

Inter Clinic Immigration Working Group (ICIWG) submission to Legal Aid Ontario on
the Proposed Refugee and Immigration Panel Standards

John Norquay, ICIWG Chair
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The Inter Clinic Immigration Working Group (ICIWG) is a network of lawyers and community legal workers in Ontario community legal clinics and student legal aid services societies. Clinics are funded by Legal Aid Ontario (LAO) to provide services to low income, disadvantaged and vulnerable people. We serve clients in a variety of ways including summary legal advice, representation, public legal education and law reform activities. There are currently over thirty clinics in Ontario that belong to ICIWG, which has been meeting monthly in Toronto, including teleconference access for members outside the GTA, for over twenty-five years. ICIWG's membership has collectively contributed to and endorsed this document.

ICIWG welcomes LAO's commitment to improve the refugee and immigration panel standards. As you know, historically clinics have tended to provide refugee and immigration services to "fill gaps" in the coverage available under legal aid certificates. As a result, we rely heavily on high quality private bar lawyers accepting certificates to serve our clients' needs. We therefore welcome any changes to the panel standards which will improve the chances that our clients will receive high quality services when they approach private bar lawyers on certificate matters.

We echo much of the submission that you have received from the Refugee Lawyers Association. In particular we note:

- Mandatory Related Experience: We agree that the quantity of work undertaken (i.e. number of BOCs prepared or hearings conducted) is not a proxy for quality. A substantive review of the lawyer's work should be the primary basis for empanelment decisions. We also raise the issue of lawyers practicing immigration and refugee law in smaller cities and towns in Ontario where it may be difficult to dedicate 25% of a practice to refugee law, or to conduct a certain number of hearings.
- Quality Service Expectations: While we welcome the introduction of Quality Service Expectations and Best Practices Guides, there must be an assurance on the part of LAO that the number of hours available on a certificate and the policy on discretionary increases can realistically permit lawyers acting on certificates to meet these expectations and best practices. The policy on discretionary increases must be linked directly with the service expectations.
- Enforcement: Care should be taken to not create overly onerous reporting requirements on the part of panel members. A balance must be struck to ensure the new panel standards have teeth without creating additional time constraints on private bar lawyers who already spend significant time satisfying LAO

administrative requirements, including requests for discretionary increases. For example, in reviewing quality of work, we wonder whether LAO could rely on the BOCs that a lawyer has already submitted in order to obtain coverage for representation at a hearing rather than requesting the lawyer to resubmit documents which have already been provided.

- Public Information: We agree that the Best Practices Guide in particular should be provided to LAO clients retaining lawyers on a certificate and not just made available, for example, on LAO's website.

ICIWG was also asked to consider whether lawyers and other caseworkers practicing immigration and refugee law in legal aid clinics would be willing to adhere "in principle" to the panel standards. While we agree that all lawyers practicing immigration and refugee law (whether funded by LAO or not) should adhere to the Quality Service Expectations, for a variety of reasons discussed below, we are unable to agree to meet the overall panel standards in principle.

Lawyers practicing immigration and refugee law in the clinic system do so in highly varied ways. Throughout the province, there are relatively few lawyers whose practice consists primarily of immigration and refugee law, and the large majority practice in other clinic areas including income support, rental housing, human rights, and employment. For this reason, it would be difficult for many lawyers to meet the minimum percentage of practice requirements. Of the lawyers who do practice primarily in immigration and refugee law, much of this work is in "non-certificate" matters, and even these lawyers may be unable to meet the minimum number of hearings requirements. For these reasons, we would not be able to agree to meet the Mandatory Related Experience requirements, even in principle, as they do not reflect the nature of our work.

For similar reasons, we would also not be able to agree to meet the Mandatory Professional Development requirements. In no other area of clinic law does LAO mandate or suggest a minimum number of focussed CPD hours for lawyers to be permitted to practice. Clinics also have significant learning, support and collaboration resources on top of formal CPD programs at our disposal, including ICIWG, which includes a collegial listserv and monthly meetings which frequently include an informal learning component. Lawyers practicing within the clinic system in any area of law, including immigration and refugee law, are well supported in terms of mentorship and resources. Lawyers are also accountable to our clinics' Executive Directors and Boards of Directors. We believe that clinic lawyers are able to objectively self-assess competence to take on any given matter, in consultation with our peers and supervising bodies, and it is not appropriate to adhere to the same standard as private bar lawyers accepting certificates.

As noted above, ICIWG members do agree to adhere to the Quality Service Expectations and Best Practices Guides attached to the panel standards.