

# Your Way Forward Justice Children Youth

Background:

Your Way Forward (YWF) is a federal Department of Justice (DOJ)-funded project operating within nine non-profit legal aid clinics in Ontario, Canada. Our project seeks to improve access to justice for survivors of gender-based violence (GBV). We provide much-needed holistic legal advice, representation, information, and services to survivors of sexual violence, intimate partner violence (IPV) and family violence in our communities and client base.

The funding for YWF was made available through the 2021 Canadian Federal Budget, which invested \$48.75 million over five years for projects that help survivors of sexual assault and IPV make informed decisions about their particular legal circumstances. These investments built on Budgets 2017 and 2018, with a total funding of over \$600 million over five years, complementing the efforts underway as part of the Government of Canada's Gender-Based Violence Strategy.

Ontario's legal clinic system receives core funding through the Province of Ontario, specifically Legal Aid Ontario (LAO). This core funding allows clinics to provide services in areas of law that most affect low-income individuals and disadvantaged communities. Legal clinics assist people with meeting their most basic needs, such as a source of income, a roof over their heads, human rights, rights to education and health care, etc.. While providing services to clients who have experienced GBV is not new for legal clinics, the dedicated DOJ resources have provided much-needed additional staff support and leveraged new energy and expertise, while allowing some YWF partner clinics to provide services in the areas of criminal and family law.

Because of the community-integrated nature of Ontario legal clinics, we have a unique vantage point when it comes to observing the challenges that survivors experience while seeking justice. We work closely with private bar lawyers and community-based social service providers. We routinely hear from both of these essential service providers, as well as our survivor clients, how difficult, dire, and oftentimes dangerous the situation can be when accessing legal representation for people who are leaving violent relationships. Our project is addressing this gap for the clients we can serve within our limited resourcing and staffing, but the issue is too large to be undertaken in a piecemeal manner.

## ACCESS TO JUSTICE

The Committee has accurately identified the very real concerns that our clients and we have regarding access to justice for women who have experienced violence. The Committee asked Canada to provide "information on measures taken to increase the availability of legal aid in civil cases". Canada's response to this question is insufficient and does not describe the reality on the ground of for women seeking legal remedies after an experience of violence. Legal aid in our province of Ontario is inadequately funded, resulting in many women being forced to self-represent in family court and other legal systems. Research shows that "self-represented litigants, especially those with vulnerabilities due to limited literacy or education, family violence or other factors, often experience worse outcomes in terms of obtaining support and protection for themselves and their children."

Our report on the status of legal aid in Ontario, Canada is broken down into the following identified legal aid concerns:

Income threshold eligibility for accessing legal representation through certificates;

Inadequacy of coverage under family law Certificates;

Low numbers of certificate-accepting lawyers; and

Legal clinics' underrated role in providing access to justice to survivors.

Our recommendations are listed at the end of the report.

Income threshold eligibility for accessing legal representation through Certificates

In Ontario, in order to access long-term legal representation through LAO, one must be eligible and apply for a legal representation “certificate”. This certificate grants a person a certain number of hours of legal services from a private bar lawyer who accepts LAO certificates.

Certificates are granted based on income, on a sliding scale depending how many dependants you have. For example, to qualify for a legal representation certificate, a four-person household must have a total household income of less than \$45,289. For comparison, the poverty line for a family of four in Ontario is approximately \$50,000, depending on your location in the province. This means one must be living below the poverty line to be eligible to qualify for an LAO certificate. This high financial eligibility threshold leaves many low to middle-income earners unable to access family law representation through LAO’s certificate. The eligibility figures have not increased since 2020 and are disconnected from the current economic reality, where hyper-inflation and other factors have created an affordability crisis for many Canadians.

Additionally, financial eligibility tests are not uniform across Ontario social services. For example, the financial eligibility for Legal Aid Ontario is significantly lower than for rent-geared-to-income (RGI) housing. Thus, ironically, a low-income earner who lives in RGI housing may not qualify for an LAO certificate.

To illustrate why being found financially ineligible for a certificate increases a survivor’s vulnerability, one of our partner clinics, the Advocacy Centre for Tenants Ontario (ACTO), refers to an ongoing case where a client was experiencing litigation abuse as well as stalking/harassment, and threats with a weapon, from an ex-partner. She had financially qualified and was living in RGI housing but she did not qualify for an LAO certificate because her income was over the LAO financial eligibility limits. She retained a private bar family lawyer, preventing her from being able to afford her rent. This led to her eviction into homelessness. Ontario’s Housing Services Act does not allow former tenants to return to social housing if they owe arrears to any provincial social housing provider, effectively locking them out of their only affordable housing option. Had this client been able to access Legal Aid, she would likely still be housed, and not living in the shelter system with her children.

During the COVID-19 pandemic, and the resulting increased rates of gender-based violence, LAO waived financial eligibility for all people who were experiencing domestic violence (DV), allowing all survivors to access family law certificates. Post-pandemic, LAO has maintained the waiver of financial eligibility for Indigenous domestic violence survivors only.

We are grateful for and applaud LAO for centering the experiences of Indigenous survivors. However, with the context of the current affordability crisis, financial eligibility tests should be decreased or removed altogether for all survivors of DV so that survivors can pursue safety and justice through the legal system.

#### Inadequacy of Coverage under Family Law Certificates

When a survivor does qualify for a family law representation LAO certificate under the high threshold for financial eligibility, the hours of legal work covered under the certificate is inadequate.

Recently, LAO changed certificate coverage to include 8-hour authorizations for select motions, including restraining orders and exclusive possession orders. It is well established that one of the most dangerous points in an abusive relationship is when the abused spouse leaves or initiates separation. Providing legal representation for such urgent motions can be lifesaving and we applaud LAO for this increase in coverage.

However, clients and local lawyers regularly share that family law representation certificates are generally woefully insufficient to cover the specialized needs of survivor clients. More certificate hours and adequate compensation for competent, trauma-informed lawyers are necessary for a survivor to truly gain access to justice and achieve safety.

To illustrate the experiences and feedback from our clients, here are some common concerns we have heard or experienced regarding the inadequacy of coverage under family law certificates:

More time is often needed for a survivor client to convey the details of their case than a client without an experience of violence. Health research tells us how trauma affects one’s memory and recounting of experiences. This is intensified with a language barrier, a traumatic brain injury, or a disability. In a lawyer-client relationship, this manifests when a survivor is recounting their story in a non-linear, fragmented, distorted manner. Working with

survivors takes extra time. LAO certificates for matters where DV is involved must take this into account.

Some abusers use the court system to perpetrate further abuse, (i.e. litigation abuse). They bring multiple, unnecessary, costly motions, requiring the survivor to attend court to reply to their vexatious behavior. Certificates should provide additional hours of legal representation to respond to these superfluous motions.

Private bar lawyers have shared that there are not enough hours covered under a certificate to get the minimum required filings completed.

DV cases require emergency motions and extensive client contact. Clients can become hesitant to ask their lawyers for anything because they feel they are using up all of their hours under the certificate.

Our staff have seen poorly drafted affidavits where clients have written out their story and their certificate lawyer did not properly review the drafting, resulting in the court not appreciating the violence involved.

Under current LAO guidelines, one must meet a high bar in order to be granted a change of lawyers under a certificate. Because of this, clients stay with lawyers who do not appreciate the seriousness of their case. As a result, they are subject to court orders which are not in the best interests of their children and jeopardize their safety.

The coverage of family law certificates' coverage is inadequate and must be increased in order for survivors to be able to access full and robust representation.

Low numbers of certificate-accepting lawyers

Once a certificate is issued, there are new barriers for a client to overcome. Seven of our partner clinics are community-based and serve a largely rural and/or semi-rural geographic area in Ontario. They report that finding lawyers who will accept an LAO certificate is becoming an increasingly difficult challenge for clients. The number of lawyers accepting certificates in smaller urban centres, never mind predominantly rural areas, is low and appears to be shrinking.

Private bar lawyers working in our communities have informed us that the dwindling number of certificate-accepting lawyers is directly tied to the inadequacy of tariffs (i.e. compensation) and hours covered. They shared that certificate work is akin to pro bono work, as certificates are insufficient and lawyer are rarely compensated for work done promptly.

In particular, for complex high-conflict DV cases, for some lawyers, the pay and emotional labour are not worth it. This, combined with the administrative effort to be remunerated, sometimes taking more time than the actual work completed under the certificate, is deterring lawyers from doing Legal Aid certificate work.

Here are some examples of the decreasing number of lawyers from some of the jurisdictions that we serve:

Northumberland Community Legal Centre (NCLC) reports that 21 private bar lawyers are practicing Family Law in Northumberland County; 13 are identified as being on the LAO Family Law roster; 4 are currently accepting DV certificates. Out of the four who are currently accepting DV certificates, one is booking 4-6 weeks out for appointments; the other three are typically fitting people in within a week unless they are out of the office.

At Community Advocacy and Legal Centre (CALC) in Belleville, clients experiencing domestic violence are being told that lawyers are unable to take them now and to try back at a later time.

Community Legal Assistance Sarnia (CLAS) shared that a client recently went through the entire roster of domestic violence lawyers and was told by each one that they do not have capacity.

ACTO, as part of its extensive province-wide needs analysis, has heard many similar reports. A survivor whom they interviewed shared that she called 61 lawyers in the Durham region and only one could take her case.

Seeking to retain a lawyer in a community with a smaller pool of lawyers creates a scenario that is rife with litigation abuse. In small communities, it is easier for an abusive spouse to meet with all the local law firms to conflict them all out, leaving the survivor with no legal representation. The same lawyer cannot represent both spouses in a family law matter. The parties are directly adverse in interests. The law governing lawyers and the Federation of Law Societies of Canada Model Code of Professional Conduct prohibits lawyers "from representing one client whose legal interests

are directly adverse to the immediate legal interests of another client” (R 3.4-1). What this means is that clients have to go out of their area, often to larger urban centres, to find counsel who can accept their certificates. For example, CALC clients are having to travel to Kingston, a city an hour away, to obtain counsel. As courts return to requiring in-person attendance, retaining an out-of-jurisdiction lawyer can pose new barriers when it comes to getting LAO to approve travel authorizations and disbursements.

NCLC reported that family lawyers are not accepting clients from outside their region. When they could not find a lawyer to accept their certificate in Cobourg, one of NCLC’s clients called half a dozen family lawyers in Peterborough, a city a forty-minute drive away and none would accept a client whose matter was before the Northumberland County court in Cobourg.

These scenarios are not limited to the jurisdictions we serve but are a snapshot of the reality in many smaller urban settings. This is leaving survivors who have been issued an LAO certificate with no options for their family law needs.

Lawyers need to be paid adequately, fairly, and promptly for their work to ensure they remain committed to providing these essential services in our communities.

Legal clinics’ underrated role in providing access to justice to survivors.

Ontario’s legal clinic system’s comprehensive, community-focused approach to providing legal services to low-income people is unique. By integrating legal advocacy, community development, law reform and public legal education, the four pillars of clinic, Ontario’s legal clinics strive to nimbly address the complex needs of marginalized individuals. Our community-embedded nature ensures that services are both culturally sensitive and tailored to the exceptional challenges faced by our clients, while our commitment to systemic change and broad advocacy efforts further strengthens our impact. This holistic and inclusive approach makes Ontario's legal clinic system a vital resource for those in need of support and justice.

Survivors of gender-based violence have complex and overlapping legal issues in intersecting legal domains. They are not limited to family or criminal law. By housing dedicated services for survivors within legal clinics, we are able to serve the whole client, as well as address the systemic barriers they are experiencing. The services that we offer are akin to a family doctor – we aim to provide personalized, comprehensive, and continuous support and ensure that our clients receive thorough, empathetic, and effective legal care. When a legal issue is outside of our capacity or competency, we not only have a clinic team to rely upon, we also make warm referrals to trusted community-based associates.

Legal clinics are designed to be accessible and responsive to marginalized and low-income individuals. Our geographic location, community member governing boards, and diligence in maintaining relationships with local partners and system players, make us a trusted member within our services areas. Clinic staff are keenly aware of the local service landscape and actively build coalitions of support for clients.

Legal clinics not only provide individual legal assistance but also engage in broader advocacy and policy work. This can take various forms, including litigating test cases, systemic action and working within a collective to push for legal change. Our independence as individual non-profits allows us to respond and react when we see how government policy negatively affects our clients and communities.

Additionally, clinics work from an anti-oppressive, trauma-informed model, which works to ensure that interactions with survivors are sensitive to their experiences and needs. This approach helps create a supportive environment where survivors can feel safe and heard.

The need for legal services on behalf of survivors remains high in Ontario, with no shortage of demand in sight. The rate of femicide in Canada is increasing: the killing of women and girls involving a male accused increased 27% in 2022 compared to the pre-COVID year of 2019. Providing accessible legal service to survivors is crucial and potentially lifesaving.

Since Your Way Forward came into being in 2022, we have served thousands of survivors in achieving safety and justice. The DOJ-funding, which allows us to provide dedicated services to survivors of GBV, is set to expire in

2026. We know that the combination of specialized knowledge, comprehensive support services, accessibility, community integration, advocacy, and trauma-informed care makes Ontario's legal clinic system an essential resource for survivors of gender-based violence.

We are seeking to ensure that we are able to continue providing devoted services after 2026.

## RECOMMENDATIONS

We call for the following specific recommendations to be implemented by Canadian provincial legal aid authorities, specifically Legal Aid Ontario:

Expand eligibility for family law representation certificates

Eliminate financial eligibility for certificates of family law matters for all survivors of DV;

Increase coverage under family law representation certificates

Increase certificate coverage on domestic violence files to account for the additional labour and expertise that such complex files require;

Increase certificate coverage where survivors must respond to motions that they allege are brought for vexatious or improper purposes;

Increase certificate coverage with documented mental health issues;

Improve the conditions for certificate-accepting lawyers;

Meaningfully consider the feedback and concerns from the private family bar around increases to tariffs & hours to ensure family lawyers can provide competent, essential representation to survivors;

Reduce administrative barriers for certificate-accepting lawyers to ensure timely compensation;

Affirm the role of Ontario's legal clinics in providing access to justice for survivors

Commit to resourcing our dedicated services for survivors of GBV within Ontario's legal clinics as part of clinics' core services.

We would welcome the opportunity to discuss any of our comments or recommendations further. Inquiries can be sent to Miriam Roger, Your Way Forward's Program Lead at [Miriam.Roger@jfcy.clcj.ca](mailto:Miriam.Roger@jfcy.clcj.ca).

Thank you for your consideration and the opportunity to provide our input on behalf of the communities we serve.

Sincerely,

The Steering Committee of Your Way Forward

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