

Report on Kensington-Bellwoods Funding Decision Reconsideration Request

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BACKGROUND

In April the Provincial budget contained significant cuts to Legal Aid Ontario's (LAO's) budget. LAO is essentially the sole funder of Kensington-Bellwoods. It took LAO about 3 months to implement the budget cuts, but the end result for Kensington-Bellwoods was a cut in annual funding (retroactive to April 1, 2019) of about \$95,000, which represents a cut of about 10% in our funding.

Clinics can request a reconsideration of a funding decision, and we made that request in writing in July. The clinic also participated in a rally at the LAO offices on July 11, where a number of clinics requesting funding reconsiderations submitted their requests in person at the LAO offices. The rally then proceeded to the offices of the Ministry of the Attorney General where speeches were made outside of those offices.

Reconsideration requests are dealt with by a Committee of the LAO Board of Directors. Oral hearings can be held as part of the reconsideration decision-making process. The LAO Board of Directors decided that the Committee should hold oral hearings. These hearings have been taking place in the week of October 21-25.

OUR RECONSIDERATION APPLICATION

In our written reconsideration request we outlined that Kensington-Bellwoods Community Legal Services

- is a non-profit community legal clinic that has provided legal services to low income persons in our community for over 36 years
- has a goal of eliminating poverty and ensuring equality before the law
- is committed to working with individuals and groups who share that goal, and to organizing in our community to bring about changes that would improve the legal and economic status of low income persons.

We outlined that the funding decision will

- have a devastating impact on the clinic and its clients because we are a small organization that already stretches its limited resources to serve vulnerable clients
- force the clinic to reduce direct client services, restrict community development and limit public legal education

Our main request was a variation in the funding decision to reduce the budget cut from 10% to 5%.

THE RECONSIDERATION HEARING

Our reconsideration hearing took place on Tuesday October 22 in front of a panel consisting of 3 LAO Board members. I attended to make submissions on behalf of the clinic. LAO staff was also present at the hearing to make submissions in support of the funding decision. Earlier in the day, the Committee had dealt with reconsideration requests from Parkdale Community Legal Services and York Region Community Legal Services.

After a brief introduction providing background on the clinic, our geographic boundaries, and the nature of our work, I explained that for many of our clients homelessness is a distinct possibility if they lose access to support for legal issues around housing or income support in particular.

I pointed out that since our focus is on front-end casework we rely on what are known as “Specialty Clinics” in (for example) the areas of housing and income support to take the lead in systemic challenges that impact our clients. These clinics were hit with even larger budget cuts than our cut, and have also made reconsideration requests. I noted that we have clients in common with (for example) Injured Workers Community Legal Clinic (another Specialty Clinic). We are working on an ODSP claim while IWCLC is working on a workers’ compensation claim for the same individual. I stressed that the legal clinic system has many interconnections, so a cut to one clinic affects other clinics.

LAO had provided written information attempting to justify the specific cuts to our funding. That information could be reduced to two points:

1. The actual cash expenditures of the clinic in 2018/2019 were approximately \$6,500 less than our (reduced) funding in 2019/2020. This implied that funding received this year would be more than adequate to continue the level of service provided last year.
2. In 2018/2019 the clinic received funding of approximately \$27.50 per low-income person in our catchment area, while the average funding for Toronto clinics was only \$23.09 per low-income person. The definition of “low income” is based on what is known as the low-income measure (LIM). If our funding had been decreased to match this fact, our budget should have been cut by 16% rather than 10%.

Regarding point 1, I strongly suggested that it was highly improper to pick a figure of “actual cash expenditures” (their figure for “non-cash expenses” was \$31,000) which ignored that the clinic had accrued expenses that we budgeted for in 2018/2019. As well LAO staff had not included \$46,000 in actual “cash” expenses that showed in the financial information available. I suggested that this information provided by LAO was incorrect, confusing and misleading. I noted that the KBCLS Board spent the entire summer attempting to figure out how to reduce expenses by 10%, and had implemented 2

plans in order to do so. Both plans involved reducing staff hours. If in fact our reduced funding was still sufficient to continue with 2018/2019 service levels, we would not have needed to reduce any expenses at all, and our Coordinator would have told us this! The Committee members appeared to understand. In reply LAO did not contest my submissions (this surprised me).

Regarding point 2, I reminded the Committee that there are other indices to measure poverty (this point had been made in written submissions from a number of clinics), and a major flaw in LIM is that it fails to take into account expenditures. In Toronto, housing costs consume a disproportionately large share of income. The reality for our “low income” community members is that their incomes may be fairly similar to incomes across the province, but their expenses are much higher. The Committee members appeared to understand. In reply LAO argued that LIM was the best proxy for measuring poverty, and that while housing costs were higher in Toronto, transit costs were higher outside of Toronto because of a lack of public transit in many parts of the province. I responded by noting that transit costs for persons outside of Toronto represent a far smaller share of expenses (even for those who must own a vehicle) than do housing costs for someone living in Toronto. The Committee members appeared to understand.

I then proceeded to describe the impact of the 10% cut on the clinic and highlighted 5 things:

- 1. We have not been able to pursue a more efficient intake model, ie. being able to provide basic summary legal advice on telephone intakes.**
- 2. Coordinator has less time available for administrative tasks including Board committee meetings, staff meetings**
- 3. We have phased in a reduction in caseworker staff hours, with staff working “overtime” (uncompensated) to maintain prior levels of service; eventually with a further reduction in caseworker hours effective Oct 1, there will be an impact on service**
- 4. We are trying to encourage self-help for income security claimants, but this inevitably creates difficulties plus systemic delays, with perhaps a need for more complex intervention further along in the legal process**
- 5. We have had to cut back on Community Development initiatives.**

The Committee members took extensive notes and nodded as I reviewed these highlights. LAO staff had nothing to say except that the clinic could still consider different intake models regardless of the funding cut.

I mentioned that none of the Federal money provided to offset cuts to LAO immigration services was offered to the clinics, noting in particular those clinics (like KB) that do immigration work. This was acknowledged by LAO staff, but they argued that since they had not made any demands on clinics regarding cuts to immigration services, it was not appropriate to direct any “new” immigration money to the clinics.

My final submission was to note that if our funding was restored by 5% this would allow (for example) for a part-time paralegal intake worker who could provide summary legal advice and relieve caseload pressures for the direct legal services caseworkers at the clinic. In the alternative, that money could also be used to adjust staff hours upwards so that there would be less uncompensated “overtime”.

In their reply submissions LAO staff made what could be called the “zero-sum game argument” which is that LAO has a fixed pot of money and while \$95,000 or less represents a relatively small amount of that pot, if money comes to the clinic it has to be cut somewhere else. I responded by suggesting that as a matter of prudent fiscal management, there must be money that LAO has set aside to cover contingencies such as a clinic “winning” a reconsideration request, or a clinic (or LAO) having one-time extra costs associated with layoffs or termination of contracts. LAO would have realized this when creating their funding plans. I then noted that one of the clinics has withdrawn its reconsideration request because it was offered \$48,500 by LAO to do so. Where did that money come from? The Committee was clearly surprised to learn this and a member wanted to ask LAO staff about this. The Committee Chair did not permit questioning of LAO staff at that point in the hearing, but allowed the member to ask me for details. I suggested that the Committee could check through its materials and would observe that one reconsideration request had been withdrawn (I didn’t want to name the clinic.)

The meeting ended on that note.

A decision in writing must be made within 30 days of the hearing.

October 23, 2019