

The Honourable Attorney General Caroline Mulroney
Ministry of the Attorney General
11th Floor, 720 Bay Street
Toronto, Ontario
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April 9, 2019

Dear Attorney General,

RE: Possible cuts to Ontario provincial government funding for legal aid in immigration and refugee cases

Amnesty International understands that the Government of Ontario may seek to cut legal aid funding for refugee and immigration related cases in the upcoming April 11 budget. We are writing this urgent letter to you urging that the government refrain from taking any such steps and instead commit to maintaining the province's contribution to legal aid coverage in refugee and immigration matters, an area of law that very often involves essential human rights concerns.

We are aware that you wrote to the federal government on March 15 of this year, calling on Ottawa to fully fund the \$45 million legal aid program for immigration and refugee cases in the province. In that letter, you reportedly noted that the federal government is "leaving a shortfall of nearly \$28 million that the province is expected to subsidize to support matters of federal jurisdiction."¹ The federal government, according to media reports, covers \$16.9 million of the total amount of Legal Aid Ontario's (LAO) current budget as it relates to refugee and immigration law. This request of the federal government has sparked widespread concern that this may be an indication that your government will seek to eliminate any provincial funding for these services.

As you know, LAO has been a leader in service provision in the country with respect to funding access to legal services for refugees, refugee claimants and newcomers. In fact, LAO's certificate program is looked upon worldwide as a model for providing access to legal representation and more widely, access to justice, in refugee and immigration matters. At a time when the world faces a global refugee crisis, the need for leadership from governments at all levels is vital. One concrete and crucially important way for the Government of Ontario to demonstrate that leadership is to commit to continued and strengthened legal aid funding for immigration and refugee law.

¹ Laura Stone, "Ontario asks federal government for \$45 million to fund legal aid for refugees, immigrants", *The Globe and Mail* (18 March 2019), online: <https://www.theglobeandmail.com/canada/article-ontario-asks-federal-government-for-45-million-to-fund-legal-aid-for/>.

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Notably, in a 2011 paper Professor Sean Rehaag of Osgoode Hall Law School found that “counsel is a key factor driving successful outcomes”² in refugee cases. As such, any restriction of legal aid funding in this area puts lives, freedom and other rights at risk, as those in need of refugee protection may not receive it without the assistance of counsel.

Given the intricacies of the refugee status determination process, including the importance of making complex legal arguments in relation to the specific definition of who is a “refugee” under the *Immigration and Refugee Protection Act*, it is especially important that refugee claimants have access to legal representation. Claimants often face language barriers, are questioned extensively by the Immigration and Refugee Board (IRB) Member and may also be cross-examined by counsel for the Minister. As such, unrepresented claimants are at significant risk of failing a claim even if they may, in fact, be in need of protection.

In a 2012 report,³ the United Nations High Commissioner for Refugees (UNHCR) examined the impact of lack of legal representation in the Canadian refugee determination system. The report found that unrepresented claimants face significant barriers at the IRB as a result of what was already, at that time, reduced access to legal aid. Any further cuts will starve a system already struggling to meet the needs of individuals seeking protection, and ultimately put vulnerable people at risk of being denied the legal protections they urgently require.

Attorney General Mulroney, it is important to highlight as well that legal aid coverage also bolsters efficiencies for the courts and justice system. Ensuring that refugee claimants have access to counsel can help to ensure hearings are more efficient and may avoid appeals and other litigation, all of which may save valuable court resources down the road.

Amnesty International urgently calls upon the Government of Ontario to refrain from making any cuts to the province’s contribution to legal aid in immigration and refugee cases and to instead work with the federal government to ensure the level of funding required to uphold access to justice and protect rights in this important area of legal services.

Sincerely,

A handwritten signature in black ink that reads "Alex Neve". The signature is written in a cursive, flowing style.

Alex Neve
Secretary General

² Sean Rehaag, “The role of counsel in Canada’s refugee determinations system: An empirical assessment.” *Osgoode Hall Law Journal* 49:1 (2011), 71-116.

³ Michael Barutciski, “The impact of the lack of legal representation in the Canadian asylum process: Report researched and written for UNHCR.” (6 November 2012), online: https://www.unhcr.ca/wp-content/uploads/2014/10/RPT-2012-06-legal_representation-e.pdf.