Durham Community Legal Clinic
& Access to Justice Hub

Written Submissions to:

Standing Committee on Justice Policy

of the

Legislative Assembly of Ontario

Re: Bill 161, *Smarter and Stronger Justice Act, 2020*

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Executive Summary

1. From their inception, Community Legal Clinics (CLCs) have prioritized independence at the core of their purpose. By being grounded in the community, CLCs ensure that they focus on the specific and unique needs of the communities they serve, and allow for innovation and change to occur at the grassroots level.

2. CLCs provide a voice for the most impoverished members of society, who often have no input or interaction with policy and decision-makers. By providing summary advice and legal representation, CLCs also ameliorate much of the delays and expenses involved with Self-Represented Litigants (SRLs), who would otherwise be unable to navigate the legal system.

3. Bill 161, an Act to enact the *Legal Aid Services Act, 2019* contains a number of sweeping changes to the legal system, some of which DCLC are in support of.[1] However, there are some intended changes that focus on the clinics that Durham Community Legal Clinic (DCLC) is concerned about.

4. These submissions will mirror in many ways those of other clinics, as well as the Association of Community Legal Clinics of Ontario (ACLCO), but will draw heavily on our unique experiences in Durham Region, and provide some distinct recommendations that will not be found in the submissions of other parties. Our recommendations can be grouped as follows:

    1) Ensure the autonomy and independence of community legal clinics;
    2) Retain an explicit reference to "access to justice", "low-income Ontarians" and "disadvantaged; communities", and instead promote their efficiency through paralegal modernization;
    3) Avoid limiting or constraining the definition of "poverty law";
    4) Eschew from models that mirror a fee for service approach; and,
    5) Extend the date of contract negotiations from 6 months to a fixed date of March 2021.

5. DCLC can be differentiated from other CLCs in that the staffing quotient leans far more heavily towards paralegals instead of lawyers, which has been a highly effective strategy in providing more cost-effective legal than other

[1] See, for example, the changes to remote commissioning and notarizing, subsequently introduced and passed under Bill 190.

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clinics in the province. Our recommendations therefore include substantive details and information under Recommendation #3 in relation to how paralegals can be further utilized and retained within the clinic system through statutory amendments, which can be added in Bill 161.

6. These submissions are made with particular consideration and support for the principles in the 2019 Budget, in particular: ensuring accountability; reducing red tape to provide greater convenience for individuals and families; reducing duplication of services; guaranteeing valuable programs and services are sustainable and modernized; using an evidence-based approach towards decision-making; breaking down silos; and ensuring services are provided to the people of Ontario where they live, in consideration of who they receive services from, and with consideration of their unique circumstances.[2]

Background

7. The Durham Community Legal Clinic (DCLC) was founded in 1985, after operating for a couple years as a telephone service for tenants providing summary advice. For much of its history, DCLC focused income security matters with its Legal Aid Ontario (LAO) funding, such as Ontario Works (OW), Ontario Disability Support Program (ODSP), and Canada Pension Plan Disability (CPP-D) denials.

8. In the past 5 years, a significant surge in housing needs resulted in the clinic expanding its tenant law services from summary advice to representation. This mirrored much of the economic downturn observed in Durham Region, in part connected to closures in manufacturing and industry. Housing law is now the largest area of services DCLC provides in Durham Region. The clinic also started offering services in employment law, Workplace Safety and Insurance Board (WSIB) claims and appeals, and human rights applications over the past 5 years.

[2] The Hon. Victor Fedeli, Minister of Finance, "2019 Ontario Budget: Protecting What Matters Most," 2019, at 44, available at: https://budget.ontario.ca/pdf/2019/2019-ontario-budget-en.pdf.

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9. Although the clinic briefly provided immigration law services in recent years, this is not an area we are able to service based on our current funding from LAO.

10. Beyond the services above funded by LAO, DCLC has been involved in the development of innovative models to expand services. One example of this has been the Durham Access to Justice Hub®, launched in 2019. The Hub is located in the clinic and involves a partnership with The Regional Municipality of Durham, Durham College, John Howard Society of Durham, Durham Mental Health Services, Community Development Council Durham (CDCD), DRIVEN Durham (a Hub for domestic violence and sexual abuse that includes Bethesda House, Catholic Family Services of Durham, the Domestic Violence Sexual Assault Care Centre, Durham Rape Crisis Centre, Region of Durham Family Services, Herizon House, Luke's Place, The Denise House, and YMCA Durham), Brain Injury Association of Durham (BIAD), Durham Region Unemployed Help Centre, Canadian Mental Health Association Durham, Durham Welcome Centre Immigrant Services, and others.

11. The goal of this Hub is to improve inter-agency collaboration, reduce administrative barriers and silos, and develop a better client-centered focus. In doing so, the clinic promotes efficiency and ensures responsiveness to client needs and changing environmental factors. Examples of some of the initiatives currently being developed in cooperation with the Hub include sexual harassment in the workplace services, a family law triage project, financial literacy programming, a year-round tax clinic, and more. All of these services are provided for free to the community.

12. The Hub allows for a teaching model at the clinic, with several dozen students receiving placements or training on site during the year. A special partnership with Durham College allows for paralegal students to do their placement at DCLC through the Hub, and this partnership allows the Hub to offer *additional* legal services in the areas of consumer law, small claims, and provincial offences.

13. These legal services in the Hub are not funded directly by LAO, and are provided beyond the income thresholds required by LAO, meaning the legal services offered through the Hub go well beyond the definitions of poverty

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law in the existing act. Students from law school, social work programs, and business and accounting programs also do placements at the clinic, meaning that the clinic is also a job creator, and helps ensure that local residents are better prepared for the job market. All of these goals and objectives are derived from DCLC's local governance, and not directed in any way by LAO.

Recommendations

1) Ensure the autonomy and independence of community legal clinics

14. The necessity of CLCs being fully autonomous and independent can be found in the earliest foundation documents of legal clinics. The *Report of The Commission on Clinic Funding* stated in 1978,[3]

> Section 147 of the Regulation makes provision for the funding of "independent community based clinical delivery systems" and I approve of the term "independent" because it recognizes that clinics are to be free from any governmental control and are to be allowed to run their affairs, in effect, like a private law firm (subject to their duty to account for public funds).
> [emphasis added]

The Honourable S.G.M Grange explicitly discussed this concept of control in the context of law reform activities, and instead promoted a broad interpretation of legal services to encompass law reform activities.[4]

15. Instead, CLCs are intended to be controlled by the communities they serve through a board of directors, which is intended to give the community input into the services provided and involve the deliverers of those services in community affairs,[5]

> If there are to be effective services to the poor, the traditional distrust felt by the poor towards lawyers, the legal profession and even towards the law itself, must be reduced.

16. The year after the Grange Report, The Honourable Roy McMurtry, Q.C., Minister of Justice and Attorney General of Ontario at the time, incorporated these recommendations into a regulation of the *Legal Aid Act*.[6] The principles

[3] The Honourable S.G.M. Grange Commissioner, "Report of the Commission on Clinical Funding" [the "Grange Report"], October 25, 1978 at 10-11, available at: https://aclco.org/wp-content/uploads/2019/01/GrangeCommissiononClinicFunding-1978.pdf
[4] *Ibid* at 14-15.
[5] *Ibid* at 21.
[6] 0. Reg. 160/76. Although the principles of clinic independence and community involvement in decision making precede this regulation, this was the creation of the Ontario Legal Aid Plan's funding of an "independent community-based clinical delivery systems" in s. 147; Mary Jane Mossman, "Community Legal Clinics in Ontario," Windsor Yearbook of Access to Justice 3 (1983) at 381-383, available at: https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2538&context=scholarly_works. This statute was followed by the current statute, *Legal Aid Services Act*, 1998, SO 1998, c 26 [the "*LASA*"], as subsequently amended.

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of independence and community-based control have been the hallmark feature of CLCs ever since, and affirmed by subsequent reviews of the system.[7]

17. Centralizing the administration or decision-making of CLCs in any way, or modifying the system to allow for undue interference by government, will limit and impact the ability of CLCs to maintain close ties to low-income populations in our communities, and thwart the goal of poverty alleviation.

18. For example, Bill 161 may restrict our clinic's ability to adapt in innovative ways, by providing LAO the express authority to "determine the legal needs of individuals and communities in Ontario for legal aid services".[8] Independence ensures that our clinic remains non-partisan, and reflects the unique needs of our respective communities across Ontario. The structure proposed under Bill 161 potentially threatens this, by allowing for a centralization of decision-making within Legal Aid Ontario ("LAO").

19. The priorities and the focuses of community clinics may necessarily be affected, depending on who may be directing LAO. This is detrimental to the goals of poverty alleviation and access to justice, and community legal clinics susceptible to political influences and interference, which no political party should support. Instead, our clinic ensures that we maintain open channels of communication with all political parties, and we promote cooperation with all parties and governments to address systemic and specific concerns around poverty law.

20. The notion of independence from governmental influence was specifically contemplated in the 1974 review of the current model by the Honourable Justice Osler, in his "Report of the Task Force on Legal Aid,"[9]

> We envisage the continuance of this independence in a setting in which the licensing and professional conduct of barristers and solicitors continues to be the exclusive charge of the Society, <u>while Legal Aid Ontario, separated from both government and the profession can single-mindedly serve the public interest by the provision of legal services</u>.
> [emphasis added]

[7] Legal Aid Ontario, "Report of the Ontario Legal Aid Review: a blueprint for publicly funded legal services" [the "McCamus Report"], Chapter 2, available at: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch2.php. The McCamus Report also emphasized the need for a greater mix of legal services to assist a greater percentage of the public with their legal problems, and recognized that delivery models in competition with each other can be beneficial for the purposes of evaluation.
[8] Bill 161, Schedule 16, s. 6.
[9] Mr. Justice Osler, "Report of the Task Force on Legal Aid," Ministry of the Attorney-General, 1974 [the "Osler Report"], at 28.

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21. This is not to say that LAO should have the sole authority of the provision of legal services. Justice Osler's comments must also be read in conjunction with the Honourable Justice Grange's aforementioned remarks regarding community control.[10]

22. Further, Bill 161 deviates from the current *LASA* by indicating that, "The Corporation may provide legal aid services" it considers appropriate,[11] and "The Corporation may provide legal aid services" in certain areas of law that include Poverty Law.[12] The current act *requires* LAO to provide legal aid services.[13] The removal of this statutory requirement from LAO directly threatens the funding stability to CLCs, compelling them into accepting funding arrangements (and the associated provisioning of legal aid services) that are not reflective of local community needs, out of fear that LAO may decide not to fund the CLC at all.

23. This is especially problematic in light of Schedule 15 of Bill 161 which provides that LAO *may* enter into discussions with each clinic with respect to the provision of legal aid services and entering into a new agreement with the clinic regarding said services within 6 months of Bill 161 coming into force,[14] which is explored briefly in Recommendation #5.

2) Retain an explicit reference to "access to justice", "low-income Ontarians" and "disadvantaged communities", and instead promote their efficiency through paralegal modernization

24. Canada has had an access to justice crisis for several years now, a problem widely recognized throughout the legal industry, and at every level of government and organization.[15] CLCs do not purport to singlehandedly be the

[10] See also, Byron Sheldrick, "Law, representation, and political activism: Community-based practice and the mobilization of legal resources," 10 Can. J.L. & Soc'y 155 (1995) at 176-177, where accountability to local boards is described as an accountability mechanism and democratic institution entirely distinct from the traditional notions of legal practice. For this reason, many members of the bar who have not had clinic exposure, either in law school or in their professional career, easily misunderstand the role and function of CLCs.
[11] Bill 161, Schedule 16, s 3.
[12] Bill 161, Schedule 16, s 4.
[13] *LASA*, *supra* note 6, s. 13(1).
[14] Bill 161, Schedule 15, 72.3 (1).
[15] See, for example: Canadian Bar Association, "Canada's Crisis in Access to Justice," April 2006, available at: http://socialrightscura.ca/documents/CESCR-Submissions/canadianbarassociation.pdf; Canadian Bar Association, "Reaching Equal Justice," Nov. 2013, available at: https://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf

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solution to the access to justice problem, but they certainly can and should play a central role in these discussions, especially given their specialized knowledge that is largely absent elsewhere in the bar.

25. Access to justice is not achieved by simply increasing money to a justice system that is already ineffective and inefficient. There are widespread structural problems that create unnecessary expenses and delays in courts and tribunals. The modernization initiatives currently underway by this government, in particular in the use of more technology and remote hearings for procedural matters, should assist significantly.[16]

26. DCLC has been supporting and assisting these initiatives, and will continue to provide specialized insight and expertise on how to best use technology in our justice system. The COVID-19 pandemic is likely to only exacerbate the existing system, which is already under considerable pressure.[17]

27. However, access to justice is best understood as identifying and dismantling barriers due to historic and systemic challenges.[18] Neither the government nor the bar at large has a proper understanding of the challenges faced by the public with our legal system. [19] Lawyers in private practice in particular typically service wealthy or institutional clients, who may be inconvenienced by the inefficiency and procedural hurdles in our justice system, but are not excluded from it entirely.

28. Meaningful changes to access to justice require channels of communication to marginalized populations, and input and insight from those regularly working with low-income people. CLCs are the only institutions within the legal industry that have this regular access to low-income populations, and due to the independence described

[16] Anita Balakrishnan, "MAG Doug Downey commits to permanent modernization for remote notarizing, commissioning," Canadian Lawyer, May 14, 2020, available at: https://www.canadianlawyermag.com/resources/professional-regulation/mag-doug-downey-commits-to-permanent-modernization-for-remote-notarizing-commissioning/329628

[17] National Self-Represented Litigants Project, "What Does COVID-19 Tell Us About Our Response to the Access to Justice Crisis?," Slaw, April 2, 2020, available at: http://www.slaw.ca/2020/04/02/what-does-covid-19-tell-us-about-our-response-to-the-access-to-justice-crisis/

[18] Thomas Cromwell, "Access to Justice: How it's looking on the ground," The Lawyer's Daily, Aug. 13, 2019, available at: https://www.thelawyersdaily.ca/articles/7107/access-to-justice-how-it-s-looking-on-the-ground-thomas-cromwell

[19] See, for example, comments by the author regarding the name of the law society in: Canadian Lawyer, "The name remains the same," May 10, 2012, available at: https://www.canadianlawyermag.com/news/general/the-name-remains-the-same/271387; Omar Ha-Redeye, "The Sausage Man at the Corner of Queen and University," Slaw, Oct. 11, 2017, available at: http://www.slaw.ca/2017/10/01/the-sausage-man-at-the-corner-of-queen-and-university/.

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above, are able to foster relationships characterized by trust that allows them to gain these insights. Their role in any access to justice initiatives facilitated by the government is therefore invaluable.

29. Bill 161 fails to reference terms such as "access to justice", "low-income Ontarians" and disadvantages communities in its Purpose clause. This overlooks the foundational elements behind CLCs for decades, to facilitate access to justice to low-income and disadvantages communities. This is a radical change being undertaken without study, review, or contemplation of what the consequences of this change might be.

30. The wisdom of these principles was highlighted in the 1974 Osler Report,[20]

> We have little doubt that at the time of its creation, the Ontario Legal Aid Plan… committed the Government of Ontario to a Plan in which the cost was open-ended but was obviously going to be considerable, in recognition of the fact that equality before the law… was a meaningless phrase if access to the machinery of the law was denied to a substantial proportion of the population by reason of their inability to pay for it.

No government in over 45 years has even considered the removal of these phrases, even after extensive reviews of the system.

31. Instead of such drastic measures, DCLC provides a suggestion as follows, building on existing trends within the legal system intended to facilitate access to justice, and based on ongoing initiatives in the legal industry with licensed paralegals. This strategy was in fact envisioned in some form at the inception of the current system in 1974, as explained in the Osler Report,[21]

> [A community legal clinic] has trained para-legal personnel, who, under the direction of the professional staff, provide legal assistance and advice. It has been outstandingly successful in making use of the services of these men and women who, drawn from the community, relate well to the clients and have acquired specific skills directly applicable to one or more of the principal areas of the clinic's concern. It is further staffed by a large corps of students, who work in the clinic as part of their academic programme.
>
> …
>
> We are satisfied that a properly trained and supervised para-professional has an important role to play in the delivery of legal services by clinics. Because many of the problems that will be brought to the clinic may only have a marginal legal component, the para-professional may be better able to deal with them than a lawyer. In addition, para-professionals may be used to assist in Small Claims Court, the Family Court office and no doubt in many other respects under the new Plan.
>
> …
>
> If opportunities for employment are created by the new Plan for para- professionals in the poverty law area, we are confident that our community colleges will respond to the challenge of providing academic training for such persons. Such programmes should be developed by collaboration between The Law Society, the Board of Directors of Legal Aid Ontario and the community colleges.

[20] Osler Report, *supra* note 9 at 17.
[21] *Ibid* at 51, 53.

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[emphasis added]

32. To date, DCLC has especially exemplified this vision of cost-effective legal services through use of paralegals and students. Further regulatory reform in this area, as detailed below, is a far more prudent means of achieving accountability and cost-effectiveness.

Modernizing paralegals

33. Government expenditures on legal aid are estimated to create significant cost savings for governments, especially when reviewed on a Return-on-Investment (based on monetary returns from investment) as well as a Social-Return-on-Investment (looking at the social benefits of investments), with an estimated $9 to $16 in savings for every $1 spent.[22] This is particularly true for community legal centres,[23] and where community-based paralegals can be used in the provision of services.[24] The use of paralegals in these settings also demonstrate higher client satisfaction.

34. Given the heightened need for accountability during difficult economic times, DCLC proposes clear recommendations that will have measurable impacts on the services provided, and do so in a cost-effective manner.[25] Some contextual background around the history of paralegals are necessary for these submissions.

35. The Law Society of Ontario was created in 1797 by an act of the Legislative Assembly (at that time, the Law Society of Upper Canada) under the *Law Society Act* (the "Act"). Although the Act used terms borrowed from England at

[22] Lisa Moore, Trevor C.W. Farrow, "Investing in Justice: A Literature Review in Support of the Case for Improved Access," Canadian Forum on Civil Justice, August 2019, available at: 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; See also, Legislative Assembly of Ontario, Official Report of Debates (Hansard) No. 150, 1st Session 42nd Parliament, Tuesday 3 March 2020 at 7396 [Statement of MPP Tom Rakocevic].
[23] *Ibid* at 43-46
[24] *Ibid* at 60-61.
[25] Investments into CLCs in Ontario have demonstrated a clear increase in services. See, for example, Office of the Auditor General of Ontario," 2018 Annual Report," Chapter 3, Section 3.05, Legal Aid Ontario, at 260, available at: https://www.auditor.on.ca/en/content/annualreports/arreports/en18/v1_305en18.pdf. The report notes that due to reclassification of services provided there is an artificial decrease in number of files and an increase in average cost per file, but excluding this statistical anomaly, a clear increase in services can be observed.

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the time, such as barrister, bencher, and treasurer, the law society departed significantly from the model of practice in England.[26]

36. Much like today, the creation of the law society was prompted by ensuring professional standards of competence.[27] Although the original terminology used at its inception included terms such as barrister, solicitor, attorney, and counsel, these terms (especially attorney) fell into disuse in Ontario after the Chancery court was established in 1837.[28] As such, the professional distinctions between these terms have not been as significant in Ontario as they have been in England.[29]

37. Lawyers then were the exclusive purveyors of professional and regulated legal services in Ontario until Bill 14, Access to Justice Act, 2006,[30] an omnibus bill that included numerous amendments to several statutes, including the *Law Society Act* under Schedule C. One of these amendments included repealing the definition of "member" under Subsection 1(1) of the Act, and replacing it with the definition of "licensee." The reason for this was the creation of new members for the law society under the Act, defined in the substituted Subsection 2(2), for people who provide legal services as paralegal members.

38. The purpose for creating these paralegal members was to provide an alternative for the public in getting legal advice and legal services, ideally helping to promote access to justice. Regulation would also provide some standardization and quality control to the provision of these services, which had previously been provided in an informal capacity by individuals without any required qualifications.[31] Bill 14 also created a five-year review period

[26] Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997*, University of Toronto Press, Jan. 1, 1997, at 27.
[27] *Ibid* at 34.
[28] *Ibid* at 344.
[29] *Ibid* at 39.
[30] The full title of which is, Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.
[31] Legislative Assembly of Ontario, 38th Parliament, Official Report of Debates (Hansard), 38th Parliament, 2nd Session, Monday 13 February 2006, at 1785-1786 [Hon. Michael Bryant (Attorney General)].

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to review the manner in which persons providing legal services as paralegals has had on the public, and to prepare a report.[32]

39. Licensed paralegals were licensed to practice at administrative tribunals, small claims, summary criminal proceedings, and provincial offences.[33]

Tensions, Definitions, and Delineations

40. The creation of licensed paralegals created quite a bit of tension between them and the existing legal profession. For some lawyers, the work that licensed paralegals provided directly cut into their work and revenue streams. The fact that many were able to provide these services at a fraction of the price did not help with this sentiment. Conversely, some licensed paralegals felt that they were too frequently unwelcome within the legal community, and that the lawyers unfairly opposed or excluded them.

41. These tensions also manifested themselves within the regulation of both legal professionals, most notably around the further expansion of the scope of practice for paralegals, especially for family law. A motion was introduced at Convocation in 2010, but then withdrawn given the potential conflict between the lawyers and paralegals.[34] Another motion was contemplated in 2013, around roughly the same issues,[35] and then again in 2017.[36] Visible conflict at Convocation has also been observed around deputy judges who serve as benchers, especially where those lawyer benchers may comment at Convocation on the services provided by paralegals.[37]

[32] *Law Society Act*, s. 63.1.
[33] Law Society of Ontario, By-Law 4, s. 6(2).
[34] Michael McKiernan, "Update: Paralegals call truce over law society motion," *Law Times*, May 3, 2010, available at: https://www.lawtimesnews.com/news/general/update-paralegals-call-truce-over-law-society-motion/258424.
[35] Yamri Taddese, "Time to expand paralegal rights?," *Law Times*, April 29, 2013, available at: https://www.lawtimesnews.com/news/general/time-to-expand-paralegal-rights/259856.
Yamri Taddese, "Paralegal motion withdrawn hours before law society AGM," *Canadian Lawyer*, May 8, 2013, available at: https://www.canadianlawyermag.com/news/general/paralegal-motion-withdrawn-hours-before-law-society-agm/271984.
[36] Alex Robinson, "Debate heats up on paralegals in family law," *Law Times*, May 15, 2017, available at: https://www.lawtimesnews.com/news/general/debate-heats-up-on-paralegals-in-family-law/262555.
[37] Alex Robinson, "Adjudicators shouldn't be benchers: paralegals," *Law Times*, Apr. 30, 2018, available at: https://www.lawtimesnews.com/news/general/adjudicators-shouldnt-be-benchers-paralegals/263031.

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42. The family law issue has now been resolved, despite vociferous opposition by many family lawyers. The Family Legal Services Review by Justice Annemarie E. Bonkalo in 2016 concluded that licensed paralegals should provide some legal services within family law.[38] The report drew on older studies prior to the regulation of paralegals, which suggested a role for paralegals in family law, especially if licensed to do so. The law society and Minister of Attorney General received over 160 submissions from individuals and organizations, with many of the family lawyers opposing the expansion of scope. Despite these submissions, Justice Bonkalo stated,

> There are few subjects that cause more controversy within the family justice community than the provision of legal services by paralegals… However, I do not agree that no assistance is better than some assistance where paralegals, [properly] trained and regulated, are able to provide legal services in family matters. The rising number of unrepresented litigants can be addressed more immediately and effectively by considering ways to expand the provision of legal services.

43. The law society is currently developing the professional training program and accreditation for licensed paralegals to offer family law services under an additional post-license licensure program, which is expected within the next year or two. The COVID-19 pandemic is expected to delay this process further.

44. Distinctions between lawyers and licensed paralegals have also manifested practically in court and in the regulation of both professions. In *R. v. Lippa*,[39] Justice Fuerst reviewed the creation of the two forms of licensees in the context of reviewing whether a judicial officer could direct where legal professionals sit in the courtroom. Although acknowledging that licensed paralegals "are members of a regulated profession,"[40] she noted that paralegals are not listed in s. 29 of the *Law Society Act*, and are therefore not considered "officers of the court."

45. Although this distinction was not central to her determination of the issues, this statement potentially had significant consequences, especially as it relates to the duties that licensed paralegals have to the justice system that they work within.[41] Consequently, the Paralegal Standing Committee made a Report to Convocation on

[38] Justice Annemarie E. Bonkalo, "Family Legal Services Review," Ministry of the Attorney General, Dec. 31, 2016, available at: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/.
[39] 2013 ONSC 4424.
[40] *Ibid* at para 3.
[41] Omar Ha-Redeye, "Are Paralegals Officers of the Court?," Slaw, July 14, 2013, available at: http://www.slaw.ca/2013/07/14/are-paralegals-officers-of-the-court/.

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December 1, 2017, bringing a motion that Convocation recognize licensed paralegals as officers of the court in every court of record in Ontario that a paralegal is authorized to provide legal services.[42] Amendments to the Act in 2018 through Bill 31 added s. 29.1 to confirm the same.[43]

46. The issue of scope of practice has also arisen in entirely unintended ways. The introduction of Bill C-75[44] was intended to address many of the delays criticized by the Supreme Court of Canada.[45] However, the removal of preliminary inquiries for most offences resulted in a hybridization of almost all indictable offences, potentially taking them outside of the scope of practice for paralegals. Because paralegals are only licensed in Ontario, and not in any other jurisdiction in Canada, the implication of these changes on licensed paralegals was likely attributable to oversight.

47. Responsive action by the Attorney General, by way of an Order in Council 1115/2019 on Aug. 15, 2019, created an "approved program" to allow licensed paralegals to continue to practice in this area. A successful motion at the law society on Sept. 11, 2019 created an ongoing review process, while allowing licensed paralegals to establish a scope for criminal matters in response to Bill C-75.

Proposed Amendment

48. Despite further changes to the *Law Society Act*, and improved cooperation between the lawyers and licensed paralegals, the law society, and government, numerous regulatory and statutory gaps continue to exist in light of unanticipated interpretation of other statutes. In large part this is because for over 200 years the only legal professionals providing regulated legal services were lawyers.

[42] Paralegal Standing Committee, "Report to Convocation December 1, 2017," available at: https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-dec-2017paralegal_standingcommitteereport.pdf [citing Ha-Redeye*, ibid*, at fn 8; see also, Julia Munro (York-Simcoe), citing the same in Legislative Assembly of Ontario, Second Session, 40th Parliament, Dec. 3, 2013, at 4842].
[43] Bill 31 (Chapter 8 of the Statutes of Ontario, 2018) An Act to implement Budget measures and to enact and amend various statutes, Schedule 15.
[44] An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts.
[45] *R. v. Jordan*, 2016 SCC 27 (CanLII), [2016] 1 SCR 631; *R. v. Cody*, 2017 SCC 31 (CanLII), [2017] 1 SCR 659.

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49. The statutes in Ontario continue to use and reflect the wording that precedes the creation of licensed paralegals, even if they are intended to encompass and include them. In some instances, these gaps continue to create ambiguities, and in some instances, those ambiguities continue to tie up the courts and create unnecessary legal proceedings. Consequently, the proposed amendment is relatively simple, and are to the Interpretation provisions under section 1 of the Act, as follows:

> "licensee" means,
> (a) a person licensed to practise law in Ontario as a barrister and solicitor, or
> (b) a person licensed to provide legal services in Ontario law under this Act; ("titulaire de permis");
>
> both of which are legal professionals, practising subject to regulation by the Society.

50. Much like the 2018 amendment to the Act, this modest change to the wording and language can help further clarify that the roles and responsibilities of both lawyers and paralegals are effectively the same, in regards to their professional obligations to the law society, and in their treatment in the law through the interpretation of other statutes. Given the anticipated regulation of licensed paralegals in family law, an area of practice that can be highly contentious and often fueled by emotion, this clarification may decrease the acrimony between lawyers and paralegals, and also ensure there is no misunderstanding about the role of licensed paralegals by members of the public who may be retaining these services.

51. This type of clarification may also assist in the regulation of licensed paralegals, who are already required to abide by standards of professional competency under ss. 41-45 of the Act, are subject to professional audits and investigations of a professional business for any professional misconduct under ss. 49.2-49.3, required to engage in ongoing professional development (s. 60(1), obtain professional liability insurance (s. 61), and may establish professional corporations (s. 61.0.1). Despite these numerous references to paralegals having professional obligations, and maintaining their own *Paralegal Rules of Conduct*, the apparent ambiguity between licensees under the definition has resulted in risks to the public.

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52. In *Law Society of Upper Canada v. Lee*,[46] the law society reviewed a licensed paralegal who held himself out as a lawyer, and in engaged in numerous contraventions of his professional responsibilities. The law society concluded that he had engaged in professional misconduct. In his defence, the paralegal attempted to utilize an argument that amounted to a lack of professionalization for paralegals, blaming his training and a lack of understanding.[47] The law society tribunal rejected this argument in the penalty decision, stating,

> [7] We do not accept that proposition. Whether or not trust account obligations are specifically taught at the colleges where they pursue legal studies, paralegals know they must comply with the *Paralegal Rules of Conduct* and with the By-Laws under the *Law Society Act,* RSO 1990, c. L.8, which set out requirements for handling trust and client monies. **Paralegals are legal professionals**. Clients must be able to count on paralegals to handle monies entrusted to them with complete honesty. Integrity is essential to the privilege of providing legal services to the public and to the privilege of calling oneself a paralegal licensed by the Law Society of Upper Canada.
> [emphasis added]

53. The proposed amendment therefore seeks to confirm in statute what is already described in the case law, that licensed paralegals are legal professionals, and that they have professional obligations that may differ in nature than lawyers, but are no less important in light of the public interest.

Regulatory and Industry Impact Analysis

54. A clear statement from the legislature that paralegals are considered legal professionals would be widely celebrated and supported from the paralegal community. This recognition would also be welcomed by almost all segments of the lawyer community as well, especially as it would assist in ensuring competency and accountability to the law society. One of the greatest concerns raised about the expansion of paralegal scope into family law by the family law lawyers was around these issues of competency and accountability. This amendment, prior to the formal introduction of these new family law services, would help to ensure that they are developed in light of the need for both paralegals and lawyers to understand the shared and mutual responsibility of developing these new services in a professional manner, and with minimal risk to the public.

[46] 2017 ONLSTH 141 [Decision]; 2017 ONLSTH 210 [Penalty].
[47] 2017 ONLSTH 141 at para 50; 2017 ONLSTH 210 at para 6.

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55. Greater statutory emphasis on the professional status of licensed paralegals may also improve the job prospects and the ability of paralegals to better practice independently. A 2015 report by the Paralegal Standing Committee found that 13% of all licensed paralegals are unemployed, and only 33% practice in a paralegal law firm. Many of those otherwise employed work in legal related positions, but not in a professional capacity. This would include paralegals who are effectively working as law clerks, or paralegals who are working in education.

56. One of the biggest challenges observed in the 5 year review of the paralegal profession was that members of the public surveyed had low awareness of the changes in the legal sector, including the type of services that paralegals can provide.[48] This lack of awareness may be directly impacting the ability of licensed paralegals to successfully operate their own independent practice.

57. The proposed amendments are unlikely to have a significant impact on licensed paralegals who are not working in a professional capacity. The exemptions to Parts VII, VII.1, VIII, IX, X and XI under the *Employment Standards Act,*[49] do not apply to a person who is not employed as a practitioner of law.[50] Similarly, the full time or part time academic or support staff who are excluded from a bargaining unit under Schedule 1 of the *Colleges Collective Bargaining Act*[51] is only where they are employed in a professional capacity.[52]

58. What this relatively simple legislative change could do is modernize the paralegal profession, recognize its professional status in Ontario, and facilitate the greater use of paralegals in CLCs. This approach was envisioned at the outset of the creation of CLCs in the Osler Report, decades before licensed paralegals were created, where high volume of relatively simple and routine legal services could be provided with minimal supervision by lawyers.[53]

[48] David J. Morris, "Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario," Nov. 2012, available at: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.html.
[49] 2000, S.O. 2000, c. 41.
[50] O. Reg. 285/01, s. 2. (1)(a)(ii).
[51] 2008, SO 2008, c 15.
[52] *Ibid*, Schedule 1, ss. 1(e), 2(2)(d), 3(h), 4(g).
[53] Osler Report*, supra* note 9 at 63.

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3) Avoid limiting or constraining the definition of "poverty law"

59. The causes of poverty, and the legal needs of those with poverty, are necessarily diverse and different across the province. The needs of low-income people in highly dense urban areas of the province are going to be distinct in many ways that the needs of people in rural areas, or on a reserve. The social and economic character of local communities not only informs the approach needed to address immediate and systemic poverty law concerns, but also apprises the areas of law that are offered.

60. As described in the background above, DCLC has itself experimented and offered different types of legal services over the years, which were in direct response to the needs of the community as described by an independent board of directors. The ultimate goal of the legal services provided by a clinic is not simply in response to an immediate legal issue that a client might be facing, but to alleviate poverty entirely. This necessarily requires a holistic approach towards the problems that clients face, which has been greatly enabled by the introduction of the Hub at DCLC, but also requires flexibility in regards to the topical areas of law that CLCs may provide. Restricting the services through statutory amendments, and allowing this determination to be made centrally, is ill-advised and unlikely to result in an effective use of taxpayer dollars.

29. The original conception of poverty law within the clinic system was always intended to be inter-disciplinary and to focus on systemic issues around poverty. The Osler Report stated,[54]

> In this connection it is important to recall that many "poverty law" problems are not primarily legal problems. A Legal Aid Plan should not create expectations which realistically cannot be met by lawyers alone. It must explicitly recognize that a lawyer cannot solve all or even most of the problems of the poor without the constant co-operation and assistance of other disciplines from which the lawyer traditionally has been remote and removed.
> …
> [It] is generally undesirable to provide for discretionary powers to be exercised for the purpose of limiting the scope of the areas covered by the Plan. To provide for discretions in this regard creates situations where in one area of the province Legal Aid is available in certain matters while in other areas it is unavailable. It is only in matters where community input should dictate the nature of the services covered that a discretion should be reserved.
> [emphasis added]

[54] Osler Report, *supra* note 9 at 40-41.

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30. Bill 161 restricts the definition of "poverty law" to being law relating to housing and shelter, income maintenance or social assistance.[55] Section 5 of Bill 161 sets out that LAO will "have regard" to the foundational role of CLCs in providing "poverty law" services and determinations by CLCs of the legal needs of their communities.[56] When read together, Bill 161 appears to restrict the scope of service that CLCs provide through poverty law, and will only "have regard" to CLC determinations about the needs of their communities, as opposed to allowing communities to set these priorities for themselves.

31. Instead, CLCs should be the ones to take the lead in developing innovation and modernization of legal services, including defining poverty law in light of the needs of their own respective communities. The Grange Report quoted Hon. Roland "Roy" McMurtry, Attorney General, who stated on May 25, 1977,[57]

> It is also obvious that these clinical delivery systems are meeting a need which has not traditionally been well served by lawyers… It should therefore be obvious that community based law projects have a vital role to play in the future development of Ontario's legal aid system.

This requires leadership and direction from local board members, who live in their local community have some critical connection to our community, not just some bureaucrats far removed. Setting priorities in conjunction with other social services, and providing services beyond legal representation in the courts, have been a stable feature of CLCs since their inception.[58]

4) Eschew models that mirror fee-for-service

61. Bill 161 requires that individuals "demonstrate" that they meet any financial and other eligibility requirements.[59] This potentially imposes an onerous and additional level of administration that detracts from the ability of CLCs to deliver legal aid services in a cost-effective manner. The current approach for CLCs is quick and efficient,

[55] Bill 161, Schedule 16, s 4.
[56] Bill 161, Schedule 16, s 5.
[57] Grange Report, *supra* note 3 at 9.
[58] Mary Jane Mossman, Karen Schucher, Claudia Schmeing, "Comparing and Understanding Legal Aid Priorities: A Paper Prepared for Legal Aid Ontario, 29 Windsor Rev. Legal & Soc. Issues 149 at 9. The authors suggest at 10 that "…the state's obligation must ensure that legal aid services foster fundamental constitutional values, including the rule of law and democratic participation, as well as equality. In this way, the courts' *Charter* decisions about legal aid services provide only a minimal set of requirements for legal aid priorities."
[59] Bill 161, Schedule 16, s. 7(1).

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especially for summary legal advice, and is not subject to the potential abuses that may be observed through other forms of legal aid. This amendment also fails to reflect the reality of administrative tasks within CLCs.

62. CLCs are unique within the social services sector in that minimal administrative expenses are largely shared and dispersed among all staff. A 2010 review of administrative costs in CLCs revealed that Executive Directors, who are also licensed lawyers, only spend on average just over 25% of their time on administration, as much of their work also involves front-line legal services. The bulk of administrative work in CLCs are conducted by the Office Manager and support staff.[60] Although the report suggests that some CLCs may have higher administrative expenses than other social service organizations, this likely reflects an broader definition of the term and the reality that many of these tasks are dispersed throughout the staff. The concern with Bill 161 is that it may introduce changes that would increase administrative expenses even further, significantly impacting front-line services.

63. DCLC is already implementing many of the ideas discussed in the 2010 LAO review, including regional coordination, sharing of space and services, exploring new models and ways of partnering, leveraging technology, and offering holistic services. We intend to find even further efficiencies in the future, especially as it relates to technological solutions. In order to do so, we require less intervention from government and funders, and some refrain in creating new and additional administrative burdens.

64. Bill 161 provides that clients of CLCs pay for service via a charge on any sum recovered. [61] Bill 161 also makes no mention of the current CLC model whereby services are provided on an "other than fee for service basis".[62] If clients are required to pay for services, a fundamental purpose of community legal clinics is eroded. Clinics exist, in part, so that clients do not have to pay for legal services because they cannot afford to do so. The likely result of charging clients for legal assistance is an increase in SRLs. This will simply create an additional burden on the

[60] Legal Aid Ontario, "A Discussion Paper on Addressing Clinic Administrative Costs," May 5, 2010, available at: https://collections.ola.org/mon/25005/309973.pdf.
[61] Bill 161, Schedule 16, s.13(1).
[62] Legal Aid Services Act, 1998 s. (2).

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justice/tribunal system due to an increase in self-represented litigants. This will slow/delay the administration of justice and waste valuable resources.

65. The problems associated with significant numbers of self-represented litigants have already been demonstrated in various contexts, including the family law context.[63] Furthermore, the administrative tribunal system in Ontario is already overburdened, under-staffed, and deteriorating.[64] Tribunals Ontario will not be able to handle an increase in self-represented litigants.
66. There are other ways methods to ensure fiscal responsibility such as the integration of community services, including clinics, into a community hub. Community hubs have time and again proven to deliver the best possible value for every dollar spent.[65] This is an approach that DCLC is spearheading, and would suggest be more broadly adopted where appropriate given community needs.

5) Extend the date of contract negotiations to a fixed date

67. Schedule 15 of Bill 161 provides LAO the ability to enter into a new agreement with CLCs regarding services, within 6 months of Bill 161 coming into force. A 6-month timeframe to negotiate complex funding agreements is far too short a time to reconsider how crucial legal services should be provided. In the context of a global pandemic, the problems with this abbreviated timeline are exacerbated.
68. CLCs need to consult and obtain input from a variety of stakeholders before and during negotiation of funding agreements. These stakeholders include Board Members, community partners, and staff. Obtaining quick and meaningful feedback amidst COVID-19 will prove difficult as most aspects of society have ground to a halt. Without the feedback of these important stakeholders, CLCs cannot in good faith purport to adequately represent

[63] "The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants," (2013) 91:1 Can Bar Rev 67 at 71, available at: https://cbr.cba.org/index.php/cbr/article/view/4288.
[64] Tribunal Watch Ontario, "Statement of Concern," May 14, 2020, available at: https://tribunalwatch.files.wordpress.com/2020/05/statement-of-concern-may-14.pdf.
[65] Karen Pitre, "Community Hubs in Ontario: A Strategic Framework and Action Plan," Government of Ontario, August 9, 2015 at 8, available at: https://docs.ontario.ca/documents/4815/community-hubs-a-strategic-framework-and-action.pdf.

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the needs of the community in negotiations with LAO. As a result, any funding agreements agreed upon within the 6-month timeline will fail to address the needs of the community the agreement is supposed to reflect.

69. The removal of Reconsideration Requests from Bill 161 makes it absolutely essential that all funding decisions, especially those involving cuts, are executed properly. Ideally this mechanism would be retained, but if it is not, LAO risks imposing catastrophic decisions on CLCs given their limited knowledge of community needs.
70. Our recommendation is to pick a fixed date of the end of the next fiscal period, in this case March 2021, to allow for proper consultations and discussions to occur. This period of time would hopefully allow much of the uncertainties around the pandemic to be clarified.

Conclusions

71. DCLC is not averse to the modernization or reform of CLCs in Ontario. However, we caution that any changes to the infrastructure of the clinic system must still afford CLCs adequate autonomy and independence to be responsive to local needs. Our example demonstrates that innovation is indeed possible within the clinic system, but this requires greater stability and further support from LAO and the provincial government in order to address the broader impacts of systemic poverty.
72. CLCs cannot be defined or constrained to provide legal representation services alone, as this would fail to examine or explore the root causes of poverty, and remove any ability to address these systemic issues. Poverty alleviation necessarily requires a long-term goal, which includes educating and supporting at-risk populations, giving them the tools and resources to get out of poverty, and to do so with an anti-oppressive framework using an interdisciplinary approach that critically examines power imbalances in society.
73. Previous reviews of the legal aid system, including CLCs, have been wide-ranging, intensive, and highly exploratory. The consultations undertaken by the government in the current amendments do not rise to the level

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of reflection and deliberation of these previous reviews, all of which emphasized the critical role of CLCs in a free and democratic society.[66]

74. In light of this, it would be risky and imprudent to introduce any sweeping reforms to the structure behind CLCs, and doing so may in fact result in greater inefficiency and lack of responsiveness to local needs. This is especially true at a time of economic uncertainty, and when a larger segment of Ontarians is likely to access the services provided. DCLC offers caution in this regard, and calls for an incremental approach to any changes to the clinic system.

[66] To contrast, the Osler Report received 285 written submissions and heard 105 oral submissions over three months of hearings, and in ten different centres throughout the province; Frederick H. Zemans, "Legal Aid and Legal Advice in Canada: An Overview of the Last Decade in Quebec, Saskatchewan and Ontario," Osgoode Hall Law Journal 16.3 (1978) at 686, available at: http://digitalcommons.osgoode.yorku.ca/ohlj/vol16/iss3/7.

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