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December 4th, 2009

Mr. Bob Ward
President and CEO
Legal Aid Ontario
Atrium on Bay
40 Dundas Street West, Suite 200
Toronto, ON
M5G 2H1

Dear Mr. Ward:

Re: LAO funding abuses by legal clinic system and tenant duty counsel program

I am a licensed paralegal in Ontario and a former Board Member of the Ontario Rental Housing Tribunal. My work is primarily in the area of landlord and tenant law, but I do some Small Claims Court, provincial offence and Human Rights Tribunal work as well. I teach and write extensively, have spoken at the Law Society twice in this capacity, and am known as an expert in the field.

I follow with interest the ongoing funding crisis within LAO, and I was fortunate enough to hear you speak at the ACLCO annual meeting earlier this year. As part of my work, I have witnessed such terrible abuses committed by the legal clinic system using the machinery of government to gain advantage over taxpayers. The community legal clinics have the resources that most landlords lack. The clinics, at least in the Toronto area, are ideological to a fault and too often use their weight to crush small landlords. Clinics appear to have a bottomless pit of money for Divisional Court appeal work, and when that runs out, they pass the file to ACTO, the Advocacy Centre for Tenants, Ontario, also funded by LAO.

An example of the abuse can best be described by reference to the saddest case I've ever been involved in. I acted for a landlord in an application at first instance at the Ontario Landlord and Tenant Board, and on internal review, to obtain an eviction order for my client as he and his growing family wanted to move back into their house. It was a good faith application, yet the legal clinic, Kensington-Bellwoods Community Legal Service, used what was likely 100+ hours of government funding to defeat the landlord at first instance, then losing on review once I was retained and then losing again at the re-hearing after the review was granted and a hearing held *de novo*. This was in 2007 and 2008. The landlord's name is Ed Slapsys, the tenant is Jason Abrams, and the address is 65 Bellwoods Avenue, #203 Toronto M6J 3N4.

Days prior to the enforcement of the eviction order, the order was stayed by an appeal by ACTO to Divisional Court. ACTO's appeal was dismissed after a year of delay and legal fees incurred by my client, with no risk to the tenant who by my observation was simply along for the ride.

The appeal to Divisional Court was so lacking in merit that at the hearing, before which the judges had clearly read the factum, the Court did not even require counsel for the respondent landlord to speak. The stay of enforcement was lifted, but again, just days before the enforcement of the eviction order, ACTO filed a motion seeking leave to appeal the decision to the Ontario Court of Appeal. The leave motion was recently granted, and the hearing will take place sometime in 2010. My client will have spent in excess of \$25,000 in legal fees just for the appellate work by the time the Court of Appeal matter is concluded. He lives in increasingly cramped quarters as his family has grown from 3 to 5, while the tenant enjoys my client's home. The tenant accomplishes all this risk-free. Costs were assessed against the appellant tenant at Divisional Court in the amount of \$3,000. It is my understanding that ACTO has assumed the costs.

Furthermore the tenant, until just recently, was shown on title of a property on Dundas Street West in Toronto that he purchased with his mother in 2006 for \$415,000. He has rental income from the building, and until recently, was working towards the opening of a club or bar, having taken out several building permits stating that express intention. Yet, Kensington-Bellwoods acted for him with over 100 hours of representation and preparation, ACTO represents him still, and Kensington-Bellwoods as recently as November was providing summary advice to the tenant on a new matter, and they have stated in writing in a letter to the Landlord and Tenant Board that they believe he qualifies for their assistance.

Not only are the community legal aid clinics out of control, but there is a terrible duplication of services between the legal clinics, which do a high percentage of landlord and tenant work, and the Advocacy Centre for Tenants, Ontario. By far the largest part of the ACTO mandate is the tenant duty counsel program. Staff lawyers or community legal workers are at every session of the Landlord and Tenant Board at every location across the province. In the busier areas like the Toronto South regional office, there are often three staff lawyers giving tenants advice. These are tenants who ought to have come to the hearing prepared, and who had the opportunity to visit a community legal clinic or hire a private bar lawyer prior to the hearing. The very presence of the ACTO offices at each Board location creates little more than frivolous requests for adjournments on simple rent arrears matters. In my opinion, ACTO should be dismantled, or at least their budget significantly reduced to remove the tenant duty counsel function from its mandate.

Legal clinics too often use appeal as a weapon in landlord and tenant matters. It costs little in time and effort to file an appeal with Divisional Court to stay enforcement of an eviction. There is one private bar certificate lawyer who seem to specialize in frivolous tenant appeals as evidenced by the number of summary dismissals of his appeals. But the small landlord or the social housing landlords which should be offered some deference, just fold and walk away. Terrible injustice is done when landlord cases are not funded or advanced, resulting in most of the jurisprudence coming down on the tenant side creating an imbalance in the law. Landlords can't afford \$15,000 to defend a claim or bring a claim when it involves just one tenant, when it is cheaper to just pay them \$5,000 to have them move out. But on the tenant side, issues that will result in a shift of power in the landlord and tenant wars is funded and advanced even when the nominal tenant-appellant has little interest in the outcome. The excuse often used is that the outcome of the appeal has a "*greater public interest*". If that's the case, why not fund the defence of those appeals so that landlords can retain good counsel?

This imbalance of power creates a further problem whereby the legal clinics easily take unreasonable positions as they can afford to prolong a dispute. This past Tuesday afternoon, I was at a hearing of the Landlord and Tenant Board where the tenant owed about \$500 in rent arrears and costs (the costs were the Board's \$170 application filing fee paid by the landlord, virtually always awarded to the winner). There was no dispute about the rent being owed. There was no counter-claim. The issue was the \$170 in costs. The tenant didn't want to pay it, despite the fact that the arrears accumulated based on the tenant not reporting un-declared income in a rent-g geared-to-income context that he was required by law to report. Ontario Works even cut him off his benefits for two months based on his failure to report to them. The staff lawyer acknowledged during private discussions that her client was being less than reasonable. However, she took his instructions, took about 75 minutes out of a 2 ½ hour hearing block resulting in 3 other applications not getting heard that afternoon and being sent home. And what's more, we didn't finish, and the matter will return in January. This was such a terrible waste of Landlord and Tenant Board, LAO and my client's resources. Most lawyers would walk away when their clients act unreasonably and refuse to take sound advice. The rules of professional conduct forbid encouraging frivolous litigation. But the clinics, by their ideological nature, will go to the ends of the earth to fight for poverty issues, regardless of the fairness or merit of their position.

Certainly tenants should be protected from landlord harassment, unlawful evictions, lock-outs etc., but when LAO, through the clinic system, ACTO or the private bar on certificates, advance what are basically civil claims for compensation on the taxpayers' dime, I believe that is completely unfair and contrary to LAO's mandate. A party can't go to Small Claims Court on a certificate or through a legal clinic and sue his gardener for \$10,000 (soon to be \$25,000) for not implementing a landscaping contract property. But I can go to a community legal aid clinic or a private bar lawyer and bring an action for compensation for \$10,000 (soon to be \$25,000) based on maintenance, interference with enjoyment, reduction of a facility or service etc. The Landlord and Tenant Board is basically a Small Claims Court for landlords and tenants. Yet even civil disputes at the Board that are not about eviction seem to find funding.

In summary, I would hope you will address the following during this re-structuring process:

- The community legal clinics, ACTO and private bar lawyers not scrutinizing eligibility before providing services
- The operation of the Tenant Duty Counsel program, which is supposed to be for brief, summary legal advice, but which often turns into representation and lengthy consultations that cause de facto adjournments just by the delay
- The duplication of service between the community legal clinics advice and representation functions and ACTO's tenant duty counsel program
- The elimination of the Tenant Duty Counsel program
- The duplication in the appeal and test case litigation functions of the community legal clinics and ACTO

- The mandate of clinic lawyer, specifically that it not extend to more than eviction prevention, and then, only when there are legitimate issues in dispute, perhaps with a cap with respect to the number of hours
- Funding for counsel for the respondent when the clinic system claims that the outcome is in the public interest
- Better systems for verification of eligibility for service for any matter going beyond the summary advice phase

Finally, I will be asking the Ontario Ombudsman to look at the following issues:

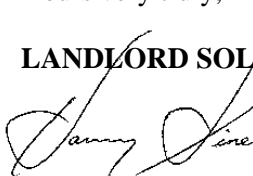
1. The oppression of members of the public by an ideological clinic system;
2. The over-funding of tenants and the imbalance of power it creates;
3. The scrutiny of eligibility requirements for those seeking assistance from legal aid generally, and specifically related to the file I mentioned above;
4. The providing of funding for respondents in what the tenant-side submits are “broader *public interest*” appeals.

As you are no doubt aware, prior the Ombudsman opening a file, it is a requirement that the complainant go to the organization against which the complaint is based seeking resolution there first. I would ask that LAO investigate and respond to these issues above in a timely manner.

I thank you for your time and wish you the best of luck in your challenging position. I would be pleased to discuss these issues with you at your convenience.

Yours very truly,

LANDLORD SOLUTIONS



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