

**Legal Aid Ontario Board of Directors  
Clinic Committee**

**IN THE MATTER OF a Request for Reconsideration made by  
Parkdale Community Legal Services Inc.  
concerning its funding by Legal Aid Ontario**

**B E T W E E N:**

**PARKDALE COMMUNITY LEGAL SERVICES INC.**

**- and -**

**LEGAL AID ONTARIO**

**DECISION AND REASONS FOR DECISION**

**A. Introduction**

[1] Parkdale Community Legal Services Inc. (the “**Clinic**”) requested reconsideration of a decision by Legal Aid Ontario’s Board of Directors (the “**Board**”) made on May 24 and 27, 2019 concerning the Clinic’s funding (the “**Board’s Decision**”). The Board’s Decision was communicated to the Clinic by correspondence from Legal Aid Ontario (“**LAO**”) dated June 12, 2019 enclosing the 2019/2020 approved annual funding for the Clinic.

[2] The Board’s Decision was as follows:

- The Clinic’s funding was reduced for 2019/20 to \$1,835,647, a reduction of \$536,000 from the Clinic’s funding in 2018/19 of \$2,371,647. The Clinic was advised that there would be a further reduction of \$536,000 in the Clinic’s 2020/21 funding.
- [3] The funding decision was communicated to the Clinic as an individual decision in respect of the draft budgets submitted by the Clinic through the funding application process. The Clinic was provided with an Approved Annual Funding document that indicated total approved funding amounts and then deducted an amount determined by the Board as a “Funding Adjustment” applied against the total funding.
- [4] The Approved Annual Funding document was accompanied by a Summary of Global and Individual Clinic Savings which described the reduction in LAO’s provincial funding and the implementation of cost saving measures by the Board, including global savings in the clinic system and adjustments to the funding allocated to individual clinics. The Clinic also received a Description of Funding Adjustment document that articulated the specific adjustment applicable to the clinic and described the considerations reflected in the funding adjustment.
- [5] On July 9, 2019, the Clinic submitted the Reconsideration Request. The Clinic made this request (the “**Reconsideration Request**”) pursuant to subsection 36(1) of the *Legal Aid Services Act, 1998*, S.O. 1998, c. 26 (“LASA”). In accordance with subsection 36(2) of LASA, the Board’s Clinic Committee (the “**Committee**”) heard and determined the Reconsideration Request. The Committee was comprised of Mr. Malcolm Heins (Chair), Ms. Christa Freiler and Mr. David Wexler. Each of the Committee’s members was appointed in accordance with section 8 of LASA and LAO’s By-laws.
- [6] On August 7, the Board’s Chair, Mr. Charles Harnick wrote the Clinic to acknowledge receipt of the Reconsideration Request. In light of the number of reconsideration requests received, he asked LAO Staff to prepare an omnibus submission responding to the Common Issues raised in the reconsideration requests, as well as clinic-specific submissions responding to the issues raised by individual clinics. Mr. Harnick directed that LAO Staff’s submissions be provided to the Clinic Committee, and each clinic, by August 16, 2019. Mr.

Harnick further directed that each clinic's reply submissions be provided to the Clinic Committee and LAO Staff by September 25, 2019.

- [7] On August 16, 2019, LAO Staff submitted an omnibus written submission responding to the Common Issues raised in the clinics' reconsideration requests, and included appendices containing clinic-specific submissions responding to the issues raised by individual clinics.
- [8] On September 13, 2019, Mr. Malcolm Heins wrote to all clinics and LAO Staff to advise that he had been appointed Chair of the Committee. In his letter, Mr. Heins further advised that hearings in respect of the twelve reconsideration requests would be held between October 22 and 25, 2019.
- [9] By letter dated September 17, 2019, Mr. Brian Gover, independent legal counsel to the Clinic Committee, provided additional information about the reconsideration process. In that letter, Mr. Gover set out six issues that had been identified by the Committee as being common to the Clinics requesting reconsideration (the "**Common Issues**"). The letter conveyed the Committee's request that the clinics provide written submissions in relation to the identified Common Issues by October 2, 2019. LAO Staff were required to provide responding submissions by October 11, 2019. Enclosed with Mr. Gover's letter was a copy of the rules created by the Clinic Committee to govern the reconsideration process.
- [10] On September 23, 2019, Mr. Gover sent a letter to all parties providing certain information provided in response to questions with respect to the proposed Common Issues.
- [11] Although the clinics were provided an opportunity to identify additional relevant common issues, no additional issues were raised.
- [12] In accordance with the schedule described above, on October 2, 2019, each of the clinics provided written submissions on the Common Issues and reply submissions on the clinic-specific issues.
- [13] On October 11, 2019, LAO Staff made written submissions on the identified Common Issues.

[14] On October 16, 2019, at the Committee's direction, Mr. Gover sent a letter to LAO Staff, copying all parties, requesting that LAO Staff provide documentation demonstrating how the criteria established by Board Decision's at its May 24 and May 27, 2019 meetings were applied to calculate the reductions for each of the clinics seeking reconsideration. This request was made because based on LAO Staff's written submissions, it was not evident how the criteria established in the Board's policy decisions regarding implementation of cost saving measures were applied in each instance.

[15] On October 18, 2019, LAO Staff provided additional documentation as requested, demonstrating the calculation of the funding reduction for each of the clinics seeking reconsideration.

[16] The Committee established the following process for hearing and determining the Reconsideration Request:

- Where the Clinic requested an in-person hearing, the Committee has the discretion to determine whether an in-person hearing was appropriate. Pursuant to s. 35 of the Funding Agreement, Appendix "A" to the Memorandum of Understanding between Legal Aid Ontario and the Clinic (the "**Funding Agreement**"), an in-person hearing is required where the decision under reconsideration will result in a significant reduction of the Clinic's funding or will have a significant impact on the Clinic's ability to provide clinic law services. In this case, the Committee determined that all clinics who requested an in-person hearing would receive to one.
- The Committee determined the dates, hours and location of the hearings. The Committee provided notice of these details in a written Notice of In-Person Hearing.
- The Committee in its discretion determined the amount of time allocated to the Clinic and to Staff for oral submissions at an in-person hearing.
- The Clinic was entitled to up to four (4) representatives at the in-person hearing. Except with leave of the Committee, no additional representatives were permitted to attend the in person hearing.

- During the in-person hearings, the Clinic’s representatives had the first opportunity to make oral submissions. LAO Staff were then provided an opportunity to respond. Finally, the Clinic had a right of reply.

[17] The in-person hearing of the Clinic’s Reconsideration Request (the “**Hearing**”) was conducted pursuant to a Notice of Hearing that was dated October 8, 2019 and took place at the offices of Legal Aid Ontario in Toronto, Ontario on October 22, 2019. The entire Committee - that is, Mr. Malcolm Heins (Chair), Ms. Christa Freiler and Mr. David Wexler - presided over and was present throughout the Hearing. As directed by subsection 36(2) of LASA, the purpose of the Hearing was to consider whether to confirm, reverse or vary the Board’s Decision.

[18] Following the in-person hearings, the Committee requested that independent legal counsel prepare an opinion for the Committee with respect to certain jurisdictional issues raised during the hearing process. The opinion, dated November 4 (the “**November 4 Memo**”), was provided to the parties for comment on November 5, 2019. Enclosed with the November 4 Memo was an Appendix to a memorandum to the Board dated May 22, 2019. The parties were provided an opportunity until November 13, 2019 to make submissions with respect to the accuracy and completeness of independent legal counsel’s advice.

[19] On November 13, 2019, the Clinic made written submissions with respect to the November 4 Memo.

[20] LAO Staff did not make written submissions with respect to the November 4 Memo.

## **B. Common Issues**

[21] The Committee’s decisions with respect to each of the Common Issues are provided below.

[22] Common Issue #1: Whether Clinics were given sufficient notice and an adequate opportunity to respond to the proposed cost saving measures.

- (i) The clinics have taken the position, in both the original requests for reconsideration and their submissions with respect to the Common Issues, that the notice of reduction in

funding was inadequate, that the consultation with the clinics in May was abbreviated and inadequate and did not disclose LAO's intent with respect to the targeted cuts to clinics.

(ii) In coming to a decision with respect to this issue the Committee has taken into account the situation the LAO Board found itself in as a consequence of the decision by the Government of Ontario to reduce its funding by \$133 million in 2019/2020 and its further indication that it would reduce its budget in 2020/21 by a further \$31 million. The total impact of this announcement on April 11, 2019, eleven days after the start of LAO's fiscal year, meant that the Board had to take unprecedented action to reduce its financial commitments by upwards of 30%. The Board, on recommendations of its staff, decided to find the savings by reducing the expenditures in the Clinic system by 21%; the certificates for Immigration and Refugee certificates by 22%; Criminal, Family and Civil certificates by 27% and administration and staffing at LAO by 30%.<sup>1</sup> This meant that a total of just under \$15 million in savings needed to be found in the clinic system.

(iii) The Board met on April 18, May 10, 24 and 27, 2019 to review the plans to implement the savings required to meet its new financial constraints. At the April 18 meeting the Board approved a plan to find \$6 million of savings in the clinic system by implementing a compensation freeze, discontinuing one-time and inactive projects and recovering unspent (surplus) funds. The clinics received a directive from LAO on April 24 to freeze the expenditure of all LAO funds where legally possible, and a further communication on April 29 communicating the \$6 million savings plan. The LAO Board at the April 18 meeting also directed LAO staff to find a further \$9 million in savings. On May 10, the LAO Board directed that a consultation be held with the clinics as to how to find the further savings. These consultations took place between May 14 and May 17.<sup>2</sup> Following the consultations the Board then met on May 24 and May 27 and approved a plan, "the targeted plan", to reduce the clinics' funding by a total of \$14.5 million. This plan was communicated to

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<sup>1</sup> LAO's Global Response Book @ Tab 20

<sup>2</sup> See Power Point distributed in advance of consultations at Tab 15 of LAO Global Response Book. LAO also met with the Association of Community Legal Clinics on April 18 and April 30, Tab 17

clinics on June 12. The full plan was explained to the clinics at a town hall on June 18, 2019.<sup>3</sup>

(iv) The roll out of a savings plan of this magnitude to 72 clinics on June 12, only 41 working days after the announced cuts to LAO's budget, was no small feat. While clearly having to introduce retroactive cuts is not ideal, and the consultation process would have ideally been longer, LAO was not by choice in the position it was and had to proceed in an expedited manner to achieve the savings it was required to by reason of the reduction of its funding by the Government of Ontario on April 11. In fact, the potential for LAO to be in just such a position was covered off in its agreement with clinics.<sup>4</sup>

(v) Interestingly, many of the issues set out in the clinics' objections to the targeted funding reductions were the subject of some discussion during the consultations.<sup>5</sup> The specialty clinics also sent a letter dated May 17, 2019 to the CEO, and copied to the Chair and Vice President of Clinic Services, setting out their objections to LAO weighing any particular clinic service more heavily for funding purposes and advocating for "the same percentage decrease to their respective LAO budgets as the average decrease for the general clinics."<sup>6</sup> In effect this letter was an objection to the "Targeted Approach" to clinic savings adopted by the LAO board at its May 24 and May 27 meetings.

(vi) While the Association of Community Legal Clinics of Ontario was not at this hearing, its letter to LAO following the consultations was provided to the Committee.<sup>7</sup> Apart from advocating that the LAO Board should "publicly oppose" the cuts to its budget, the letter stated that the broad mandate of community legal clinics not be tampered with and that "systemic work such as law reform, community development and test cases, are equally vital to achieving the access to justice mandate that we all share." It further stated that "no decision should be made that favours individual case work over any other part of the mandate"; no decision be taken that "could lead to a community losing its clinic or that

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<sup>3</sup> LAO Global Response Book, Tab 20

<sup>4</sup> LAO's Consultation Policy, paragraph 19

<sup>5</sup> LAO Global Response Book, Tab 15 & Tab 17

<sup>6</sup> LAO Global Response Book, Tab 18

<sup>7</sup> LAO Global Response Book, Tab 19

could so diminish a clinic as to render it unable to serve its community”); and that the central supports such as the “CRO, clinic learning and training, legal disbursements, etc. [are fundamental].” Again, it is clear from this letter as well that all the issues were on the table at the consultations and that the clinics were able to weigh in with respect to their concerns. We heard the same concerns at this, and the other, hearings.

(vii) Accordingly, this Committee finds that in the circumstances of the reduction of LAO’s overall funding by the Government of Ontario, clinics were given sufficient notice of the reduction to their funding and the general basis on which it would take place. The consultation process was adequate in the time frame in which decisions had to be made. In addition to the points made in this decision the Committee was persuaded by the LAO response to this issue.

[23] Common Issue #2: Whether the Committee has jurisdiction to reconsider (1) the LAO Board’s policy decisions approving the total amount of clinic savings required, and (2) the LAO Board’s determination as to the principles to be applied when calculating clinic reductions.

(i) The Committee, following the review of the parties’ submissions with respect to this issue determined that it should request an opinion from its independent counsel, Brian Gover and Caitlin Milne of Stockwoods.<sup>8</sup>

(ii) It was Stockwoods’ opinion that the decision of the LAO Board to reduce overall funding for clinics by \$15 million (the actual amount was in fact \$14.5 million<sup>9</sup>) is not open to reconsideration by the Committee. Many clinics, including this Clinic, did not actually take objection to this opinion in that they agreed with Stockwoods that the Committee has the authority and jurisdiction to “confirm, reverse funding amounts to individual clinics”<sup>10</sup> and that this might necessarily cause the LAO overall goal of achieving a \$15 million funding reduction from clinics not to be achieved. As was stated by Stockwoods at page 6 of its opinion memo: “While the Committee may consider the planned \$15 million

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<sup>8</sup> Stockwoods Opinion Memo of November 4, 2019

<sup>9</sup> LAO Global Response Book, Tab 20

<sup>10</sup> IAVGO Community Legal Clinic submission of November 13, 2019



reduction in its decision, it is not bound or constrained to strictly stay within that funding envelope.”

LAO staff did not comment on the Stockwoods’ November 4, 2019 opinion.

(iii) The Committee concurs with this view and points out that in attempting to achieve the \$15 million in savings LAO itself did not actually implement savings of this amount across the clinics but rather savings of \$14.5 million.

(iv) With respect to the second aspect of this question Stockwoods advised that the “Board’s decision to identify certain priorities is not within the scope of the Committee’s reconsideration of the Board’s funding decision in relation to an individual clinic” but that while the “Board’s identification of priorities and guidelines is not amenable to reconsideration by it, the Committee nonetheless has the jurisdiction to reconsider, change or otherwise revise the Board’s decisions to adopt funding reductions for individual clinics, whether expressed as percentages or previous allocations, or in dollar amounts.” While it appears that clinics accept the opinion of Stockwoods that the Committee may vary the actual funding decision for an individual clinic some take exception to the opinion to the extent that it states that the Committee must do so in accord with the “policies and guidelines” adopted by the Board. These clinics assert that the Committee’s jurisdiction should not be circumscribed by By-Law 1 which states that the Committee shall “make decisions with respect to applications by clinics for funding within policies and guidelines adopted by the Board.” Exception is taken because the Committee’s power as conferred by section 36 (2) of LASA to “confirm, reverse or vary the decision” is not so limited. This interpretation of section 36, in the view of the Committee, ignores the restrictions put on the Committee’s jurisdiction by reason of section 12 and 8 of LASA as well as By-law 31.

(v) It is the opinion of this Committee that the opinion of Stockwoods is the correct analysis of the Committee’s authority. The Committee’s authority requires a full reading of all the relevant provisions of LASA and in particular S. 12 where it falls to the Corporation to establish priorities and policies:

Section 12(1) The Corporation shall establish and administer a cost-effective and efficient system for providing high quality legal aid services within the financial resources available to the Corporation.

(2) For the purpose of subsection (1), the Corporation shall,

(a) determine the legal needs of low-income individuals and of disadvantaged communities in Ontario;

(b) establish priorities for the areas of law, types of cases and types of proceedings for which it will provide legal aid services; and

(c) establish policies for the kinds of legal aid services to be provided in the different areas of law, types of cases and types of proceedings.

(vi) The Corporation (Legal Aid Ontario) pursuant to LASA is to act through its Board of Directors, who constitute its members.<sup>11</sup> The affairs of the Corporation shall be governed and managed by its Board of Directors.<sup>12</sup> Accordingly it is clear that for the purposes of S. 12 it is the Board of Directors who are to establish the priorities for the areas of law, the types of cases and proceedings for which it will provide legal aid services. It is also for the Board of Directors to establish policies for the kinds of legal aid services to be provided in the different areas of law, types of cases and types of proceedings.

(vii) Section 8 of LASA makes it clear that it is the Board which establishes the Clinic Committee and that “the functions of the committees shall be as determined by the board.” Subsection (4) of S. 8 states that:

(4) in addition to any functions assigned to it by the board the Clinic Committee shall,

(a) recommend policies and guidelines to the board in respect of the Corporation’s funding of clinics;

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<sup>11</sup> S. 3(2) of LASA

<sup>12</sup> S. 5(1) of LASA

(b) recommend standards to the board for the operation of the clinics; and

(c) make decisions with respect to applications by clinics for funding and reconsider such decisions made by it or by an officer or employee of the Corporation.

(viii) The Committee finds that in reading Subsection (4) of S. 8 together with S.12, the intention of LASA is clear that it is for the **Board to “establish the priorities** for the areas of law, types of cases and types of proceedings for which it will provide legal aid services” and for the **Board to “establish policies** for the kinds of legal aid services to be provided in the different areas of law, types of cases and types of proceedings.” The Clinic Committee can only “**recommend**” in these regards (emphasis added). Accordingly, just from a reading of these sections it is clear to the Committee that it must exercise its decision making authority in accordance with the “policies and priorities” established by the Board.

(ix) The Board in creating By-law 31 makes this interpretation even clearer, in that the by-law states that the Clinic Committee “is responsible to the board” and that “it shall perform such functions as are from time to time required by the Board by by-law or otherwise (emphasis added). Specifically subsection (c) of By-law 31 makes it clear that the Committee is to make its decisions for the funding of clinics and reconsider such decisions “within policies and guidelines adopted by the Board.”

(x) Accordingly, the Committee finds that in exercising its jurisdiction to consider a clinic’s reconsideration request it is bound by the “policies and priorities” established by the Board.

[24] Common Issue #3: If the Committee has jurisdiction to reconsider the items set out in Issue #2, whether the priorities identified by the LAO Board were appropriate.

(i) The Board of Directors of LAO established the following principles and priorities, as referenced in Stockwoods’ November 4, 2019 memo:

- minimize the impact on clinics in small, rural, and northern communities
- reduce the impact to particularly disadvantaged client groups (e.g., Indigenous, and racialized people)

- minimize impact on direct client services (i.e. case work) and public legal education
- ensure an equitable funding approach based on the low-income population in clinics communities

(ii) These principles were explained in greater detail in a Power Point presentation made by LAO staff to clinics at a June 18, 2019 meeting<sup>13</sup>. The principles were titled as the “Targeted Approach” and were to be implemented so as to impact a smaller number of clinics, result in the least amount of job loss across the clinic system and have the smallest negative impact on low income Ontarians. It should be pointed out that the Board specifically rejected options of reducing clinic funding in an equal percentage across the whole clinic system as the analysis presented to it indicated that such an approach would result in greater job losses across the clinic system.

(iii) Specialty clinics did take specific objection to the Targeted Approach in their letter of May 17, 2019 and advocated for an equal percentage decrease across the clinic system. However, this approach was specifically rejected by the Board.

**(iv) The Committee has already determined that it does not have jurisdiction to reconsider the principles and priorities established by the Board to reduce clinic funding.**

[25] Common Issue #4: Whether available financial resources provided by the Government of Ontario constitutes an appropriate consideration in respect of Clinic funding decisions.

(i) The clinics generally concur with the submissions of LAO and the view of this Committee that “available financial resources” constitute an appropriate consideration in respect of clinic funding.

[26] Common Issue #5: If the Committee has jurisdiction to reconsider the items set out in Issue #2, whether the metrics used by the LAO Board to compare Clinics and allocate funding among them were appropriate.

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<sup>13</sup> LAO Global Response Book, Tab 20

(i) Clinics have taken the position that the metrics used to allocate their funding were a misapplication of the principles established by the Board in the Targeted Approach and that the metric was inaccurately applied. The metrics to which objections have been taken are: the calculation of the percentage of time spent on case work and public legal education; the proximity of Toronto clinics to one another; the availability of public transit and other support services in Toronto (the “Toronto Factors”); and the representation of low income people (the “LIM”) in a clinic’s catchment area.

(ii) This issue is central to the Committee’s decision with respect to the clinics’ requests for reconsideration. The authority of this Committee to adjust the funding of a clinic based on the application of the principles and priorities to a funding application has already been decided. It follows that the Committee may also reconsider the application of the LIM and the Toronto Factors by LAO to a clinic’s funding. This does not mean that the Committee needs to reject the Toronto Factors and the LIM as factors to be taken into account when considering a clinic’s request for reconsideration, but rather the Committee can assess whether their application has been fairly and appropriately applied in the circumstances. The scope of the Committee’s authority in this regard is set out at some length in the Stockwoods’ opinion at pages 9 and 10. It is clear from the Stockwoods review of LASA that this Committee has the power to vary the funding allocations “where a matter that the Committee considers relevant was not appropriately considered in the exercise of the decision making process under section 33.”<sup>14</sup>

[27] Common Issue #6: Whether the Committee has jurisdiction to allocate additional funds to Clinics.

(i) LAO, the clinics and Stockwoods all agree that the Committee has jurisdiction to award additional funds to a clinic further to a clinic’s request for reconsideration. The Committee concurs that this is the correct interpretation of its authority.

[28] The above decisions with respect to the Common Issues are adopted in these reasons and constitute part of the reasons for the decision in the Clinic’s reconsideration.

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<sup>14</sup> Stockwoods opinion of November 4, 2019

## **C. The Parties' Submissions**

### **i. The Clinic**

[29] With respect to the clinic-specific issues, the Clinic made the following submissions:

- 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 the Clinic to Legal Assistance Windsor was a breach of natural justice;
- d. LAO was wrong to consider the Clinic's community organizing and law reform in its funding decision;
- e. LAO used factors other than stated in the Funding Decision; and
- f. The unreasonableness of the retroactive cut.

### **ii. LAO Staff**

[30] With respect to the clinic-specific issues, LAO Staff made the following submissions:

- a. LAO submits that the application of the LIM was consistent with other Toronto clinics and in keeping with the principles of the "Targeted Approach" and the need by LAO to balance the provision of legal aid services across Ontario;
- b. LAO states that the LIM was applied across the Toronto clinics and that the LIM was based on the census and should be reflective of an urbanized community;
- c. A comparison to Legal Assistance Windsor was not used to reduce the Clinic's funding;
- d. The decision to emphasize direct client services and public legal education was a determination by the Board in prioritizing legal aid services due to the cut in LAO's funding and was a principle of the "Targeted Approach";

- e. LAO states that it only used the LIM and the principles of the “Targeted Approach” in considering the Clinic’s funding reduction; and
- f. All the funding reductions were retroactive and were as a consequence of the reduction in LAO’s funding after the start of its fiscal year.

#### **D. Decision**

[31] For the reasons set out below, the Committee finds that the Clinic’s funding for 2019/20 should be reduced by \$536,000 and directs that LAO maintain the funding allocation for the Clinic in the 2019/2020 fiscal year at \$1,835,647. The Committee has decided that the decision to further reduce the Clinic’s funding in 2020/21 by \$536,000 is of no effect and directs that the Clinic’s funding for 2020/21 be decided on its funding application for that year, and that the funding decision be made *ab initio*.

#### **E. Reasons for the Decision**

[32] The Committee’s determination of the Common Issues has been set out above, and substantially informed the Committee’s decision in respect of the Clinic’s Reconsideration Request. In addition, the Committee’s discussion regarding the parties’ submissions should be read as constituting reasons for our decision. To those reasons we add the following.

[33] The Clinic has set out in some detail its background and the activities in which it engages. Briefly, it is the oldest community legal services clinic in Canada, having been established in 1971. The Clinic’s mandate is to provide legal services to low-income individuals; to build social movements to reduce poverty and fight for equality; and to train law students in community lawyering and poverty law. It is also a teaching clinic affiliated with Osgoode Hall Law School. It has an Academic Director and supervises and trains 20 law students a year who are front line case workers who have full case loads while at the Clinic.<sup>15</sup>

[34] The Clinic has submitted in ground F that the retroactive cut in its funding was unreasonable and contrary to the principles of natural justice. The Committee has already determined in the Common Issues portion of its reasons that, in the circumstance of the overall reductions

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<sup>15</sup> Page 5 of Clinic November 13, 2019 Reply to Stockwoods opinion

to LAO's funding in April of 2019, LAO acted as reasonably as possible in advising the Clinic of its funding reduction and that it was entitled to do so retroactively based on the Clinic's Memorandum of Understanding and the Funding Agreement with LAO.

[35] Ground D of its Request for Reconsideration was that LAO was wrong to consider the Clinic's community organizing and law reform in coming to its decision as to how to reduce its funding. The Board specifically adopted as a principal, in reducing clinic funding in 2019/20, that it would prioritize direct client services and public legal education. The Committee examined the authority of the Board to set policies and priorities for funding in the Common Issues portion of these reasons and found that this was in the Board's authority to do, and that the Committee is bound by the principles or priorities established by the Board pursuant to its authority to do so under LASA. These principles and priorities were titled the "Targeted Approach" and were decided upon as the way to minimize the impact of the overall funding reduction on clinic services. They were as follows<sup>16</sup>:

- minimize the impact on clinics in small, rural and northern areas;
- reduce the impact to particularly disadvantage client groups (e.g. Indigenous and racialized people);
- minimize the impact on direct client service (i.e. casework) and public legal education; and
- ensure an equitable funding approach based on the low-income population in clinic communities.]

Consequently, the Committee has decided that it is not in a position to revisit the decision by the Board to prioritize direct client services and public legal education in its funding decisions. This decision was supported by the opinion from Stockwoods.

[36] The Clinic has also argued in that it was a breach of natural justice to compare it to Legal Assistance Windsor and that it is concerned that there were grounds relied on, other than stated by LAO, in coming to its funding decision. These arguments are set out in Grounds C

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<sup>16</sup> Tab 3 of Hearing Book



and E of the Clinic's submissions. The Clinic states that if Legal Assistance Windsor was used to justify its funding reduction, or if there were other grounds not disclosed, that LAO should have been transparent in its decision making and given the Clinic an opportunity to respond. Not to have done so would have been a breach of natural justice. It is the position of LAO that the Clinic's funding was reduced based on the application of the LIM, which was very high for Parkdale as compared to other Toronto clinics. The Committee has not seen any evidence of other factors applied by LAO to reduce the funding to the Clinic. However, it is fair to say that the LIM of Legal Assistance Windsor was a "reference" point for contextualizing the Clinic's LIM funding. **The Clinic has clearly presented its case as to why it should be looked at on its own operations and services. The Committee has taken no recognition of Legal Assistance Windsor in its reconsideration of the Clinic's funding application.**

[37] The Board, when approving the "Targeted Approach", also approved a reduction to each clinic's funding as per Appendix H to its minutes of May 27, 2019. The individual clinic funding reductions set out in this Appendix had been determined based on the principles of the "Targeted Approach". The application of the "Targeted Approach" to clinics was summarized in the LAO Directive of June 12, 2019, and the document titled Summary of Global and Individual Clinic Savings, which were sent to the clinics on June 12<sup>th</sup> together with their funding letters.<sup>17</sup> In addition LAO prepared a Power Point presentation which was shown to clinics on June 18, 2019. Again, this was a summary and an effort to set out the basis for each of the cuts to the clinics and the application of the Board approved "Targeted Approach" to funding reductions.

[38] The considerations, criteria and methodologies underlying the "Targeted Approach" were set out in the Board Briefing Note dated May 22, 2019 which is specifically incorporated in the Board May 27, 2019 resolution adopting the "Targeted Approach." This is significant because the Board did adopt the use of the LIM as a factor to determine clinic funding and approved its use to adjust the funding of the Toronto clinics, including this Clinic. The Toronto clinics and this Clinic were to be dealt with differently because of their access to

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<sup>17</sup> Tabs 21 and 22 and Paragraph 66 of Tab A of LAO's Global Response Book

community partners, neighbouring clinics, comprehensive public transit system and other supports (the Toronto Factors). LAO, in explaining the Clinic's funding reduction points to the Toronto Factors and the application of the LIM as their reason for reducing the funding of the Clinic so as to achieve the overall required funding reduction for the clinic system.<sup>18</sup> The summaries and Power Point presentation referred to in the above paragraph outline the considerations, criteria and methodology used by LAO in applying the "Targeted Approach" to clinic funding.

[39] Does this mean that this Committee is bound to use the LIM and the Toronto Factors as applied by LAO in considering the funding application of this Clinic? Given the agreed upon authority of this Committee to adjust the funding of a clinic based on the application of the principles and priorities to a funding application it would follow that the Committee may also reconsider the application of the LIM and the Toronto Factors by LAO to this Clinic's funding. This does not mean that the Committee needs to reject the Toronto Factors and the LIM as matters to be taken into account when considering a clinic's request for reconsideration, but rather that the Committee can assess whether their application has been appropriately applied in the circumstances. The scope of the Committee's authority in this regard is set out at some length in the Stockwoods opinion at pages 9 and 10. It is clear from the Stockwoods review of LASA that this Committee has the power to vary the funding allocations "where a matter that the Committee considers relevant was not appropriately considered in the exercise of the decision making process under section 33." The Committee agrees with this view of its authority.

[40] The Toronto Factors have been applied by LAO on the basis that the Clinics in Toronto are able to mitigate the impact of the funding cuts better because of proximity, public transit, community partners and other supports available to their clientele. LAO cites the distances between clinics in the North as compared to Toronto and the evidence of inter-clinic referrals that take place in Toronto. It also points out that clinics in Toronto are in close proximity to

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<sup>18</sup> LAO's submissions to the Committee in Tab 3 of the Hearing Book and in Tab A of its Global Response Book

social service entities providing healthcare, youth, seniors, employment and social services. The Clinic takes issue with these assertions and points out that referrals are now very difficult when all the clinics are under-resourced due to funding cuts across the clinic system, particularly so in Toronto due to the higher reductions in funding to Toronto clinics. Submissions have also been made to this Committee that social services are not a replacement for legal services. The Committee, on reading and hearing the submissions of both parties and the submissions made by other Toronto clinics, finds that the Toronto Factors are very difficult to quantify and apply in a practical way to the Clinic. They have a certain legitimacy at first blush given the size of Toronto and the many social service agencies, hospitals and other supports that are located here. However, apart from the more relative proximity of Toronto clinics, and their potential ability to refer clients to one another, there is really no evidence as to how the Toronto Factors will assist clientele in receiving legal services. Nor is there any evidence as to what the reduction in funding overall will mean to referrals as between the community clinics.

[41] The Clinic has vigorously taken issue with the use of the LIM from two perspectives. First, that it does not accurately represent the needs of the community it serves. The Clinic points out that the cost of housing is not factored into the LIM and as a consequence residents in Toronto who spend substantially more on rent than in other parts of Ontario are not considered low-income, even though they have little disposable income after paying the rent. Evidently 86.6% of the residents in South Parkdale are renters as compared to 47.2% in the rest of Toronto. The Clinic states that the failure to capture the high cost of housing is a major weakness of the LIM. This Clinic also points out that its catchment area includes undocumented immigrants and people with mental health issues who will not be picked up in the LIM. Its catchment area also includes 198 unlicensed rooming houses, housing over 2,700 tenants. The Clinic argues that the Committee should reconsider the use of the LIM and analyze the needs of the community more holistically and accurately.

[42] LAO counters that it used a LIM calculation based on the 2016 Census, which indicated approximately 21,750 people in the Clinic's catchment area are low-income. LAO makes the point that even altering the estimated low income population substantially upwards, to account for the Clinic's arguments, would not alter the fact that the Clinic is funded at

\$109.04 per low-income person, which is far more than the Toronto average of \$23.09. The Committee would observe that the Clinic would have to have a low income population almost five times greater to be at or near the average funding for Toronto clinics.

[43] The Clinic secondly has argued that LAO is using the LIM in a logically inconsistent and arbitrary manner. It disputes the applicability of the Toronto Factors as well as pointing out that there were five clinics which were receiving more funding per LIM than it was in 2018/19. The Committee observed only four, and they were all Northern clinics. The Northern clinics had been singled out for different treatment, as stated in the principles and priorities of the Board's "Targeted Approach" to funding reduction on the basis of size and remoteness. The Committee has not been swayed by the comparisons to Northern community clinics. However, it does accept as stated previously that the Toronto Factors are difficult to quantify and apply in a practical way to the Clinic. The Committee has recommended in its other Toronto clinic decisions that LAO work with the Community Clinics and the Association of Community Legal Clinics of Ontario to come up with a set of factors, including the LIM, that are relevant and verifiable so as to develop a composite metric for the purpose of clinic funding.

[44] The Committee, after reading and hearing the submissions of the Clinic and LAO, is of the view that the application of the LIM and the Toronto Factors to this Clinic are not practicable. As LAO points out in its memorandum of October 19, 2019, if the LIM had simply been applied directly the Clinic would have faced a funding reduction of \$1,869,412, almost 80% of its budget. Clearly something is amiss if a methodology to reduce funding produces a result such as that. For all intents and purposes, it would have been a decision to close the Clinic. The measures taken to avoid this result by simply reducing the funding cut to 45%, and then deciding it should be implemented over two years are indicative that ultimately the inflexible application of LIM and the Toronto Factors were not particularly suitable in dealing with this Clinic.

[45] The Clinic has almost a 50 year history and has been funded on a progressive basis by LAO based on its funding applications in each year. Its current level of funding, relative to other community clinics in the Toronto area, may be attributed to the kinds of services it has been

offering combined with its role as a teaching clinic. The clinic goes to some length to describe the amount of supervision the students require because of the needs and unique circumstances of many of its clients. Clearly this training and supervision impose a heavy overhead.

- [46] In addition, this Clinic appears to be engaged in a higher degree of community and law reform type work than the other Toronto community clinics. It points to its two law service programs the Intensive Program in Poverty Law and Community Legal Services and law reform activities. It indicates that it educates 40 law students per year in poverty law and community lawyering clinical services. The Clinic has also pointed to the effectiveness of systemic and law reform work in assisting a wider range of clientele than individual case work. The unique qualities of the Clinic make it difficult to compare them to other Toronto clinics. **In effect this Clinic is a hybrid of a community, educational and specialty (given its emphasis on law reform) clinic.**
- [47] The Clinic has asserted in its submissions of November 14, 2019 that *Charter* values ought to guide this Committee's decision making. It asserts that higher reductions in funding for Toronto clinics and its funding reduction have a disproportionate impact on racialized communities. The Committee recognizes that human rights and *Charter* principles require looking at both the impact and intent of a decision. In the Committee's view, neither the intent, nor the impact, of the priorities and principles of the "Targeted Approach" to the reduction of clinic funding violated human rights or *Charter* principles.
- [48] The goal of minimizing the impact of the reductions on particularly disadvantaged clients, minimizing the impact on case work and public legal education, and ensuring that services were maintained across the province, was a reasonable and non-discriminatory approach. It was adopted by LAO to absorb a budget cut so large that some client impact was unavoidable, **while still carrying out its statutory mandate to provide access to justice within available resources.** Further, the "Targeted Approach" approved by the Board minimized the overall impact of the budget reductions because it resulted in significantly lower job loss across the province.

- [49] Finally, LAO continues to provide significant funding to 22 clinics in the Greater Toronto Area. This investment of resources reflects LAO's recognition and prioritization of the needs of low income, disadvantaged and racialized persons in Toronto and surrounding area.
- [50] On the issue of LIM and the Toronto Factors, the Committee finds that the application of the LIM and the Toronto Factors to this Clinic does not make sense given its unique circumstances. The Clinic is a hybrid and needs to be treated more flexibly. In approving a total funding reduction of 45% the Board implicitly recognized that this was the case as the 45% was not in accord with the LIM calculation. The Board's further instruction that the funding reduction be phased in over two years, and that the "LAO staff are directed to work with PCLS to implement the reduction, including assisting PCLS in their leasing process to operate their student program and house administrative functions at 55 University, and to maintain a satellite office in their current catchment area"<sup>19</sup> also point to an effort by the Board to treat the Clinic more flexibly and ameliorate the application of the LIM and the Toronto Factors to its funding reduction.
- [51] The Clinic requires a unique approach in considering how to deal with its funding and the services it provides in the face of the reduction in LAO's overall funding. What is clear is that LAO cannot afford to fund the Clinic as it has in the past. What should now occur is for LAO, working with the Clinic, to come up with an approach to ongoing funding and that decisions be made as to what services LAO will continue to fund. It may be that the Clinic can no longer provide all the services it has in the past or on the scale it has previously done so. This should occur before the next funding application cycle for 2020/21.
- [52] The Clinic has formerly asked in its submissions of November 13, 2019 that its funding reduction be capped at \$536,000, which is a reduction of 22.6% of its 2018/19 funding. The Committee for the reasons set out above confirms the Clinic's reduction for 2019/20 at \$536,000. The Committee has also decided that that the plan to reduce the Clinic's funding a further \$536,000 in 2019/20 is of no effect. Any funding decision made prior to a Clinic's actual funding application would be contrary to LASA, the Funding Agreement and the rules

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<sup>19</sup> Board Minutes of May 27, 2019

of natural justice. No further reduction in the Clinic’s funding should take place until the work set out above has been completed.

[53] Finally, it is important to acknowledge that LAO will continue to face financial pressures going forward as a result of the April 2019 funding reduction. For that reason, it will be important for LAO and clinics to work together to ensure a sustainable, effective and efficient clinic system that meets the needs of clients.

**F. Conclusion**

[54] The Committee has decided to maintain the reduction in the Clinic’s funding of \$536,000 for 2019/20. The decision to further reduce the Clinic’s funding by another \$536,000 in 2020/21 is of no effect.

[55] The Clinic’s funding for 2019/21 should only take place following the establishment of policies and priorities by the Board for this Clinic’s funding in the context of the Board’s policies and priorities for the overall clinic system.

[56] The Clinic’s funding application for 2010/21 should then be considered *ab initio*.

[57] The Committee would be remiss if it did not acknowledge all the hard work of the Clinic’s staff and Board members, and LAO’s staff in the preparation of the submissions, both written and oral. This is a difficult time for both the clinics and LAO. The Committee is thankful for the assistance provided by the Clinic and LAO in coming to its decision.

**DATED** at **Toronto**, Ontario, this 13<sup>th</sup> day of December, 2019.

**LEGAL AID ONTARIO BOARD OF DIRECTORS**

**CLINIC COMMITTEE**

per:  \_\_\_\_\_

**Malcolm Heins, Chair  
Clinic Committee**