



North York
Women's Shelter

Bill 161 Submissions to the Standing Committee on Justice Policy

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BACKGROUND

Since opening its doors in 1984, North York Women's Shelter (NYWS) has provided a place of safety and support for women and children impacted by violence. In the 35 years since NYWS's inception, over 11,000 residents have stayed at the shelter – determined to build lives free of violence and abuse.

Many, if not most, of our clients have ongoing and often complex overlapping legal issues. The separation process from an abusive partner often precipitates a higher risk of lethal violence, while the justice system provides abusers an avenue to perpetrate harassment, including behaviors like prolonging cases through endless motions, making unfounded reports to the court about the survivor, contacting as many lawyers as possible so that they are conflicted out from taking on the survivor's case, etc. Ensuring functional access to justice is vital for a survivor's safety.

Being subjected to financial abuse and financial insecurity lead most of our clients to require financial aid in order to access legal support and justice. In 2016-2017, Legal Aid Ontario (LAO) provided legal representation to over 14,000 individuals who had been subjected to domestic abuse¹. Our clients rely on LAO duty counsel, clinics and certificates to obtain legal representation, advice and information. Any change in the

¹ Legal Aid Ontario. Domestic Violence Strategy. 16 July 2019.
<https://www.legalaid.on.ca/documents/legal-aid-ontarios-domestic-violence-strategy/>



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way that those services are rolled out directly affects our clients and other women fleeing violence.

Bill 161 has the important goal of modernizing the *Legal Aid Services Act*, which has not been updated in over twenty years. However, some of the proposed amendments could hinder the ability of our clients and other survivors of gender-based violence, to access justice when using the legal aid system upon which they rely.

CONCERNS

Our concerns lie with the changes in the language to the *Purpose* under section 1 and *Areas of law in which legal aid services provided* under section 4 of the *Legal Aid Services Act, 2019*:

1. 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.

(...)

4 The Corporation may, subject to the regulations, provide legal aid services in the following areas of law:

1. Criminal law.



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2. Family law.
3. Poverty law, being law in relation to housing and shelter, income maintenance or social assistance.
4. Child protection law.
5. Human rights law.
6. Health law, including mental health law.
7. Employment law.
8. Education law.
9. Immigration and refugee law.

As you know, the purpose section of a piece of legislation sets the tone and intention of the law, and helps to justify its existence to the public and the legal system players. In the proposed *Legal Aid Services Act, 2019*, the removal of the key phrase “access to justice across Ontario for low income individuals” from this section has us worried about the way that legal aid will be understood and distributed in our province. Instead, the purpose now states “value for money”, which, while important, cannot overshadow the need to ensure low income individuals across Ontario have access to justice. We are concerned that these changes to the purpose section will prioritize the pursuit of value for money at the expense of ensuring justice for all.



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Last year's 30% budget cuts to Legal Aid Ontario negatively affected our clients. The cuts reduced tariffs on family law certificates, increased wait times at legal clinics, decreased the availability of duty counsel at criminal court and cancelled all provincial funding for immigration certificates. Our clients use all of these services.

Therefore, despite Legal Aid's pledge of support for survivors of violence, the reality is that the cuts directly impacted them and their ability to work towards safety and justice. Any future reductions to Legal Aid's budget will further harm our clients by causing decreased justice-seeking access points.

In addition, we are concerned with the replacement of "shall" with "may" in section 4: The Corporation **may**, subject to the regulations, provide legal aid services in the following areas of law (*emphasis added*). By changing the language to one of permissiveness, it would no longer be imperative that LAO offer services in the listed areas. What this could mean for the future of legal aid services in Ontario is alarming. Our clients regularly require support in all of these areas of law, particularly family, immigration and criminal law. Should LAO no longer be required to provide services in all of these areas, our clients would be directly and negatively affected.



We applaud the goal of updating the *Legal Aid Services Act* to be consistent with today's society. We also understand and appreciate that public funds must be used wisely and with accountability. However, in order for Legal Aid Ontario to perform the service which society requires it to do, the focus must remain on ensuring access to justice for our most vulnerable members.

Lastly, changes to the *Legal Aid Services Act* should be enacted after consultations with survivors of violence and front line workers to understand the impacts of the changes. Particular attention needs to be paid to the experiences of indigenous women, women of colour, transwomen and newcomer women. For example, indigenous women are over three times more likely to be assaulted by their spouse than Canadian women in general and eight times more likely to be killed by their spouse after a separation². An intersectional approach to a gender-based analysis will ensure that the identities, the contexts and the lived realities of the people affected by the policy will be considered, resulting in a fair and equitable piece of legislation.

² Government response to the second report of the Standing Committee on the Status of Women, "Gender-Based Analysis: Building Blocks for Success", May 2006 - sourced from [Working Guide on Gender-Based Analysis](#)



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RECOMMENDATIONS

Legal Aid Ontario has made a commitment of support to survivors of domestic violence and gender based violence. In order for the organization to achieve this, its governing legislation must:

1. Maintain “access to justice for low-income individuals” in the *Purpose*.

- Value for money cannot come at the expense of access to justice

2. Maintain “shall” in the *Areas of law in which legal aid services provided*.

- Permissive language could result in service reductions or cuts upon which survivors of violence rely

3. Be enacted after an intersectional gender-based analysis.

- Consult with survivors and front line workers to understand the impacts of changes to *Legal Aid Services Act*.
- Particular concern to be paid to the impacts on indigenous women, women of colour, newcomer women and women fleeing violence.