



ALLIANCE FOR SUSTAINABLE LEGAL AID

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May 5, 2016

**ASLA Response to
Open Government, Open Data:
Promoting Transparency and Accountability in LAO and Ontario's Justice System**

ASLA appreciates the opportunity to respond to this consultation on an important topic. We applaud the initiative of Legal Aid Ontario and of the Province of Ontario to embrace the concepts of Open Government and to use data to promote transparency and accountability in Ontario's Justice system, especially given Legal Aid Ontario's role as a major funder of public services. ASLA and many of its members have long believed that with more information, released in a timely manner, better collaborative decisions can be made. Since our legal aid system is based on a partnership between government and the various legal service providers that exist in Ontario, any move to increase the flow of information and promote transparency can only help strengthen our partnership.

We wholeheartedly agree that a great opportunity exists to utilize open data and the principles of open government to better communicate the social return on investment from legal aid services. It is clear to us that all of the stakeholders involved can do more to explain the critical role of legal aid funding to the functioning of a just society. Better communicating this value should raise public consciousness and help to promote adequate funding for legal aid for poor and indigent or marginalized populations as a government priority.

We also see great benefit in the use of open data to facilitate innovation in policy, programming and business modelling, as noted in your consultation paper. By having more data available to all stakeholders in the system, we are confident that good ideas will come from all corners that will help make the system function more efficiently and deliver value for the public funds that are invested. We would respectfully request, however, that the availability of data be accompanied by a culture change at Legal Aid Ontario. Too often over the past number of years, the perception has been that consultation with partners such as the members of ASLA has taken place after the fundamental decisions have already been made. It bears repeating that providing greater access to information can only result in innovation and change if that access accompanies a willingness to accept ideas from other partners.

Although many of the potential LAO initiatives that are being contemplated have merit and should be pursued, we hope that we will be provided with an opportunity to provide feedback before their implementation.

LAO should approach any consideration of the merits and value of expanding salary disclosure to legal clinic salaries or the billings of private bar lawyers with great sensitivity. Reporting aggregate figures using non-identifiable and non-individual data has merit and would enhance transparency and accountability. Certain measures, however, could harm LAO's relationships with service providers and shrink the pool of lawyers available to serve legally aided clients while failing to provide contextually meaningful information to the public.

It bears repeating and reiterating that legal clinic staff are not civil servants or employees of the Province of Ontario or any agency of the Province. The reporting of clinic salaries, in the absence of legislation requiring this, would intrude upon the autonomy of the independent boards that run the clinics whose role is to ensure public and community accountability. Such clinics are also subject to LAO's own checks and balances in the funding process. Lawyers who work in legal clinics are generally paid far less than their counterparts with similar levels of experience and expertise in government settings. Depending on where any reporting threshold is set, they may experience the worst of both worlds – lower pay and the awkwardness that often accompanies the disclosure of those salaries.

With respect to the proposal to consider publishing individual private lawyer billings to LAO, we fear that it would be extremely difficult to provide meaningful context to this information. The consultation paper has mentioned overhead, administrative costs and disbursements as variables (these can turn \$100,000 in billings into \$30,000 of income, or less). Other variables include areas of law practiced, the parts of the province served, the demographic make-up of clients, the extent, if any, of a lawyer's non-legal aid practice and the opportunity cost associated with a lawyer accepting legal aid certificates. Lawyers having the ability to do so may curtail their legal aid practices to avoid the disclosure of their billings, reducing the options available to legally-aided clients. Nor is there a need to publish billings to ensure accountability. Statutory billing caps of 2,350 hours per year already limit what can be billed. Ultimately, the publication of such figures could misinform the public and undermine public confidence.

Furthermore, as a matter of law, we have serious objection to this proposal. The Act that created the original Sunshine List does not permit the publishing of billings in this way. At the time, the legislature was evidently aware that there could be litigation over the breach of privacy as it specified in the legislation that privacy protections override all other legislation. We believe that in addition to the attack on the privacy of lawyers, there are many instances where it would be easy to figure out what was spent for a specific individual. We strongly encourage LAO to receive the opinion of specialists in privacy law who, we believe, will confirm our position that this proposal would not be lawful.

In short, we believe that should LAO choose to pursue this proposal, it will be a last straw for a lot of lawyers who will simply choose to withdraw their services from the legal aid system, and we do not believe it is lawful.

With respect to the specific questions that were advanced in the consultation, we offer the following comments and suggestions:

- 1. How can LAO promote open data and open government for LAO services, governance, and operations?**
 - Publish agreements with the Attorney General (e.g. protocol cases agreement, CLA/LAO/AG agreement)
 - Publish the minutes of LAO Board meetings in a regular and timely fashion
 - Publish the minutes of the advisory committees to the Board (subject to anonymization of who said what)
 - Reports and data should be made easier to find. LAO's website is notoriously difficult to navigate

- ASLA member organizations would appreciate greater opportunity to interact directly with the LAO Board
2. **What data or information should LAO publicly disclose that is not currently available?**
 - Provide to the public and private bar a rationale or business case for why staff are hired by LAO instead of looking to private-bar or clinic options. Why “in-source” rather than utilize clinic or private bar resources?
 - Provide a clearer and more specific break-down of administrative costs and overhead at LAO to help outside stakeholders understand these costs and help LAO identify possible savings.
 - More timely publishing of quarterly reports, which have fallen behind in the past year.
 - Consider publishing information that has been requested through FOI requests that do not involve personal information (particularly if it has been requested more than once).
 - Publish the entire panel list (presently available on request) so that potential clients can see who may be available to assist them in a particular area, instead of just a random sampling of lawyers (based on location, area of law and language) as is currently provided in the LAO "Finding a lawyer" directory.
 3. **How can LAO promote proactive disclosure practices among community agencies and service providers funded by LAO?**
 - For certificate-funded work, LAO could publish aggregate billing figures by area of law or area of the province.
 - No disclosure burden should be placed on private bar service providers.
 - Discussion and consensus are required in respect of any uniform clinic disclosure practices.
 4. **What are the legal or practical obstacles to improved openness?**
 - The obvious caveats to respect lawyer-client privilege must be observed at all times.
 - Relative resources available put LAO in a better position than community agencies and service providers to publish information.
 5. **How can other actors in the Ontario justice system improve transparency and open government?**
 - We have no comment to offer at this time.

The Law Society has not had an opportunity to review this paper within its own policy process. In the interests of time we are forwarding ASLA's response without the benefit of The Law Society's input

Yours Truly,



Alliance for Sustainable Legal Aid
Per: Lenny Abramowicz, Chair

On behalf of our member organizations:

Association of Community Legal Clinics of Ontario
Criminal Lawyers Association
Family Lawyers Association
Federation of Ontario Law Associations
Law Society of Upper Canada
Ontario Bar Association
Refugee Lawyers Association
The Advocates' Society
Mental Health Legal Committee