

## **The Smarter & Stronger Justice Act could jeopardize access to justice for women fleeing abuse**

*Prepared by Luke's Place Support and Resource Centre*

Thank you very much for this opportunity to speak with you about this Bill.

Luke's Place Support and Resource Centre, where I am the Legal Director, provides direct services to women in Durham Region who are fleeing abuse and are involved with family law proceedings. We also conduct research, develop resources and deliver training about intimate partner abuse and family law and engage in law reform advocacy on the provincial and national levels.

I would like to preface my remarks about Bill 161 by commending Legal Aid Ontario for its response to the pandemic. The suspension of eligibility criteria for survivors of family violence has meant that women in very vulnerable situations can access legal advice and legal representation, regardless of the legal issue they are dealing with or their financial situation. This is extremely important and much appreciated.

Not surprisingly, we were very interested to see Bill 161, the *Smarter and Stronger Justice Act*, which will amend more than 20 existing pieces of legislation. Of particular concern to us and many other advocates for women fleeing abuse are the proposed revisions to the *Legal Aid Services Act 1998*.

While it is certainly the case that this legislation is long overdue for updating, given that it has not been amended for more than 20 years, the changes proposed in Bill 161 could threaten the already fragile access to justice provided by Legal Aid Ontario (LAO) to low-income Ontarians generally and, in particular, to women who are leaving abusive relationships.

These threats are posed by two proposed changes in particular.

### **LAO Mandate**

Under Bill 161, the mandate of LAO would change from:

“to promote access to justice throughout Ontario for low-income individuals ”

to:

“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.”

This change in language indicates a significant shift in what the government expects of Legal Aid Ontario. The removal of promoting access to justice and of low-income individuals in its mandate cuts LAO loose from what has been central to its operations since its inception in 1998, when it replaced the Ontario Legal Aid Plan: a commitment to assisting vulnerable Ontarians to access justice, primarily by funding legal representation for those who cannot afford to pay for a lawyer themselves.

The new mandate, rather than retaining this focus, gives equal value to the delivery of legal aid services and cost. There can be little doubt that when these two values conflict, as they will, cost will trump delivery of legal services.

### **Delivery of legal services**

The second change proposed by Bill 161 speaks to the delivery of legal services.

Section 13.1 of the current legislation states that:

"The Corporation **shall** provide legal aid services in the areas of criminal law, family law, clinic law and mental health law." (emphasis added)

Bill 161 will change this word in section 4 of the revised Act to:

"The Corporation **may**, subject to the regulations, provide legal services in the following areas of law" (emphasis added)

This new permissive rather than mandatory language opens the door to the possibility that LAO could reduce the provision of legal services in favour of providing less expensive services that fall short of legal representation.

### **Concerns**

Ontario's Domestic Violence Death Review Committee has found that victims of intimate partner abuse are at highest risk of lethal violence during the separation process. Non-lethal forms of abuse also continue and often escalate post-separation. It is during this time that many women engage with the family/criminal legal systems, where they are often subjected to legal bullying by their former partner.

Women in this vulnerable position must have access to full legal representation to ensure they understand their legal rights and have a meaningful opportunity to advance them. Ontario's Family Court Support Workers provide critical support to women as they navigate the family law/court process; however, this program cannot serve as an excuse to cut back on funding for full legal representation in cases where family violence has been asserted.

LAO has made a commitment to increasing its services and programs for victims of domestic violence through its Domestic Violence Strategy, for which it is to be commended. However, it is in its early days of implementation, and Bill 161 could slow and possibly halt further progress.

Coupled with the 30% cut to LAO's budget imposed in last year's provincial budget, the provisions of Bill 161 relating to the *Legal Aid Services Act* may well jeopardize the safety and well-being of women and children fleeing abuse, thereby denying them access to justice. Thank you for this opportunity. I will do my best to answer any questions you might have.