



The Advocates' Society La Société des plaideurs

December 22, 2022

VIA EMAIL

The Honourable Peter Bethlenfalvy, M.P.P.
Minister of Finance
Ministry of Finance
Frost Building South, 7th Floor
7 Queen's Park Crescent
Toronto, Ontario M7A 1Y7

Dear Minister:

RE: 2023 Pre-Budget Consultation – Funding for Ontario's Justice System

Established in 1963, The Advocates' Society (the "Society") is a not-for-profit organization representing approximately 5,500 diverse advocates throughout Canada, including approximately 4,500 in Ontario. As the leading national association of litigation counsel in Canada, the Society's mandate includes making submissions to governments on matters that affect access to justice and the administration of justice. In the 2023 Budget, we call upon the Government to invest in more permanent court staff, the simplification of family court processes, legal aid for Ontario's most vulnerable people, and technology so our justice system can continue to be accessible and responsive to the needs of all Ontarians.

I. More Permanent Court Staff Are Needed

Court staff are essential to the proper functioning of all levels of court. Their work includes providing information about policies and procedures to the public, processing court filings, collecting fees, maintaining court records, scheduling court cases, managing the jury system, providing administrative and courtroom support to judges, organizing court interpretation services, and court reporting.

Court staff have been under immense and increasing pressure throughout the pandemic. The exigencies of the pandemic have resulted in repeated changes to courthouse procedures and the digitization of previously paper-based processes. Court staff have had to take on new, complex responsibilities in the shift to virtual proceedings, such as accepting online filings and administering virtual courtrooms. Ontario has seen very significant attrition and turnover among court staff during the pandemic. Currently, there are simply not enough employees, including experienced employees, to allow the courts to operate properly.

The lack of court staff is a source of significant delay for litigants and diminished public confidence in the administration of justice. There are backlogs in processing litigants' court filings, and some do not make it to the judge in time for the hearing. There are also backlogs in processing the decisions of the court – for example, judges in family law proceedings may make an order quite quickly in response to a consent

motion brought in writing; however, the lack of staff to process the order means the family whose dispute requires resolution does not receive the order for many months afterwards. The delays, inconsistencies, and mistakes arising from the lack of court staff create a perception of mismanagement and erode confidence in our civil justice system.

There are several factors contributing to court staff departures and turnover. First, the wages are not commensurate with the new skillset and demands associated with the role or with other similar positions in the civil service or private sector. Second, the work is often contract-based (contracts are frequently offered for less than six months) and irregularly scheduled with no guarantee of minimum hours (sometimes described in job postings as 'on-call'). As such, the Society recommends that the 2023 budget include funding for the following:

1. Reclassification of some of the current court services positions to account for the new skills required in the role, to put them in higher pay categories;
2. More full-time equivalent positions to ensure court staff positions can be filled on a full-time and permanent basis.

This will assist courts with attracting, training, and retaining skilled staff, so matters can continue moving through the courts efficiently, the judiciary is adequately supported, access to justice for Ontarians is improved, and public confidence in the justice system is maintained.

II. Planning for the Implementation of the Unified Family Court across Ontario

In Ontario, the Superior Court of Justice and the Ontario Court of Justice share jurisdiction over family law matters, unless litigants are in one of the areas with a Unified Family Court ("UFC"). This "two-tiered" court process can cause an unnecessary additional financial and emotional toll on families, including children. The system poses navigational challenges and barriers for the many self-represented litigants in family law actions.¹

In sites where they exist, UFCs offer "one-stop" courts that have exclusive jurisdiction over all family law matters. Currently, there are 25 UFCs in Ontario.² However, many areas of the province (including populous municipalities in the Greater Toronto Area) are not yet served by UFCs. Expanding UFCs would significantly reduce the financial and emotional burden on middle and low-income families as they maneuver their way through the justice system. Areas of Ontario that are not currently served by a UFC, including Toronto, therefore require UFCs as soon as possible.

The Society urges the Government to include funding in the 2023 Budget for the accommodation of UFCs in existing and new court infrastructure and staffing, to ensure that court sites across Ontario are ready to receive federally-appointed judges allocated to UFCs.

III. A Pressing Need for an Increased, Consistent Financial Commitment to Legal Aid

Legal aid ensures that individuals who cannot afford a lawyer can access legal assistance and representation for proceedings that affect their lives and fundamental rights, including in criminal and

¹ It is estimated that there are approximately 4,000 instances per year where parties are required to attend both courts: Office of the Auditor General of Ontario, [Annual Report 2019](#), Volume 3: Reports on Correctional Services and Court Operations, Chapter 4: Family Court Services, p. 225.

² Barrie, Belleville, Bracebridge, Brockville, Cayuga, Cobourg, Cornwall, Hamilton, Kingston, Kitchener, Lindsay, London, L'Original, Napanee, Newmarket, Oshawa, Ottawa, Peterborough, Pembroke, Perth, Picton, St. Catharines, St. Thomas, Simcoe, Welland.

family court. Funding legal aid is crucial to ensuring access to justice for low-income Ontarians and their fair treatment in our justice system. In addition to ensuring fairness, funding legal aid makes good practical sense: self-represented litigants consume significantly more justice system resources than litigants who are represented. These resources include scarce court time and time spent by court staff, opposing parties, Crown Attorneys, and judges to ensure self-represented litigants receive a fair hearing.

The Society recommends that the Government increase its funding for Legal Aid Ontario to \$480 million annually, commensurate with the level of funding envisioned in the 2014 Ontario budget, when the Government expanded eligibility for legal aid to an additional one million low-income Ontarians. We further recommend that the Government make permanent the \$52 million in COVID-19 Time-Limited Funding allocated in the 2022 Budget to support Legal Aid Ontario as a result of lower revenue received from the Law Foundation of Ontario.³ This commitment will insulate Legal Aid Ontario from large fluctuations in its Law Foundation funding based on the variability of interest rates. The lack of consistent funding makes it difficult for Legal Aid Ontario to plan and provide consistent services.⁴

These investments must be allocated towards increasing services and service quality for legal aid clients. The Society suggests raising the cut-off for eligibility for legal aid, so more low-income individuals can access legal aid help. In addition, we recommend raising tariff rates (i.e. the hourly amounts paid to lawyers in the private bar who accept legal aid certificates). These rates have not been raised since 2015, when they were already low. Inflation and the increasing overhead costs involved in maintaining a legal practice have steadily eroded the already low tariff. The current tariff rates make it difficult to attract and retain lawyers to legal aid work, leading to a supply problem as demand for legal aid services increases post-pandemic. We further recommend that additional investments in legal aid be allocated to increasing the number of remunerated hours that lawyers are permitted to spend on particular proceedings. As it stands, lawyers who accept legal aid certificates routinely spend more hours than authorized – unpaid – in order to provide high-quality representation independent of clients' economic means. A functioning defence bar is vital to ensuring access to justice.

IV. More Investments in Court Technology Are Required

The Society sincerely appreciates your Government's significant recent investments in technology for the Ontario courts. However, there remain some gaps in the provision of technology to courts, in particular, to enable self-represented litigants to participate fully in their proceedings in this new digital era. Many self-represented litigants, including low-income individuals or members of vulnerable, marginalized populations, do not have adequate access to technology. A self-represented litigant's lack of access to computers or the internet means they cannot file their documents online via the new online filing portals, cannot access the online CaseLines platform to upload their documents for the judge's review, and cannot attend virtual hearings. The Society recommends investing funds in public-facing technology to allow

³ Please note that The Advocates' Society is a long-standing member of the Alliance for Sustainable Legal Aid, an alliance of Ontario legal organizations who share a commitment to a sustainable legal aid system. The Society's recommendations with regard to legal aid funding generally align with those of ASLA. The Society supports the ASLA recommendation 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.

⁴ The Law Foundation of Ontario pays 75% of net income earned from lawyer and paralegal mixed trust accounts to Legal Aid Ontario (Law Foundation of Ontario, "[Legal Aid Ontario](#)"). For the year ended March 31, 2019, this amount was \$79 million; for 2020, \$105.7 million; for 2021, \$25.5 million; for 2022, \$44.6 million (Legal Aid Ontario, [Annual Reports](#)).

litigants who cannot afford a lawyer to participate fully in their proceedings. By way of one example only, the Government may wish to fund the purchase of additional computers for Family Law Information Centres across Ontario.

The Advocates' Society's recommendations above will be instrumental in helping the Government deal with the urgent problem of delay in the justice system. We urge the Government to commit to greater investments in the justice system so it can continue to serve Ontarians and help them resolve their disputes efficiently.

We would be pleased to answer any questions you may have about our recommendations.

Yours sincerely,

A handwritten signature in black ink that reads "Peter W. Kryworuk". The signature is written in a cursive, flowing style.

Peter W. Kryworuk
President

CC: The Honourable Doug Downey, M.P.P., Attorney General of Ontario
Vicki White, Chief Executive Officer, The Advocates' Society