



The Law Society of
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To the Standing Committee on Finance,

Re: 2018 Pre-Budget Consultations

The Law Society of Upper Canada is Ontario's 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 and the Pre-Budget Consultation's theme of productivity, we are pleased to offer two recommendations for the 2018 federal budget which if implemented, will result in a more productive and efficient justice system.

Unified Family Courts

The expansion of Unified Family Courts (UFCs) in Ontario is much needed and long overdue and the Law Society welcomed its inclusion in the mandate letters for both the Federal Minister of Justice and Ontario Attorney General.

In Canada's federal system, family law is a matter of divided jurisdiction, such that families in the midst of disputes must use both the Superior Court, where federally appointed judges can decide matters related to divorce and the division of matrimonial property, and the Ontario Court of Justice, where provincially appointed judges may hear matters related to custody, access, child and spousal support, adoption and child protection application, unless a Unified Family Court serves their region.

This "two-tiered" or "divided-jurisdiction" court process takes an unnecessary additional financial and emotional toll on families, including children. It is particularly difficult for self-represented litigants to navigate. The duplication of effort, increased procedural complexity and associated costs can create significant barriers for those seeking to resolve family disputes through the Courts.

Starting in the late 1970s UFCs were introduced in certain Canadian provinces, including Ontario, to provide a "one stop" court to address all family law issues. Approximately half of the sites in Ontario are unified (17 sites) with exclusive jurisdiction over all family law related areas. However, in non-UFC regions, including the Greater Toronto Area, family law remains divided between the two levels of courts.

In the spring of 2017, the Department of Justice issued a call for proposals to the provinces and territories seeking input into the expansion of UFCs. In response, the Ontario Attorney General has proposed a two phase expansion plan. Phase One would see the immediate expansion in the following cities: Belleville, Picton, Pembroke,

Kitchener, Welland, Simcoe, Cayuga and St. Thomas. Phase Two of this proposal will involve expansion to the remaining communities, including Toronto, by 2025.

Such an expansion 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.

The Law Society recognizes that the federal government is keen to take a national approach towards expansion. However, given that Ontario is uniquely positioned to move forward immediately as a result of previous planning, the Law Society strongly recommends that the federal government work with its provincial counterpart to ensure the expansion of UFCs throughout Ontario.

Legal Aid Funding

Criminal Legal Services

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. Currently, only those making less than a gross annual income of \$13,635 for an individual and \$30,384 for a family of four qualify for legal aid in Ontario.

A study by Professor Julie Macfarlane found that 17% of self-represented litigants participating in her survey had an annual income in the \$30,000-\$50,000 range and 19% within the \$50,000 to \$75,000 range. 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 recent commitment to increased 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 for 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 to \$111.9M annually, the level at which it remained until Budget 2017. 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 Ontario.

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".

Immigration and Refugee Legal Services

There have been several one-time in year increases in funding, however the national base funding for Immigration and Refugee legal aid services has 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 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.

As a result, LAO announced its intention to curtail services in Immigration and Refugee legal services. While LAO has announced temporary deficit measures to delay cuts until November, the Legal Services Society (LSS) of British Columbia has recently announced its intention to also suspend Immigration and Refugee services on November 1st, 2017.

The cuts, as proposed, would have a profound impact on the most vulnerable people in our society. Therefore, given the need for increased legal aid funding and the associated benefits, the Law Society suggests the federal government increase its investment in legal aid services.

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 yours,

Paul Schabas,

Treasurer

Law Society of Upper Canada