

Appendix "C"

LAO-CLINIC DISPUTE RESOLUTION POLICY

INTRODUCTION

The purpose of this policy is to establish a clear, comprehensive and equitable framework for addressing and resolving situations in which LAO believes that a Clinic is not complying with its obligations.

The policy attempts to balance LAO's legitimate interest in ensuring that the Clinic fulfils its obligations with the Clinic's legitimate interest that it be notified of LAO's concerns and be given a fair opportunity to respond and, if necessary, remedy the situation on its own or with LAO assistance.

The policy establishes a three-level dispute resolution process: Investigation and Informal Settlement; Support and Management Assistance; and Formal Resolution. The policy sets out LAO's and the Clinic's rights and responsibilities at each level. The levels are graduated – the process becomes progressively more formal at each subsequent level. Barring urgent circumstances, LAO undertakes to complete one level of response before proceeding to the next level.

Both parties agree that disputes should be resolved in a constructive, timely, and supportive manner. It is expected that most matters will be resolved at the first level. LAO will only exercise its authority to reduce or suspend funding of the Clinic as a last resort.

DEFINITIONS

- 1) In this policy,
 - a) "the Act" means the *Legal Aid Services Act, 1998*, and includes the regulations under the Act;
 - b) "clinic" means an independent community organisation structured as a corporation without share capital that provides clinic law services to the community it serves on a basis other than fee for service, and includes the board of directors of that clinic;

- c) "Clinic Committee" means the committee of the LAO Board of Directors established under section 8 of the Act;
- d) "clinic law services" means 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;
- e) "Legal Aid Ontario" or "LAO" or "corporation" means Legal Aid Ontario established under the *Legal Aid Services Act, 1998* and includes the Board of Directors of LAO;
- f) "LAO Staff" means the staff of LAO, or their designates, authorised to exercise the rights and perform the duties of LAO under the Act or the Memorandum of Understanding;
- g) "Memorandum of Understanding" means the Memorandum of Understanding between LAO and the Clinic, and includes all of the documents appended to the Memorandum of Understanding;

PART I

PRINCIPLES

- 2) This policy has been written in accordance with the following principles:
 - a) In the event of a dispute between LAO and the Clinic, both parties shall make reasonable efforts to resolve disputes by amicable discussions.
 - b) Both parties commit to providing frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those discussions and to make every reasonable effort to resolve disputes as quickly as possible.
 - c) Both parties agree that disputes should be resolved with as little disruption in the provision of clinic law services to the community as is possible.

PART II

LEGAL AID ONTARIO'S LEGISLATIVE AUTHORITY

- 3) LAO's legislative authority to take remedial action is established in sections 37, 38 and 39 of the *Legal Aid Services Act, 1998*.

THE CLINIC'S OBLIGATIONS

- 4) The Clinic's obligations are established in:
 - a) Sections 37, 38 and 39 of the *Legal Aid Services Act, 1998*;
 - b) The Memorandum of Understanding between LAO and the Clinic.

PART III

DISPUTE RESOLUTION – GENERAL

- 5) LAO and the Clinic acknowledge that LAO has the obligation to ensure that the Clinic is operating in accordance with the Act and the Memorandum of Understanding. Both parties also acknowledge that LAO has the right to investigate circumstances in which it appears that the Clinic may not be complying with its obligations.
- 6) This policy is applicable once LAO becomes aware that a clinic may not be complying with its obligations.
- 7) Except in urgent circumstances, and subject to section 10 of this policy, LAO will complete one level of response before proceeding to the next level.
- 8) LAO has the right to request meetings with the Clinic and/or to request any documentation that LAO believes is necessary to fulfil its obligations at any stage of the remedial process. LAO shall give reasonable notice of these requests. The Clinic shall make reasonable efforts to comply with these requests. The Clinic may withhold any information or document that is confidential to any individual to whom the clinic has provided legal services, unless the individual consents to such access, or unless the information pertains to the financial eligibility of the individual to receive legal aid services.

- 9) Either LAO or the Clinic may request that any agreement on an issue be summarized in writing and signed by a representative of each party.
- 10) A Clinic may waive the time limits and/or procedures set out in this policy and request LAO's assistance at any time.

PART IV

LEVEL ONE – INVESTIGATION AND INFORMAL SETTLEMENT

- 11) In the event that it appears that the Clinic may not be complying with its obligations, LAO will initiate an informal investigation into the matter.
- 12) LAO's objective at this level will be to discuss the matter with the Clinic to ascertain the facts, identify potential compliance issues, and, if necessary, to propose remedial measures that should be taken by the Clinic.
- 13) LAO shall give the Clinic reasonable notice of its concerns. The Clinic shall have a reasonable opportunity to respond to LAO's inquiries.
- 14) Any proposed remedial measures shall be communicated by LAO in writing and the Clinic shall be given a reasonable opportunity to comply with those measures.
- 15) There is no formal timetable or procedure at this level. Rather, LAO and the Clinic will attempt to resolve the issue informally and in a timely manner.

PART V

LEVEL TWO – SUPPORT AND MANAGEMENT ASSISTANCE

- 16) In the event that the matter is not resolved at the Level One and LAO continues to have ongoing concerns, LAO shall give the Clinic written notice of those concerns.
- 17) The Clinic shall have 30 days to respond in writing to LAO's written notice.

- 18) If, after these steps, LAO is not satisfied that the matter has been resolved, LAO shall work with the Clinic to develop a remediation plan intended to assist the Clinic in complying with its obligations.
- 19) During this process, LAO may offer, and the Clinic may request, assistance or support, including any of the following:
 - a) management consultation and advice;
 - b) external resources to the board of directors of the Clinic and/or Clinic staff through consultants, peer mentors, the private bar, or others;
 - c) assistance to the board of directors of the Clinic and/or Executive Director in recruitment, orientation and training;
 - d) authorisation of investigations by independent third parties as appropriate;
 - e) authorisation of assessments by external experts as appropriate;
 - f) advice and support in employment matters, including matters relating to employee discipline and termination.
- 20) LAO has the authority to require any of the measures set out in section 19. LAO shall also have the authority to require meetings with appropriate individuals or groups of individuals from the staff and/or board of directors of the Clinic. LAO will assume the cost of legal opinions, external consultants, and/or experts incurred at this level.
- 21) Prior to requiring the Clinic to implement one of the measures set out in section 19, LAO staff shall provide Legal Aid Ontario's Senior Management Committee, or the Senior Management Committee's designate, with a written report outlining the staff's concerns, the Clinic's responses to date, and the remedial responses recommended.

PART VI

LEVEL THREE – FORMAL RESOLUTION

- 22) If, in the opinion of LAO staff, the matter is not resolved at Level One or Level Two, and if LAO staff believe that a Clinic has committed a fundamental breach of its obligations, as defined below, LAO staff may recommend to the LAO Board of Directors that LAO impose a Level Three remedial response.
- 23) Prior to recommending to the LAO Board of Directors that a Level Three remedial response should be imposed, LAO staff shall provide LAO's Senior Management Committee with a written report outlining the staff's concerns, the Clinic's responses to date, the remedial responses recommended and the reasons that LAO staff believe that there has been a fundamental breach of the Clinic's obligations.
- 24) A Level Three remedial response may include any one or more of the following measures:
 - a) the imposition of special terms and conditions on the funding of the Clinic, in accordance with s. 34(5) of the Act;
 - b) the issuance of a directive to the Clinic to do anything that the LAO Board of Directors considers appropriate to ensure that the Clinic complies with the Act and the terms and conditions of its funding and, generally, for the more effective operation of the Clinic, in accordance with s. 38 of the Act;
 - c) the reduction or suspension of funding to the Clinic in accordance with s. 39 of the Act.
- 25) A "fundamental breach" of the Clinic's obligations shall include:
 - a) a failure, without reasonable grounds, to participate in a Level Two remediation plan;
 - b) a refusal or failure by the Clinic to carry out its responsibilities under the Act or the Memorandum of Understanding; or
 - c) an inability on the part of the Clinic to carry out its responsibilities under the Act or the Memorandum of Understanding

which results in serious financial mismanagement, serious professional misconduct or negligence, misrepresentation of statistical, financial or other information provided to LAO, significant reduction in the provision of clinic law services, significant personnel problems or significant board governance problems.

- 26) In the event that LAO staff conclude that a Level Three response is justified, LAO staff shall prepare a written report for the LAO Board of Director's consideration. This report shall outline LAO's concerns, the Clinic's responses to date, the remedial responses recommended and the reasons that LAO staff believe that there has been a fundamental breach of the Clinic's obligations. A copy of this report will also be provided to the Clinic, by registered mail, fax, courier or electronic transmission.
- 27) The Clinic may make a written response to the LAO Board of Directors within 30 days from the date that the Clinic receives the LAO staff report. The written response shall address the concerns raised in the LAO staff report.
- 28) After considering the written report from LAO staff and the Clinic's written response, the LAO Board of Directors may decide to hold an oral hearing.
- 29) The LAO Board of Directors may decide to impose any of the Level Three responses outlined in this policy.
- 30) The LAO Board of Directors shall provide the Clinic with its decision in writing, including the reasons for the decision, by registered mail, fax, courier or electronic transmission within 30 days from the receipt of the Clinic's written submission or within 30 days from the date of the oral hearing, whichever is later. This decision will identify the steps, if any, that the Clinic must take in order to remedy the situation. The decision will also set out a reasonable time frame within which those steps must be completed.

PART VII

RECONSIDERATION

- 31) The board of directors of the Clinic may ask the LAO Board of Directors to reconsider its original decision, made pursuant to

sections 34(5), 38(1) or 39(4) of the Act and Part VI of this policy. The decision with respect to the imposition of a Level Three remedial response shall not be effective until the time period for requesting reconsideration has expired or the LAO Board of Director's has made a decision on the Clinic's request for reconsideration, whichever is later.

- 32) The Clinic board of directors' request for reconsideration must be made within 21 days of receiving the LAO Board of Directors' decision. The request must be in writing and explain why the Clinic believes that a Level Three response is not justified or is unnecessary.
- 33) The LAO Board of Directors shall consider the reconsideration request within 30 days of receiving the request. The Board may decide to provide an oral hearing to the Clinic if one is requested. An oral hearing will be mandatory in the event that the LAO Board of Directors' original decision would result in a significant reduction of the Clinic's funding or would have a significant impact on the Clinic's ability to provide clinic law services.
- 34) The LAO Board of Directors shall provide the Clinic with its decision in writing by registered mail, fax, courier or electronic transmission, within 30 days from the receipt of the Clinic's written submission or within 30 days from the date of the oral hearing, whichever is later.
- 35) The LAO Board of Directors may confirm, vary or revoke the original decision.
- 36) In the event that the LAO Board of Director's original decision is confirmed, that decision will become effective within 10 days after the Board's decision on reconsideration.

PART VIII

URGENT CIRCUMSTANCES

- 37) There may be exceptional circumstances in which LAO believes that urgent action is required to prevent serious or irreparable harm to the Clinic, its clients or its community. These circumstances could include the sudden resignation of the Clinic's Board, significant financial improprieties, or similar situations requiring immediate action.

- 38) In these circumstances, LAO has the authority to abridge the process set out in this policy to the extent that it is required to address or remedy the situation.
- 39) In these circumstances, LAO staff will provide the LAO Board of Directors with a written report, which shall detail all the relevant circumstances and shall recommend a remedial response. This report shall specify why LAO staff believes that urgent action is required.
- 40) LAO staff shall provide the Clinic a copy of its written report immediately. The Clinic will be given 7 days to remedy the situation and/or to submit written response to the LAO Board of Directors.
- 41) The LAO Board of Directors shall consider the LAO staff written report and the Clinic's written response, if any.
- 42) The LAO Board of Directors has the authority to impose any of the remedial responses referred to in this policy. The Board shall notify the Clinic of its decision, in writing, immediately.
- 43) A Clinic in receipt of this notice has 7 days to either remedy the situation, if possible, or to submit a written request for a reconsideration to the LAO Board of Directors.
- 44) A request for reconsideration shall be dealt with in accordance with the procedure set out in Part VII of this policy.

DELEGATION

- 45) Pursuant to section 61 of the Act, the LAO Board of Directors may delegate any or all powers or duties under this policy to the Clinic Committee of the Board.