

Legal Aid Services Act, 2020

Summary of feedback on Risk Policy

April 2023



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Introduction

Legal Aid Ontario (LAO) has completed its consultation about its proposed risk policy for entity service providers.

LAO has always been responsible for the oversight of the clinic system and LAO and entity service providers have always been responsible for managing risks within the clinic system and within individual clinics. The standards for risk management however are being updated and aligned with the [Legal Aid Services Act, 2020](#) (LASA 2020) and the Legal Aid Services Rules (Rules).

The consultation period began September 14, 2022 and ended on October 26, 2022. Two town-hall style consultations were conducted online, on September 22 and September 26th. LAO received 41 written submissions the contents of which are summarized below.

The consultation feedback can mainly be broken down into two overarching areas.

1. General concern from some stakeholders about how the policy itself would be interpreted by LAO, and how that interpretation could impact the risk level of a clinic and therefore potentially the duration of a new funding agreement for a particular clinic.
2. Specific changes that ESPs felt would make the policy clearer and fairer from their perspective.

General concern regarding LAO's interpretation of the policy

Although some participants expressed concern about LAO's involvement with clinics regarding evaluating their individual risk with a matrix, it was clear that LAO's ability and responsibility to manage risk across the entire clinic system was considered important by a majority of the participants. Many participants however expressed concern that the risk matrix chart was not clear and could lead to confusion as to where a particular clinic would be scored within it. This was in addition to the discretion given to LAO and the VP Clinic Law Services to determine the risk level of a clinic within a policy that some felt was too broad and could have a negative impact on their communities.

The example was given of the comparison between a clinic that has a few significant risks and a clinic that has many more minor risks. Some participants felt that in either of these cases each clinic could be placed anywhere from high to low risk and felt that this generated too much uncertainty. Some also felt that LAO should focus only on higher risks and that it would be unnecessary to disclose lower level risks to LAO.

Participants also expressed concern and sought clarity regarding how the proposed risk policy would interact with s.95 of the Rules regarding remedial measures. Participants wanted to know whether remedial measures would be taken in all cases where there was a risk to a clinic or only in certain circumstances. Additionally, they sought clarity on the timeline of when these remedial measures may be used, would it be early on in the process once a risk is identified or only at the end of the risk is unable to be remedied.

Another area of general concern participants noted was how LAO would respond to and complaints made directly to them from the public or stakeholders and how that could potentially impact a clinic's risk level.

A question frequently posed by participants was whether LAO would inform clinics of any complaints or information they received and whether they would be allowed to respond or resolve the complaint or issue before it would have a potential impact on their risk level. If they were not made aware of the complaint or issue and not given a chance to respond participants strongly felt that it would not be fair to this information to impact their risk level determination.

There was a general appreciation for LAO's commitment to work collaboratively to identify and mitigate risks faced by clinics, however, some clinics raised the issue of how specifically LAO and the clinics would communicate potential risks to each other.

The need for continual learning and training for all clinic staff and executives was also raised by some participants. Feedback was provided that learning and training would

complement the creation of a risk policy as having properly trained staff would reduce the risk of events occurring which could impact the particular clinic's risk level.

Many participants requested management and risk training for staff in order to educate themselves on proper risk management practices. Specific feedback was received requesting that all new executive directors should receive management training yearly and more experienced executive directors receive training on a 2-3 year rotating basis to reduce risk overall.

Proposed changes to the policy

Many participants raised concerns about the lack of an appeal process from a decision made by the Vice President Clinic Law Services regarding a clinic's risk level based on the policy. There was a general appreciation that the policy specifically stated that LAO's Board of Directors would be made aware of any change to an individual clinic's risk level under the policy and Rules, however, many felt there was still a need for a clear review process.

Regarding the uncertainty around the interpretation of the risk policy and matrix some suggestions were provided to potentially remedy this which included:

- requiring the policy to explicitly define categories of risk and what defines each specific risk level (along with the data used to determine the risk)
- requesting that different clinics receive separate risk policies tailored to their own needs
- defining how notice of risks are provided by LAO to clinics and vice versa
- defining what a "20 out of 20" clinic looks like versus a "15 out of 20" clinic and what exact criteria must be fulfilled to secure a particular score.
- providing clinics a checklist of risks or more examples (particularly of high risk scenarios) to help identify risks more easily
- providing clinics templates to aid in their development of a risk management plan
- stating specifically what the timeline for LAO to complete a risk assessment would be

A common suggestion from many participants was to incorporate some of the wording of the memorandum that accompanied the policy into the policy itself. Participants felt that the memorandum better explained the purpose of the policy as well as the collaborative approach LAO would be taking regarding the identification and mitigation of risks under the policy. Many felt that without incorporating some of the wording of the memorandum it would be seen to be of secondary importance to the policy which they viewed as more punitive in its language.

The extension of the period of notice between when LAO is required to inform a clinic of their risk level and the signing of a new agreement was an issue many participants expressed concern over. Many felt that the current period of two months set out in the policy was too short.

If a clinic was informed they were high risk and were getting an agreement less than three years long they would then have only a short period of time to adjust and make any other changes. This uncertainty would be detrimental to the clinic's ability to retain and hire staff and may further impact the ability of the clinic to provide services. Several participants

proposed extending this period to somewhere between three to six months with some requesting the period be extended longer up to two years.

Repeated requests were also made by a number of participants for LAO to implement a Quality Assurance program in order to assist clinics in monitoring compliance with the Rules and overall risks.

LAO also provided all clinics with the Transfer Payment Accountability Directive (TPAD) which was created by the Province to govern the relationship between the government and all transfer payment recipients. This was requested by a participant in a town hall session. One participant also suggested that LAO should list the public policy objectives of LASA 2020 regarding access to justice in the risk policy itself which they believed would be clearer and would better align with some of the examples in TPAD.

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