

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
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:

WHEREAS this Committee determined in its Decision of September 5, 2014 that the African Canadian Legal Clinic (the “ACLC”) was in fundamental breach of its obligations as defined in Section 25 of the LAO Dispute Resolution Policy;

AND WHEREAS this Committee determined in that Decision that the ACLC should be subjected to a Level Three Remedial Response involving the imposition of eight remedial conditions designed to improve financial management and governance of the ACLC’s operations;

AND WHEREAS the eight remedial conditions were revised by this Committee’s Decision of November 7, 2014;

AND WHEREAS this Committee determined that it would withhold approval of the ACLC's 2014-15 Funding Application until such time as the ACLC complied with the eight remedial conditions;

AND WHEREAS this Committee also determined that if the ACLC were to fail to comply with the eight remedial conditions, LAO staff could recommend that this Committee exercise its statutory authority to suspend LAO's funding of the ACLC;

AND WHEREAS the LAO staff have so recommended and this Committee, after entertaining written and oral submissions from the LAO staff and the ACLC, has determined that the ACLC has not fully complied with the eight remedial conditions and remains in fundamental breach of its obligations under Section 26 of the Dispute Resolution Policy;

This Committee herewith gives notice to the ACLC that LAO will suspend its funding of the ACLC on December 31, 2016 unless it has, by that date, fully complied to the satisfaction of this Committee, with the eight remedial conditions imposed by this Committee's Decision of September 5, 2014, as revised by this Committee's Decision of November 7, 2014. As a result, to the extent that it is not moot given that interim funding was provided, the Committee's decision in 2014 to withhold approval of the ACLC's Funding Application remains in effect.

REASONS FOR DECISION

TABLE OF CONTENTS

PART I – EXECUTIVE SUMMARY	5
PART II – BACKGROUND – THE REGULATORY FRAMEWORK AND THE NATURE OF THE PRESENT PROCEEDINGS	10
A) INTRODUCTION	10
B) THE STATUTORY OBLIGATIONS OF LAO AND ACLC AND ITS BOARD OF DIRECTORS.....	10
C) THE FUNDING AGREEMENT, MEMORANDUM OF UNDERSTANDING AND DISPUTE RESOLUTION PROCESS	11
D) APPLICATION OF THE DISPUTE RESOLUTION PROCESS TO THE ACLC: A BRIEF SKETCH	13
PART III – BRIEF CHRONOLOGY	16
A) 2009-2012: THE DEVELOPMENT OF LAO’S CONCERNS AND THE IMPOSITION OF LEVEL ONE OF THE DRP	16
B) 2012-2014: IMPOSITION OF LEVEL TWO OF THE DRP.....	19
C) 2014-THE PRESENT: IMPOSITION OF LEVEL THREE OF THE DRP AND THE EIGHT CONDITIONS	20
PART IV – ANALYSIS: HAS THE ACLC COMPLIED WITH THE EIGHT CONDITIONS IMPOSED BY THE LEVEL THREE DECISION OF THIS COMMITTEE?	24
A) INTRODUCTION	24
B) FIRST CATEGORY OF CONDITIONS – DEFICIENCIES IN FINANCIAL MANAGEMENT AND REQUIRED REMEDIATION	24
CONDITION #7	
I) FAILURE TO REPORT VACANCIES AND MISUSE OF COMPENSATION FUNDING.....	26
II) ARRANGEMENTS FOR MONTHLY ALCL FUNDING AND REVIEW OF EXPENSES	34
CONDITION #4	
I) WRITE-OFF OF \$50,009.00	35
II) ADEQUATE FINANCIAL RESTRUCTURING.....	38
CONDITION #5	
I) DETAILED BUDGETS	40
II) POLICIES AND BEST PRACTICE FINANCIAL CONTROLS	42
CONDITION #6 – AUDIT OF COMPENSATORY OVERTIME ACCRUAL.....	43
CONDITION #8 – AUDIT OF IMPLEMENTATION OF PWC RECOMMENDATIONS.....	43
C) SECOND CATEGORY OF CONDITIONS – ENHANCEMENT OF BOARD CAPACITY TO ENGAGE IN EFFECTIVE SUPERVISION OF THE OPERATION OF THE CLINIC	49
CONDITION #1 – LAO OBSERVER AT ACLC BOARD MEETINGS	49

CONDITION #2 – BOARD COMPOSITION	54
CONDITION #3 – BOARD TRAINING	55
PART V – SUMMARY OF FINDINGS	59
PART VI – LAO’S COMMITMENT TO THE AFRICAN CANADIAN COMMUNITY ...	67
PART VII – SECTION 35 (<i>LEGAL AID SERVICES ACT</i>) ISSUE	69
PART VIII – CONCLUSION AND DECISION	71
 <u>APPENDICES</u>	
APPENDIX A – CONDITIONS AS REVISED ON RECONSIDERATION BY THE CLINIC COMMITTEE	73
APPENDIX B – GLOSSARY OF ACRONYMS AND SHORT-FORM REFERENCES	77
APPENDIX C – TIMELINE	80

Part I – Executive Summary

This Decision of the Clinic Committee of the Board of Directors of Legal Aid Ontario (“LAO”) arises in the following circumstances. Under its governing statute, the *Legal Aid Services Act* (“LASA”), Legal Aid Ontario (“LAO”) may provide funding to community legal clinics across the Province. One of the clinics currently funded by LAO is the African Canadian Legal Clinic (“ACLC”). LAO provides annual funding to the clinic of approximately 35% of the clinic’s total annual income.

Under the terms of the *LASA*, LAO is required to monitor the operations of the clinics funded by it. In order to enable LAO to discharge this statutory responsibility, obligations of transparency and accountability are imposed on the clinics by the legislation. In particular, clinics are obliged to provide “any financial or other information related to the operation of the clinic that the corporation may request”. LAO enters into Memoranda of Understanding and Funding Agreements with each of the clinics it funds, which impose further obligations of accountability and transparency on each clinic. The *LASA* also imposes a statutory obligation on clinics to comply with the terms and conditions of their funding by LAO. The statute also provides that where LAO believes that a clinic is not complying with its statutory obligations or the obligations imposed under the terms and conditions of its funding, LAO may reduce or suspend the funding of the clinic. This regulatory framework is described in greater detail in Part II of these Reasons.

As early as 2009, LAO staff (“LAO Staff”) responsible for the funding of the ACLC began to develop grave concerns about the financial management and governance practices at the ACLC. These concerns were heightened in 2010 when LAO received copies of emails to the ACLC from two lawyer members of the Board of Directors of the ACLC who were resigning in protest their membership on the ACLC Board because of concerns pertaining to “financial irregularities”, “gross misconduct and illegalities” and “concerns about financial and governance matters of the ACLC”. LAO also learned that [REDACTED] who had raised similar concerns was effectively removed from [REDACTED] position on the ACLC Board.

In the months following LAO’s awareness of these allegations, LAO Staff met with the ACLC, but did not develop a confident sense that their concerns were being appropriately addressed by the ACLC Board. Accordingly, in September, 2010, LAO invoked Level One of its Dispute Resolution Policy (“DRP”), thereby signalling that there were problems that, in LAO’s view, needed to be addressed. The DRP process is a three-level procedure imposed as one of the conditions of clinic funding which is designed to provide a means of remediation in circumstances where LAO is concerned that a clinic is not complying with its obligations under *LASA* or under the terms and conditions of its funding. Level One of the DRP envisages voluntary collaboration between LAO and the clinic involved to resolve the issues in question.

LAO also retained PricewaterhouseCooper LLP (“PwC”) to conduct a forensic audit of the clinic’s finances. The audit conducted by PwC identified a number of troubling aspects of ALCL’s financial management and proposed remedial measures to address

them. Accordingly, LAO proposed a series of remedial measures to the ACLC Board in June, 2012. The Board declined to reply to the proposal, but, rather, retained counsel and challenged LAO's authority to propose remedial measures at Level One. Subsequently, LAO indicated to the ACLC its decision to place the ACLC in Level Two of the DRP. Under Level Two of the DRP process, LAO has the authority to require the clinic to follow various aspects of a remediation plan. In essence, the ACLC declined to participate in the Level Two remediation process.

In due course, LAO determined that the matters it had raised were not being satisfactorily resolved by the ACLC and on April 3, 2014, LAO Staff filed with this Committee a Report (the "LAO L3 Staff Report"), alleging that the ACLC was in "fundamental breach" of its obligations and that a Level Three Remediation Response should be imposed by this Committee. In Level Three of the DRP, the process becomes more formal and enables LAO to impose a Level Three Remediation Response which may include special terms of funding for the clinic and the issuance of directions to the clinic to ensure compliance with its obligations. Level Three also envisages the possibility that LAO may decide to reduce or suspend the clinic's funding if it is not satisfied that satisfactory compliance with the clinic's statutory and funding obligations has been achieved.

After entertaining written and oral submissions from both the LAO Staff and the ACLC, this Committee released its Decision on the matter on September 5, 2014. That Decision imposed a Level Three Response on the ACLC which required the ACLC to comply with eight remedial conditions within a certain timeframe, failing which the LAO staff were invited to consider whether to recommend that LAO suspend its funding of the ACLC. A brief chronology of the events leading up to this Committee's September 5, 2014 Decision is provided in Part III of these Reasons.

The present proceeding arises by virtue of the fact that the LAO Staff have concluded that the ACLC has not fully complied with the eight remedial conditions imposed by this Committee and the LAO Staff has further recommended that this Committee should exercise its statutory authority to suspend LAO funding of the ACLC.

The eight remedial conditions imposed on the ACLC in this Committee's Decision of September 5, 2014 (as revised in a subsequent Decision of this Committee dated November 7, 2014), can be sub-divided into two categories. The first category of remedial conditions was designed by this Committee to address deficiencies in financial management. Thus, in light of the ACLC's substantial operating deficit and other problems, Condition #4 required the development by the ACLC of a financial restructuring plan for LAO approval. Condition #5 required the ACLC to adopt certain policies relating to expenses such a travel, meals and hospitality and to adopt best practices and controls regarding the use of credit cards. The PwC Forensic Audit had identified inappropriate purchases using the clinic credit cards. Condition #5 also required the implementation of certain financial reporting systems including the establishment of detailed budgets for the expenditures of the ACLC funding provided by LAO. Condition #6 required the ACLC to cooperate with an independent audit of the reduction of a compensatory time accrual awarded to the ACLC Executive Director.

Condition #7 stipulated the manner in which LAO would provide monthly funding and attempted to ensure transparency with respect to ACLC expenditures. Condition #8 required full implementation of all PwC Forensic Audit recommendations, such implementation to be verified by LAO's Internal Audit and Compliance Unit ("IAU").

The object of the second category of conditions related to strengthening the willingness and capacity of the ACLC Board of Directors to engage in effective supervision of the operations of the clinic. Condition #1 set out arrangements under which a Legal Aid Ontario Observer would be permitted to attend all ACLC Board of Directors' meetings. Condition #2 required the ACLC to bring its composition of the Board into compliance with the funding agreement which required that the Board include more than one person with financial skills and more than one lawyer. Condition #3 required the ACLC to organize within six months and to complete within nine months an appropriate training experience for all members of the ACLC Board of Directors on the duties and responsibilities of Board members, such experience to be organized in collaboration with and upon the approval of LAO staff.

On November 6, 2015, LAO Staff filed a report with this Committee alleging that the ACLC had failed to comply with the remedial conditions imposed upon the ACLC by this Committee's September 5, 2014 and November 7, 2014 Decisions and recommending that the LAO funding of the ACLC be suspended. In response, the ACLC filed an extensive reply to these allegations which this Committee received on December 23, 2015.

A detailed analysis of the arguments and evidence provided by both the LAO Staff and the ACLC with respect to the question of whether the ACLC has complied with the eight remedial conditions is set out in Part IV of these Reasons. In turn, a more concise summary of the findings made in Part IV of these Reasons is set out in Part V.

In substance, this Committee concluded that the ACLC had only fully complied with one condition, that being Condition #6. With respect to the other conditions, there were failures to fully comply with the conditions in question that caused this Committee considerable concern. Particularly troubling was the ACLC's failure to comply with Condition #7 with respect to payment to the ACLC with respect to its recurring expenses. In essence, the ACLC provided misleading information concerning its recurring expenses relating to staff salaries in the quarterly reports of actual expenses required by Condition #5, thereby securing improper access to LAO funds and used such funds in a manner not permitted by the terms of the LAO/ACLC Funding Agreement. There are a number of troubling aspects to this misconduct. First, the ACLC has engaged in this form of wrongdoing on several occasions in the past and has been consistently advised by LAO that it must not do so. Section 26 of the LAO/ACLC Funding Agreement provides that funds accumulated by reason of staff vacancies may be expended only for the purpose of employing "replacement staff" or for any other purpose approved by LAO. The wrongful conduct in question involves declining or refusing to report staff vacancies in order to use the money thus accumulated for purposes not approved by LAO. For example, misconduct of this kind was drawn to the attention of the ACLC in July, 2012

when LAO learned that vacancy funding was used to pay additional lump-sum of bonus payments to staff totalling \$170,000.00, of which \$121,000.00 was paid to the Executive Director.

Remarkably, in the period following this Committee's Decisions of September 5, 2014 and November 7, 2014, LAO learned independently that two staff positions had been vacated and the money that was accumulated had been spent for unauthorized purposes. The ACLC had not reported the vacancies to LAO. Indeed, the ACLC declined several requests from LAO for information concerning these positions and, moreover, provided misleading and false information to LAO concerning them. The accumulated surplus was spent by the ACLC for a purpose not approved by LAO.

The ACLC did not make reasonable efforts to provide a financial restructuring plan as required by Condition #4. The ACLC did not engage in a budgeting exercise in accord with Condition #5. With respect to Condition #8, which required full implementation of the recommendations in the PwC Forensic Audit report, LAO's Internal Audit Unit found that the ACLC had complied with a majority of the recommendations (78%), but had not complied with the others.

With respect to the conditions relating to strengthening Board performance, the ACLC did permit a Legal Aid Ontario Observer to attend most, but not all, Board meetings. In breach of Condition #1, it refused to allow the LAO Observer to attend Board Committee meetings, including meetings of the Board Finance Committee. It also improperly excluded the Observer from Board discussions pertaining to funding received from other funders and refused to share with LAO financial information concerning other funding sources. The ACLC failed to fully comply with Condition #2 relating the Board composition and did not succeed in organizing a training program of the kind required by Condition #3.

Accordingly, this Committee concluded that the ACLC has failed to comply with seven of the eight remedial conditions and that it remains in "fundamental breach" of its statutory obligations and the obligations imposed by the terms and conditions of its funding. Indeed, the available evidence raises serious concerns as to whether the ACLC will genuinely comply with the terms and conditions on an ongoing basis. In this Committee's view, therefore, it is appropriate to approve the recommendations of LAO Staff that LAO's funding of the ACLC be suspended.

In Part VII of these Reasons, this Committee discusses an issue relating to the proper interpretation of Section 39(5) of *LASA*. This sub-section applies in circumstances where LAO determines that a clinic is not compliant with the statute or with the terms and conditions of its funding and decides to reduce or suspend the funding of the clinic pursuant to Section 39(4). In such circumstances, Section 39(5) requires that LAO shall give the clinic Board of Directors "notice of its intent and a reasonable opportunity to comply with this Act or the terms and conditions or direction or to meet the operational standards". As we indicated in Part VII of our Reasons, this Committee is of the view that in order to give effect to our intention to suspend LAO's funding of the ACLC, LAO

must give the ACLC Board of Directors reasonable notice of its intention to do so and an opportunity to engage in further remediation efforts.

This Committee determined that six months' notice would be quite reasonable and accordingly, LAO is giving notice to the ACLC Board of Directors in the form of this Decision that unless the ACLC fully complies by December 31, 2016, to the satisfaction of this Committee, with the eight remedial conditions imposed by this Committee, LAO intends to suspend its funding of the ACLC as of that date. This Committee's conclusion and corresponding Decision is briefly set out in Part VIII of these Reasons.

Although the LAO Staff Report recommended cessation of LAO funding of the ACLC as a result of its "fundamental breach" of its statutory obligations and its obligations under the terms of its funding, LAO Staff indicated that they wish to reassure members of the African Canadian community that LAO will continue and renew its support for the community by funding legal aid services designed to facilitate access to justice for community members. Part VI of these Reasons contains excerpts from the statement in the LAO Staff Report to this effect.

Part II – Background – the Regulatory Framework and the Nature of the Present Proceedings

a) 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 the certificate and Duty Counsel programs and the poverty law services provided by the community legal clinics across the province. At the same time, LAO has a statutory responsibility 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 community legal clinics across the province.

b) The Statutory Obligations of LAO and ACLC and its Board of Directors

LAO is, in fact, required by law to monitor the clinics. Section 37(1) of *LASA*, under the heading “Corporation to monitor clinics” provides as follows:

Corporation to monitor clinic

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.

In order to enable LAO to discharge this statutory responsibility, obligations of transparency and accountability are imposed on the clinic by Sections 37, 38 and 39 of the *LASA* under Section 37(1).

Sections 37(2) and (3) provide for LAO to have access to information concerning the clinic in the following terms:

37. (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.

Section 38 provides that if a clinic fails to comply with *LASA* or the terms and conditions of its funding, LAO may order the clinic to take appropriate steps to ensure compliance. It reads as follows:

Direction from Corporation

38. (1) 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. (emphasis added)

Request for reconsideration

(2) The board of directors of the clinic may ask the board of directors of the Corporation to reconsider a direction issued by it and the board of directors of the Corporation may reconsider its direction and may confirm, vary or revoke the direction. 1998, c. 26, s. 38.

Section 39(1) clearly stipulates that it is the responsibility of the board of directors of each clinic funded by LAO to ensure that the clinic in question complies with its obligations under *LASA* and under the terms and conditions of its funding as follows:

Duties of clinic board

39. (1) The board of directors of a clinic funded by the Corporation shall ensure that,

- (a) the clinic complies with this Act and the terms and conditions attached to the funding;
- (b) the clinic complies with any direction issued by the board of directors of the Corporation; and
- (c) the clinic meets the operational standards established by the Corporation.

In short, 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.

c) The Funding Agreement, Memorandum of Understanding and Dispute Resolution Process

In furtherance of LAO's responsibility to monitor and hold accountable clinics for compliance with LAO's "standards for the operation of clinics," 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. 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.

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."

Level One, "Investigation and Informal Settlement" does not involve a formal timetable or procedure and envisages voluntary collaboration between LAO and the clinic to resolve the issues in question.

In the event that the collaborative exercise mandated at Level One does not enjoy success, LAO may move the dispute to Level Two or in urgent circumstances to Level

Three. Level Two does envision a more formal process, including the development of a remediation plan designed to facilitate compliance by the clinic with its statutory obligations and the terms and conditions of its funding. Under Level Two, LAO has the authority to require the clinic to follow various aspects of the remediation plan.

In Level Three of the DRP, the process becomes even more formal and enables LAO to impose a Level Three “remedial response” which may include special terms of funding for the clinic, the issuance of directives to the clinic to ensure compliance and the possibility of reducing or suspending LAO’s funding of the clinic in accordance with Section 39 of *LASA*.

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. That report is then reviewed by the Clinic Committee of the LAO Board as a delegate of the Board and a decision as to whether to accept or reject the recommendations set out in the report is then made by the Clinic Committee.

- d) Application of the Dispute Resolution Process to the ACLC: A Brief Sketch

As will be recounted in more detail in the next section of these reasons, LAO staff developed severe concerns about the financial position and management of the ACLC in 2009. After a series of discussions from September, 2009 to September, 2010, LAO decided to place the ACLC under Level One of the DRP. The September 9, 2010 letter from LAO to the Chair of the ACLC Board outlined in some detail the nature of LAO’s concerns.

As part of the Level One process, a forensic audit of ACLC's finances by PricewaterhouseCoopers LLP ("PwC") was conducted. In order to address the problems identified by PwC, LAO proposed a series of remedial measures to the ACLC Board in a letter to the Board dated June 7, 2012. The Board declined to reply to the proposals by the requested deadline for a response but, rather, retained counsel and challenged LAO's authority to propose remedial measures at Level One. By letter of July 12, 2012, LAO communicated to the ACLC Board its decision to place the ACLC in Level Two of the DRP.

In due course, LAO determined that the matters in issue were not being satisfactorily resolved by the ACLC and on April 3, 2014 LAO filed a Level Three Section 26 Report ("LAO L3 Staff Report") with the Committee, with a copy to the ACLC, alleging that the ACLC was in "fundamental breach" of its obligations and that a Level Three Remedial Response should be imposed by the Committee.

On June 9, 2014, the ACLC filed a document with the Committee titled "Submissions of the African Canadian Clinic" with the LAO Board of Directors ("ACLC Response").

On July 11, 2014, the Clinic Committee met to consider a request from ACLC for oral submissions and determined that it should grant that 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 from 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 their oral submissions.

On September 5, 2014, the Committee released its decision in this matter. That decision imposed a Level Three Response on the ACLC which required the ACLC to comply with eight conditions within a certain timeframe, failing which the LAO staff were invited to consider whether to recommend that LAO suspend its funding of the ACLC.

On October 7, 2014, the ACLC requested a reconsideration by the Committee of certain of the eight conditions set out in its Level Three Response. The Committee issued a decision on November 7, 2014 modifying the conditions in some respects. The revised eight conditions are set out in Appendix A to this decision.

On November 6, 2015, LAO staff filed a document with the Committee with a copy to the ACLC alleging that the ACLC had not complied with the eight conditions imposed by the Level Three Response and accordingly, that the LAO funding of ACLC should be suspended.

The parties filed written submissions on this matter and an oral hearing was conducted by the Clinic Committee on March 18, 2016. Subsequently, upon the consent of the parties, additional information and further written submissions by the parties were filed

with the Committee. These Reasons set out the Clinic Committee's decision concerning the recommendations of the LAO staff to suspend the LAO funding of the ACLC.

The central issue to be resolved at this stage of these proceedings is whether the ACLC has complied with the eight conditions imposed on the ACLC in this Committee's Decision on November 7, 2014.

Part III – Brief Chronology

In order to understand the nature of the current dispute between LAO and the ACLC, it will be useful to provide a relatively brief account of the nature of LAO's concerns and LAO's attempts to resolve them.

a) 2009-2012: The Development of LAO's Concerns and the Imposition of Level One of the Dispute Resolution Policy

The materials filed with this Committee indicate that LAO began to develop concerns with respect to the financial management of the ACLC at least as early as 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 March 10, 2010 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".

[REDACTED] 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 [REDACTED] 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”.

LAO learned of another troubling alleged incident suggesting serious governance issues at ACLC. LAO was advised that [REDACTED] had also expressed concerns about the financial management of the clinic. Soon after [REDACTED] raised these and other matters, [REDACTED] ACLC membership was cancelled and [REDACTED] position as [REDACTED] was thereby terminated. LAO, as a custodian of public funds with a statutory responsibility to “monitor” clinics, could not responsibly refrain from investigating these allegations and from attempting to remedy problems within the governance and management of ACLC thereby uncovered.

In the months that followed LAO’s first awareness of the allegations, LAO representatives met with the ACLC Board without developing a confident sense that governance and fiscal management issues were being addressed. 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 [REDACTED], LAO was invoking Level One of the DRP. In her letter, Ms. Robertson listed twelve items of concern with respect to the ACLC’s financial management including the ACLC’s substantial operating deficit, its use of LAO funds to pay for over-expenditures on a conference thereby increasing the deficit in the LAO funding, its improper use of surplus funds for vacant positions funded by LAO, the fact that two of six staff positions funded by LAO were vacant, the payment to the Executive Director in December of a \$35,000.00 bonus notwithstanding the substantial deficit of the clinic, and the fact that the Executive Director was permitted to go on vacation from December 14 through to February 8 and again from February 19 to March 1 which, together with staff vacancies, raised in her

view, a question of the ACLC's capacity to meet client needs. 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 8, 2013. Certain aspects of the findings of PwC will be briefly summarized below.

It is of interest to note, however, that the ACLC refused to allow PwC to make copies of any ACLC documents it reviewed. In his submissions in the present proceeding, LAO's counsel, Mr. Forrest, suggested that this refusal to grant access in the form of making copies of ACLC documents for audit purposes constituted a breach of Section 37(2)(d) quoted in full above, which grants LAO a statutory right of access to *"any financial or other information relating to the operation of the clinic that (LAO) may request."* (emphasis added). As we will see, simple refusals or failures by the ACLC to provide information requested by LAO or to provide it in an accessible form is a recurring theme in the relationship between LAO and the ACLC.

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 propose 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. Among other findings, Ms. Budgell referred to (i) the increasing cumulative deficit, (ii) compensation accrual liability of \$155,107 for overtime compensation, almost all of which (2,566 hours) is attributable to the Executive Director and well in excess of the 168 hour maximum permitted by the

ACLC's personnel policy, (iii) substantial cash outflows from the LAO clinic funding (the ACLC's "LAO General Fund" to other ACLC funds and substantial inflows from these funds to the LAO clinic funding, (iv) excess funds from vacant ACLC staff positions used to make additional lump-sum payments (totaling \$170,000.00) to staff in breach of the LAO-ACLC Funding Agreement, and (v) substantial (\$151,622.00) expenditures from the LAO funded Legal Disbursement Fund not supported by third party invoices.

b) 2012-2014: Imposition of Level Two of the Dispute Resolution Policy

In her letter of July 12, 2012, Vice-President Budgell invoked Level Two of the DRP. In that letter, LAO Vice-President Budgell proposed 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.

The ACLC's response to the proposed measures, through counsel, in a letter dated July 20, 2012 was that the proposed measures were "unreasonable and unauthorized." ACLC counsel proposed, as an alternative, "a reasonable dialogue with you to meet your concerns." It is unnecessary for present purposes to review in detail the extensive communications between LAO and the ACLC following this exchange. Suffice it to say that the ACLC did not accept LAO's position that the parties were now at Level Two of

the DRP Process and that LAO was entitled to require remediation measures. The ACLC essentially refused to participate in the proposed Level Two remediation plan and proposed mediation as an alternative measure.

c) 2014-the Present: Imposition of Level Three of the Dispute Resolution Policy and the Eight Conditions

On April 3, 2014, Vice-President Janet Budgell forwarded a two-volume document titled Dispute Resolution Policy: Level Three Report – African Canadian Legal Clinic (“LAO L3 Staff Report”) to this Committee. The LAO 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*.

As explained above, in order to engage a Level Three Remedial Response, the DRP requires the LAO staff to establish in a proceeding before this Committee, that the matter in question has not been resolved at Stage One or Two of the DRP and that the clinic in question is in “fundamental breach” of its obligations. The LAO L3 Staff Report provided an account of ACLC’s response to LAO’s Level Two remedial measures and concluded as follows:

“ACLC’s response to LAO’s proposed Level 2 remedial measures amounts to a refusal, without reasonable grounds, to participate in a remediation plan under Level 2 of the Dispute Resolution Policy. Given the seriousness of the forensic review findings and ACLC’s financial situation, suggesting mediation and refusing to co-operate with LAO’s proposed remedial measures was not a reasonable response, but instead appears to be an attempt to avoid the Dispute Resolution Policy process and specifically the proposed remedial measures which LAO viewed as essential to a remediation plan. Moreover, it reflects ACLC’s rejection of its accountability to LAO as its funder and of its obligations under the Act and the MOU to respond in a substantive way to LAO’s concerns about the ACLC’s use of public funds and its financial stability.”

With respect to the issue of “fundamental breach”, the LAO L3 Staff Report expressed the opinion that the existence of such a breach was supported by from the following four allegations:

- Potential misuse of public funds for personal benefit
- Financial mismanagement
- Inadequate governance by the ACLC. Board of Directors
- Lack of accountability to LAO as its funder

The LAO L3 Staff Report then identified what the staff considered to be the evidence supporting this opinion under the following headings:

1. Unexplained and Inappropriate Purchases using Clinic Credit Card
2. Personal Use of Clinic Funds
3. \$6,650 in Unexplained Cash Advances Using Clinic Credit Card
4. Excessive and Inappropriate Spending on Meals, Travel, Accommodation and Gifts
5. \$39,007 Spent on Taxis within Toronto
6. \$170,000 in Lump Sum Bonuses
7. Large Accumulated Deficit in LAO General Fund
8. Accrued Compensatory Time Liability
9. Co-Mingling of Funds: \$138,922 LAO Inter-fund Payable
10. Director of Legal Services Vacancy since 2006
11. Use of Clinic Funds to Hire Outside Counsel: \$307,000 in 2011
12. High Level of Office Manager Turnover
13. Transparency of Financial Reporting
14. Understated General Fund Deficit
15. Failure to Provide Requested Financial Documents and to Co-operate with Forensic Review
16. Failure to Report Staff Vacancies
17. Lack of ACLC Board Members with Required Expertise
18. Delay and Lack of Co-operation

The LAO L3 Staff Report then concluded as follows:

“As illustrated by these examples, LAO has well-founded concerns about ACLC’s financial management and the ACLC Board of Directors governance. These concerns have been confirmed by an independent forensic review, ACLC’s financial reports, and ACLC’s inaction in response to LAO’s stated concerns and requests for information. The issues constitute a fundamental breach of ACLC’s obligations. ACLC has engaged in a pattern of delay, inaction and unresponsiveness to LAO’s concerns. ACLC has not co-operated with LAO to resolve these issues under the Dispute Resolution Policy process.

ACLC continues to suggest further dialogue and meetings. ACLC’s past conduct of inaction, delay and failing to respond in a timely way to requests for information has demonstrated that meetings and dialogue are insufficient and create a significant

risk that issues will not be addressed. In order to carry out its legislative responsibility to ensure accountability for public funds, LAO needs effective accountability mechanisms that ensure compliance. Formal resolution under Level Three, which establishes clear expectations, timelines and consequences for non-compliance, is required to remediate ACLC's financial management and board governance issues."

Extensive written submissions disputing the allegations made in the LAO L3 Staff Report were filed by the ACLC with this Committee. The ACLC L3 Response states, in part, the following:

"There is a long-running dispute between LAO staff and the clinic. ACLC will establish in the pages that follow that LAO staff has consistently acted arbitrarily and in bad faith insofar as ACLC is concerned. As set out in detail below, LAO staff routinely takes unreasonable and contradictory positions, mischaracterizes facts, refuses to respond to ACLC and subjects ACLC to differential treatment. As also set out below, ACLC has, on many occasions requested assistance from LAO, to address issues of concern, both before dispute resolution was engaged (e.g. legal disbursements and organizational review in the context of the rapid growth and expansion of the clinic), and during the dispute resolution process (e.g. concerns about unauthorized payments made by former employee). LAO staff simply refuses to assist."

In addition, the ACLC alleged procedural unfairness by the LAO staff."

In due course and in response to a request for an oral hearing, oral submissions were entertained from both parties at a meeting of the Committee held on August 8, 2014. This Committee released its decision imposing a Level Three Response on September 5, 2015. In its reasons for that decision, this Committee reviewed at length the allegations made in the LAO L3 Staff Report, the response filed by the ACLC, the oral submissions of the parties and the extensive documentary record filed with this Committee by the parties. For present purposes, it is unnecessary to repeat the analysis and findings made by the Committee. In sum, the Committee found that the allegations were in the main substantiated by the LAO staff and this Committee concluded as follows:

"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 IV – Analysis: Has the ACLC Complied with the Eight Conditions Imposed by the L3 Decision of This Committee?

a) Introduction

As previously noted, the conditions imposed in the this Committee’s initial CC L3 Remedial Response Decision were revised by this Committee as a result of further written request for revisions from the ACLC and the revised conditions are set out verbatim in Appendix A to this Decision.

In broad general terms, the conditions were of two kinds. First, a number of conditions addressed deficiencies in the financial management of the ACLC and required specific types of remediation. The second category of conditions was designed to strengthen the willingness and capacity of the Board of Directors of the ACLC to engage in effective supervision of the operation of the clinic and meet its statutory obligation to ensure that the ACLC complies with its obligations under the *Legal Aid Services Act (LASA)* and under the terms and conditions of its funding by LAO.

b) First Category of Conditions – Deficiencies in Financial Management and Required Remediation

The conditions falling within the first category include:

Condition #4 – requiring a financial restructuring plan for LAO’s approval;

Condition #5 – requiring the ACLC to adopt certain policies relating to expenses such as travel, meals and hospitality and to adopt best practices and controls regarding the use of credit cards, and further, to implement specified financial reporting systems (including the establishment of detailed budgets for the expenditure of funding provided to the ACLC by LAO);

Condition #6 – requiring the ACLC to co-operate with an independent audit of the reduction of compensatory time accrual reported by the ACLC;

Condition #7 – relates to the manner in which LAO would provide monthly funding and attempts to ensure transparency with respect to ACLC’s expenditures.

Condition #8 – requires full implementation of all PwC Forensic Audit recommendations, such implementation to be verified by LAO’s Internal Audit and Compliance Division.

The second category of conditions related to the strengthening of the willingness and capacity of the ACLC Board of Directors to engage in effective supervision of the operations of the clinic, including:

Condition #1 – relates to the arrangements under which a Legal Aid Ontario observer would be permitted to attend all ACLC Board of Directors meetings;

Condition #2 – requires the ACLC to comply with its obligations under the Funding Agreement to make reasonable efforts to have a Board that includes “persons with financial skills” and “lawyers”. As mentioned above, the two lawyers on the Board had resigned in protest in 2009 and, since then, no new lawyers had apparently been added to the Board complement. The PwC Forensic Audit Report (at page 35) had noted that the ACLC Board is comprised of members with little financial background and that efforts by some Board members to facilitate the appointment of lawyers to the Board were ignored.

Condition #3 – requires the ACLC to organize within six months, and complete within nine months, an appropriate training experience for all members of the ACLC Board of Directors on the duties and responsibilities of Board members. The training experience was to be organized in collaboration with and upon the approval of the LAO staff.

On November 6, 2015, the LAO staff filed a report (the “LAO L3 Staff Compliance Report”) with this Committee alleging that the ACLC had failed to comply with the conditions imposed upon the ACLC in this Committee’s L3 Decision. Further, the document alleges that the current Board and management of the ACLC “are unwilling to comply with their legal obligations and with public service norms.” The report further alleges that “LAO’s request for information and co-operation have been met with conflict and resistance and that ACLC’s Board and management continually fail to meet their fundamental obligations to LAO as a funder and to frustrate LAO’s ability to monitor, supervise, and carry out its statutory mandate to ensure accountability for public funds.” The document outlines in detail the view of the LAO staff concerning ACLC’s non-compliance with the eight conditions and concludes by recommending that this Committee make a decision to suspend LAO’s funding of the ACLC. The LAO staff further recommend that “LAO funds currently flowing to the ACLC will be redirected to ensure continuity of service to the African Canadian community. The LAO staff proposed that LAO support the creation of a new independent not-for-profit corporation with a properly qualified Board of Directors from the African Canadian community to provide the LAO-funded legal services currently provided by the ACLC. The report was accompanied by two volumes of extensive documentation.

The ACLC, through its counsel, filed a formal written response to the LAO L3 Staff Compliance Report denying, essentially, many of the allegations made by LAO staff, asserting that the LAO staff had raised new issues in its report and that the ACLC has “undertaken significant efforts to address and discharge the conditions despite the fact that LAO staff has been completely unsupportive and uncooperative and that an appropriate response of this Committee to the LAO L3 Staff Compliance Report is to

make a finding that “the Dispute Resolution Policy has ended.” As well, the ACLC filed supporting documents with this Committee.

On March 18, 2016, this Committee convened a meeting in which it entertained oral submissions from counsel representing LAO staff and the ACLC. This Committee has appointed as its independent counsel, Mr. Richard Steinecke. He attended and participated in this meeting as well.

The Committee sets out below its findings with respect to the question of whether or not the ACLC did successfully comply with the eight conditions, beginning first with the conditions relating to financial management.

Condition #7

i) Failure to Report Vacancies and Misuse of Compensation Funding

Condition #7 stated that LAO would provide monthly funding to the ACLC in two categories. First, payment would be made on the first day of each month for recurring expenses such as rent, salaries and equipment leases. Secondly, LAO would review invoices and expense reports for all other expenditures and release those funds within seven business days if there were no concerns or questions raised by LAO with respect to such expenditures. Quarterly reporting of actual expenses was required by Condition #5.

The LAO staff allege that there was a very substantial problem with non-compliance with respect to the recurring expenses. In brief, the ACLC continued to claim for salary allotted to LAO-funded ACLC staff positions which were vacant and used the LAO money acquired in this way in an improper fashion. By way of background, part of the funding provided to the ACLC and, indeed, all other clinics by LAO, is allocated to staff positions at salaries known to and accepted by LAO as the basis for this funding. With respect to this funding, Sections 21 and 26 of the Funding Agreement entered into by LAO and the ACLC provide as follows (LAO Tab A3):

“21) The Clinic shall expend the funding in each fiscal year in accordance with the Annual Budget and LAO policies. The Clinic may transfer funds between budget lines set out in the Annual Budget, but the Clinic may not, without LAO’s written consent:

- a) Use funding provided for personnel expenses for non-personnel expenses;
- or
- b) Use funding provided for non-personnel expenses for personnel expenses.”

“26) Personnel funds accumulated during the fiscal year by reason of staff turnover, gaps in hiring, or leaves of absences may be expended for the employment of replacement staff, but shall not be expended for any other purpose without the approval of LAO. Such personnel funds not expended shall be held by the Clinic as surplus funds to March 31. Surplus funds held by the Clinic at year end shall be applied to the Clinic’s Annual Budget for the following fiscal year, unless otherwise approved by LAO.”

LAO staff allege that two vacancies occurred after the issuance of this Committee's CC L3 Remedial Response Decision, that the ACLC did not report these vacancies in the required manner, and that the ACLC continued to claim funding for these positions which it then spent without LAO approval in an unauthorized fashion.

A number of points may be made with respect to this improper conduct. First, there appears to be a substantial history of the ACLC engaging in this unauthorized practice. Second, the inappropriateness of this conduct had been drawn to the attention of the ACLC on a number of previous occasions, thereby suggesting that the misconduct in recent months must have been intentional. Third, LAO learned of these vacancies, LAO staff claim, only from independent sources. Further, LAO staff assert that the information concerning the vacancies provided by the ACLC was misleading and in some cases, simply false. Finally, the use made of the funds secured by the ACLC as a result of this improper conduct was not only unauthorized by LAO, but it was a highly questionable use of public funds.

With respect to the first point noted above, misbehaviour of this kind was drawn to the attention of the ACLC by Vice-President Heather Robertson in her letter to Board member Rawle Elliott of September 7, 2010 placing the ACLC under Level One of the DRP (LAO L3 Report, Tab G5). Similarly, Vice-President, Janet Budgell, wrote a letter to the then Chair of the ACLC Board of Directors, Christopher Holder (LAO L3 Report, Tab G-11) dated July 12, 2012 in which she gave notice to the ACLC that LAO was invoking Level Two of the DRP. In that letter, she listed as one of the items of concern that excess funds associated with vacant positions were used to make additional lump-sum or bonus payments to staff totalling \$170,000.00. In the LAO L3 Staff Report, Vice-President Budgell reported that \$121,000.00 of the total bonuses was paid to the Executive Director. The bonuses paid to other staff members ranged from \$2,000.00 to \$10,000.00.

A third instance of notification to ACLC of the nature this misconduct also related to misuse of surplus funds from the vacant Director of Legal Services (DLS) position to hire outside counsel in order to represent clinic clients in what the ACLC considers to be "test case litigation". The expenditures incurred were remarkably substantial. In a letter of June 10, 2011 to LAO, the ACLC Executive Director disclosed that actual expenses incurred for outside counsel in fiscal 2011 totalled \$307,586.00. Of this total \$283,905.00 was incurred in a case involving [REDACTED] involving a [REDACTED] (after the retained firm wrote down \$200,000.00 of its billings). In this Committee's CC L3 Remedial Response Decision, the Committee identified the various unauthorized uses of funding allocated to positions which were in fact vacant and determined that this conduct does in fact constitute a fundamental breach of the clinic's obligations. Commenting more generally on this issue, this Committee noted in that Decision as follows:

i. Failure to Report Staff Vacancies

The LAO 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 LAO 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.

In summary, then, this problem of misuse of surplus compensation funding resulting from undisclosed vacant positions is a recurring pattern and the fact that it constitutes a breach of the Funding Agreement between LAO and the ACLC has been brought to the ACLC’s attention on at least three occasions in recent years.

Further, after the release of this Committee’s CC L3 Remedial Response Decision on September 5, 2014, Vice-President Budgell wrote a letter dated November 27, 2014 to the ACLC Board Chair, Gloria Small-Clarke (LAO, Tab B33), with copies to the Executive Director and counsel to follow up on this Committee’s CC L3 Remedial Response Decision conditions, including a template for recording ACLC’s recurring expenses which she asked the Board Chair to complete and return by a specified date in order to facilitate the release by LAO to the ACLC of appropriate funding for the recurring expenses. In this letter, she noted as follows:

“... Included in the template is a request that you identify the staff and salaries you are currently paying on a recurring basis, including benefit, and pay equity as well as operating costs.”

She then further reminded the Board Chair with respect to the need to inform LAO of any changes to recurring expenses as follows:

“ ... There will be a requirement that the ACLC notify us thereafter of any change to a recurring expense, including salaries. Should you have any questions on completing the form, please contact Kimberly Roach, your Clinic and Programs Advisor.”

Remarkably, and notwithstanding those instructions, during the period following the issuance of this Committee’s CC L3 Remedial Response Decision, the ACLC continued to engage in this form of misconduct. For six months or so, the ACLC failed to indicate that the [REDACTED] position held by [REDACTED] was in fact, vacant and the ACLC continued to receive and misuse the funds relating to [REDACTED] position. When LAO became aware from an independent source that [REDACTED] position had terminated, it broached the subject with the ACLC and was advised that the money had been expended on the invoices for services rendered by the law firm hired by the ACLC to represent a [REDACTED] in the case mentioned above.

Moreover, during this period, ACLC’s Board and management continued to claim LAO funding for this position. On December 10, 2014, for example, the Executive Director

wrote to Vice-President Budgell and included a completed template for ACLS's recurring monthly expenses, which continued to claim a monthly salary for the [REDACTED] position. Similarly, ACLC's quarterly reports for the period of the vacancy asserted that the LAO funds were being spent on the vacant position.

Although the clinic did file an "Information Change Form" concerning [REDACTED] dated November 5, 2014, the form did not plainly indicate that [REDACTED] was resigning [REDACTED] position. The report indicated that the reason for the change was [REDACTED] and requested that the email account for [REDACTED] be kept intact with access disabled. With respect to departing staff, the form instructs that the "Outgoing Staff" section of the form should be completed, including the "last work-day in clinic". Such information was not provided in the November 5, 2014 form concerning [REDACTED]. LAO staff, reasonably, in our view, understood that [REDACTED] was on [REDACTED] leave.

Further, in a letter dated March 16, 2015 from LAO staff member, Margo Ayers to the Executive Director, Ms. Ayers reported that she had asked the ACLC's Office Manager whether [REDACTED] had returned [REDACTED]. The Office Manager advised Margo Ayers that [REDACTED], "had not returned [REDACTED]. Ms. Ayers then requested that the Executive Director advise as to when [REDACTED] was expected to return [REDACTED]. The Executive Director responded to Vice-President Budgell and advised that [REDACTED] would not be returning to ACLC. In that letter, the Executive Director also indicated that the funds for the vacant [REDACTED] position "were used to pay for the outstanding invoice for outside counsel which was incurred for ACLC's test cases."

In a further letter to the Executive Director on April 1, 2015, Ms. Ayers asked the Executive Director to "complete a Staff Change Form advising of the date [REDACTED] left the employ of the clinic." When, on April 10, 2015, the Executive Director forwarded the Staff Change Form concerning the [REDACTED] position, it identified [REDACTED] as having replaced [REDACTED], starting April 1, 2015. In the "Outgoing Staff" portion of the form, however, the entry for "Last day of employment" for [REDACTED] was not filled in. That is to say, the ACLC persisted in its refusal to disclose the termination date for [REDACTED] employment. That date would, of course, indicate the point at which the surplus compensation funds for the position would have begun to accumulate.

Subsequently, on a number of occasions, LAO staff communicated with the Executive Director requesting information concerning [REDACTED] termination date (in letters dated September 4, 2015 (LAO Tab A15), September 14, 2015 (LAO Tab A16), September 21, 2015 (LAO Tab A17), October 13, 2015 (LAO Tab B29) and November 3, 2015 (LAO Tab B2)). The Executive Director simply declined to respond to any of these overtures and by the time this Committee met to consider these matters on March 18, 2016, the Executive Director had still not disclosed [REDACTED] termination date. At the hearing, when ACLC counsel was asked directly for this information, the Executive Director disclosed through counsel that [REDACTED] had left [REDACTED] position in late November or December of 2014. It was also disclosed that [REDACTED] came off the payroll, [REDACTED] [REDACTED] at the time when the November 5, 2015 Change Form was filed [REDACTED]

Subsequently, LAO staff learned, again from an independent source, that there was a second vacant position, that being the Director of Legal Services (“DLS”). That position had been vacant since April 1, 2015. On September 4, 2015, Vice-President Budgell wrote a letter to the Executive Director, referred to above, reaffirming the need for a termination date for [REDACTED] and for a copy of the invoice pertaining to the services paid for with the surplus compensation funding. She also advised that she had been notified that [REDACTED] had not held the DLS position since at least April 1, 2015. In this letter she also reminded the Executive Director of Condition #7 of this Committee’s CC L3 Remedial Response Decision and relevant provisions of the Memorandum of Understanding and the *Legal Aid Services Act*. She also advised that in keeping with LAO’s legislative obligations to ensure prudent expenditure of public funds by clinics, that LAO is entitled to conduct an audit of ACLC’s compensation funding and intends to do so later in that month. We will return to the latter point below.

In a further letter dated September 21, 2015, again referred to above, Vice-President Budgell reminded the Executive Director of the need for a Staff Change Form for the DLS position. In a letter dated October 23, 2015 (LAO Tab A20) received by LAO on October 28, 2015, the requested Staff Change Form for [REDACTED] was provided, indicating [REDACTED] last work day in the clinic as “March, 2015.”

Again, as with the [REDACTED] position, during the more than eight months that the DLS position was vacant, the ACLC continued to provide false information concerning its recurring expenses and quarterly reports suggesting that the money allocated to the DLS position were being expended on the salary of the DLS position, whereas in fact the position was vacant. In addition to the false quarterly reports, however, LAO staff had a conversation about the holder of the DLS position on July 8, 2015 in which LAO asked ACLC’s management and staff whether the ACLC would be applying for test case funding since (as LAO thought was the case), the DLS position was filled. LAO staff further asked whether the current DLS has policy experience. In response, the ACLC management responded that the current DLS did in fact have policy expertise, neglecting to mention that the former incumbent had left the position four months prior. Vice-President Budgell, in her LAO L3 Staff Compliance Report alleging non-compliance with the eight conditions, observed that failure to report the vacancies on these occasions is unacceptable and provided “a clear example of ACLC management’s lack of transparency and good faith in dealing with LAO.” We agree with this submission.

In summary, then, during the period following the issuance of this Committee’s CC L3 Remedial Response Decision, the ACLC, notwithstanding several reminders of the nature of the terms and conditions of its funding on this matter, continued its practice of providing false and misleading information to LAO thereby obtaining unauthorized access to surplus compensation funding and again, without authorization, as is required by the MOU, expended the money on unauthorized and highly questionable expenses. A total of approximately \$100,000.00 was obtained in this improper fashion (\$70,808.99 for the DLS position, and from December 1, 2014 to March 31, 2015, \$27,689.27 for the [REDACTED] position).

It is perhaps not surprising, as indicated above, that in her letter to the Executive Director of September 4, 2015 (LAO Tab A15), Vice-President Budgell indicated her intention to conduct an audit of ACLC's compensation funding from the commencement of fiscal year, 2013/14 later that month. As she noted, LAO is entitled under the provisions of *LASA* to conduct such audits and LAO certainly had good reason to be concerned about the transparency and accuracy of ACLC's reporting on the use of compensation funding. The audit was to be conducted by LAO's Internal Audit Unit. On September 14, 2015 (LAO Tab A16), Vice-President Budgell wrote further to the Executive Director advising her of the kinds of records that the Internal Audit Unit would wish to see. In a further letter to the Executive Director of September 21, 2015 (LAO Tab A17), Vice-President Budgell indicated that she had been advised that the Executive Director had informed LAO's Internal Audit Unit that ACLC's co-operation with this audit including disclosure of all relevant documents was contingent upon LAO disclosing how LAO became aware that [REDACTED] and [REDACTED] are no longer employed by the ACLC. Ms. Budgell further advised the Executive Director that LAO would not be providing such information and has no obligation to do so. The fact that the Executive Director made such a request, however, may be considered to offer some further support for the proposition that the deception practiced on LAO by ACLC management with respect to vacant positions was quite intentional.

In a letter dated October 23, 2015 (LAO Tab A20) to Vice-President Budgell, the ACLC Executive Director advised that "The ACLC will not allow any documents to be removed from its premises or copies made of any documentation. This is our right. The LAO Auditors can take detailed notes of any documents they require as part of the Audit." Again, as we noted above with respect to the PwC Forensic Audit, this unwillingness to grant full access to information in the form of making copies of relevant material is, in our view a violation of Section 37(2) of *LASA*.

Further, on September 24, 2015, a member of LAO's Internal Audit Unit was advised by ACLC management that ACLC would not allow LAO to go back as far as April, 2013 in its audit. This is a very clear and, indeed, "fundamental" breach of the ACLC statutory obligations to provide any requested financial or other information to LAO under Section 37(2) of *LASA*. This Committee was not advised of the explanation offered, if any, for the Executive Director's refusal to make available information concerning compensation matters as far back as early 2013. On October 13, 2015, Margo Ayers of LAO wrote to the Executive Director indicating that the ACLC has no authority to limit the scope of the audit conducted by LAO pursuant to Section 37(1) of *LASA* and that it is required to provide any requested information under Section 37(2). She noted, however, that in the interest of completing the audit expeditiously the Internal Audit Unit would attend at the ACLC's offices to begin conducting the compensation funding audit for the period April 1, 2014 to the present time. Accordingly, if the compensation audit had proceeded, it would not have revealed whether there were any unreported vacancies of ACLC staff during the 2013-14 fiscal year. The audit would be restricted by the ACLC's refusal to grant access to the earlier materials for the period from April 1, 2014 to the then present time. It is our understanding that by the time of the filing of the November 6, 2015 L3 Staff Compliance

Report concerning ACLC's alleged non-compliance with the conditions of the CC L3 Remedial Response Decision, no compensation audit for the period from April, 2014 on had been completed.

Notwithstanding the absence of a compensation audit, the evidence presented in this proceeding of actual and documented instances of refusal to provide information in order to secure unauthorized access to and improper use of LAO funding provide a sufficient basis for a finding that misconduct of this kind did, in fact, occur. As we noted above, this Committee, as indicated in the CC L3 Remedial Response Decision, considers this form of misconduct to constitute, in itself, a "fundamental breach" of the ACLC's obligations under the terms and conditions of its LAO funding.

Before turning to other matters, we wish to emphasize that the conduct of the ACLC in refusing to report staff vacancies is deeply troubling for a number of reasons.

First, it provides clear evidence of an intentional refusal by the ACLC Executive Director to comply with the ACLC's obligations of transparency with respect to the use of public funds provided by LAO. These obligations are imposed on the ACLC by both legislation and the terms and conditions of its funding from LAO. Moreover, it is quite evident that the refusal to disclose was intended to facilitate and did facilitate access to and unauthorized use of LAO funding.

Second, these incidents demonstrate a willingness on the part of the Executive Director to actively provide misleading and, indeed, false information to LAO in order to accomplish the same objective.

Third, the phenomenon of refusing to provide information and, indeed, providing false and misleading information undermines the relationship of trust and confidence between LAO and the ACLC which is necessary to a successful and functional funding relationship.

Moreover, this conduct by the Executive Director appears to have been acquiesced in by the ACLC Board. Although these allegations of misconduct were set out plainly in the LAO L3 Staff Compliance Report, the ACLC in its written response submissions to this Committee, persisted in the view that its use of accumulated personnel funds was appropriate or permissible on the ground which this Committee rejected (at p. 15) in the Committee's CC L3 Remedial Response Decision, that highly expensive external law firms could count as "replacement staff" within the meaning of Section 26 of the LAO/ACLC Funding Agreement. No reference was made in the ACLC's written submissions to the misleading conduct that permitted the ACLC to gain access to these funds.

Belatedly, however, on the eve of the oral hearing of this matter, the ACLC Board Chair wrote a letter to the Executive Director, dated March 10, 2016 (ACLC Supp. Tab 5), (a copy of which was filed with this Committee at the oral hearing on March 18, 2016) which reads as follows:

March 16, 2016

Personal and Confidential

Margaret Parsons
Executive Director
African Canadian Legal Clinic

Dear Ms. Parsons

Re: Letter of Warning and Imposition of Corrective Action

In preparing for the hearing scheduled for March 18, 2016, members of ACLC's Board of Directors have reviewed the allegations made by staff of Legal Aid Ontario in the report it has submitted to the Clinic Committee.

It is apparent that most of the allegations are unfounded or based on distortions and half-truths and that the relationship between LAO staff and ACLC continues to be plagued with difficulties for which you are not primarily responsible.

The Board of Directors is nevertheless deeply troubled by the allegation that ACLC received funds from LAO that were earmarked for the Director of Legal Services position, after that position had become vacant, and that you were not candid in discussing the matter with LAO staff.

We understand that your justification for the events in question is that [REDACTED] had commenced legal action against ACLC to collect unpaid invoices. Staff funds collected for the vacant Director of Legal Service position were used to settle the claim, and you did not benefit personally.

While we accept that your intentions were to protect the ACLC from legal liability, your conduct is inconsistent with the degree of integrity that is required of all ACLC staff. Your actions also demonstrated poor judgment, as they have jeopardized ACLC's interests.

We must ensure that conduct of this nature is not repeated and wish to remind you of your responsibility to ensure that ACLC complies with LAO policies and directives. We also wish to remind you of the need for candour and integrity in dealing with stakeholders.

You are warned that if misconduct of this nature reoccurs, the Board will take disciplinary action, up to and including the immediate termination of your employment for cause.

In the future, your reports to the Board of Directors at all of its meetings must include confirmation that you have made appropriate inquiries, and that all reports to LAO are complete, up to date and accurate to the best of your knowledge. This report is to be provided to the Board in writing in advance of or at the beginning of each meeting and is to be minuted.

The Board very much appreciates your hard work and devotion to ACLC and its constitutions. We are confident and hopeful that there will be no further difficulties of the nature referred to above and that your invaluable contribution can continue for many years to come.

Sincerely,

Rawle Elliott
Chair
Board of Directors
African Canadian Legal Clinic

At the oral hearing of this matter, LAO Counsel expressed skepticism concerning what he characterized as a last-minute attempt to create the illusion of Board oversight. Further, he expressed skepticism as to whether the Board would have only become aware of these allegations on the very eve of the oral hearing. He suggested that either the Board did not take steps to review the LAO Staff Report at an earlier stage, thereby demonstrating a lack of judgment when approving the ACLC response or, alternatively, that the Board was aware of the allegations and nonetheless authorized the Response filed and realized ultimately that its position was untenable.

In our view, we need not speculate as to what the Board may or may not have known in the months following the filing of the LAO L3 Staff Compliance Report. It is our view, however, that the warning signs of this particular form of misconduct have been present over a period of several years and that a diligent and effective board would have taken action of some kind at a much earlier stage.

In its written and oral submissions, the ACLC sought to defend what we consider to be its misleading quarterly reports on the basis that “recurring” expenses reported need not be “actual” expenses. Rather, in its view, they are estimates or budgeted amounts that need not be altered when the actual expenses are less. We do not find this to be a plausible reading of the requirement in Condition #5, to file quarterly reports that show “variances” from an approved budget. Even if one accepts this explanation for the misleading nature of the quarterly reports, however, it remains nonetheless the case that the ACLC declined to respond straightforwardly to several requests from LAO as to the departure date for the [REDACTED] and provided other misleading information to LAO for which the Executive Director has been reprimanded by the ACLC Board of Directors. Quite apart from the misleading quarterly reports, then, this conduct amounts, in our view, to a “fundamental breach” of the obligations of transparency imposed on the ACLC both by statute and under the terms and conditions of its funding from LAO.

ii) Arrangements for Monthly Funding and Review of ACLC Expenses

Condition #7 also set out arrangements concerning the monthly funding that LAO would provide to the ACLC and for the review of certain ACLC expenses by LAO. Under Condition #7, ACLC was to provide a monthly schedule of recurring expenses such as

rent, salaries and equipment leases, payment for which was to be released by LAO on the first day of each month.

For all other expenditures, ACLC was to submit invoices and expense reports, which LAO was to review in a timely manner and either pay or provide an opportunity for the ACLC to provide further information or explanation with respect to invoices and expense reports which LAO intended to reject.

Although both parties in their submissions to this Committee registered complaints about the timeliness of each other's participation in this approval process, the Committee is of the view that the important point is that ACLC did participate in an expense approval process of this kind and afforded an opportunity to LAO to decline to reimburse expenses which either lacked an apparent business purpose or proper documentation.

In our view, therefore, the ACLC substantially complied with this aspect of Condition #7.

Condition #4

Condition #4 requires the ACLC to submit a financial restructuring plan to LAO for approval, which would have the effect of stabilizing the clinic's financial position and improve its financial management. Condition #4 states that the plan must include the write-off of the \$50,009.00 account receivable from LAO shown in the ACLC March 31, 2013 financial statements. As well, it was to include a plan for eliminating the deficit of \$139,340.00 in the Legal Aid Ontario funds made available to ACLC by March 31, 2016 and the elimination of the remaining accrued compensation liability for all employees without compromising client service. Condition #4 also referred to the fact that there had been a write-off of the substantial accrued liability related to vacation and compensatory time for the Executive Director. The condition required accurate information concerning the write-off and made reference, in turn, to Condition #6 which requires an independent audit of that write-off.

i) **The Write-off of the \$50,009.00**

This account receivable shown by the ACLC in its March 31, 2013 financial statements relates to the phenomenon discussed at length above of surplus compensation funding resulting from an undisclosed staff vacancy. In this instance, LAO withheld the sum of \$50,009.00 as a result of the vacancy in the DLS position. LAO withheld these funds as noted above, whereas the ACLC treated the money as a receivable which had the effect of reducing its deficit in its 2013 audited financial statements to \$139,340.00. The PwC Forensic Audit Report referred to above, discovered that surplus funds arising from the vacancy in the DLS position were being used for unauthorized purposes, including paying large lump-sum bonuses to ACLC staff, contrary to Section 26 of the Funding Agreement. LAO advised the ACLC through its counsel by letter dated July 30, 2012 (LAO Tab B31) that as of July, 2012, funding for the DLS position would not flow to the clinic until the position was filled. ACLC's conduct constituted a breach of the arrangement concerning surplus compensation funds resulting from staff vacancies which are required by

LAO to be retained as a surplus and applied to the following year's budget. The ACLC's claim that the amount was properly considered to be a receivable is based on the receipt of a letter to the ACLC Board Chair, Christopher Holder, from Vice-President Budgell dated August 17, 2012 (LAO L3 Staff Report Tab G18) which indicated that "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 ...". Apparently it was on this basis that the auditors, having been informed by the ACLC of the "in escrow" status of the amount, included it in the March 31, 2013 financial statements as an account receivable subject to the following note:

"This amount is under dispute between LAO and the Organization at year end and the outcome is not determinable."

Use of the phrase "in escrow" in this letter could, indeed, be misleading as it might reasonably be taken to suggest that the monies would be held in trust by LAO for the ACLC. In the context of the August 17, 2012 letter, it was, however, clearly indicated that the funds would be made available to the ACLC only if and when the vacant positions were filled. In any event, LAO's view of the matter was plainly communicated to the Executive Director in an email dated September 12, 2013 (LAO Tab B31), which stated, in part, as follows:

"Please note that, subject to any ultimate disposition of the ongoing dispute resolution process, it is LAO's position that, as the Funding Agreement requires any surplus funds from vacant positions is to be accumulated, held as a surplus and applied to the following year's budget, and as the position remained vacant the entire fiscal year, ACLC should not expect any 2012-13 monies to be provided by LAO retroactively for the position. It is also LAO's position that resumption of funding for the position going forward depends on the hiring of replacement staff and that LAO will only flow the funding once replacement staff has been hired."

When the audited financial statements for 2012/13 were made available to LAO, Vice-President Budgell wrote to the ACLC Board of Directors on November 26, 2013 (LAO Tab B31) noticing the reference in the note concerning the \$50,009.00 account receivable as being held in escrow, objecting to this treatment of the amount. She reiterated the point made in the September 12, 2013 email and indicated that it is LAO's position that since there is no account receivable of this kind, the clinic's annual operating deficit for 2012/13 is understated by \$50,009.00 and should be \$131,390.00. She also asked that ACLC notify its auditors regarding LAO's September 12, 2013 email. Nonetheless, it appears that this information may not have been communicated to the auditors as the same note referring to a \$50,009.00 account receivable from LAO appears in the March 31, 2015 financial statements. (LAO Tab A-23).

Further, LAO counsel submitted in the present proceeding that there remains a concern subsequent to the issuance of this Committee's L3 Response Decision, including this requirement in Condition #4, that ACLC continues to take the position

that the matter is in dispute. Thus, notes prepared by Michelle Séguin, LAO Vice-President and Chief Administrative Officer who was, at the time, serving as the LAO Observer at ACLC Board meetings (pursuant to Condition #1) records a discussion in which the Executive Director raised the question as to whether or not the Board wished to retain the \$50,009 as a receivable on its financial statements. At that time the LAO Observer reminded the Board of the instruction in Condition #4 that clearly states that ACLC must write off the receivable and remove it from ACLC's financial statements. As noted above, the 2014/15 financial statements did contain the Account Receivable note that had appeared in the previous financial statements as an amount held in escrow. Confusingly, however, the 2014/15 financial statements show an expense item of \$50,009.00 as "other expenses" in listing all expenses in the Legal Aid Ontario Fund account.

In support of the proposition that the ACLC has not given up on its assertion of an entitlement to the \$50,009.00, counsel for LAO points to the fact that in an exchange of correspondence relating to the proposed audit of the compensation funds, the ACLC Executive Director wrote to Vice-President, Janet Budgell on October 23, 2015, and made the following comments concerning the audit process:

"Regarding the timeframe of LAO's Audit dating back to April 2013, as you are aware, the ACLC did not receive its full complement of funds from LAO for the six (6) positions funded by LAO during this time period. You are also aware that LAO was holding compensation funds in "escrow" for the ACLC for the position of the Director of Legal Services (DLS). The ACLC has never received a full accounting for these funds being "held in escrow" despite repeated requests. These funds were given to LAO by the provincial government for the ACLC and LAO has failed to be transparent and forthcoming with us on the status of these "escrow" held funds.

Please advise as to how will the DLS funds being "held in escrow" be dealt with as part of LAO's Audit of ACLC's compensation funds."

In response, counsel for the ACLC submitted that there is no question but that the write-off has occurred. In support of this proposition, notwithstanding the appearance of the note at the end of the financial statements concerning the amount "held in escrow", Mr. Dewart filed in evidence an email from ACLC's auditor, MNP LLP which states that "the clinic processed an (sic) year end entry to fully provide for the receivable that was on the books related to \$50,009 due from LAO for the vacant staff position from a couple years prior. As a result this amount is not included in the year end receivable balance." (ACLC Supp. Tab 6).

Although LAO's counsel responded by noting that the October 15, 2015 letter from the Executive Director protesting, in effect, the treatment of the \$50,009.00 occurred many months after the alleged write-off, it is our view that in determining whether Condition #4 has been complied with in regard to the write-off of the \$50,009.00, the central question is whether the write-off has in fact occurred. In our view, and notwithstanding the confusion generated by the note in the 2014/15 financial

statements, the statement of the auditor that the write-off has occurred should be considered authoritative.

In our view, then, this aspect of Condition #4 has been complied with by the ACLC.

ii) Adequate Financial Restructuring Plan

At the time of this Committee's CC L3 Remedial Response deliberations, the extent of the ACLC's current operating budget was unclear. A number of possible calculations were suggested by the parties. There is no doubt, however, that the deficit was quite substantial. It was principally for this reason that Condition #4 required the ACLC to "submit a financial restructuring plan to LAO for approval, which stabilizes the clinic's financial position and improves its financial management." Condition #4 went on to stipulate that in order to obtain LAO approval, the plan must include:

- The write-off of the \$59,009.00 account receivable from LAO discussed above
- The elimination of the \$139,340.00 deficit in the LAO fund account by March 31, 2016
- The production of all relevant information and documentation relating to the write-off of accrued compensation liability
- The elimination of any remaining accrued compensation liability for all employees without compromising client service

Counsel for the ACLC has submitted that the ACLC has in fact submitted an adequate financial restructuring plan in the form of a paragraph in a letter to LAO from the office of ACLC counsel dated February 17, 2015 (LAO Tab A24). The paragraph reads as follows:

"Condition 4 – Financial Restructuring Plan

The ACLC's financial restructuring plan is as follows:

1. Through cost reduction measures that are ongoing, the ACLC has been successful in significantly reducing its deficit as follows:
 - As at March 31, 2014, the deficit was reduced significantly to \$4,807
 - It is expected that the deficit will be reduced further, or eliminated, as at March 31, 2015
 - By March 31, 2016, the ACLC anticipates that its deficit will be eliminated.
2. Accrued compensation liability has been eliminated.
3. The auditor has advised the ACLC that the \$50,009.00 accounts receivable from LAO cannot be written off almost three fiscal years later. However, in an effort to comply with this condition, the ACLC and its counsel will meet with the auditor to discuss the options to write-off the \$50,009.00 accounts receivable from LAO and will provide you with an update in the near future."

It may be noted that the above paragraph does not actually provide any information as to the measures taken or that will be taken to reduce the deficit, nor does it indicate what measures are being taken or will be taken to stabilize the clinic's financial position and improve its financial management. Indeed, the paragraph simply states that the deficit has been substantially reduced and will be reduced further, noted that the accrued

compensation liability has been eliminated and suggested that it may not be possible to write off the \$50,009.00 account receivable in the view of ACLC's auditors.

Counsel for LAO has submitted that this paragraph does not constitute an appropriate financial restructuring plan. Indeed, he characterizes the paragraph as being "vague, incomplete, lacks particulars and does not comply with Condition #4." With specific reference to the claim that the deficit would decrease in the paragraph, LAO counsel indicated that the deficit in the LAO General Fund had increased from \$35,677.00 as of March 31, 2014 to \$117,885.00 as of March 31, 2015. He noted that the deficit increase consists of the provision of the write-off of the \$50,009.00 account receivable together with \$32,199.00 of expenses in excess of revenue. He further suggested that the deficit would have been even more substantial if the ACLC had not improperly used surplus compensation funding to cover other kinds of expenses, as noted above.

In reply, counsel for the ACLC noted that the expense overage was largely attributable to unfunded moving costs and he observed that the ACLC had indeed made some progress in reducing its deficit and should be given credit for that. In this Committee's view, however, in the absence of more information and increased transparency with respect to financial information and management, it is difficult to determine how much progress has, in fact, been made and the nature of any measures taken to achieve that result.

The Committee is of the view that the one paragraph quoted above in the letter of February 17, 2015 cannot be considered to constitute a reasonable attempt to comply with this aspect of Condition #4. Condition #4, in our view, has not been met.

Condition #5

Condition #5 imposed a requirement on the ACLC that within ninety days of the Clinic Committee's Decision, the ACLC will have fully implemented the policies and directives applicable to all clinics concerning travel, meals and hospitality and the procurement directive, that it implement best practice financial controls including restricting credit card use to the Executive Director and other controls on the use of the corporate credit card.

Condition #5 also required the implementation of a number of financial reporting systems including the establishment of a detailed budget for expenditures within both the LAO General Fund and the LAO Legal Disbursement Fund, to be approved by the ACLC Board of Directors, with quarterly reports to LAO comparing actual expenses against an approved budget and explaining variances, if any.

Further, Condition #5 required that any inter-fund transfers between LAO funds and other programs managed by the ACLC be reported to LAO on a monthly basis. The condition also required that no bonuses be paid to ACLC employees unless approved by LAO, that LAO be present at the ACLC Board of Directors meeting when the external auditors present the annual audit of the ACLC's financial statements, and finally that LAO's Internal Audit Unit be permitted to contact the ACLC's external auditors.

a) Detailed Budgets

There is no doubt that the ACLC failed to comply with Condition #5's requirement that it prepare detailed budgets for approval by the ACLC Board of Directors and forwarding to LAO.

The controversy concerning this issue, however, is the cause of the ACLC failing to do so. It is the ACLC's position that there are essentially two reasons for its failure to provide a budget. Counsel for the ACLC submitted that it had not been provided with basic information by LAO as to what level of financial support it could expect and, accordingly, it was unable to make appropriate budget estimates and calculations. He further asserted that the LAO Observer, when confronted with this point, responded that the clinic could simply use last year's figures. Assuming that this was the advice given, it is not clear to this Committee why that could not have provided a satisfactory basis for preparing budget estimates.

ACLC counsel also places reliance on the alleged fact that since, under Condition #7 (to which we will return), the ACLC was obliged to get approval for its monthly expenses, the ACLC had no basis for predicting monthly revenues from LAO. This alleged unwillingness of LAO to provide firm information was compounded, in his view, by the fact that LAO, in the fourth quarter of the fiscal year, indicated to the ACLC that it was "almost out of money". In his view, this demonstrates that LAO had a number in mind all along and simply refrained from advising the ACLC as to what that number was.

A similar point had been made by counsel for the ACLC in a letter dated February 17, 2015 (LAO A-24) reporting on the ACLC's compliance with the conditions and stating that it would provide detailed budgets only "*when it released from the funding restrictions imposed by Condition #7.* (Emphasis in the original). The letter further asserted that "... it is impossible to establish a budget for the expenditure of funds when the amount of funding approved by and received from LAO varies on a month to month basis."

This alleged unwillingness of LAO to provide information concerning projected revenues for the ACLC would be troubling if it were true. The facts, however, appear to be otherwise. Counsel for LAO drew attention to a letter from LAO to the ACLC Executive Director dated June 3, 2015 (LAO B-14). The LAO letter was written in response to a letter from the ACLC to LAO expressing concern about the difficulties in fulfilling Condition #5 because LAO failed to provide the ACLC with a detailed approved budget for 2014/15. In the June 3, 2015 response, LAO confirmed that it had in fact provided the necessary information concerning its expected level of support in the following terms:

"I am writing in response to your letter dated March 27, 2015 in which you advised that ACLC could not comply with Condition 5 because LAO did not provide the clinic with a 2014-15 budget. In fact, LAO has provided you with a monthly funding schedule that sets out ACLC's funding of \$59,351, which totals

annual funding of \$712,211. I am again attaching ACLC's monthly schedule to this letter."

Attached to this letter was a detailed breakdown of "Schedule of Monthly Funding" detailing various projected recurring costs and other expenditures.

The ACLC Executive Director, in a March 27, 2015 letter also expressed concern that no budget has been established with respect to the Legal Disbursement Fund by LAO. The LAO response on June 3, 2015 (LAO Tab B14), however, noted as follows:

"LAO provides the ACLC with \$10,901.00 in October and April of each year. This amount should form the basis of the clinic's Legal Disbursement Budget."

Moreover, LAO counsel drew attention to two further letters from LAO to ACLC dated July 10, 2015 (LAO Tab B24) and November 3, 2015 (LAO Tab B3) where LAO appended schedules indicating a "monthly funding schedule" of \$59,657.53. In his view, the ACLC certainly knew that it was expecting to receive a minimum of \$721,000 from LAO in 2014/15. What it did not know was whether some of the ACLC expenses would be disallowed. In his view, this uncertainty cannot provide a reasonable basis for not preparing a budget.

On this point, this Committee concludes that ACLC's claim that it could not prepare a budget because of a lack of information from LAO is simply unsustainable.

A second explanation offered by the ACLC for not preparing a budget is that it had been promised a template for a budget by the LAO Observer and that such a template was not provided. Counsel for the ACLC conceded that there is controversy as to whether or not such a commitment had been given by the LAO Observer. No such commitment is revealed in the detailed notes she made of her attendance at ACLC Board meetings. ACLC counsel further submitted that the only template that had been provided by the LAO Observer was in the form of a hand-written note prepared by the LAO Observer. A copy of this note was filed by counsel for the ACLC at the hearing of this matter (ACLC Supplementary Tab 1) and described as, "budget information from Michelle Séguin, LAO Observer – undated". The hand-written note is inscrutable. It contains three numbers and seven words which appear to be headings.

Again, these allegations might be troubling, if true. On its face, however, the hand-written note is obviously not designed as a budget template, nor was it presented, it appears, by the LAO Observer as such. Her explanation for the note is that it was something she wrote down when responding to the ACLC bookkeeper's request for advice on how to record variances and that she had invited the bookkeeper to follow up with any further questions she might have on the topic. Thus explained, the scribbles on the piece of paper appear to make some sense as a numerical illustration of a variance.

More importantly, in our view, the ACLC's claim that it could not prepare a budget without a budget template strains credulity. Indeed, it is surprising if it is the case that the ACLC has not had a practice of preparing and maintaining annual budgets. It is not a complex matter to draw up a budget matching expected revenues with anticipated expenses in various categories. Indeed, it is difficult to imagine how one could responsibly manage a large organization like the ACLC without doing so. If, indeed, the ACLC needed some assistance in identifying headings of expenditures or budget lines, the schedule accompanying the LAO letter dated June 3, 2015 from LAO to ACLC which identifies categories of expenses and anticipated funding from LAO for them would have been a good place to start.

In sum, this Committee is of the view that ACLC's failure to engage in a budget exercise amounts to substantial non-compliance with Condition #5 and its explanations for failing to do so are unconvincing.

b) Implementation of Policies and Best Practice Financial Controls

The ACLC takes the position that, apart from the issue of preparing budgets, described above, the ACLC has otherwise adopted the policies and best practices referred to in Condition #5 with one exception. That exception relates to controls over the use of credit cards. The ACLC submitted that it had adopted the recommendation of having only one credit card in the name of the Executive Director and it had otherwise implemented the recommendations made by the PwC Forensic Audit Report with respect to credit card use except for the recommendation that the ACLC cease its practice of making cash prepayments on its corporate credit card. In a letter from its counsel dated February 17, 2015, ACLC (LAO Tab A24) asserted that it needed to be able to exceed its credit limit of \$3,000.00 for certain kinds of purchases such as capital purchases and travel and that it was looking into alternative means of facilitating such purchases. In due course, the ACLC determined that prepayment on the credit card was necessary and simply declined to adopt this policy.

Counsel for LAO responded to this submission by suggesting that the ACLC, rather than simply refusing to act upon this recommendation, should have sought an exception or revision of the recommendation from this Committee. While we agree that this would have been a more appropriate course of action for the ACLC, we note in passing that we are as yet unpersuaded that this practice of pre-payment creates a serious problem. When asked by this Committee to explain the rationale of the PwC recommendation on this point, LAO counsel indicated that PwC had recommended that there ought not be prepayment because it is a practice that, in effect, facilitates an increase to the credit limit, thus reducing the financial controls inherent in having a credit card limit.

The Committee offers no definite view on this point in the present context, but should the matter surface for further consideration, our preliminary view is that the rationale for a credit card limit is to limit borrowing by the card holder and that prepayment does not offend that rationale.

More generally, although LAO counsel expressed concern as to whether or not the travel directive had been consistently followed, once adopted, we think the critical fact on this point is that the ACLC has adopted the required Travel, Meal and Hospitality Directive and the Procurement Directive required by Condition #5 even though they have not been implemented with perfection to date. More particularly, the ACLC has suggested that it was not aware that it required approval for out-of-country travel when authorizing travel to the United States. Presumably, this problem has now been corrected.

Our conclusion with respect to Condition #5, then, is that with the exceptions noted above concerning the preparation of budgets, the issue of credit card prepayment and the filing of misleading quarterly reports of recurring expenses, the remainder of the requirements in Condition #5 have been implemented.

Condition #6

As noted above, Condition #6 was intended to settle the controversy concerning the elimination by ACLC of a rather substantial overtime compensation liability to the Executive Director. To that end, Condition #6 required the ACLC to co-operate with an independent audit of this compensation time accrual reduction. The parties agree that the ACLC did co-operate with such an audit and that the information provided thereby was satisfactory.

Condition #8

Condition #8 provides as follows:

“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 material requested, and making staff and ACLC Board members available to meet with Division staff upon request, to confirm compliance with the recommendations.”

In the materials filed by LAO staff with respect to the LAO L3 Staff Compliance Report dated November 6, 2015 recommending that this Committee determine that the ACLC’s Board and management had failed to comply with the Conditions of this Committee’s CC L3 Remedial Response Decision, there was not included a report prepared by the LAO Internal Audit Unit (“IAU”) pursuant to the instructions set out in Condition #8. At the oral hearing with respect to this matter convened by this Committee on March 18, 2016, it was explained by LAO counsel that, although the field work with respect to this assessment to be performed by the IAU had been completed, the IAU had been instructed by LAO senior management to terminate its work in light of the fact that the LAO staff had decided to go forward with its November 6, 2015 report and recommendations. It was the view of LAO staff that in light of the more general failure of the ACLC to comply with the other conditions imposed by this Committee’s CC L3

Remedial Response Decision, that it simply would not matter whether the ACLC did, in fact, comply with Condition #8.

Counsel for the ACLC, on the other hand, expressed disappointment that the report of the IAU had not been completed as it was his view that it would be generally favourable in its assessment of the ACLC's attempt to implement the recommendations made in the PwC Forensic Audit Report. In this Committee's deliberations, Committee members expressed the view that having access to the final version of the IAU Report would be of interest to the Committee. Accordingly, the Committee instructed its counsel, Mr. Steinecke, to inquire of the parties whether they would be willing to have the IAU complete its report and make it available to the Committee. Counsel for both parties agreed to this request and further agreed to a timetable for the making of submissions by counsel on behalf of LAO, with a reply from the ACLC. In due course, the IAU completed its report (the "IAU Report") and made it available to this Committee and to the parties. Written submissions concerning the IAU Report were also received by the Committee from counsel for both parties.

In the course of the exchange of written submissions by counsel concerning the IAU Report, a further procedural issue emerged. Counsel for the ACLC alleged that counsel for LAO had exceeded Mr. Steinecke's March 21, 2016 instructions to the effect that each of the written submissions of the parties concerning the IAU report, "is limited to the internal LAO/ACLC report and is not intended to result in delivery of other information or submissions." Accordingly, this Committee sought further advice from Mr. Steinecke with respect to this issue. In an email that the Committee shared with counsel, Mr. Steinecke indicated that in his view, the March 21, 2016 instructions did not limit counsel to speaking only about the report itself. Counsel could, in his view, comment on "whether it thought the audit report observations were consistent with the ACLC's practices after the audit period." He further noted that LAO, in its submissions, "did not attempt to include fresh evidence with its submissions and that, overall, its actual submissions were just over six pages in length."

Mr. Steinecke expressed some uncertainty, however, with respect to submissions made by LAO counsel with respect to the Legal Disbursement Deficit ("LDD") issue, with respect to which, in his view, it was unclear whether staff was simply disagreeing with the conclusion in the IAU Report, or making a new argument concerning this issue. He further suggested that this Committee, having some expertise with respect to this issue, would be in a better position to assess the nature of these submissions and further, if there was new argumentation, whether such departure from his instructions was significant and warranted an invitation for further submissions from ACLC. As we shall further indicate below, it is our view that no new information concerning this issue was introduced by LAO counsel and that the submissions made essentially repeated the information concerning the LDD issue provided in the original PwC Forensic Audit Report, which was in turn briefly alluded to in the IAU Report. Moreover, in its written reply to Mr. Steinecke, LAO staff indicated that they were not relying on the IAU Report in support of the positions taken at the oral hearing in this matter. Essentially, their position was that the IAU Report does not undermine the concerns initially expressed

concerning deficiencies in the ACLC's financial reporting and management. For this reason, as well, it is our view that it is not necessary to invite further submissions from counsel to the ACLC on the LDD issue.

Before turning to consider the findings set out in the IAU Report, we wish to emphasize, as a preliminary matter, that the IAU Report deals only with the question of ACLC's compliance with the recommendations in the PwC Forensic Audit Report. It does not deal with the broader question of ACLC's compliance with the eight conditions set out in this Committee's CC L3 Remedial Response Decision. Moreover, it deals only with ACLC's compliance with the PwC recommendations within a limited timeframe from February 17, 2015 to July 31, 21015.

With respect to the question of compliance by ACLC with Condition #8, there are essentially two requirements, one relating to the implementation of all of the PwC Forensic Audit recommendations, and the other relating to ACLC's co-operation with the IAU audit of that implementation. With respect to the question of co-operation, it is not seriously questioned that the ACLC co-operated with the IAU in its assessment of whether the ACLC had, indeed, successfully implemented all of the PwC Forensic Audit Report recommendations. It is true that the ACLC, once again, refused to make available copies of documents of interest to the IAU. As we have indicated above, this refusal to grant access to financial information in this form constitutes, in our view, a clear breach of the obligations imposed on the ACLC by *LASA* and by the LAO/ACLC Funding Agreement. In its report, however, the IAU indicates that it was sympathetic to the ACLC's refusal to provide copies of the documents and that it was able to "work around" this problem in preparing its report. Accordingly, and subject to this reservation, we conclude that the ACLC essentially complied with this aspect of Condition #8.

With respect to the implementation of the PwC Forensic Audit recommendations, however, the IAU Report concludes that the ACLC's implementation of the recommendations was incomplete. The IAU summarizes its findings by noting that "in the majority (78%) of instances, the PwC recommendations had been implemented or fulfilled within the required timeframe by ACLC." (IAU Report, p. 3). We do not consider it necessary to review the IAU's findings in detail. As a more general matter, where the recommendations had not been fully implemented, the IAU indicated "action plans" for ACLC, whereby it could successfully implement the recommendations in question. Before finalizing its report the IAU submitted a draft to the ACLC for comment. The ACLC observed, with respect to the various action plans, that it would implement them.

In general terms, the PwC Forensic Audit Report recommended various measures to be taken by the ACLC to strengthen its financial controls over expenditures, improved monitoring of financial transactions to ensure compliance with the Funding Agreement, proper implementation of lieu day policies, policies on travel expenses and other matters, improved reporting on financial matters to LAO, the development of a policy on inter-fund transfers and other matters. The PwC Forensic Audit Report also identified a series of concerns with credit card use by ACLC staff and recommended further inquiries into this issue. Accordingly, a further audit of credit card transactions was undertaken by PwC

and an Addendum to the Forensic Audit Review Report on this subject was prepared (the "PwC Addendum Report").

The PwC Addendum Report identified a number of problematic aspects of credit card use by ACLC staff and made a series of recommendations for changes in the use of the cards and the documentation of credit card expenditures. Particularly troubling, in our view, were the PwC findings that the cards had been used for personal and other questionable purposes. The LAO/ACLC Funding Agreement permits the ACLC to use credit cards in Article 29 in the following terms:

"The Clinic may obtain a credit card(s) for the purpose of paying the expenses associated with the operation of the Clinic. The credit card limit of any such credit cards(s) shall not exceed \$5,000."

Plainly, use of the cards for personal matters is a breach of this aspect of the Funding Agreement. Moreover, it is not entirely clear that the ACLC was reimbursed for such expenditures. An attempt by PwC to determine whether the Executive Director had reimbursed the ACLC for an expenditure on an ACLC credit card of \$754.00 for a diamond ring at The Diamond Shop, is described in the PwC Addendum Report in the following terms (at pp. 67-68):

"Ms. Parsons was unable to explain the purpose of this expenditure. As set out in Appendix C, and based on our understanding as set out in *Section 5 – Findings*, it is unknown to which fund this expenditure relates. It is our understanding from Ms. Parsons that the payment to The Diamond Shop of \$754 may have related to the purchase of a ring by Ms. Parsons for personal purposes. Ms. Parsons indicated that she repaid the amount in cash the subsequent day. The cash payment was provided to ██████ the Office Manager at the time. We further understand from Ms. Parsons that ██████ was only with the Clinic for a period of one month in 2007. Ms. Parsons was unable to recall ██████ full name or exact dates of employment. We were unable to identify a deposit in the General Fund cash account, petty cash or other records indicating repayment to the Clinic in the amount of \$754.

We understand from a former Office Manager that the purchase from The Diamond Shop was identified as part of reconciling the credit card statement. When this transaction was raised by the former Office Manager with Ms. Parsons, we understand that Ms. Parsons indicated that she had forgotten to repay the Clinic for the purchase. We understand from the former Office Manager that Ms. Parsons made no mention to ██████ of the expenditure being repaid to a Clinic staff member. The former Office Manager indicated that ██████ was not aware of subsequent repayment by Ms. Parsons for this expenditure.

In the Correspondence from Dewart Gleason LLP dated December 18, 2012, provided in response to the Correspondence from Fasken Martineau DuMoulin LLP, dated December 14, 2012, the ACLC acknowledged use of the Clinic credit card by Ms. Parsons to purchase jewellery. The ACLC stated that Ms. Parsons explained to PwC that on the same day the purchase was made, she withdrew funds from her personal bank account and reimbursed the Clinic for the

expenditure. The ACLC further stated that PwC was advised that the Office Manager at the time forgot to provide Ms. Parsons with a receipt indicating repayment to the Clinic and Ms. Parsons forgot to ask for a receipt. The ACLC stated that Ms. Parsons explained this to the Clinic Board and offered to make the payment a second time, however, the Clinic Board declined the offer.

As stated above, during our interview with Ms. Parsons, we were advised that she repaid the Clinic for this expenditure in cash the subsequent day. We were not aware of, or provided with an explanation regarding the fact that the Office Manager forgot to issue a receipt to Ms. Parsons for this purchase or that Ms. Parsons forgot to request a receipt from the Office Manager. In our review of the Clinic Board meeting minutes for the Period of Review, we noted no reference to this purchase at The Diamond Shop. In the correspondence from Fasken Martineau DuMoulin LLP dated January 7, 2013, LAO requested from the ACLC copies of Ms. Parsons' bank statements for March and April, 2007 supporting the withdrawal of funds from Ms. Parsons' personal bank account to reimburse the Clinic for the ring purchase. In the correspondence from Dewart Gleason LLP dated January 10, 2013, the ACLC declined to provide this supporting documentation."

It may be reasonable to assume that if the banking records were supportive of the Executive Director's assertions, they would have been made available to PwC. The PwC Addendum Report, however, makes no explicit finding to this effect.

With respect to other obviously personal expenditures, the ACLC explained that they were incurred by a former employee who misused her credit card without authorization. Other questionable expenditures pertained, for example, to the purchase of alcohol from the LCBO. A former Office Manager explained that alcohol was kept on-site at the clinic for "Bacardi Friday" events. (PwC Addendum Report, p. 64).

In a number of instances of credit card transactions, PwC was unable to identify either the user of the card or the business purpose of the transaction. In short, the PwC Addendum Report demonstrated that credit card use by the ACLC was badly in need of the imposition of new controls and restrictions.

The IAU Report found that the ACLC has made progress in ensuring more effective management oversight of credit card transactions. Thus, for example, the ACLC now has only one corporate credit card, the use of which is monitored directly by the Executive Director. The IAU Report also found, however, that credit card expenditures were not (in 18% of the cases) documented in the manner recommended by PwC (IAU Report, p. 6). The IAU Report does not mention that the ACLC simply refused to accept the recommendation by PwC that it not engage in the practice of making pre-payments on its credit card. As noted above, it is our view that the ACLC should have sought a waiver of this requirement from LAO or from this Committee, rather than simply refusing to abide by the PwC recommendation.

Among the recommendations not implemented was the recommendation by PwC that further investigation be made with respect to the flow of LAO moneys in and out of the

ACLC Legal Disbursements Fund. The PwC Forensic Audit Report had noted some inconsistencies in the reporting, both by letter and in the financial statements, of a deficit in this account and recommended that further investigation be undertaken in order to get a clearer picture of the actual deficit in that account. When the IAU assessed compliance with this recommendation, it was advised that relevant documentation was not readily available and accordingly, the IAU concluded that, “the recommendation has been closed due to the low achievability of further work.” In its written submissions concerning the IAU Report, ACLC counsel disclosed that relevant documents that were made at the time in question were “held in storage or had been purged during its recent office move”. Apparently it has thus become impractical, or perhaps, impossible, to follow-up on this issue.

Another of the not-implemented recommendations relates to the adoption by the ACLC of a policy for inter-fund transfers; that is, transfers in and out of accounts maintained by the ACLC to hold funds provided by LAO, to be spent, presumably, on non-LAO projects and, presumably, to be reimbursed to LAO accounts in due course. PwC also recommended that the ACLC adopt monitoring procedures to ensure that the clinic complied with the LAO/ACLC Funding Agreement and its own inter-fund transfer policy when conducting any fund transfers, including regular reporting to and written approval from the ACLC Board.

The ACLC has taken the position that it cannot implement this recommendation unless LAO provides a model inter-fund transfer policy for it to follow. One might have thought that a good beginning could be made on drafting such a policy by the ACLC by simply describing its current policies and practices with respect to inter-fund transfers, i.e. when do they occur and for what purpose or purposes, the nature of the required approvals for them, and the mechanisms in force, if any, to ensure that the ACLC accounts containing LAO funds were appropriately reimbursed with respect to any such withdrawals. LAO could then have indicated whether it considered these practices to be in compliance with the LAO/ACLC Funding Agreement. Be that as it may, the IAU Report indicated some sympathy with the perceived difficulty of the ACLC in drafting an inter-fund policy and in its “action plan” on this point suggested that LAO should “provide a sample to ACLC to assist in developing its inter-fund policy and guidelines on managing inter-fund activities.” (IAU Report, p. 11).

In their respective submissions concerning the IAU Report, counsel for the parties take different view of the significance of the IAU Report. Counsel for the ACLC submitted that, “the internal audit report is reliable and objective. It recognizes the significant progress made by the ACLC in addressing deficiencies identified by PwC. ACLC is dedicated to ongoing improvements of its policies and practices.” In its submissions, LAO emphasizes that the ACLC failed to comply with Condition #8 in the sense that within the required timeframe, the ACLC implemented only eleven of the twenty-three PwC recommendations. Further, it was noted that in a number of circumstances where the ACLC had adopted policies recommended by PwC, it had failed to comply with those policies on a number of occasions by ignoring, for example, the requirement in the LAO Clinic Travel, Meal and Hospitality Directive, that LAO must pre-approve international

travel and, additionally, various other requirements of that and other directives. Further, as indicated above, LAO staff submitted that the IAU Report does not mitigate the ACLC's failure to comply with the other conditions imposed by this Committee's CC L3 Remedial Response Decision and its continuing breach of the obligations imposed upon the ACLC by the LAO/ACLC Funding Agreement, the LAO/ACLC Memorandum of Understanding and the *Legal Aid Services Act (LASA)*.

Our finding with respect to ACLC compliance with Condition #8, then, is that compliance has been merely partial. Apart from the refusal to grant access to copies of documents to the IAU, the ACLC did co-operate in the IAU's assessment of its implementation of the PwC Forensic Audit recommendations. With respect to the question of implementation, however, it is common ground to the IAU Report and to the submissions of both parties that full compliance with this condition has not been achieved by the ACLC.

c) Second Category of Conditions – Enhancement of Board Capacity to Engage in Effective Supervision of the Operations of the Clinic

As previously noted, the second category of conditions imposed in this Committee's CC L3 Remedial Response Decision had as its objective the enhancement of the capacity of the ACLC Board to supervise the operations of the clinic and to ensure that the ACLC complies with its obligations under the *Legal Aid Services Act (LASA)* and under the terms and conditions of its Funding Agreement with LAO. Condition #1 required permission for the appointment of an LAO Observer to attend ACLC Board of Directors' meetings under certain terms and conditions. Condition #2 required the ACLC to comply with its obligations under Section 19 of its Funding Agreement with LAO with respect to the composition of the Board. Condition #3 required the ACLC to collaborate with LAO on organizing and successfully completing an approved training experience for all members of the ACLC Board of Directors, the approved program to be organized within six months of the Committee's CC L3 Remedial Response Decision, and completed within nine months of the Decision. We consider the question of compliance with each of these conditions in turn.

Condition #1

Condition #1 provides a set of arrangements concerning the presence of an LAO Observer at all ACLC Board of Directors' meetings. An Observer to be appointed by LAO was to be provided with Board meeting materials in advance of the meetings and would be permitted to provide LAO's perspective on issues discussed at the meetings. The Observer would not, however, have voting rights or sit as a member of the Board. Condition #1 speaks directly to the issue of access to Board information and indicates that the LAO Observer was to have access to information including financial eligibility and resource allocation information concerning particular clients. Condition #1 also provided, however, that the ACLC Board could meet in-camera with the LAO Observer not present, to discuss matters pertaining to the present Dispute Resolution Process, and secondly, matters pertaining to the Association of Community Legal Clinics of Ontario (ACLCO). Condition #1 also provided that the ACLC Board could withhold

material or meet in-camera with respect to matters subject to solicitor-client privilege, provided however, that the ACLC Board disclosed sufficient information to LAO concerning the nature of the information with respect to which privilege was claimed by the Board to enable LAO to determine whether it agreed with the claim of privilege was reasonable in the circumstances. Finally, Condition #1 requires that the Chair of the ACLC Board of Directors meet on a monthly (or otherwise mutually agreeable) basis, "in order to ensure that the Observer is kept abreast of activities at the ACLC".

LAO staff submit that the Board and management of the ACLC have failed to comply in good faith with the requirements of Condition #1. More particularly, the LAO staff allege that the LAO Observer was not included in all Board meetings, and that the ACLC Board refused to provide information on such matters as inter-fund transfers, overall revenue and expenditures and details concerning the ACLC's deficit or surplus position. Further, it is alleged that the one-on-one meetings with the ACLC Board Chair were quite unsuccessful and typically constituted brief meetings of ten to fifteen minutes, in which the LAO Observer reported her impressions of recent Board meetings, with respect to which the ACLC Board Chair was simply unresponsive. Indeed, the ACLC Board Chair was reported to have said on a number of occasions that her meetings with the LAO Observer were "a waste of time".

The ACLC responded to these allegations by asserting that it had substantially complied with Condition #1, that the failure to include the LAO Observer in two Board teleconference meetings was "an honest mistake", and that the ACLC has, in any event, provided minutes of the two teleconference meetings to the LAO Observer (LAO Tab A34 and A36). The teleconference meetings, it may be noted, were held after the LAO Observer had attended five Board meetings on previous occasions. Although one of the teleconference meetings was held simply for the purpose of setting dates for the Annual Strategic Planning Meeting and the ACLC Annual General Meeting, the other teleconference meeting was held for the purpose of reviewing the audited financial statements and approving a change of accounting method from the deferral method to the restricted funds method of accounting. This meeting would obviously been of greater interest to the LAO Observer. Indeed, the change of accounting method is a matter of some controversy. The LAO Observer indicated that, in her view, the change had the effect of masking, to some extent, the ACLC's deficit. The ACLC responds to this allegation by denying that it has this effect, by noting that some other clinics use the restricted funds method and by asserting that it adopted the new method because it would be easier for its various funders to understand.

LAO had appointed as its Observer, LAO's Vice-President and Chief Administrative Officer, Michelle Séguin. Ms. Séguin is a Chartered Accountant with twenty-five years of experience in financial management. LAO submitted that Ms. Séguin had been appointed because of her credentials and experience in financial matters and, in part, because she had no prior oversight responsibilities concerning the ACLC.

In accord with Condition #1, once Ms. Séguin had been appointed as the LAO Observer, the ACLC Board began the practice of inviting her to their regular Board meetings. Ms.

Séguin attended at least seven such meetings and made extensive notes of her observations and suggestions for improvement to ACLC Board practices. As noted above, Ms. Séguin shared these impressions with the ACLC Board Chair at regular one-on-one meetings with her, but these meetings did not result either in substantive discussion flowing from her impressions, or, indeed, in the provision of information by the ACLC Board Chair in order to keep the Observer “abreast of activities at ACLC”. Ms. Séguin’s notes indicate that the ACLC Board Chair considered that the matters raised by Ms. Séguin were more appropriate for discussion with the ACLC Board in its entirety. By way of explanation for the Board Chair’s lack of responsiveness in these meetings, counsel for the ACLC submitted that the Board Chair was neither comfortable with nor equipped to engage in discussions of the kind advanced by the LAO Observer. Further, counsel submitted that the LAO Observer was, in any event, able to relay her impressions to the ACLC Board of Directors at subsequent Board meetings.

In an attempt to determine whether the ACLC has indeed complied with Condition #1, this Committee has reviewed the extensive notes prepared by the LAO Observer with respect to each of the meetings of the ACLC Board that she attended and the minutes prepared by the ACLC for those meetings. We have reviewed, as well, the memorandum from the LAO Observer reporting her summary observations with respect to this experience. It is unnecessary to review these observations in detail, but their tone is very critical of the conduct of the ACLC Board with respect to five broad categories of issues concerning Board governance, including financial management, oversight, the use of public funds, respect for the Clinic Committee’s conditions and lack of co-operation with the LAO Observer. The summary provides particulars with respect to such questions as the lack of the provision of information to the Board concerning the overall financial position of the ACLC, the failure to provide budgets and quarterly reporting with respect to ACLC’s expenditures, the approval by the ACLC Board of sending a five-person delegation comprised of the ACLC Chair and four staff members to the unveiling of the Ark of Return in New York City without giving any consideration to ACLC’s current financial position, a similar approval of the sending of three people, two staff members and one Board member, to a training program in Maryland, the fact that Board meetings were conducted in her absence and the Board’s refusal to provide information relating to other sources of funding for the ACLC.

Ms. Séguin concluded her summary with the following observations:

“It is my view that the ACLC has consistently demonstrated that its financial, administrative and governance abilities are insufficient to provide LAO with the confidence that the ACLC is making effective use of public funds, and fully meeting the Conditions of the Clinic Committee of the LAO Board. Additionally, repeated derogatory comments by the ACLC Board members and its Executive Director revealed a basic hostility towards LAO, its legislative role and its employees, that is incompatible with the obligations of the clinic to work in good faith with its funder.”

With respect to the latter point, Ms. Séguin alleged that both the Executive Director and the members of the ACLC Board were “antagonistic and hostile toward LAO and me” and made derogatory personal comments about LAO staff. To some extent, this latter

point is indeed reflected in the minutes of Board meetings prepared by the ACLC. Thus, the April 21, 2015 Board minutes (LAO Tab A32) report the following exchange:

“The Board responded to the comments made by the LAO Observer about feeling insulted and reminded her that she is for once experiencing the onslaught of insults and offensive treatment the ACLC has been experiencing at the hands of LAO since the Clinic was announced in 1993. The ACLC has consistently been insulted and discriminated against by LAO. It has been on-going for over 20 years. The ACLC has been subjected to suspicion, ridicule, criticism and discrimination.

Ms. Séguin’s allegation that derogatory comments were made about LAO staff members is also borne out to some extent in the ACLC Board’s minutes. In the ACLC Board minutes of October 17, 2015, it is recorded that the Board and Executive Director requested clarification of the LAO Observer’s assertion that the Executive Director had been making derogatory comments about LAO staff members. This assertion on the part of the LAO Observer was criticized by the Executive Director as demeaning of African Canadians. The minute then observes of the Board’s discussion of this point that:

“The Board didn’t get personal but discussed its ongoing treatment by LAO, in particular, Janet Budgell, Bob Ward and Margo Ayers as racist towards ACLC.” (ACLC Supp. Tab 4, p. 4).

For its part, the ACLC submits that the admittedly hostile or tense relationship between the LAO Observer was provoked, at least in part, by the LAO Observer’s early request that she be allowed to bring a note-taker to Board meetings, or in the alternative, to record the meetings. The ACLC alleges that this created the impression that the LAO Observer saw her role as one of gathering information rather than the development of a relationship of trust and confidence. The ACLC refused to allow the LAO Observer either to bring a note-taker or to record the Board’s deliberations.

There were other differences of opinion concerning the role of the LAO Observer. Thus, it was the LAO’s Observer’s position, communicated at an early stage to the ACLC Board, that Condition #1 permitted her to attend meetings of the Board and Sub-Committees, such as the Finance Committee. The ACLC took the position that Board Committee meetings were not “Board meetings” within the meaning of Condition #1 and therefore refused to include her in such meetings. In our view, it was not reasonable in the context for the ACLC to exclude the LAO Observer from Board Finance Committee meetings.

As noted above, the LAO Observer was of the view that she was entitled to receive information concerning resources provided to the ACLC by other funders. The ACLC Board took the view that she was not entitled to such information and moreover, excluded Ms. Séguin from Board meetings when discussion relating to other funders was to take place. Discussions relating to other funders was not identified in Condition #1 as a basis for excluding the LAO Observer. Moreover, in our view, this refusal to share information concerning other sources of funding is a clear breach of the *Legal Aid*

Services Act (LASA) and the Funding Agreement between LAO and the ACLC (LAO Tab A3, Section 42). Under Section 37(2) (d) of the *LASA*, a clinic is obliged to provide to LAO “any financial or other information relating to the operation of the clinic that [LAO] may request.”

The ACLC’s exclusion of Ms. Séguin from such discussions and refusal to provide information concerning other funders became the subject of an exchange between counsel after Ms. Séguin was excluded from discussions pertaining to other funders at the March 19th, 2015 Board meeting. On March 12, 2015, Mr. Forrest, on behalf of LAO wrote to ACLC’s counsel asserting that LAO was entitled to access to such materials and that, indeed, such access was imperative, “in light of the issues concerning inter-fund transfers with this Clinic.” (LAO Tab B4, p.2). Ms. Basa replied for the ACLC asserting that, “The ACLC does not have the authority from the funders of its other programs (which are not related to legal aid services) to share information with LAO.” (LAO Tab B6, p.2) A similar explanation for the refusal to disclose such information was offered by counsel for the ACLC at the oral hearing of this Committee on March 18, 2016. When asked by the Chair as to whether the ACLC had ever sought such authorization from the other funders, it was conceded that such authority had not been sought. Counsel submitted further, however, that if the matter of access to such information was important to LAO that they should have followed up on the issue and that Mr. Forrest failed to do so after intimating that he would. (ACLC Supp. Tab 2). The fact remains, however, that the ACLC refused to provide this information and was supported by counsel in doing so.

We remain of the view that refusal to provide information pertaining to other funders constitutes a clear breach of *LASA* and the Funding Agreement. This refusal and the exclusion of Ms. Séguin from ACLC Board discussions concerning other funders constitutes, in turn, a clear breach of Condition #1.

In considering whether the ACLC has complied with Condition #1, a number of observations are pertinent. First, in a general and technical sense, the ACLC complied with Condition #1 in the sense that it invited the LAO Observer to a number of Board meetings, provided her with relevant Board material, and permitted her to engage in discussions with the ACLC Board at these meetings. In the absence of evidence to the contrary, we find that the failure of the ACLC Board to include the LAO Observer in the two summer teleconference meetings in August of 2015 was “an honest mistake” that would not warrant a finding of non-compliance with Condition #1.

With respect to the question of access to information, however, our finding is that the ACLC Board’s refusal to share financial information concerning other funding sources and the exclusion of Ms. Séguin from ACLC Board discussions pertaining to other funders constitutes a failure to comply with Condition #1. The exclusion of the LAO Observer from Board Committee meetings, also, in our view, constitutes a failure to comply with Condition #1.

At the same time, it is disappointing that the ACLC Board’s reception of the LAO Observer was fraught with such difficulties. It would appear that an opportunity to

strengthen the Board's willingness and capacity to engage in effective oversight of the operations of the clinic was not exploited effectively by the ACLC Board. Indeed, the observations and recommendations provided by the LAO Observer in her extensive written reports provide support for the view expressed earlier in the CC L3 Remedial Response Decision by this Committee to the effect that the ACLC Board does not appear to engage in effective supervision of this kind.

In summary, then, it is our view that the ACLC has partially complied with Condition #1.

Condition #2

Section 10 of the LAO/ACLC Funding Agreement sets out requirements with respect to the composition of the clinic Board and includes in the list of categories of persons that would be appointed to the Board:

- (c) Persons with financial skills
- (e) Lawyers

Since the resignation in protest of the two lawyer members of the ACLC Board in 2009, recounted above, there does not appear to have been any new lawyer members of the Board; at least none were drawn to our attention and there were no lawyers on the Board at the time of this Committee's deliberations on the LAO L3 Staff Report. Similarly, we were not aware of the identity of two individuals with financial skills. PwC, in its Forensic Audit Report, noted that "(t)he clinic Board is comprised of members with little financial background" (p. 35). In order to increase the capacity of the Board to engage in more effective supervision of the financial management and operation of the ACLC, it was this Committee's view that the ACLC should make reasonable and verifiable efforts to meet its obligations under Section 10 of the Funding Agreement and appoint at least two lawyers and two persons with financial skills to the Board.

Further, Condition #2 stipulated that 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."

Condition #2 noted that this condition would be met when "all four of the described Board positions had been filled." Plainly, the objective of Condition #2 was to strengthen both the skill set and the sense of professional independence of a number of members of the Board with a view to enhancing the Board's capacity to discharge its statutory and other responsibilities.

Condition #2 has not been met. In its original written response to LAO's submissions, the ACLC made the following claim:

"The Board includes a paralegal (C. Holder), a lawyer (S. Agbakwa), a bookkeeper (G. Self), and individual with a university degree in financial accounting and management (C. Holder) and an accountant (V. Manswell)."

It will be noted that only one lawyer has been successfully appointed and that Mr. Holder, who is, in fact, a reappointed former member of the Board is counted twice as a paralegal and as an individual with a university degree in financial accounting and management.

With respect to the question of process, LAO submitted that the ACLC's Board and management have not demonstrated reasonable efforts to fill the Board vacancies as required by Condition #2. On January 29, 2015, LAO requested in writing that the ACLC report on a monthly basis with respect to its reasonable efforts (LAO A-29) and that in response, ACLC's management indicated that a lawyer had joined the Board but that efforts to recruit someone with financial skills had not been successful (LAO A-24). ACLC's Board and management provided LAO with no further reports. LAO counsel noted further that the minutes of Board meetings held during that period which were filed in evidence before this Committee, did not indicate any evidence of such reasonable efforts. Further, the extensive notes prepared by the LAO Observer of the board meetings she attended did not reveal reasonable efforts to recruit or, indeed, any meaningful discussion of the Board composition issue.

No explanation was provided with respect to the extent of the difficulty encountered by the ACLC management in recruiting lawyers in particular. There appear to be two possible explanations: it may be that reasonable efforts were simply not made, which would constitute a breach of the conditions, or alternatively, it may well be that members of the African Canadian community who are members of the legal profession, are reluctant to become involved as members of the Board of the ACLC. If this is in fact the explanation for the ACLC's inability to attract lawyers to the Board, this would only serve to justify the concerns that led to the imposition of Condition #2.

In response to a question from the Chair, Mr. Dewart, on behalf of the ACLC, conceded that resumes of the people who were appointed were not made available to LAO. Although Condition #2 does not specifically require this, the Committee is of the view that good faith efforts to comply with Condition #2 would have prompted the ACLC to do so. In determining, for example, whether a particular individual could be fairly characterized as a "person with financial skills", it would be useful to have an indication of the person's education in financial matters and their experience in financial work.

In sum, the Committee's conclusion is that the ACLC did not comply with Condition #2.

Condition #3

As noted above, Condition #3 requires the ACLC Board to organize within six months of this Committee's CC L3 Remedial Response Decision and to successfully complete within nine months of that date, an appropriate training experience for all members of the ACLC Board "on the duties and responsibilities of Board members including duties of monitoring, oversight and risk management". The organization of the program was to be done in collaboration with LAO staff and subject to their approval. Counsel for LAO suggested that the effective date for the revised CC L3 Remedial Response Decision of this Committee is November 17, 2014 and accordingly, that the deadlines for the

organization and successful completion of the Board training program are May 17, 2015 and August 17, 2015, respectively.

No Board training had been organized or completed by those dates or indeed, by November 6, 2015, the date on which LAO staff brought a motion before this Committee alleging failure of the ACLC to comply with the CC L3 Remedial Response Decision conditions, which led to the present proceeding.

The ACLC attributes its failure to comply with this condition, however, to the unwillingness of LAO staff to approve providers of Board Governance training that it suggested. Accordingly, a brief account of the ACLC failed attempts to secure such approval from LAO staff must be given. On March 20, 2015, the ACLC submitted a proposal for a Board training program to be conducted by [REDACTED], described by ACLC's counsel as "a well-respected provider of Board governance and development training". LAO staff refused to approve [REDACTED], however, on the basis that its sole proprietor and the person who would provide the training had been a member of the Board of Directors of another clinic funded by LAO at a time when that clinic was itself subject to the Dispute Resolution Policy due to concerns about financial mismanagement and Board oversight. In communicating this decision and the reasons for it to the ACLC in a letter dated April 24, 2015 (LAO Tab A38), LAO included a list of three companies that provide Board training that the ACLC might wish to contact. Subsequently, having been approached directly by the proprietor of [REDACTED] Vice-President Budgell wrote to the ACLC on May 7, 2015 (LAO Tab A39) reaffirming the decision to not approve [REDACTED] and encouraging the ACLC to retain an acceptable governance trainer as soon as possible.

Counsel for the ACLC characterizes LAO's refusal to approve [REDACTED] as "unreasonable". On the contrary, however, this Committee is of the view that the involvement of the sole proprietor of [REDACTED] as a board member of an unsuccessful clinic was a reasonable basis for concern and that the decision to withhold approval of [REDACTED] was reasonable in the circumstances.

There is no indication in the record as to whether any of the providers recommended by LAO staff were in fact considered or contacted by the ACLC. On July 30, 2015, however, the ACLC Executive Director forwarded a request (LAO Tab A41) that [REDACTED] be retained to provide Board governance training. Appended to this email was a two-page outline of the topics to be covered and a brief profile of the sole proprietor of [REDACTED]. LAO staff, having visited the website of [REDACTED] developed some concerns about the qualifications and/or expertise of [REDACTED] in the Board governance training field. Again, while we view these concerns as reasonable in the circumstances, this is not in any way to suggest that [REDACTED] is not a highly capable individual. [REDACTED] holds a doctorate in education and is a member of the faculty at [REDACTED]. The website of [REDACTED], however, describes [REDACTED] as a [REDACTED] and lists a very broad range of subjects in which [REDACTED] possesses expertise, including Board governance, but places a good deal of emphasis on various aspects of wellness training of various kinds. The

website also indicated that [REDACTED] had been associated with [REDACTED] for of period of only three months. Accordingly, Vice-President Budgell wrote to the ACLC Executive Director on August 13, 2015 (LAO Tab A42), asking for additional information concerning the proposed trainer “including, specifically, copies of:

- a. any materials outlining the board governance, risk management and financial oversight training to be provided. This could include a copy of the training materials this trainer proposes to use for the ACLC training and/or any materials used by the trainer in the past when training other boards; and
- b. the trainer’s C.V. and references as we could not find any business website that outlines this training.”

Not having the benefit of a reply from the Executive Director, Vice-President Budgell, on September 14, 2015 (LAO Tab A43), wrote to the Executive Director reminding her of this request for further information concerning [REDACTED]

On September 15, 2015, the Executive Director wrote to Vice-President Budgell (LAO Tab A45) enclosing the original proposal together with a three-page proposed agenda covering much of the same ground and a one-page summary listing [REDACTED] training experience, related academic experience and Board and Committee memberships. The material provided is not directly responsive to the requests of Vice-President Budgell for training materials and references. Nonetheless, it does indicate more about [REDACTED] experience than did the [REDACTED] website.

Although the material provided does indicate that [REDACTED] has served on a number of Boards in Bermuda and Toronto, it would not be unfair to observe that the listed experience as a facilitator does not indicate extensive involvement in Board governance training. There appear to be two occasions in which [REDACTED] facilitated Board training in Bermuda and one in Toronto. Again, with no intent or desire to minimize [REDACTED] achievements and impressive career, we can understand why the concerns of LAO staff were not completely assuaged by the information provided concerning the [REDACTED] proposal.

On October 2, 2015 Margo Ayers of LAO wrote to the Executive Director (LAO Tab A46) indicating that the information provided was “insufficient for LAO to perform due diligence regarding this organization.” The letter went on to say that, “The information provided does not reference experience in training board of directors on the issues of monitoring, oversight, and risk management. As such, LAO is declining ACLC’s proposal to engage [REDACTED] as board training provider.” This letter attached a long list of Vendors of Record for training services from the Ministry of Government Services and encouraged the ACLC to contact any of the listed vendors with the objective of obtaining a proposal addressing the listed issues.

Approximately three weeks later, the ACLC Executive Director wrote to Vice-President Budgell requesting a reconsideration of the decision to decline the proposal to retain [REDACTED] (LAO Tab B1). The letter went on to criticize LAO’s alleged failure to

collaborate with the ACLC to complete the training in a timely manner and concluded that:

“The ACLC is no longer willing to engage in a process that we believe will be beneficial to our Board only to be frustrated with unnecessary challenges and roadblocks by yourself and others at LAO.”

The letter went on to say:

“ ... if [REDACTED] is not approved upon re-consideration by LAO to conduct the Board training it will no longer be engaging in a search for a Trainer.”

The letter concluded by suggesting that if [REDACTED] was not approved, the ACLC Board had decided that LAO should simply choose a suitable vendor from the list provided on April 2, 2015.

LAO did not respond to this overture from the ACLC because, according to LAO counsel, LAO was on the verge of delivering its LAO L3 Staff Compliance Report, which was in fact delivered to this Committee a week or so later, on November 6, 2015.

In considering whether the ACLC has complied with Condition #3, the Committee is of the view that it is not necessary or desirable to try to establish the precise level of responsibility of either party for this condition not being fulfilled. From the ACLC perspective, the LAO staff were too demanding in terms of their requirements for qualifications of an approved vendor and from LAO's perspective, the ACLC did not move in a timely fashion to seek compliance with the condition, proposed two vendors over a period of several months in respect of which LAO had legitimate reservations, and failed to propose any of the vendors suggested by LAO. On the record before us, however, we see no evidence of bad faith on the part of LAO staff. Further, in the circumstances, it should have been a relatively simple matter for the ACLC to have selected an experienced provider of such services acceptable to LAO.

The important point for present purposes, however, is that Condition #3 has not been complied with by the ACLC.

Part V – Summary of Findings

Introduction

For the convenience of the reader, we provide in Part V a brief summary of this Committee's findings and determinations with respect to the ACLC's compliance or non-compliance with the eight conditions imposed on the ACLC by this Committee's CC L3 Remedial Response Decision. As a result of that Decision, the eight conditions were to be fully complied with by the ACLC within a certain timeframe in order for the clinic to continue to be eligible for funding by LAO. This Committee's reasoning and analysis with respect to the ACLC's compliance or non-compliance with the eight conditions are set out at much greater length in Part IV of this decision.

The eight conditions with which the ACLC was required to comply are reproduced in Appendix A to this Decision. We will not reproduce them again here but will briefly allude to important aspects of each condition before briefly summarizing this Committee's findings.

As noted above, the eight conditions can be divided into two broad categories: First, Conditions 7, 4, 5 6 and 8 address deficiencies in the financial management of the ACLC and required specific types of remediation. Second, Conditions 1, 2 and 3 were designed to strengthen the willingness and capacity of the ACLC Board of Directors to effectively supervise the operations of the clinic and enable it to meet its statutory obligations to ensure that the ACLC complies with its obligations under the *Legal Aid Services Act* ("LASA") and under the terms and conditions of its funding by LAO. This Committee's analysis in Part IV of this Decision of the ACLC's compliance or non-compliance with each of the eight conditions followed the order set out above and this summary of findings will follow the same order.

Condition #7

Condition #7, along with part of Condition #5, sets out the arrangements on which continued monthly funding would be provided to the ACLC while it is subject to Level Three of the Dispute Resolution Policy ("DRP") process and the eight conditions. Condition #7 provides for monthly funding of two kinds. The first kind is funding for recurring expenses such as rent, salaries and equipment leases, payment for which would be made to the ACLC by LAO on the first day of each month. The second category of funding is for ACLC expenses for other purposes with respect to which Condition #7 required invoices and expense reports to be provided by the ACLC and approved by LAO.

This Committee has concluded that there was a very substantial problem of non-compliance by the ACLC with respect to its recurring expenses. In essence, the ACLC provided misleading information concerning its recurring expenses relating to staff salaries and thereby secured improper access to LAO funds and used such funds in a manner not permitted by the terms of the LAO/ACLC Funding Agreement.

The Funding Agreement provides in Section 21 that funding provided for personnel expenses cannot be used for non-personnel expenses. Section 26 of the agreement provides that funds accumulated by reason of staff vacancies may be expended for the purpose of employment of “replacement staff” and may only be expended for some other purpose with the approval of LAO. We find that there occurred two staff vacancies since the issuance of this Committee’s CC L3 Remedial Response Decision that were not reported to LAO in the required manner, and further, that the ACLC continued to claim funding for these purposes, which it then spent without LAO approval in an unauthorized fashion.

There are a number of troubling aspects to this misconduct. First, the ACLC has engaged in this form of wrongdoing on several occasions in the past and has been consistently advised by LAO that it must not do so. Misconduct of this kind was drawn to the attention of the ACLC by LAO in September of 2010 when the ACLC was placed under Level One of the DRP. Further misconduct of this kind was drawn to the attention of the ACLC in July of 2012 when LAO learned that vacancy funding was used to pay additional lump-sum or bonus payments to staff totalling \$170,000, of which \$121,000 was paid to the Executive Director.

A third instance of this misconduct was the subject of discussion in this Committee’s CC L3 Remedial Response Decision which related to the use of vacancy funding to hire highly expensive outside counsel to undertake test-case litigation, in one instance involving a [REDACTED] as the client. Fees totalling \$283,905 (after the retained firm wrote down \$200,000 of its billings) were expended on this particular case. In its CC L3 Remedial Response Decision, this Committee noted that this misconduct on the part of the ACLC was particularly problematic in light of its recurring nature. For this reason, it is both surprising and troubling to learn that this form of misconduct recurred in the period following the CC L3 Remedial Response Decision.

Second, it is troubling that when LAO obtained from independent sources knowledge of the fact that there were vacant positions at the ACLC, LAO staff sought, on several occasions, to obtain accurate information from the ACLC, as to when the staff in question had left their positions. The ACLC simply declined to provide that information. Even more troubling is the fact, conceded by the ACLC Board, that the Executive Director was not candid in discussing this matter with LAO staff. Refusal to provide information and the provision of false or misleading information to LAO concerning financial matters is not only a breach of the ACLC’s statutory obligations and its obligation under the Funding Agreement it has entered into with LAO, but it undermines the relationship of trust and confidence between LAO and the ACLC, which is necessary to a successful and functional funding relationship. It is our view that the misuse of vacancy funding and the provision of false and misleading information concerning vacancies constitutes a “fundamental breach” of the ACLC’s statutory obligations and its obligations to LAO under the Funding Agreement.

Finally, in light of the history of this form of misconduct by the ACLC and several warnings given by LAO on this point to the ACLC, the provision of false and misleading information on this issue by the ACLC to LAO provides support for our conclusion that the wrongdoing of the ACLC on this issue was intentional.

With respect to the arrangements set out in Condition #7 for a monthly review of the ACLC's non-recurring expenses, it is our view that the ACLC substantially complied with this aspect of Condition #7 and Condition #5.

In sum, the ACLC did not fully comply with Condition #7 and a related aspect of Condition #5.

Condition #4

Condition #4 requires the ACLC to submit a financial restructuring plan to LAO for approval which would have the effect of stabilizing the clinic's financial position and improving its financial management. The plan was required to include the write-off of the \$50,009 account receivable from LAO shown in the ACLC's March 31, 2013 financial statements and was to include, as well, a plan for eliminating the ACLC's deficit of \$139,340 in respect to LAO funding made available to the ACLC by March 31, 2016, and the elimination of the accrued compensation liability for all employees.

With respect to the account receivable of \$50,009, this account receivable related to the phenomenon discussed above of surplus compensation funding in the context of non-disclosure of staff vacancies. In this instance, LAO withheld the sum of \$50,009 as a result of the vacancy of the Director of Legal Services ("DLS") position. It is unnecessary to describe here the nature of the disagreement between LAO and the ACLC concerning the status of this amount. This Committee was satisfied, however, on the basis of a written statement from the ACLC's auditors, that this amount has in fact been written off.

Accordingly, our finding is that this aspect of Condition #4 has been complied with by the ACLC.

With respect to the requirement that the ACLC prepare an adequate financial restructuring plan with the elements briefly alluded to above, we have concluded that the ACLC did not make a reasonable attempt to comply with this aspect of Condition #4. The ACLC's purported compliance with this requirement was a paragraph contained in a letter to LAO from ACLC's counsel asserting that the ACLC had significantly reduced its deficit and will be reducing it further, that its accrued compensation liability has been eliminated and that there were anticipated difficulties in writing off the \$50,009 account receivable that it would attempt to resolve with the auditor. This brief paragraph did not actually provide any information as to the measures taken or that would be taken to reduce the deficit, nor the measures that were being taken or will be taken to stabilize the clinic's financial position and improve its financial management. This aspect of Condition #4, in our view, has not been met.

In sum, the ACLC has not fully complied with Condition #4.

Condition #5

Condition #5 imposed a series of requirements relating to the improvement of financial management by the ACLC. In brief, it required three different types of measures. First, it required the ACLC to have fully implemented, within 90 days, the policies and directives applicable to all clinics concerning travel, meals, hospitality and procurement and adopt best practice financial controls, including restrictions on the use of corporate credit cards.

Second, it required the implementation of a number of financial reporting systems, including the establishment of a detailed budget for expenditures of funds provided by LAO, such budget to be approved by the ACLC Board of Directors with quarterly reports to LAO comparing actual expenses to the approved budget.

Third, Condition #4 required that any inter-fund transfers between LAO funds and other programs managed by the ACLC be reported to LAO on a monthly basis, that no bonuses be paid to ACLC employees without LAO approval, that LAO be present at the ACLC Board of Directors meeting when the external auditors present the annual audit and that LAO's Internal Audit Unit ("IAU") be permitted to contact the ACLC's external auditors.

With respect to the preparation of budgets, it is uncontested that the ACLC failed to prepare a budget in accord with the instructions in Condition #5. The ACLC provided, however, a series of explanations for its failure to do so. It is our view, however, that the explanations provided, which were examined by this Committee at some length, are unconvincing. It is surprising to this Committee that the ACLC does not have a practice of preparing and maintaining annual budgets as this would seem to be a necessary instrument of financial management in a large organization like the ACLC. It is this Committee's view that the ACLC's failure to engage in a budget exercise amounts to substantial non-compliance with Condition #5.

With respect to restrictions on the use of credit cards, the ACLC simply refused to adopt the recommendation made in the PwC Forensic Audit Report, that the ACLC cease its practice of making cash pre-payments on its corporate credit cards. A more appropriate course, in our view, would have been to seek an exception or revision of the recommendation from this Committee.

Our finding with respect to Condition #5, then, is with the exceptions noted above concerning the preparation of budgets, the quarterly reporting of actual expenses and the issue of the credit card pre-payment, the remainder of the requirements of Condition #5 have been implemented.

In sum, there has been partial compliance with Condition #5.

Condition #6

Condition #6 required the ACLC to cooperate with an independent audit in order to settle the controversy concerning the elimination by the ACLC of the rather substantial overtime compensation liability to the Executive Director. Our finding is that the ACLC did cooperate with such an audit and that the information provided thereby was satisfactory.

Condition #8

At an early stage in LAO's investigation of allegations made by third parties of financial mismanagement at the ACLC, LAO retained PricewaterhouseCoopers LLP ("PwC") to conduct a forensic audit of the ACLC's finances as part of the Level One DRP process. In the extensive Financial Audit Report, PwC identified a number of problematic aspects of the ACLC's financial management practices and made recommendations designed to improve those practices. As well, in the supplementary report, the PwC Addendum Report, PwC audited the ACLC's use of credit cards and identified a number of problems including the use of credit cards for personal purchases and made a number of recommendations with respect to the reform of the ACLC's practices in this regard.

Condition #8 required that the ACLC fully implement all of the PwC Forensic Review recommendations within 90 days of the Clinic Committee's CC L3 Remedial Response Decision. Condition #8 also required that the ACLC fully cooperate with LAO's Internal Audit Unit ("IAU") to enable the IAU to verify the ACLC's compliance with Condition #8's requirement to implement the PwC Forensic Review recommendations.

Although the ACLC did substantially comply with the requirements that it facilitate verification of its compliance with the PwC recommendations by making relevant documents available to the IAU, it refused to allow the IAU to make copies of any of these documents. Similarly, it had refused to make copies of documents available to PwC in the course of its forensic review. It is our view that failure to cooperate with audits of this kind by refusing to make copies of relevant documents available to the auditors constitutes a substantial breach of the ACLC's obligations under Section 37 of the *Legal Aid Services Act (LASA)*. In its report, however, the LAO IAU indicates that it was sympathetic to the ACLC's refusal to provide copies of the documents and that it was able to "work around" this problem in preparing its report. Accordingly, and subject to this reservation, we conclude that the ACLC essentially complied with this aspect of Condition #8.

In terms of its implementation of the PwC recommendations, the IAU found that in the majority (78%) of instances, the ACLC had implemented or fulfilled the PwC recommendations within the timeframe required by Condition #8. While obviously some progress in implementation has been made, it is nonetheless the case that more than a fifth of the recommendations or 20% of the PwC recommendations have not been implemented by the ACLC. In sum, the ACLC has not fully complied with Condition #8.

The second category of conditions, Conditions 1, 2 and 3, as noted above, had, as its objective, the enhancement of the capacity of the ACLC Board to supervise the operations of the clinic and ensure that the ACLC complies with its obligations under the Legal Aid Services Act (“LASA”) and under the terms and conditions of its Funding Agreement with LAO.

Condition #1

Condition #1 provides for a set of arrangements concerning the presence of an LAO Observer at all ACLC Board of Directors’ meetings. The Observer was to be appointed by LAO and was to be provided with meeting materials in advance of the meetings. The Observer was to be permitted to provide the LAO perspective on issues discussed at Board meetings, but would not have voting rights or sit as a member of the ACLC Board. Condition #1 deals explicitly with the question of access to information and stipulates, in essence, that the Observer will have full access to all Board information, subject to certain exceptions relating to the present DRP process, the Association of Community Legal Clinics of Ontario (“ACLCO”), and material subject to solicitor-client privilege.

With respect to the question of compliance, the ACLC complied with Condition #1 in a general and technical sense in that it invited the LAO Observer to a number of Board meetings, provided her with relevant Board material and permitted her to engage discussions with the ACLC Board at these meetings. The LAO Observer was not invited to two Board teleconference meetings, but we accept the submissions of the ACLC that this constituted an “honest mistake” on their part.

The ACLC refused, however, to allow the LAO Observer to attend Board Committee meetings, including meetings of the Board Finance Committee. The ACLC also excluded the LAO Observer from Board meetings during discussions pertaining to funding received by the ACLC from other funders and refused to share financial information with her concerning other funding sources.

In our view, the refusal to share information concerning other sources of funding is a clear breach of the *LASA*, Section 37(2) (d) and Section 42 of the LAO/ACLC Funding Agreement. It also constitutes a failure to comply with Condition #1 of this Committee’s CC L3 Remedial Response Decision. The refusal to allow the LAO Observer to attend Board Committee meetings and the exclusion of the LAO Observer from Board meetings when matters concerning other funders was discussed also constitutes a failure to comply with Condition #1.

In summary, then, the ACLC has only partially complied with Condition #1.

Condition #2

Condition #2 required the ACLC to comply with the requirements set out in Section 10 of the LAO/ACLC Funding Agreement with respect to the composition of the Board of Directors of the clinic. Section 10 provides a list of categories of persons that would be

included in the Board (“persons with financial skills” and “lawyers”). LAO interprets this requirement as requiring the ACLC to appoint at least two persons with financial skills and two lawyers.

Since the resignation in protest of the two lawyer members of the ACLC Board in 2009, there does not appear to have been any new lawyer members appointed to the Board. There were no lawyers on the Board at the time of this Committee’s deliberations on the LAO L3 Staff Report. In recent months, the ACLC has appointed only one new lawyer member of the Board. As far as persons with financial skills are concerned, the ACLC asserts that an accountant has been appointed to the Board. The ACLC also asserts that there are two other persons on the Board with financial skills, but it is difficult to determine, in the absence of resumes, whether these individuals possess sufficient financial expertise and experience to comply with this requirement.

In sum, the ACLC has not complied with Condition #2.

Condition #3

Condition #3 requires the ACLC Board to organize within six months of this Committee’s CC L3 Remedial Response Decision and to successfully complete within nine months of that date, an appropriate Board training experience for all members of the ACLC Board on the duties and responsibilities of Board members, including the duties of monitoring, oversight and risk management. The organization of the program was to be done in collaboration with LAO staff and subject to their approval.

The ACLC did not move in a timely fashion to seek compliance with this condition. Although the ACLC did propose two vendors over a period of several months, LAO had legitimate reservations concerning the proposed vendors and proposed a number of alternative vendors to the ACLC. By the time of the submission to this Committee of the LAO L3 Staff Compliance Report on November 6, 2015, (approximately one year after issuance of this Committee’s revised set of the eight conditions), the ACLC had neither organized nor completed a training program of the kind described in Condition #3.

In sum, the ACLC did not comply with Condition #3.

Conclusion

Counsel for the ACLC has submitted that the ACLC’s failure to fully comply with the eight conditions is merely partial and that the failure to fully comply results from a lack of co-operation by LAO Staff. The ACLC Compliance Response stated in part, the following with respect to the ACLC’s level of compliance with the eight conditions:

“The majority of these conditions have been discharged. The remainder – those that remain in force until a future date – have been complied with and have been partially satisfied. The conditions which have not yet been fully discharged require the co-operation of LAO staff and it has prohibited

full execution. LAO staff routinely take unreasonable and contradictory positions, mischaracterise facts, refuse to respond to or co-operate with the ACLC and thwart the ACLC's ability to discharge the conditions."

This Committee, for the reasons set out above takes a different view. We have concluded, in light of the evidence filed and the submissions made by the parties, that of the conditions imposed upon the ACLC by this Committee's CC L3 Remedial Response Decision, the ACLC fully complied with only one of the eight conditions, that being Condition #6 which required the ACLC to cooperate with an independent audit of the compensation time accrual reduction concerning the Executive Director. With respect to each of the other seven conditions, the ACLC engaged in merely partial compliance. Moreover, the deficiencies in ACLC's compliance, identified above, are, in our view, both substantive and substantial. The ACLC has yet to take sufficient steps to demonstrate to LAO that it is prepared to improve its financial management and governance practices in such a way as to demonstrate that can and will utilize the public funds made available to it by LAO in a manner that is effective, transparent and accountable. Further, in many instances, its refusal or failure to comply with particular conditions constituted not only a failure to fully comply with the condition in question, but also constituted a failure to abide by its obligations under LASA and under the LAO/ACLC Memorandum of Understanding and the LAO/ACLC Funding Agreement. Accordingly, it is our view that the ACLC has failed to fully comply with the eight conditions imposed by this Committee's CC L3 Remedial Response Decision and remains in "fundamental breach" of those obligations as that term is defined in Section 26 of the DRP.

Part VI – LAO’s Commitment to the African Canadian Community

Although the LAO L3 Staff Compliance Report recommended a cessation of LAO funding of the ACLC as a result of its “fundamental breach” of its statutory obligations and its obligations under the LAO/ACLC Memorandum of Understanding and the LAO/ACLC Funding Agreement, the LAO staff wished to reassure members of the African Canadian community that it would continue and review its support for the community by funding legal aid services designed to facilitate access to justice for community members. The LAO staff report addressed these issues in the concluding paragraphs of the report in the following terms:

“LAO’s commitment to the African Canadian community is unwavering. LAO believes test case litigation, community outreach, and law reform are critical to achieving access to justice for the African Canadian community. LAO has no intention of reducing its funding of this important work, or its funding of services to the African Canadian community generally. In fact, LAO has recently increased its engagement in work supportive of the African Canadian community with the creation of LAO’s Racialized Communities Strategy. This project is led by policy counsel dedicated exclusively to addressing the over-representation of racialized communities in the justice system. Through this initiative, LAO is deepening its involvement in ongoing and emerging issues affecting racialized communities, such as carding.

LAO has a duty to the African Canadian community and to the public at large to ensure that the community legal clinics it funds operate in a professional, transparent and fiscally responsible manner. Since 2010, LAO has been engaged in the DRP process with ACLC’s Board and management, working in good faith to support ACLC’s compliance with its legal obligations and public sector norms.

LAO has given ACLC’s Board and management every opportunity to comply with the Committee’s Decision and Conditions, and to solve their longstanding governance and financial problems. As outlined above, ACLC’s Board and management have failed to comply with the Conditions. LAO has come to the unfortunate, but inescapable conclusion that ACLC’s Board and management are unwilling to fulfill their obligations, and are not acting in good faith.

Despite now being in the most serious stage of the DRP, ACLC’s Board and management have not cooperated with LAO. They have not remediated the obligations they were found to have breached, and are still in fundamental breach. They have undermined the remedial intent of the Committee’s Decisions.

Further, the longstanding approach of ACLC’s Board and management to LAO as an organization, and to individual LAO staff is unprofessional and disrespectful, and has become intolerable. ACLC’s Board and management have made it impossible for LAO to carry out its statutory obligation to monitor and oversee ACLC. And to ensure accountability for public funds. The funds ACLC’s Board and management have misused and mismanaged could have been, and should have been, spent on services for the African Canadian community.

This conclusion is in no way a reflection upon staff of ACLC. From LAO's perspective, ACLC's staff are capable, hard-working professionals deeply committed to social justice. LAO admires and is very grateful for their work. LAO's recommendations is based entirely on the acts and omissions of ACLC's current Board and Executive Director.

LAO staff recommends that the Committee exercise its authority under *LASA* Section 39(4), the MOU, the FA and the DRP to suspend LAO's funding of ACLC, and to deny ACLC's 2014-15 Funding Application, as well as any future request for funding by ACLC's Board and management.

If the Committee follows this recommendation, the LAO funds currently flowing to ACLC will be redirected to ensure continuity of service to the African Canadian community. In the immediate term, LAO has the capacity to deliver the services it is currently funding ACLC to deliver. LAO would be supported by the advice of an external advisory committee drawn from leaders in the African Canadian community. The intention would be to move as quickly as reasonably possible to seek proposals for an independent not-for-profit corporation with a properly qualified board of directors from the African Canadian community to provide the LAO-funded legal services currently being provided by ACLC.

It is important to note that ACLC is a not-for-profit corporation with voting members who are approved by its Board of Directors. According to ACLC's most recent audited financial statements, ACLC's total funding was approximately \$2,093,368 in 2014/15. LAO funds ACLC monthly totalling \$719,390 annually, which represents approximately 35% of ACLC's overall 2014-15 income. Therefore, if the Committee follows this recommendation, ACLC may continue certain of its work, provided other funds continue to fund ACLC. LAO staff cannot continue to recommend that ACLC be provided with any further LAO funding."

Counsel for the ACLC responded to these submissions by suggesting that the establishment of a new clinic would not likely be an easy matter, in his view. The preferable course, he suggested, was to preserve and build upon the valuable work that the ACLC has accomplished over the years. Counsel for LAO responded to these submissions by observing that, while creating a new clinic would not be an easy matter, it would be easier than making further attempts to hold the ACLC accountable for its expenditure of public funds, an exercise that has absorbed considerable LAO resources and staff time in recent years. Further, he suggested that LAO has a good deal of experience in supporting the creation of new community legal clinics.

Part VII – Section 39(5) of the Legal Aid Services Act (LASA) Issue

At the conclusion of the hearing, counsel to the Clinic Committee, Richard Steinecke, made submissions with respect to the various options available to the Committee in the event that it came to the conclusion that the African Canadian Legal Clinic (ACLC) is not in substantial compliance with the Conditions imposed in this Committee's Level Three Remedial Response dated September 5, 2014. He expressed his view that if the Committee decided that a decision to reduce or suspend funding to the clinic was appropriate, the Committee would be obliged under Section 39(5) of *LASA* to "give notice of its intent to do so and to provide a reasonable opportunity to comply with this Act or the terms and conditions or direction or to meet the operational standards". Section 39(4) and (5) provide as follows:

39. (4) If the board of directors of the Corporation is of the opinion at any time that a clinic funded by the Corporation is not complying with this Act or with the terms and conditions attached to its funding or with a direction issued under section 38 or is not meeting the operational standards established by the Corporation, the board of directors may reduce or suspend the funding of the clinic.

Notice to clinic

(5) Before taking any action under subsection (4), the board of directors of the Corporation shall give the board of directors of the clinic notice of its intent and a reasonable opportunity to comply with this Act or the terms and conditions or direction or to meet the operational standards. 1998, c. 26, s. 39.

Mr. Steinecke also suggested that counsel for the parties be invited to make submissions on this point.

LAO counsel submitted that a reasonable time to comply had already been imposed by the Committee in its September 5, 2014 CC L3 Remedial Response Decision and that the time had expired, and indeed, a much longer period of time than stipulated in the Decision and that this period of time constituted "a reasonable opportunity to comply".

ACLC counsel submitted that no decision was taken by this Committee in its September 5, 2014 Decision to reduce or suspend the funding to the clinic. Rather, the Committee had expressed the view that if LAO staff was of the view that the ACLC had failed to comply with the conditions of the Level Three Remedial Response, the staff may recommend to the Committee that the funding of the ACLC be reduced or suspended. Accordingly, in his view no decision to suspend or defund under Section 39(4) was taken in September, 2014 and further, if such a decision were now to be taken by the Clinic Committee, it would be subject to the requirement of Section 39(5) to provide notice of its intention and a reasonable opportunity to comply.

The response of LAO Counsel was to submit that interpreting Section 39(4) and (5) in this fashion could result in an endless cycle of notices and reasonable opportunities since a decision to defund would only be taken at the end of a reasonable opportunity

and again become subject to the requirement of notice and a reasonable opportunity under Section 39(5).

We are not persuaded that the combined effect of Sub-sections (4) and (5) of Section 39 does create the prospect of an endless cycle of this kind, but we do agree with Mr. Steinecke and counsel for the ACLC that a critical question is whether a decision to reduce or suspend funding was in fact taken by this Committee on September 4, 2014. In this regard, it is necessary to review carefully the precise wording of the opening paragraphs of Part V: Decision, of the September 5, 2014 decision. They read as follows:

“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.*” (Emphasis added).

In our view, Mr. Steinecke’s advice on the point is sound. The Committee’s September 5th, 2014 Decision does not purport to reduce or suspend the funding of the ACLC. It explicitly leaves that decision to another day on the basis of staff advice to that effect. Accordingly, in our view, a decision to suspend the funding of the ACLC on this occasion would engage the notice requirement of Section 39(5) of LASA.

PART VIII – CONCLUSION AND DECISION

In its September 5, 2014 Clinic Committee Level Three Remedial Response Decision (“CC L3 Remedial Response Decision”), this Committee decided that the African Canadian Legal Clinic (“ACLC”) was in fundamental breach of its obligations under Section 25 of the Legal Aid Ontario (“LAO”) Dispute Resolution Policy (“DRP”), and accordingly, this Committee imposed a Level Three Remedial Response Decision on the ACLC that required the ACLC to comply with eight conditions. The Decision further stipulated that, pursuant to Sections 34(5), 35 and 38(1) of the *Legal Aid Services Act* (“LASA”), this Committee’s approval of the 2014-15 funding application of the ACLC is conditional upon the ACLC’s compliance with the eight conditions of the CC L3 Remedial Response Decision. Further, the Decision provided that if, in the opinion of LAO staff, the ACLC fails to comply with the conditions of the CC L3 Remedial Response Decision, 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. In its November 6, 2015 LAO Staff Compliance Report, LAO staff alleged that the ACLC had not complied with the eight conditions of the CC L3 Remedial Response Decision and recommended that this Committee exercise its authority under Section 39(4) of LASA, under the LAO/ACLC Memorandum of Understanding (“MOU”), under the LAO/ACLC Funding Agreement and the DRP, to suspend LAO’s funding of the ACLC and to deny the ACLC’s 2014-15 funding application as well as any future requests for funding by the ACLC’s Board and Management.

As noted above in Parts IV and V of these Reasons, we have concluded that the ACLC has not in fact fully complied with the eight conditions set out in the CC L3 Remedial Response Decision. Indeed, it is our view that the ACLC has only fully complied with one of these conditions, that being Condition #6 and is in significant default in its failure to comply with each of the other seven conditions. As we further noted in Parts IV and V of these Reasons, a number of the failures of the ACLC to comply with the eight conditions also constitutes non-compliance with its obligations of transparency under Section 37 of LASA and with various aspects of the LAO/ACLC MOU and the LAO/ACLC Funding Agreement. Thus, for example, the ACLC has either declined or refused to provide financial information concerning various matters to LAO during the course of this remedial process. This conduct constitutes, in our view, a clear breach of Section 37(d) of LASA which requires the ACLC to provide “any other financial or other information related to the operation of the clinic that the corporation may request.” Particularly troubling from this Committee’s perspective is the fact that on numerous occasions, misleading or false information was provided by the ACLC to LAO in order to secure improper access to LAO funding in order to facilitate unauthorized use of the funding in question.

For these and for other reasons set out in Parts IV and V of these Reasons, we remain of the view that the ACLC is in “fundamental breach” of its obligations under LASA and under the LAO/ACLC MOU and the LAO/ACLC Funding Agreement. Accordingly, it is our conclusion that the relationship between the ACLC and LAO has become dysfunctional as a result of the apparent unwillingness and/or incapacity of the ACLC

Board of Directors to comply with public sector norms in its governance and financial management and practices. Accordingly, in our view, it is appropriate, as recommended by the LAO staff, that this Committee suspend LAO's funding of the ACLC and to the extent it is not moot given that interim funding was provided during this period, leave unchanged the Committee's decision in 2014 withholding approval of the ACLC's 2014-15 Funding Application.

As noted in Part VII of these Reasons, however, it is our view that Section 39(5) of *LASA* requires this Committee to give the Board of Directors of the ACLC "notice of its intent" to exercise its authority under Section 39(4) of *LASA* to suspend the funding of the ACLC and to provide "a reasonable opportunity to comply with this Act or the terms and conditions or direction or to meet the operational standards" established by LAO. Accordingly, we herewith giving notice to the Board of Directors of the ACLC that this Committee intends to exercise its authority under Section 39(4) of *LASA* to suspend the funding of the clinic on December 31, 2016, unless, by that time, the ACLC will have fully complied with the eight conditions set out in this Committee's CC L3 Remedial Response Decision to the satisfaction of this Committee. Full compliance with the eight conditions will include the reinstatement of the LAO Observer pursuant to Condition #1. This Committee is of the view that the granting of slightly more than six months' notice of its intention to suspend funding of the ACLC provides a reasonable time within which the ACLC can either succeed in fully complying with the eight conditions or alternatively, organize its affairs in such a way as to continue its operations without such funding.

This Committee will advise the parties of dates in December of 2016 when it can be available to the parties to entertain written or oral submissions from the parties concerning the question as to whether the ACLC has fully complied with the eight remedial conditions imposed by this Committee along with a proposed procedure for the parties to follow.

APPENDIX A – LEVEL THREE 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 (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). 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 cooperate 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.

APPENDIX B – GLOSSARY OF ACRONYMS AND SHORT-FORM REFERENCES

ACLC

African Canadian Legal Clinic.

ACLC Compliance Response

The ACLC's undated written response to the LAO L3 Staff Compliance Report received by this Committee on December 23, 2015.

ACLC L3 Response

A document prepared by the ACLC dated June 9, 2014 filed with this Committee which sets out the ACLC's response to the LAO L3 Staff Report.

ACLCO

Association of Community Legal Clinics of Ontario.

Clinic Committee

The Clinic Committee of the LAO Board of Directors (often referred to in these reasons as "this Committee") is created by LAO pursuant to Section 8 of the *LASA* with a mandate that includes hearing appeals by clinics from decisions made by LAO on clinic funding applications. Additionally, the LAO Board of Directors has delegated its authority under Sections 34(5), 38(1) and 39(4) of *LASA* to require compliance by clinics with their statutory obligations under *LASA* and their obligations under their funding arrangements with LAO. The present proceeding is a proceeding before this Committee.

CC L3 Remedial Response Decision

This is the decision of this Committee (the "Clinic Committee") dated September 5, 2014, which, in response to the LAO L3 Staff Report, determined that it was appropriate to impose a DRP Level Three remedial response upon the ACLC and to impose eight conditions on the ACLC, compliance with which are the subject of the present proceedings. At the request of the ACLC, a further hearing was conducted by this Committee to entertain submissions from the ACLC to the effect that the terms of the eight conditions be revised in some respects. This Committee issued, on November 7, 2014, a further decision revising, to some extent, the eight conditions. The revised set of conditions are reproduced as Appendix A to this Decision.

DLS

The Director of Legal Services position at the ACLC.

DRP

The "Dispute Resolution Process" is provided for in the MOU entered into by LAO with each of its clinics. The purpose of the DRP is to provide a framework for addressing situations where LAO has reason to believe that a clinic is not complying with its obligations, whether they be statutory in nature under the

provisions in *LASA*, or imposed under the terms and conditions of the funding made available to the clinic in question by LAO, such terms and conditions being set out in the Memorandum of Understanding (MOU) and Funding Agreement entered into by the particular clinic with LAO. The DRP provides for a staged process of monitoring and moves through three “levels” of formality or intensity if success in ensuring compliance by the clinic is not achieved at an earlier stage.

Fundamental Breach

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 provide to Lao, significant reduction in the provision of clinic law services, significant personnel problems or significant board governance problems.”

Funding Agreement

A Funding Agreement is entered into by LAO with each of the community legal clinics it funds, including the ACLC. The Funding Agreement sets out the process for a clinic’s annual application for funding from LAO and sets out the terms and conditions of that funding.

IAU

The Internal Audit Unit of Legal Aid Ontario which performed an audit of the ACLC’s compliance with Condition #8 of this Committee’s CC L3 Remedial Response Decision.

IAU Report

The report of the IAU of ACLC’s compliance with Condition #8 of the Committee L3 Remedial Response Decision.

LAO

Legal Aid Ontario

LAO L3 Staff Report

A two-volume document filed by LAO with this Committee dated April 3, 2014 requesting that this Committee impose a Level Three Remedial Response under the DRP upon the ACLC on the basis that LAO’s concerns relating to the ACLC have not been resolved at Levels 1 and 2 of the DRP and that the ACLC is in “fundamental breach” of its obligations.

LAO L3 Staff Compliance Report

A report dated November 6, 2015 filed with this Committee alleging that the ACLC had failed to comply with the conditions imposed upon the ACLC by this Committee in its CC L3 Remedial Response Decision and that as a result, this Committee should decide to suspend or terminate LAO funding of the ACLC.

LAO Observer

Under Condition #1 of this Committee's CC L3 Remedial Response Decision, ACLC was required to invite an LAO Observer to attend and participate in ACLC Board meetings. LAO appointed M. Michelle Séguin, LAO's Vice-President and Chief Administrative Officer as the LAO Observer.

LASA

Legal Aid Services Act, 1998, S.O. 1998, c.26, an Ontario statute that established LAO and regulates its governance of the legal aid system, including the funding of community legal clinics.

LDD

Legal Disbursements Deficit, a deficit in the Legal Disbursements Account of the ACLC which is the account maintained for funds provided by LAO to the ACLC to cover legal disbursements of certain kinds.

MOU

A Memorandum of Understanding is entered into by LAO with each of the clinics it funds, including the ACLC. The MOU sets out the terms and conditions of the relationship between LAO and the clinic in question, pursuant to which LAO will provide funding to the clinic in question.

PwC

PricewaterhouseCoopers LLP, the accounting firm that was retained by LAO to conduct the Forensic Audit of the ACLC, which commenced on June 11, 2011 and was completed in January of 2012, and on a supplementary audit relating to credit card expenditures on April 18, 2013.

PwC Addendum Report

A supplementary report to the PwC Forensic Audit Report focussing on issues relating to credit card use by the ACLC.

PwC Forensic Audit

The forensic audit of the ACLC conducted by PwC in 2011 and 2012.

PwC Forensic Audit Report

The Report prepared by PwC with respect to its forensic audit of ACLC.

APPENDIX C – TIMELINE

The following is a brief timeline of principal dates for the convenience of the reader. A more detailed chronology is set out in Part III of these Reasons.

September 8, 2009

LAO provides detailed statement of concerns with respect to the management of the ACLC.

March, 2010

LAO receives copy of email from lawyer [REDACTED] to ACLC Board members resigning in protest [REDACTED] position as a member of the ACLC Board due to [REDACTED] perception of “gross misconduct and illegalities.”

LAO receives a copy of an email from lawyer [REDACTED] to ALCL Board members resigning [REDACTED] position as an ACLC Board member because of the Board’s failure to address “concerns about financial and governance matters of the ACLC.”

LAO later learned that during this period, similar concerns were raised by [REDACTED] [REDACTED] whose membership in the ACLC was subsequently revoked making [REDACTED] no longer eligible to serve on the ACLC Board.

September 7, 2010

After meetings with the ACLC Board that did not resolve LAO’s concerns, LAO advised the ACLC that it was being placed under Level One of LAO’s Dispute Resolution Policy (“DRP”). The letter so advising ACLC listed twelve items of concern and advised ACLC that LAO would be retaining an auditor to conduct a forensic audit of the clinic’s finances.

April 11, 2011

LAO retained PricewaterhouseCoopers LLP (“PwC”) to conduct a forensic audit of the ACLC’s finances during the period from April 1, 2007 to March 31, 2010.

January, 2012

PwC completed a draft of its Forensic Audit Report.

February, April, 2012

LAO retained PwC to perform a supplementary audit of certain credit card expenditures during the period from April 1, 2007 to April 30, 2012/

May 16, 2012

PwC presented a draft of its Forensic Audit Report to the ACLC Board. LAO invited feedback from ACLC by June 6, 2012.

June 27, 2012

Having received no feedback on the draft PwC Forensic Audit Report, LAO Vice-President Budgell wrote to the ACLC proposing four remedial measures in light of the findings in the draft PwC Forensic Audit Report.

July 4, 2012

ACLC counsel wrote to LAO objecting to the remedial measures.

July 12, 2012

LAO Vice-President Budgell wrote to ACLC summarizing certain findings in the draft PwC audit, invoking Level Two of the DRP and proposing certain remedial measures to be adopted by the ACLC.

July 20, 2012

ACLC counsel wrote to LAO objecting to the remedial measures.

April 8, 2013

Final versions of PwC Forensic Audit Report and PwC Addendum Report made available to LAO.

April 3, 2014

Vice-President Budgell forwarded a two volume document titled “Dispute Resolution Policy: Level Three Report – African Canadian Legal Clinic (“LAO L3 Staff Report”) to this Committee. The document proposed that this Committee invoke Level Three of the Dispute Resolution process and impose eight remedial conditions upon the ACLC and further, proposing that if the ACLC did not comply with the conditions, LAO staff could return to this Committee and recommend that this Committee exercise its statutory authority to suspend LAO funding of the ACLC.

June 9, 2014

The LAO Clinic Committee received the two volume undated response of the ACLC (the “ACLC L2 Response”) to the LAO L3 Staff Report.

September 5, 2014

The Clinic Committee released its decision (the “CC L3 Remedial Response Decision”) in the matters raised in the LAO L3 Staff Report and the ACLC L3 Response, imposed Level Three of the Dispute Resolution Policy and imposed the eight conditions upon the ACLC suggested in the LAO L3 Staff Report.

November 7, 2014

In response to the request from the ACLC dated October 7, 2014 for reconsideration of the eight remedial conditions, this Committee entertained written and oral submissions from the parties and issued a Decision revising the remedial conditions in some respects (the revised conditions being set out in Appendix A to this Decision).

November 6, 2015

LAO Staff filed with this Committee a memorandum titled “Failure of ACLC’s Board and Management to Comply with Conditions of Level Three Decision” (the “LAO Staff Compliance Report”) together with two volumes of exhibits, alleging that ACLC had failed to comply with the eight conditions imposed by this Committee in its CC L3 Remedial Response Decision and requesting this Committee to suspend LAO’s funding of the ACLC.

December 23, 2015

ACLC’s written updated response to the LAO L3 Staff Compliance Report is received by this Committee (the “ACLC Compliance Response”).

March 18, 2016

An oral hearing was convened by this Committee to entertain submissions from the parties concerning the matters raised by the LAO L2 Staff Compliance Report and the ACLC Compliance Response.

April, 2016

At the request of the Committee and with the consent of LAO and the ACLC, LAO’s Internal Audit Unit completed and made available to this Committee and LAO and the ACLC an audit report (the “IAU Report”) of ACLC’s compliance with the recommendations in the PwC Forensic Audit Report, pursuant to Condition #8 imposed upon the ACLC by this Committee’s CC L3 Remedial Response Decision, following which written submissions of the parties concerning the significance of the IAU Report were entertained by this Committee.