

# **LEGAL AID SYSTEM MODERNIZATION PROJECT 2019**

## **Submissions by Chinese & Southeast Asian Legal Clinic**

The Ontario Ministry of Attorney General, in partnership with Legal Aid Ontario (LAO), is conducting a review of legal aid. The initial focus of the Legal Aid Modernization Project (the “Project”) is to reform *Legal Aid Services Act 1998 (LASA)* legislation, which governs LAO and all community legal clinics in Ontario.

The Chinese and Southeast Asian Legal Clinic (CSALC) is committed to working with LAO throughout this review and on an ongoing basis. Our clinic firmly supports a legal aid model with independent oversight like LAO; at the same time, we urge LAO to respect the foundational principles of the clinic model and work together with clinics to preserve this model as a vehicle to deliver poverty law service.

### **About the Chinese & Southeast Asian Legal Clinic**

CSALC<sup>1</sup> is a community-based organization that provides free legal services to and acts as an advocacy group for non-English speaking, low-income members of the Chinese, Vietnamese, Cambodian, and Laotian communities living in Ontario.

Founded in 1987, CSALC has provided legal services and representation to nearly 100,000 clients in various areas of law, including landlord and tenant, social assistance, employment, immigration and citizenship, human rights and other areas of law affecting low-income members of our client communities.

CSALC also conducts community education and engages in law reform activities in order to advance the rights of the clients it serves. To date, CSALC has conducted more than 1,000 public legal education sessions and has published numerous sets of public legal education materials in Chinese and Vietnamese on various areas of law.

Widely recognized for its legal and policy expertise and experience, CSALC has been consulted by all levels of governments and other public institutions on issues affecting the Chinese and Southeast Asian communities in particular, and racialized communities in general. Over the years, CSALC has made numerous submissions to Parliamentary and Senate Standing Committees on issues such as access to justice and legal aid, employment insurance benefits, social inclusion, poverty reduction, and the federal budget. CSALC has also made submissions to various provincial legislative standing committees on such issues as policing, human rights reform, social assistance, housing, poverty reduction and employment standards.

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<sup>1</sup> The legal name of CSALC is Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC). When the clinic was first established, its mandate was to serve members of the four specific ethno-racial communities living in Metro Toronto. Over the years, the clinic has expanded its services to the communities living in the Greater Toronto Area (GTA). In 2017, with additional funding from Legal Aid Ontario, the clinic officially expanded its mandate to province wide and set up a toll free number for target communities living anywhere in Ontario to contact the clinic for service. While the clinic has retained its legal name, it decided to change its business name to CSALC to reflect the broad expansion of its mandate.

CSALC also engages in test case litigation. It has appeared before and has been granted intervener status by all levels of courts, including the Supreme Court of Canada, the Federal Court of Appeal and the Court of Appeal for Ontario.

In addition to test case litigation, CSALC has extensive experience with the international human rights system. To address issues of concerns affecting Chinese and Southeast Asian communities, as well as other racialized and immigrant communities in Canada, CSALC has submitted a number of shadow reports to international human rights bodies, including the United Nations (UN) Human Rights Council, and a number of UN treaty-monitoring bodies, such as the UN Committee on the Elimination of Racial Discrimination (CERD) and the UN Committee on Economic, Social and Cultural Rights.

CSALC has also made submissions to and appeared before the Inter-American Human Rights Commission of the Organization of American States on issues affecting the communities served by the clinic.

In view of its longstanding commitment to human rights in Canada, CSALC was granted consultative status as a Non-Government Organization with the UN's Economic and Social Council (ECOSOC) in 2013. The clinic's ECOSOC status was renewed in 2019.

Finally, over the years, CSALC has been involved in a number of community-led initiatives seeking to advance the rights of racialized communities, immigrants, refugees, and persons with precarious status. For instance, in 2007, CSALC co-founded the Colour of Poverty-Colour of Change Network, a coalition of individuals and community organizations working to redress racial inequities and the growing racialization of poverty in Canada.

In sum, through its law reform activities, community engagement and test case litigation, CSALC has developed considerable expertise in various issues affecting racialized communities.

## **Proposed Principles to Guide the Modernization Project**

CSALC has reviewed the submission made by the Association of Community Legal Clinics of Ontario (the "ACLCO") on the Project. CSALC supports the position and various recommendations put forward by the ACLCO – in particular, the proposed foundational principles of the community legal clinic model, which are essential to access to justice for low-income Ontarians.

CSALC's position builds on the foundational principles proposed by ACLCO; it adds the perspective of the clients we serve, who are racialized and face additional challenges in accessing justice due to linguistic and cultural barriers and, in some cases, their immigration status.

CSALC proposes that the following principles must guide the Modernization Project:

- **Accountability:** Clinic law services, offered by independent community clinics and governed by boards of directors, are accountable to the communities we serve

- **Equity and Inclusion:** The review of *LASA* should be guided by the values of equity and inclusion. It should recognize that there should not be a “one size fits all” solution, and that our connection with our communities is what drives the work of clinics.
- **Community boards:** Clinic boards have the responsibility to determine the needs of their communities and to ensure the delivery of clinic law services in accordance with those needs
- **Flexibility:** Clinics have the ability to offer a broad range of services to meet those needs, including systemic work such as law reform, community development, test cases and public legal education (PLE)
- **Core and stable funding:** The provision of core and stable funding for legal clinics will ensure low-income people’s legal needs are met and their access to justice will not be affected by changing government priorities.

### **Principle 1: Accountability**

There are three modalities for the delivery of legal services under *LASA*: clinics, certificates and duty counsel. Of the three modalities, clinics are subject to the most stringent legislated accountability measures. Indeed, almost all of the provisions governing reporting and accountability requirements are specific to clinics only; there are no specific accountability measures regarding duty counsel, and the only measures dealing with the private bar in *LASA* refers to the role of the Law Society of Ontario.

Clinics have readily accepted and integrated these legislated accountability measures into their core operation. In practice, clinics are held accountable by two bodies: a) LAO and b) each clinics’ own community board of directors.

With respect to LAO, clinics are required to sign a Memorandum of Understanding (MOU) with LAO, which sets out the basic framework of accountability that all clinics must abide by. On an annual basis, clinics must also submit a funding application that includes a detailed report from each clinic about their activities in all areas of their operations, including case work, PLE, advocacy and community organizing. Clinics also provide quarterly financial and statistical reports to LAO, which includes all the relevant casework statistics, as well as financial status, of the clinics. As not-for-profit organizations, clinics must also prepare audited financial statements, which are submitted to LAO. The statements are also submitted to the clinic’s board of directors for adoption and to clinic members for final approval at the clinic’s annual general members’ meeting.

While the practice varies from one clinic to the next, generally speaking, each clinic board will receive a monthly financial statement, as well as statistical report, from the Executive Director of the clinic. In the case of CSALC, the Board also reviews monthly staff activity reports, which includes a short summary of the workshops conducted by clinic staff, media interviews and coverage, community outreach projects, test case litigation, law reform and advocacy activities, as well as some sample cases (anonymized) that the clinic staff are working on.

If LAO wants to strengthen clinics' accountability measures, LAO can do so without amending *LASA*.

If LAO seeks to review the accountability measures, then LAO should use these measures to promote the principles of equity, inclusion and the delivery of client-centered service.

To that end, below are some suggestions for LAO to consider in strengthening clinics' accountability.

**Recommendation: In consultation with ACLCO and clinics, LAO can strengthen accountability measures for legal clinics by**

- **Updating the Memorandum of Understanding with all clinics,**
- **Conducting quality performance audits with clinics every three to five years, and**
- **Requiring clinics to collect disaggregated demographic data (including race and gender) of their clients**

## **Principle 2: Equity and Inclusion**

LAO's 2019 Strategic Plan identifies "respect" as one of its core values. It promises that LAO will be culturally sensitive to clients' needs and circumstances. Per LAO, in fulfilling its mandate, it is committed to "providing services which recognize the importance of diversity, access, equity, creativity and quality." The Strategic Plan also discusses "implementing a customized client-centred approach for marginalized communities and vulnerable groups."

As communities of colour, Chinese and Southeast Asian communities experience higher level of poverty as compared to white Ontarians. Members of these communities also experience greater barriers in accessing justice due to racism and other systemic barriers.

The very existence of CSALC is to ensure that low-income, non-English speaking members of the Chinese and Southeast Asian communities are able to access legal services that are linguistically and culturally appropriate, and in a way that is respectful of these communities.

To be respectful of the Chinese and Southeast Asian communities, and to recognize the importance of diversity, access, equity, creativity and quality, LAO should continue to provide sustainable and adequate funding support CSALC (and other ethno-racial legal clinics).

As it now stands, the LAO Board and senior management do not reflect the Chinese and Southeast Asian communities served by CSALC; nor does the LAO Board and senior management have any connection to these communities. We respectfully submit that it would not be culturally sensitive or respectful for LAO to impose on our clients a model of governance that does not reflect or have any connection to their communities. We further submit that the current community-based clinic system model is one that will best ensure a customized client-centered approach for marginalized communities and vulnerable groups.

That is not to say clinics cannot do better. Just like LAO, clinics should also work on increasing diversity among their board and staff. This can be done, not by amending *LASA*, but by ensuring LAO and legal clinics adopt hiring practices that are consistent with employment equity principles. We have previously reviewed LAO's employment equity policy. With all due respect, LAO's policy falls short of an adequate employment equity policy, which should have specific requirements of goals and timetables.<sup>2</sup>

### **Recommendation: LAO should**

- **Continue to provide sustainable and adequate funding support to CSALC and other ethno-racial legal clinics**
- **Adopt a real and effective employment equity plan to increase representation of communities of colour and Indigenous peoples at all levels and in all departments across LAO**
- **Work with ACLCO and legal clinics to increase representation of communities of colour and Indigenous peoples among clinic staff and board.**

### **Principle 3: Community boards**

As noted above, community boards play a critical role in ensuring accountability of legal clinics to the communities they serve. In the case of ethno-racial legal clinics like CSALC, community boards play an additional role of ensuring that clinics will be responsive to the needs of the specific racialized communities they serve.

In the case of CSALC, we have been able to adapt to the changing demographics because we are rooted in our community, and are led by a board of directors that come from and represent the communities we serve. Our by-law specifically requires that our board of directors must come from the four communities we serve, because it is critical that any decision that we make about client services involve people who understand the respective community's needs.

It is, therefore, vital to the Chinese and Southeast Asian communities that any reform to the legal aid system should retain the current model of legal clinics: independent from LAO and governed by boards of directors that are accountable to the communities they serve.

We appreciate that not all community organization boards are created equal. However, if clinics are stripped of community boards, then by default, LAO would become the centralized body that will determine the needs for all communities in Ontario. This would mean, in the case of the Chinese and Southeast Asian communities, that the people who decide what services to provide to our communities will have no connection to the very communities that require these services.

We note with concern that there is not a single Asian Canadian among the senior management at LAO. However well-meaning LAO might be, there is currently not one single member of the

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<sup>2</sup> See for instance: <https://www.canada.ca/en/employment-social-development/services/employment-equity/tools.html>.

LAO senior management team who comes from the Chinese and Southeast Asian communities. It calls into question how LAO could claim to understand the needs of these communities.

Given the lack of representation of LAO, the lack of LAO's connection to and understanding of our communities' needs, removing community board in the case of CSALC will have a negative impact on our client communities and may result in the reduction of legal services that are responsive to needs of these communities.

To address LAO's concerns about community boards, we recommend the following:

**Recommendation: In consultation with ACLCO, LAO and clinics can strengthen community boards by:**

- **Providing annual training to members of clinics' community boards**
- **Creating best practices and sample policies or developing certain basic requirements to be adopted by clinics boards (e.g. having term limits; requiring clinic boards to be representative of the communities they serve not just geographically, but also based on other demographic data such as race and gender; requiring clinics boards to be made up of individuals with different skills and experiences in law, accounting, social services, and other relevant areas); and**
- **Ensuring all clinics adopt an ongoing and regular process to evaluate the performance of the clinic's Executive Director**

#### **Principle 4: Flexibility**

In keeping with the principles of equity, inclusion and community governance, clinics must have the flexibility to determine the best way to address the needs of the communities they serve, be it through direct service and representation, public legal education, community engagement and/or systemic advocacy, including test case litigation.

Over the years, CSALC has successfully advocated for thousands of clients with respect to their legal issues by employing a combination of direct service, community education and engagement, and systemic advocacy.

For instance, one of the areas of law that we practice is employment law; we have represented and continue to represent many clients working in low-waged jobs in non-unionized setting. They work in restaurants, grocery stores, or factories, among others, where their rights under the *Employment Standards Act (ESA)* are routinely violated by employers.

Through our work, we have helped clients collect wages that are owed by their employers. We also work closely with Ministry of Labour to make sure employers who owe money will comply with the Ministry's orders. In one high profile case, we represented a group of about 60 employees working in four restaurants owned by the same employer. They were owed approximately half a million in unpaid wages, termination and severance pay when their restaurants closed down for business. In addition to helping the workers filed their ESA claims with the Ministry of Labour, we also ran a media campaign to talk about the impact of the case on the affected workers and to

highlight the issues with enforcement by the Ministry. We helped the Ministry gather evidence, which led to a successful prosecution of the employer, who was found guilty of violating the *ESA* and was sentenced to 90 days in custody, plus a fine of \$900,000.

Another example of the community education and advocacy work we do in employment law is a report we released in 2016, *Sweet and Sour: The Struggle of Chinese Restaurant-Workers*. The report is based on a survey CSALC conducted of 184 Chinese restaurant workers who came to our clinic between 2014 and 2016 to seek help with their *ESA* claims. The report documents the rampant workers' rights violation in the restaurant industry. The release of the report triggered a review by the restaurant industry and the creation of a stakeholders review by the Ministry of Labour, which we were part of.

Since the success of the restaurant workers' report, we have been approached by many community partners to work on projects for vulnerable workers in other sectors, including nail technicians (who are mostly women of colour) and Chinese grocery store workers. In addition to helping to empower these low-income workers through education and community engagement, we also represent individual nail technicians and grocery store workers who have been deprived of their legal entitlements under the *ESA*.

Our success is due to our flexibility to adopt the measures and approaches that are most appropriate for our communities in each specific case, in order to best respond to the needs of the clients and the broader communities to which they belong.

**Recommendation: Community Legal Clinics should continue to have the flexibility to offer a broad range of services to meet the needs of their communities, including systemic work such as law reform, community development, test cases and public legal education**

### **Principle 5: Core and stable funding**

Community legal clinics in Ontario are often described as the “jewel” of Canada’s legal system. One of the key reasons clinics have been so effective in addressing community needs is the existence of core and stable funding for the clinic system.

Without core and stable funding, legal clinics would not be able to take on any clients with complex legal matters, or any legal matters that will take more than just a few months to resolve. In effect, without core and stable funding, anytime legal clinic takes on a new case, we will have to warn the clients that if our funding is cut, we will have to stop representing them.

Clinics would also not be able to engage in any broad-based community projects that are likely to run beyond a year, irrespective of what the community needs.

Community legal clinics operate in a non-partisan manner and do not have vested interests in the outcome of any election. Regardless of who is in power, the role of community legal clinics is the same: to ensure the voices of vulnerable communities are heard and their needs are addressed.

Much has been said about the savings generated by investment in legal aid. The provision of core and stable funding for legal clinics is the only way to ensure low-income people's legal needs are met and their access to justice will not be negatively impacted by changing government priorities.

**Recommendation: Any change to *LASA* should continue to recognize clinic law as a fundamental area of law to be covered by legislation and enshrine the need to provide core and sustainable funding to community legal clinics.**

## **Questions Raised by LAO during the Roundtable Discussions**

The Terms of Reference of LAO's Legal Aid Modernization Project include a number of key goals. LAO's Board and CEO raised additional questions during the roundtable consultations that CSALC staff participated in. In this section, we will respond to some of the key goals/questions raised by LAO.

### **How to achieve modernized service that is integrated and nimble?**

#### *Integrated Service*

CSALC is the only legal clinic in Ontario (and in Canada) that provides linguistically and culturally appropriate services to our client communities. Very often, we are the first and the last place clients go to for legal help.

The legal services that CSALC provides are well-integrated because our clinic is part of the long-established networks of community agencies that serve the Chinese and Vietnamese communities in GTA and beyond. The vast majority of our referrals come from these agencies, followed by people who hear about our clinic in the Chinese and Vietnamese media, and lastly, referrals from former and current clients.

As part of this integrated service, CSALC also refers clients to the appropriate social service agencies for assistance; for instance, clients with family issues will be referred to agencies that offer counselling in their language, while clients with settlement issues will be referred to the various immigration settlement agencies. At the same time, we act as the bridge for access to the broader justice system, such as services provided by LAO (e.g. duty counsel, FLIC, certificates). Many of the clients who contact the clinic have little to no understanding of the legal system in Ontario. Their lack of knowledge is compounded by their lack of proficiency in the English language.

As such, from the perspective of the clients served by CSALC, integration is multi-dimensional. It requires CSALC to be integrated in the network of culturally and linguistically appropriate services in the community, while at the same time, being integrated into the mainstream justice/legal system. If LAO only looks at integration solely from the point of view of integration with LAO, marginalized communities, like those served by CSALC, will lose out because they do not access legal services the same way that white English-speaking low-income people do.



### *Ability to be Nimble*

When CSALC was first established in 1987, it had four staff. This number gradually grew to nine. Because we are the only clinic of this kind, we are the go-to place for members of the Chinese and Southeast communities in this province. Over the past 32 years, these communities have grown by about three times in size. The demographics of the communities have also changed, and the issues that they face are becoming ever more complex.

Take the case of the Chinese community as an example; it has changed from a community with predominantly Cantonese speaking immigrants from Hong Kong, to now mostly Mandarin speaking immigrants and refugees from China. Since day one, CSALC has made sure that we have staff who could speak either Cantonese or Mandarin and, in some cases, both languages. We are thus uniquely placed to provide the services that our clients need in the language they speak as immigration patterns change.

Today, the population of Chinese, Vietnamese, Cambodian and Laotian communities combined in Ontario is about one million, and the poverty rate of these communities averages at around 22%. The population we serve is huge, and our clients are disperse across GTA and beyond.

As our communities change and grow, so must the way we serve them. Without any instructions, requests, or directions from LAO, about five years ago, CSALC set up a satellite office in Scarborough to serve the growing Chinese population in Scarborough and Markham. A year later, we established a satellite office in Mississauga to serve the growing Chinese and Vietnamese communities living in that city.

Since 2017, we have set up a toll-free number so that clients living outside the GTA can reach us without expense. Today, we have clients calling from communities across Ontario, including Windsor, London, Hamilton, Kingston, Ottawa, Kitchener and Waterloo, etc.

We are also part of a network of and have connection to the private bar, including but not limited to groups like the Federation of Asian Canadian Lawyers (FACL). We have worked with FACL on some of our test case litigation, as a way of leveraging the limited resources that we have. We have created our own private bar referral lists based on the lawyers' linguistic capacity, area of practice, and willingness to take on cases on LAO certificates.

We have also worked with the private bar on test case litigation – sometimes on a pro bono basis and other times through test case funding from LAO or the Court Challenges Program of Canada.

Most recently, we helped Osler set up their first-ever pro bono law program in the area of immigration law, in order to help address the resource challenge and the underfunding of legal aid for immigration and refugee law cases.

All this work is possible only because of our clinic's strong connection to the community and our stellar reputation in the justice system and legal community.

These are but a few examples of the diverse service delivery model our clinic has adopted in order to advance access to justice for the communities we represent. With ongoing funding support from LAO, we will continue to leverage our limited resources in order to achieve the best outcomes for our client communities.

**Recommendation: The integrated approach to legal aid service must be defined broadly to include community agencies that form part of the larger support networks that provide frontline services to low-income Ontarians of all backgrounds.**

*Should legal aid services be streamlined and should there be a one system approach?*

As McIntyre J. (as he then was) has said in *Andrews*, the first decision by the Supreme Court of Canada dealing with s.15, the equality section of the *Canadian Charter of Rights and Freedoms*:

“[Equality] is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others in the social and political setting in which the question arises. It must be recognized at once, however, that every difference in treatment between individuals under the law will not necessarily result in inequality and, as well, that identical treatment may frequently produce serious inequality.”<sup>3</sup>

If LAO is to remain true to the principles of equality, diversity, and respect as set out in its Strategic Plan, then it must reject the notion of “one system” for the delivery of all legal aid services. The creation of one system will inevitably result in a centralized, standardized, “one size fit all” access point to legal aid, which will work well for people who face no barriers to accessing legal services other than their income, while leaving those who face multiple barriers behind.

There is, however, a great need for LAO to work closely with community legal clinics on improving clients’ access to legal aid, while finding ways to facilitate referrals between LAO and legal clinics. At CSALC, we often have to assist clients with linguistic barrier to apply for legal aid certificates. This is particularly so when we are dealing with domestic violence victims. Clients who do not speak English or French have significant problems navigating LAO’s automated phone intake system. When CSALC staff get involved, they typically have to spend an hour or more just to help the client get through the initial intake stage. This is a waste of CSALC’s staff time. A better referral service would allow clients more direct access to LAO, while reducing the burden on clinics to play the facilitation role.

**Recommendation: LAO should reject a one size fit all, one system approach to the provision of legal services, and continue to consult with ACLCO and community clinics on how to facilitate better referral services between LAO and legal clinics. LAO should enhance its capacity to assist clients with linguistic barriers by hiring more staff with different linguistic skills, and by designing a better phone intake system to allow more direct and immediate access to interpretation services.**

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<sup>3</sup> *Andrews v. Law Society of British Columbia* [1989] 1 SCR 143.

*Should LAO take on test case litigation in addition to funding test cases?*

The idea that LAO should take on more test cases was raised at one of the roundtable discussions. With respect, this idea is misguided.

Many community legal clinics, in particular specialty clinics and ethno-racial clinics like CSALC, are engaged in test case litigation as a way to address systemic issues that are common to the clients they serve. As noted above, CSALC has extensive test case litigation experience before all levels of courts and some tribunals. In the past two years alone, CSALC has acted in six cases before the Supreme Court of Canada, either as intervener or as counsel for the intervener. Currently, CSALC is involved in three test case litigation, including a criminal matter before the Court of Appeal for Ontario, an immigration matter before the Canadian Human Rights Tribunal and a taxation matter before the Tax Court of Canada. In two of these cases, CSALC was granted intervener status while in one, it acts as counsel for the appellant.

CSALC decides which test cases to take on based on the cases that are brought to us by our clients, as well as issues that are raised by our communities. In some cases, CSALC seeks funding from LAO's test case committee or the Court Challenges Program of Canada to support the test case litigation. In most cases, CSALC takes on these cases without any additional funding support. Occasionally, CSALC will work with outside counsel; but for the most part, CSALC does all the litigation work in-house.

If LAO decides to take on test case litigation, the question of what kinds of test cases it will take on become critical. This question in turn will depend on whose interests is LAO representing.

As a funder, LAO does not represent the interests of the individual clients who benefit from legal aid funding; nor does LAO represent any particular community interests. If an individual client's case raises systemic issues, then the client's counsel – be it private bar or a community legal clinic – would be in the best position to bring the necessary Charter Challenge or other constitutional/human rights issues to bear.

If LAO wishes to participate in the case as an intervener, it must be able to meet the test for intervener status as established by the court – or tribunal in question. Other than the Federal Court and Federal Court of Appeal, the factors for granting intervention by Canadian courts are as follows:

- (a) the nature of the case;
- (b) the issues which arise; and
- (c) the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.<sup>4</sup>

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<sup>4</sup> *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 OR (2d) 164 (CA), at 167.

Subsequently, McMurtry C.J.O. expanded on the first criterion, and some courts have since added the explicit consideration whether the issues are essentially private in nature or whether they involve a public interest component.<sup>5</sup>

With respect to intervention applications before the Federal Court and the Federal Court of Appeal, the test has been described by Stratas, J.A. of the FCA as follows:<sup>6</sup>

1. Has the proposed intervener complied with the specific procedural requirements in Rule 109(2)? Is the evidence offered in support detailed and well-particularized?
2. Does the proposed intervener have a genuine interest in the matter before the Court such that the Court can be assured that the proposed intervener has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court?
3. In participating in this appeal in the way it proposes, will the proposed intervener advance different and valuable insights and perspectives that will actually further the Court's determination of the matter?
4. Is it in the interests of justice that intervention be permitted? For example, has the matter assumed such a public, important and complex dimension that the Court needs to be exposed to perspectives beyond those offered by the particular parties before the Court? Has the proposed intervener been involved in earlier proceedings in the matter?
5. Is the proposed intervention inconsistent with the imperatives in Rule 3, namely securing "the just, most expeditious and least expensive determination of every proceeding on its merits"?

In both of these tests, the proposed intervener needs to establish that they represent a certain public interest, will bring a unique perspective, and make a valuable contribution to the issues under dispute.

Apart from cases dealing with legal aid funding, it is hard to imagine what public interests LAO could purport to represent and what perspective and valuable contribution that they could bring to cases dealing with, for example, racism targeting racialized communities, discrimination against public housing tenants, or gender-based violence.

If LAO takes on test cases at the exclusion of specialty/ethno-racial clinics, it may end up undermining communities that are more directly affected by the law or policy in question; LAO would risk appropriating or drowning out the voices of these communities, which already face challenges in being heard by the justice system.

In short, we respectfully submit that while LAO must continue to provide funding so that private bar lawyers and legal clinics can continue to engage in test case litigation, LAO should not take on test case litigation except for cases that falls directly under the mandate of LAO.

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<sup>5</sup> *Authorson (Litigation Guardian of) v Canada (Attorney General)* (2001), 147 OAC 355 (CA), at paras 7-9; *1162994 Ontario Inc. v Bakker* (2004), 184 OAC 157 (CA), at para 6.

<sup>6</sup> *Canada (Attorney General) v. Pictou Landing Band Council*, 2014 FCA 21.

**Recommendation: LAO should continue to fund test case litigation and should not replace the private bar, community legal clinics and other public interest organizations in their roles with respect to test case litigation.**

*Should the terms “Advocacy” and “Education” be defined?*

At the round table, we cited CSALC’s “Sweet and Sour” Report as an example of a project that that can be defined either as “advocacy” or “education,” to highlight the inherent difficulties of drawing an imaginary line in the sand between these two types of activities.

Apart from the difficulty of defining these terms, we also question the need to give them concrete definitions. If the primary focus for the modernization of legal aid is to make legal aid system more nimble and client-centered, then it matters little whether a certain activity is defined as “advocacy” or “education,” so long as the activity is carried out in a transparent, accountable and effective manner. Thus, rather than trying to define these terms, LAO should consider strengthening the reporting requirements for clinics and private bar when they engage in advocacy or education, including any requirements to measure the impact of the activities in question.

**Recommendation: LAO should consult with ACLCO and community legal clinics on improving reporting requirements to better monitor the non-case work activities conducted by clinics and to evaluate the impact of such activities on client communities.**

*Should Legal Clinics be part of a “Community Hub” or “Justice Hub”?*

Finally, LAO raised the questions of whether all legal clinics should be housed in some form of a “community hub,” and/or whether LAO should take on a greater role in facilitating access to justice by being a “justice hub.”

With respect to the first question, the answer can only be found in the communities themselves. While it make sense for some geographically-based legal clinics to co-locate with other community agencies in a hub – where the option of co-location in fact exists – the same cannot be said of clinics that have a provincial mandate.

In the case of CSALC, not only do we have to consider our provincial mandate, we must also consider the various communities that we serve. For instance, while there is a growing population of Chinese communities in Scarborough and Markham, the Vietnamese communities are mostly centralized in downtown Toronto, northwest Toronto, and southwestern Ontario. If we move our clinic to Scarborough or Markham, we will be neglecting the Vietnamese communities who will have a much greater distance to travel to visit our clinic.

With respect to the idea of a “justice hub,” we understand that LAO is proposing this idea because very often, the clients who receive legal aid certificates for family and criminal law matters are not getting appropriate referrals to other community services. That, however, is *not* a problem created by legal clinics.

Nevertheless, we support the idea of enhancing the role of legal clinics to ensure clients who get legal aid certificates also get other supporting services as needed. To achieve that goal, we propose the following:

**Recommendation: LAO should work with ACLCO and community legal clinics to enhance overall client services to people who receive legal aid certificates by:**

- a. Making available to these clients information about community legal clinic services;**
- b. Providing better training to LAO staff to help identify clients' legal needs in other areas of law not covered by the certificate;**
- c. Providing training to LAO staff about the wide range of services provided by legal clinics; and**
- d. Setting up an internal referral mechanism so that, in appropriate cases, LAO staff may contact a specific legal clinic to refer a certificate client to that clinic for immediate services and support.**

## **CONCLUSION**

Clinics are ready to discuss any issues to improve clinic law services, such as ways to strengthen: board governance and clinic management, clinics' administrative processes, the relationship between independent clinics and LAO, clinic coordination and collaboration both with each other and with other community agencies, etc.

Clinics and LAO must engage in an open and honest two-way dialogue on what "modernization" of clinics and legal aid looks like. Community clinics are not merely "stakeholders" with a peripheral interest in clinic law services, whose input LAO need only seek while independently developing plans to remake the clinic system. Community clinics are not just "service providers" of clinic law services; they share with LAO the responsibility for determining the diverse legal needs of low-income individuals and of disadvantaged communities, and providing clinic law services to low-income Ontarians.

In conclusion, we call on LAO to:

- Ensure that the fundamental principles of the clinic model are currently enshrined in the *Legal Aid Services Act*, and must remain enshrined in any future enabling statute
- Work with the Provincial and Federal Governments to reverse the cuts to Legal Aid as a first step to improving clinic law services in Ontario. This year's funding cuts have a significant impact on the services clinics can provide in every part of the province, and particularly to the communities whose clinics were disproportionately impacted.
- Recognize the ability of clinics to respond to community needs because we are rooted in the community and are governed by community boards. We are also flexible and have the expertise to respond to changing needs of our low-income clients and communities. We

are the bridge between our communities and the legal system; many of our clients have no knowledge of legal aid or the legal system before contacting us.

- Engage in discussions with clinics about ways to improve the clinic system *after* the fundamental principles of the clinic model have been guaranteed and the framework for clinic law services has been enshrined in legislation. To engage in discussions of changes to the clinic system prior to receiving these guarantees would open the door for a significant restructuring of the clinic model or even the elimination of community clinics.