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Winnipeg MB R3M 0R7**

September 10, 2020

Management Council  
Legal Aid Manitoba  
c/o Chair Allan Fineblit  
4<sup>th</sup> floor – 287 Broadway  
Winnipeg, MB R3C 0R7

Via email: [alfin@legalaid.mb.ca](mailto:alfin@legalaid.mb.ca)

Re: Public Interest Law Centre (PILC)

Dear Council Members:

I am writing to you as a concerned citizen in advance of the Council's September 15 meeting that I understand is being held to respond to the Minister of Justice's request for advice on the future of the Public Interest Law Centre.

The development of this advice is a tremendously serious responsibility. As Council members, you were appointed to provide independent and impartial oversight and strategic direction to Legal Aid Manitoba (LAM) in fulfilling its legislated mandate to provide access to justice for low income individuals and groups.

PILC has played an incredibly important role in fulfilling this mandate for the last 38 years. PILC has consistently been recognized and celebrated for the high quality, economy and impact of its services. In recent years, accolades for PILC and its staff have included:

- The Manitoba Human Rights Commission's Aaron Berg Award (2018)
- A provincial government Service Excellence Award (2017)
- A commendation from the Clerk of the Executive Council (2016)
- Honours from the University of Winnipeg (2017), the Manitoba Bar Association (2017), the Canadian Bar Association (2015) and the Manitoba Law Society (2013).

Indeed, PILC has long been one of the jewels in LAM's crown, an evidence-based defender of human and legal rights and due process of which all Manitobans can be and should be proud.

So it is deeply troubling that the government of the day is considering pushing PILC out of the public sector to an uncertain future that would, as outlined in the Social Planning Council's May 25<sup>th</sup> letter to your Council, make its continued viability dependent on the vagaries of charitable giving and charitable tax law.

It is also deeply troubling that the Minister of Justice may be hoping for your Council, by way of the advice sought, to be complicit in placing PILC's future in jeopardy.

Sadly, the troubles don't stop there. The report that recommended that "PILC begin to build things it needs to move to a free standing organization (not part of LAM)" is highly problematic.

The Fineblit Report, prepared by the Council's current chair prior to his appointment, represented the first review of LAM in over 15 years but was based on very limited consultations with the many stakeholder groups with keen interests in LAM and PILC. The report includes the following description of the methodology that informed its preparation:

LAM has been studied before and LAM does a lot of "self studying". There are reams of paper (some of it available online). I read it all. I also met with the LAM Management Council (twice), the Chair of the Management Council (three times), the Executive Director and the Deputy Executive Director, the Director of the Public Interest Law Centre and the Chair of the Public Utilities Board. I met with lawyer representatives both of Legal Aid staff lawyers and private bar lawyers who do Legal Aid work.

Everyone I talked to was open-minded, forthright and helpful. Much of what is in this report was tested with those audiences. As a result, I believe more than a few "wacky" ideas were left on the cutting room floor and some very good new ideas emerged that are incorporated into this report. (p. 4)

The Fineblit Report criticizes both LAM and PILC for their lack of engagement with stakeholders. Despite this, the recommendations contained in the Fineblit Report seem to be based on consultations with those who are later described pejoratively as the "same old gang". This lack of broader stakeholder and community consultation on the future of PILC is problematic.

Another of the Fineblit Report's limitation relates to its timeliness. The report was published in March 2019, six months beyond the original deadline for its submission to government. Important developments related to PILC occurred over those six months, including the Council's approval of Terms of Reference for the PILC Advisory Committee and the appointment of the PILC Advisory Committee's first eight members.

The delayed publication of the report meant that it was already dated upon its public release. This may mislead readers as areas of concern had already been addressed.

Moreover, the Fineblit Report fails to provide a compelling or even clear rationale for the recommendation that PILC should build the things it needs to "move to a free standing organization."

This recommendation seems to be largely based on the observation that many public interest law centres elsewhere in Canada are not attached to a legal aid plan. Because of PILC's connection with government:

. . . few private donors have stepped up to endow initiatives or give large donations. There is no doubt that to many donors, PILC might otherwise be an attractive place to endow. This cannot happen over night but if given sufficient time PILC could put in place the modest additional financial infrastructure to enable it to replace government funding with private donations, and operate like many other public interest law centres as a free standing organization. (p 31)

The fact that some public interest law centres operate outside of legal aid plans (while others do not) only provides the basis to conclude that this might be possible for PILC, not that it is desirable or in the public interest. Nor does the Fineblit Report acknowledge the significant risk factors associated with PILC's possible transitioning to a free standing organization (as set out in the SPC's May 15<sup>th</sup> letter). Finally, the Fineblit Report fails to provide any serious assessment of the conditions and preconditions required for a successful transition and long-term sustainability.

That the government of the day would endorse this recommendation with Premier Pallister directing the Minister of Justice to transform "our support for the Public Interest Law Centre to secure its independence from government" may not be a surprise. Governments often fail to share enthusiasm for being held to account to the rule of law. Indeed, government lawyers will sometimes argue that complaints filed by PILC-supported clients are "frivolous and vexatious". But again and again, the courts and human right tribunals disagree with the government's positions and rule strongly in favour of PILC's clients.

While being held to account on your own dime may be uncomfortable, PILC performs an essential role integral to the checks and balances in our democratic system of government. Given PILC's impressive track record, I respectfully ask that your Council advise the Minister of Justice to substantially increase government support for PILC.

The final troubles that require my comment are the apparent limitations in the Council's own process in responding to the request for advice from the Minister of Justice.

Here's an excerpt from LAM's 2019 Annual Report:

Stakeholders play a key role in LAM's strategic planning and implementation process. Stakeholder engagement ensures that Management Council's oversight of LAM emphasizes the following principles:

1. Transparency

The principle that LAM will conduct its business in an accessible, clear and visible manner and that its activities are open to examination by its stakeholders.

2. Accountability

The principle that LAM is obligated to demonstrate and take responsibility for its actions, decisions and policies, and that it is answerable to the public at large.

This commitment to due and inclusive process is reiterated in the third of LAM's four priority objectives set out in LAM's 2018/19 – 2023/24 Strategic Plan:

Meeting the highest standards of public administration in Manitoba, including the highest standards of transparency and accountability.

Given these strong statements of principle, I was very surprised, indeed perplexed, to learn that the timelines for the Management Council to prepare advice on the future of PILC has been suddenly compressed and seem to have compromised due and inclusive process.

I participated in a July tele-conference call organized with the Social Planning Council with both Allan Fineblit (Council Chair) and Sam Reposo (LAM's ED). We were advised then that the Management Council would be dealing with the request for advice from the Minister of Justice in the fall of 2020 – the expectation then shared was late fall, likely in November. This seemed to provide time to reach out and engage with the broader community following the summer months and the first weeks of school, the latter a busy time made much more stressful due to the pandemic.

I was only very recently informed that the Management Council's intent is now to deal with the request at the special meeting scheduled for September 15, 2020. Then late last week, based on LAM's responses to queries from Kate Kehler of the Social Planning Council, I was informed that only two public presentations directly to the Council would be permitted at the special meeting, that other interested members of the public would not be allowed to observe any part of the meeting, and that there was no commitment to make the Council's recommendation to government on PILC's future public.

I was further advised that LAM's Advisory Committee had not been invited to provide comment even though this seems clearly intended based on the Advisory Committee's Terms of Reference, which were approved by Management Council in 2006 and which are posted on LAM's website.

These practices seem remarkably distant from LAM's foundational governance principles and aspirations.

In closing, thank you for your time and consideration of the concerns outlined in this letter.

I respectfully request that your Management Council provide evidence-based advice to the Minister of Justice that will ensure a robust and sustainable long-term future for PILC, and that your recommendation be made public. Manitobans, and especially those who are most vulnerable, deserve this critically important service now and into the future.

Sincerely,



Patrick Falconer

cc: Sam Reposo, Executive Director, Legal Aid Manitoba  
Byron Williams, Director, Public Interest Law Centre  
Kate Kehler, Executive Director, Social Planning Council