Sept 30/80

DISCUSSION PAPER

REPORTING BY CLINICS

S.148(1)(d) of the new Regulation on clinic funding authorizes the Clinic Funding Committee to require clinics to report on the use of funds "at such intervals and in such form and detail as the Committee may require". Further, s.148(3) provides that the Committee may require the clinic to provide access to the clinic premises at any reasonable time and to various accounts and records, subject to client confidentiality, for the purpose of verifying a clinic's report to the Committee. The failure to report pursuant to s.148(1)(d) or to give access pursuant to s.148(3) is deemed by s.148(4) to be a contravention of the clinic certificate. Where the Committee finds that there has been a contravention of the clinic certificate (s.153(3)), the Committee may report to the Director (s.153(2)); where the Committee reports to the Director, the Director must revoke the clinic certificate (s.153(1)).

Since the reporting requirements are so closely linked to the provisions in the Regulation concerning contravention of the clinic certificate, it is important to identify precisely what reporting is required by the Committee. Concern has been expressed about existing reporting requirements by the Provincial Auditor (see attached letter dated May 29, 1979). The following comments explain the existing reporting requirements for clinics and make recommendations, taking into account the Auditor's letter. These requirements are general reporting requirements; however, s.148(1)(d) may also permit the Committee to require a particular clinic to report more frequently, or to make a special report in relation to the use of clinic funds.

A. REPORTS

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The 1979/80 clinic certificate requires all clinics to report as follows:

1. The application for renewal of funding, due January 15:
   a. a report on the past year's expenditures and a budget request for the next fiscal year;
   b. statistics for the past year's activities; and
   c. a descriptive report of the clinic;
2. Mid-term evaluation report, due September 15:
   a. a descriptive overview; and
   b. an estimate of expenditures for the next fiscal year; and
3. Quarterly financial reports, due the 15th day after the end of each quarter.

1. Application for Renewal of Funding:

   a. Report on past year's expenditures and budget request

When applying for annual funding on January 15, each clinic complétes a report on the past year's expenditures, and a budget request for the coming fiscal year. The expenditures and the request are reported "line-by-line" rather than on a lump sum (global) basis. The budget forms are quite detailed, covering all identifiable clinic expenditures. The expenditures for the fiscal year about to end are reported on a 9 + 3 basis: actual expenditures for the period April 1 to December 31, and a forecast of expenditures for the last three months of the fiscal

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year, January 1 to March 31. Thus, the clinic funding staff has before it both expenditures and a request, so that a direct comparison can be made.

There has been some controversy about the staff's method of deciding on amounts to be allocated to clinics. Some clinics would like to submit only total budget requests rather than "line-by-line" requests. However, the line-by-line request is the only way by which the clinic funding staff can arrive at its assessment of the total request on a fair and consistent basis for all clinics. However, once the total amount has been determined, clinics are not bound to allocate amounts according to the line-by-line calculations; the Board of an established clinic has the authority to spend its global budget according to its own priorities without restriction, (global expenditures), and other clinics must seek the approval of the clinic funding staff only where the Board wishes to transfer funds from one category of expenditures to another (category expenditures). This system of financial reporting has evolved during the past three years and clinics are now familiar with the system. For all these reasons, it is recommended that this general format be retained.

Clinics are also required to report "other funding": its source, and its use, as well as an estimate of other potential funding for the forthcoming year. Approximately half of the clinics rely on OLAP for 100% of their funding, although they may receive modest contributions from clients for services rendered in amounts ranging from $400 to $2,000 per year. Another group of clinics receive substantial "other source funding", varying in amounts from $10,000 to $50,000 per year from such grant bodies as

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Justice, Culture and Recreation, local municipalities and private foundations, including the Law Foundation, Donner and Laidlaw. In fact, one clinic has a "blue chip" list of corporate sponsors. These grants are available only to fund "special projects" conducted by clinics over and above the clinic's delivery of legal services; it should be recognized that the Ontario Legal Aid Plan is the only source of funds available for providing legal services to clients.

There is another distinct group of eight clinics which are best described as "legal units attached to parent organizations" which deliver a variety of services other than legal services. OLAP funds 100% of the costs of these "legal units", but the OLAP grant is small compared to the parent organization's total budget, the full details of which are reported to OLAP.

The clinic funding staff is reasonably satisfied that "other source funding" is reported accurately and used for the purposes stated by the clinic; "double funding" of legal services, if it occurs at all, is not a real problem. We recommend continuation of the present arrangements, subject to comments to be made later respecting auditing arrangements.

b. Statistics on the past year's activities

The application also requires clinics to submit statistics on the past year's activities. These reports are the weakest aspect of our reporting requirements. At one point, Management Board indicated its dissatisfaction, and the Provincial Auditor has also drawn attention to the need to verify case statistics and work performed. The reporting

of statistics will require consultation with all clinics, and because this will be a time consuming process, it is recommended that the present "head count" of clients and breakdown of the nature of services be retained for the next reporting period (January 15). It is recommended that the Committee direct the staff to commence the consultation process with clinics with a view to establishing a satisfactory system to be implemented as soon as possible. The system should be designed to ensure that the information generated will be relevant for assessment purposes and that it can be conveniently verified without imposing undue strain on the workload of clinics. It is suggested that these reports should be submitted at least on a quarterly basis.

c. Descriptive reports

In the past, the clinic funding staff has provided guidelines for the descriptive report, although the format has differed from year to year, in order to elicit desired information. For example, the 1979/80 report requested job descriptions for clinic staff and financial eligibility criteria adopted by the Boards. In addition to requests for specific information, clinics were asked to explain and justify requests for additional staff.

Why does CS want this info?

It is recommended that the written report to be submitted at the time of the annual application be retained and revised to elicit information required to determine whether the clinic's annual request meets funding criteria and priorities. Some clinics regularly produce annual reports, and to the extent that these annual reports contain information required by the clinic funding staff in any year, clinics should be permitted to satisfy the requirement to submit descriptive reports by filing their annual reports.

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no discussion of restrictions on what info is legit. to ask of clinics.

2. Mid-Term Evaluation Report

The evaluation which all clinics are required to submit on September 15 is not the objective exercise which the term suggests. Clinics are asked to assess such areas as:

- the involvement of the Board in the affairs of the clinic;
- the clinic's relationship with lawyers in the community;
- the effectiveness of duty counsel assigned to the clinic;
- and areas of service not receiving sufficient attention during the last six months.

The reports were of interest to the clinic funding staff, and assisted it in preparing the estimates for the Attorney General. However, the clinics have been requested in 1979 to submit their own estimates by September 15 which should include explanations of any projected changes. As a result, the mid-term descriptive reports are now redundant, and it is recommended that they be discontinued. However, the Committee may wish to request from OLAP or elsewhere clinics which received additional funds to support specific new activities during the fiscal year (for example, the publication of a manual, the opening of a satellite office) to report on the progress of these activities.

Why is this of concern to OLAP if they're not paying for it?

3. Quarterly Financial Reports

All clinics are required to report expenditures, on a cash-reporting basis, by the 15th day of the month after each quarter. The reporting forms are divided into two sections, one of which is a summary sheet. This sheet requests information on surplus funds on hand and carried over from the last quarter; total OLAP expenditures during this quarter, total OLAP funds received during the quarter; the remaining balance; and, any "other source" funds received. The second section of the form requests a line-by-line report of expenditures, (the same budget heads as on the application

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for renewal form), and a cumulative total of expenditures to date.

On receiving the reports the clinic funding staff completes the "OLAP use only" column by inserting the approved line-by-line April 1 estimate. This allows the staff to quickly compare actual expenditures to approved estimates which is particularly useful for identifying any problems which new clinics may be experiencing. For example, when certain items are continually overspent, clinic funding staff may frequently discuss the matter with the Treasurer of the clinic's Board, and subsequently may approve necessary inter-category transfers. The quarterly reports are also useful in relation to established clinics in that they provide regular information about the overall financial management of the clinic throughout the year. It is recommended that the quarterly reports on financial expenditures be retained.

B. VERIFYING REPORTS

a. Report by Coopers and Lybrand, Chartered Accountants

The quarterly cash reporting method used in the quarterly reports filed by clinics is satisfactory for the purposes for which it has been used. However, the reports do not indicate whether expenditures are within the scope of the funding mandate, nor do they indicate whether the Boards have authorized expenditures according to established clinic policy or by-laws. For the past few years, Coopers and Lybrand, Chartered Accountants, have performed year-end inspections of the books of all clinics, but these have also been cash audits only. Such an audit is not satisfactory and its limitations have been criticized by the Provincial Auditor. Given the expenditure of public monies involved, it is recommended that a full audit be performed annually in relation to all clinics. Such an audit should include:

What do they mean "full audit"

- Justification of services

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- An examination of the records of accounts, including vouchers for payments and receipts, in order to verify that all income and expenditure is properly supported.
- Verification that funds approved by the Clinic Funding Committee for specific purchases were used for the purpose specified.
- Verification of the existence of fixed assets acquired by physical examination.
- Examination of policies and directives established by the Board of Directors in matters relating to financial management and client eligibility.
- An examination of minutes relating to the above in order to ensure that such matters have been carried out in accordance with the established Board policy or by-laws.

There may also be some controversy about who should conduct the audits. For the past few years, Coopers and Lybrand have conducted the inspection on behalf of the Ontario Legal Aid Plan. However, a few clinics have their accounts routinely audited by other auditors as well; in these cases, the audits are performed on behalf of the clinics concerned. The Provincial Auditor suggested that an auditor be hired by the Ontario Legal Aid Plan, one of whose functions would be the auditing of clinics.

To maintain the credibility of clinic funding, it is essential that an audit of clinics be performed on behalf of the Ontario Legal Aid Plan. For this reason, it is not appropriate to rely upon audits conducted independently on behalf of individual clinics, although funds should be made available to provide bookkeeping assistance to clinics. As between an

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internal auditor and the contract arrangement with Coopers and Lybrand, there may be savings in costs if an internal auditor is appointed. Since the full-time services of an auditor are not required by clinic funding, arrangements would need to be made for sharing time and costs of such an auditor between clinic funding and other aspects of the Ontario Legal Aid Plan. This arrangement would appear to satisfy the Provincial Auditor, although it might not be seen to be as independent as the present arrangement with Coopers and Lybrand. Further investigation may be needed in order to decide on appropriate auditing arrangements for the future.

b. Access to clinics and books and records

The Regulation permits the Committee, for the purpose of verifying reports, to require access to the clinic premises "at any reasonable time" and to certain books and records of the clinic, subject to the confidentiality of clients. The clinic must give access to members of the Committee, members of the staff and agents of the Committee or any of them. In the past, there has been some controversy about the authority of the Committee and the staff to request information from clinics and to visit clinic premises. Several clinics objected to the "Provision of Information" clause contained in the 1979/80 clinic certificate which stated:

> "Subject to the paragraph on confidentiality, any member or members of the Clinical Funding Committee, any employee of The Ontario Legal Aid Plan, or anyone designated by the Director or said Committee may visit your office and/or obtain such information as they may require concerning your organization or its operations".

After some discussion, a number of clinics reached agreement with the clinic funding staff in relation to this clause when it was changed to read:

> "Subject to the paragraph on confidentiality, any member or members of the Clinical Funding Committee,

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> any employee of The Ontario Legal Aid Plan or anyone designated by the Director or said Committee may visit your office and/or obtain such information as they may require for the purposes of the Legal Aid Act and Regulations."

However, a small number of clinics still objected to this clause until the clinic funding staff agreed to direct all requests for information and visits to the Chairperson of the clinic Board and, wherever possible, to make requests in writing and with at least twenty-four hours' notice.

The right of a clinic to be protected from harassment by the clinic funding staff (or the Committee) in relation to requests for information or visits must be balanced with the Committee's overall responsibility to account for the expenditure of public money. The Committee's authority to request information is limited by the scope of its responsibility and it is, therefore, recommended that the Committee should authorize the clinic funding staff to make requests pursuant to s.148(3) only in relation to matters affecting clinic funding. The requests should be made to the Chairperson of the clinic Board. According to s.148(3), access must be given "at any reasonable time", and, wherever possible, the request should be made in writing with notice. Although the failure to give notice or to make the request in writing should not in itself give the clinic the right to refuse access, the Committee, pursuant to s.148(1)(g), should entertain complaints by clinics about the conduct of the clinic funding staff in such cases.

C. CONTRAVENTION OF CONDITIONS RE. REPORTING

The Clinic Funding Manager will report to the Committee regularly on the reports submitted by clinics. Where a clinic fails to file a report, the Manager will so report to the Committee and may provide to the Committee

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any explanation offered by the clinic. The Committee may give notice to the clinic pursuant to s.153(3) that it intends to report a contravention of the clinic certificate to the Director; the Committee may also arrange a hearing. The Committee may choose to adopt the procedures for hearings (as set out in the policy paper on appeals), or may adopt other suitable procedures. What does this mean

D. REPORTING TO CONVOCATION

S.155 of the Regulation provides that the Committee shall report annually to Convocation on the functions of the Committee and the operation of the Regulation. In the past, the Committee has submitted informational reports to the Legal Aid Committee and then reported to Convocation. The Committee regularly reported on funding applications during the fiscal year, and, as well, provided a short report on the year's activities as part of the report of The Ontario Legal Aid Plan required by the Legal Aid Act. It is recommended that the Committee report regularly on its activities, funding applications and any other pertinent matters. In addition, it is recommended that the Committee report on its activities at the end of each fiscal year, and provide information on the functions of the Committee and the operation of the Regulation on clinic funding in the preceding year.

RECOMMENDATIONS

1. (a) All clinics shall make the following reports to the Committee:

   (i) In respect of the annual application for funding, to be submitted by January 15:

   a. a report on the past year's expenditures and a budget request for the next fiscal year;

   b. statistics for the past year's activities; and

   c. a descriptive report of the clinic;

   (ii) An estimate of expenditures for the next fiscal year, to be submitted by September 15; and

   (iii) Quarterly financial and statistical reports, to be submitted by the fifteenth day after the end of each quarter.

   (b) The Committee may require any clinic to report more frequently, or to make additional or special reports in relation to the use of clinic funds.

   (c) The Committee may authorize the clinic funding staff to prepare forms to be used by clinics in making reports to the Committee.

2. The Committee will direct the clinic funding staff to consult with clinics with a view to establishing, as soon as possible, a satisfactory system of quarterly recording of clinic statistics.

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3. The Annual Reports of clinics shall be filed with the Committee and may, where all the required information is contained in the Annual Reports, preclude the necessity for filing descriptive reports as required pursuant to 1(a)(i)(c) above.

4. (a) A full audit of all clinics will be performed each year to include:

(i) an examination of the records of accounts, including vouchers for payments and receipts, in order to verify that all income and expenditure is properly supported;

(ii) verification that funds approved by the Clinic Funding Committee for specific purchases were used for the purpose specified;

(iii) verification of the existence of fixed assets acquired by physical examination;

(iv) examination of policies and directives established by the Board of Directors in matters relating to financial management and client eligibility; and

(v) examination of minutes relating to the above in order to ensure that such matters have been carried out in accordance with the established Board policy or by-laws.

checking internal procedures.

(b) The audit will be performed on behalf of the Ontario Legal Aid Plan.

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(c) The Committee will consult with the Ontario Legal Aid Plan and Coopers and Lybrand, Chartered Accountants, to decide whether an internal auditor should be appointed to carry out audits on the use of funds by clinics.

5. (a) Subject to client confidentiality, the Committee may require clinics to provide access to clinic premises and to books and records pursuant to the Regulation for the purpose of verifying reports on any matter relating to clinic funding.

must have a reasonable time

(b) The Committee will direct requests for access or information to the Chairperson of the Board of Directors.

(c) Wherever possible, the Committee will make requests for access or information in writing, and will provide reasonable notice of intended visits and allow reasonable time for the production of information.

Committee or staff

(d) The Committee may entertain complaints by clinics about the conduct of clinic funding staff in relation to requirements for reports or the verification of reports, but failure to give notice in writing to the clinic will not permit the clinic to refuse to comply with a request for access or information.

6. (a) The Clinic Funding Manager will report regularly to the Committee on the reports submitted by clinics.

(b) Where a clinic fails to file a report or refuses to permit access to its premises or information for the purpose of verifying a report, the Manager will so report to the

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Committee, and may provide any explanation offered by the clinic.

(c) In such cases, the Committee may:

(i) accept the explanation and give leave to the clinic to file the report late;

(ii) give written notice to the clinic with reasons that it proposes to report a contravention of the certificate to the Director, and give the clinic an opportunity to be heard; or

(iii) take any other action which may be appropriate in the circumstances.

7. (a) The Committee shall report to Convocation regularly on:

(i) its activities;

(ii) funding applications; and

(iii) any other matters affecting clinic funding generally.

(b) The Committee shall provide an annual report to Convocation on:

(i) the functions of the Committee; and

(ii) the operation of the Regulation on clinic funding.