



The Advocates' Society

La Société des plaideurs

February 11, 2020

VIA EMAIL

The Honourable Rod Phillips, M.P.P.
Minister of Finance
c/o Budget Secretariat
Frost Building North, 3rd Floor
95 Grosvenor Street
Toronto, Ontario M7A 1Z1

Dear Minister:

RE: Ontario 2020 Budget Consultations

The Advocates' Society, established in 1963, is a not-for-profit association of more than 6,000 members throughout Canada. The mandate of The Advocates' Society includes making submissions to governments on matters that affect access to justice, the administration of justice, and the practice of law by advocates. More than 5,000 of The Advocates' Society's members practise law in Ontario and have a profound interest in access to justice and the justice system in Ontario.

The Society wishes to highlight the urgent need for funding for two key areas of the justice system: Legal Aid and Unified Family Court ("UFC").

Legal Aid needs to be restored to 2018 funding levels and then increased by a further ten percent to cover more people living below the poverty line who cannot afford legal services. Legal Aid is a frontline service for a clientele often challenged by mental illness and substance use issues. One in three clients that Legal Aid serves has mental health or addiction issues. Duty counsel, who provide summary advice and service in court (excluding trials), provide approximately 214,000 such assists to those clients annually. This government has committed to improvements to the delivery of mental health services – this commitment must extend to Legal Aid.

As for UFC, a large capital outlay for infrastructure is required. Only half of the province has UFC, and infrastructure spending is the only solution.

I. Legal Aid: the Scope of the Problem

Legal Aid underfunding has resulted in a lack of basic services and has caused delays. In the 1990s, Legal Aid issued some 200,000 certificates in total, and covered approximately 80 percent of all criminal charges in the province. Today, Legal Aid issues approximately 100,000 certificates in total and covers only 55-60 percent of all charges in Ontario. The reduction in the percentage of criminal charges covered in Ontario provides a general indication of the overall decline in service coverage over time in family, immigration, and landlord and tenant matters. This decline disproportionately affects the most vulnerable Ontarians.

Cutting funding to Legal Aid does not reduce costs for taxpayers – it only increases costs in the long run. That is because Legal Aid funds critical services on which the courts rely to manage and dispose of cases before it. Duty counsel assists are down more than 50 percent since the cuts to Legal Aid’s funding. In criminal law, this has meant that guilty pleas, bail hearings, and routine court appearances consume more time than they ought to due to unrepresented defendants. In the family law context, we have noted increased delays in processing consent orders and scheduling judicial pre-trials, and a higher number of trials. That is because duty counsel no longer assist in these matters, and Family Law Information Offices, mediation programs, and other family law services have been reduced. Backlogs in family law courts are growing and in some cases, family law timelines have doubled. All of these inefficiencies and delays place a greater demand on an overburdened court system and increase the costs for everyone.

The Advocates’ Society will be communicating further with the Ontario government concerning its proposed repeal and replacement of the *Legal Aid Services Act, 1998* by Bill 161, the *Smarter and Stronger Justice Act, 2019*.

II. Unified Family Court: the Need for Infrastructure

Canada’s federal system means that jurisdiction over family law matters is divided between the Ontario Superior Court of Justice and the Ontario Court of Justice. Families in the midst of legal disputes must often avail themselves of two different courts unless their region is serviced by a UFC. This takes an unnecessary additional financial and emotional toll on families, including children. Expanding UFCs would significantly reduce the financial burden on families as they navigate the justice system, thereby improving access to justice.

UFC requires a significant capital outlay for implementation. We welcome the new courthouse for Milton, but we are not aware of a plan for building physical space for UFC in Brampton, Toronto, Windsor, or Northern Ontario—half of the province. There is never a good time for capital funding, but it must be a government priority. Savings to offset these measures could be achieved through better use of technology and the integration and delivery of justice and related services through a community hubs model.

We are concerned about the current level of funding for our courts. Courts need to be sufficiently funded to properly carry out their mandate on behalf of the people of Ontario, and to ensure administrative independence. We believe that this is a broader issue that warrants immediate attention.

Thank you for providing The Advocates’ Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours sincerely,



Scott Maidment
President

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