

Written Submission for the Pre-Budget Consultations in Advance of the 2019 Budget by the Alliance for Sustainable Legal Aid on behalf of its member organizations:

Association of Community Legal Clinics of Ontario

Criminal Lawyers Association

Family Lawyers Association

Refugee Lawyers Association

The Advocates' Society

Mental Health Legal Committee

Recommendation 1: the removal of the legal aid funds currently included in the Canada Social Transfer in favour of a specific, earmarked civil legal aid fund for provinces administered under the Department of Justice Canada Legal Aid Program.

Recommendation 2: the federal government to further increase its funding contribution to the provinces and territories for the delivery of legal aid services



ALLIANCE FOR SUSTAINABLE LEGAL AID

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Friday, August 3, 2018.

To the Standing Committee on Finance,

Re: 2018 Pre-Budget Consultations

On behalf of the Alliance for Sustainable Legal Aid (ASLA), I am pleased to offer you our pre-budget submission. ASLA is a coalition of the leading legal organizations in the province of Ontario. We are united in our shared belief that a sustainable legal aid program is the cornerstone of an accessible justice system for Ontario and all Canadians.

As Chief Justice Beverley McLachlin has said:

"The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system."

Legal aid is a critical foundation of access to justice for Canadians, more and more of whom find themselves unable to afford a lawyer and ineligible for legal aid services. As a result, we see more and more people representing themselves or failing to take any steps to address their legal problems, all of which conspires to actually increase costs, both to the courts and related social services.

Studies and research bear out what we have intuitively known for years:

- A lack of access to justice is often a symptom of a larger set of issues: medical, social, economic;
- Effective representation by lawyers has a dramatic positive impact upon outcomes;
- A lack of early legal intervention - from the provision of legal information to summary advice to representation - allows issues to escalate and compound;
- As issues compound, the lack of access to justice is perpetuated and reinforced;
- All of which leads to increased costs across a range of services.

In 2014-15, more than 57 per cent of people in the province — just over 21,000 Ontarians — who went to family court, were unrepresented, as provided by the Family Court Branch, Superior Court of Justice and Ontario Court of Justice

In numerous studies, the most cited reason for self-representation was that they could not afford representation and did not qualify for legal aid. Currently, only those making a gross annual income of \$14,453 for an individual and \$32,207 for a family of four qualify for legal aid in Ontario. 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 population who require legal aid assistance but cannot afford it.

For years there has been insufficient investment in legal aid. For decades the financial eligibility guidelines for legal aid remained frozen at a level that made legal aid unavailable to any but the most destitute in Ontario. ASLA recognizes and supports the province of Ontario's recent commitment to increase funding for legal aid in this province. This investment is supposed to be part of a multi-year plan to increase the number of Ontarians who qualify for legal aid services. However this modest infusion of resources still leaves the vast majority of the province unable to afford legal representation and ineligible for legal aid. Much remains to be done to overcome the years of stagnant funding.

Further investments will need to come from both the province and the federal government.

In 2014-15, the federal government provided only \$112.39 million to the provinces and territories for the delivery of criminal and civil legal aid while the provincial and territorial governments contributed \$666.03 million over the same period. While this year's federal budget included an additional \$12.8 million for legal aid services to asylum seekers in 2018-19 and \$25.4 million over five years to boosting legal aid funding across the country with a focus on supporting victims of sexual harassment in the workplace, it is a far cry from what is needed. Similarly, while the 2016 budget inclusion of \$88 million over 5 years for the provision of criminal legal aid was a step in the right direction, it falls well short of the funding and leadership that the provision of legal aid requires from the federal government.

Part of the issue is the 1995 decision to include federal funding for civil legal aid in the Canada Social Transfer. In the Canadian Bar Association's (CBA) Study on the Access to Justice System – Legal Aid, they highlight a scenario that is all too familiar for those who advocate for increased legal aid funding:

“The consistent federal response is that federal support for delivery of civil legal aid is in the CST and it is up to the provinces and territories to determine what, if anything, to spend on it. The consistent provincial response is that the federal government gives no money for civil legal aid.”

Therefore, ASLA strongly endorses Recommendation 1 of the Report of the Standing Committee on Justice and Human Rights report entitled “Access to Justice Part 2: Legal Aid” which is the removal of the legal aid funds currently included in the Canada Social Transfer in favour of a specific, earmarked civil legal aid fund for provinces administered under the Department of Justice Canada Legal Aid Program.

ASLA also strongly endorses Recommendation 3 of the same report, which calls for the federal government to further increase its funding contribution to the provinces and territories for the delivery of legal aid services.

In 2011, Ontario's Auditor General conducted a value for money audit of Legal Aid Ontario with positive results. There is a growing recognition that legal aid, if treated more on par with other "essential services" like health care, education and social services, could significantly contribute to cost management and reduction efforts more generally across government. Other western jurisdictions have begun to try to quantify this economic value of legal aid. For example, for every \$1 spent on legal aid:

- In Australia, there is a return to government of \$1.60 to \$2.25;
- In Florida, the government saves \$4.78;
- In New York, there is a return to government of \$5.00;
- And on and on.

Indeed, according to various published data, the savings to government for every dollar spent on legal aid can range from \$1.60 to as much as \$30.00. If these findings apply in Canada, legal aid could more than pay for itself. And, more importantly, contribute to a just and more prosperous Canada.

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.

Sincerely,



Alliance for Sustainable Legal Aid
Per: Lenny Abramowicz, Chair

On behalf of our member organizations:
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Criminal Lawyers Association
Family Lawyers Association
Refugee Lawyers Association
The Advocates' Society
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