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LEGAL AID SYSTEM MODERNIZATION PROJECT 2019

Submissions of the South Asian Legal Clinic of Ontario

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 South Asian Legal Clinic of Ontario (SALCO) remains committed to working with LAO throughout this review and on an ongoing basis. SALCO submits that Ontario’s legal clinic model is a best practice for the provision on a variety of poverty law services both directly and through systemic work. SALCO also acknowledges that the model can be updated to streamline efficiency, accountability, and oversight for LAO.

About the South Asian Legal Clinic of Ontario

SALCO 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 South Asian community living in Ontario. We work with low-income clients from across the South Asian diaspora including Bangladesh, India, Nepal, Pakistan, Sri Lanka, and a number of countries in Africa and the Caribbean.

SALCO was founded in 1999 to provide legal services. From 1999 – 2007 SALCO was funded for project based services by a variety of funders including the Law Foundation of Ontario and the Ontario Trillium Foundation. SALCO received permanent legal clinic status and funding from LAO in 2007. Since its inception, SALCO has served approximately 60,000 clients through direct legal services in a number of areas of poverty law including landlord and tenant, social assistance, employment, immigration and citizenship, human rights, gender-based violence (forced marriage), and other areas of law affecting low-income members of our client communities.

SALCO also engages in significant community education, averaging approximately 100 public legal education sessions annually within the communities that we serve. Many of those sessions are provided in the common South Asian languages spoken by our clients like Punjabi, Tamil,

Hindi, Urdu, Bengali, and Kannada. SALCO also engages in a variety of community development and law reform activities to advance the rights of low-income South Asians in Ontario.

SALCO is widely accepted as a legal and policy expert on the intersection of poverty, race, gender, violence, disability, and other identities connected to its South Asian clients. To that end we have been consulted by all levels of government and other public institutions on issues that impact our communities. Over the past 20 years SALCO has:

- Made a number of oral and written submissions, including to parliamentary standing committees on issues of social assistance and poverty reduction in racialized communities, anti-racism, family violence, family law, forced marriage, human rights, hate crimes, policing, human trafficking, legal aid, access to justice, religious dress, gender equity, employment standards/equity, and housing;
- SALCO sits on several expert tables at the provincial and municipal level to support government implementation of law and policy including in the provinces Roundtable on Violence Against Women, the Anti-Racism Directorate Consultative Committee, the current Community and Social Services Table (implementing the current police services legislation), the current Support For Victims of Crime Table, the Toronto Police Service Anti-Racism Advisory Panel, and the Ontario Human Rights Commissions Community Advocacy Committee;
- SALCO has also engaged in test case litigation at all levels of court including the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Ontario Court of Appeal, the Ontario Human Rights Tribunal, and the Immigration and Refugee Board. Our test case litigation is informed by the issues that arise out of our direct legal services and our community connections, and includes cases of gender, race, and religious discrimination, challenges to immigration law and policy, challenges to social assistance law and policy, issues related to forced marriage, and the application on a race-based framework within the judicial system;
- SALCO has made submissions to and presented in front of the United Nations Committee on the Elimination of Racial Discrimination, the United Nations most recent periodic review of Canada, and to the United Nations Committee on the Status of Women. SALCO is currently under consideration for consultative status as a Non-Government Organization with the UN's Economic and Social Council (ECOSOC);
- SALCO is Canada's national expert on the issue of forced marriage in Canada and has supported thousands of forced marriage victims with various legal issues arising out of their cases (including bringing victims who have been kidnapped to another country home to Canada). SALCO has been an active partner of the federal government since 2005 to develop

a national risk assessment tool, a toolkit for service providers, to train governments, police, educators, children’s aid societies, service providers, and people facing forced marriage on how to navigate these cases, and to change laws and policies to support victims of forced marriage;

- Finally, over the past several years SALCO has been involved in a number of community –led initiatives that advance the rights of the communities that it serves, including being a cofounding and steering committee member of 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.

SALCO has developed considerable expertise on the various issues that impact low-income South Asian communities in Ontario, in Canada, and by extension the issues that affect low-income racialized communities.

SUBMISSIONS MADE BY THE ASSOCIATION OF COMMUNITY LEGAL CLINIS ON ONTARIO

SALCO has reviewed the submission made by the Association of Community Legal Clinics of Ontario (the “ACLCO”) on the Project. We support 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.

SALCO’S SUBMISSIONS

SALCO’s further submissions are made within the context of supporting racialized clients, who face additional challenges in access to justice because of linguistic and cultural barriers, and a the growing challenges related to immigration status.

i) COMMUNITY / FUNDER / PUBLIC ACCOUNTABILITY

The current *Legal Aid Services Act* (“LASA”) provides the basis for strict accountability and reporting measures for legal clinics. Furthermore, a clinics Memorandum of Understanding (MOU) sets out the 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.

In addition, each clinic sets up internal accountability measures to ensure that it meets its mandate and operates in a fiscally responsible manner. At SALCO those measures include:

- SALCO's board financial management committee (which includes the treasurer and 2 other accountants) receives bi-weekly financial updates and is responsible for the approval of all expenses;
- SALCO's board receives and approves quarterly financial reports for all services provided including those funded by LAO;
- SALCO conducts annual needs assessments through client and community partner surveys in tandem with LAO's client service measures; and
- SALCO has an annual general meeting where it reports to the SALCO membership and the public on its financial and non-financial activities in each year.

In 2012, SALCO participated in a LAO Quality Assurance Program Audit, a detailed review of all of SALCO's policies, procedures, casework, community work, and governance structures. The auditors found:

- *“Surveys and interviews with community organizations and other stakeholders indicate that SALCO is well known, respected and appreciated by the South Asian community.”*
- *“The clinic maintains a flexible and responsive approach to the changing legal requirements that affect the large South Asian immigrant population.”*
- *“Board minutes are a detailed account of the items before the Board for consideration and approval. Monthly reports from the Executive Director provide a clear picture of clinic activities, important case work, and updates on LAO's requirements of the clinic.”*
- *“Board minutes record that a financial report is presented at each Board meeting. A very complete funding Application is prepared by the Executive Director with the assistance of the Board Treasurer and the clinic's accountant. The Funding Application is approved by the full Board.”*

Accountability is a critical component of the modernization of legal aid services. It is important to note that legal clinics are accountable at multiple levels, to our communities, to our boards, to our funders, and to the public at large. During this review, LAO should consider the pre-existing mechanisms that can be enhanced to achieve accountability goals and objectives.

RECOMMEDATIONS:

- **Update the clinic Memorandum of Understanding with best practices for efficient and effective accountability measures**
- **Require Clinics to undergo regular audits (example: every 3-5 years) to review clinic operations.**

ii) 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. In fact, the decision by LAO to fund SALCO in 2007 was made in recognition that racialized communities often require specific services that are best served by creating ethno-racial legal clinics that can provide linguistic and most importantly, culturally competent services.

LAO’s Racialized Communities Strategy and its own Strategic Plan echo the importance of “implementing a customized client-centred approach for marginalized communities and vulnerable groups.” (LAO Strategic Plan). Ontario is home to the largest population of racialized people in Canada and South Asians are Ontario’s largest racialized community:

- South Asian was the single largest visible minority group, accounting for 29.6% of visible minorities and 8.7% of Ontario’s total population (most recent census);
- 18-19% of the South Asian population lives in poverty (most recent census);
- Racialized individuals comprised 29.3% of Ontario’s total population and represented more than half of Canada’s total visible minorities (7.7 million) (most recent census); and
- Racialized communities continue to fall into and remain in poverty at disproportionate rates (most recent census).

These growing populations have significant barriers to access to justice and are large users of legal aid services, including clinic law services. Any modernization of the legal aid system must be based on a framework of equity and inclusion that considers supporting a model that best serves these vulnerable and marginalized communities and that reflects the diversity of the communities that access legal aid services.

RECOMMENDATIONS:

- **Provide sustainable and adequate funding support to SALCO and other ethno-racial legal clinics**

- **Require all clinics to collect demographic data (including race and gender) to develop a better understanding of who is served by legal clinics**
- **Adopt employment equity across LAO so that racialized and Indigenous communities are represented at all levels of LAO**
- **Work with ACLCO and legal clinics to increase representation of racialized and Indigenous peoples among clinic staff and boards**

iii) **COMMUNITY BOARDS / SERVICES**

Community boards are a critical part of the legal clinic model. As noted above, boards play a key role in ensuring accountability. SALCO's board also plays a fundamental role in representing the community, in raising issues related to the communities that we serve, and in supporting SALCO clients through a broader range of community supports for non-legal issues. SALCO's by-laws and board nominations committee:

- Ensure that the board is comprised of communities members that both represent and are connected to the various communities that we serve;
- Ensure that there are board members with lived experience;
- Set board term-limits;
- Have developed an strong onboarding process for new board members; and
- That representation on the board includes intersection with not only race, but with gender / gender identity, faith, languages spoken, ability / disability, and linguistic diversity.

Many of our board members also work directly within community and are able to provide valuable insight into community needs, and to support SALCO clients with non-legal needs.

It was SALCO's board of directors that conducted its initial needs assessment, created a business plan, and lobbied LAO and the provincial government to obtain status of a legal clinic and received LAO funding. The SALCO board truly represents the interests of the communities that we serve and has foundationally shaped our service delivery and on-going needs assessments. Losing our community board will make our services less effective and less responsive. An independent legal clinic board will have a much better understanding of the needs of its community and the services that should be delivered through a legal clinic model. It is difficult to envision a centralized model that would be able to identify the needs of multiple populations with the same level of effectiveness. In particular, given the lack of diverse staff at LAO, there is concern that the ability to understand the needs of ethno-racial communities will not be sufficient.

While we recognize that there may be concerns from time to time with individual clinic boards, the best practices of strong and effective boards should be considered, supported, and solidified during the modernization review.

RECOMMENDATIONS:

- **Providing annual for clinics community boards**
- **Develop basic requirements for clinic board (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)**
- **Provide sample policies on board governance**
- **Require regular audit of clinic, including board governance / structures**
- **Ensure on-going Executive Director evaluations are conducted by boards**

iv) HOLISTIC / FLEXIBLE SERVICES

As noted above, in its 2012 LAO quality assurance audit, the LAO auditors noted, “*The clinic (SALCO) maintains a flexible and responsive approach to the changing legal requirements that affect the large South Asian immigrant population.*” By their nature, clinics are nimble and responsive to the needs of their communities and the changes to law and policy that impact service delivery. Countless examples have been provided to LAO during the course of these consultations.

SALCO’s model includes the provision of satellite services at nine (9) areas across the GTA, where large pockets of low-income South Asians reside. Those services are embedded in community agencies that have grassroots connections in South Asian communities, and who support SALCO clients with other non-legal issues that invariably arise when they come to see us. For example, SALCO may work on a family violence case and then refer the client to a counselor in the same space for emotional support counselling.

SALCO is also a member of a coalition of organizations who serve South Asians across Ontario, with regular meetings of the Executive Directors of those organizations. SALCO has excellent connections to other service providers who work with South Asian clients including South Asian doctors, psychologists, the South Asian bar, South Asian social workers, South Asian-specific shelters, and faith-based spaces.

With both these embedded satellites and our wide connection to our South Asian service providers, our ability to provide holistic services to our clients is tremendously enhanced.

SALCO is also co-located with LAO family law services in North York. SALCO has housed family law lawyers within its office as a space-sharing partnership from time to time. In addition, SALCO supported LAO family law services at a domestic violence hub in Peel Region.

Outside of its own direct legal services SALCO's community connections inform its community development / law reform / advocacy work. SALCO's understanding of community needs is supported by these community partnerships and opens up opportunities to address issues at a more systemic level.

Systemic advocacy is a fundamental part of enhancing access to justice for our communities. Our work on forced marriage is a good example – SALCO was able to lobby federal government to change immigration law to protect victims of forced marriage. This in turn, reduced the number of immigration-related cases that SALCO had to take on related to forced marriage.

This modernization review must consider the effective ways in which a legal clinic models leverages community connection to provide holistic services, and how systemic work, including test case litigation, plays a critical role in supporting community needs, and leads to efficiencies beyond solely doing direct legal services.

RECOMMENDATIONS

- **Community Legal Clinics' ability to create dynamic community partnership should be supported as a mechanism for providing hub-like services**
- **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**
- **LAO should continue to support legal clinics to do test case work in areas where they hold the expertise by providing funding for legal disbursement**

CONCLUSION

As many have pointed out during these consultations, community legal clinics in Ontario are often described as the “jewel” of Canada's legal system. The clinic model is accountable, effective, efficient – It is a best practice to meet the needs of the large variety of low-income communities in Ontario, including the large and growing population of low-income racialized clients.

One of the main reasons that clinics have been so effective in addressing community needs is the existence of core and stable funding for the clinic system. Having been connected to SALCO prior to the receipt of core, stable funding, I am keenly aware of the enhanced service that we have been able to provide after receiving funding from LAO. We developed a capacity to take on larger and much more complex cases, we developed the ability to do systemic work that has had positive impact on access to justice for our communities, and we have been supported to develop significant long-term community connections to create a holistic almost hub-style model. Prior to LAO funding, SALCO was not able to engage in any legal services or systemic work that were anticipated to extend beyond one year (a limitation of our project-based funding).

SALCO, and all community legal clinics, are strong advocates for some of the most vulnerable and marginalized populations in Ontario. Our work spans decades and governments across the political spectrum with a goals to enhance access to justice, to reduce poverty, to fight discrimination, and to improve the circumstances of low-income populations in Ontario. Clinics do that work efficiently and effectively. While there is always room for improvement, the legal clinic model should be considered valued part of Ontario's provision of legal aid services.

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**