



## Submission

September 5, 2019

From  
Board of Directors  
Community Legal Clinic of York Region (CLCYR)

To  
Doug Downey  
Attorney General of Ontario  
Ministry of the Attorney General  
c/o Charles Harnick, Board Chair  
Legal Aid Ontario, Atrium on Bay  
40 Dundas Street West, Suite 200  
Toronto, ON M5G 2H1

Dear Mr. Harnick,

**Re: Legal Aid Modernization Project (2019) – Submission – Community Legal Clinic of York Region (CLCYR)**

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Please find attached our submission in response to the Ministry of the Attorney's request for input into the Legal Aid Modernization Project (2019).

As a group of volunteers serving on the board of the Community Legal Clinic of York Region, we are committed to addressing access to justice issues in our community, effective governance, and efficient delivery of basic legal services to people who cannot afford essential services from the private bar. We therefore support efforts by the Ministry of the Attorney General "to find better ways to provide services to more low-income Ontarians and to support financial sustainability over the long-term."

We are providing this submission to assist the Attorney General to achieve these objectives by leveraging the strengths of the unique, low-cost, and nimble community legal clinic system that has evolved in Ontario over the past 50 years. The clinic system has been an important contributor to making Ontario the increasingly just and inclusive society we have today and should be strengthened as a central pillar of Ontario's legal aid system as part of this Modernization Project. Thank you for considering our perspective.

Respectfully submitted,

On behalf of the Board of Directors, Community Legal Clinic of York Region (CLCYR)

A handwritten signature in black ink, appearing to read 'Pramila Javaheri', is written over a horizontal line.

Pramila Javaheri, President

## **Legal Aid Modernization Project (2019)**

### **Submission**

#### **Community Legal Clinic of York Region (“CLCYR”)**

- 1. Objective and scope:** The Terms of Reference for the Legal Aid Modernization Project (2019) outlined by MAG state that the objective of this process is to find “better ways to provide services to more low-income Ontarians” ... “that will contribute to moving the legal aid system towards sustainability and modernized service delivery”. The Project further aims to achieve these objectives by building on the recommendations of the Auditor General of Ontario. The Project offers a unique opportunity for building on the strengths of the current legal aid system, while correcting some of the critical weaknesses that have led to growing concerns about financial sustainability and unequal funding over the past few years.
- 2. Limitations:** According to further direction by LAO regarding this Project, “the purpose of this consultation is to explore how to make the legal aid system more client-focused and efficient”, and “the legal aid system’s budget is not the question to be discussed in this engagement.” While it is understandable that the overall budget levels for the legal aid system are considered beyond the scope of this consultation, the manner in which a fixed budget is allocated across different channels for delivering legal aid (i.e., through certificates, duty counsel, or clinics) is critical for shaping the overall efficiency and value for money in service delivery.
- 3. Who we are:** The Community Legal Clinic of York Region (CLCYR) is one of the many general-purpose legal clinics that have evolved in Ontario over the past 50 years to expand access to basic legal services to people with little or no income. Based on Statistics Canada’s low income measure (LIM), CLCYR happens to be the worst funded clinic in the legal aid system (see table below). At the same time, the population in York Region is large and diverse, with fast evolving socio-economic disparities and a growing demand for basic legal aid services from low income residents. Over the years, and in large part due to CLCYR’s tight budget relative to demand for legal aid in York Region, CLCYR has learned to become innovative in responding to the evolving needs of our community, for instance by building extensive collaborations with local public and non-profit service providers and municipal stakeholders.

Clinic	Region	Total 2018/19 AAF	Est. LIM Pop.	\$/LIM
CLCYR	GTA	\$2,039,948	162,620	\$12.54
LAW	Southwest	\$1,112,848	78,740	\$14.13
NLSLM	Southwest	\$1,387,565	92,395	\$15.02
DUR	Central and East	\$1,264,377	77,080	\$16.40
WILL	GTA	\$944,848	53,720	\$17.59
FLEM	GTA	\$1,391,397	75,460	\$18.44
SCAR	GTA	\$1,798,525	97,530	\$18.44
WSCAR	GTA	\$1,290,193	67,530	\$19.11
HCLS	Southwest	\$1,041,730	54,475	\$19.12
SIMCO	Central and East	\$1,636,152	84,690	\$19.32
WATER	Southwest	\$1,567,960	80,885	\$19.39
NPD	GTA	\$1,944,488	99,710	\$19.50
MISS	GTA	\$2,521,549	128,910	\$19.56
SETOB	GTA	\$709,404	34,090	\$20.81
DOWN	GTA	\$1,114,428	52,605	\$21.18
WLC	Southwest	\$596,084	27,865	\$21.39
UHCS	GTA	\$811,630	37,430	\$21.68
CLSO	Central and East	\$3,067,590	136,555	\$22.46
WTOR	GTA	\$840,489	36,925	\$22.76
BHN	Southwest	\$919,452	39,500	\$23.28
JANE	GTA	\$1,034,181	43,385	\$23.84
PETE	Central and East	\$621,554	25,610	\$24.27
GBLC	Southwest	\$705,462	29,025	\$24.31
KING	Central and East	\$582,311	23,805	\$24.46
NIAG	Southwest	\$1,971,564	80,090	\$24.62
EOLC	Southwest	\$849,841	32,215	\$26.38
CKLC	Southwest	\$573,300	21,685	\$26.44

4. **Value for money:** As an independent board of volunteers that cares about access to justice in communities where we live and work, we are amazed by the capacity of our clinic staff to stretch available funds, integrate their work with public and private sector partners across the relatively large and diverse York Region, and offer a life-line to low-income members of our community. While much of this value cannot be easily measured in financial terms, it is evident that the clinic provides an essential community hub in York Region for delivering integrated services to the most vulnerable and marginalized among us, filling in gaps in the continuum of services, and responding to the needs of our clients across a large region with growing urban and rural poverty. Our experience in York Region lends strong support for the views outlined in the submission by the Association of Community Legal Clinics of Ontario (ACLCO) about the efficiencies and innovation associated with Ontario's decentralized legal aid system of independent community legal clinics. Delivering high quality services that meet local needs and conditions at a relatively low cost and enhancing support for the legal clinic component of Ontario's legal aid system will be critical for achieving the Government's dual objective of providing services to "more low-income Ontarians" while ensuring long term financial sustainability. Put simply, local legal clinics, including CLCYR, represent an inexpensive and effective method in delivering client-focused services to low-income Ontarians
5. **Financial sustainability and the clinics:** In contemplating adjustments to the legal aid system, we submit that it is important for the Attorney General to be mindful of the origins of concerns about financial stability and recognize that the problem has little to do with failures in governance and management of community legal clinics. As documented in the 2017 Legal Aid

Ontario Review conducted by Deloitte for MAG,<sup>1</sup> the long-term financial stability concerns that, at least in part, motivate this Modernization Project result from “the cumulative impact of a number of events including changes to financial and legal eligibility for its services, changes in demand for its services, and changes to the tariff it pays to private bar lawyers.” With the exception of some increases to financial eligibility funds and recent claw backs, clinic funding has been relatively stable and predictable. Neither the Deloitte report, nor the value for money audit conducted by the Auditor General, found any evidence of failures in the financial control of the clinics by the LAO and volunteer clinic boards.

6. **Risks and opportunities for efficiency enhancement:** Nevertheless, we recognize that the clinic system represents one of the few discretionary elements of LAO’s overall budget. As such, we are concerned about the risks the budget claw backs have brought to many clinics recently (e.g., a 30% cut in the case of CLCYR). These risks include the potential erosion of statutory independence, accountability, and stable long-term funding jeopardizing our responsive and cost effective system of community legal clinics. These clinics run on shoestring budgets, help fill gaps in “poverty law” cases that are not economically viable to address by the private bar, and play an important role as a familiar institution of last resort that provides a life-line for our vulnerable neighbours, friends, and family members.
  
7. **Legislative reforms:** We submit that legislative changes that erode the independence of community clinics and their accountability to communities they serve will obstruct the Attorney General’s objective of providing services to “more low-income Ontarians” and promoting financial stability of the legal aid system. On the other hand, enhanced commitments to relatively low cost/high value-added community clinics will be a required ingredient for reaching out to more low-income Ontarians and making basic legal services available to them when they need it the most. Given the size and diversity of York Region, CLCYR utilizes satellite locations for delivering services, which also allows clinic staff to actively engage with other local service providers to build networks that leverage our combined resources to maximize the value for money and close gaps in the continuum of services. The community clinic system represents a low cost and high value-added solution for achieving the Government’s objectives “of expanding service to more low-income Ontarians and ensuring long term financial stability of the system”. We therefore support the legislative reform strategy outlined by Association of Community Legal Clinics of Ontario (ACLCO) in its draft submission, which we have had the opportunity to review:

*“The success of the Ontario clinic system is based on its responsiveness and adaptability to the needs of the communities each clinic serves. For this reason, the important fundamental characteristics of the clinic model should not be altered but rather should be strengthened by the Project.”*

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<sup>1</sup> [https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lao\\_review/](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lao_review/)

8. **Funding gaps and value for money:** After more than two decades since its inception, LAO continues to lack a data driven funding formula for the clinic system that responds to the evolving needs of low-income Ontarians requiring access to the justice system, regardless of where they live and work. This has led to the development of significant inequality in funding and access. As the worst funded clinic in Ontario and given the low-income population of York Region, CLCYR represents an extreme example of how systemic inequalities arise due to the lack of a fair, transparent funding formula from LAO for clinic budgets. It is important to note that the ad hoc nature of clinic funding was noted in the value for money audit of the legal aid system by the Auditor General (Section 4.3.4). LAO needs to modernize its anachronistic funding for clinics. Legal aid clinics should be funded through fair, transparent formulas based on need similar to the way health care and education services budgets are allocated.
  
9. **Enhanced accountability:** Despite multiple attempts to refine appropriate criteria (clinic expansion of 2000, GTA transformation 2014–2017, ACLCO consultation 2018), clinics and LAO have consistently concluded that only low income population is a reliable, unbiased proxy for measuring the need for poverty law services. However, progress in development and implementation of a data driven, needs-based approach to funding allocation and performance benchmarking has been minimal. In fact, as highlighted by the Auditor General between 2013/2014 and 2016/17, the size of the gaps between the top 10 highest and lowest funded clinics based on the low-income measure actually increased by approximately 20 percent. Moving towards a more equitable funding formula that reflects demographic data on the prevalence of low-income persons and potentially other concrete indicators of need/demand for legal aid is a necessary step in modernizing the system and stretching a shrinking LAO budget. This Project offers an opportunity for MAG to lead and support LAO in developing an evidence-based approach to need assessment and funding allocation within the clinic system.
  
10. **Performance measurement and quality assurance:** While clinics compile and report on their outputs to their boards and LAO, the manner in which these numbers are aggregated and reported by LAO is inadequate and limits the scope for LAO and/or clinic boards to benchmark performance across clinics, learn from each other’s successes and failures, and make necessary adjustments. This issue was identified by the Auditor General in the 2011 audit of Legal Aid Ontario and emphasized again in the more recent report (S. 4.3.5). This Project offers an opportunity for MAG to lead and support LAO develop a more systematic approach to collection, aggregation, and dissemination of key performance indicators required to ensure accountability of service providers across all three service provider channels. If nothing else, this Modernization Project can have significant value if it promotes systematic data collection at LAO, and thereby enable accurate assessment of outcomes and improve the quality of services provided to clients. For example, client feedback provided by LAO as part of this consultation indicates that (Consultation doc No. 2):
  - “Lawyers may not take the time to provide sufficient explanation and/or pressure clients to plead guilty.”

- “Criminal panel lawyers may plead a client out when the matter should have gone to trial.”
- “Some clients feel that lawyers plead them guilty just for ease, and possibly to make money faster.”

Detailed tracking and analysis of case outcomes are essential for identifying service providers that may be delivering low quality services. This is particularly vital in criminal cases handled by the private bar and/or duty counsel, where inadequacies in representation can have devastating effects on clients. With respect to clinics, consistent and comparable key performance indicators will be critical for enabling independent boards and LAO to assess operational effectiveness and identify areas that need improvement in a timely manner. More broadly, a modernized approach to data collection and analytics needs to be developed to ensure long term financial sustainability of the system. A modernized system must have the ability to produce refined scenario planning and demand forecasting across service delivery channels, which was a key problem identified by Deloitte in its 2017 report to MAG.

11. **Barriers to access and increased use of information technology:** There is significant room for improvement in the use of client facing information and communication technology, that can help inform low-income Ontarians on their legal rights and options that are available through the legal aid system. In the case of certificates, people appear to be having a hard time finding qualified lawyers from the panel lists provided by LAO. LAO needs to evaluate its panel lists more frequently and/or rigorously to ensure there is still a current willingness to accept certificates on the part of every listed lawyer and that their areas of service/expertise are correlated with areas clients need. LAO’s “find a lawyer” tool for example is not designed in an intuitive manner and does not include some of the priority areas for clinics such as housing and employment.
12. **“One system” and efficiencies:** LAO’s operational costs are substantial, nearly equaling the total budget for the clinic system (\$81 vs. \$85 million, respectively, as of 2018 according to the Auditor General’s report, p. 1). While there can be significant gains in terms of economies of scale in moving towards a one system approach—for instance by providing a user friendly “one stop shop” for intake on the Internet, front facing search and referral processes for potential clients, and data collection/analytics required for moving towards a modernized legal aid system—there are risks to moving in this direction. Local linkages, governance, and accountability of the clinic system and expertise in providing “poverty law” services in collaboration with other service providers in York Region are key value for money components to CLCYR’s ability maximize our relatively limited budget to meet the