



Question and answers

With the passing of the *Legal Aid Services Act, 2020*, LAO must implement a clear framework for the delivery of legal aid services by community legal clinics serving communities throughout Ontario. The new framework is an important part of LAO's Modernization Project, which aims to update and modernize Ontario's legal aid system and allow LAO to be more responsive to community needs.

We are looking for feedback from our justice partners to help us establish a new framework for LAO's oversight of the delivery of legal aid services by community legal clinics.

Find more information about the consultation on www.legalaid.on.ca

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General

1. Why are you making these changes now?

Under the new legislation, Legal Aid Ontario is accountable for making new rules for offering services to our clients in all areas of the legal aid system, including clinics. The new rules must be in place for the new legislation to come into force.

The *Legal Aid Services Act, 2020* was passed in July 2020. Amendments to the *Legal Aid Services Act, 1998* will cancel existing LAO-clinic agreements on April 1, 2021. We need to ensure there are new agreements in place by that date to ensure continuity of services to clients.

2. Why can't the clinics continue to use the agreements they have historically had with Legal Aid Ontario?

The existing agreements between LAO and the clinics are over 20 years old and don't reflect the new legislation that was recently passed. They also do not reflect modern expectations, principles and requirements for transfer payments, which are transfers of public funds to funding recipients outside of government.

3. Is Legal Aid Ontario planning to close the clinics?

No. The clinics have been, and will continue to be, an important component of assisting low income Ontarians with their legal needs. We are currently moving forward with a new oversight framework, which includes replacing the agreements between clinics and Legal Aid Ontario, which are over 20 years old.

Clinic funding

4. Are legal clinics losing funding from LAO?

Funding considerations are not on the agenda for this consultation. The purpose of the consultation is to receive feedback on the new framework for the delivery of legal aid services by legal clinics. How funding is allocated is ultimately part of the new framework, but that will be part of the next stage of work after the *Legal Aid Services Act, 2020* comes into force.

5. Will Legal Aid Ontario provide funding to non-clinics to do work clinics have traditionally done?

Legal Aid Ontario has funded organizations to provide poverty law services that have not been community legal clinics, such as community health centres. This practice will likely continue depending on the need. However, clinics are currently LAO's primary entity service providers and that will not change when LASA 2020 comes into force.

6. There needs to be a new agreement in place by April 1, 2021. But normally clinics submit funding applications in the fall. How is that going to work for 2021/22 funding?

With the agreement changing, the funding application (or process to determine services to be delivered with funding) will also need to change. There will need to be a transitional process for fall 2020 funding applications. We will be consulting in phase 2 on the draft new process for determining services to be delivered with funding and to replace the funding application for fall 2021. This process will continue to evolve with subsequent funding cycles.

7. Is multi-year funding on the horizon?

This is something we would like to consider, as longer term planning is important. At LAO we do not receive multi-year funding. However, LAO annually provides a three year business plan to the Minister. A similar, risk-based option could exist for clinics. Our goal is to ensure stable services and funding.

8. Will Legal Aid Ontario be moving towards a tendering system for clinics to provide services?

No. The goal is for clinics to deliver services that respond to community legal needs. We want to ensure that all clinics have rigorous and effective ways of assessing, measuring and determining community legal needs. This helps the clinics and Legal Aid Ontario to better deliver services and ensures that the client is receiving

services that best help with their needs.

9. Will you be doing away with the dispute resolution process and the reconsideration process, both of which provide clinics with a recourse against funding or management decisions?

We will be determining processes for non-compliance, risk management and reviewing funding decisions as part of the second phase of the consultation we are doing with clinics.

10. Is the new framework a way for LAO to link funding to service levels? E.g. X funding per case?

The new framework is about collecting better and more relevant information from clinics on which we can ultimately— at a later date after LASA 2020 comes into force—move toward a new transparent, equitable way of allocating funding.

11. Currently, clinics forecast future services and needs in the annual funding application, and they track how they have met the needs of the previous year. Is this not sufficient?

Transfer Payment Accountability Directive (TPAD) requires that agreements include provisions for outputs and outcomes, which for us means services.

We want to build on the forecasting clinics are currently doing, and create benchmarks of services and service levels that will be part of the agreement

Clinics boards and LAO will monitor progress through quarterly reports.

12. What happens if LAO does not agree with the services that clinics identify to be delivered with funding?

LAO will have a discussion with the clinic. There are a number of reasons why services and service levels may vary between catchment areas. Communication between ministries/agencies and funding recipients is also a principle underlying TPAD, which includes communication about why service levels delivered may differ from forecasts. Please see consultation questions in the area of “service and outcomes focus”.

Clinic services and supports

13. Is there a difference between clinic law services and poverty law services?

Although the definitions are somewhat different in LASA 1998 and LASA 2020, LAO recognizes that clinics provide services in areas other than “poverty law” as defined in LASA 2020. That is why the new framework has been characterized as a “new framework for the delivery of legal aid services by community legal clinics” rather than “new framework for the delivery of poverty law services by community legal clinics”.

14. LAO currently provides a number of supports to clinics (e.g. IT services, insurance coverage, group RRSP, group benefits, etc.). Will those continue in the new framework?

Where LAO provides supports, LAO will ensure that the service levels that clinics can expect are clear. Where supports to clinics currently delivered by LAO are more appropriately managed elsewhere (for example, by individual clinics or groups of clinics), that transition should be made carefully.

15. Is the new framework focused on quantities of services? Not all clinic work can be quantified.

We need to do a better job of telling the story of the impact of our work. That is what performance measures and metrics are about. We know that cases vary greatly and direct comparison is not always possible.

16. Is LAO going to prescribe services and service levels for clinics?

LASA 2020 establishes that LAO determines how services will be delivered but in doing so, it shall have regard to the foundational role of clinics in providing poverty law services, determinations by clinics of the legal needs of their communities for these services; and any other information about community legal needs. As more information is gathered, LAO will be able to have more informed discussions with clinics about services clinics identify to be delivered with funding.

17. Is LAO planning to prevent or limit clinics' ability to do community development and organizing and law reform?

Under LASA 2020, LAO will have regard to clinics determination of community needs for poverty law services. Clinics will identify the services that will respond to community needs. As the consultation paper states, that will include the types of services clinics currently provide. Funded services must be within the mandate of LASA 2020.

Consultation materials

18. What is the distinction between consultation questions 2 and 3? One refers to “assessing” community needs, and the other refers to “measuring” community needs. What does LAO see as the distinction between these two words in this context?

The focus of the questions in this consultation area is clinics' determinations of the legal needs of communities. What are the best or most effective ways and methods? LAO recognizes that methods of determining the legal needs of communities may vary based on geography, population, and a clinic's mandate, among other factors. Do clinics distinguish between assessment and measurement when they are determining the legal needs of communities? If so, please explain how. If not, please indicate that.

19. Consultation question 12 asks how clinics can demonstrate that the range of services they identify to meet community needs are within the mandate of LASA 2020. Isn't it understood and agreed that clinics should use a broad range of services (including casework, law reform, CD, PLE, etc...) in meeting the needs of their communities?

Is LAO asking clinics to prove that every case and every PLE effort and every CD effort, meet LASA 2020?

The consultation paper recognizes that clinics will continue to provide a broad array of services under LASA 2020. Services must be within the mandate of LASA 2020, which requires services to meet community needs and be evidence based, among other principles and requirements. Clinics could look at LASA 2020 section 1, the purpose, and section 17, the objects and principles, for example, when thinking about this question.

In an annual funding application process, what would/could/should it look like for clinics to demonstrate that the services they identify to meet community needs are within the mandate of LASA 2020?

20. Can I participate in both a town hall and submit a written submission or use the online platform?

Yes. You can provide feedback in

multiple ways.

21. Where can I find materials that will explain some of the terms LAO is using?

Please see the [Transfer Payment Accountability Directive](#) and the [Transfer Payment Operational Policy](#).

22. How do the current LAO-clinic documents and arrangements not comply with TPAD?

The current LAO-clinic document and arrangements do not reflect many of the TPAD requirements that agencies, such as LAO, must meet to provide transfer payments to entities external to government, such as clinics.

Examples of ways the current documents and arrangements could improve to comply with TPAD include:

1. Making services and services levels to be delivered with funding clear in a new LAO-clinic agreement. The current agreement states that funding is for services, but specific services and service levels to be delivered with funding are not articulated (i.e. service expectations in the agreement do not change from year to year).
2. Ensuring the service forecasts clinics make through a funding application process form part of the agreement. This will allow for more effective monitoring through quarterly reporting requirements which are aligned to the services and service levels benchmarked in the agreement.

3. Focussing on outputs (services) over inputs. The current agreement focusses on inputs (funding level, staffing levels and positions to be maintained) rather than outputs (specific services and service levels to be delivered with funding).

23. The materials refer to risk assessments and risk-based oversight. What do you mean by “risk”?

We are referring to the TPAD definition of risk, which is “the effect of uncertainty on objectives. It can be characterized as either a potential negative or positive consequence or event that deviates from an expected output or outcome”.

There are different categories of risk, including governance, financial management, human resources, and technology, among others. Examples include:

- A decline in quality or level of services due to high staff turnover
- Increased costs from anticipated salary settlements or future contracts
- Financial insolvency because of lack of financial management systems and controls.

24. The materials refer to “value for money”. Are clinics not currently providing value for money?

Value for money is about the effective and efficient use of public resources, which is an ongoing process. LAO has

an obligation to ensure that the legal aid system continues to be effective and efficient.

Clinics deliver vital legal aid services to their communities. Some ways to increase effectiveness and efficiency include:

- Improving the collection of demographic information about clients to deliver more responsive services
- Continuing to develop solid metrics and performance measures to tell the story of the impact of LAO and clinics in Ontario.

25. Why is LAO consulting with individual clinics instead of through the Association of Community Legal Clinics of Ontario (ACLCO)? This is taking away from our time to deliver services.

LAO will be meeting regularly with the ACLCO. We want to be transparent and ensure a broad range of perspectives. To do this, we need to hear from all clinics.

26. The materials refer to a second stage of work which will involve developing an equitable, transparent, locally-responsive approach to allocating funding to communities across Ontario. Does this include equity based on race, gender, etc.?

We will be consulting with clinics on



developing a new approach to allocating funding to communities in Ontario, after LASA 2020 comes into force, and we collect more accurate, consistent information and data about service levels across the province.

We plan to build on the funding principles discussed with clinics, which include accounting for the different dimensions of poverty across Ontario.