

Parkdale Community Legal Services Inc.

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July 9, 2019

VIA PERSONAL DELIVERY

DAVID FIELD, CHIEF EXECUTIVE OFFICER
LEGAL AID ONTARIO
201-20 DUNDAS STREET WEST
TORONTO, ON M5G 2C2

Dear Mr. Field:

RE: REQUEST FOR RECONSIDERATION OF LAO FUNDING DECISION

Parkdale Community Legal Services (PCLS) is seeking reconsideration of the decision made by Legal Aid Ontario (LAO) to reduce PCLS' approved annual funding by \$1,072,000 with half of that reduction being implemented in the fiscal year 2019/2020 retroactively to April 1, 2019 (\$536,000).

Our request is made pursuant to s. 36(1) of the *Legal Aid Services Act*, 1998, S.O. 1998, c.26 (the "*Act*"), as well as the Memorandum of Understanding and the Funding Agreement between PCLS and LAO. Please forward our request to the Clinic Committee of the LAO Board of Directors as required by s. 36(2) of the *Act*.

Background

PCLS began when what was then the Canadian Department of Health and Welfare provided experimental funding for four community legal aid clinics in four provinces in 1971: Dalhousie Legal Aid Service (Halifax, Nova Scotia); Community Legal Services (Point St. Charles, Montreal, Quebec); Parkdale Community Legal Services (Toronto, Ontario); and Saskatoon Community Legal Services (Saskatoon, Saskatchewan). PCLS officially opened its door to the community on September 1, 1971, thus becoming the first community legal clinic in Canada.

PCLS was initially organized into three working groups: Consumer and Immigration, Housing and Development, and Employment Standards and Unemployment Insurance. Today, PCLS is organized into four divisions: Immigration, Housing Rights, Social Assistance, Violence, and Health (SAVAH), and Workers' Rights.

From the very beginning, PCLS was a teaching clinic affiliated with Osgoode Hall Law School. When PCLS opened, it had one articling student (Mary Jane Mossman) and sixteen Osgoode Hall law students. PCLS now has two articling students and twenty law students.

PCLS' mandate has always been: (1) to provide legal services to low-income individuals, (2) to build social movements to reduce poverty and fight for equality, and (3) to train law students in community lawyering and poverty law.

Special Note

Below, PCLS will be making observations about the unequal and inequitable manner in which LAO distributed the funding cuts. While PCLS makes these observations bluntly and frankly, it is not in any way suggesting that the clinics who escaped harsh budget cuts should have their budget cuts more in order to alleviate PCLS' pain. PCLS recognizes that no community clinic in Ontario was ever funded adequately. No clinic should have to suffer further cuts. Accordingly, PCLS requests that LAO and the provincial government reverse the cuts for each and every clinic. Indeed, as every dollar invested in legal aid saves \$6 in public spending, PCLS urges the provincial government to enhance legal aid funding.¹

PCLS makes the observations about the unequal and inequitable funding cuts merely to highlight that LAO's decision was made in a manner that was arbitrary, unfair, and logically inconsistent.

Grounds for the Request for Reconsideration

1. In a June 12, 2019 communication (the Funding Decision), LAO stated that the funding cut reflected the following consideration:

In 2018/19, PCLS was funded for 19 full time equivalents (FTEs) at a rate of \$109 per low income resident. The Greater Toronto Area (GTA) regional average is \$22 per low income resident. Legal Assistance Windsor (LAW), which is [sic] also delivers services through a student experiential education program in an urban setting is funded for 10 FTEs at a rate of \$14 per low income resident.

2. Other than the above passage, the Funding Decision cites no other consideration.
3. PCLS requests reconsideration based on the following grounds:
 - a) LAO's application of the LIM is logically inconsistent;
 - b) The LIM does not accurately estimate the need of the community;
 - c) LAO's comparison of PCLS to LAW was a breach of natural justice;
 - d) LAO was wrong to consider PCLS' community organising and law reform in its funding decision;
 - e) LAO's used factors other than stated in the Funding Decision; and
 - f) The unreasonableness of the retroactive cut.

A. LAO's application of the LIM is logically inconsistent

4. Based on the brevity of the reasons articulated in Funding Decision, it is reasonable for a reader to believe that LAO's decision to cut PCLS' funding was primarily informed by the Low Income Measure (LIM).
5. Setting aside for now the wisdom of using the LIM to determine community need, PCLS acknowledges that it received more money per the LIM than the other GTA clinics. Nevertheless, PCLS submits that LAO is using the LIM in a logically inconsistent and arbitrary manner.

¹ Canadian Bar Association, "Study on Access to the Justice System - Legal Aid" (December 2016).

6. PCLS notes, for example, that GTA clinics were hit with the largest budget cuts of all the community clinics. If the LIM was the primary driver for the budget cuts, then LAO's decision to target GTA clinics would only be logically consistent if the GTA clinics had been receiving more funding per low income individual than the clinics in other regions. Please note that LAO stated that GTA clinics received, on average, \$22 per low income individual.
7. However, there were 28 clinics outside of the GTA who received more than \$22 per low income individuals. Specifically, there were 10 clinics in Central and East, 8 clinics in Southwest, and 10 clinics in Northern regions that received more than the GTA average. Yet, LAO reduced their budget by much smaller amounts.
8. Indeed, five of the 28 clinics received more funding per low income individual than PCLS. One of the clinics, for example, was receiving \$1,195 per low income individual, which is 11 times more funding than PCLS receives per low income individual. Nevertheless, PCLS understands that the 28 clinics received approximately 1.3% cut to their budget, while PCLS received an approximately 45% cut to its budget, a cut that is 35 times more.
9. Even though the Funding Decision lists no other factors, it is certainly possible that LAO relied on unstated factors to make its funding decisions. However, in a Toronto Star article of June 12, 2019, LAO maintains its position that the LIM was indeed the primary factor. As stated in the article:

LAO staff told reporters at a briefing Tuesday. More and more low income people are leaving the city and moving to the 905 region, the agency said, meaning that the clinics' funding is no longer in line with the number of low-income residents in their neighbourhood (emphasis added).²
10. While the possible (but uncorroborated) migration of low income individuals from Toronto to the 905 region may explain why the three 905 clinics in the GTA region (York Region, Mississauga, and North Peel) escaped harsh cuts, it would still not explain why the City of Toronto clinics bore the brunt of the cuts when they were, on average, more under-resourced than 28 clinics outside of the City of Toronto.
11. LAO also told the media that a number of Toronto clinics are in proximity to each other and can share services.³ However, LAO provides no explanation as to exactly how geographical proximity results in funding calculations as disparate as 45% cut versus 1.3% cut. To put it another way, it is unclear as to how geographical proximity results in PCLS – which in one comparison receives 11 times less funding per the LIM – receiving a cut that is 35 times more.
12. Based on such widely differing results, it is clear that the LIM is not the primary factor in deciding funding levels.
13. Again, PCLS does not make the above observations to suggest that any clinic should have its budget reduced more to ease PCLS' pain. PCLS acknowledges, for example, that even the five above-referenced clinics that receive more funding per

² Gallant, Jacques. "Sweeping cuts to legal aid disproportionately hit Toronto clinics, Parkdale site to lose \$1 million", *Toronto Star* (2019).

³ *Ibid.*

the LIM have unique circumstances that necessitates their funding level. Indeed, it is PCLS' strong belief that those five clinics, in actuality, need more funding to fully meet their communities' needs.

14. Rather, PCLS makes the above observations to point out that LAO's use of the LIM to justify its decision is – at best – logically inconsistent or – at worst – disingenuous.
15. Accordingly, PCLS submits that LAO cannot reasonably maintain its decision to cut PCLS' budget based on the LIM.

B. The LIM does not accurately estimate the need of the community

16. Setting aside LAO's inconsistent application of the LIM, PCLS also submits that it is inappropriate for LAO to use the LIM to estimate the need of a community.
17. The LIM is calculated by taking 50% of median adjusted or equivalent household income. To use a simplified example, if the median after-tax income of a two-person household in Canada was \$62,000 a year, then the LIM for a two-person household would be \$31,000 a year.
18. The LIM is the same across the province – and Canada – regardless of where an individual or a household resides. The LIM – unlike say the Low Income Cut-Off or Market Based Measure – does not consider cost of living, e.g. housing costs. It will treat, for example, all two-person households in Ontario with \$40,000 income to be not low-income even if some of those households spend a substantial portion of their income on rent.
19. In PCLS' catchment area, in October 2018, the average monthly rent for a one-bedroom rental unit was \$1,238.⁴ By way of comparison, in Windsor (Centre), the average rent for a one-bedroom was \$745.⁵
20. For context, 86.6% residents in South Parkdale – where PCLS is physically located – are renters (versus 47.2% for rest of Toronto).⁶
21. Accordingly, it is very likely that PCLS' catchment has more precarious housed, food insecure, households than many other communities in Ontario. South Parkdale's unaffordable housing rate, for example, is 49.2%.⁷ In comparison, the unaffordable housing rate in Thunder Bay and Windsor are 19.3% and 21.9% respectively.⁸
22. In summary, the LIM is less likely to capture poverty in communities with high cost of living. Since cost of living is higher in highly urbanized centres such as Toronto, the use of the LIM to base funding decisions is particularly unfair to clinics in Toronto.
23. Moreover, the LIM only counts those who filed income taxes. Within PCLS' catchment is Canada's largest mental health and addiction centre (CAMH). There

⁴ Canada Mortgage and Housing Corporation, "Rental Market Report: Greater Toronto Area" (November 28, 2018)

⁵ Canada Mortgage and Housing Corporation, "Rental Market Report: Windsor CMA" (November 28, 2018)

⁶ <https://www.toronto.ca/ext/sdfa/Neighbourhood%20Profiles/pdf/2016/pdf1/cpa85.pdf>

⁷ Ibid.

⁸ <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/cg-c007-eng.htm>

are also 198 licensed and unlicensed rooming houses across Parkdale, housing over 2,700 low-income tenants.⁹ Many undocumented immigrants also call Parkdale and surrounding communities their home. Consequently, PCLS serves many vulnerable populations that often do not file taxes.

24. PCLS, therefore, submits that LAO's use of the LIM to determine community need caused LAO to reach a flawed conclusion. As such, PCLS encourages the Clinic Committee to reconsider LAO's decision by analysing community needs more holistically and accurately.

C. LAO's comparison of PCLS to LAW was a breach of natural justice

25. Legal Assistance Windsor (LAW) is an organization that provides high quality service to its community. LAW deserves its excellent reputation. PCLS would usually be honoured to be compared to LAW.
26. What is patently unfair, both procedurally and substantively, is for LAO to make its funding decision based on such a comparison.
27. Other than the fact that both clinics have about 20 law students working year-round, it is extremely difficult to determine if comparing PCLS to LAW was truly an "apple to apple" comparison. For example:
 - PCLS trains and supervises 20 full-time student caseworkers. 40%-50% of LAW caseworkers are part-time.
 - PCLS was given no opportunity to comment on the unique circumstances that require its staff to provide heavier than expected amounts of training and supervision to its student caseworkers. For example, PCLS serves a high level of clients who suffered trauma, e.g. CAMH patients, refugees fleeing violence, etc. Accordingly, PCLS has developed (a) an intensive training module in order to properly equip the student caseworkers; (b) a comprehensive supervision scheme and structure to ensure student caseworkers are meeting professional obligations and community standards; and (c) a formalized system to ensure emotional health of student caseworkers.
 - PCLS was given no opportunity to comment on the unique circumstances that require its staff to provide heavier than expected amounts of training and supervision to its student caseworkers on cultural competencies, e.g. working with Roma or Tibetan communities.
 - PCLS was given no opportunity to comment on its obligation to Osgoode Hall Law School – and to the community – to provide its student caseworkers ongoing training and practical experience on community lawyering.
 - PCLS was given no opportunity to comment on the other unique community circumstances that create additional burden on its resources, e.g. intensity of gentrification, low vacancy rate, rental housing stock in the community being held by few corporate landlords, etc.

⁹ Parkdale Neighbourhood Land Trust, "No Room For Unkept Promises, Parkdale Rooming House Study" (May 2017)

28. Ultimately, PCLS was given no opportunity at all to comment on the LAW comparison. The decision, therefore, is inconsistent with the principles of natural justice.

D. LAO was wrong to consider PCLS' community organising and law reform in its funding decision

29. Year after year, in its funding applications, PCLS informed LAO of its mandate to “[work] with our client community, in all its diversity, to build and mobilize an ever increasing community movement for social change, to create the social and economic conditions to eradicate poverty and oppression, to restore and revitalize the quality of life and enhance self-reliance in the Parkdale and Swansea communities.”

30. Year after year, PCLS and LAO chose to govern themselves based on a Memorandum of Understanding that defined “clinic law services” as “legal and other services provided under the *Act*, in clinic law areas, and includes legal representation and advice, community development and organising, law reform, and public legal education” (emphasis added).¹⁰

31. Year after year, LAO never raised concerns about PCLS’ mandate nor stated that its understanding of clinic law services differed from what was agreed upon in the Memorandum of Understanding.

32. Yet, in justifying its decision to drastically cut PCLS’ funding, LAO commented to the *Toronto Star* that PCLS spent a lower percentage of its work on “client case work” and that “33 per cent staff work is on community organizing and law reform.”¹¹

33. PCLS submits that LAO was wrong to exclude community organising and law reform in its definition of clinic law services and/or to devalue community organising and law reform.

34. PCLS should not be penalized for conducting community organizing and law reform activities when it was explicitly and implicitly required to do so.

35. Moreover, criteria that must guide LAO’s funding decision include cost-effectiveness, accountability, efficiency, all directed toward meeting the diverse legal needs of low-income individuals and disadvantaged communities in Ontario. LAO must also be guided by *Charter* values when it exercises its discretion as an administrative decision-maker.¹² LAO’s decision – unstated in the Funding Decision but commented to the media – to cut PCLS’ funding due to its community organising and law reform work is inconsistent with these criteria.

36. PCLS’ systemic work is highly efficient direct client service that has benefitted thousands of low-income people in Ontario. For example, PCLS’ leadership in tenant organizing have reduced evictions and prevented rent increases, and PCLS’ significant research contribution to \$15 and Fairness campaign resulted in a more robust employment standards protections to workers.

¹⁰ Memorandum of Understanding at page 3.

¹¹ Gallant, Jacques. “Sweeping cuts to legal aid disproportionately hit Toronto clinics, Parkdale site to lose \$1 million”, *Toronto Star* (2019).

¹² *Dore v. Barreau du Quebec*, [2012] 1 SCR 395 at paras 23-58.

37. As an aside, it would be a fallacy to believe that work on community organising can only be done at the expense of so-called direct client case work, that is to say, implying that spending 33% of staff time in community organising means that little or less direct client work is being done. With respect to number of client files that PCLS opens in a year compared to other clinics, PCLS usually falls around the 86th percentile.

E. LAO used factors other than stated in the Funding Decision

38. As already alluded above, PCLS is deeply concerned that LAO is relying on factors other than stated in the Funding Decision. LAO should not be providing one set of reasons to PCLS and then communicate other sets of reasons to the media.

39. Rules of natural justice dictate that a decision maker be both transparent about how they arrived at a decision and provide adequate reasons for their decision.

40. To permit a decision maker to arrive at a decision for reasons other than stated makes a mockery of rules of natural justice.

41. Therefore, PCLS urges the Clinic Committee to reverse LAO's improper decision.

F. The unreasonableness of the retroactive cut

42. LAO's decision to cut funding is retroactive and gives PCLS no opportunity to plan for the impact of the cuts and no opportunity to reduce expenditures for a significant portion of the year that already passed. LAO is required by the Funding Agreement to provide "as much notice as is reasonably possible of any decrease in the funding of the clinic." LAO failed to do so, having communicated its decision two months after the provincial government's budget was announced and more than two months into the fiscal year. Retroactive funding cuts of this magnitude cannot be absorbed without devastating impacts on PCLS' work. The decision is inconsistent with the principles of natural justice.

Conclusion

For the reasons above, we respectfully ask the Clinic Committee to reconsider LAO's decision to reduce PCLS' funding by 45%. If the Clinic Committee has any questions with respect to our submission, we will be happy to meet with its Committee members before a final decision is made regarding our reconsideration request.

Yours truly,

PARKDALE COMMUNITY LEGAL SERVICES

Per:



Johanna MacDonald
Clinic Director



Elizabeth Shilton
Board Co-Chair



Kalsang Dolma
Board Co-Chair

Cc: Charles Harnick, Chair, LAO Board
JM/ES/KD/jn