CELA'S RESPONSE TO DRAFT PAPER ON FUNDING

A. HISTORY OF CLINIC FUNDING

The clinic movement began in Ontario with the development of a small number of community organizations providing legal, para-legal, and advocacy services. In 1971, the Canadian Environmental Law Association and Parkdale Community Legal Services both opened, to be followed in the early 1970's by several other clinics. Funding came from a variety of public and private sources, none of which proved (or were intended) to be permanent. Clearly if the clinic movement was to survive and expand, some stablized form of long-range public funding would need to be developed. On the basis of the recommendations contained in the Report of the Task Force on Legal Aid (the Osler Report), the Clinical Funding Committee was established under the Ontario Legal Aid Plan in January, 1976. Subsequent to this, a comprehensive examination of the clinic funding program was undertaken by Mr. Justice Grange, and his Report on Clinical Funding formed the basis for the new Regulation adopted in April , 1979.

Throughout the late 1970's, a considerable debate on the function of clinic funding and the relationship of clinics vis-a-vis their communities, the private Bar, and the certificate program of the Legal Aid Plan was undertaken. Out ot these discussions arose a general consensus that clinics represent a successful and cost-effective mechanism for delivering essential legal services which are not generally available from the private Bar or through Legal Aid certificates. Clinics rather than competing with traditional methods of delivering legal services, have been

seen to complement them, because they respond to a different clientele with different legal problems. This view was endorsed by Mr. Justice Grange in his Report, as well as by the Law Society of Upper Canada and Attorney-General Roy McMurtry, when he declared "a deep commitment to the concept of community law and the further development of community clinics." He further concluded that "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." On the basis of these endorsements and input from the clinics, Mr. Justice Grange concluded, "If there was ever a battle for survival, the victory of the clinical movement is complete. There are no more dragons to slay. Everyone recognized the need for further expansion; the sole limitation is funds."

It would be difficult to over-emphasize the extent to which the community base of clinics has contributed to the strength and vitality of the clinic funding program. Clinics have materialized and maintained themselves only because of substantial dedication and hard work, frequently of a volunteer nature, by individuals and groups aware of and responsive to the needs of their communities. Because of this, clinics have always been in a unique position to assess need and determine effective methods of delivering legal services so as to meet those needs. Mr. Justice Grange recognized the necessity to the clinic movement as a whole that clinics be able to maintain their autonomy. Referring to the reference in the previous Regulation to "independent community based clinical delivery systems," he stated:

> 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) (p. 10 - 11).

In Mr. Justice Grange's view, the autonomy of clinics was to be reflected in the function of the Clinic Funding Committee and its staff vis-a-vis the clinics. As he stated at p.#32 of his Report:

> The Committee is the funder of the clinics and while it must in the public interest exercise some control over the clinics, that control, in my view, should be limited to a funding one. It is not a disciplinary or regulatory body imposing its will upon the clinics and directing their operations; it has no right to issue orders.

We are extremely concerned about the erosion of clinic autonomy. We perceive this erosion as the underlying policy of the Draft Policy Paper on Funding prepared by the clinic funding staff. Although the Policy Paper makes a number of references to the necessity of preserving the independence of clinics, the overwhelming effect of the implementation of its recommendations will inevitably be to undermine the clinics' autonomy by restricting their decision-making power. Both the current funding practises and the Policy Paper presume for the Clinic Funding Committee and its staff the regulatory and supervisory function that Mr. Justice Grange explicitly stated in his report were not to be assumed. Moreover, we understand that amendments to the Regulation may be sought to even further empower the Committee and staff to regulate the activities of clinics. We feel that the combined effect of these factors seriously jeopardizes the autonomy of clinics and, as such, is a threat to the clinic funding program.

B. CLINIC FUNDING POLICIES

1. Criteria for Funding

The Regulation providing for the funding of community clinics defines a clinic as "an independent community organization providing legal

services or para-legal services or both on a basis other than fee for service." The necessity that community clinics be independent of both the government and the Ontario Legal Aid Plan has already been noted. We view this as precluding the funding of any clinic whose organization evolved at the initiative of the clinic funding staff (i.e., as barring the Committee's directing the clinic funding staff to initiate the development of clinics where no independent community organization has made an application to the staff for funding). We view the independence of clinics as a crucial element to the success of the clinic program, and are convinced that a clinic initiated by the clinic funding staff could never be truly independent in any meaningful sense. The energy that is necessary to formulate, initiate and organize a clinic is the strongest guarantee of a clinic's independence, and a Board which is given a clinic by the clinic funding staff would inevitably view their function as one of following directives from the staff on defining community needs and delivery of services.

Law reform

We note that there is no explicit definition of legal services or para-legal services in the Discussion Paper, although, it is stated at p.#8 that "a narrow construction of this section might exclude an organization whose function is the provision of public legal education." However, the definition of funding in the Regulation explicitly states that the services which can be funded include "services designed solely to promote the legal welfare of a community." There is also no discussion of what services this would include; indeed, the issue is raised whether this statement applies to clinics at all, although there is nothing else it could apply to, since the Regulation covers only the funding of clinics. What seems to be implied in the Discussion Paper, without being explicitly

stated, is that legal services involves legal casework for which legal aid certificates are not available, and legal education and law reform, if there at all, are provided only as an adjunct to the casework.

The question of what constitutes legal services has long been a pivotal issue with clinics, and the failure of the Discussion Paper to address this question in clear and explicit terms is disturbing. This issue was discussed extensively during the Grange hearings, and the Report concluded that the inability of the traditional legal aid program to fund community legal education and law reform was one of the reasons which gave rise to the clinic funding program:

> The private Bar and its clients know that it is sometimes not sufficient merely to solve the immediate problem. Often the client's welfare dictates much more. He must know the dangers in order to avoid them in the future and if they cannot be avoided, he may have to combine with others to attack the root of the problem which perhaps can only be done in the councils and legislatures of the land. Services such as these are well within the field of the private Bar and if the aim of Legal Aid as often stated is the rendering to the poor of the same legal benefits as those available to their more fortunate brothers some method needed to be found to provide them. (p.#3).

Mr. Justice Grange went on to make the following comments about law reform as a legitimate aspect of legal services in clinics:

> I cannot leave this subject without some discussion of law reform. As I have stated earlier, the field is not unknown to the private Bar in its services to its clients and it is perhaps even more the proper concern of lawyers who serve the poor because the poor are less articulate and their concerns less often heard by the legislators. While there may have once been doubt of the propriety, it does not exist now. Many clinics, to a greater or lesser degree, engage in some form of law reform activity including lobbying of legislators and organizing of their clients for the purpose. I will deal later with control of the subject matter of

> clinical activites but it is clear that in any event the classification of that activity as law reform does not now disentitle a clinic to funding ...The definition of 'legal and para-legal services' I have set out above is intended to encompass law reform. (p. 15 - 16).

CELA agrees with this position, viewing the implementation of effective legislation and government policy designed to protect the environment as crucial. The significance of law reform here is only partially explained by the fact that environmental law as a field did not even exist a decade ago. As well as working to develop rights and procedures to protect the environment, we also attempt to improve existing legislation as the need arises, and we consider this an essential component of the legal services we provide.

As well as defining legal services very broadly, the Grange Report also recommended the expansion of the definition of community. The initial concept of a community clinic focused on a service to a specific neighbourhood, and the limitations imposed by this restriction were readily apparent. As Attorney General McMurtry noted:

> The term community also need not be restricted to its narrow geographic sense. Geographically diverse groups of immigrants, single parents, tenants, consumers, cultural associations, and others all form communities which frequently need specialized and readily accessible legal assistance. Wherever there is a community of interest, with legal needs but with limited resources, there is a potential home for a community law project. (Grange Report, p.#11)

With this view in mind, Mr. Justice Grange recommended, and the new Regulation adopted, re-defining community to include "a geographic community, persons who have a community of interest, and the general public." The question of what community organizations qualify for funding is intricately linked with the question of what type of legal services qualify,

since no clinic can practically refrain from limiting its services. The question is not whether clinics should restrict their services, but whether they should do so geographically, by area of legal specialty (eg. environmental law, workmen's compensation, landlord and tenant, etc.), by type of legal service provided (casework, legal education, or law reform), or by a combination of all three. The expanded definition of community provides for considerable flexibility in the question of what types of limitations may be placed on services offered by clinics, (or, conversely, what types of services may be offered by clinics), and was adopted precisely for that reason. Mr. Justice Grange noted the Committee's funding of CLEO (offering legal education only to the general public) and CELA (offering advocacy in environmental matters to individuals and groups who could not afford litigation) and stated:

> ...I commend the Committee for funding them but it is difficult to justify that funding unless community be defined to mean in some instances the public at large...I support a broad recognition of the word "community" to include both "geographic community" and "community of interest." (p. #12)

By focusing on a restricted definition of the type of legal services which a clinic may provide, and by failing to take into consideration the implications for variety of services fundable under the definition of community, the Discussion Paper seems to be presuming--and, by doing so, advocating--the legitimacy of the neighbourhood model of community legal clinics. This presumption clearly conflicts with the definitions contained in the Regulation and as such is inappropriate as a policy basis for funding criteria.

There is extensive reference in the Discussion Paper to clinics taking cases for which Legal Aid certificates may be available, and a requirement

is suggested that clinics be obligated to consult with the Legal Aid Director to fill gaps. The Paper also states a need for general policy guidelines applicable to all clinics for taking cases for which certificates may be available, while recommending that the Clinic Funding Committee require clinics to develop their own policy guidelines. Given that the needs of clinics and their communities vary substantially we support the position that clinics be required to develop their own guidelines.

In supporting this principle, we feel that the recommendation that the Clinic Funding Committee require Boards to determine their policy on the basis of the needs of the clientele rather than on the professional development of staff lawyers is putting the situation too simply. The requirement that guidelines are to be developed by the Board dictates that the weight to be given to the various factors must also be determined by the Boards. Moreover, the Board is in the best position to assess the need for professional development of staff lawyers and its implications for the overall extent and quality of services offered by the clinic.

The recommendations in the Discussion Paper with respect to the clinics' relationship with the certificate program of Legal Aid is justified as a legitimate criterion of funding on the ground that the definition of clinics providing services on a basis other than fee-for-service requires a relationship between clinics and the certificate program of Legal Aid. There is no requirement in the Regulation of any type of relationship between the clinic and certificate programs of Legal Aid, and any requirement that one exist would have to be imposed as a condition of funding by the Clinic Funding Committee. We would recommend that an

information program be instituted to show each component of the Legal Aid plan which services the other is offering. Beyond that, however, we believe that potential clients should be free to choose their own legal representation.

The lack of distinction in the Discussion Paper between funding criteria and conditions (and also between funding criteria and priorities) is problematical in that it fails to differentiate between whether an application qualifies for funding under the Regulation or whether the applicants are able and/or prepared to meet any additional terms the Committee may wish to impose as a condition of funding. The discussion of need under criteria for funding in the Discussion Paper is similarily misplaced, being an issue that relates to priorizing among existing applicants; there is nothing in the Regulation requiring need for services to be demonstrated as a criterion, although clearly it will be given some consideration when making decisions between competing applications for new funds. Given the ambiguity in the Discussion Paper on these distinctions, we would request that the Committee determine clearly which issues relate respectively to criteria, conditions and priorities for funding and make this information available to clincs. Accordingly, we would recommend that the following criteria policies be implemented in place of those put forward in the Discussion Paper.

1. Funding applications shall originate from clinics proposing to deliver or delivering legal services on a basis other than fee-for-service. Legal or para-legal services includes legal casework, community legal education, and law reform; and

2. Funding applications shall be initiated by independent community organizations. Community includes geographic community, community of interest, and the general public.

These criteria encompass the extremely broad definitions of community and legal services recommended by Mr. Justice Grange and embodied in the Regulation. They would also preserve the autonomy of the clinics by requiring that the funding applications be initiated by the organization which proposes to operate the clinic.

2. Funding Priorities

The view of the legal clinic system as a network of general service clinics spread across Ontario which is implied in the statements about criteria for funding in the Discussion Paper is stated clearly and explicitly in the part dealing with the establishment of priorities among new clinic applications. Also clearly stated here is the presumption that casework is the pivotal activity of legal clinics, with legal education functioning as a distinct adjunct, if at all. The whole issue of the consideration to be given to law reform in the establishment of new clinics is conspicous by its absence. In any event, the provision of community legal education and law reform clearly are not to be given priority in the funding of new clinics.

Given that the priorities by which new clinics are established will form the basis for the development of the clinic system in the years to come, the significance of the priority being given to casework cannot be over-emphasized. Since funding applications will either have to be modeled to conform with the priorities established by the Committee or not be funded, the effect of this priority will be to screen out at the initial stages the community legal education and law reform components of legal services which have been fought for so strongly by the clinics and which are viewed by many, including CELA, as so crucial an element of their services.

The creation of a province-wide network of clinics and the question of the need for clinic services are essentially the same issue, since the presumption on which a province-wide network of clinics is based is the view that the need for clinics is province-wide. The second unstated presumption is that limited funding resources ought to be allocated as evenly as is possible in relation to need across the province. We are in agreement with the principle that, where two equally strong funding applications exist, priority ought to be given to the application of the community which has the most limited access to communty legal clinic services. We are also in agreement that basic demographic information, such as the number of people who are tenants, unemployed, or on welfare, etc., can be a useful method of measuring need, at least to some extent and for some types of legal problems. (Environmental problems are one clear example of information about need for legal services which would not be revealed through this type of study). It is, however, only one technique for assessing need.

The essential difficulty with the issue of need as put forth in the Discussion Paper and the view that this necessitates a province-wide network of clinics lies in the role this presumes for the clinic funding staff to initiate applications and organize community groups to act as Boards of Directors for geographic areas where the staff or Committee determines a need for a legal clinic. We view this as extremely detrimental to the essential independence of community clinics from control by government and the OntarioLegal Aid Plan, as discussed earlier. In view of the crucial nature of the independence of the clinics, we would recommend that the goal of a province-wide network of clinics based on demographic information defining need not be adopted as a policy by the Committee. However,

we recognize that information about the clinic concept and the clinic funding program is not as evenly available throughout Ontario as is desirable. In order to alleviate this problem, and ensure that communities in need of clinic services are informed of its availability, we would recommend that the Committee direct the clinic funding staff to initiate a public information program about the clinic funding program, with emphasis being placed on the areas of the province with least access to clinic services.

In view of the fact that need will inevitably remain a pivotal issue in priorizing among clinic applications, however, guidelines for assessing need will have to be developed, as well as some determination of what type of documentation may be provided by applicants to substantiate their community's need for the legal services they propose to provide. There are no suggestions (other than demographic data) in the Disscussion Paper on this point, and attention must be addressed to it. Some suggestions of possible documentation to indicate need might include letters from local community leaders; statistical information, if any is available that applies to the proposed services; statements from residents' groups about legal problems; and assessment of identifiable gaps in services by local social service, community and legal workers. Since the private Bar and the certificate program of Legl Aid generally deal with a different clientele with different problems, assessments of need for clinic services from these groups would probably be of limited usefulness.

The second general policy stated in the determination of funding priorities indicates a preference for general (as opposed to specialized) clinics which include a casework component, with community education and law reform seen as possible but not necessary adjuncts to the casework.

We view this policy as one which has serious negative implications for both the independence of clinics and the quality of the legal services to be provided by clinics.

The rationale offered in the Discussion Paper for the preference for general clinics is specious in the extreme. It is concluded that "A combination of the goal of the province-wide network of clinics and the goal of responding to the most pressing needs seems to require an emphasis on a general rather than a specialized clinic." (p.#30) This appears to refer to the definition of needs by the clinic funding staff on the basis of demographic information, the inadequacies of which have already been discussed. Moreover, there is in our opinion no basis for the view that general clinics respond more effectively to the most pressing needs than do specialized clinics; certainly no information to justify this assertion is put forward in the Discussion Paper. Indeed, a strong argument can be made for the opposite position.

The Discussion Paper also states that clinics "should provide services to everyone in relation to problems, without regard to the specialization priorities of staff or the applicants." (p.#28) This statement, however, merely indicates a preference for the neighbourhood model of legal clinic, and provides no reason for this preference--except for the position that the specialization preferences of staff and the applicants are not a legitimate reason for restricting the services of the clinic to specific legal problems. This presumes that the content of services to be provided by a clinic is to be determined, not by the Board, but by the Clinic Funding Committee and staff. This interpretation is verified by the assertion in the Discussion Paper that:

> It should be possible for the clinic funding staff

> to consult with Boards to set up a pattern of growth of services responsive to the needs of the community while allowing its staff to develop expertise in different problems over a manageable period of time. However, it is important for the Board to understand that the goal is to provide general legal services and the Board should generally commit the clinic to achieving this goal. (p.#30)

Aside from the fact that this position incorrectly assumes that the clinic funding staff is in a better position to assess needs in the community than the community Board, it clearly deprives the Board of its mandate to define what legal services its clinic is to provide. This mandate is a community Board's single most crucial function. As Mr. Justice Grange concluded in his report:

> The most delicate question is the problem of control of the nature of the services to be rendered to the public. The principle of community control dictates that, generally speaking, control must be with the community board, which must know best what the community needs and how those needs can best be met. Yet this control cannot be absolute; it cannot be said too often that we are dealing with public funds. There may come a time when the work proposed has lost its necessary base, the connection with legal services. There may also come a time, perhaps not until clinics are much more numerous, when there may be duplication of services between clinics. In such circumstances, the Committee may well be bound to remedy the situation. (p. 31)

The requirement of community control clearly precludes the clinic funding staff from developing programs designed to define the legal services of clinics. We would submit that this requirement also prohibits the implementation of a policy giving funding priority to clinics offering general legal services.

The implications of the general service model to the quality of legal services is acknowledged in the Discussion Paper, and we would submit that the continued funding of specialized clinics is essential to the ongoing development of expertise in the clinic movement. The potential

ability of a proposed clinic to offer high quality legal services should be a prime consideration in priorizing among funding applications, and specialized clinics, by restricting their services to a narrower range of legal problems, are in a much better position to acquire a detailed knowledge of the complexities of the problems they face. The Law Society has concluded that some degree of specialization is necessary and desirable in the profession, and the same principle would apply to the work of clinics.

Although it applies significantly to casework, the component of legal service in which this greater expertise of specialized clinics has been demonstrated most clearly is law reform: generally, although not invariably, the specialized clinics such as CELA, Injured Workers' Consultants, and Metro Tenants' Legal Services have performed much more extensive law reform efforts than general clinics. Since existing laws are frequently inadequate to protect their client's interests, law reform has always been a crucial element of the legal services offered by clinics. We view the policy against specialized clinics as seriously jeopardizing the law reform efforts of legal clinics, whether intentionally or otherwise. Accordingly, we are strongly opposed to the policy which priorizes in favour of general clinics.

Given the inadequacies of the policies on funding priorities proposed in the Discussion Paper, we would propose the following policies in lieu thereof:

1. Preference should be given to funding applications which have the strongest base of community input and communtiy organization, in order to ensure the essential independence of clinics from the funding source;
2. Preference should be given to funding applications

which show the greatest potential for the provision of high-quality legal services;

3. Preference should be given to funding applications which show the greatest potential on the part of the Board to effectively assume the responsibilities for the overall direction and management of the clinic; and
4. Where more than one application is acceptable on the above three requirements, priority should be given to the funding application from the geographic area with the least access to legal clinic services; and
5. Where more than one application is acceptable on the first three requirements, priority should be given to the funding application which most thoroughly demonstrates a need for the proposed services.

The third policy relates to the need for Boards with an ability to manage and direct the affairs of the clinic, which is discussed in the Terms and Conditions portion of the Discussion Paper, and with which we are in agreement.

This proposal would require priorization, not on the basis of a preconceived notion of what the clinic system should reflect, but on the basis of the applicant's ability to maintain the clinic's independence direct and manage its affairs, and provide high quality legal services. Once these have been established, priorities would be determined on the basis of geographic locale and the needs of the clinic's community. Not to be taken into consideration is the question of what type of legal services the clinic proposes to provide (general or specialized, casework, community education and/or law reform), since these issues are properly within the jurisdiction of the clinic Board and not the Clinic Funding Committee.

3. Conditions of Funding

The Regulation empowers the Committee to impose a number of terms and conditions, one of them being that the clinic be under the direction

of a community Board of Directors. Given that clinics are defined as independent community organizations elsewhere in the Regulation, the clinic's Board must be an independent body. Independence here is defined by Mr. Justice Grange as independence from the clinical funding process. We are in agreement that an independent community Board of Directors is an essential condition to the funding of a clinic. We are further of the opinion that this condition of funding, and the goal of clinic autonomy underlying it, precludes the Clinic Funding Committee and staff from interfering in any way in the composition or decision-making processes of the Boards of clinics.

CELA is one clinic whose Board's composition and decision-making procedures are currently being monitored by the clinic funding staff. (To our knowledge, other clinics being monitored include Metro Tenants' Legal Services, the Advocacy Research Centre for the Handicapped, and the Ottawa clinic). A condition in our certificate requires that proposed changes to the Board and staff be reported to the clinic funding staff, thereby conceivably giving them final authority to approve any additions to the Board and any staff hiring decisions. We are of the opinion that any input from clinic funding staff into the operation of clinics ought to be limited, as the Grange Report recommended, to concerns with respect to public funds and quality of services.

In addition, substantial concern is expressed generally in the Discussion Paper about domination of Boards by their staff. This focuses on an issue that is more appropriately a concern of the Boards than of the clinic funding staff. A more legitimate focus of concern than staff domination of Boards of Directors, is domination of a Board's autonomy by the Clinic Funding Committee and staff.

We are in agreement with the conclusion that the responsibilities of Boards are onerous, and feel that they are becoming more so as the administrative complexity of the clinic funding program increases. The strength of a potential Board to assume the responsibilities of funding, including a coherent focus and direction for the clinic, is essential. On a more tangible level, the Clinic Funding Staff could, and should, greatly assist Boards in their responsibilities by providing them with additional funds necessary to allow staff time to amass, collate, and produce Board materials and attend to the correspondence and reports which arise from the Board's business. Accordingly, the Committee should consider providing Boards with the resources needed to carry out their responsibilities.

With respect to the condition of employing a solicitor, CELA has three lawyers on staff, and considers this essential to the legal services we provide. The question of the need for a lawyer on staff, however, is one which can most appropriately be assessed by the Board of a clinic.

Our concerns about the third condition, requiring personnel of a clinic to be trained to a standard approval by the Committee, will be discussed in our response to the Discussion Paper on Training and Education Programs.

The terms and conditions which the Committee may impose include, but are not limited to those mentioned above. There is no reference in the Discussion Paper to what other terms and conditions may be imposed, under what circumstances and for what objective. We are concerned about this issue, as it is in the imposition of terms and conditions that a clinic's independence will most effectively be curtailed.

During the 1980-81 funding process, a variety of conditions were imposed on a number of clinics, and many of these conditions are ones which we consider inappropriate. Conditions of which we are aware which clinic staff have imposed or attempted to impose, either in discussions with the clinic or in the certificates, include, among others, a member of the clinic funding staff sitting on the clinic's hiring committees, and specific items to be included in the job descriptions.

These conditions presume for the clinic funding staff a decision-making authority which appropriately rests with the Boards of the clinics; the function being performed by the clinic funding staff is of a supervisory and regulatory nature, and is not limited to funding as recommended by the Grange Report and adopted in the Regulation. Accordingly, we would request a detailed examination of the role of the clinic Boards vis-a-vis the Clinic Funding Committee and staff, so as to develop guidelines which both clarify and restrict the types of conditions which may be imposed on clinics.

Given the primary objective of preserving the independence of clinics, we would recommend the following policies be adopted:

1. The Clinic Funding Committee and staff not impose any terms and conditions pertaining to the composition of the Boards or staffs of clinics;
2. The Clinic Funding Committee and staff not impose any terms and conditions around the decision-making procedures to be adopted by clinics;
3. The Clinic Funding Committee and staff not impose any terms and conditions which define the type of legal services to be provided by a clinic.

C. THE FUNDING PROCESS

We are in agreement with the policy adopted in 1979 of having the clinics submit their initial estimates to the Clinic Funding Committee prior to the Committee's submitting its estimates to the Ministry of the Attorney-

General; without estimates provided by the clinics of their needs, the Committee will clearly be in no position to evaluate the amount of funds that will be needed. We would further suggest that the clinics be given an opportunity to defend their initial estimates to the clinic funding staff at the annual funding meeting prior to the Committee submitting its estimates to the Attorney-General. The estimate then submitted to the Ministry would be the amount approved in the initial decision of the clinic funding staff. This procedure would involve moving the annual funding review by the clinic funding staff to September and October rather than January and February, and would create for clinics an obligation to project their needs for the upcoming year more clearly at an earlier date. However, since the September estimates of clinics are presently used as the basis of the Committee's estimates to the Ministry, careful planning presently requires that this be done in any event.

A further advantage of an earlier annual review process would be to ease the current extremely short periods for responding to funding decisions (10 days at present), which can be very onerous for volunteer boards Expanding the time-frame for responding would allow the Boards greater time to assess the potential implications of terms and conditions imposed on the grant of funding and their ability to provide adequate legal services within the funding proposed. It would also ensure that the appeal process could be completed by the Committee and approval given by Convocation prior to the April start of the new fiscal year, when the new rate and conditions would take effect.

We are in agreement with the procedure for the handling of funding applications for existing clinics outlined in the Discussion Paper, with the changes in the timetable suggested above. Conceivably, applications

should be in by September 1, allowing the clinic funding staff all of September and October to meet with clinics and make initial decisions. Estimates based on consultation with the clinics could then be submitted by the Committee to the Ministry in November. The clinics could be given a month to decide on whether to appeal, a reasonable time given the structure of clinics. Appeals could then be heard by the Committee starting in November, until completed.

There is no reference in the Discussion Paper to when applications for additional staff (which now require a separate application) are to be dealt with. In the interests of efficiency and a thorough single presentation of the clinic's assessment of its needs, we would recommend that these applications be submitted and dealt with concurrently with the general funding application.

The procedure with respect to applications for new clinics seems somewhat complicated and onerous, involving a preliminary brief and 2 applications. The reason for this complexity is unclear, although it does provide for maximum consultation and modification of applications. This presumably allows for the suggestions for clinic funding staff input outlined at the end of the Discussion Paper. Staff input into documenting need statistically is logical and may be helpful to applicants; however, their assistance in helping to define the nature of the legal services to be provided raises the question of the autonomy of the Boards and which is the appropriate body to determine the nature of the legal services to be provided here. The complicated procedure of preliminary briefs and draft applications presents extensive opportunities for staff to negotiate requirements as conditions of funding approval which are clearly inappropriate for the reasons discussed earlier.

A particularily problematical aspect to the assessment of new applications is the strong role assumed for the non-clinic part of the Legal Aid Plan as well as the Canadian Bar Association. Since these bodies deal with different problems, their usefulness in formulating clinic proposals would at best be very limited. A preferable approach would require consultation with groups and individuals representative of and/or knowledgeable about the community seeking a legal clinic.

D. CONCLUSIONS

The objective behind all the policies outlined in the Discussion Paper appears to be an effort to systematize the clinic funding program into a model which is perfectly comprehensible in bureaucratic terms of accountability for services provided, casework statistics, cost-effectiveness, standardized methods for delivering services, and allocation of resources according to demographically defined needs.

For the vast majority of publicly-funded servcies, this model of program development makes perfect sense; indeed, it is virtually inevitable. The point that is not taken into consideration is that legal services are unique. Legal problems cannot be both centrally defined and responsive to the needs of the people suffering legal problems. The Discussion Paper states at p.#16 that "The dynamism and vitality of the clinic movement is a result of their independent development", and we agree with this assessment. Our comments are made with the object of maintaining that independent development and avoiding the standardization of clinics into a pre-conceived model.