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October 2, 2017

Via email: [mcu@justice.gc.ca](mailto:mcu@justice.gc.ca)

The Honourable Jody Wilson-Raybould, P.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Minister:

**Re: Insufficient Funding for Immigration and Refugee Legal Aid Services across Canada:  
Impact on Right to Representation by a Lawyer**

The Immigration Law Section of the Canadian Bar Association (CBA Section) is concerned with the alarming trend of budget cuts, lack of funding and service suspension for immigration and refugee (I&R) legal aid services in Canada. These trends, which are evident in Ontario, British Columbia and other provinces, have had a detrimental impact on some of the most vulnerable members of our society, refugee claimants – many of which are children.<sup>1</sup>

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. Our primary objectives include improvement in the law and in the administration of justice. The CBA Section has over 1,000 members who are lawyers practising all aspects of immigration law. Our members deliver professional advice and representation in the Canadian immigration system to thousands of clients in Canada and abroad.

**Overview**

Canada's current immigration legislation permits refugee claimants to be represented by legal counsel in proceedings before the Immigration and Refugee Board of Canada (IRB) at their own expense.

We appreciate that the federal government has been contributing \$11.5M to \$12M in temporary funding annually to six provinces (Alberta, Quebec, Manitoba, British Columbia, Ontario, and

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<sup>1</sup> See UNICEF, *A child is a child: Protecting children on the move from violence, abuse and exploitation* (May 2017) Available [online](http://ow.ly/hUBC30fzwc5) (<http://ow.ly/hUBC30fzwc5>). According to this recent UNICEF report, while children account for less than a third of the global population, they comprise more than half of the world's refugee population.

Newfoundland and Labrador) for I&R legal aid services, which has allowed these provincial legal aid programs to fund legal representation by lawyers for refugee claimants who cannot afford one.<sup>2</sup> However, legal aid is not universally available for representation in refugee proceedings, and while certain provinces' refugee legal aid programs receive government funding, other provinces (such as Nova Scotia and New Brunswick) do not. Of those provinces that do receive legal aid funding, certain provinces are woefully underfunded as compared to other provinces.

Amidst this current backdrop, we are witnessing greater political and climatic instability around the world – which in turn has led to an unprecedented 65 million forcibly displaced persons globally. The landscape for providing refugee and immigration law services is changing dramatically in Canada as a result. Currently, refugee claims have gone up dramatically, and the IRB predicts 40,000 new claims by year's end.

With the significant increase in demand for refugee legal aid services, and without additional funding to meet the increased demand, the legal aid societies in Ontario and British Columbia intended to take immediate steps to ensure they operated within their means by suspending legal aid services for immigration and refugee clients. While these decisions have been suspended for the time being, we are deeply concerned by the implications of this alarming trend, which stands to become a national problem. Indeed, the legal communities in Ontario, B.C., and Quebec (three provinces where a significant proportion of refugee claimants reside) are all facing similar financial challenges.

## **Ontario**

The number of refugees coming into Ontario in 2017 is at an all-time high. According to Canada Border Services Agency (CBSA), the number of people making refugee claims at Ontario/U.S. border crossings is steadily increasing. In January 2017 alone, 433 refugee claims were made at the Niagara Falls, Fort Erie, and Sarnia border Ports of Entry. If this rate continues, there would be 5,196 refugee claims in Ontario by the end of the year, up from 3,865 in 2016, and 2,742 in 2015.

However, even as the number of claimants continues to climb, Legal Aid Ontario (LAO) seriously considered making cuts to its refugee legal services. LAO's refugee program has historically cost \$20 million annually. However, over the past two years the cost has increased dramatically – the program cost \$27 million last year, and this cost is forecast to rise to \$33.6 million in 2017.

These soaring costs are part of the reason why, despite increased demand, LAO announced that it would suspend immigration and refugee services, which would have cut costs by approximately 40%. Earlier this year, the Vice-President of the Greater Toronto sector of LAO stated that while the nonprofit agency was hopeful that funding would come through; its board would be considering service suspensions if it didn't get the support it needed. The group identified its budget shortfall at \$13.1 million.

Although LAO received one-time funding of \$7.72 million from the provincial and federal governments, which allowed it to continue immigration and refugee services at the current level without suspensions, the problem is not solved. This funding was given with no guarantees for the

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<sup>2</sup> See Department of Justice Canada, *Legal Aid Program Evaluation* (last modified May, 2017), available [online](http://ow.ly/Ukqp30fzvRH) (<http://ow.ly/Ukqp30fzvRH>).

future and as a result, LAO would require more funding from the federal government to continue to help as many refugees and immigrants as possible.<sup>3</sup>

Service cuts to refugee services in the future would have a serious impact on LAO's clients, with the potential to affect as many as 1000 clients per month. These service cuts would impede access to justice for thousands of refugees and suggest a serious gap in the justice system.

### **British Columbia**

In face of the significant increase in refugee claims and a lack of increase in funding, the B.C. Legal Services Society (LSS) also announced that they would cease immigration and refugee services for new claimants as of November 1, 2017, after which time they would no longer be accepting immigration and refugee services. Cases approved before November 1<sup>st</sup> and applications for legal aid filed prior to this date would not be affected.

In 2013, 378 individuals made refugee claims in B.C. By 2016, this figure nearly doubled to 725. In 2017, the society handles an average of 110 cases per month. At present, LSS receives \$900,000 annually from the federal government, and \$800,000 from the provincial government. The Federal Department of Justice said that it would provide \$1.1 million to B.C. for immigrant and refugee legal aid next year, which still fell dramatically short of what LSS would need to provide its services. Over the past 3 years, the society has required a 145% increase to cover their costs. As the LSS is prohibited from incurring a deficit or reallocating funding from other services to cover immigration and refugee costs, they must stop issuing new contracts to comply with this rule.

We understand that the Executive Director of the LSS was in discussions with both levels of government to address the cap on spending, the lack of funding, and the ways to deal with the surge in refugee claims. In a recent article, he explained that additional funding would most likely not come from the provincial level, given that Immigration is principally of federal jurisdiction. For now, it seems that unless the LSS receives additional federal funding by November 1, 2017, individuals in need of the LSS' services would be forced to represent themselves before the Immigration and Refugee Board of Canada.

### **Access to Justice**

Section 15 of our Charter guarantees the right to equal treatment before the law regardless of one's status. Refugee claimants in Canada should receive the benefit of legal assistance on par with Canadian citizens and permanent residents. In August of 2016, the CBA Council passed a resolution endorsing proposed legal aid benchmarks developed by our Access to Justice Committee in cooperation with the Association of Legal Aid Plans of Canada. Of note was the CBA's call for a National Public Legal Assistance System, with an emphasis on sustainably funded public legal assistance systems capable of meeting essential legal needs, and of contributing to the health and well-being of disadvantaged and low-income individuals.

Access to justice is a foundational component of the rule of law and fundamental human rights issue for all members of our society, which includes refugees, immigrants, and those with precarious

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<sup>3</sup> See CBC News: *Legal Aid Ontario withdraws threat to suspend immigration and refugee services* (June 30<sup>th</sup>, 2017), available [online](http://ow.ly/ihGb30fzwfR) (<http://ow.ly/ihGb30fzwfR>).

status.<sup>4</sup> With respect to refugees with precarious status, the consequences of immigration actions and government decisions can be dire. A refugee who cannot rely on prompt and effective legal representation is at risk for arbitrary deportation to a terrifying future filled with torture or even death. Moreover, refugees comprise a truly marginalized group, and the challenges they face are endless.

In addition to the typical challenges often faced by newcomers to Canada (financial, housing, employment, etc.), they may also face the added burden of a number of additional challenges. These include language and education barriers, limited support networks, and limited knowledge of Canadian laws. In addition, given the reasons that lead refugees to seek asylum in Canada, it is not uncommon for them to experience post-traumatic stress disorder. If it can be difficult for the average Canadian to navigate our immigration and refugee system and laws, how can we expect refugees complete their claims effectively? While the CBA Section appreciates that this is a complex issue involving both the federal and provincial governments, we believe that it is unfair for refugees, who are often facing life and death situations, to be caught in the crossfire during these political budgetary negotiations.

A secondary but important concern is that a decrease in funding for I&R legal aid services would likely lead to an increase in self-represented refugees, resulting in longer proceedings, lengthier hearings, delays in the asylum and legal appeals and raise important issues of breach of natural justice.

### **Representation by a Lawyer**

Following the sweeping changes to the refugee determination system in December 2012, it was predicted that more refugees would go unrepresented. These predictions turned out to be inaccurate. Although refugee claims dropped, because of the tight deadlines and very new and complex constitutional issues raised by the new system, over 90% of refugees are currently represented by a lawyer before the Refugee Protection Division (RPD), the Refugee Appeal division (RAD) and the Immigration division (ID) of the Immigration and Refugee Board (IRB). Many of these claimants are represented under legal aid certificates.

Studies have shown that refugee claimants represented by a lawyer have a 230% greater chance of approval of their case as compared to unrepresented claimants.

### **Recommendations**

The current crisis is a shared responsibility between the federal government, the provincial governments and the legal aid societies. We believe that a collaborative approach by all stakeholders will offer the best chance of remedying this issue. Funding for legal aid services should be the joint responsibility of provinces – who should work closely with the federal government to monitor the volume of refugee claimants and their demand on legal services, and to allocate funds accordingly.

We applaud the current government's generous approach to welcoming refugees to our country. With this change in policy however, it is crucial to also provide additional funding, so that the legal aid societies can continue to provide effective representation to refugee claimants. Federal

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<sup>4</sup> See *Trial Lawyers Association v. British Columbia*, 2014 SCC 59 (at paragraph 38), available [online](http://ow.ly/Cb6O30fzwkv) (http://ow.ly/Cb6O30fzwkv).

contributions for I&R legal aid services have not changed, and have in fact steadily decreased as a percentage of total funding, since at least 2002.

The federal government should consider reforming and streamlining the current refugee system. For example, by eliminating restrictive timelines for refugee hearings – which have contributed to wasteful hearing postponements – we believe that the federal government could incur savings and increased efficiencies. Also, claimants coming or transiting from the United States by ground are not eligible for a work permit unless, and only once their refugee claims are approved. Providing *all* refugee claimants with access to an open work permit could also reduce the burden on both the provincial legal aid and provincial welfare systems, while promoting greater access to justice for these individuals.

### **Conclusion**

The CBA Section commends the steps our federal government has taken in recognition of the world-wide refugee crisis, and in admitting more refugees in 2016 than in any other recent year. However, the government must also ensure that sufficient resources are in place to support refugee claimants in Canada, including access to representation by an immigration and refugee lawyer through legal aid.

Yours truly,

*(original letter signed by Kate Terroux for Barbara Jo Caruso)*

Barbara Jo Caruso, Chair  
CBA Immigration Law Section

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