



Law Society of Ontario | Barreau de l'Ontario

Written Submission for the Pre-Budget Consultations in Advance of the 2019 Budget by the Law Society of Ontario

Recommendation 1: that the federal government further increase its funding contribution to the provinces and territories for the delivery of legal aid services.

Recommendation 2: that the Minister of Justice take a leadership role and assist Statistics Canada by working with the provinces and territories and other relevant stakeholders in the justice system to ensure that the data collected for the Integrated Criminal Court Survey is reliable and sufficient for Canadians to have as complete an understanding as possible of the criminal justice system. The statistics should better reflect, if possible, the number of cases in which a stay of proceedings has been ordered due to a violation of the right to be tried within a reasonable time.

Recommendation 3: that the federal government to work with its provincial counterparts in Ontario to ensure the next phase of UFC expansion is completed as soon as possible.



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August 2, 2018

Standing Committee on Finance
Pre-Budget Consultation
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To the Standing Committee on Finance,

Re: 2019 Pre-Budget Consultations

The Law Society of Ontario is the provincial regulator of more than 49,000 lawyers and over 7,900 licensed paralegals. The Law Society has a duty to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, and to act in a timely, open and efficient manner. Given the Law Society's mandate, we are pleased to offer the following recommendations.

Legal Aid Funding

There is a large volume of evidence around the growing number of self-represented litigants in the justice system. In numerous studies, the most cited reason for self-representation was that they could not afford representation and did not qualify for legal aid. Clearly, there is a significant gap between those who qualify for legal aid services, and those who need it, resulting in a large segment of Ontario's middle-income population who require legal aid assistance but cannot afford it.

The Law Society applauds the province of Ontario's commitment to increase funding for legal aid in Ontario which we have seen over the last several years. In 2014, then Attorney General, the Honourable Madeleine Meilleur, announced an initial investment of \$95.7 million to increase the eligibility threshold by six per cent for the first three years. This was part of a 10-year plan which would see over one million people qualify for legal aid services by having the eligibility threshold match the low-income cut off.

In 2007, the federal government provided permanent and ongoing funding for criminal legal aid at 2006/07 funding levels. This established the federal base funding level to provinces and territories for criminal legal aid at \$111.9M annually, the level at which it remained until recently. Of the \$111.9M committed by the federal government, Legal Aid Ontario (LAO)

receives \$43.3M. Increased federal contributions toward legal aid would significantly enhance access to justice in Canada.

In Budget 2016, the federal government increased funding for criminal legal aid nationally in the amount of \$88M over five years starting with \$9M in 2016/17 and \$12M in 2017/18. While the increased funding for criminal legal aid is a step in the right direction, it does not go far enough in addressing the gap between those who qualify for legal aid services and those who require assistance.

There is a large body of evidence which has shown that criminal legal aid produces 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.

The Department of Justice's Report of the Deputy Minister Advisory Panel on Criminal Legal Aid found that:

The Legal Aid Program's objective of promoting access to justice continues to align with federal government priorities and directly supports the Department of Justice's strategic outcome of a "fair, relevant, and accessible justice system". Legal aid plans contribute to the effective functioning of the criminal justice system by upholding Canada's commitment to fairness and the rule of law.

Furthermore, multiple studies have shown that more court resources are used when economically-disadvantaged litigants are unrepresented, thereby "bogging down" the system. Additionally, a 2014 report prepared for the Legal Aid Directorate at the 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".

Similarly, there have been several one-time in year increases in funding for immigration and refugee legal aid services, however the national base funding for these services has largely been static at \$11.5m for the last 10 years. In 2017, the federal government committed an additional \$2.5m nationally for refugee services for the next two years while the 2018 federal budget proposed an additional \$12.8 million for legal aid services to asylum seekers in 2018-19. While this increased funding was welcomed, it fell far short of what the provinces had requested in order to deal with the unprecedented volume of refugee claims being received.

Echoing Recommendation 3 from the Standing Committee on Justice and Human Rights' Report on Access to Justice, the Law Society recommends that the federal government further increase its funding contribution to the provinces and territories for the delivery of legal aid services.

Data

In January 2018 the Law Society approved its report of the Legal Aid Working Group which proposed the Law Society's formal role and involvement in legal aid. The Working Group met with more than forty stakeholders from twenty organizations before deliberating and developing a list of recommendations. One of the issues raised repeatedly by stakeholders was the need for more and better data on access to justice more broadly, not just on legal aid.

The lack of justice sector data was a sentiment also reflected by many of those who participated in the hearings of the Standing Senate Committee on Legal and Constitutional Affairs when they examined justice sector delays. In the committee's final report entitled "Delaying Justice is Denying Justice: An Urgent Need to Address Court Delays in Canada" numerous experts discussed the challenges with accessing and analyzing Statistics Canada data and the need for data to create indicators around repeat offenders and recidivism, victimization, accused persons who self-represent and alternative dispute resolution.

The Law Society therefore, strongly endorses the Senate Committee's second recommendation:

The committee recommends that the Minister of Justice take a leadership role and assist Statistics Canada by working with the provinces and territories and other relevant stakeholders in the justice system to ensure that the data collected for the Integrated Criminal Court Survey is reliable and sufficient for Canadians to have as complete an understanding as possible of the criminal justice system. The statistics should better reflect, if possible, the number of cases in which a stay of proceedings has been ordered due to a violation of the right to be tried within a reasonable time.

Improved collection and access to data will better inform policy makers and increase accountability in the system.

Unified Family Courts

The 2018 federal budget included \$77.2 million over four years, starting in 2019, and then \$20.8 million per year ongoing, to support the expansion of Unified Family Courts (UFCs), creating 39 new judicial positions in Alberta, Ontario, Nova Scotia, and Newfoundland and Labrador. The expansion of Unified Family Courts (UFCs) in Ontario is much needed and long overdue and the Law Society welcomed its inclusion in the 2018 federal budget.

The new funding will ensure that more Ontarians have a single court to handle all family matters, making the process easier on families while optimizing judicial time and resources. However, while this funding will go towards financing Ontario's Phase 1 expansion of UFCs, it does not include cities such as Toronto, Mississauga and Brampton. Therefore, the Law Society urges the federal government to work with its provincial counterparts in Ontario to ensure the next phase of UFC expansion is completed as soon as possible.



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Once again, thank you for the opportunity to participate in the Standing Committee on Finance's pre-budget consultations and should you require further information, please do not hesitate to reach out to me.

Yours truly,

Malcolm M. Mercer
Treasurer