



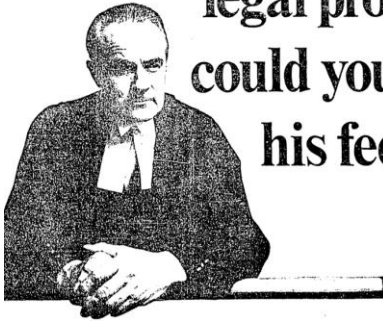
CLA Submissions on Bill 161 – *Legal Aid Services Act*, 2019

A FUNDAMENTAL SHIFT IN JUDICARE

LOUIS P. STREZOS, CO-CHAIR CLA/LEGAL AID COMMITTEE

THE PROMISE MADE ON MARCH 29, 1967

If you had a serious
legal problem,
could you afford
his fee?



You can now.

A criminal or civil action, or specialized legal counsel might cost more than you can afford. Yet justice may depend on both. Inability to pay a lawyer is one of the last remaining obstacles to justice within the law. This is no longer a problem in Ontario. On March 29, 1967, a new legal assistance act became effective in Ontario. It guarantees that no resident of this province shall be denied his legal rights because of the lack of money.

You choose your own lawyer. You make application to him or your area director. Then a decision is made as to what portion of the legal costs, if any, you can pay. The difference is made up from the legal assistance fund provided by the Government of Ontario. The plan is administered by The Law Society of Upper Canada. Neither the court nor the public knows you have received legal assistance. It is a private

affair between you and your lawyer. This is the most advanced solution in the world to the problem of legal assistance. And its purpose is to render justice to every man under the law. The Law Society of Upper Canada.



The new Ontario Legal Assistance Plan—effective March 29, 1967.

LOCAL AREA DIRECTOR: J. M. Magwood, Q.C. 121 Richmond Street W., Toronto 1

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Legal Aid Services Act, 1998

(Section 1, Section 13 and 14(2))

Promise # 1:

PURPOSE

s. 1**to promote access to justice** throughout Ontario **for low-income individuals** by means of,

(a) providing consistently high quality legal aid services in a cost-effective and efficient manner **to low-income individuals throughout Ontario;**

(b) encouraging and facilitating flexibility and innovation in the provision of legal aid services, **while recognizing the private bar as the foundation for the provision of legal aid services** in the areas of criminal law and family law and clinics as the foundation for the provision of legal aid services in the area of clinic law;

Promise # 2:

Legal aid services **to be** provided

s. 13 (1) The Corporation **“shall”** provide legal aid services in the areas of criminal law, family law, clinic law and mental health law.

Foundation for criminal and family law services

ss. 14 (2) The Corporation **“shall”** provide legal aid services in the areas of criminal and family law **having regard to the fact that the private bar is the foundation for the provision of legal aid services** in those areas.

A CHANGE IN PRIORITIES

Bill 161 - Legal Aid Services Act, 2019

S. 1 *Purpose*

The purpose of this Act is to facilitate the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services throughout Ontario in a client-focused and accountable manner while ensuring value for money.

S. 5 *Manner of providing legal aid services*

5 (4) In determining how to provide legal aid services in the area of criminal law, family law or child protection law, the Corporation shall **have regard to the foundational role** of private practice lawyers in providing services in those areas of law.

A CHANGE IN PRIORITIES

Areas of law in which legal aid services provided

s. 4. The Corporation “may”, subject to the regulations, provide legal aid services in the following areas of law [9 enumerated].....

The CLA does not support the shift from “shall” to “may” for three reasons:

- The statutory promise of ensuring access to justice for low income Ontarians has been removed;
- LAO is now tasked with deciding what services “will” be provided unless: (i) ordered by a Court to do so, or (ii) LAO has determined that an accused’s *Charter* rights will be infringed without funded counsel – a *lower statutory standard* than which currently exists in LASA, 1998;
- It is a fundamental policy shift in judicare in Ontario that has existed in on Ontario for 53 years for which the private bar “is” the foundation for the manner in which services are delivered thus ensuring that Ontarians have counsel of choice.

SUPPORTING FLEXIBILITY, Section 46

- The CLA generally supports the Government's amendments that provide greater flexibility to LAO under the proposed new rule-making authority granted under s. 46 of *LASA* 2019, including the determination of fees and hours and eligibility.
- LAO's criminal law budget is its' largest expenditure. With greater flexibility, and with the MOU that ended the LAO boycott expiring over 5 years ago (with no increases since April 1, 2015), it is essential that the CLA, LAO and MAG negotiate a Memorandum of Understanding to ensure long term stability in the legal aid market. An MOU could include:
 - ✓ **Active input** and consultation with LAO, MAG or Finance on tariff rates and hours realistically required for the delivery of services by the private bar -- particularly in light of *Criminal Code* amendments that have increased the complexity and cost of services that are not reflected in *O.Reg* 107/99;
 - ✓ **Accountability** of service providers;
 - ✓ **A biennial tariff review** mechanism necessary to ensure: (i) a vibrant private defence bar; (ii) its' continued and stable participation in the delivery of legal aid matters, and (iii) equitable participation in the criminal justice system thereby ensuring counsel of choice; and;
 - ✓ **Stable LAO funding** combined with less reliance on Law Foundation grants that are subject to fluctuating interest rates (variations from \$27.9 M to \$68.3M in 2016 with an anticipated \$70 M shortfall in 2020).