

November 13, 2019

VIA EMAIL

MALCOLM HEINS
CHAIR OF LEGAL AID ONTARIO CLINIC COMMITTEE
LEGAL AID ONTARIO
201-20 DUNDAS STREET WEST
TORONTO, ON
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Dear Mr. Heins:

Re: Stockwoods LLP Barristers memo - jurisdiction of Clinic Committee in funding adjustment reconsiderations

Parkdale Community Legal Services (PCLS) takes this opportunity to comment on the independent legal counsel's (ILC) memorandum prepared by Stockwoods LLP Barristers dated November 4, 2019.

PCLS agrees with the summarized conclusions outlined in the memorandum and confirms our arguments from the October 4th 2019 written submissions on the common issues.

Consistent with and in addition to the arguments presented in PCLS' July 9th 2019 written request for reconsideration, PCLS submits that its individual funding decision should be varied because the 45% funding reduction was, as outlined on page 10, paragraph 2 of the ILC memorandum:

- (a) inconsistent with the objects of Legal Aid Ontario (LAO) pursuant to section 4 of *LASA*;
- (b) inconsistent with the policies and priorities of the Board identified pursuant to section 12 of *LASA*; and/or
- (c) made without appropriate consideration of matters the Committee considers relevant in the exercise of decision making power under section 33.

Inappropriate reliance on the LIM matrix as a means to achieve Board-identified priorities in PCLS' funding adjustment

PCLS' request for reconsideration details how the LAO's use of Low Income Measure (LIM) is a crude measure that was neither appropriate nor consistently or logically applied.¹ PCLS' oral submissions outlined how the mechanical application of the LIM failed to appropriately respond to LAO Board policies and priorities and failed to consider issues of relevance regarding the unique legal needs of individuals living in deep poverty in South Parkdale and PCLS' effective services responding to disadvantaged communities.² For several years and again in 2018, South Parkdale is identified by the City of Toronto as a [Priority Neighbourhood](#)³ due to the serious inequities that require action. Given that the province's largest mental health facility is in Parkdale, the catchment area has a larger percentage of people living with mental health disabilities and addictions in the community. Many of these individuals are not captured in data sourced for LIM calculations.

The [2016 census profile](#)⁴ of South Parkdale also exposes some of the unique features of the community. Of recent immigrants in South Parkdale, almost 70% came as refugees or through family sponsorship. Almost 40% have incomes in the bottom two deciles of income distribution compared to 27% for the rest of Toronto. A LIM formula funding decision does not account for the Parkdale-Swansea community's unique legal needs that intersect with the Board's priority of reducing the impact on particularly disadvantaged client groups such as racialized refugees and immigrants and community members with mental health and addictions issues.

LAO indicated in its oral submissions that it considered the impact of its budget cuts on racialized communities by not severely reducing the funding of legal clinics that serve specific ethnolinguistic or racialized communities. However, within PCLS' catchment are many ethnolinguistic or racialized communities that do not have access to such clinics. These communities, e.g. Tibetan, Roma, are detrimentally affected by the cuts to PCLS. In oral submissions, we outlined how PCLS' immigration division reduced from 3 full time staff to 0.8 full time staff, significantly affecting our ability to engage in immigration-related casework of racialized communities in our catchment area. By relying on the LIM measure alone, LAO applied this Board-identified priority in an inconsistent and decontextualized manner that failed to adequately consider the racialized nature of PCLS' clientele in Parkdale-Swansea.

¹ 2019 07 11 – PCLS Request for Reconsideration.

² See 2019 07 11 – PCLS Request for Reconsideration, at paragraphs 16-24; and 2019 10 04 – PCLS Submissions on Common Issues, at page two.

³ https://www.toronto.ca/wp-content/uploads/2019/09/9066-TSNS2020_NIAs_2018MAP.pdf last accessed November 13, 2019.

⁴ <https://www.toronto.ca/ext/sdfa/Neighbourhood%20Profiles/pdf/2016/pdf1/cpa85.pdf> last accessed November 13, 2019.

LAO has indicated in their response to the common issues that PCLS' community outreach, organizing and law reform activities were *not* factors in their funding decision. They also stated that the LIM matrix was not the only metric used, and that PCLS' funding was 'validated' and indeed increased from the LIM formula calculation after a comparison with Legal Assistance Windsor in order to "address higher rental rates".⁵ As outlined in PCLS' July 9th 2019 request for reconsideration, the PCLS and Windsor student programs are far from an 'apples to apples' comparison, making this so that the validation exercise is essentially arbitrary.⁶

The original written funding decision communicated to PCLS and the 'Appendix H' chart disclosed last week both highlight the LIM formula and indicate its use as the key rationale for decision-making. PCLS submits that this funding matrix fails to match Board priorities as it is neither an equitable funding approach nor does it effectively minimize the impact of budget reductions on direct client services. The LIM matrix does not consider the relevant successful clinic services that reduce the number of people that are considered as low-income in the first place. It sets up a perverse system in which legal aid funding disincentivizes a legal empowerment model. A LIM funding matrix works against proactive legal clinic services that reduce poverty and reduce the need for more complex, more expensive, legal services such as representation in courts. Over time, such an approach will increase public and private costs. This decision-making trajectory is clearly inconsistent with the objects, policies and priorities of Legal Aid Ontario under *LASA* for the purpose of promoting access to justice for low-income Ontarians.

Relevant Considerations

Compounding factors of leasing and core funding uncertainty

The detrimental effects of the drastic funding cut on the PCLS community cannot be understated. The retroactive cuts came at a time where the community experienced a retraction of LAO's commitment to funding office space in the community. PCLS was due to move into a new office space on July 31st 2019. Indeed, the decision to settle a dispute with our previous landlord was premised on LAO's commitment to our new space. LAO's reversed leasing decision for community clinic space in Parkdale is highly relevant and was not appropriately considered in the exercise of decision-making power under section 33 of *LASA*. The compounding effect of the core funding cut has created chaos in our ability to provide effective services to a needy community.

In addition to necessitating a 30% reduction in staff this past summer, our operations currently are split between an inaccessible church basement in the community, and a downtown law office far from our catchment area. We are forced to meet with clients in the community at neighbouring social services

⁵ 2019 10 11 – LAO Response to Common Issues, at paragraph 47.

⁶ 2019 07 11 – PCLS Request for Reconsideration, at paragraph 27.

agencies with their own limited space and funding. Despite our best efforts at proactive communication, these changes have created significant confusion and anxiety among our clientele, many of whom are unable to contact us through phone or computer. Maintaining standards of professionalism such as confidentiality of client documents is also a persistent challenge.

The uncertainty of future funding keeps the organization in limbo regarding our clinic space and services. We stay committed to the community we serve and the student program, but the community has suffered greatly already due to these compounding factors. In LAO's oral submissions, David Field noted that another clinic did not receive a significant funding cut because they had just experienced a disruptive merger and office move. LAO staff were acutely aware of PCLS' space challenges over the course of their decision-making. It is both vexing and perturbing that PCLS did not receive similar consideration when LAO staff decided to impose drastic cuts on PCLS. Certainly, this community need of establishing accessible, adequate, and affordable office space is a relevant consideration in PCLS' funding decision that must now be appropriately addressed as part of the committee's reconsideration.

Charter Values

While recognizing that the Committee hearing process is not a court of competent jurisdiction to consider *Charter of Rights and Freedoms* (*Charter*) arguments and remedies, the decisions made have important implications on *Charter* rights. The urban centres of Toronto, Vancouver and Montreal receive 61% of immigrants and refugees to Canada.⁷ The disproportionate reductions in funding for GTA clinics and the drastic funding reduction in Parkdale unequally distributes a burden on racialized communities in Toronto who are already disproportionately living in poverty due to systemic racism. People with disabilities, women and recent immigrants to Parkdale are disproportionately affected and decisions to disproportionately reduce funding in Toronto and Parkdale specifically trends against the *Charter* values that ought guide decision-making.

Intensive Program In Poverty Law and Community Outreach, Engagement, Education, Organizing, Law Reform Programs

In utilizing the LIM matrix as the basis for a 45% funding cut, LAO is treating PCLS like all other community legal clinics. This is an inappropriate decision-making matrix as it fails to appropriately consider the historic and current reality of PCLS' operational services in relation to objects and priorities under the *LASA*. As noted in PCLS' July 9th 2019 request for reconsideration, PCLS was given no opportunity to comment on or engage in meaningful dialogue regarding the cost-effectiveness and efficiencies of the services through the clinic as compared to any other clinic, including the Legal Assistance of Windsor student program.

⁷ Statistics Canada (2016). [Ethnic and cultural origins of Canadians: Portrait of a rich heritage](http://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016016/98-200-x2016016-eng.cfm). Retrieved from <http://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016016/98-200-x2016016-eng.cfm>

LAO's own reference to their rationale only addressed an increased cost of office rent in relation to the student program.

PCLS is differentiated from other neighbourhood based community legal clinics. It has two additional law service programs: the Intensive Program in Poverty Law and the Community Legal Services and Law Reform program. Both programs provide a unique benefit to all the clinics and legal aid services in Ontario. The former program is recognized in our Memorandum of Understanding with LAO and supports the objects and priorities of *LASA*. The latter program is directly informed by *LASA* section 33(1) which states that the funding to clinics is to provide legal aid services to low-income individuals **or** disadvantaged communities. Furthermore, section 4 of the *LASA* states that the objectives of LAO include coordination of different methods by which legal aid services are provided, including coordination with other aspects of the justice system and with community services. To this end, LAO should have differentiated these programs from its lump sum per capita calculation under LIM.

The **Intensive Program in Poverty Law** directly develops the expertise that supports *LASA*'s objects by educating 40 law student per year in poverty law and community lawyering clinical practice. Many PCLS alumni have gone on to work as service providers under LAO funding – whether at duty counsel services, on certificates, or in the clinics. With almost 2,000 lawyers trained in the Program to-date, this accounts for 4% of all currently practicing lawyers in Ontario and, we would estimate, 10% of lawyers working with low-income Ontarians with practices related to poverty law and legal aid services. Notable alumni include current Supreme Court of Canada Justice Karakatsanis and current Leader of the Opposition and Member of Legislative Assembly in Alberta, Rachel Notley.

The *intensive* nature of the Program is one of the elements of how it is differentiated from other student programs. Students are front-line caseworkers taking on a full client caseload for a full semester of law school credits. Uniquely, the Program also integrates community engagement, organizing, education and outreach as the most effective approach to addressing the systemic nature of poverty in Ontario. For three decades, LAO has supported this program through direct funding for the student program. By not robustly considering the Intensive Program in Poverty Law at PCLS in its funding decision, the relevance of the cost per LIM is inflated and unreliable as a measure.

The Intensive Program in Poverty Law dovetails with PCLS' **Community Outreach, Engagement, Education, Organizing, Law Reform Programs**. These programs are not only direct service activities, they also provide effective and efficient services that benefit a wide range of low-income individuals and disadvantaged communities in Parkdale-Swansea and across Ontario. The Intensive Program in Poverty Law, our casework, and the community outreach, engagement, education, organizing and law reform programs take this cost-effective, systemic approach. As outlined in our oral arguments, both the

Canadian Bar Association's 2013 '[Reaching Equal Justice Report](#)'⁸ and Canadian Forum for Civil Justice's 2019 '[Investing in Justice](#)'⁹ report cite the crucial cost-effectiveness of upstream legal empowerment, legal problem-solving services that directly avoid extraneous public and private costs later on – within a legal aid system and beyond it.

As noted in our July 9, 2019 request for reconsideration, 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 has reduced evictions and prevented rent increases across Toronto. Similarly, PCLS' significant research contribution to the \$15 and Fairness campaign resulted in a more robust employment standards protections to workers through provincial law reform, resulting in a \$1.7 billion dollar wage increase to low income Ontarians in 2018.¹⁰

LAO statements to the media have highlighted the amount of law reform work carried out at PCLS. However, through this reconsideration process, LAO has repeatedly refuted that these considerations were part of its rationale for the 45% cut to PCLS. LAO has long funded the PCLS community services and law reform programs through funding of six direct services staff in this program. Through defunding this program services, LAO could decide to stop providing funding to services for low-income Ontarians or 'disadvantaged communities'. That would be a separate matter to address. By not explicitly addressing the community services and law reform program at PCLS, LAO again inflated the relevance and impact of the cost per LIM and failed to appropriately consider relevant factors in the funding decision. Ignoring these two PCLS programs and obscuring their impact within a lump pro rata matrix is misleading and fails to appropriately and fully consider the important objects of *LASA*.

When allocating resources, failing to take into consideration the value of the services and mechanisms for enabling justice for low-income Ontarians in turn fundamentally changes how we address access to justice in Ontario. As Clinic Committee members, you have the power and the duty to make decisions in the interests of low-income Ontarians to fulfill effective equity and access to justice under our Legal Aid system. The Honorable Roy McMurtry stated:

“... as Ontario's attorney general I have the historical and constitutional responsibilities to ensure that civil liberties are protected in this province. Legal aid and in particular community law is perhaps the single most important mechanism that we have to make the equal rights dream a reality.”

PCLS is community legal clinic with deep expertise in community legal services carried out through innovative programming that upholds commitments to *LASA*'s

⁸ http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf last accessed November 13, 2019.

⁹ <https://cfcj-fcjc.org/wp-content/uploads/Investing-in-Justice-A-Literature-Review-in-Support-of-the-Case-for-Improved-Access-by-Lisa-Moore-and-Trevor-C-W-Farrow.pdf> last accessed November 13, 2019.

¹⁰ 2019 07 11 – PCLS Request for Reconsideration, at paragraph 36.

access to justice purposes. LAO's funding decision is inconsistent with the objects and priorities in *LASA* and failed to appropriately consider relevant factors in the exercise of decision making powers regarding PCLS' funding.

As outlined in our oral arguments, we ask the Clinic Committee to vary LAO's decision by reversing the funding reduction slotted for the 2020-21 fiscal year, therefore capping the funding cut to PCLS at 22.5%. This level of cut will continue to have an enormously negative impact on the Parkdale-Swansea community and PCLS' role in Ontario's legal aid system, but would mitigate some of the most devastating impacts of the funding loss.

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,

A handwritten signature in cursive script, appearing to read "JMacdonald", written in black ink.

Johanna Macdonald
Clinic Director, Parkdale Community Legal Services

Cc: David Field
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