

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 this Committee determined on June 20, 2016 that the ACLC had not then fully complied with the eight remedial conditions and remained in fundamental breach of its obligations under Section 26 of the Dispute Resolution Policy, this Committee gave notice to the ACLC that LAO would suspend its funding of the ACLC on December 31, 2016 unless it had, 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;

AND WHEREAS this Committee invited both parties to make written submissions to this Committee in December of 2016 in the event that contention remained as to whether the ACLC had fully complied with the eight remedial conditions;

AND WHEREAS the parties did file written submissions to this Committee on December 1 and December 12, 2016;

AND WHEREAS this Committee granted an adjournment in these proceedings on January 19, 2017 including the proposed commencement date of suspension in order to facilitate the provision of further information by the parties;

AND WHEREAS this Committee has determined that the ACLC has not fully complied with the said eight remedial conditions and remains in fundamental breach of its statutory obligations under LASA and the terms and conditions of its funding from LAO;

This Committee has decided to suspend LAO funding of the ACLC. This suspension will be effective September 30, 2017 or at such later date as may be mutually agreed to by LAO and the ACLC.

August 16, 2017.

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	12
D) APPLICATION OF THE DISPUTE RESOLUTION PROCESS TO THE ACLC: A BRIEF SKETCH	14
PART III – BRIEF CHRONOLOGY	17
A) 2009-2012: THE DEVELOPMENT OF LAO’S CONCERNS AND THE IMPOSITION OF LEVEL ONE OF THE DRP.....	17
B) 2012-2014: IMPOSITION OF LEVEL TWO OF THE DRP	20
C) APRIL TO SEPTEMBER, 2014: IMPOSITION OF LEVEL THREE OF THE DRP AND THE EIGHT CONDITIONS	21
D) NOVEMBER, 2015 TO JUNE 20, 2016: CLINIC COMMITTEE DECIDES THAT THE ACLC HAS FAILED TO COMPLY WITH THE EIGHT CONDITIONS.....	26
E) THE JUNE 20, 2016 DECISION: A BRIEF SUMMARY OF ITS FINDINGS	26
F) JUNE 20, 2016 TO DECEMBER 31, 2016 – SIX MONTHS NOTICE THAT THE FUNDING OF THE ACLC WOULD BE SUSPENDED	34
G) DECEMBER 31, 2016 TO THE PRESENT: THIS COMMITTEE’S INTERIM DECISION OF JANUARY 19, 2017	35
PART IV – ANALYSIS – DID ACLC SUCCESSFULLY CURE THE DEFICIENCIES IN ITS COMPLIANCE WITH THE REMEDIAL CONDITIONS DURING THE EXTENDED NOTICE PERIOD?	40
CONDITION #1	41
CONDITION #2	50
CONDITIONS #4 AND #5	51
CONDITION #7	68
PART V – CONCLUSION AND DECISION.....	72
PART VI – LAO’S COMMITMENT TO THE AFRICAN CANADIAN COMMUNITY	78

APPENDICES

APPENDIX A – CONDITIONS AS REVISED ON RECONSIDERATION BY THE CLINIC COMMITTEE 81

APPENDIX B – GLOSSARY OF ACRONYMS AND SHORT-FORM REFERENCES 85

APPENDIX C – TIMELINE 89

APPENDIX D – EVIDENCE OF FISCAL MISMANAGEMENT AS OF SEPTEMBER 5, 2014 93

Part I – Executive Summary:

This Decision of the Clinic Committee of the Board of Directors of Legal Aid Ontario (LAO) is an exercise of the authority conferred by its enabling statute, the *Legal Aid Services Act* (LASA) of Ontario with respect to the funding by LAO of community legal clinics across the Province of Ontario. Under the terms of LASA, LAO is permitted to provide funding which LAO has received principally from the Province of Ontario to community legal clinics across the province. The African Canadian Legal Clinic (ACLC) is one of seventy-four community legal clinics funded by LAO. Under LASA, LAO is required to monitor the operations of the community legal clinics which it funds. In circumstances where a clinic fails to comply with its statutory obligations under LASA or under the terms and conditions upon which funding is extended to a clinic by LAO, LAO may make such directions as it considers appropriate to the clinic, in an attempt to bring the clinic into compliance with these obligations. LASA further permits LAO to reduce or suspend the funding of a clinic where it is satisfied that the clinic has not complied with its statutory obligations under LASA or under the terms and conditions of its funding or with directions issued by LAO, in an attempt to bring the clinic into compliance with these obligations. The statute also provides that where the Board of Directors of LAO forms the intention to reduce or suspend such funding, it will provide the clinic in question with reasonable notice of its intentions and a reasonable opportunity for the clinic to comply with its statutory and other obligations.

In addition to these statutory arrangements, LAO has entered into a Funding Agreement (FA) and a Memorandum of Understanding (MOU) with each of the clinics, which imposes constraints on their expenditure of funds and creates various mechanisms to ensure transparency and accountability in circumstances where LAO develops concerns as to whether or not a clinic is living up to these obligations. LAO will investigate such concerns and is obliged to engage in a remediation process pursuant to the “Dispute Resolution Policy” (DRP), set out in these agreements. The DRP sets out a three-stage process of increasing intensity. Level One involves an informal process envisaging voluntary collaboration between LAO and the clinic in question. Level Two envisages a more formal process including the development of a remediation plan with a similar objective. In the event that matters are not resolved at Level One or Level Two, LAO has the authority, though only with the approval of this Committee, to impose a Level Three “Remedial Response” which may include mandatory requirements of the clinic to ensure compliance with its obligations and continued funding. This regulatory context is described in greater detail in Part II of this Decision.

LAO Staff (“LAO Staff”) first became aware of concerns with respect to the financial management and governance practices at the ACLC in 2009. These concerns became more intense when LAO received copies of emails to the ACLC from the two lawyer members of the Board of Directors of the ACLC, who were resigning from the Board in protest because of concerns relating to “financial irregularities”, “gross misconduct and illegalities”, and “concerns about financial and governance matters of the ACLC”.

Equally troubling was the fact that LAO learned that the Board Chair who raised similar concerns was removed from his position on the ACLC Board of Directors.

In the months following these allegations, LAO Staff met with the ACLC and in light of their growing concerns about these issues, invoked Level One of the DRP. The ACLC declined to participate in Level One of the DRP and, in due course, LAO sought to invoke Level Two of the DRP on July 12, 2012. Again, the ACLC declined to cooperate with LAO in the implementation of Level Two of the DRP.

During this period, LAO also retained PricewaterhouseCooper LLP (PwC) to conduct a forensic audit of the clinic's finances. The PwC Forensic Audit provided a good deal of troubling information concerning the ACLC's financial management and governance practices. Among other problems, it was revealed that the ACLC corporate credit card had been used to make what were obviously purchases of personal items, that compensation funding provided to the ACLC for LAO-funded staff positions, which could properly be used only to pay staff salaries was used to provide the Executive Director with approximately \$120,000 in bonuses over a four year period; that the Executive Director also claimed over \$150,000 of compensatory time, well in excess of the maximum hours permitted under the ACLC's personnel policy, that the ACLC appeared to be engaged in excessive spending on taxis, travel and meal expenses, that the ACLC was routinely using monies provided for the funding of one program to be improperly used to cover over-expenditures in other programs leading to an accumulated deficit, and that the ACLC had a large and growing accumulated deficit in the LAO-funded "General Fund" maintained by the ACLC. A more extensive summary of these and other problems concerning financial management and governance issues is set out in Appendix D to these Reasons in an excerpt from this Committee's Decision of September 5, 2014.

The PwC Forensic Audit Report also provided a lengthy list of recommendations for changes in ACLC policy that could address these concerns. In attempting to invoke Level Two of the DRP, LAO Staff sought agreement from the ACLC that it would implement a number of these recommendations. When the ACLC refused to cooperate with LAO Staff with respect to Level Two of the DRP, LAO Staff brought an application on April 3, 2014, requesting that this Committee exercise its authority to impose a Level Three Remedial Response upon the ACLC. After receiving extensive written and oral Submissions from the parties in the ensuing months, this Committee issued its Decision imposing a Level Three Remedial Response on the ACLC on September 5, 2014 ("CC L3 Remedial Response Decision"). That Decision of this Committee imposed eight remedial conditions on the clinic with the instruction that these conditions must be complied with by the ACLC if it is to be brought into alignment with its statutory and other obligations and to receive continued funding from LAO. Briefly stated, the eight conditions provided:

1. That an LAO Observer would be appointed to attend all ACLC Board meetings;
2. That the ACLC will comply with its obligations under its Funding Agreement to have a Board that includes at least two lawyers and two "persons with financial skills";

3. That the ACLC organize, within six months, and complete within nine months, an appropriate training experience for members of its Board of Directors;
4. That the ACLC submit a financial restructuring plan that would receive approval of LAO;
5. That the ACLC adopt certain policies relating to travel, meal and hospitality expenses, use of the corporate credit cards, disclosure of inter-fund transfers, and various other policies that would flow from implementation of the recommendations in the PwC forensic audit;
6. That the ACLC would cooperate with an independent audit of the reduction of compensatory time accrual reported by the ACLC;
7. That ACLC would abide by certain terms and conditions for the provision of monthly funding by LAO to the ACLC during the DRP process.
8. That the ACLC fully implement all of the PwC Forensic Audit recommendations, such implementation to be verified by LAO's Internal Audit Unit (IAU).

The eight remedial conditions briefly described above are reproduced in Appendix A to this Decision.

On November 6, 2015, LAO Staff filed a report with this Committee asserting that the ACLC had failed to comply with the eight remedial conditions and that on this basis, LAO Staff invited this Committee to make a decision to suspend LAO funding of the ACLC. In response, extensive written submissions were filed by the ACLC with this Committee on December 23, 2015. In due course and in response to a request for an oral hearing, oral submissions were entertained from both parties at a meeting of this Committee held on March 18, 2016. In April of 2016, at the request of this Committee, LAO's IAU completed and made available to this Committee and the parties, an audit report (the "IAU Report") of the ACLC's compliance with the recommendations in the PwC Forensic Audit Report. The IAU Report indicated that the ACLC had implemented most but not all of those recommendations. The filing of this report with this Committee was followed by further written submissions from the parties concerning the significance of the IAU Report.

In its Decision of June 20, 2016, this Committee concluded that the ACLC had only fully complied with one of the eight remedial conditions, that being Condition #6. On the basis of this finding, this Committee concluded that the ACLC remained in fundamental breach of its statutory and other obligations with respect to LAO funding and that a decision to suspend LAO funding of the ACLC was warranted.

In the June 20, 2016 Decision, however, LAO acknowledged that it was obliged, under section 39(5) of LASA, to give the ACLC Board notice of its intention to suspend funding and a reasonable opportunity to comply with the ACLC's statutory and other obligations. The Committee determined that six months would be a reasonable notice period and therefore provided in the June 20, 2016 Decision that the final decision of whether or not full compliance with the eight conditions had been achieved would be postponed to the end of December, 2016. This Committee also indicated that in the event that there was continued disagreement between the parties as to whether the ACLC had in fact fully complied with the eight remedial conditions by December, 2016, the parties would be invited to provide written submissions in December, 2016.

In the event, initial written Submissions were invited from the parties and were received on December 1, 2016. Written Reply Submissions from both parties were provided on December 12, 2016. In light of difficulties encountered by the parties in reaching agreement on a mutually convenient date for an oral hearing, the parties decided that this Committee could proceed to make its Decision on the basis of the December, 2016 written Submissions.

On January 19, 2017, this Committee issued its Interim Decision in which it concluded that, notwithstanding the fact that some progress in compliance with the conditions had occurred, the Committee remained of the view that there were several deficiencies in the ACLC's attempt at compliance with the eight remedial conditions. Further, the Committee indicated that it wished to have additional information on three issues and accordingly, that the Committee would adjourn this proceeding pending receipt of this additional information.

In the event, further information was provided by the ACLC with respect to the composition of the Board of Directors. Further, PwC was retained by LAO to provide an audit of the inter-fund transfer issue and a report of that audit was provided to the parties on April 25, 2017. In addition, the ACLC submitted a new version of its financial restructuring plan on April 28, 2017. A series of written Submissions from the parties was received, the last Rely Submission from the ACLC being received on June 7, 2017.

The Committee's deliberations began toward the end of June, 2017 and have resulted in the present Decision. A more extensive chronology of the events briefly described above is to be found in Part III of this Decision. Part III of this Decision also includes brief summaries of the previous Decisions of this Committee in this matter.

On the basis of the analysis set forth in Part IV of this Decision, this Committee has concluded that the ACLC did not successfully cure the deficiencies in its compliance with the eight remedial conditions during the extended notice period following June 20, 2016. More particularly, this Committee has concluded that the ACLC has failed to fully comply with Conditions #1, #4, #5 and #7. The consequence of this conclusion is that LAO will shortly suspend its funding of the ACLC.

This Committee had initially envisaged that if suspension of funding were to occur, the funding would be suspended as of December, 2016. However, the passage of time resulting from the adjournment issued in the Interim Decision of January 19, 2017 has had the effect of delaying the imposition of this Committee's intention to suspend funding. Accordingly, it is our Decision that funding should be suspended as of September 30, 2017 or on such later date as may be mutually agreed by the parties.

This decision to suspend the funding of the ACLC simply rests on our finding that the ACLC has not, during the extended period from September 5, 2014 to June, 2017, successfully complied with the eight remedial conditions and remains in fundamental breach of its statutory and other obligations. This Committee wishes to observe,

however, that this prolonged process has also revealed persistent difficulties encountered by LAO in its dealings with the ACLC. More particularly, even under the scrutiny imposed upon the ACLC by the eight remedial measures, the ACLC has declined to adopt a consistent practice of transparency and, indeed, candour in its dealings with LAO.

The record in this proceeding is replete with incidents in which the ACLC Board and management have refused to comply with LAO's inquiries and requests for information, with non-disclosure by the ACLC when disclosure was required by statute, the provision by the ACLC of misleading and, on occasion, false information in response to LAO's inquiries and belated disclosure of information after months and years of improperly refusing to disclose the information in question. Such conduct simply undermines any confidence that LAO could otherwise have that the ACLC would deal with LAO in transparent and straight-forward manner in the future. Moreover, this prolonged exercise in seeking to ensure ACLC's compliance with LASA and its MOU and FA with LAO has been a very burdensome and costly exercise for LAO, draining away resources that could otherwise be devoted to client service.

It is important to note, in light of the fact that this Committee has now decided that LAO funding of the ACLC will be suspended on September 30, 2017 or such later date as may be agreed to by the parties, that LAO Staff, both in their April 3, 2014 Submissions inviting this Committee to decide to suspend the ACLC's funding and in their more recent Submissions of May 5, 2017, have strongly reaffirmed the commitment of LAO to fund legal aid services designed to facilitate access to justice for members of the African Canadian community and, more particularly, by making such resources available to a new community-based organization.

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 *LASA*.

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.

In circumstances where LAO has determined that a clinic is not complying with its statutory obligations, with directions issued by LAO under Section 38 or the terms and conditions of its funding, Section 39(4) confers a discretion on LAO to reduce or suspend the funding of a clinic in the following terms:

Non-compliance by clinic

(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.

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 purpose of such a remediation exercise is to bring the clinic in question promptly into alignment with its statutory and other obligations.

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 the 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 this Committee titled "Submissions of the African Canadian Clinic" ("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.

After due deliberation, this Committee released its Decision of June 20, 2016 which determined that LAO funding of the ACLC should be suspended as a result of the ACLC's failure to comply with the eight remedial conditions and accordingly, its continuing fundamental breach of its obligations under Section 26 of the Dispute Resolution Policy.

The June 20, 2016 Decision also held, however, that the Committee was obliged under Section 39(4) and (5) of the *Legal Aid Services Act* (LASA) to give the Board of Directors of the clinic in question notice of its intention to suspend the clinic's funding and to provide a reasonable opportunity to comply with LASA or other terms and conditions of its funding. The Committee concluded that six months would constitute reasonable notice pursuant to this provision and accordingly, gave notice to the ACLC that LAO would suspend the funding of the ACLC on December 31, 2016 unless it had by that time fully complied to the satisfaction of this Committee with the eight remedial conditions imposed by this Committee's Decisions of September 5 and November 7, 2014.

This Committee further indicated that it would invite submissions from the parties in December of 2016 in the event that controversy remained with respect to the question of whether full compliance with the eight conditions had been achieved. In due course, the parties were invited to and did provide initial written Submissions on December 1, 2016 and Reply Submissions on December 12, 2016. Owing to difficulties encountered in finding mutually convenient dates for a hearing, the parties agreed that the matter could be determined on the basis of their written Submissions.

In its Interim Decision of January 19, 2017, this Committee concluded that notwithstanding the fact that the ACLC has made some progress toward compliance in some areas, there nonetheless remained a number of deficiencies in ACLC's compliance with the eight conditions.

There were, however, three points with respect to the Submissions of the parties with respect to which the Clinic Committee wished to have further information. First, the question of inter-fund transfers was the subject of vigorous disagreement between the parties. LAO submitted that the ACLC continued to employ inter-fund transfers and failed to report on them appropriately to LAO. The ACLC asserted that this was simply not the case. This Committee suggested that the proceedings be adjourned to permit either the LAO Internal Audit Unit (IAU) or other party designated by LAO to "ascertain the facts of the inter-fund transfer issue". Second, this Committee sought further advice

from the parties concerning the financial restructuring plan submitted by the ACLC just a few days before the deadline for submissions in December, 2016.

Further, with respect to Condition #2, the ACLC had submitted that in order to comply with its obligation to have at least two lawyers sitting as members of the ACLC's Board of Directors, it invited a Judge of the Ontario Court of Justice to sit as a member of the Board, thus bringing the number of lawyer Board members to the minimum requirement of two. This Committee expressed mild surprise that a sitting Judge would be permitted to accept such an appointment and asked for confirmation that the Judge in question would be able to take a full and active role in the Board deliberations and that his acceptance of the appointment to the ACLC Board was approved by the Chief Justice of that Court.

Although the January 19, 2017 Decision stipulated dates for submission of the materials in writing by the parties in late February and early March, delays in the proposed schedule resulted from two factors. First, PricewaterhouseCoopers (PwC) was retained by LAO to engage in the proposed review of inter-fund transfers. That study was finalized by PwC on April 25, 2017. Second, the ACLC proposed a new Financial Restructuring Plan dated April 28, 2017. In the event, it was agreed that the parties should make initial written Submissions on May 5, 2017, with Reply Submissions on May 16, 2017. In light of the submission of the new Financial Restructuring Plan by the ACLC, comments from the parties on that plan were requested and received on June 1, 2017.

The central issue before this Committee at this stage in the proceedings, then, is whether the ACLC, with the extended notice period which it has received from this Committee, has achieved, finally, full compliance with the eight remedial conditions. Further, if the answer to the question is negative, the Committee will further consider whether any persisting failures to comply constitute a "fundamental breach" of the ACLC's obligations, as that term is used in the DRP.

Part III – Chronology: Including Summaries of Previous Clinic Committee Decisions in this Matter

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]. 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 the Chair of the ACLC Board had also expressed concerns about the financial management of the clinic. Soon after the Board Chair raised these and other matters, his ACLC membership was cancelled and his position as Board Chair 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 proceeding leading to the Decision of June 20, 2016, 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 Funds 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) April to September, 2014: 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 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

(A more detailed account of the September 5, 2014 findings of this Committee concerning the existence of wrongdoing on the part of the ACLC grouped under a slightly modified version of these headings is set out in Appendix D to this Decision).

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 *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.

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. 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.

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 of PwC's 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.

d) November, 2015 to June 20, 2016: Clinic Committee decides that ACLC has failed to comply with the eight conditions

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 unresponsive 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.

This Committee issued a Decision concerning this matter on June 20, 2016, in which it held that the ACLC had not successfully complied with the eight conditions. It is unnecessary for present purposes to set out at length the various and conflicting Submissions made by the parties and the detailed factual findings made by this Committee in its June 20, 2016 ruling. These matters are discussed at considerable length in the Reasons for Decision issued by this Committee on June 20, 2016. For present purposes, however, it will be useful to briefly summarize the findings made by this Committee in its June 20, 2016 Decision.

e) The June 20, 2016 Decision: A Brief Summary of its Findings

As noted above, the eight conditions with which the ACLC was required to comply are reproduced in Appendix A to this Decision. We will briefly allude to important aspects of each condition before briefly summarizing this Committee's June 20, 2016 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 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.

This Committee observed that 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 had been 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, the Committee observed that 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.

The Committee concluded that 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. Although there was a 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, the Committee concluded 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, this Committee 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 had not been met.

The Committee concluded that the ACLC had 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 #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, 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.

This Committee concluded that there had 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. This Committee made a finding 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. This Committee concluded that the ACLC had 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 in 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 *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.

This Committee concluded that the ACLC had 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 had not been any new lawyer members appointed to the Board. Thus, there were no lawyers on the Board at the time of this Committee’s deliberations on the LAO L3 Staff Report. In recent months, however, the ACLC had appointed only one new lawyer member of the Board. As far as persons with financial skills are concerned, the ACLC asserted that an accountant has been appointed to the Board. The ACLC also asserted 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.

The Committee concluded that the ACLC had 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.

The Committee concluded that the ACLC did not comply with Condition #3.

In its June 20, 2016 Decision, this Committee summarized its findings in the following terms:

"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."

- f) June 20, 2016 to December 31, 2016 – Six Months Notice that the funding of the ACLC would be suspended

At the conclusion of the hearing on March 14, 2016, 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. For present purposes, it is unnecessary to review the nature of these submissions nor the reasoning of this Committee on this point. It is sufficient to note that this Committee concluded that Mr. Steinecke's advice on this point was sound. As the Committee was of the view that the ACLC's failure to comply with the eight conditions did provide a basis for suspending LAO's funding of the ACLC and was also of the view that six months notice would be reasonable in the circumstances, it therefore ordered as follows:

"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."

g) December 31, 2016 to the Present: this Committee's Interim Decision of January 19, 2017.

In this Committee's June 20, 2016 Decision, the Committee indicated that it would invite submissions from the parties in December, 2016 in the event that contention remained with respect to the question of whether or not full compliance with the eight conditions had been achieved by the ACLC. Initial written Submissions were provided by the parties to the Committee on December 1, 2016 and Reply Submissions from both parties on December 12, 2016. In light of difficulties encountered by the parties with respect to finding a mutually convenient date for the hearing, the parties agreed that this Committee should proceed solely on the basis of their written Submissions.

On the basis of this Committee's deliberations with respect to the parties' Submissions, the Committee issued an Interim Decision concerning this matter on January 19, 2017. Briefly stated, the Committee concluded that, notwithstanding the fact that some progress in compliance with the conditions had occurred, the Committee remained of the view that there were a number of deficiencies in the ACLC's attempt at compliance with the eight remedial conditions. Further, however, the Committee indicated that it wished to have further information on three points. It will be useful to briefly summarize the Committee's conclusions with respect to the question of compliance, making reference where appropriate to the points on which further information was requested and, finally, describing the procedures adopted in light of that request.

Condition #1

This condition provided for the appointment of an LAO Observer to attend all ACLC Board of Directors' meetings and provides an arrangement for which such attendance was to be facilitated. In the parties' written Submissions, there was extensive discussion and much contention as to whether or not the ACLC had fully complied with that condition. From LAO's perspective, concerns were expressed concerning the question of invitations to the ACLC Board meetings, access to Board minutes and materials and other financial information, including information relating to funding received by the ACLC from organizations other than LAO.

The main concern with respect to meeting invitations relates to the meeting of July 9, 2016. This is a matter that will be further discussed in the Analysis section of these Reasons. We may note in passing, that no invitation was issued to the LAO Observer for this meeting, which involved a review of the ACLC 2015-16 audited financial statements. With respect to access to Board minutes and Board packages, access to which for the LAO Observer is required by Condition #1, the ACLC initially refused to provide copies of minutes and Board packages requested by LAO. Ultimately, a few days before the deadline for written Submissions in December, 2016, Board minutes and materials with substantial redactions were provided. As this Committee noted, the initial explanation for the redactions was that the redacted material dealt with human

resources issues. As will be explained further in the Analysis section of these Reasons, this is a completely unsatisfactory explanation and represents a simple refusal to comply with Condition #1. The ACLC, in the alternative, suggested that these were materials subject to solicitor/client privilege. This is also an unsatisfactory explanation as Condition #1 requires that the ACLC is obliged to provide sufficient information concerning material redacted on this basis to permit LAO to determine whether the claim of privilege is reasonable in the circumstances. The ACLC did not do so.

With respect to other types of information, LAO has frequently, over the years, and repeatedly, since the June 20, 2016 Decision, requested information concerning funding of the ACLC provided by sources other than LAO. In its June 20, 2016 Decision, this Committee indicated that refusal to provide such information is a clear breach of LASA, the LAO-ACLC MOU and the Funding Agreement. Throughout the six month period, the ACLC continued to refuse to provide such information, more recently taking the position that it required legal advice before it could do so. Surely, if such advice was truly necessary, it would have acquired it at a much earlier stage in light of this Committee's Decision of June 20, 2016. Again, a few short days before the deadline for written Submissions, the ACLC provided such information. As this Committee observed in its January 19, 2017 Reasons;

“The reluctance of the ACLC to comply with this obligation in this regard and its belated willingness to do so are difficult to understand.”

Condition #2

Condition #2 requires that the composition of the ACLC Board include “persons with financial skills” and “lawyers”. Controversy concerning the presence of two persons with financial skills centered on the qualifications or lack of same of Board member [REDACTED]. This Committee held that this matter should be resolved in the ACLC's favour.

With respect to the lawyer category, however, the ACLC submitted that it had added a second lawyer to the Board in the person of a sitting Judge of the Ontario Court of Justice. This Committee expressed mild surprise that a sitting Judge could serve in this capacity and requested written reassurance that the Judge in question would be able to be a fully active member of the Board and that his appointment had been approved by the Chief Justice of the Ontario Court of Justice.

Condition #4

This condition imposed various requirements relating to financial management. Condition #4 states that, “within ninety days of the Committee's Decision (i.e. September 5, 2014), the ACLC will submit a financial restructuring plan to LAO for approval, which stabilizes the clinic's financial position and improves its financial management”. Although the ACLC had previously submitted a one paragraph document, which it claimed constituted a financial restructuring plan for LAO's approval, that approval was not forthcoming. In this Committee's Decision of June 20, 2016, the Committee found that the paragraph in question did not constitute a “reasonable

attempt to comply with this aspect of Condition #4". Subsequent to this Decision, then, the ACLC was obliged to make a further attempt to submit such a plan and promised to do so by August 31, 2016. In the event, however, the ACLC did not make such an attempt until November 16, 2016, within a few days of the deadline for the delivery of written Submissions in this matter. It thus arrived in circumstances where there was no meaningful opportunity for LAO to provide feedback and ultimately grant its approval or disapproval. No such approval was, in fact, granted by LAO. Indeed, six days before the submission of the revised plan, the plan had been reviewed by the ACLC Finance Committee, which meeting was attended by the LAO Observer. The LAO Observer was critical of the measures proposed by the plan to reduce the deficit in the LAO General Fund. This criticism was not reflected in the revised plan as submitted to LAO. This Committee offered its own assessment of the November 16, 2016 financial restructuring plan and found it deficient. This committee concluded as follows:

"In short, some two years after this Committee initially imposed the requirement on the ACLC to develop a Financial Restructuring Plan, it has still not identified any specific measures or plans with respect to the important question of cost reduction. The commitment of the ACLC does not represent a plan for cost reduction but rather an undertaking to develop such a plan in the future."

Conditions #5 and #8

Condition #5 requires the ACLC to adopt various policies, directives, best practices and reporting systems concerning financial management. The one area of contention with respect to compliance relates to the specific requirement that the ACLC establish a financial reporting system that would include a requirement that any inter-fund transfers between the LAO fund and other programs managed by the ACLC be reported to LAO monthly. Condition #8 requires the ACLC to implement the various measures recommended by the PwC forensic audit report dated April 8, 2013. Amongst other measures, the report recommended the development of a policy for inter-fund transfers, having expressed some concern about this practice. Although no such policy had been adopted by the ACLC at the time of this Committee's Decision of June 20, 2016, the ACLC Board subsequently adopted such a policy and revised that policy in light of a model policy made available by LAO to the ACLC. The ACLC forwarded its revised policy on October 25, 2016. Since LAO made no objection to that policy in its December, 2016 Submissions, this Committee concluded that that aspect of Condition #8 had been complied with. The controversy concerning inter-fund transfers nonetheless continues and occupies a substantial portion of the written Submissions of the parties on December 1 and December 12, 2016. In essence, the dispute between the parties is that LAO insists that the ACLC persists in such transfers without reporting on them to LAO. For its part, the ACLC denies that this is the case. It also relied on the fact that a study of the ACLC's implementation of the PwC recommendations undertaken by the LAO Internal Audit Unit indicated that no such transfers had occurred during the period from February 17, 2015 to July 31, 2015.

In light of the complexity of the factual background of this issue and the diametrically opposed positions of the parties, this Committee suggested in its January 19, 2017 Decision that either the LAO Internal Audit Unit (IAU) or other auditors selected by LAO be asked to investigate whether or not the ACLC has provided information with respect to inter-fund transfers and has implemented its policy on this subject in the period subsequent to July 31, 2015.

Condition #7

Condition #7 sets out the arrangements on which monthly funds will be provided to the ACLC by LAO during the Level Three Remedial Response. It provides for two types of monthly funds. The first covers so-called "recurring expenses such as rent, salary and equipment leases", payment of which would be made by LAO on the first day of each month on the basis of recurring expense estimates provided by the ACLC. The second category related to other ACLC expenses which would be paid on the basis of invoices and expense reports to be provided and approved by LAO.

As this Committee noted in its January 20, 2016 Decision, very serious compliance problems resulted from the fact that the ACLC did not transparently disclose vacancies, thereby securing improper access to LAO funds. Indeed, a history of severe wrongdoing of this kind led, in part, to the initial imposition of the Level Three Remedial Response Decision. In the period from September 5, 2014 and prior to this Committee's Decision of June 20, 2016, LAO learned independently that two staff positions had been vacated and that the monies accumulated had been spent for unauthorized purposes. Indeed, the ACLC had not only failed to report the vacancies to LAO, but had declined several requests from LAO for information concerning these positions.

In its December 1, 2016 Submissions, LAO claims that the ACLC continued to obtain improper access to LAO funding for vacant staff positions and that in most instances, LAO learned independently of the fact that the positions were vacant. In its Reply Submissions, the ACLC offered various explanations for these instances, which this Committee did not find either plausible or convincing. The Committee concluded that the ACLC had failed to comply with Condition #7 with respect to the reporting of vacancies.

In its December 1, 2016 Submissions, LAO also claimed that the ACLC had on multiple occasions, sought to obtain duplicate funds for expenses. Essentially, this involved filing separate invoices for expenses that were included within the monthly recurring expense claims. In its Submissions, the ACLC claimed that there was no intentional misleading involved and to the extent that this problem may have occurred, LAO should have caught this problem and accordingly, in the ACLC's view, the ACLC should not be punished for this "joint mistake". In the absence of clear evidence on this point, it is difficult to place much weight on this issue. The non-reporting of vacancies is obviously a much more serious breach of Condition #7.

Against the background of concerns noted above with respect to the capacity of a sitting Judge to serve on the ACLC Board of Directors, the difficulty in making a factual determination with respect to the persistence or not of inter-fund transfers and the lack of feedback from LAO concerning the ACLC financial restructuring plan caused by its late submission, this Committee determined in its January 19, 2017 Decision that it wished to adjourn the proceedings to the end of February, 2017 so as to permit the presentation of further information to this Committee relating to whether or not the ACLC has engaged in full compliance of the eight conditions and, more particularly, information concerning the three items mentioned above. In due course, further delays were encountered in this process for two reasons. First, LAO retained PwC to conduct an audit of the inter-fund transfer issue. The report of that audit was provided to the parties on April 25, 2017. Second, the ACLC submitted a new version of its financial restructuring plan on April 28, 2017. In the event, Submissions from the parties were requested and received on May 5 and May 23, 2017 and a further opportunity to make Submissions regarding the financial restructuring plan was afforded and taken up by the ACLC on May 23, 2017 and by LAO on June 1, 2017, with Reply Submissions from the ACLC on June 7, 2017.

Part IV – Analysis – Did the ACLC Successfully Cure the Deficiencies in its Compliance with the Remedial Conditions During the Extended Notice Period?

In this Committee's Decision of June 20, 2016, the Committee concluded that the ACLC had fully complied with only one of the eight remedial conditions (reproduced in Appendix A to these Reasons), imposed on the ACLC by this Committee's Decision of September 5, 2014 (as revised by this Committee's Decision of November 7, 2014). The only condition with which the ACLC had fully complied was Condition #6 relating to an independent audit of the compensation time accrual reduction by an auditor of LAO's choice.

Accordingly, this Committee concluded that the ACLC was in fundamental breach of its obligations under *LASA* and under its MOU and Funding Agreement with LAO. On this basis, the Committee determined that LAO's funding of the ACLC should be suspended. Pursuant to the authority conferred upon LAO by Section 39(4) and (5) of *LASA* to suspend the funding of a clinic, however, LAO accepted that it was required to give the ACLC notice of its intention to suspend funding and a reasonable opportunity to comply with *LASA* and the terms and conditions of its funding. This Committee decided that six months notice would be reasonable in the circumstances and gave such notice to the ACLC in its June 20, 2016 Decision, indicating an intent to suspend ACLC funding on December 31, 2016.

In that Decision, the Committee also indicated to the parties that if controversy persisted as to whether the ACLC had successfully complied with the eight remedial conditions during the six month notice period, this Committee would entertain written submissions on the matter from the parties in December of 2016. In the event, this Committee received initial written Submissions from both parties on December 1, 2016 and Reply Submissions from both parties on December 12, 2016.

After due deliberation, this Committee concluded, in its Interim Decision of January 19, 2017, that the ACLC had failed to comply fully with Conditions #1, #4, #5 and #7. The Committee also indicated in that Decision that it wished to have further information from the parties on certain matters. More particularly, the Committee indicated that it wanted a further audit of the alleged use of inter-fund transfers by the ACLC, performed either by LAO's Internal Audit Unit or another auditor selected by LAO. Further, with respect to Condition #2, this Committee sought reassurance that the second lawyer appointed to the ACLC Board, a sitting Judge of the Ontario Court of Justice, would be able to fully participate in the deliberations of the ACLC Board and that his appointment had been approved by the Chief Justice of the Ontario Court of Justice.

Finally, the Committee noted that the ACLC's proposed financial restructuring plan, required by Condition #4, had been submitted very late in the day, that is, just before the deadline for written submissions from the parties in December, 2016 and that, accordingly, LAO had not had a meaningful opportunity to comment on the proposed plan. This Committee therefore invited further submissions on the question as to

whether the ACLC had successfully established that it had proposed a financial restructuring plan that met with LAO's approval or, failing that, of this Committee.

As noted above, although this Committee initially envisaged a short time-frame for this adjournment, the period of the adjournment was extended for two reasons. First, LAO retained PwC to conduct a review of the ACLC's inter-fund transfer practices from July 31, 2015 onwards. The resulting report was made available to the parties on April 25, 2017. Second, the ACLC submitted a further revised financial restructuring plan, again, late in the day, on April 28, 2017. In the event, further written Submissions were submitted by the parties on May 5, 2017, with Reply Submissions from both parties filed with this Committee on May 23, 2017. A further opportunity was afforded to the parties by this Committee to make written Submissions concerning the ACLC's April 28, 2017 financial restructuring plan. Such Submissions were received by this Committee on May 23, 2017 from the ACLC and on June 1, from LAO, with Reply Submissions from the ACLC on June 7, 2017.

As far as the additional information requested by this Committee is concerned, we have, as indicated, received the PwC Review of inter-fund transfers and the April 28, 2017 revised financial restructuring plan. We have also been advised with respect to Condition #2, that the Justice of the Ontario Court of Justice who had been appointed to the ACLC Board, resigned from the Board subsequent to this Committee's Interim Decision of January 19, 2017. We have also been advised that the ACLC has recently appointed a second lawyer to its Board in substitution for the Justice who resigned his seat on the Board. We have also received extensive submissions from the parties with respect to the new information. The significance of the new information with respect to this Committee's deliberations will be discussed at appropriate points in the Reasons which follow.

By way of anticipation of the outcome of this Analysis, it is this Committee's view that the answer to the question posed in the title to this Part of these Reasons is "no". That is to say, this Committee remains of the view that the ACLC has not, over the course of the past years and months since September 5, 2014, successfully complied with the eight remedial conditions imposed at that time. With respect to the period following January 19, 2017, it is our view that the ACLC compliance remains deficient with respect to Conditions #1, #4, #5 and #7. Although these findings constitute a sufficient basis to dispose of the matters before this Committee, as these have previously been found to be fundamental breaches of the ACLC's transparency obligations, we will turn, in a concluding Part, to an assessment of the significance of these deficiencies for the desirability, or not, of any ongoing LAO funding for the ACLC. As well, we will consider the question raised, but not answered in our Interim Decision of January 19, 2017, as to whether last-minute compliance before the expiry of a notice period following a lengthy and sustained period of non-compliance constitutes a state of compliance with the ACLC's statutory and other obligations in the requisite sense. In our view, it does not. We turn now to consider the question of continuing non-compliance with the eight remedial conditions.

Condition #1: LAO Observer to Participate in Board meetings:

Condition #1 provided that an LAO Observer should be appointed to attend meetings of the ACLC Board. The Observer 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 Board and Committee meetings. The LAO Observer would not, however, have voting rights. Condition #1 provided that the ACLC Board could meet *in-camera* in the absence of the LAO Observer, to discuss matters relating to the present Dispute Resolution Policy ("DRP") or matters pertaining to the Association of Community Legal Clinics of Ontario ("ACLCO"). Condition #1 also provided that the ACLC Board could meet *in-camera* with respect to matters subject to solicitor-client privilege provided that the Board disclosed to LAO sufficient information to determine whether it agreed with the ACLC Board's claim of privilege. Further, Condition #1 required that the Chair of the ACLC Board of Directors meet on a monthly (or as mutually agreeable) basis "in order to ensure that the LAO Observer is kept abreast of the activities at the ACLC". Finally, Condition #1 stipulated that in the event that the ACLC successfully complied with the eight conditions, this requirement concerning the LAO Observer would continue for one year after fulfillment of the other conditions.

More particularly, Condition #1 reads as follows:

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

The question as to whether the ACLC Board complied with Condition #1 during the period from September 5, 2014 until the filing of written submissions by the parties in late 2015 was vigorously contested by the parties. The conflicting views of the parties and the conclusion reached by this Committee in its Decision of June 20, 2016 is summarized in the following paragraphs of this Committee's June 20, 2016 Decision:

"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, 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 minutes then observe 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 *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.”

In the period from June 20, 2016 until December, 2016, problematic aspects of the ACLC’s failure to comply continued. Again, in the parties’ Submissions of December, 2016, the question of whether the ACLC had complied successfully with Condition #1 was the subject of vigorous contention. The principal concerns expressed by LAO Staff at that time related to the question of invitations to the ACLC Board meetings, access to Board minutes and materials and other financial information including information related to funding received by the ACLC from organizations other than LAO. The concern related to invitations to Board meetings focused on the period immediately following this Committee’s June 20, 2016 Decision and more particularly, the failure of the ACLC to notify the LAO Observer to attend meetings on July 9, 2016 at which the ACLC auditors attended and presented the audited financial statements, a meeting that would have been of great interest to the LAO Observer and, possibly, to a meeting of the Board on July 15, 2016 at which the financial statements were approved.

In the June 20, 2016 Decision of this Committee, this Committee stated that “full compliance with the eight conditions will include a reinstatement of the LAO Observer pursuant to Condition #1”. On the basis of this instruction, the ACLC Board should have restored its practice of inviting the LAO Observer to meetings. It did not do so.

On July 6, 2016, LAO Vice-President, Budgell sent a reminder to Rawle Elliott, Chair of the ACLC’s Board of Directors via email with a copy to the ACLC Executive Director, that the LAO Observer should be invited to meetings of the ACLC Board. The LAO Observer was not, however, invited to the July 9, 2016 meeting of ACLC Board. This was in fact the second year in a row and a third occasion on which the LAO Observer was not invited to a meeting of the ACLC Board that considered its annual audited financial statements. Needless to say, LAO was concerned about this failure to invite the LAO Observer to attend the July 9, 2016 meeting.

On August 12, 2016 The ACLC Executive Director, in a letter to LAO alleged that, “the Audited Financial Statements for the fiscal year ending March 31, 2016 were presented to the Board of Directors at a meeting on Saturday, July 9, 2016, prior to LAO’s decision to reinstate the attendance of the LAO Observer at ACLC’s Board meetings”. This communication is misleading in a number of respects. First, the decision that the LAO Observer should be reinstated was made by this Committee on June 20, 2016, not by Vice-President Budgell on July 6, 2016. Moreover, the suggestion that Ms. Budgell’s July 6, 2016 letter did not arrive until after July 9, 2016 is, as the Executive Director must have known, simply false.

It is apparent that the ACLC Executive Director must have been aware of the nature of this falsehood inasmuch as the ACLC’s Reply Submissions to this Committee assert that the Executive Director, though very busy on July 6 and 7, 2016, did see Ms. Budgell’s communication late on July 8, 2016 (para. 157). Indeed, this Submission claims alternatively (at para. 141) that she reviewed the letter on July 11, 2016, but in later Submissions dated May 16, 2017 (para. 66), the ACLC asserted that the reference to July 11, 2016 was an error. Thus, on the basis of the new Submissions, it is apparent that the ACLC Executive Director was aware of Ms. Budgell’s letter prior to the July 9, 2016 meeting. More importantly, subsequent information that came to light after this Committee’s Interim Decision of January 19, 2017 confirms that Ms. Budgell’s July 6, 2016 letter was presented and discussed by the ACLC Board at its July 9, 2016 meeting. By the time of receipt of the written Submissions of the parties in December, 2016, LAO had received copies of minutes, substantially redacted, for the July 9, 2016 meeting. In these minutes there was reference to a discussion of a letter of Vice-President Budgell, though information relating to the date of the letter and the substance of the communication from Vice-President Budgell was redacted. In LAO’s December 12, 2016 Submissions to the Committee, LAO alleged that the letter referred to in the minutes must have been Vice-President Budgell’s letter of July 6, 2016. In the ACLC’s Reply Submissions of December 12, 2016, the ACLC simply did not mention the fact that Ms. Budgell’s letter of July 6, 2016 was discussed at the July 9, 2016 Board meeting. Subsequent to this Committee’s Interim Decision of January 19, 2017, on January 24, 2017, LAO’s counsel wrote to the ACLC renewing LAO’s request that

the ACLC provide, among other things, “complete and unredacted Board meeting minutes and Board packages”.

On February 14, 2017, the ACLC’s Board and management provided, among other things, minutes for the July 9, 2016 meeting of ACLC’s Board. Again, however, the July 9, 2016 Board minutes were incomplete and information concerning the date and contents of the letter of Vice-President Budgell discussed at the July 9, 2016 meeting were redacted. This continued failure to provide requested information is, of course, a breach of Condition #1.

On March 2, 2017, LAO Staff wrote to the ACLC Board and management to protest this continued refusal to provide information. Finally, in a letter dated March 15, 2017, the ACLC Board and management confirmed that the letter discussed at the July 9, 2016 meeting of the ACLC Board was, in fact, the July 6, 2016 letter from Vice-President Budgell requesting that the LAO Observer be informed of all ACLC Board meetings.

This episode again indicates not only a failure to comply with Condition #1, but continuing evidence of the ACLC’s unwillingness to engage in dealings with LAO that are characterized by transparency and indeed, basic honesty.

We may note in passing that the ACLC did not mention whether the Board Chair, Rawle Elliott, became aware of the nature of Ms. Budgell’s communication prior to July 9, 2016. If Mr. Elliott was aware of the communication to him by email on July 6, 2016, it is not at all obvious why he, as Board Chair, would not have extended an invitation to the LAO Observer to attend the July 9, 2016 meeting. The fact that the ACLC evidently did not feel it relevant to provide information concerning his awareness or lack of awareness of the email prior to the July 9, 2016 meeting suggests that the ACLC did not consider his role in this matter to be significant.

In LAO’s Submissions of May 5, 2017, LAO offered its view of the significance of this episode concerning the July 9, 2016 Board meeting in the following terms:

“Further, the continued refusal to respond to LAO’s request for information about the letter is demonstrative of the type of obfuscation, delay and difficulty that is typical of ACLC’s Board and management.”

In the period following the Interim Decision of January 19, 2017, there were other problems related to the failure to comply with Condition #1. For example, the ACLC made a decision to split the corporation into two entities, the ACLC and the African Canadian Community Services (ACCS), the latter entity to operate programs funded by sources other than LAO. This decision must have been made or confirmed at some point by the ACLC Board of Directors. LAO claims in its May 5, 2017 Submissions, however, that no discussion about this rather significant initiative, which would have

significant implications for LAO, was ever discussed at any meeting attended by the LAO Observer, nor was it revealed in any of the Board materials provided to her.

Information made available subsequent to January 19, 2017 also confirms the misleading nature of prior disclosure made by the ACLC and, more particularly, its continued refusal to disclose Board discussions concerning human resources matters. Subsequent to this Committee's Level Three Remedial Response Decision of September 5, 2014, this Committee considered and denied a request by ACLC's Board and management that Condition #1 be revised in order to permit the ACLC to delete from the minutes and materials made available to the LAO Observer, matters concerning Human Resources matters. In this Committee's decision dated November 7, 2014, this Committee rejected that request on the basis that, "much of the past wrongdoing and mismanagement of the ACLC related to matters involving Human Resources issues". Accordingly, this Committee instructed the ACLC that the LAO Observer should have access to "Board materials relating to confidential human resources matters and should be invited to be present for Board discussions of such issues". The ACLC Board and management simply refused to comply with this instruction and accordingly, with Condition #1, by continuing to provide minutes and Board materials from which matters concerning Human Resources issues had been deleted. The fact that this was the case only became completely apparent on February 10, 2017. The ACLC Board and management responded to a further request from LAO dated January 24, 2017 to counsel for the ACLC, again requesting that the Board and management provide, among other things, complete and unredacted Board meeting minutes for Board and Committee meetings that occurred on various specified dates.

Although the package of materials forwarded by the ACLC on February 10, 2017 continued to redact significant portions of the minutes being provided, some of the earlier redactions were corrected. What the new information revealed was that the redactions that had earlier been made with respect to the minutes of April 9, 2016 and May 7, 2016 concerning human resources matters did, in fact, relate to the dates of staff resignations and appointments. This new information plainly reveals that, notwithstanding Condition #1 and notwithstanding this Committee's explicit instruction to the ACLC on November, 2014, the ACLC simply withheld precisely the type of information that this Committee had explicitly instructed the ACLC to provide. As had been noted elsewhere in these Reasons, a serious form of wrongdoing conducted by the ACLC over a period of years relates to the non-reporting of vacancies. It is perhaps not surprising that the improperly redacted materials relate to resignations and appointments to the ACLC.

In summary, it is our view that the ACLC has not successfully established that it has fully complied with Condition #1, in spirit or intent. On the contrary, the ACLC has, on occasion, deliberately disregarded key components of Condition #1.

Condition #2

Condition #2 provided as follows;

“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.”

For obvious reasons, LAO Staff were alarmed when, as noted above, the two lawyer members of the ACLC Board resigned in 2010 in protest with respect to concerns about financial mismanagement. Condition #2 was obviously designed to ensure that professional expertise was present on the ACLC Board in accord with Section 10 of the Funding Agreement. In its June 20, 2016 Decision, this Committee concluded that the ACLC did not comply with this Condition. This Committee concluded that only one lawyer, Shedrack Agbakwa, had been appointed to the Board and that the qualifications of one of the members alleged to have financial skills were unclear.

In their December 1, 2016 Submission, the ACLC asserted that it had now fully complied with this Condition, having appointed another lawyer to the Board who was, in fact, a sitting Judge of the Ontario Court of Justice. In this Committee’s Interim Decision of January 19, 2017, this Committee suggested that although the Judge in question was obviously both a lawyer and an individual of considerable stature, the Committee expressed some concern that a sitting Judge would be able to accept such an appointment. Accordingly, the Committee sought reassurance that the Judge in question will be able to be a fully active member of the ACLC Board and that the appointment had been approved by the Chief Justice of the Ontario Court of Justice.

Subsequently, for reasons not made clear to this Committee, the Judge in question resigned his seat on the Board. We do not know, then, whether the approval of the Chief Justice was sought, and, if so, whether that approval was granted or denied. The ACLC appointed another lawyer as a member of the Board, Royland Mariah, in substitution. On this basis, the Committee is satisfied that there has now been full, if belated, compliance with Condition #2.

LAO Staff, relying on information from the LAO Observer, has noted that while this condition has received technical compliance, concerns were expressed that the attendance records of the lawyer members of the Board have been rather erratic. To the extent that this may be true, in one case at least, this is disappointing as it defeats the purpose of Section 10 of the Funding Agreement. Nonetheless, this Committee concludes that the ACLC has complied with Condition #2.

Conditions #4 and #5:

Condition #4 provides as follows:

“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 reads as follows:

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

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

reviewed and approved by the Executive Director, a process for reviewing and approving expenditures by all staff including the Executive Director, and quarterly monitoring of expenditures by the Board of Directors to ensure compliance with all applicable policies

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

A number of alleged deficiencies in ACLC's compliance with Conditions #4 and #5 were identified by LAO in its May 5, 2017 Submissions. Two of them relate to the new information received by this Committee subsequent to this Committee's January 19, 2017 Interim Decision. The first relates to the April 28, 2017 version of ACLC's financial restructuring plan. The second relates to the issue of inter-fund transfers and the PwC Review of this issue. Other allegations relate to the elimination of the \$139,340 deficit in the ACLC's LAO General Fund by March 31, 2016, the elimination of the deficit in the ACLC Legal Disbursement Fund, and the continued failure to account for the use of compensation funding. We consider each of these allegations in turn:

The April 28, 2017 Version of the ACLC Financial Restructuring Plan

The central issue to be determined is whether the ACLC has successfully submitted "a financial restructuring plan to LAO for approval which stabilizes the clinic's financial position and improves its financial management". The short answer to this question is that the ACLC has not done so and therefore remains in a state of non-compliance with Condition #4. This issue was the subject of much contention in the recent round of Submissions by the parties to this Committee and accordingly, a more fulsome explanation of this non-compliance is appropriate. By way of background, the ACLC's first attempt to comply with this aspect of Condition #4 was contained in a paragraph of a letter to LAO dated February 17, 2015, which this Committee found to be quite inadequate and which LAO had not approved as a financial restructuring plan meeting the requirements of Condition #4. Indeed, this Committee observed that the paragraph in question did not constitute a "reasonable attempt to comply with this aspect of Condition #4" (at p.30).

Subsequent to that Decision of this Committee, the ACLC indicated that it would be submitting a revised financial restructuring plan by August 31, 2016. If the ACLC had done so, that would have provided LAO Staff with an opportunity to comment on the draft plan and in turn, would have provided an opportunity to ACLC to consider possible revisions to the plan, if any, in light of any response provided by LAO Staff. In any event, the ACLC did not provide a revised plan until November 16, 2016, that is, shortly before the deadline for delivery of written Submissions with respect to the six month notice period granted by this Committee in its June 20, 2016 Decision. In other words, the revised plan arrived very late in the day and did not provide LAO Staff with an appropriate opportunity to consider whether to approve or disapprove the revised plan. In the LAO Submissions of December 1, 2016, however, LAO Staff did identify what it considered to be a number of deficiencies in the November 16, 2016 plan. Accordingly, this Committee concluded in its Interim Decision of January 19, 2017, that the revised plan had not achieved LAO's approval. Further, however, this Committee went on to make the following observation with respect to what it considered to be obvious deficiencies in the revised plan:

“More importantly, the revised plan does not provide particulars with respect to measures that have been or will be taken to reduce the deficit in question. As with the predecessor plan's reference to “cost reduction measures that are ongoing”, the revised plan has avoided specific details with respect to this aspect of the plan and indicated simply that “ACLC is working with the Finance Committee to reduce expenses and costs in areas such as, but not limited to, travel, meals, audit fees, storage and printing”.

In short, some two years after this Committee initially imposed the requirement on the ACLC to develop a Financial Restructuring Plan, it has still not identified any specific measures or plans with respect to the important question of cost reduction. The commitment of the ACLC does not represent a plan for cost reduction but rather an undertaking to develop such a plan in the future.

A further concern is that six days before the submission of the revised plan, the plan was submitted to the ACLC's Finance Committee at a meeting attended by the LAO Observer. In her report, the Observer noted that it came to the Finance Committee's attention at that meeting that the deficit in the LAO General Fund had been reduced by using the surpluses from funds provided by other funders. At that meeting, the LAO Observer explained that this was, in her view, probably inappropriate and that a better solution would be to identify the manner in which LAO funded expenses would be reduced and to seek LAO's permission to use any surplus LAO funding to reduce the deficit in the LAO General Fund. These comments and an appropriate response of some kind from the ACLC are not reflected in the revised plan submitted to LAO on November 16, 2016.”

In the January 19, 2017 Decision, this Committee, given the importance of the issue, indicated that a brief adjournment of these proceedings would be granted to permit the ACLC to demonstrate, if it could do so, that it had established a financial restructuring plan that meets the approval of LAO. In response, the ACLC prepared a further revised financial restructuring plan dated February 17, 2017 which was received by LAO on February 21, 2017. By letter dated March 10, 2017, LAO advised that it had a number of concerns with respect to the adequacy of the revised plan and more particularly, with the failure of ACLC's Board and management to incorporate much of the feedback previously provided by LAO which provided a basis for withholding LAO's approval of the revised plan. However, in that letter, LAO further requested that, given the imminent deadline for written Submissions to this Committee with respect to the present adjournment of these proceedings, that a revised plan "incorporating LAO's feedback be submitted directly to the Committee". In a letter dated March 28, 2017, the ACLC Board and management advised that a consultant had been retained to assist in the preparation of a revised plan. The ACLC Board and management submitted a revised financial restructuring plan directly to the Clinic Committee on April 28, 2017. In LAO's Submissions to the Clinic Committee dated May 5, 2017, LAO indicated that, although the new revised plan was more detailed than its predecessor, it was LAO's view that, "it continues to be deficient in a number of respects". The LAO Submissions expand the basis for this conclusion as follows:

"For example, the plan still does not raise or address the \$38,106.62 deficit in the Legal Disbursements Fund. Rather, it states "At the end of the 2015-16 fiscal year, the ACLC's Legal Disbursement Fund had a surplus of \$24,318". The information about the financial position of ACLC's LAO funds thus continues to be out of date.

Also, as outlined above, ACCS was formed and the non-LAO funds were moved to the new entity effective April 1, 2017. The plan did not deal with how it intends to settle the amounts owing between all the Funds. ACLC's Board and management told PwC that they will settle inter-fund receivables by end of year FY 2016/17, or present inter-fund balances as inter-company balances owing to or from ACCS, to be settled or written off in future fiscal years. However, as outlined in LAO's December Submissions to the Committee, ACLC's non-LAO funds either have bank indebtedness, or little or no liquid assets (cash or receivables) to repay the amounts owing to the LAO funds. This trend appears to continue throughout the rest of the year with the non-LAO funds showing approximately \$1,000 in cash in total at March 31, 2017. Also, based on the quarterly reports, the vast majority of the inter-fund balances were not settled (i.e., repaid) by March 31, 2017, which was not unexpected if the various funds had little cash with which to do so. The plan does not explain how ACLC's Board and management will ensure that the receivables and payables will be repaid by both LAO and the non-LAO funds, such as through a reduction of costs in its non-LAO funds to generate the funds and settle the inter-fund receivables in ACLC's LAO funds, instead of simply reversing or writing them off in the future.

Based on ACLC's own unaudited financial statements, as at March 31, 2017, LAO owes other funds (now under ACCS) \$152,000. The stated plan of ACLC's Board and management is to spend all LAO funding for LAO services. Therefore, there is no plan for how the ACLC will repay ACCS the \$152,000. Also, ACLC's General Fund is owed approximately \$118,000. There is no plan for how this is to be repaid, especially in light of ACLC's and ACCS's lack of cash. LAO is left to wonder whether ACLC's Board and management assume LAO will agree that ACLC can write-off all previous amounts owed. In any event, it is apparent that ACLC's Board and management do not have a plan to clear these receivables. Further, there is no evidence of ACLC's Board and management even having discussed the issue.

Finally, as noted above, effective April 1, 2017, all of ACLC's non-LAO funded programs are operated through the ACCS. The financial restructuring plan submitted by ACLC's Board and management on April 28, 2017 provides, in part:

To ensure a seamless transition to ACCS of the non-LAO funded programs, all matters related to these programs – such as, but not limited to, finances, human resources information, office leases, bank accounts, stakeholders, service providers and suppliers – have either been transferred to ACCS or new accounts have been opened in the name of ACCS.

The transfer of the non-LAO programs to ACCS will result in the complete financial separation of the funds, and will eliminate all inter-fund transfers, and in particular, the risk of co-mingling of funds between LAO and non-LAO funds.

In addition to the funders, suppliers and service providers have been informed of the organizational restructuring and the creation of ACCS. All suppliers and service providers necessary for the full operation of ACCS have been requested to open new accounts for the new corporation. This is an important element of the FRP as it will eliminate any further shared expenses between LAO and non-LAO programs.

Separate accounting software and bookkeeping systems have been set-up for ACCS that are separate and apart from the ACLC's accounting software and bookkeeping systems.

LAO notes that the Initial Registered Office Address and First Board of Directors lists the address of the ACCS as 250 Dundas Street West, Suite 402. This is the same address as ACLC. ACLC's Board and management have failed to provide any specific information about how leasing costs will be addressed/shared.

LAO also notes that up until March 31, 2017, ACLC's Executive Director and Office Manager were responsible for the administration of both ACLC's LAO and non-LAO funds. It is unclear from the plan whether this will continue. ACLC's Board and management have not submitted an updated recurring expense form to reflect any change in compensation funding for these positions.

If ACLC and ACCS will share office space and staff, it is unclear how ACLC's Board and management will avoid shared expenses. While the creation of the ACCS would eliminate inter-fund transfers, it would not eliminate inter-company transfers. Given the ACLC's Board and management's past practice of misreporting expenses and their unwillingness to share financial information related to ACLC's non-LAO funds, LAO has no confidence that they will be forthcoming or transparent with respect to financial information in another entity. Indeed, one might wonder whether ACCS was created, at least in part, to make it more difficult for LAO to monitor these issues. In their May 16, 2017 Reply Submissions, LAO Staff indicate that LAO has no confidence that the ACLC "will be forthcoming or transparent with respect to financial information in another entity".

For over two years, ACLC's Board and management failed to develop and implement a proper financial restructuring plan. As a result, they have not stabilized the Clinic's financial position or improved its financial management of ACLC's LAO funds. Rather, as outlined in LAO's December Submissions to the Clinic Committee, ACLC's overall cash position is declining significantly, ACLC's Board and management continue to spend more cash than ACLC receives, and ACLC's overall net asset position had progressively worsened. Also, as outlined above, ACLC's Board and management have concealed rather than eliminated a large portion of the Clinic's previous \$139,340 deficit.

ACLC's Board and management simultaneously claim that ACLC has a competent and fully functioning Board while also claiming that they could not, despite significant direction and feedback from LAO and the Committee, comply with the conditions imposed by the Committee. Whether due to unwillingness or inability, the end result of ACLC's consistent failure and subsequent delay is that the clinic's financial position has actually worsened, and the plan remains inadequate as it does not address important concerns. Further, presumably the Committee's intent was not merely that a plan be created, but that it actually be implemented and then assessed to determine its effectiveness. The delay created by ACLC's Board and management in taking the first step of creating a plan has prevented any assessment of its efficacy. On its face, the plan fails to deal with important concerns. Further, LAO has no confidence that ACLC's Board and management will implement and comply with the plan.

The LAO Observer's Report made the following comments about the April 28, 2017 financial restructuring plan:

“Observation #4: Financial Restructuring Plan (FRP)

I expressed my concern to the ACLC at both the Finance Committee meeting of April 26th and the Board meeting of April 30th that the FRP did not consider inter-fund balances, nor the deficit in the LAO Disbursement Fund. The Treasurer and the representative from Collins Barrow (a firm retained by the ACLC Board to assist the ACLC in the preparation of a Financial Restructuring Plan) indicated the establishment of ACCS requires the inter-fund balances to be “cleaned up”, and that this would be done during the year-end audit of the 2017 financial statements. Only then would the ACLC know the final inter-fund balances. It is my view that since the ACCS came into effect April 1, 2017, after the end of the ACLC's 2016/17 fiscal year, the inter-fund balances are known and should have been taken into consideration as part of the FRP. In my view, the FRP is incomplete because it doesn't address how the inter-fund balances will be settled and doesn't include the Legal Disbursement Fund. Despite my advice, the ACLC submitted their FRP as presented to the Finance Committee (as amended for minor changes).

In addition, I further expressed my concern that this “clean up” may have a negative impact on the LAO General Fund and the Disbursement Fund.”

An important feature of the ACLC's revised plan was to create another corporation, the African Canadian Community Services, the development of which had significant implications for the relationship between LAO and the ACLC. Notwithstanding the fact that the ACLC's intention to create this new organization structure was formulated some months before its disclosure to LAO in the revised plan dated April 28, 2017, the ACLC did not raise this possibility with LAO and provide an opportunity for LAO to consider and comment on this possibility during that period of time. In LAO's Reply Submissions of May 16, 2017, LAO Staff made the following observations with respect to this issue:

“In contrast to the apparent experience of Collins Barrow, the extensive record, including the decisions of the Clinic Committee and the LAO Observer reports, demonstrates that ACLC's Board and management have not “worked diligently” to improve ACLC's financial practices or comply with the conditions imposed by the Clinic Committee.

Specifically, in decisions dated September 5, 2014 and November 7, 2014, the Clinic Committee found that, despite having had years of involvement in the dispute resolution process and thus years of opportunity to work diligently to improve their financial practices, ACLC's Board and management were in fundamental breach of their obligations under the MOU, Funding Agreement, and *LASA*. The Committee

imposed eight conditions to remedy these breaches and directed LAO Staff to monitor and report on the fulfilment of these conditions.

On June 20, 2016, following written and oral Submissions by LAO and ACLC's respective counsel, the Committee found that ACLC's Board and management failed to comply with Condition #1, Condition #2, Condition #3, Condition #4, Condition #5, Condition #7 and Condition #8. The Committee gave ACLC's Board and management six months' notice of its intention to suspend LAO's funding to the ACLC effective December 31, 2016, holding that this provided "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" (Emphasis added).

In an interim decision dated January 19, 2017, the Committee found that despite being provided with an additional six months to achieve full compliance, ACLC's Board and management again failed to comply with Condition #1, Condition #4, Condition #5, and Condition #7. The Committee adjourned to permit the presentation of further information to the Committee with respect to Condition #2, Condition #4 and Condition #5. As outlined in LAO's May 5 Submissions and LAO's May 16 Submissions, and outlined further above, ACLC's Board and management remain in breach of Condition #4 and Condition #5. The facts and findings of the Committee do not reflect diligence or good faith on the part of ACLC's Board and management, the composition of which has not changed materially in the relevant period.

The ACLC Board and management's request for more time to comply should be rejected. As is clear from the record in this proceeding, there is a real risk that ACLC's Board and management will not use LAO funding to responsibly deliver legal aid services. Further, the ACLC Board and management's ongoing failure to comply with their obligations and with the Clinic Committee's conditions provides clear evidence that the risk to public funds cannot be mitigated "on a go-forward basis" as suggested by ACLC's Board and management. It is futile and a waste of public funds to continue to invest significant resources in trying to ensure that ACLC's Board and management comply with their obligations. LAO should instead provide funds to a community-based organization that will use every dollar of public funding in a manner consistent with public sector values, and for its intended purpose – to provide legal aid services to Ontario's Black community."

For its part, the ACLC asserts in its May 5, 2017 Submissions that the plan submitted on April 28, 2017 actually met all of LAO's requirements for such a plan. More than this, the ACLC suggested that the difficulties encountered by the ACLC in developing such a plan rested on a lack of cooperation by the LAO Staff. The principal, though not the only, evidence for this proposition related to a request by the ACLC that LAO Staff

meet with the consultants it had retained to assist in developing a plan. In its Submissions of May 5, 2017, the ACLC maintained that LAO declined to meet with the consultants and indicated that “the ACLC could submit specific questions under certain conditions”. (para. 11) This is a somewhat austere account of what appears to have transpired. Accordingly to LAO’s Reply Submissions of May 16, 2017, the ACLC advised LAO by letter dated March 28, 2017 that it had retained consultants and that the consultants had asked to meet with LAO. LAO responded on March 30, 2017 to the effect that it had outlined its requirements for the plan on a number of occasions and asked the ACLC to confirm that the consultants had been provided with this previous feedback. The previous feedback included, by the way, a letter from LAO on February 7, 2017 which it describes as having outlined “the specifics and details required” in order for a plan to be approved by LAO. The March 30, 2017 letter went on to suggest that if the consultants remained unclear about LAO’s expectations, LAO would respond to specific questions. According to LAO, the ACLC did not respond to this invitation. In our view, the LAO response on March 30, 2017 was not unreasonable in the circumstances.

For present purposes, it is sufficient to determine whether the ACLC has successfully submitted to LAO a financial restructuring plan that meets the approval of LAO. As noted at the beginning of this section, for these reasons, the short answer to this question is that no such approval has been granted by LAO. We might add, however, that the reasons offered by LAO Staff for withholding such approval are substantive, in our view, and appear to reflect serious and substantial concerns about various aspects of the April 28, 2017 revised financial restructuring plan. Certainly, on the basis of the Submissions we have received from both parties, it is our view that the withholding of approval by LAO is a legitimate exercise of LAO’s discretion to either grant or withhold such approval. Moreover, assuming that this Committee has the authority to second-guess the LAO Staff position on this issue, which may be doubtful, this Committee is not inclined to do so.

PwC Review of Inter-fund Transfers

In this Committee’s January 19, 2017 Interim Decision, the Committee noted the vigorous disagreement between the parties with respect to the question as to whether or not the ACLC had continued to engage in inter-fund transfers. The phenomenon of inter-fund transfers had attracted criticism in the original PwC Forensic Audit Report. Accordingly, PwC recommended in its 2012 report that the ACLC should adopt a policy dealing with such transfers. The objective of the recommendation, presumably, was to make such transfers more transparent and facilitate compliance with any applicable restrictions on such transfers.

Remedial Condition #8 required that the ACLC implement the recommendations in the PwC Forensic Audit, including the adoption by ACLC of a policy on inter-fund transfers. Further, Remedial Condition #5 had directed that any inter-fund transfers between the LAO funds and other programs managed by the ACLC be reported to LAO monthly. Although no policy on inter-fund transfers had been adopted by the ACLC by the time of

this Committee's Decision of June 20, 2016, the ACLC Board subsequently adopted such a policy and revised that policy in light of a model "inter-fund transfer policy" prepared by LAO and made available to the ACLC on October 14, 2016.

In its Submissions of December 1, 2016, LAO suggested that, notwithstanding the ACLC's claim that it no longer engaged in inter-fund transfers, such a claim was contradicted by the ACLC's own financial statements. These statements demonstrated in the view of the LAO Staff, the ACLC continued to make inter-fund transfers and had not reported inter-fund transactions to LAO. In its Reply Submissions of December 12, 2016, the ACLC repeated earlier assertions it had made that, apart from cases involving shared expenses, no inter-fund transfers had occurred. The ACLC challenged LAO's interpretation of the significance of the financial statements in question. In this Reply, the ACLC also claimed that the fact that there were no continuing inter-fund transfers had been confirmed by LAO's Internal Audit Unit study of the ACLC's implementation of the PwC recommendations. In their December 12, 2016 Reply Submissions, LAO Staff noted that the IAU study was time-limited to the period from February 17, 2015 to July 31, 2015. In the extensive Submissions on the parties on this issue, detailed and conflicting analyses of the factual context of a number of alleged inter-fund transfers were contained in the Submissions of the parties. This Committee concluded, after deliberating on these Submissions, that it was very difficult to determine which version of the facts was correct. Accordingly, this Committee suggested that the matter could usefully be investigated either by LAO's Internal Audit Unit (IAU) or by some other appropriate party selected by LAO.

Subsequently, LAO decided to retain PricewaterhouseCooper LLP (PwC) to investigate various issues relating to the phenomenon of inter-fund transfers within the financial record-keeping of the ACLC and to provide an appropriate report to this Committee. Such a report was completed by PwC and forwarded to the parties on April 25, 2017. In this Committee's January 19, 2017 Interim Decision, the Committee suggested that such a study should determine whether the ACLC "has provided accurate information with respect to inter-fund transfers and has implemented its policy on this subject in the period subsequent to July 31, 2015". Unfortunately, this precise question was not contained in the Terms of Reference for the PwC Review and, although the resulting report constitutes a thorough and useful examination of the use of various types of inter-fund transfers utilized by the ACLC, the report does not provide a simple "yes or no" answer to the question articulated in this Committee's Interim Decision of January 19, 2017.

Accordingly, and as the Submissions of the parties concerning the PwC Review amply demonstrate, the controversy continues with respect to whether or not the ACLC has been, as it claims to have been, refraining from inter-fund transfers following the July 31, 2015 end-point for the prior study by the LAO IAU. From LAO's perspective, the LAO Submissions assert that the PwC Review plainly demonstrates that the ACLC continues making changes in inter-fund balances affecting LAO's financial position. LAO Staff claim that the PwC Review plainly establishes that the ACLC has continued to engage in inter-fund transfers of various kinds.

As one example, LAO Staff refer to the inter-fund transfer described in detail in the PwC Report that occurred in November or December, 2016 in which the ACLC recorded an inter-fund transfer from the ACLC LAO Legal Disbursement Fund to the ACLC Operating Fund in the amount of \$72,588, which created a deficit in the ACLC LAO Legal Disbursement Fund as of April 1, 2016. A second example drawn from the PwC Review, on which LAO places reliance, is its description of the establishment of a so-called “prior year adjustment” creating an inter-fund receivable owing from the ACLC’s ACYJP and YIT Funds to ACLC’s LAO General Fund. Although this inter-fund receivable was created in order to eliminate the deficit in the LAO General Fund, as required by Remedial Condition #4 by March 31, 2016, the extent to which the inter-fund transfer was actually intended to achieve a genuine elimination of that deficit remains controversial and will be discussed further below. For its part, however, LAO asserts in its Submissions that these examples plainly illustrate that inter-fund transfers were undertaken without LAO’s approval. LAO drew further support from its position from passages in the PwC Report that the ACLC had booked a number of entries that resulted in changes in inter-fund balances totaling \$135,231.05. Further, of the \$135,231.05 of journal entries reviewed by PwC, the ACLC was unable to produce supporting documentation for 96% (\$130,007.65) of the entries that affected the financial position of LAO funds made available to ACLC (at pp. 6-7).

The ACLC, on the other hand, has taken the view that it has been completely vindicated by the PwC Inter-fund Transfer Review. In the ACLC’s May 5, 2017 Submissions, the ACLC draws support for this proposition from the statement made by PwC in the PwC Review that, “we noted no indication of loaning or borrowing of LAO funds during the period of review” (at p. 14). To put this statement in context, however, it is necessary to understand that PwC identified a whole series of categories of inter-fund transfers that it examined. The various categories were described by PwC in the following terms:

- **Transferring or Moving of Funds** – A journal entry was considered to be indicative of transferring or moving of funds in the following instances:
 - Shared Cost – setting up of a shared cost which was supported by documentation. Such shared costs are allocated across one or more ACLC funds and may include, but are not limited to, insurance, security, bookkeeping, photocopying, travel and telecommunications. The journal entries to set up the recording of a shared cost do not involve the movement of cash, however, an expectation exists that these shared costs will be repaid in the future to the fund which incurred the shared cost.
 - Repayment of Inter-fund Receivable/Payable – the cash repayment of a previously established inter-fund receivable/payable amount. These journal entries do involve the movement of cash.
 - Write-Off of Inter-fund Receivable/Payable – the write-off of a previously established inter-fund receivable/payable

amount. The journal entry to write-off an inter-fund balance does not involve movement of cash, however, the initial inter-fund balance being written off may have been established from a movement of cash or a previously recorded shared cost that, at the time, was expected to be repaid.

- **Loaning** – a journal entry was considered to be indicative of a loan arrangement involving LAO funds if an inter-fund receivable was created, and the journal entry did not appear to represent a receivable for a supported shared cost or repayment of a previously recognized inter-fund payable (the latter two of which would be categorized as ‘Transferring or Moving of Funds’).
- **Borrowing** – A journal entry was considered to be indicative of a borrowing arrangement involving LAO funds if an inter-fund payable was created, and the journal entry did not appear to represent a payable for a supported shared cost or collection of a previously recognized inter-fund receivable (the latter two of which would be categorized as ‘Transferring or Moving of Funds’).
- **Change to Inter-fund Balance** – This category includes all other journal entries which do not fall within the ‘Transferring or Moving of Funds’, ‘Loaning’ or ‘Borrowing’ categories noted above, but which result in a change in the inter-fund receivable/payable balance. These journal entries do not have a cash receipt or disbursement element.”

While PwC did not find examples of ‘loaning’ or ‘borrowing’ in its sampling of ACLC’s inter-fund transfers, it did note numerous examples of other types of inter-fund transfers. The ACLC appears to assume that the only types of inter-fund transfers covered by its own inter-fund transfer policy or by the disclosure obligation set out in Condition #5 pertain to ‘loaning and ‘borrowing’ LAO funds. In its May 16, 2017 Reply Submissions, the ACLC defended at greater length its view that inter-fund transfers covered by its policy do not include ‘non-cash’ journal entries. On this view, no inter-fund transfer in the requisite sense occurs unless cash is transferred from one program’s funding to that of another. Obviously, LAO takes a different view of the concept of inter-fund transfer that would be covered by the ACLC’s policy and by Condition #5. It is an interesting and difficult question as to which party has the better view of this matter. Unfortunately, the PwC Review was not asked to and did not provide direct guidance on this point. It is of some interest, however, that when asked to do a study of inter-fund transfers, it examined all of the types of inter-fund transfers identified in its listing of types of inter-fund transfers quoted above. Further, there is no indication in the original PwC Forensic Audit, that the concerns expressed by PwC with respect to inter-fund transfers were restricted to cases of ‘loaning’ or ‘borrowing’. On the contrary, it is apparent that PwC was concerned with the issue of inter-fund transfers in the context of transfers relating to ‘shared costs’ (at pp. 40 - 41). Thus, neither of the PwC Reports offer support for the notion that the concept of “inter-fund transfers” should be restricted to cases of ‘loaning’ or ‘borrowing’ in the strict sense set out in the PwC Review. To the extent that a

“receivable” creates an obligation to transfer cash in the future, it would be surprising if at least some types of receivables were not considered to be “inter-fund transfers”.

One way of testing the matter, in this Committee’s view, is to consider the examples in the PwC Review that were not cases of ‘loaning’ or ‘borrowing’, but that nonetheless caused concern to LAO. As noted above, the first was the creation of a receivable in the LAO General Fund owing from ACLC’s African Canadian Youth Justice Program (ACYJP) and its Youth in Transit (YIT) Worker Program that was intended to eliminate a deficit in the LAO General Account. The second was the reversal of a receivable owing from the ACLC Admin (Operating) Fund to the LAO-funded Legal Disbursements Fund. The original recording of the receivable was designed to eliminate an existing deficit in the Legal Disbursements Fund. The reversal of the receivable in a journal entry dated April 1, 2016 had the effect of returning the Legal Disbursements Fund to a deficit position. In our view, this is not an inter-fund transfer that should be considered to be excluded from the ACLC inter-fund transfer policy or the disclosure requirement under Condition #5. LAO obviously has a lively interest in transfers that create or eliminate deficits in the funds it has made available to the ACLC. Further, it would be reasonable, in our view, to interpret the inter-fund policy as applying to inter-fund transfers relating to shared costs. Again, LAO has an obvious interest in being aware of inter-fund transfers dealing with such matters. Be that as it may, it is not necessary to reach a definitive conclusion on the intended scope of the ACLC inter-fund transfer policy. Indeed, it would be difficult to do so simply on the basis of the written Submissions we have received. In this Committee’s view, however, the two inter-fund transfers relating to deficits in the funding provided by LAO to the ACLC are highly material and subject to disclosure under Condition #5. It is our understanding that such disclosure did not occur. More importantly, however, there are more troubling aspects to the circumstances involving these two inter-fund transfers that will be examined at greater length below.

Elimination of the \$139,340 Deficit in the LAO General Fund by March 31, 2016

As noted above, Condition #4 required the creation of a financial restructuring plan which will, among other objectives, achieve the elimination of \$139,340 deficit in the ACLC’s LAO funds by March 31, 2016, and indeed, in other deficits incurred prior to that date. Although no such plan materialized by the required deadline, it was, nonetheless, the case that the ACLC purported to eliminate the deficit in question as of that date. Thus, the ACLC’s Board and management reported that in compliance with Condition #4, the \$139,340 deficit in the ACLC’s LAO General Fund had been eliminated as of March 31, 2016 and the 2015-16 audited financial statements reported that as of March 31, 2016 the ACLC LAO General Fund had a balance of nil dollars (App. A-33).

As a result of the PwC Review, however, LAO has learned that the ACLC had concealed rather than eliminated the deficit by recording receivables in the LAO General Fund that they had no intent to collect.

More particularly, the PwC Review revealed that the elimination of the deficit was accomplished, in part, by establishing a \$21,874 inter-fund receivable owing from

ACLC's African Canadian Youth Justice Program (ACYJP) and its Youth in Transit (YIT) Worker Program. This \$21,874 receivable formed part of the \$39,338 so-called "prior year adjustment" reported, but unexplained, in the ACLC's 2015-16 audited financial statements (App. A-19, p.3). Additionally, the ACLC recorded other inter-fund receivables owing to the ACLC's LAO General Fund from its ACYJP and YIT Funds totaling \$35,545. The ACLC disclosed to PwC that, in fact, it had no intention to clear these receivables with a cash transfer. Although the ACLC's auditors had advised PwC that the previously existing deficit in the LAO General Fund was created as a result of inaccurate recording of prior years' shared expenses incurred by the LAO General Fund on behalf of other ACLC funds, the ACLC advised PwC that no documentation exists to support the alleged inaccuracies in prior year expense logs. The actual cause of the deficit in LAO's General Fund thus remains obscure.

What remains clear, however, is that the ACLC reported to LAO that the LAO General Fund was in a \$139,340 deficit position and that this Committee required, pursuant to Condition #4 that this deficit be eliminated as of March 31, 2016. Further, it is clear that the purported elimination of the deficit as of that date was quite misleading. The purported elimination of the deficit in the LAO General Fund was illusory in the sense that it rested on the recording of receivables that the ACLC never intended to collect. Looking forward, the ACLC advised PwC that, rather than clearing these receivables with cash transfers, the ACLC intended to clear the inter-fund receivables with further inter-fund transfers to the LAO General Fund as at March 31, 2017 through the ACYJP or the YIT Funds, or with another ACLC fund that might have a sufficient surplus.

LAO Staff, in their May 5, 2017 Submissions, objected to this approach on a number of grounds. First, they submit that setting up a receivable with no intention to repay it is inconsistent with basic accounting principles and proper financial governance. Second, the ACLC ACYJP and YIT Funds come from the Ontario Ministry of Children and Youth Services. Accordingly, in LAO's view, these are restricted funds that cannot be used to fund deficits in funds provided from other sources. The ACLC's proposed use of surpluses in its ACYJP and YIT Funds to clear the receivables in the ACLC LAO General Fund would thus be in breach of the ACLC's obligations to their other funders. This problem had been signaled to the ACLC Board of Directors by the LAO Observer previously.

Finally, with respect to the possibility of inter-fund transfers from other ACLC funds, LAO Staff note that such funds, according to the March 31, 2017 ACLC financial statements show a negative cash and bank balance of (\$3,569), such that repayment of the funds owing to the LAO General Fund is simply not feasible. We may note in passing that the failure of the ACLC's proposed financial restructuring plan to address this problem is another point of criticism made by LAO Staff of that restructuring plan.

LAO Staff further objected with respect to the elimination of the deficit through the recording of inter-fund receivables and, in particular, the prior year adjustment which may never have been put before the ACLC Finance Committee for that Committee's consideration and approval. The ACLC, on the other hand, maintains that its Finance Committee did, in fact, meet with the ACLC auditors and reviewed a draft copy of the

audited financial statement on July 6, 2016. Unfortunately, no documentation related to this meeting exists and it remains unclear therefore, what sorts of deliberations of the Finance Committee might have occurred on July 6, 2016. In this Committee's view, the much more serious concern relates to the illusory nature of the elimination of the deficit in the LAO General Fund reported as at March 31, 2016. The elimination of the deficit was a purported, but not genuine compliance with this aspect of Condition #4.

Elimination of the Deficit in the Legal Disbursements Fund

A similar exercise in financial camouflage revealed in the PwC Review related to the elimination of a substantial deficit in the ACLC's LAO-funded Legal Disbursements Fund as at March 31, 2013. The history of this matter may be briefly recounted.

In 2011, the ACLC informed LAO that there was a large deficit (though its precise size was subject to varying reports from the ACLC), in the ACLC Legal Disbursements Fund. Once so informed, LAO expressed concern about the issue and the significant level of expenses incurred by the ACLC in the form of disbursement expenses.

In response to LAO's concerns, the ACLC's counsel wrote a letter to LAO dated September 26, 2013 indicating that the ACLC's financial statements for the period ending March 31, 2013 would indicate "significant progress" in addressing this deficit (App. A-19). Subsequently, the ACLC's 2012/13 audited financial statement reported that as at March 31, 2013, the ACLC's Legal Disbursements Fund had been restored to a nil balance.

As a result of the recent PwC Review, LAO has now learned that this "significant progress" was achieved simply by recording a \$72,588 receivable owing to the LAO-funded Legal Disbursements Fund from ACLC's Admin (Operating) Fund. During the PwC Review, the ACLC advised PwC that this entry was recorded to clear the LAO Legal Disbursements Fund deficit to nil dollars by an "inter-fund transfer". This issue came to light in the recent review because PwC became aware that in a journal entry dated April 1, 2016, ACLC's management, in consultation with the Treasurer of ACLC's Board of Directors, reversed the \$72,588 receivable, thereby returning ACLC's Legal Disbursement Fund to a deficit position of \$38,138 as at December 31, 2016 (App. A-21), a position it maintained as at March 31, 2017. Although this inter-fund transfer was back-dated to April 1, 2016 (the date after the deadline set out in Condition #4 for eliminating deficits in LAO's funds), the journal entry was actually made in November or December of 2016.

As discussed in the PwC Review, the ACLC's Board, management and auditors have provided conflicting explanations for the original establishment of the \$72,588 receivable and its recent reversal. Although the ACLC's Board and management first told PwC that the original establishment was an erroneous entry, the ACLC auditors at the time of its establishment of the receivable, expressed the view that it was understood by them to be a valid receivable in the sense that there was an expectation that the LAO-funded Legal Disbursement Fund would receive payment from the ACLC's Admin (Operating) Fund in the future. The auditor added that the journal entry was

approved by the ACLC Board at the 2013 year-end meeting in the presence of the auditors.

In subsequent discussion with PwC, the ACLC conceded that the journal entry was not an erroneous one, but also confirmed “that there was no intention to cause funds to be paid to clear an inter-fund receivable established in 2013”.

In summary, then, the initial creation of the receivable appears to be an illusion designed by the ACLC to create the impression that it had made “significant progress” in addressing the deficit in the LAO-funded Legal Disbursements Fund. The illusory nature of the elimination of this deficit is also illustrated by the fact that on April 1, 2016, one day after the March 31, 2016 deadline imposed by this Committee for eliminating the deficits, the LAO Legal Disbursements Fund was back in a deficit position. Further, as appears to be the case from the ACLC’s disclosure to PwC that the ACLC had no intention to cause funds to be paid to clear the inter-fund receivable established in 2013 to clear the deficit in the Legal Disbursement Fund, this incident would constitute a breach of Conditions #4 and #5 in at least two ways. First, it indicates that with respect to this particular instance, the ACLC has consistently and deliberately misrepresented the ACLC’s financial position since the 2012-13 fiscal year and created an illusion that the deficit in the LAO-funded Legal Disbursements Fund would be paid off in the future. The receivable established in 2013 created the appearance of an improved financial position which was not, however, the result of new measures of financial restraint or improved financial management. The creation of a misleading impression with respect to the status of this particular deficit does not constitute compliance with the requirements of Condition #4 that the deficit be eliminated by March 31, 2016. Further, if one accepts, as the ACLC apparently does now accept, that the entry of the receivable in 2013 was not erroneous, it must be the case that its reversal in late 2016 was an inter-fund transfer that should have been reported to LAO pursuant to Condition #5.

Continued Failure to Account for the Use of Compensation Funding

As has been noted in previous Decisions of this Committee, a major series of difficulties in the relationship between LAO and the ACLC is related to the ACLC’s improper claims for compensation funding for positions that were, in fact, at the material times, vacant. This was an important feature of the various aspects of financial mismanagement that led to the imposition of the Level Three Remedial Response on this clinic on September 4, 2014. Remarkably, as noted in this Committee’s Decision of June 20, 2016, this practice continued even after the imposition of the Level Three Remedial Response, though it involved lesser sums of money. Further confirmation of these subsequent incidents was obtained in February of 2017 when the ACLC provided, in response to a request from LAO, Records of Employment for all employees in LAO-funded programs for the period beginning fiscal year, 2013-14. This facilitated the process of the calculation of how much excess compensation funding was acquired by the ACLC during that period.

LAO Staff, in their May 5, 2017 Submissions indicate that the total amount of money improperly obtained by the ACLC in this fashion is as much as \$461,269 during the fiscal years, 2010-11 through to 2015-16. Although the ACLC's Board and management have maintained over the years that the compensation funding it obtained for vacant positions was used to hire outside counsel for test cases, this would amount to a misappropriation of these funds. Moreover, the ACLC has also failed to properly document such expenditures and demonstrate in this way the manner in which these funds were employed by the ACLC. Thus, during the PwC Forensic Audit in 2011-12, the ACLC Board and management only provided PwC with invoices to support expenditures of \$172,136.00 or 53% of the cost estimate expenditure. That cost estimate may have been inaccurate, as the ACLC maintains that some of it was based on oral estimates of future expenses by outside counsel and that, in the event, savings were achieved. It appears, nonetheless, to be the case that the \$461,269 figure accurately represents the amount of compensation funding secured in this fashion by the ACLC. In February, 2017, after repeated requests for documentation, the ACLC provided documentation concerning money paid to two law firms, [REDACTED] and [REDACTED] together with invoices from P&M Group for workplace investigation services for a total of \$58,900 of additional costs for outside counsel. This brings the total of substantiated costs to \$231,026 of the \$461,269, or approximately one-half of the wrongfully acquired funds. It may be that a detailed review of recent expenditures would increase the number of substantial expenses other than outside counsel to some extent, but the important point for the present purposes is that there never has been a satisfactory explanation either for the acquisition of this compensation funding by the ACLC, nor adequate substantiation of its actual use by the ACLC. In its Reply Submissions of May 16, 2017, although the ACLC repeated its assertion that the moneys were spent on outside counsel and listed a number of them, no further documentation concerning these expenses was provided.

In sum, the ACLC has not fully complied with Conditions #4 and #5.

Condition #7:

Condition #7 was designed to ensure that further funding provided by LAO to the ACLC subsequent to this Committee's September 5, 2014 Decision to impose a Level Three Remedial Response, would be subject to careful documentation, transparency and full disclosure of actual expenses being incurred by the ACLC. In other words, it was designed to prevent a recurrence of past wrongful practices of the ACLC in obtaining access to LAO funds through the provision of misleading or inaccurate information and then not spending the money provided by LAO for its intended purpose. As noted previously in this Decision, the most problematic form of this wrongdoing related to the non-reporting of staff vacancies by the ACLC to LAO. In an attempt to provide such scrutiny of ongoing expenses incurred by the ACLC, Condition #7 provided as follows:

"LAO will provide monthly funding based on:

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

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

The basic arrangement set out by Condition #7, then, stipulates for the provision of two different types of monthly funding. The first covered so-called “recurring expenses such as rent, salaries, equipment leases” for which payment would be made to the ACLC on the first day of each month on the basis of recurring expense estimates provided by the ACLC. The second type constituted all non-recurring expenses for which Condition #7 requires the ACLC to provide invoices and expense reports that were to be approved by LAO.

Notwithstanding these arrangements, the ACLC subsequently continued to engage in these wrongful practices involving the misapplication of funds provided to the ACLC by LAO. Thus, in this Committee’s Decision of June 20, 2016 (at p. 59), the Committee concluded that there was a continuing and substantial problem relating to non-disclosure of staff vacancies for which LAO continued to provide funding intended to be used to pay salaries for the position in question. During the period prior to that Decision, LAO had learned from independent sources the fact that there were newly vacant positions and attempted on several occasions to obtain accurate information from the ACLC as to when the employees in question had left their position. The ACLC declined to provide the information and, indeed, provided false and misleading information concerning this situation.

As this Committee noted in its Interim Decision of January 19, 2017, one might have expected, against this background, that the ACLC would have adopted a policy of immediately reporting vacancies once it became aware of their occurrence and to refrain from claiming compensation for vacant positions in its monthly recurring expense claims. As the Committee noted at that time, it would appear that no such instructions were issued and in the period following the June 20, 2016 Decision of this Committee, these wrongful practices continued. Thus, in LAO’s December 1, 2016 Submissions to this Committee, LAO described a number of instances in which LAO learned independently of further staff vacancies in positions for which the ACLC continued to request and receive funding from LAO. Although the ACLC, in its December 1, 2016 Submissions offers explanations for these failures to provide accurate information, this Committee, having reviewed the Submissions with appropriate care, concluded that the explanations offered by the ACLC lacked plausibility and, indeed, credibility.

One might have expected in light of the foregoing circumstances that the ACLC, in the period following this Committee’s Interim Decision of January 19, 2017, would have been scrupulous in its compliance with Condition #7. Unfortunately, this was not to be the case. In its May 5, 2017 Submissions, LAO asserted that the ACLC’s Board and management, in breach of Condition #7, claimed almost \$20,000.00 in funding for an external bookkeeper, notwithstanding the fact that the ACLC had, some months earlier, stopped using the services of an external bookkeeper. We will describe the incident in some detail, not because the amount of funding obtained in this way was substantial,

but rather because this instance demonstrates in microcosm, the apparent impossibility of establishing a relationship of transparency and good faith disclosure between the ACLC and LAO. LAO's concern about the funding of the external bookkeeper surfaced in LAO's Submissions of December 1, 2016 to this Committee. LAO questioned a discrepancy between the recurring expense forms submitted by the ACLC and the ACLC's quarterly report on expenses. Notwithstanding the fact that LAO had been providing \$1,403.00 per month on the basis of ACLC's recurring expense forms, the quarterly report filed by the ACLC indicated that the ACLC had spent an average of only \$796.00 per month in July, August and September of 2015 and did not incur any bookkeeping expenses in October, November and December of 2015, and further, that the ACLC spent only \$316.00 per month on bookkeeping services in June of 2016.

In the ACLC's Reply Submissions to this Committee dated December 12, 2016, the ACLC asserted that in fact the ACLC received only \$317.00 per month for bookkeeping services, as opposed to the \$1,403.00 that LAO claims it had been providing. In further Reply Submissions of June 12, 2017, the ACLC repeated this claim. Remarkably, the ACLC Board and management, neither in these Submissions nor in any other communication with LAO indicated that they no longer had an external bookkeeper and that the ACLC's Office Manager had also been acting as the ACLC's bookkeeper for the past eight months. These facts would only come to light when LAO, subsequently to this Committee's Interim Decision of January 19, 2017, pressed the ACLC for further information with respect to the bookkeeping expense claim by the ACLC. In February, 2017, in response to a request from LAO for invoices, supporting financial documentation and reconciliation that would provide material evidence concerning ACLC's use of the funding provided for bookkeeping services, the ACLC provided a number of invoices from the external organization that had been providing bookkeeping services, but these invoices, however, only went up to April 1, 2016. Again, the fact that the ACLC no longer retained an external bookkeeper was not disclosed.

On March 2, 2017, LAO again requested invoices for bookkeeping services, in this case, for the period, April, 2016 to date. On March 29, 2017, the ACLC's Executive Director responded to this request by noting that she had been informed that this was the last invoice provided to this external organization to the ACLC. Once again, however, the ACLC's Executive Director did not inform LAO that the ACLC no longer had an external bookkeeper and that the ACLC's Office Manager had been acting as the ACLC's bookkeeper since April, 2016.

On April 6, 2017, LAO asked the ACLC to advise LAO of the identity of the person or organization that had been providing the ACLC with bookkeeping services since April, 2016. In a letter dated April 21, 2017, the ACLC's Executive Director finally disclosed the fact that since April of 2016, the ACLC's Office Manager had been providing bookkeeping services. The Executive Director further claimed that the money received from LAO for bookkeeping services had been included in the Office Manager's salary.

Since LAO had been providing ██████████ in annual compensation funding for the Office Manager position in addition to the bookkeeping expenses of \$1,403.00 per month provided on the basis of monthly recurring expenses forms, LAO was able to

compare the total amount of funding that it provided and compare it to the monies actually paid to the Office Manager/bookkeeper. In its Submissions of May 5, 2017, LAO indicated that it had provided the ACLC Board and management with [REDACTED] in funding for the Office Manager and for bookkeeping expenses in the fiscal year 2017, whereas the ACLC has, in fact, only used approximately [REDACTED] of LAO's funding to pay its Office Manager/bookkeeper.

Against this background, LAO concluded in its May 5, 2017 Submissions as follows:

“The arguments put forward by ACLC’s Chair and Executive Director are demonstrative of the ACLC Board and management’s unwillingness to accept accountability for their failure and ongoing refusal to engage in proper management and governance of the Clinic.”

This Committee is of the view that full compliance with Condition #7 has not been achieved by the ACLC.

In summary, then, for the reasons set out in this Part, this Committee has concluded that although the ACLC has made some progress in addressing its problems and has now complied with Condition #2, it continues to fail to fully comply with Conditions #1, #4, #5 and #7.

Part V – Conclusion and Decision

For the reasons set out in Part IV of this Decision, this Committee has concluded that the ACLC remains in breach of a number of the eight remedial conditions imposed by this Committee's Clinic Committee Level Three Remedial Response Decision of September 5, 2014. As noted above, this Committee's Decision of June 20, 2016 found that the ACLC had failed to comply with seven of the eight remedial conditions. This Committee further held that this finding provided a basis for concluding that the ACLC was in fundamental breach of its statutory obligations under *LASA* and of its obligations under the terms and conditions of its funding from LAO. Accordingly, the Committee gave six months notice to the ACLC that its funding would be suspended as of December 31, 2016 unless this Committee had been satisfied in the interim that the ACLC had fully complied with the eight remedial conditions. Written Submissions from both parties, contesting the issue as to whether compliance had occurred were filed with this Committee in December of 2016.

After due deliberation, this Committee issued an Interim Decision on January 19, 2017. This Decision indicated a number of continuing problems with compliance and granted an adjournment during which it wished to have further information and input from the parties. By the conclusion of the adjournment, such information had been received by the Committee and this Committee continued its deliberations leading up to the present Decision.

In the final paragraph of Part IV of these Reasons, this Committee concluded that, notwithstanding the fact that improvements have been made, the ACLC remains in a state of non-compliance with Conditions #1, #4, #5 and #7. Although this alone may be a sufficient basis for suspending LAO funding of the ACLC under Section 39(4) of *LASA*, this Committee will consider the further question of whether this continuing non-compliance with the eight remedial conditions constitutes a "fundamental breach" of the ACLC's statutory and other obligations as that term is employed in the context of Level Three remediation in the Dispute Resolution Policy (DRP). As noted above, this Committee must find, under Section 25 of the DRP that a clinic is in fundamental breach of its obligations as a prerequisite to the invocation of Level Three of the DRP. This Committee expressed its view that the ACLC was in such fundamental breach in its Decision of September 5, 2014. This Committee came to the same conclusion in its Decision of June 20, 2016.

The definition of fundamental breach in Section 25 of the DRP includes:

- "a refusal or failure by the Clinic to carry out its responsibilities under the Act or the Memorandum of Understanding; or
- 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”.

It is not necessary to repeat here the considerations that grounded this Committee’s findings of fundamental breach on September 5, 2014 and June 20, 2016. The important point for present purposes is that the continuing failure of the ACLC to comply with the eight conditions constitutes, in this Committee’s view, a continuing fundamental breach of its obligations. Essentially, the statutory and other obligations imposed on the ACLC, as with other clinics require transparency, candour and good faith in a clinic’s dealings with LAO. The continuing breaches of these obligations detailed in Part IV of these Reasons constitute, in the Committee’s view, a continuing fundamental breach of these obligations. Thus, in recent months, the ACLC failed to comply with this Committee’s order of June 20, 2016, that the LAO Observer be reinstated and then failed to be candid about not doing so. It failed to provide, despite the significant amount of time that had elapsed, a financial restructuring plan that meets the approval of LAO and, instead, it engaged in accounting measures that were misleading as to the true financial status of LAO funds. It failed to promptly disclose vacancies in salaried positions and external bookkeeping and then failed to account fully for the funds paid by LAO during those vacancies. Although other deficiencies have been identified in Part IV of these Reasons, this list is sufficient, in this Committee’s view, for a conclusion that the ACLC’s breaches of its transparency obligations remain fundamental.

The consequence of our conclusion that the ACLC remains in breach of a number of the eight remedial conditions and in fundamental breach of its statutory and other obligations is that this Committee has decided to suspend LAO funding of the ACLC. Although the Committee had initially and tentatively ordered that funding should cease on December 31, 2016, the passage of time resulting from the adjournment issued on January 19, 2017 suggests that the funding should be suspended as of September 30, 2017 or such other date as may be mutually agreed to by LAO and the ACLC.

The fundamental nature of these deficiencies is heightened or underlined when they are placed in the context of the difficulties in the relationship between LAO and the ACLC that have been revealed in this prolonged process. This Committee is of the view that the record in this proceeding amply demonstrates that the ACLC Board and management are unwilling, even when under the scrutiny of Level Three of the Dispute Resolution Policy and under the risk of having its LAO funding suspended, to adopt the values of transparency, good faith and basic honesty that are, in our view, a pre-requisite for an agency to be entrusted with the expenditure of public funds. The record in this proceeding is replete with illustrations of situations in which the ACLC Board and management have refused to comply with LAO’s inquiries and requests for information, non-disclosure by the ACLC when disclosure is required by statute, the provision by the ACLC of misleading and, on occasion, false information in response to LAO’s inquiries and belated disclosure of information after months and years of improperly refusing to disclose the information in question. Such conduct simply undermines any confident basis for a continuing practice by LAO of providing public funds to an agency that engages in conduct of this kind. As we have noted above, LAO has a statutory

obligation under section 37(1) of *LASA* to monitor the conduct of clinics. In order to carry out this obligation and ensure that the public funds with which LAO is entrusted are properly spent by agencies to whom LAO transfers public moneys, LAO needs to be confident that the agencies to whom such moneys are entrusted will deal with LAO in a transparent and straightforward manner. The record before this Committee appears to suggest that one or more members of the Board and management of the ACLC do not share this view.

Enhanced ACLC Board oversight of the ACLC's Executive Director does not appear to offer an adequate solution to these problems. On the eve of the March, 2016 oral hearing preceding the June 20, 2016 Decision of this Committee, the ACLC Board made available to LAO a letter it had written to the Executive Director indicating that the Board was deeply troubled by the allegation that the ACLC had received funds that were earmarked for the Director of Legal Services position after that position had become vacant and, further, that the Executive Director was not candid in discussing the matter with LAO Staff. This conduct was said by the Board "to be inconsistent with the degree of integrity that is required of all ACLC staff". The Board further indicated 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". The letter further instructed that the Executive Director must report to the Board of Directors at all of its meetings that "all reports to LAO are complete, up-to-date and accurate to the best of your knowledge".

In the LAO Staff Submissions of May 5, 2017, LAO Staff allege that a review of the Board minutes reveals that this instruction does not appear to have been followed by the Executive Director. In one instance, the ACLC Board received information in the Board material for its June 18, 2016 meeting to the effect that LAO had learned independently of the fact that a [REDACTED] had left his place of employment with the ACLC and, accordingly, that LAO had asked for appropriate, if belated, documentation of his departure. Indeed, the ACLC Board minutes reveal that the Board was advised at its April, 2016 meeting of [REDACTED] impending departure. On neither occasion is there an indication that the Executive Director reported, nor did the ACLC Board enquire as to whether reports to LAO were complete and up-to-date. Further, when it became apparent at the June 18, 2016 meeting that the Executive Director had not properly advised LAO of [REDACTED] departure, there is no indication that the Board considered or discussed the possibility of disciplinary measures or other appropriate action. No response to these allegations by LAO Staff was made by the ACLC in subsequent written submissions to this Committee.

Moreover, to be clear, this Decision to suspend funding of the ACLC is justified simply on the basis that since being placed under the eight remedial conditions by this Committee on September 5, 2014, the ACLC has not successfully complied with them and has persisted in a fundamental breach of its transparency obligations. We simply note in passing that the interactions between LAO and the ACLC during this process as revealed in the materials made available to this Committee suggest that this result is

consistent with the public interest in requiring transparency in the handling of public funds.

Finally, we turn to consider a question raised but not answered in our Interim Decision of January 19, 2017. This issue concerns a difficult question of interpretation of the governing legislation. The particular issue was raised by Counsel to the Clinic Committee, Mr. Richard Steinecke at the March 18, 2016 hearing of this Committee which preceded the issuing of this Committee's Decision of June 20, 2016. As Mr. Steinecke noted, this Committee is deliberating on the question of whether to suspend LAO funding of the ACLC pursuant to sections 39(4) and 39(5) of the (LASA). Those provisions stipulate as follows:

Non-Compliance by clinic

(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.

As Mr. Steinecke noted, these provisions deal with the issue of current non-compliance, but it is not entirely clear what this concept envisions. In the absence of judicial authority interpreting the concept, it was his opinion that current compliance must mean that the clinic in question is in a "state of compliance" with the Act or the terms and conditions of its funding. Mr. Steinecke provided the following illustration:

"Assuming there is a direction that the clinic have \$5,000.00 in its account at all times and it has \$5,000.00 in its account consistently, but the day before the hearing, something unusual arises and on the date of the hearing, it has something less than \$5,000.00 in the account. In my opinion, the clinic would still be considered to be in a state of compliance, even though something unusual caused a state of last-minute non-compliance. Conversely, if it is not in compliance the entire time and the day before the hearing, it deposits sufficient money to satisfy the \$5,000.00 condition, one could find that it is not in "a state of" compliance.

Arguably, then, when the ACLC after years of refusing to respond fully to LAO's requests for, in the wording of section 37(2)(d), "financial or other information relating to

the operation of the clinic” and then provides the information on the eve of the expiry of the deadline for compliance, it may be seriously questioned whether the clinic is in a state of compliance.

In our view, the illustration offered by Mr. Steinecke is quite compelling. Turning to the present facts, as we have noted above, the ACLC is subject to statutory obligations of disclosure to LAO of, among other items “any other financial or other information relating to the operation of the clinic that the corporation may request”. Both prior to and subsequent to the imposition of the eight remedial conditions in this Committee’s Decision of September 5, 2014, the ACLC has persistently refused to abide by this statutory obligation. The question that arises, then, is whether belated disclosure of requested information on the eve of the expiry of the notice period for the suspension of funding constitutes compliance in the requisite sense.

Two examples may be of assistance. For much of the period subsequent to September 5, 2014, LAO has requested access to information concerning other sources of funding received by the ACLC. Such information would have been of interest and material to LAO for a number of reasons. The ACLC persistently refused to provide such information, however, and improperly excluded the LAO Observer from Board meetings when such matters were discussed. In this Committee’s decision of June 20, 2016, the Committee held that the ACLC’s refusal to disclose such information constituted a “clear breach” of *LASA* and of Section 42 of the Funding Agreement between LAO and the ACLC. Nonetheless, the ACLC continued to refuse to provide this information until a few days before the deadline for Submissions at the end of the six month notice period for suspension of the clinic’s funding.

Similarly, the ACLC was ordered in remedial Condition #1 to make available to the LAO Observer, ACLC Board minutes and materials subject to certain precisely identified permissible redactions. Once requested by LAO, such information was subject to the ACLC’s statutory disclosure obligations. In November of 2014, the ACLC sought permission from this Committee for a further type of redaction to the minutes for “human resources” matters. This Committee declined this request in its Decision of November 7, 2014 on the basis that “much of the past wrongdoing and mismanagement of the ACLC related to matters involving human resources issues”. (p. 13). As noted above, we now know, as a result of last minute disclosures by the ACLC that it nonetheless continued to redact discussions concerning human resources issues in the minutes it made available to the LAO Observer.

In either case, it may be asked whether these last-minute disclosures constitute a state of compliance with ACLC’s statutory obligations and the obligations imposed by the terms and conditions of its funding. In favour of the view that they do not, it is difficult to conclude that a clinic that has persisted for years in refusing to comply with its disclosure obligations during a period in which it was subject to Level Three of the Dispute Resolution Policy and indeed, explicit orders of disclosure from this Committee, is now in a state of compliance with its obligations on the basis of last-minute disclosures. As in Mr. Steinecke’s example, the obligations to disclose, like the

hypothetical obligation he poses to maintain a bank balance of \$5,000.00, is a continuing obligation. Arguably, it is simply not met by making disclosure (or depositing \$5,000.00) at the very last minute after months and/or years of refusal to do so.

This interpretation of the statute is reinforced, in our view, by the practical consideration that last minute compliance of this kind does not provide a basis for confidence that the state of compliance will continue. Thus, the deposit of the \$5,000.00 at the last minute after years of defying the requirement provides little confidence that the required balance will be maintained in the future. Similarly, the fact that the ACLC made certain disclosures on the eve of the expiry of the notice period for suspension of its funding offers no basis for confidence that it would abide by its statutory obligations in the future and, similarly, that it would abide by the obligations imposed by the terms and conditions of its funding agreements with LAO.

In our view, this interpretation of *LASA*, which we find persuasive, offers a separate and independent basis for concluding that the ACLC has not fully complied with the eight remedial conditions and remains in fundamental breach of its statutory and other obligations. In other words, this reasoning is not necessary to our decision, but it does, in our view, provide a separate and independent ground for reaching such a conclusion.

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

LAO Staff, in their Submissions to this Committee on November 6, 2015 and more recently on May 5, 2017, have reasserted its strong support for funding legal aid services that are designed to facilitate access to justice for members of the African Canadian community. Thus, LAO Staff have sought to reassure members of that community that if a suspension of the funding of the ACLC by LAO should occur, that LAO would continue to provide legal aid services to members of the community in some other fashion. In its November 6, 2015 Submissions, the LAO Staff explicitly addressed this issue 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 recommendation 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."

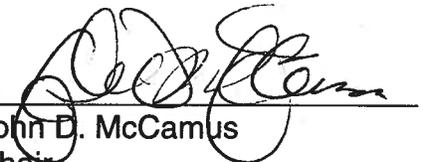
In their Submissions to this Committee of May 5, 2017, LAO Staff reaffirmed this commitment in the following terms:

"As previously stated, LAO's commitment to Ontario's Black community is unwavering. It is because of this commitment that LAO has for close to

seven years made extensive efforts to support and improve the capacity of ACLC's Board and management. At this point, however, it is LAO's position that the only path forward and the only way to ensure that the community receives the high quality, cost-effective, and efficient legal aid services to which it is entitled is to suspend funding to the ACLC and redirect the funds that are being misused and mismanaged by ACLC's Board and management to a new community-based organization."

Decisions by LAO as to how to implement this commitment are not the prerogative of this Committee. Rather, they would result from the normal decision-making processes of the LAO Board and management. Nonetheless, the members of this Committee wish to underline what they see as the importance of this commitment and encourage the LAO Board and management to achieve such implementation as soon as may be possible.

August 16, 2017.



John D. McCamus
Chair

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

ACCS

African Canadian Community Services, a separate corporate entity incorporated by ACLC on November 28, 2016 to operate programs formerly operated by the ACLC which were not funded by LAO. The transition of the non-LAO-funded programs to the ACCS was effective April, 1, 2017.

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 *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.

Decision of June 20, 2016

This is the Decision of this Committee that determined that the ACLC had fully complied with only one of the eight remedial conditions, that it remained in fundamental breach of its statutory and other obligations and that its LAO funding should be suspended on December 31, 2016, unless in the interim, it satisfied this Committee that it had fully complied with the eight remedial conditions.

Decision of September 5, 2014

This is a Decision of this Committee also referred to in these Reasons as the “CC L3 Remedial Response 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.

FRP

Remedial Condition #4 required the ACLC to submit a Financial Restructuring Plan for LAO approval.

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.

Interim Decision of January 19, 2017

The Decision of this Committee on January 19, 2017 that granted an adjournment of these proceedings to provide an opportunity to the parties to submit further information on certain issues.

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.

PwC Review of Inter-Fund Transfers

The study of ACLC's inter-fund transfer practices (often referred to in these Reasons as the "PwC Review") commissioned by LAO as a result of this Committee's request for such a study in its Interim Decision of January 19, 2017. The report of the PwC Review was provided to the parties and this Committee on April 25, 2017.

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 the then ACLC Board Chair, whose membership in the ACLC was subsequently revoked making him 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.

June 20, 2016

The Clinic Committee rendered its Decision, finding that the ACLC had fully complied with only one of the eight remedial conditions imposed on September 5, 2014, that the ACLC remained in fundamental breach of its obligations under LASA and the terms and conditions of its funding from LAO and therefore that its funding should be suspended. This Decision also acknowledged, however, that having reached such a conclusion, LASA required LAO to give reasonable notice to the ACLC of its intent to suspend funding and an opportunity to comply with its statutory and other obligations. The Committee determined that six months would constitute reasonable notice and therefore indicated to ACLC that its LAO funding would be suspended in December, 2016 unless, in the interim, this Committee was persuaded that the ACLC had fully complied with the eight remedial conditions.

December, 2016

Written Submissions of the parties contesting whether or not the ACLC had complied with the eight remedial conditions were filed by the parties, initial Submissions on December 1, 2016 and Reply Submissions on December 12, 2016.

January 19, 2017

This Committee rendered its Interim Decision indicating continuing issues with compliance, but granting an adjournment to permit the parties to submit further information on certain issues and to facilitate an audit of inter-fund transfer practices of the ACLC.

April 25, 2017

The PwC Review of ACLC's practices with respect to inter-fund transfers is presented to this Committee and to the parties to this proceeding.

April 28, 2017

The ACLC submits to this Committee and to LAO a further revised financial restructuring plan.

May – June, 2017

The parties submit written Submissions and Reply Submissions concerning the new information provided to this Committee during the adjournment order of January 19, 2017 and with respect to the ACLC's revised financial restructuring plan.

APPENDIX D – EVIDENCE OF FISCAL MISMANAGEMENT AS OF SEPTEMBER 5, 2014

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

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

1. Large Accumulated Deficit in the LAO Fund

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

In its written and oral submissions, the ACLC acknowledges that deficit reduction is essential but further claims that the deficit is largely attributed to unanticipated expenses with respect to a particular project and further, that substantial steps have already been taken to reduce the deficit. Further, the ACLC challenges the extent of the deficit at various points in time and further, asserts that the account receivable is in fact payable by LAO. Further, the ACLC submits that the fact that it has a deficit does not warrant a Level Three Remedial Response. For the purposes of making a decision in the present matter, it is not necessary, in our view, to resolve the differences of opinion between LAO Staff and the ACLC on the precise extent of the deficit at various points in time. The essence of the dispute is the proper treatment of \$50,009.00 of surplus funds relating to the vacant Director of Legal Services position. LAO withheld these funds and the ACLC treated the moneys as a receivable. This had the effect of reducing the ACLC's deficit in its 2013 audited financial statements to \$139,340.00. Vice-President Budgell, in a letter to the ACLC Board on November 26, 2013, explained that, in her view, the Board was not authorized to do this and that the deficit was therefore understated by that amount. Be that as it may, the L3 Staff Report recommends the imposition of a condition on the ACLC that it be required to provide a plan to eliminate its deficit at the reduced amount of \$139,340.00 and that, at the same time, the ACLC write-off the alleged receivable of \$50,009.00. This has the effect, as best we can determine, of reducing the deficit by the amount of \$50,009.00 of surplus funds. As this was the result

sought by the ACLC in treating the amount as a receivable, we assume that this result is satisfactory to both parties.

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

2. \$170,000.00 Lump Sum Bonuses

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

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

The ACLC responds that the bonuses were paid with LAO funds only on two occasions, 2008 and 2010, and moreover, asserts that at least part of the justification for the payment of such bonuses was that additional work performed by the remaining staff may be associated with the existence of vacant positions and therefore can sometimes be considered to be "replacement" in nature. We do not find this to be a convincing justification for such use of surplus funds. The meaning of the phrase "replacement staff" is clear, i.e. a staff member, not already paid for by LAO funds who, in this instance, replaces the missing Director of Legal Services. The use of surplus funds to pay bonuses to several existing LAO-funded staff members is, in our view, a clear breach of Section 26 of the Funding Agreement.

The ACLC also asserts that it does in fact have a policy relating to bonuses and that all of the bonuses were properly approved by the Board at in-camera

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

3. Accrued Compensatory Time and Liability

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

In its written and oral submissions LAO asserts that the ACLC response is unsatisfactory in a number of respects. First, LAO noted that not only had PwC been critical of the accumulation of accrued compensatory time liability, but that the ACLC's own auditors had drawn the ACLC's attention to this problem in years gone by. Nonetheless, it was to take another two years for the ACLC Board to revise this policy. Moreover, the treatment of the Executive Director's accrued liability by the ACLC has been the subject of contradictory explanations by the ACLC and its counsel. It was first claimed by the ACLC that the problem had been resolved by the receipt of a donation in the 2012 fiscal year by a donor who wished to remain anonymous. Counsel for LAO suggests that this explanation does not make sense as it does not appear to be reflected in the record keeping of the ACLC, nor is the ACLC in a position to provide a charitable receipt for tax purposes to a donor of such money. During the oral submissions on August 8, 2014, however, Mr. Dewart offered an alternative and inconsistent explanation that the liability to the Executive Director has been forgiven by the Executive Director and was no longer owed to her. The first explanation – donation by an anonymous donor – suggests that the liability has been

discharged by payment of the anonymously donated funds to the Executive Director. The second explanation does not involve such a payment. The inconsistency in these explanations and the lack of supporting documentation of something alleged to have occurred in the 2012/13 fiscal year is troubling. In our view, LAO was entitled to a clear and documented explanation of the handling of this substantial liability.

4. Co-Mingling of Funds

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

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

- Proper support for all inter-fund transfers including provisions of the LAO-Clinic Funding Agreement and Funding Agreements from other funders where transfers take place.
- Detailed explanation of all inter-fund transfers on financial reports provided to LAO.
- Board monitoring provisions which ensure Board oversight and approval of all inter-fund transfers.
- Evidence of Board review and approval of the policy itself.

No such policy has been adopted notwithstanding the passage of a substantial period of time since this matter has been drawn to the attention of the ACLC Board, both by its auditors and by the PwC Forensic Audit Report. This

Committee remains very concerned by the use of LAO funds for purposes not contemplated by the Funding Agreement.

5. Use of Clinic Funds to Hire Outside Counsel

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

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

The ACLC purports to defend this use of the surplus funds created by the vacancy on the tenuous basis that it constitutes the hiring of “replacement staff” within the meaning of Section 26 of the ACLC Funding Agreement. Even if one accepts this argument (and the Committee does not), it appears very difficult to justify the first item on this list. The first item concerns [REDACTED]. The L3 Staff Report asserts that the costs incurred by the clinic on outside counsel were excessive, created a large over-expenditure and were an irresponsible use of public funds. Leaving aside the question of whether [REDACTED] was financially eligible for legal aid clinic representation, the allegation that the costs incurred were excessive is difficult to rebut.

6. Inappropriate Use of Clinic Credit Cards

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

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

In response to the draft audit addendum report, the ACLC indicated that these

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

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

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

A more troubling illustration of the phenomenon of the use of clinic credit cards for personal purchases involves the purchase of a ring for \$754.00 from The Diamond Shop by the Executive Director on March 30, 2007. The materials filed, including a letter from Mr. Dewart to Mr. Forrest on December 18, 2012, indicate that when this matter was raised by PwC, the Executive Director reported that she had explained to the ACLC Board that on the same day that she made the purchase, she had withdrawn an equivalent amount of cash from her own bank account and immediately reimbursed the clinic. Further, she asserted that she had failed to ask for a receipt when she did so. She also said that she indicated to the ACLC Board that she would be willing to make a further repayment of the money if necessary. It is alleged that the Board declined to require repayment at that time. In the exchanges between counsel prior to the present proceeding, Mr. Forrest invited Mr. Dewart to provide banking records of the Executive Director from March and April, 2007, that would demonstrate that funds had, at the appropriate time, been withdrawn from the Executive Director's bank account in order to facilitate the alleged repayment. Mr. Dewart replied on January 10, 2013 that such a request was "grossly insulting to [the Executive Director], asking her to prove the truth of information she provided to the board". The bank records were not provided. Nor was a statement from the bank provided to the effect that such documents cannot be produced if that was indeed the case. With all due respect to Mr. Dewart, this request for documentation of repayment, given the other findings in the PwC audit Addendum, does not seem unreasonable and the refusal to provide the relevant documentation cannot fail to generate suspicion.

The PwC Addendum also reports that between 2008 and 2011, the ACLC's credit card was used on 34 occasions to obtain cash advances totalling \$6,950.00. In the absence of reporting documentation for all but \$300.00 of

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

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

The L3 Staff Report asserts that the ACLC Board of Directors “failed to institute policies and procedures governing meals, accommodation and travel expenses that comply with LAO policy requirements for all clinics”. Moreover, the L3 Staff Report notes that the ACLC Board appears to have taken no action in response to “variances and over-expenditures in the ACLC’s travel, meal and hospitality budget”. The L3 Staff Report goes on to suggest that, in light of the budgetary deficit of the ACLC, expenditures on such items appear to be excessive. The L3 Staff Report and supporting documentation suggest that substantial sums were spent at Toronto restaurants on staff lunches and dinners, some including alcohol that contravened the LAO policy that came into force in September, 2010 prescribing limits on such expenditures. Other expenditures asserted to be excessive or inappropriate in the L3 Staff Report include expenditures on accommodation and catering for staff meetings and planning days, unexplained domestic and international travel, Christmas parties and gifts of various kinds which appear to be of a celebratory nature for members of staff. The ACLC response to this complaint is that many of the expenditures involved did not use LAO funds and that the expenditures are unfairly criticized by LAO. In response to the recommendations of PwC and LAO to adopt appropriate policies with respect to expenditures of this kind, the ACLC submitted a Travel Policy to LAO on October 22, 2013. According to the L3 Staff Report, however, the ACLC Travel Policy did not fully comply with the PwC recommendations on this topic, nor with LAO’s Clinic Travel, Meal and Hospitality Expenses Directive of September, 2010. On the basis of the materials filed it is difficult for the Committee to determine the extent to which such expenditures utilized LAO funds and/or were excessive or inappropriate. Regardless of whether or not LAO funds were used for the expenditures in question, the Committee does not find it acceptable that the ACLC’s policy is not compliant with the recommendations of PwC and with LAO’s Directive.

8. Expenditures on Taxis within Toronto

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

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

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

As noted above, the L3 Staff Report also asserts that the ACLC "has not implemented policies that fully comply with LAO's Clinic Travel, Meals and Hospitality Expense Directive" of September, 2010 and that the ACLC has not fully implemented PwC's recommendations on these topics. Accordingly, it is suggested in the L3 Staff Report that "the risk of improper use of public funds and excessive spending on meals, gifts and travel remains". The response to this concern by the ACLC is that the problems identified are essentially historical in nature and that there is "no evidence of continuing concern about improper expenditures nor is there any evidence that the board is failing to conduct

meaningful oversight of expenses”. The position taken in the L3 Staff Report that the ACLC should comply fully with the recommendations of PwC and the current policies at LAO does not, in our view, appear to be unreasonable. The Committee concurs with this recommendation given past concerns and the lack of fully compliant policy.

10. High Levels of Office Manager Turnover

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

11. Failure to Report Staff Vacancies

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

12. Board Composition

As noted above, in March, 2010, two lawyer members of the ACLC Board of Directors resigned and provided copies of their emailed letters of resignation to LAO. The allegations made in the letters of resignation are very troubling and suggest a lack of capacity and willingness on the part of the Board to exercise appropriate oversight of the performance of ACLC staff in matters of financial management and of management-staff relationships.

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

“As set out in the Memorandum of Understanding, the clinic will have a

board of directors which is reflective of the diversity of the communities to be served by the clinic and will make reasonable efforts to have a board that includes:

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

Obviously, this provision is designed, in part, to ensure that by including persons with financial skills and management skills and lawyers, the Board has the capacity to engage in effective oversight of the administration of the clinic. In our view, it is especially important to have persons with these skills on the Board. With the resignations of [REDACTED] there are no longer any lawyers on the ACLC Board of Directors.

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

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

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

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

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

13. Lack of Cooperation

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

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