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September 6, 2019

David Field, CEO and President
Legal Aid Ontario
Atrium on Bay
40 Dundas Street West, Suite 200
Toronto, ON, M5G 2H1

Dear Mr. Field:

Re: ARCH Disability Law Centre submission to Legal Aid Modernization Project

I am writing on behalf of ARCH Disability Law Centre and its Board of Directors. We are deeply concerned about the current Legal Aid Modernization Project. As per ARCH's By-laws, directorship on ARCH's Board is term limited, and thus as Directors have no vested interest other than assuring that ARCH stays on mission.

ARCH supports and endorses the written submissions made to you by the specialty and ethno-racial and linguistic legal clinics on September 6, 2019 and those provided to you by the ACLCO on August 29, 2019.

ARCH's board plays an important role in bringing the diverse and complex disability communities perspective to ARCH's work. It makes ARCH responsive to and grounded in the needs of our communities, which is then translated by a rigorous process into our Strategic Plan. ARCH's By-laws mandate that the majority of the board always consists of persons who identify as having disabilities. Board members have made us more cognisant of issues such as the impacts of multiple disabilities and intersecting identities. For example, the ARCH Board has struck a working group to examine the particular issues arising for Indigenous persons with disabilities across Ontario.

ARCH adheres to a rigorous professional skills recruitment process for recruiting new board members. The ARCH Board has attracted a broad range of highly talented individuals. These include persons with lived disability experience, human rights lawyers from the private bar, disability scholars, human resource professionals, professionals from the financial and private sector, and architectural professionals. Respectively, aside

from our community representation, we board members also provide significant management and organizational advice, that if required to be obtained in the market would be prohibitive.

ARCH is the only law clinic focused solely on the legal needs of persons with disabilities across Ontario. In this role, ARCH has developed highly expert knowledge and skill in delivering services to our most vulnerable and marginalized communities of persons with disabilities, as well as in the substantive areas that we practice. We are concerned that in a potentially more centralized service delivery system, the highly individualized needs of persons with disabilities will be lost. Given the heterogeneity of disability, one size does not fit all. To pursue equality for persons with disabilities, lawyers must be immersed in more than just the substantive law, they need to understand the breath of conditions, issues and community resources available. Most lawyers are not aware of disability issues and many would not be willing nor are trained to service clients with complex disabilities. As it is, when other clinics are confronted with a client with a disability legal issue, they often consult ARCH or partner with ARCH, which speaks to the significant resource and expertise that ARCH has developed. ARCH's Accessible Services Project provides ongoing workshops, education materials, and consults to lawyers and paralegals regarding a range of disability related issues when representing a client with a disability, such as providing appropriate disability related accommodations, securing procedural accommodations, and issues related to legal capacity to instruct counsel. Persons with disabilities are underserved by the legal profession and we are concerned that a potential diminishment of ARCH's ability to service persons with disabilities will exasperate this lacuna, not to mention what may be lost in public legal education and law reform. Furthermore, the cutbacks to legal aid services are incongruous to Canada's commitments under the *Convention on the Rights of Persons with Disabilities* and what is envisioned by the international governance and monitoring systems.

The independence that each clinic maintains, with a volunteer board of directors rooted in the communities that we serve, is fundamental to ensuring that the voices we are trying to amplify have a role in determining the clinics' vision and priorities. This allows each general service, specialty, ethno-racial and linguistic clinic to be responsible and responsive to their own particular communities' needs. For example, ARCH's work advancing supported decision making or advocating for protections in medical assistance in dying legislation have both significantly differed, and in some circumstances, directly oppose, the positions taken by other specialty clinics, and this difference underscores the need for ongoing consultation and capacity building within our distinct communities. There is not one homogenous community that all clinics serve. The work of clinics is always informed by the particular communities it serves. The diversity in communities and their needs dictates the need for independent community legal clinics.

Persons with disabilities are the largest minority in the Province of Ontario and the incidence of disability will continue to increase as the demographics of Ontario's population continues to age. Further, according to the Ontario Human Rights Commission, persons with disabilities continue to experience poverty, with 23.5 per cent living under high rates of poverty. In addition, "[p]overty is intricately tied to systemic

discrimination on prohibited grounds and in turn gives rise to further stigmatization and discrimination” (OHRC, 2017/2018 Annual Report). Budget cuts mean a continuation of struggle with an even greater reduction in resources to meet a basic standard of access for equity seeking people who have long endured under oppressive systemic barriers, historically and to the present day. Arguably, based on these metrics ARCH is underfunded.

The Ontario Human Rights Tribunal reports that more than fifty per cent of their cases are on account of disability, which is demonstrative of the ongoing systemic discrimination experienced by persons with disabilities. As the Pinto Report points out, many claimants to the Ontario Human Rights Tribunal are unrepresented, due to the insurmountable cost of retaining a member of the private bar. When the government exercises power in ways, which delimit access to legal support, it is a form of injustice and arguably can contribute to deepening discriminatory, divisive and adverse effects.

If efficiency is the measure of success in a “modernized” legal aid system, you could not ask for a better model than ARCH. Few legal service providers could deliver the quantity and quality of services that ARCH delivers on a modest budget. Moreover, ARCH’s practice is mostly centred on filling the gaps of service which often means that the cases taken are much more legally complex, may not have a clear legal process to offer a resolution, and involve additional time to ensure that our services are provided in a trauma-informed and fully accommodated manner. Furthermore, ARCH leverages its resources by strengthening our partnerships with communities, private bar, the judiciary and administrative decision-makers, government, disability rights organizations, and service providers. Through coalition building, continuing legal education programs, rights education and outreach and other innovative initiatives, ARCH has grown accustomed to finding solutions in creative, meaningful and lasting ways within our limited budget. For example, ARCH programs have encouraged private bar to take on cases that otherwise would not have been taken, trained decision makers on procedurally accommodating parties with disabilities, and finding solutions for clients within a strong network of community partners and stakeholders. The relationships that ARCH forges with our communities and stakeholders are invaluable; bureaucracies cannot forge such relationships.

The current round of roundtable discussions, while important opportunities for clinics to express their concerns, are not real consultation. Without knowing what the government proposes, or what it considers in need of revision, it cannot be said that we have had a real opportunity to be consulted.

Lastly, we close with a note about ARCH’s historically significant impact on the rights of Ontarians with disabilities. ARCH successfully fought for disability to be a protected ground in the *Human Rights Code*, de-institutionalization, the right to vote for people with disabilities, and we continue to fight for the eradication of ableism, the right of students to be fully accommodated in their neighbourhood school, the rights of institutionalized persons, the right to access public and accessible transportation, the right to make one’s own decisions, the right to receive attendant services and developmental services free

from abuse and discrimination, the right for an accessible election, the right to accessibility, and the right to appropriate accommodations in accessing post-secondary education, in gaining and retaining employment and in the receipt of a wide range of services. In addition to the direct legal services that we provide to persons with disabilities, it is critical that we continue to seek systemic change for Ontarians with disabilities, as despite these achievements, persons with disabilities still confront overwhelming discrimination. Systemic change on behalf of persons with disabilities is one of the core tenants of ARCH's mission. **If not ARCH, who will fight for these rights?**

We fervently hope that any pending changes to Ontario's legal aid system will not impede ARCH's ability to provide these necessary services and the continued promotion of the rights of persons with disabilities to achieve true equality, inclusion and full citizenship.

ARCH remains open to discussing ways to achieve true improvements in legal aid delivery that will benefit persons with disabilities.

Yours truly,
ARCH Board of Directors

A handwritten signature in black ink, appearing to read 'Douglas Waxman', with a long, sweeping horizontal stroke extending to the right.

Douglas Waxman
ARCH Board Chair

c. Charles Harnick, Legal Aid Ontario
Lenny Abramowicz, Association of Community Legal Clinics of Ontario