burden of this requirement that the ACLC make only one monthly submission requesting funds rather than make requests on a piece-meal basis through the month. Further, the LAO Staff asserts that in order to accommodate the preparation of cheques and transfers by LAO's Finance Department, seven business days is a reasonable requirement. Counsel for the LAO Staff proposed that for expenses where there are no problems, funds should be released within seven business days of receipt and, further, that in cases where LAO Staff has concerns or questions with respect to an individual item, LAO Staff will advise the ACLC of those questions or concerns within seven business days, and finally, where an expense claim is rejected, LAO Staff will advise the ACLC within seven business

days as to the basis of the rejection. In a case where LAO Staff receives further information or explanations for an expense from ACLC in response to questions or concerns raised by LAO with respect to a particular expense, LAO should pay for or deny the expense in question within seven business days of receipt of the additional information or explanation.

The difference between the parties on their respective proposals is not dramatic. In the Committee's view, however, we have no basis for rejecting the suggestion of the LAO Staff that seven business days is, in fact, a more realistic timeframe for processing by LAO of ACLC expenses.

Accordingly, Condition 7 is varied in order to provide for more precise timelines for the payment and other processing of ACLC expenses. More particularly, this Committee has determined that LAO should be required to release payment of recurring expenses, such as rent and salaries, on the first day of each month. Further, LAO should be required in cases of expenses where there are no problems or questions, to release the funds within seven business days of receipt. Further, in cases where LAO Staff have concerns or questions about a particular item, LAO Staff will communicate those concerns or questions to the ACLC within seven business days. In cases where an expense claim is rejected, LAO Staff will advise the ACLC as to the basis of the rejection within seven business days of receipt. Where LAO receives further information or explanation from ACLC in response to questions or concerns expressed by LAO Staff, LAO will either pay for or deny the expense within seven business days of the receipt of the additional information or explanation.

PART III – TIMING

Many of the conditions imposed in the Committee's Level Three Response involve time deadlines of various lengths. In her letter of October 7, 2014, Ms. Basa requested an extension of these deadlines in the following terms:

"Finally, the ACLC requests that the time frames attached to conditions 4, 5, 6 and 8 be extended by an additional thirty days in view of the extenuating circumstances created by the upcoming second move of offices and in view of the fact that its attention will soon be turned to its Annual Strategic Planning Process, Annual General Meeting, annual LAO Funding Application, and the celebration of its 20th Anniversary, all of which occur in November".

In his reply on October 22, 2014, Mr. Forrest indicated that the LAO Staff expressed skepticism about the need for additional time for any of the conditions since the ACLC has had access to the Decision since September 5, 2014 and the timelines in question will not start to run until the release of this Decision of the Committee on ACLC's Request for Reconsideration. Mr. Forrest further indicated, however, that if the Clinic Committee were to grant additional time to comply with some of the conditions, that no additional time should be given for compliance with Condition 4 (bullet 3) and Condition 6 relating to

the audit of ACLC's compensatory time liability. Condition 6 indicates that the audit is to be conducted within 15 business days of the Clinic Committee's decision.

The Clinic Committee has concluded that there is merit in the suggestion that there should be no delay with respect to the compensatory time audit. This does not appear to be a terribly complex or difficult matter and the Committee has not been made aware of any reason why it would be difficult for the ACLC to respond to an independent auditor's request for material information and documentation.

With respect to the timelines set out in the other conditions identified by Ms. Basa, however, that being the other conditions set out in Condition 4, Condition 5 and Condition 8, this Committee agrees that in light of the extenuating circumstances identified by Ms. Basa which will create substantial administrative burdens for the ACLC during the month of November, 2014, that it would be appropriate to extend these deadlines for an additional 30 days. In her letter of October 29, 2014, Ms. Basa sought a further extension of an additional 60 rather than 30 days in order to accommodate the aforementioned administrative burdens and, as well, the vacation of the Executive Director which is scheduled to commence in December. This would have the effect of extending the existing 60 day deadlines in Conditions 4 (other than bullet 3), 5 and 8 to 120 days. In its initial decision concerning this matter, the Committee noted that the Level Three Staff Report asserted that it had experienced a pattern of delay in LAO's interaction with the ACLC. In the Committee's view, a 30 day extension beyond the timelines set out in the aforementioned Conditions strikes an appropriate balance between accommodating the special circumstances noted by Mr. Basa with the need to avoid undue delay in implementing the requirements set out in Conditions 4, 5 and 8.

In summary, with respect to the question of time deadlines for compliance with Conditions 4 (other than bullet 3), 5 and 8, the Committee has decided on a further 30 day extension of the various time limits in question. With respect to the time limit for the compensatory time audit directed by Condition 6 and Condition 4 (bullet 3), the Committee has determined that the ACLC must adhere to the time limits set out in Condition 6 to the effect that the independent audit of compensatory time accrual reduction be conducted within 15 business days of the effective date of the original decision of this Committee to impose a Level Three Remedial Response on the ACLC. Pursuant to Section 36 of the DRP, the effective date of the original decision is within 10 days after the issuance of this Decision on the ACLC's Request for Reconsideration.

For the convenience of the parties, this Committee has prepared and attaches as Appendix A, an amended version of the Conditions set out in our original Decision incorporating the variations of them made in this Decision on the ACLC's Request for Reconsideration of the original Decision.

DATED at TORONTO this 7th day of November, 2014



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

Exhibit A

Conditions as Revised on Reconsideration by the Clinic Committee

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. LAO staff is to have access to financial eligibility and resource allocation information concerning particular clients and such information is not to be redacted from Board materials made available to the LAO staff observer. 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). If, in addition, the ACLC wishes to withhold material or meet in camera with respect to matters to which it maintains that solicitor-client privilege applies, it must provide, before doing so, sufficient description of the information or documentation and/or the subject matter of the proposed in camera discussions, without disclosing details that would result in the disclosure of the content of privileged solicitor-client communications, to enable LAO to determine whether it agrees that ACLC's claim of privilege is a reasonable one in all the circumstances. 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 90 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
- Subject to Condition 6, the production of all relevant information and 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. In the event that there exists material information and documentation subject to solicitor and client privilege that the ACLC cannot or will not waive, the ACLC should provide the LAO Staff with a sufficient description of the information or documentation, provided that such description does not disclose details that would have the effect of disclosing the content of privileged solicitor-client communications, to enable the LAO Staff to determine whether it agrees that ACLC's claim of privilege is a reasonable one in all the circumstances. Even in such cases, however, the ACLC should attempt to disclose relevant information and documentation by redaction of the privileged information where possible
- The elimination of any remaining accrued compensation liability for all employees without compromising client service

Condition 5:

Within ninety (90) 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

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. For such expenses, payment will be released by LAO on the first day of each month
- receipt of invoices and expense reports for all other expenditures which ACLC will submit, and which LAO will review, in a timely manner. Where LAO has no problems or questions, LAO will release these funds within seven business days of receipt. Where LAO has concerns or questions, LAO will communicate those concerns or questions to ACLC within seven business days. In cases where an expense claim is rejected, LAO will advise ACLC of the basis of the rejection within seven business days of receipt. Where LAO receives further information or explanation in response to its questions or concerns, LAO will either pay for or deny the expense within seven business days of the receipt of the additional information or explanation

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 90 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.