



Black Legal Action Centre

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Submission to the Standing Committee on Justice Policy

Re: *Bill 161: An Act to enact the Legal Aid Services Act, 2019 and to make various amendments to other Acts dealing with the courts and other justice matters*

Submission By:

THE BLACK LEGAL ACTION CENTRE (BLAC)

June 12, 2020

Introduction

The Black Legal Action Centre (BLAC) was established with a very specific mandate – to combat individual and systematic anti-Black racism in Ontario. BLAC is a community legal aid clinic that provides legal representation on matters related to housing and shelter, income maintenance, social assistance, human rights, health, employment, and education. BLAC engages in systemic advocacy through test case litigation, law reform, public legal education, as well as community development. BLAC also provides summary legal advice and referrals to all Black Ontarians.

Concerns

BLAC is concerned that Bill 161, the *Smarter and Stronger Justice Act, 2019*¹ proposes to change LAO's core mandate of promoting access to justice for low-income Ontario residents with a new purpose, which fails to mention access to justice. Rather, Bill 161's focus is on the value of money and cost-effectiveness. This will have a negative impact on the Black community and will create a further crisis of access to justice that reinforces existing inequities.

Section 6 of Schedule 16 of Bill 161, mandates that Legal Aid Ontario, in its determination of how to provide services in the area of poverty law, shall have regard to the legal needs of the communities it serves. However, the relevant section of the Bill does not include Black people as a distinct community in this regard. Black individuals and communities should be included. For clarity, the reads as follows:

Same

(5) In determining how to provide legal aid services in the area of poverty law as described in section 4, the Corporation shall have regard to,

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- (a) the foundational role of community legal clinics in providing services in that area of law; and
- (b) determinations by community legal clinics of the legal needs of the communities they serve in that area of law.

...

Considerations respecting the provision of legal aid services

6 In making a determination under section 3 or 4 or subsection 5 (2), the Corporation shall consider,

- (a) the needs, as determined by the Corporation, of individuals and communities in Ontario for legal aid services, including Indigenous individuals and communities and Francophone individuals and communities;
- (b) the costs of providing various legal aid services;
- (c) the Corporation's financial resources; and

The Black community, as a direct result of the impact of anti-Black racism, comprise a significant portion of legal aid service recipients of "traditional" poverty law services, including criminal, child protection, and in the clinic system, issues related to housing insecurity, social assistance, employment, and immigration.²

BLAC is also concerned about the lack of Black and racialized representation on the governing Board of Legal Aid Ontario.

Poverty in the Black Community

Although BLAC is a fairly new entity, the impact of anti-Black racism is not new to Ontario's Black communities. The current manifestations of anti-Black racism are rooted in our country's history of colonialism, slavery and segregation. The issues that besiege the Black community as a result of anti-Black racism are pernicious, persistent, and systemic. They include:

- harassment and racial profiling by police, which results in violence, death, criminalization and imprisonment;
- the disparate treatment of Black youth in the education system that limits opportunity for future success;
- inequitable access to healthcare that contributes to disproportionate rates of chronic disease;
- discrimination that results in lack of access to safe and adequate housing; and
- racism in the labour market that results in Black poverty, underemployment, precarious employment, and unemployment.

As recently as 2017, the United Nations' Working Group of Experts on People of African Descent ("Working Group"), expressed deep concern about the contradiction inherent in Canada's promotion of itself as a multicultural and diverse society, as compared to the reality of life for African Canadians, who continue to face profound inequality and disadvantage across all social and economic sectors. The Working Group affirmed that the multiplicity of issues faced by Black Canadians is unique to our history of enslavement and colonialism. Poverty and its impact on our community, were of particular concern.³ To this end, the Working Group noted that across the country, many people of African descent continue to face disproportionately high rates of poverty and made particular note of the following statistics:

- the poverty rate among Black Canadians is more than three times the average for Whites;
- Approximately 50% of the Black Canadian population are categorized as low income, with that number jumping to 65% for new Black immigrants;
- The unemployment rate for African Canadian women is 11% compared to 7% for the general Canadian population;
- African Canadian women, when employed, are making 37% less than white men and 15% less than their white female counterparts;
- 25% of African Canadian women are living below the Canadian poverty line compared to 6% for white Canadian women;
- Poverty among single-parent, mother-led families stood at 65% for African Canadian families compared to 26% for European Canadian families;
- Black children are living in poverty at the unprecedented rate of 33% for children of Caribbean heritage and 47% for continental African children. This is compared to 18% of white Canadian children living below the poverty line;
- In 2000, one in two African Canadian children lived below the low income cut-off rate before taxes, compared to one in 10 for European Canadians;
- African Canadians comprise 3% of the general Canadian population, but they are 10% of the prison population;
- Between 2005-2015 there has been an alarming increase – 71% in the number of African Canadian detainees in federal corrections.⁴

BLAC notes that these high levels of incarceration significantly impact the attainment of employment resulting in further entrenching poverty in our community.

Need for Inclusion

Given the shocking numbers set out above, Bill 161, aimed at modernizing the justice system and replacing the *Legal Aid Services Act*, 1998⁵, including its critical purpose (access to justice



throughout Ontario for *low-income individuals*), must take into account the dire levels of poverty of many in the Black community.⁶

This glaring omission in the legislation, combined with the removal of the critical purpose of ensuring access to justice, seems to be further evidence of the failure of our government to meaningfully understand and address anti-Black racism and its deleterious impact on the Black community. Indeed, as recently as June 2, 2020, Premier Doug Ford astonishingly denied the existence of systemic and deep rooted racism in Canada. He is quoted as saying that comparing Canada to the United States is like “night and day”. The statistics above related to poverty *in Canada*, and the statistics in Ontario related to police violence against the Black community would indicate otherwise.⁷

This omission in the legislation is despite the fact that Legal Aid Ontario, the corporation charged with the provision of poverty law services in the province, recently released a *Racialized Communities Strategy*⁸ and specifically identified anti-Black racism as a significant barrier in the provision of legal aid services and access to justice.

BLAC is of the view that the failure to identify the realities of poverty in the Black community will compound the structural racism that lies at the core of many Canadian institutions.⁹ To this end, BLAC also urges the government to ensure that there is appropriate Black and racialized representation on the governing Board of Legal Aid Ontario. Indeed, BLAC believes that the failure to include the Black people is likely to result in the loss of future funding for services that impact the Black community specifically, and that it will further relegate our community to the fringes of society.

Conclusion

BLAC is calling on the Government of Ontario to recognize the dangerous impact of anti-Black racism, and the unique position of Black people in Ontario as a result of a documented history of oppression in Ontario. It is BLAC’s position the failure to include Black people in the legislation will further preclude Black people across the province from full and dignified economic and social participation in our society.

BLAC urges the government to recognize the dire levels of poverty of the African Canadian community and the impact of that poverty on issues such as insecure housing and homelessness, increased criminalization and incarceration, increased apprehensions of children by child welfare agencies, poorer health, increased challenges with mental health, unemployment and underemployment, among others, as it reforms the infrastructure that provides access to justice for the diverse Black communities, *and all other vulnerable communities*, across Ontario.

Finally, we at BLAC continue to stand in solidarity with the Association of Community Legal Clinics of Ontario (ACLCO), other clinics, and community partners in their advocacy for improved access to justice for vulnerable Ontarians, better legislative protection to the clinic system and legal aid service in general. We hope that our partners share our concern and will support our endeavour to ensure access to justice for all Ontarians.

¹ Bill 161, *An Act to enact the Legal Aid Services Act, 2019 and to make various amendments to other Acts dealing with the courts and other justice matters*, 1st Sess., 42nd Leg., Ontario, 1991.

² Legal Aid Ontario, *Racialized Communities Strategy* (March, 2020).

³ *Report of the Working Group of Experts on People of African Descent on its mission to Canada*, Human Rights Council, Thirty-sixth session 11-29 September 2017, A/HRC/36/60/Add.1, at para. 55. Retrieved from: <https://undocs.org/A/HRC/36/60/Add.1>. at par. 33.

⁴ *Ibid.* at paras, 53-57, 44 and 45

⁵ *Legal Aid Services Act*, 1998, S.O. 1998, c. 26.

⁶ Sheila Block, Canadian Centre for Policy Alternatives, *Ontario's Growing Gap: The Role of Race and Gender* (June 2010). "Despite higher workforce participation, people of colour (racialized people) are more likely to be un- or under-employed or living in poverty."

⁷ Ontario Human Rights Commission, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*, (2018). This recent report revealed that Black people are 20 times more than white people to be injured or killed by Toronto Police officers. Further, between 2013 and 2017, Black people were involved in 61.5% (eight out of 13) of shootings causing death, and 60% (nine out of 15) police shootings that resulted in serious injury or death, even though they represented only 8.8% of Toronto's population.

⁸ *Supra*, note 2.

⁹ *Supra*, note 3 at para. 74.