

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.