



Alliance for Sustainable Legal Aid

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December 23, 2022

The Honourable Chrystia Freeland
Minister of Finance
Department of Finance Canada
90 Elgin Street
Ottawa, Ontario K1A 0G5
Via email: chrystia.freeland@fin.gc.ca

Dear Minister Freeland,

I am writing to you today on behalf of the Alliance for Sustainable Legal Aid (ASLA) to provide recommendations for the upcoming federal budget.

ASLA is comprised of leaders from nine legal organizations with expertise and experience with Ontario's legal aid program who are united in their strongly held commitment to a sustainable legal aid system. Originally established more than twenty years ago, ASLA's membership is composed of The Advocates' Society, the Criminal Lawyers' Association, the Family Lawyers Association, the Refugee Lawyers Association, the Association of Community Legal Clinics of Ontario, the Federation of Ontario Law Associations, the Ontario Bar Association, the Mental Health Legal Committee, and the Law Society of Ontario. With that mandate in mind, ALSA is pleased to offer the following recommendations as part of this year's pre-budget consultation process.

As is noted above, the commitment to a sustainable legal aid system is a unifying belief among ASLA members. Legal aid programs are essential to an effective and high-functioning justice system because they deliver upon our shared values of fairness and the rule of law. Ontarians need access to lawyers who provide high-quality legal aid services to ensure there is access to justice for our most vulnerable people. Despite this, inadequate base funding for Legal Aid Ontario (LAO) in combination with the court backlogs caused by the COVID-19 pandemic are threatening the sustainability of LAO, as well as the quality and the availability of legal aid services throughout the province.

A lack of sufficient legal aid services could also potentially leave many vulnerable Ontarians without access to justice. Further reductions in legal aid services will only exacerbate the current challenges within our legal system, such as the growing number of self-represented litigants. The National Self-Represented Litigants Project reports that the number of self-represented individuals in the legal system is continuing to rise. According to their latest research, 50% of family court applicants are self-represented. That number is as high as 80% in urban centres. Civil and appellate courts have seen increases since the pandemic as well, with up to 40% of cases in those areas now handled by self-represented individuals, depending on the region of the province.

Multiple studies have shown that more court resources are used when litigants are unrepresented, and that these cases tend to take longer on average thereby “bogging down” the system. The issue of unrepresented individuals is particularly acute in the Ontario tribunal system, where many of the proceedings involve poverty-related issues, such as housing and social benefits. Investment in legal aid would help to reduce the number of cases with self-represented litigants, which would help to free up court resources for other cases and help to speed up the entire system. Simply put, the legal aid system in Ontario requires significant long-term investment if it is to function properly. We suspect that legal aid systems across the country are facing similar challenges. We believe that leadership from the federal government on this issue would be a significant benefit to Canadians.

Investments in legal aid produce a wide range of benefits, from greater efficiency in the legal system, to economic, social and health benefits for society and those using the system. On this issue, a 2014 report prepared for the Legal Aid Directorate at the Canadian government’s Department of Justice entitled *Maximizing the Federal Investment in Criminal Legal Aid* stated that:

by providing access to legal representation for economically-disadvantaged persons, criminal legal aid can reduce the use of court time, and, in some cases, can help avoid costly incarceration, and can help to screen out and achieve earlier resolution of cases that do not need to go to court.

The 2019 report *Investing in Justice: A Literature Review in Support of the Case for Improved Access* report¹ concluded that spending on justice services, including legal aid, results in economic and other benefits that generally significantly exceed the value of the investment. In many cases, the rate of return on investment in justice services and programs is between \$9 and \$16 for every CAD \$1 that is spent.

At one time, the Government of Canada contributed 50% of the funds needed to run Ontario’s legal aid system. At the time, it was viewed by many independent observers as the best in the world. Since then, funding reductions from both levels of government have left the system with fewer resources to address a rapidly increasing demand for legal aid services. Additionally, the demand for these services comes disproportionately from vulnerable populations, such as people who identify as Indigenous, racialized, or as having a disability. We believe leadership from the federal government could help to restore the legal aid systems across the country and help to provide equal access to legal aid services to vulnerable Canadians. The Canadian government is uniquely positioned in its ability to support legal aid programs Canada-wide. You have the reach, the resources, and a stated interest in addressing systemic inequities. Your mandate letter from the Prime Minister states that a key priority for the government is addressing

¹ By Lisa Moore and Trevor C.W. Farrow, Ph.D. The report was prepared for the Task Force on Justice Toronto: Canadian Forum on Civil Justice, August 2019.

“profound systemic inequities and disparities that remain present in the core fabric of our society, including our core institutions”². ASLA believes that legal aid services represent the exact type of inequity and disparity that the government seeks to address.

A second issue, closely tied to the issue of long-term funding, is the lack of clarity on the future of immigration and refugee legal aid services. In 2019-20, the Ontario government changed its policy towards funding immigration and refugee legal aid services. Since then, the Government of Canada has made a number of important one-time investments to support the continued operation of this program. These investments have been crucial in ensuring that new Ontarians continue to have access to the important legal aid services they need. However, ASLA is hearing from its partners, and service providers in the area of immigration and refugee legal aid, that the lack of long-term clarity is becoming a significant issue.

Without a long-term commitment, there is ongoing uncertainty from the private bar when it comes to the viability of providing immigration and refugee legal aid services. Without the ability to forecast over multiple years, roster members and clinics are left waiting each spring for updates from LAO and both levels of government to see if there will be major changes in the services available to new Ontarians. Legal aid service providers, and new families who are anxious to start the next chapter of their lives as citizens, would benefit from further stability in this area.

Therefore, ASLA strongly recommends that the Government of Canada work with the provincial governments across the country to establish a long-term, sustainable funding model for legal aid in Canada that includes a proportional increase and significant level of investment from your government, so that vulnerable Canadians have equitable access to legal aid services.

Thank you for the opportunity for the Alliance for Sustainable Legal Aid to provide its feedback as part of your pre-budget consultation process. Please do not hesitate to contact me should you have any questions about our submission.

Respectfully,



Lenny Abramowicz
Chair of ASLA

CC:

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² <https://pm.gc.ca/en/mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letter>