

# Neither Smarter nor Stronger: Bill 161 is a Step Backwards for Access to Justice and Community-Based Legal Services in Ontario

*A Brief on Bill 161, Smarter and Stronger Justice Act, 2020*

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## **Executive Summary**

Schedule 16 of Bill 161, the *Smarter and Stronger Justice Act*, will replace, if passed, the *Legal Aid Services Act, 1998* (LASA 1998) with a new *Legal Aid Services Act, 2019* (LASA 2019).

The Bill, if passed, will have profoundly negative impacts on the clients and communities served by Ontario's community legal clinics and community-driven boards. These clinics engage in "clinic law" through: a) the determination of their communities' legal needs; b) the provision of individual and collective legal services to provide access to justice in numerous and intersecting areas of law; and c) the development and reform of the law as it systemically affects low-income and other disadvantaged communities. Bill 161 seriously weakens the ability of community legal clinics to engage in meaningful, sufficiently funded legal work to address the everyday violations of legal rights of low-income individuals and disadvantaged communities.

*More particularly, if passed, LASA 2019 will:*

1. **Significantly limit** the scope of "clinic law" services in Ontario and thus fundamentally change the statutory mandate of community legal clinics;
2. **Dramatically alter** community legal clinics' ability to engage in systemic law reform and community organizing aimed at the roots of low-income people's everyday legal issues;
3. **Weaken** the ability of community legal clinics and their independent boards to adequately determine and respond to the needs of low-income and disadvantaged communities; and
4. **Diminish** opportunities to educate future lawyers in community-based advocacy.

Furthermore, there is reason to believe that additional restrictions on the structure and scope of community legal clinics would flow from the implementation of LASA 2019 given the provincial government's recent cuts to the legal aid system, the limitations placed on law reform and community organizing work during Legal Aid Ontario (LAO)'s implementation of these cuts, and the stated goals of the ongoing (and confidential) "Legal Aid Modernization Project." In particular, Schedule 15 of Bill 161 will cancel all existing funding agreements between community legal clinics and LAO, which must be renegotiated within six months of the Bill coming into force. There is serious concern that such high-pressure, behind-the-scenes negotiations will result in further restrictions on clinic practice, funding, and independence.

In summary, LASA 2019 will limit the capacity of legal clinics and their boards to properly assess and address community legal needs, and the government's approach will deepen and extend poverty and marginalization in the province. **We strongly recommend that the Ontario Legislature reject Schedules 15 and 16 of Bill 161 and instead engage in public, meaningful, and open consultations with low-income and marginalized communities and their clinics about needed reforms to the legal aid system in Ontario.**

## Overview

Schedule 16 of Bill 161, the *Smarter and Stronger Justice Act*, will replace, if passed, the *Legal Aid Services Act, 1998* (LASA 1998) with a new *Legal Aid Services Act, 2019* (LASA 2019).

Gaps in access to justice of “crisis” proportions threaten the well-being of individuals and communities, as well as the legitimacy of Ontario’s legal system.<sup>1</sup> Research has documented the vast unmet legal needs of Ontarians, needs that are most acute for low-income and other marginalized populations.<sup>2</sup> Yet, rather than offering a meaningful legislative response, Bill 161 does just the opposite. If passed, LASA 2019 will widen the gaps in access to justice, leaving more and more low-income Ontarians without any realistic means of having their rights enforced, their legal needs addressed, or their interests conveyed to and reflected by either legislatures or courts.

The proposed legislation would remove LASA 1998’s explicit purpose “to promote access to justice throughout Ontario for low-income individuals,” including by “identifying, assessing, and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities.”<sup>3</sup> Instead, LASA 2019’s purpose is “to facilitate the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services throughout Ontario in a client-focused and accountable manner *while ensuring value for money*” (emphasis added).<sup>4</sup> Since a statute’s purpose is to guide the interpretation of its content, this shift in statement of purpose matters enormously and has implications for all forms of legal aid service.<sup>5</sup>

The Bill, if passed, will have profoundly negative impacts on the clients and communities served by Ontario’s community legal clinics and community-driven boards. These clinics engage in “clinic law” through: a) the determination of their communities’ legal needs; b) the provision of individual and collective legal services to provide access to justice in numerous and intersecting areas of law; and c) the development and reform of the law as it systemically affects low-income and other disadvantaged communities. Bill 161 seriously weakens the ability of community legal clinics to engage in meaningful, sufficiently funded legal work to address the everyday violations of legal rights of low-income individuals and disadvantaged communities.

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3. **Weaken** the ability of community legal clinics to adequately determine and respond to the needs of low-income and disadvantaged communities; and
4. **Diminish** opportunities to educate future lawyers in community-based advocacy.

Furthermore, there is reason to believe that additional restrictions on the structure and scope of community legal clinics would flow from the implementation of LASA 2019 given the provincial government’s recent cuts to the legal aid system,<sup>6</sup> the limitations placed on law reform and community organizing work during Legal Aid Ontario (LAO)’s implementation of these cuts,<sup>7</sup> and the stated goals of the ongoing (and confidential) “Legal Aid Modernization Project.”<sup>8</sup> In

particular, Schedule 15 of Bill 161 will cancel all existing funding agreements between community legal clinics and LAO, which must be renegotiated within six months of the Bill coming into force.<sup>9</sup> There is serious concern that such high-pressure, behind-the-scenes negotiations will result in further restrictions on clinic practice, funding, and independence.<sup>10</sup>

Many similar concerns exist regarding the ability of Student Legal Aid Services Societies (SLASSs) to respond to the needs of the clients and communities with whom they have worked for decades. Although governed by agreements between the deans of each of Ontario's law schools and LAO rather than by community boards, SLASSs provide legal services in a number of areas of "clinic law," engage in various forms of systemic advocacy, and provide student education in community lawyering.

In its current form, Bill 161 runs contrary to both the recommendations of past legal aid studies, including the comprehensive 1997 Ontario Legal Aid Review ("McCamus Review") that led to the creation of LASA 1998 and LAO, and also a significant volume of academic literature.<sup>11</sup> It moves Ontario away from the path towards "Justice for All" identified by the global Task Force on Justice, which recognizes that "[j]ustice is needed for communities and societies, not just for individuals. ... Prevention, which addresses the root causes of injustice, is the best way to tackle structural and systemic factors that underpin ... common justice problems."<sup>12</sup>

In summary, LASA 2019 will limit the capacity of legal clinics and their boards to properly assess and address community legal needs, and the government's approach will deepen and extend poverty and marginalization in the province. **We strongly recommend that the Ontario Legislature reject Schedules 15 and 16 of Bill 161 and instead engage in public, meaningful, and open consultations with low-income and marginalized communities and their clinics about needed reforms to the legal aid system in Ontario.**

## **1. LASA 2019 significantly limits the scope of clinic law services in Ontario**

It has long been recognized that the legal needs of low-income people are different from those with higher and more secure incomes.<sup>13</sup> While certainly not a homogenous group, low-income people face legal vulnerabilities that differ from those with more resources, due to numerous contributing factors including disability, age, race, class, language, and more.<sup>14</sup> Unfortunately, LASA 2019 narrows the scope of "clinic law" services (as defined in the current legislation) in several short-sighted ways that do not account for these differing needs.

### ***A. Narrow Definitions of "Poverty Law" and "Legal Aid Services"***

LASA 1998 defines "clinic law" as those areas of law "which particularly affect low-income individuals or disadvantaged communities," including housing and shelter, income maintenance, social assistance and other similar government programs, human rights, health, employment, and education.<sup>15</sup> LASA 2019 replaces this term with "poverty law," defined as "law in relation to housing and shelter, income maintenance or social assistance." The language of "clinic law" was an explicit choice by the legislature in 1998 and was based on the extensive consultations and

research undertaken for the McCamus Review. The concern with the term “poverty law” flagged by the Review was that it was open to a narrow interpretation, in which the only areas of law to be covered by legal aid would be those that routinely impact people because of their low-income status—areas such as income maintenance or residential tenancies.<sup>16</sup> This obscures the importance of legal aid in tackling the wide range of rights violations that contribute to poverty, poor health, denials of human dignity, and social exclusion. For some communities, the most pressing legal needs may relate to addressing discrimination; for others, it may be prejudicial treatment in education, or access to health care, home care or other public services. LASA 2019, in adopting the term “poverty law” and then in defining it in an extraordinarily narrow way, represents a fundamental departure from the current legislation.<sup>17</sup>

This new definition seriously restricts the scope of service provided by legal clinics for the past four decades. It could easily eliminate key areas of current clinic practice, both in terms of legal specialties and efforts to address the unique legal needs of particular disadvantaged communities of interest as a whole.<sup>18</sup> It also treats “poverty law” like any other area of practice and places legal clinics under the same category of “service provider” as certificate lawyers, LAO offices, SLASSs, and courthouse duty counsel.<sup>19</sup> In so doing, the legislation ignores the insights of the Grange Commission, the Osler Commission, the McCamus Review and a body of academic research about the fundamental importance of embedding legal services within relevant communities.<sup>20</sup>

Furthermore, under LASA 1998, legal aid services are simply defined as “legal and other services.”<sup>21</sup> However, LASA 2019 adds a list of example services within this definition, including specific reference to “legal and other related assistance for individuals wholly or partly representing themselves in a proceeding, including limited scope representation and the provision of summary advice or legal information,” “alternative dispute resolution services,” and “public legal education and information.”<sup>22</sup> Similarly, the new “Principles” section notes that legal aid services should “promote early resolution, where appropriate.”

Altogether, this new language suggests a greater emphasis on individual casework and a move away from providing holistic services that address the complex, intersecting legal needs of low-income people. The McCamus Review recognized that the clinic system was developed as an alternative to the limitations of the fee-for-service certificate model.<sup>23</sup> Clinic clients frequently face more than one legal problem and risk further issues if they lose access to employment, income support, housing, migration status, education, or healthcare. The cascading effect of legal problems has been well-documented.<sup>24</sup> Currently, community legal clinics can provide a range of services because they are funded based on an annual grant from LAO.<sup>25</sup> This grant allows clinics and their boards to make independent, context-based determinations about how to serve the complex needs of communities.

Furthermore, while early resolution of claims and services for self-represented parties are important, the apparent increase in weight on these types of services suggests that legal aid should prioritize quick, “in-and-out” services at the expense of full representation. This concern is buttressed by the reframing of the Act’s purpose from “access to justice” to “ensuring value for money.” How is “value” to be understood in the context of a statute in which “access to justice” has been removed and “disadvantaged communities” have been made to disappear? Does “value” translate into a crass calculation of numbers of clients served per dollar spent? Is it to be measured

based on the number of “successful” outcomes? How, if it all, does it take account of the reality that meaningful “access to justice” requires an approach—one that the community legal clinic model enables—that goes beyond access to legal processes, information, and representation in order to address the underlying laws and systems that create everyday legal issues?<sup>26</sup>

### ***B. Expanded LAO Discretion over Manner and Areas of Service***

LASA 2019 also makes the provision of “poverty law” services discretionary. LASA 1998 mandated that LAO “shall” establish and administer legal aid services, determine the legal needs of low-income individuals and disadvantaged communities, and provide services in criminal law, family law, clinic law, and mental health law.<sup>27</sup> In contrast, the new legislation permissively states that LAO “may” provide legal aid services in these and other areas of law.<sup>28</sup> Thus, there is no actual requirement that LAO provide these essential legal services.<sup>29</sup>

Under section 15 of LASA 2019, the only instances where LAO *shall* provide services are where legal representation is required by the *Canadian Charter of Rights and Freedoms* or by statute. The cases where the *Charter* requires representation occur in the criminal and child welfare contexts, where representation is necessary to ensure a fair trial or hearing.<sup>30</sup> Judges sitting in criminal court have expressed concern with the very low income thresholds used to determine eligibility for legal aid.<sup>31</sup> It is quite possible that the statutory directive in section 15 could lead to an increase in court orders requiring that legal aid funding be provided in criminal cases.<sup>32</sup> Developments in this jurisprudence could well lead to an increase in resources being prioritized to circumstances in which courts order legal representation. Without significantly expanded government funding to LAO, this has the potential to divert resources away from crucial, upstream approaches of clinics that help to prevent poverty and homelessness (both strongly correlated with child welfare apprehensions), criminalization, and incarceration, experiences that disproportionately impact Indigenous Peoples, people living with addictions and mental health disabilities, and those who are racialized.

## **2. LASA 2019 dramatically alters community legal clinics’ ability to engage in work aimed at the roots of everyday legal issues**

LASA 2019’s focus on “value for money” in place of “access to justice” suggests a philosophy that funding legal aid services is merely a short-term investment. We take issue with any suggestion that our legal aid system should be defined primarily in terms of “dollars-and-cents,” as LASA 2019 apparently seeks to do.<sup>33</sup> However, research shows that even in a narrow economic sense, legal aid investment almost always provides significant downstream returns for governments, with savings ranging from \$9 to \$16 in social services spending saved per dollar spent on legal aid.<sup>34</sup> Furthermore, there are enormous economic and social benefits to ensuring that individuals have access to stable housing, income security, health care, and other social services.<sup>35</sup> These long-term benefits have not been accounted for in the government’s approach.

Importantly, there are rarely “quick fixes” for the issues faced by people living in poverty. Yet LASA 2019’s examples of legal aid services almost exclusively emphasize individualized, “in-

and-out” services.<sup>36</sup> Within a system of finite funding envelopes and difficult budget decisions, clinic boards may feel pressured to prioritize such services at the expense of law reform and community-based initiatives that address the roots of their clients’ legal circumstances. Moreover, depending upon how “value” is constructed, boards may feel pressured to prioritize services to those with relatively straightforward, winnable legal problems.

The legislation also removes LASA 1998’s reference to serving “groups of individuals.” This currently allows legal clinics to pursue cases on behalf of more than one individual (*e.g.*, group tenant applications at the Landlord and Tenant Board) and to work with groups of community members to address their legal issues outside of the court system.

Like the revised definition of poverty law, the removal of group-based responses ignores the essential work of Ontario’s specialty and ethno-linguistic legal clinics. These organizations exist to address the unique challenges of specific areas of law (*e.g.*, housing or income security) and communities of interest (*e.g.*, Indigenous peoples, ethno-racial communities, or youth) through efforts that include, but go beyond, discrete individual casework and representation. Indeed, most specialty and ethno-racial legal clinics were established due to community advocacy or needs assessments of the legal issues faced by particular populations, and many were only incorporated into the provincial legal aid structure much later.<sup>37</sup>

This focus on systemic solutions and community needs is essential to the mandate and success of community legal clinics. As the McCamus Review highlighted, “traditional case-by-case litigation is often insufficient for achieving substantive equality. Clinics offer broader services, including community legal education, law reform, and community development.”<sup>38</sup> In fact, the McCamus Review underscored the importance of “impact work” that prevents legal issues from recurring,<sup>39</sup> of LAO dedicating a budget to law reform research and development,<sup>40</sup> and of systemic reform of the justice system.<sup>41</sup> Such initiatives can be difficult to track and assess exactly because they tackle complex, long-term issues of poverty, inequality, and oppression.<sup>42</sup> However, the provincial government should not shy away from funding this necessary work, even if it may lead to criticism of government policies. Taking a surface-level approach to legal aid services is short-sighted and, ultimately, less effective.

Roderick MacDonald, Canada’s leading access to justice scholar, emphasized the importance of access not only to courts and tribunals, but to all of the venues where law is constituted.<sup>43</sup> This includes the ability to participate in law reform and legislative processes: to have a say in the shaping of the laws that will govern our lives. And especially when the laws being developed differentially impact particular communities, it is critical that those communities have a meaningful opportunity to participate in the formation of those laws. Those with economic resources have access to legal counsel to participate in the making and shaping of law. In the absence of legal aid funding, all but the well-to-do are excluded and existing inequalities will only become more deeply entrenched.



### **3. LASA 2019 weakens the ability of legal clinics to adequately determine and respond to the needs of low-income and disadvantaged communities**

LASA 2019 removes necessary protections to ensure that community legal clinics can independently identify and address the substantive legal needs of their communities. Tellingly, LASA 2019 essentially removes all reference to serving low-income and disadvantaged groups, with the exception of Francophone and Indigenous communities.<sup>44</sup>

LASA 1998 provides that clinic boards of directors “shall determine the legal needs of the individual communities served or to be served by the clinic and shall ensure that the clinic provides legal aid services in the area of clinic law in accordance with those needs.”<sup>45</sup> Clinics and their boards determine relevant legal needs in a variety of ways, including through the role of community members (often former clients) on the board, the physical location of clinics embedded within their communities, surveys and needs assessments, direct consultations with community partners, and the outreach and organizing work of community legal workers sensitive to recurring patterns of old and new legal problems. These priorities are communicated, *and funded*, primarily through the annual funding application process outlined in the legislation.<sup>46</sup>

In contrast, under LASA 2019, LAO would have full authority to determine individual and community need for legal aid services (subject to any Ministerial Regulations mandating specific services).<sup>47</sup> In doing so, LAO need only “have regard to” clinic determinations of the legal needs of their communities and how to provide poverty law services (within its narrowed scope, reduced to housing and income assistance).<sup>48</sup> There would be no obligation on LAO to actually fund these determinations of community need. In fact, LASA 2019 would explicitly prohibit LAO from considering the financial impact of its decisions about service provision on clinics.<sup>49</sup> Thus, given that LAO simply “may” provide poverty law services, under LASA 2019 there is no statutory requirement to fund community legal clinics at all.

LASA 2019 also removes LASA 1998’s procedural protections for clinic funding applications and agreements, including required considerations for LAO funding decisions<sup>50</sup> and the opportunity for clinics to request a reconsideration of negative or unfavourable decisions.<sup>51</sup>

This elimination of both substantive and procedural protections for clinics is deeply concerning, particularly since Schedule 15 of Bill 161 will require rapid renegotiation of existing funding agreements. LASA 2019 will limit clinics’ ability to advocate on behalf of their communities. Furthermore, there will be little recourse for community clinic clients or boards if LAO does not respond to the legal needs identified by low-income community members. Beyond being mere stakeholders or service providers, community legal clinics have a shared responsibility with LAO to determine and meet the needs of low-income individuals and disadvantaged communities. The independence of community legal clinic boards from government is one way to ensure the advancement of client interests free from conflicts of interest or undue influence.

While LASA 2019 erodes the autonomy of community legal clinics and their boards, it *also* reduces the accountability of LAO. Notably, LASA 2019 gives the Attorney-General the power to appoint more members of the LAO Board of Directors,<sup>52</sup> which itself would have greatly-expanded rule-making powers to administer those previous aspects of LASA now removed by Bill 161.<sup>53</sup> In

a context where there has been heightened scrutiny of government appointments,<sup>54</sup> what procedural protections does this Bill enshrine in the event that LAO Board members' interests may reasonably appear to be in conflict with individual and systemic clinic law advocacy?

All of these changes accompany the removal of the previous requirements that the LAO Board as a whole have members with knowledge, skills, and experience with the operation of clinics and the unique legal needs and socio-economic circumstances of low-income and disadvantaged communities, and that it strike a Clinic Committee.<sup>55</sup> If knowledgeable community clinic boards are not empowered to make determinations of community legal needs, and a further-empowered LAO Board is not required to be knowledgeable of these needs, then it is not at all clear how access to justice is valued, strengthened, or made smarter by this Bill.

#### **4. LASA 2019 diminishes opportunities to educate future lawyers in community-based advocacy**

The *Legal Aid Act* of 1969 included a provision for the establishment of Student Legal Aid Services Societies (SLASS). The development of regulations followed in 1969, and shortly thereafter, the then-six law schools in Ontario entered into agreements to provide legal services through law school-based student clinics. These SLASSs have developed significantly since that time, not only in relation to the legal services work they perform, but their place in the curriculum, with significant faculty resources now devoted to them. While for many years students were involved with SLASSs as an extra-curricular activity, they are now integrated much more fully into the academic curriculum, with multiple opportunities to connect theory and practice.

Community legal clinics—such as Parkdale Community Legal Services, Legal Assistance Windsor, and Advocates for Injured Workers—have also long partnered with law schools. These partnerships have been guided by a dual mission of providing high quality legal services and educating future lawyers in the unique skills and considerations required for working alongside low-income and marginalized clients and communities.

As just one example, Parkdale Community Legal Services has trained some 2000 future lawyers since 1971, many of whom have gone on to work in legal clinics or LAO offices, to take on legal aid services or provide pro bono services, to join the bench or the legislature, or to contribute in other important ways to law reform and social change.<sup>56</sup> This supervision of clinical students requires time and resources. However, these opportunities are not merely short-term investments, but contributions to the overall knowledge and capability of legal aid workers across Ontario. They are key to ensuring the research, development, and training necessary to growth and innovation in clinical representation and advocacy for low-income Ontarians.

The many concerns Bill 161 poses for the future of community legal clinics and SLASSs will, no doubt, have implications for the potential of future generations of lawyers to receive grounded, meaningful education in working with marginalized communities.<sup>57</sup> The proposed legislative changes fail to invest in these future advocates even as the changes threaten to deepen the inequality that leads to everyday legal problems in Ontario.

## Conclusion

**LASA 2019 is not an improvement on LASA 1998.** Indeed, from the perspective of providing community-based legal aid services, it is a serious regression from the model praised by the McCamus Review and the academic literature. The proposed legislation will strip out the very purpose of legal aid in favour of a dollars-and-cents approach to the lives of low-income people. By narrowing the definition of “clinic law” while expanding the discretion of Legal Aid Ontario to determine legal aid services, it will restrict the scope of existing clinic services. Similarly, LASA 2019 will reduce the ability of community legal clinics and SLASSs to focus on systemic solutions to the everyday legal issues of low-income people; to be responsive to the needs of disadvantaged communities, rather than a central bureaucracy; and to invest in educating future community-based lawyers. This short-sighted approach threatens the basis of our legal aid system and will lead to more Ontarians losing access to basic rights in a context of growing income inequality.

**Therefore, we strongly recommend that the Ontario Legislature reject Schedules 15 and 16 of Bill 161 and instead engage in public, meaningful, and open consultations with low-income and marginalized communities and their clinics about needed reforms to the legal aid system in Ontario.**

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## References

- <sup>1</sup> Hon Beverley McLachlin, PC, “The Challenges We Face” (remarks delivered at the Empire Club of Canada, 8 March 2007), Supreme Court of Canada, online: <[www.scc-csc.gc.ca/court-cour/judges-juges/spe-dis/bm-2007-03-08-eng.aspx](http://www.scc-csc.gc.ca/court-cour/judges-juges/spe-dis/bm-2007-03-08-eng.aspx)>; Hon David Johnston (remarks delivered at the Canadian Bar Association’s Canadian Legal Conference, The Legal Profession in a Smart and Caring Nation: A Vision for 2017, 14 August 2011), online: <[www.gg.ca/document.aspx?id=14195](http://www.gg.ca/document.aspx?id=14195)>. Among the many recent reports on access to justice are those of the Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (October 2013), online: Canadian Forum on Civil Justice <[www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf)>; Canadian Bar Association, Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act* (CBA, November 2013), online: Canadian Bar Association <[www.cba.org/CBA/equaljustice/secure\\_pdf/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBA/equaljustice/secure_pdf/EqualJusticeFinalReport-eng.pdf)>; Canadian Forum on Civil Justice, *The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems* (CFCJ, 2012). The Supreme Court of Canada in various cases has also highlighted the importance of, yet barriers to, access to justice; see, for example, *Hryniak v Mauldin* 2014 SCC 7.
- <sup>2</sup> Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice, 2009), online: Department of Justice <[www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07\\_la1-rr07\\_aj1/rr07\\_la1.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf)> [*Legal Problems of Everyday Life*]; Ab Currie, *A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns* (Ottawa: Department of Justice, 2005), online: Canadian Forum on Civil Justice <[www.cfcj-fcjc.org/sites/default/files/docs/2006/currie-en.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2006/currie-en.pdf)>; R Roy McMurtry et al, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: Ontario Civil Needs Project Steering Committee, 2010), online: Law Society of Upper Canada <[www.lsuc.on.ca/media/may3110\\_oclnreport\\_final.pdf](http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf)>.
- <sup>3</sup> *Legal Aid Services Act 1998*, SO 1998, c 26, s 1 [*LASA 1998*].
- <sup>4</sup> Bill 161, *Smarter and Stronger Justice Act, 2020, Legal Aid Services Act, 2019*, s 1 [*LASA 2019*].
- <sup>5</sup> Courts have consistently adopted a purposive approach to statutory interpretation. While courts engage in various techniques to ascertain that purpose, chief among them is to consult any statement of purpose in the legislation itself, and to consider the legislative history to discern what this might reveal about changes in purpose over time; see Ruth Sullivan, *Statutory Interpretation* (3d) (Toronto, Irwin Law, 2016).

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<sup>6</sup> 2019 Ontario Budget, *Protecting What Matters Most* (Queen’s Printer for Ontario, 2019) at 279. The provincial government cut funding to Legal Aid Ontario by \$133 million (approximately 30%) for the 2019–20. Although additional cuts planned for 2020–22 have since been abandoned, the 30% cut remains in place.

<sup>7</sup> Association of Community Legal Clinics of Ontario, “Statement on Cuts to Community Legal Clinics” (12 June 2019) online: ACLCO <<https://aclco.org/blog/statementoncuts/>>. Of a \$15 million reduction in overall clinic funding, LAO levied the deepest cuts on Toronto-area clinics and those clinics engaged in significant test case and law reform work. It also directed clinics to prioritize individual legal cases and summary advice going forward.

<sup>8</sup> Legal Aid Ontario, “Legal Aid Modernization Project Terms of Reference” (2019), online: *The Hamilton Law Association* <<https://www.hamiltonlaw.on.ca/docs/default-source/legal-aid-ontario/lao-modernization-project---terms-of-reference---final.pdf?sfvrsn=0>>. The stated purpose of this Project is to “transform” service delivery and provide value for money through the increased use of: technology, unbundled legal services (limited scope retainers), paralegals, centralized means-testing, multi-disciplinary hubs, and administrative savings. While the project leaders will consult with “key internal and external stakeholders,” no public report will be issued. The Project is expected to conclude by March 31, 2020.

<sup>9</sup> Bill 161, *Smarter and Stronger Justice Act, 2020*, Schedule 15, *Legal Aid Services Act, 1998*, s 72.3(5).

<sup>10</sup> Patricia Hughes, “Searching for Smarter, Stronger – and Better? Justice” (11 February 2020), online: *Slaw: Canada’s online legal magazine* <<http://www.slaw.ca/2020/02/11/searching-for-smarter-stronger-and-better-justice/>>.

<sup>11</sup> John D McCamus, *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services*, Volume 1 (1997) [McCamus Report].

<sup>12</sup> Task Force on Justice, *Justice for All – Final Report* (New York: Center on International Cooperation, 2019), online: <<https://www.justice.sdg16>> at 78.

<sup>13</sup> See, for example, Stephen Wexler, “Practising Law for Poor People” (1970) 79 Yale LJ 1049; Austin Sarat, “‘...the law is all over’: Power, resistance and the legal consciousness of the welfare poor” (1990) 2:2 Yale J L & Humanity; Canadian Bar Association, *Report: Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions and Recommendations Arising from Community Consultations* (Canadian Bar Association 2013), online: <[http://www.cba.org/CBA/cle/PDF/JUST13\\_Paper\\_Dodge.pdf](http://www.cba.org/CBA/cle/PDF/JUST13_Paper_Dodge.pdf)>.

<sup>14</sup> *McCamus Report* at 13–14.

<sup>15</sup> *LASA 1998*, s 2.

<sup>16</sup> Janet Mosher, “Poverty Law—A Case Study” (McCamus Report, Volume 3, 1997) 913 at 920-923.

<sup>17</sup> *LASA 2019*, s 4-3.

<sup>18</sup> For example, current legal aid services may include test case litigation, community development and outreach initiatives, law reform research and campaigns. See also Association of Community Legal Clinics of Ontario, “Bill 161, An Act to enact the *Legal Aid Services Act, 2019* – ACLCO Analysis” (7 January 2020), Recommendation #3 (“Poverty Law Definition”) [ACLCO Brief].

<sup>19</sup> *LASA 2019*, ss 2 (Definitions), 5(2) (Manner of Providing Legal Aid Services).

<sup>20</sup> The Honourable SGM Grange, *Report of the Commission on Clinical Funding* (Ontario: Ministry of the Attorney General, 1978); *McCamus Report* at 193–95.

<sup>21</sup> *LASA 1998*, s 2 (Definitions).

<sup>22</sup> *LASA 2019*, s 3. Notably, this list excludes services provided to more than one individual as well as test cases, community development, community organizing, and law reform activities.

<sup>23</sup> *McCamus Report* at 13–14.

<sup>24</sup> See *Legal Problems of Everyday Life* and other references at note 2.

<sup>25</sup> See ACLCO Brief at note 18, Recommendation #4 (“Community Legal Clinic Definition”).

<sup>26</sup> Legal Aid Ontario, “Specialty Clinics,” online: *Legal Aid Ontario* <<https://www.legalaid.on.ca/specialty-clinics/>>.

<sup>27</sup> *LASA 1998*, ss 12, 13.

<sup>28</sup> *LASA 2019*, ss 3, 4.

<sup>29</sup> See ACLCO Brief at note 18, Recommendation #2 (“‘Shall fund’ versus ‘may fund’”).

<sup>30</sup> *LASA 2019*, s 15(3). See *R v Rowbothom* [1988] 41 CCC (3d) 1 and *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46. See also Michael Spratt, “‘Smarter and stronger’? New law is really a cruel gutting of access to justice for the impoverished” (13 December 2019) online: *CBC* <<https://www.cbc.ca/news/opinion/opinion-smarter-stronger-justice-act-legal-aid-1.5393810>> (estimating that this may represent millions of dollars in new costs for by LAO).

<sup>31</sup> *R v Moodie*, 2016 ONSC 3469 at para 6.

<sup>32</sup> There is also a view that the framework for orders for state-funded legal counsel in the criminal context needs to be rethought and expanded: see, for example, Manasvin Goswami (Veenu), “Reforming Rowbotham: Towards

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Fairer Financial Eligibility Standards for State-Funded Counsel in Criminal Trials” (2017) 26:1 Constitutional Forum 19; and Jennifer Bond, “Failure to Fund: The Link between Canada’s Legal Aid Crisis & Unconstitutional Delay in the Provision of State-Funded Legal Counsel” (2015) 35:1 National Journal of Constitutional Law.

<sup>33</sup> For example, section 13(1) of LASA 2019 mandates that legal aid providers seek reimbursement for the cost of legal services when money is recovered on behalf of a client. However, such payments are most often income assistance or wages which were wrongly denied in the first place, and which may not even bring a given client’s income to the poverty line. See also *ACLCO Brief* at note 18, Recommendation #12 (“Recovery of money from Clinic clients”).

<sup>34</sup> Trevor CW Farrow & Mary Condon, “Time to Invest in Justice” (12 December 2019) online: *Canadian Forum on Civil Justice* <<https://cfcj-fcjc.org/a2jblog/time-to-invest-in-justice/>>; Canadian Forum on Civil Justice, “Investing in Justice: A Literature Review in Support of the Case for Improved Access” (August 2019), online: *CFCJ* <<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>>.

<sup>35</sup> See, for example, CBA, *Reaching Equal Justice* at note 1, at 54–55.

<sup>36</sup> *LASA 2019*, s 3. This is even true of public legal education and information services: see Monica Ferrari and James Baglin, “Does Community Legal Education Work? Educating English Language Students about Consumer Contracts” (2018) 29 *Journal of Law and Social Policy* 29.

<sup>37</sup> Examples include Aboriginal Legal Services, the HIV/AIDS Legal Clinics of Ontario, the South Asian Legal Clinic of Ontario, Injured Workers’ Consultants, and the Black Legal Action Centre, among others.

<sup>38</sup> *McCamus Report* at 13–14.

<sup>39</sup> *Ibid* at 108.

<sup>40</sup> *Ibid* at 143.

<sup>41</sup> *Ibid* at 144.

<sup>42</sup> See, for example, Gemma Smyth, *Evaluating Systemic Advocacy: Report to the Law Foundation of Ontario* (Law Foundation of Ontario, 2017), online: *University of Windsor* <<https://scholar.uwindsor.ca/lawpub/50>>.

<sup>43</sup> Roderick A Macdonald, “Access to Justice and Law Reform” (1990) 10 *Windsor Yearbook of Access to Justice* 287; “Access to Justice in Canada Today: Scope, Scale, Ambitions” in Julia Bass, WA Bogart & Frederick Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005). See also, Sarah Marsden, “Just Clinics: A Humbler Manifesto,” forthcoming (2020) 32 *Journal of Law and Social Policy*.

<sup>44</sup> *LASA 2019*, s 6(a). See also *ACLCO Brief* at note 18, Recommendation #6 (“The importance of community based poverty law services”).

<sup>45</sup> *LASA 1998*, s 39(2).

<sup>46</sup> *LASA 1998*, s 35.

<sup>47</sup> *LASA 2019*, s 6; *ACLCO Brief* at note 18, Recommendation #5 (“Determining need for legal aid services and how services are provided”).

<sup>48</sup> *LASA 2019*, s 5(5)(b).

<sup>49</sup> *LASA 2019*, s 5(6).

<sup>50</sup> *LASA 1998*, ss 32–35.

<sup>51</sup> *LASA 1998*, s 36(1); *ACLCO Brief* at note 18, Recommendation #7 (“Review of LAO Decisions”).

<sup>52</sup> *LASA 1998*, s 5(2); *LASA 2019*, s 21(3); *ACLCO Brief* at note 18, Recommendation #13(i) (“LAO Board of Directors – Appointment Process”). This will increase from 5 to 7 direct appointees of the 12-member Board.

<sup>53</sup> *LASA 2019*, s 46; *ACLCO Brief* at note 18, Recommendation #8 (“Appropriate Notice Period for Postings of LAO Rules”). Unlike Regulations, these Rules would not require Cabinet approval, though some would require approval by the Ministry of the Attorney-General.

<sup>54</sup> See, for example, “Opposition cries foul as Premier Doug Ford’s list of patronage appointments grows” (21 February 2019) online: *CBC* <<https://www.cbc.ca/news/canada/toronto/doug-ford-patronage-appointment-cameron-montgomery-egao-1.5026004>>.

<sup>55</sup> *LASA 1998*, s 5(4); 8(1)–(4).

<sup>56</sup> Parkdale Community Legal Services, “Fighting the Cuts to PCLS” (3 December 2019), online: *PCLS* <<https://www.parkdalelegal.org/news/fighting-the-cuts-to-pcls/>>.

<sup>57</sup> See, for example, Lucie E White, “The Transformative Potential of Clinical Legal Education” (1997) 35:3/4 *Osgoode Hall Law Journal* 603 at 606; Sarah Buhler, “The View from Here: Access to Justice and Community Legal Clinics” 63 *University of New Brunswick Law Journal* 427 at 430.