SOCIETY *of*
UNITED PROFESSIONALS
IFPTE 160

# PRE-BUDGET SUBMISSION

## to the Standing Committee on Finance and Economic Affairs

**JANUARY 17, 2020**

# INTRODUCTION

The Society of United Professionals ("the Society"), Local 160 of the International Federation of Professional and Technical Engineers, is a union of more than 8,000 professionals working in the public, private, regulatory and not-for-profit sectors. Our members are engineers, legal aid lawyers, scientists, accountants and more. Decisions put forward in the Province's annual budget can have a direct impact on the working conditions of the majority of the Society's membership that work in the broader public sector, and will have a direct impact on the lives of all the Society's members and their families.

This document highlights the Society's recommended priorities for the 2020-2021 Ontario budget.

# LEGAL AID ONTARIO

**RECOMMENDATION:** *Immediately reverse its $133 million cut to Legal Aid Ontario's (LAO) budget.*

**RECOMMENDATION:** *End the restriction on use of non-provincial funds for immigration and refugee cases.*

In its 2019 budget, the Ontario government announced $164 million in cuts to Legal Aid Ontario. This included $133 million to be cut immediately with an additional $31 million cut by 2021. These cuts instigated protests across Ontario. The Premier, Attorney General and MPPs were contacted more than 20,000 times on this issue. Public polling showed three-quarters of Ontarians opposed cuts to legal aid, including opposition among all demographics (age, gender, region, political affiliation, etc.). The second cut was canceled in late 2019. The larger $133 million cut remains in place and equates to a 30% cut to the entire budget for Legal Aid Ontario.

Prior to the 2019 cut, access to justice was already a major concern in Ontario. First steps toward improving access to justice had only been taken in the years immediately preceding the Ford government's 2018 election. These preliminary steps included a modest expansion in eligibility for legal aid, which at about $17,000 annual income for a single person, sits well below the poverty line.

Additionally, the provincial government directed that the agency can only use federal funds to support its immigration and refugee law program. The federal government has made up some of the shortfall on a temporary basis but it is not sufficient to maintain the 2018 level of service that was already broadly criticized before the new funding restrictions took effect.

Immigration has historically been viewed as an area of shared responsibility between federal and provincial governments. While there is not a set formula for which government should cover which costs, this has long been a matter of negotiation between the two levels of government. In contrast to the Ontario government's unilateral approach that ended its support for LAO's immigration and refugee law program, the traditional approach is valued for its relative predictability and continuity of service.

We are already seeing the impact these aggressive cuts are having on front-line services, for example:

## CRIMINAL LAW

The impact of the 2019 LAO cut on criminal law services generally falls into two areas: bail representation and self-representation.

### *Bail*

Private bar lawyers performed a significant portion of the bail work prior to implementation of the funding cut in July 2019. With few exceptions, bail representation is now provided by LAO-employed duty counsel without additional resources to match caseload. Prior to arguing for bail in court there are a number of logistical details that must be organized, such as identifying a surety and preparing other aspects of a release plan to propose to the court

and engaging in negotiations with the Crown prosecution all while the accused is incarcerated. Without sufficient resources to perform this work it takes longer to properly prepare an application and therefore more accused remain incarcerated for longer and the bail courts are further delayed. This creates further overcrowding in Ontario jails and requires additional administrative overtime, both of which increases costs. Before the cut was implemented, the Auditor General undertook an analysis of the bail system and noted that the time to obtain bail had increased from 3.1 to 3.5 days, which equates to 9,400 bed days per year.

### *Self-representation*

Due to further restrictions on eligibility criteria for qualifying for LAO services, more Ontarians are unrepresented in court. In many more situations LAO has chosen not to provide a certificate for private counsel or duty counsel even for people who are eligible. This means fewer people are represented for appearances, applications and motions in court.

Self-represented litigants pose a number of challenges to the court system. Due to their inexperience self-represented litigants cause delays, backlogs, more miscarriages of justice, and therefore increased costs. For example, self-represented litigants require judges and justices of the peace to explain proceedings and to ensure fairness in proceedings in a time-consuming manner that is not necessary when people have legal representation. Mistakes are also more likely to be made without a lawyer involved from the start. This can result in additional days in court, appeals, wrongful convictions, and other disastrous consequences for all involved, including taxpayers.

In many circumstances, there is a two-tiered justice system where self-represented people do not have the same access to the system and avenues and resources that counsel would have, for example in criminal proceedings many self-represented are not permitted to have pre-trial meetings to discuss their case with the Crown.

The cuts to duty counsel services and the need for duty counsel to focus almost exclusively on bail due to LAO having cut private bail certificates means that fewer self-represented litigants have access to legal advice from duty counsel and to having duty counsel speak to their matter in court even when full representation is not available. This contributes significantly to court delays and risks of miscarriages of justice.

## FAMILY LAW

Legal Aid Ontario has stopped funding all certificates for motions to change a family court order (such as custody) or support payments except in cases that involve domestic violence. This means that as individual or family circumstances change the only recourses available to low-income parents is to attempt to represent themselves or be noncompliant with a family court order. Self-representation in family court inefficient for the same reasons outlined in the Criminal section above, however, in the family law context the stakes are arguably even higher as the custody, apprehension, and wellbeing of children is often in question. Noncompliance with a court order may result in harsh legal consequences, including unfavourable changes to court orders and financial penalties.

Additionally, LAO now restricts the number of case conferences it will fund to two. Case

conferences are a highly efficient method of resolving family law disputes. This form of alternative dispute resolution averts the need for a trial and allows the parties to devise a mutually agreeable plan that they are more likely to honour.

## IMMIGRATION AND REFUGEE LAW

The first impact of the 2019 cut was an immediate halt to all new immigration and refugee cases that were not funded by the federal government. This restriction was used as a negotiating tactic with the federal government but imperiled people who faced losing their status in Canada and persecution in their country of origin. In the immediate aftermath of this decision, LAO restricted its work on these cases to helping refugee applicants fill out an initial form. There was no assistance provided to people who often spoke little or no English in navigating the complex process to have their application heard. Representation was only available in appeal cases deemed meritorious.

In September 2019, the federal government agreed to provide an additional $16.9 million of temporary funding to restore immigration and refugee services to their pre-cut status quo. The temporary funding expires in April 2020 and beyond that date. If an extension to federal funding is not received it is expected immigration and refugee services would revert to the same, life-threatening level as April to September 2019.

## ACCEPTANCE OF LEGAL AID CERTIFICATES

For those who do qualify for legal aid it is more difficult now to find a lawyer who will accept their legal aid certificate. Prior to the cut, there was already a well-documented gulf between the hours of work LAO pays for versus the hours of work required to represent a client. Now lawyers are paid for even fewer hours of their work, examples include: bail reviews (from 10 to 5 hours), sentencing for Indigenous offenders that involve a Gladue report (5 to 3), enhanced hours available to work with clients with mental health issues (5 to 2.5), parole matters (10 to 5), and elimination of certain administrative fees. In family law it is also more difficult to retain a lawyer as LAO has eliminated certificates for motions to change and placed a hard cap on the number of case conferences for which a lawyer will be compensated.

These unreasonable limits on the amount of work LAO will compensate lawyers to perform places clients at risk of losing their lawyer part way through a case or not having all aspects and avenues of the case explored and pursued. While the courts may at times require lawyers to work for free where the hours to complete a case significantly exceeds the value of a legal aid certificate, this is frequently not the case. In these cases, clients are ineligible for an additional certificate and must continue without representation. This is seen in family law most frequently where child apprehension, custody and access, child safety and parental rights are at stake.

## IMPACT ON SOCIAL SERVICES

A key function of legal clinics helping low-income Ontarians advocate for their legal entitlements. This includes assisting people who were unjustly denied social benefits like the Ontario Disability Support Program and workers' compensation, as well as support at

tribunals like the Landlord-Tenant Board for people facing unfair eviction from their home. Cuts to clinics mean that they can help fewer people in these circumstances. The result is that vulnerable people at risk of homelessness will unnecessarily lose their housing and place a greater strain on social services as well as the health care system.

While it is too soon to have data available, there is anecdotal evidence that the impact of delays to accessing bail are creating unintended social service costs. For example, there was a recent case where a parent with sole custody of a child was arrested. Their child was taken into Children's Aid Society (CAS) care and it was determined that upon receiving bail the child could be returned to the parent. Without a private bar lawyer funded through a certificate to undertake the bail application it took additional days for the parent to be released and therefore the child had to spend more time than necessary in CAS custody.

Not only are these cuts directly impacting vulnerable Ontarians, they also represent short-sighted fiscal management. Studies show that, on average, every $1 spent on legal aid ultimately saves $6 in expenditures on other social services[1].

[1] Canadian Bar Association, 2013. "Reaching Equal Justice Report: An Invitation to Envision and Act". http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf

# FIGHTING CLIMATE CHANGE AND INVESTING IN LOW-CARBON POWER

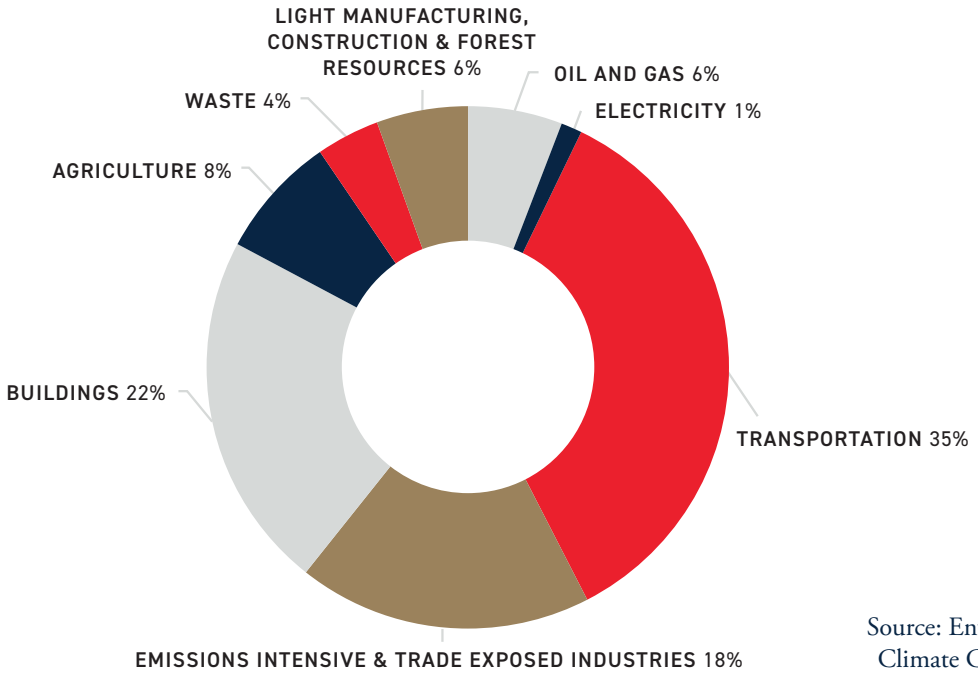
**RECOMMENDATION:** *Fight catastrophic climate change and support the shift towards electrification in Ontario.*

**RECOMMENDATION:** *Work with OPG to begin the process of investing a new, publicly owned and operated nuclear power station to replace the Pickering generating station.*

The Society is concerned with the Government's lack of action to combat climate change. Upon taking office, one of the Government's first actions was to scrap the provincial cap and trade program. Not only was this decision an example of misguided climate policy, it was also short-sighted fiscal policy – the Financial Accountability Office of Ontario estimated that "the Province's budget balance will worsen by a total of $3.0 billion over fiscal years 2018-19 through 2021-22 due to the cancellation of the cap and trade program."[2]

In cancelling the Cap and Trade program, the Government also cancelled programs funded through Cap and Trade program. One of these cancelled programs was the Electric and Hydrogen Vehicle Incentive Program (EHVIP), which provided rebates for the purchase of electric vehicles. The cancellation of the EHVIP rebates are partly responsible for a decrease in sales of electric vehicles in Ontario[3], and the Auditor General has indicated that meeting the province's target of 1.3 million electric vehicles in Ontario by 2030 is dependent on the cancelled EHVIP program, and the Government has not identified any similar initiatives that will help them achieve this target.[4]

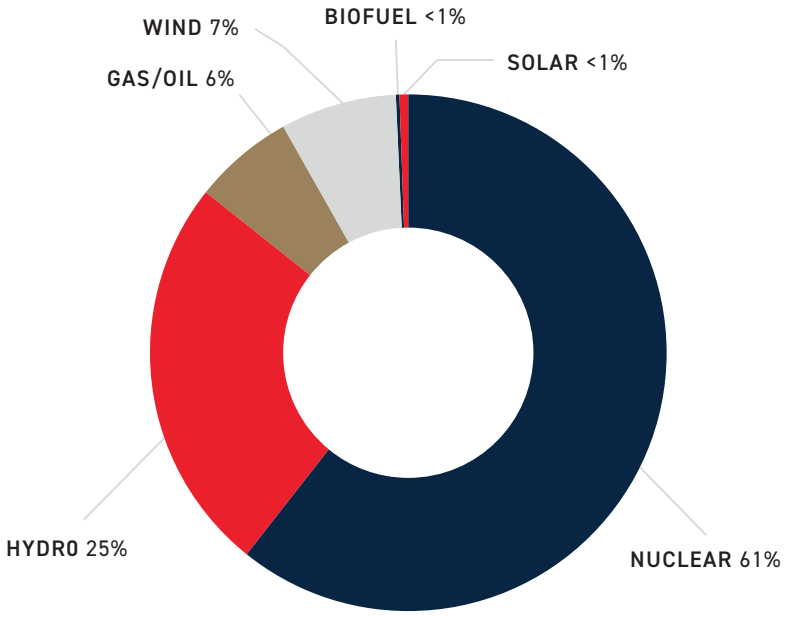
The transportation sector contributes 35% of Ontario's greenhouse gas emissions, more than half of those emissions are from passenger cars, trucks, and motorcycles[5]. Supporting a shift towards electrification in transportation is a necessary action in the province's fight against climate change.




Source: Environment and Climate Change Canada

A crucial early step toward that goal is creating a network of charging stations that make choosing an electric vehicle a viable option for every Ontarian. Our members are contributing to this work directly through the partnership between Ontario Power Generation and Hydro One to build 100 fast-charging stations across the province. Reinstating the electric vehicle rebate program is also a key step toward helping Ontarians make the greener choice.

The Government, in the Society's view, should focus on achieving net-zero greenhouse gas emissions through a fair and just transition for all communities and workers. The Government can achieve this in part by supporting a shift towards electrification in Ontario, powered by greenhouse gas emission free nuclear, hydro, and renewable electricity. Approximately 93% of Ontario's energy output comes from these three GHG-free sources.




Source: IESO[6]

However, the end of operations at the Pickering Nuclear Generating Station will reduce the province's baseload energy capacity by 3,100 megawatts. The Society is concerned that without a long-term plan to replace the lost baseload power with a new nuclear generating station, Ontario will have to increase its reliance on carbon emitting natural gas to meet the province's long-term energy needs. In order to combat climate change, Ontario needs to be reducing its reliance on carbon based energy, not increasing it. The Society believes that Ontario should look to replace the Pickering Nuclear Generating with a new, publicly owned and operated nuclear power station in order to support the transition to a low-carbon economy.

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[2] Financial Accountability Office of Ontario, 2018. "Cap and Trade: A Financial Review of the Decision to Cancel the Cap and Trade Program". https://www.fao-on.org/web/default/files/publications/ending%20cap%20and%20trade%20oct%202018/Cap%20and%20Trade.pdf

[3] CBC News, 2019. "Electric Vehicle sales stalled after end of provincial rebates" https://www.cbc.ca/news/canada/ottawa/electric-car-sales-ontario-drop-cancellation-rebates-1.5223071

[4] Auditor General of Ontario, 2019. "Annual Report 2019: Reports on the Environment" http://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v2_en_web.pdf

[5] Environment and Climate Change Canada, 2019. "Canada's Official Greenhouse Gas Inventory" https://open.canada.ca/data/en/dataset/779c7bcf-4982-47eb-af1b-a33618a05e5b

[6] http://ieso.ca/en/Power-Data/Supply-Overview/Transmission-Connected-Generation

## REPEAL BILL 124

**RECOMMENDATION:** *The Society of United Professionals calls on the Ontario government to immediately reverse its $133 million cut to Legal Aid Ontario's (LAO) budget.*

The Society views Bill 124 as circumvention of our statutory rights and a violation of our constitutional rights. Moreover, Bill 124 is an unwarranted and unnecessary interference in free and fair collective bargaining. The Society calls on the government to repeal Bill 124 and uphold workers' rights to free and fair collective bargaining.

According to Bill 124, "the purpose of the Act is to ensure that increases in public sector compensation reflect the fiscal situation of the Province, are consistent with the principles of responsible fiscal management and protect the sustainability of public services."

The reality is that removing the biggest tool available at the bargaining table – wage and compensation changes – the Government has limited both employers' and unions' ability to negotiate fair deals that are mutually beneficial to both parties.

As an example, the Society's recent arbitration award with OPG, handed down just before Bill 124 came into effect, is an illustration of how wage growth can be used as a tradeoff to drive greater savings in the broader public sector. In this instance, not bound to the restrictions of Bill 124, the arbitrator balanced wage growth with changes to the collective agreement that will facilitate a lower cost transition as Pickering Nuclear Generating Station is decommissioned. The end result was a collective agreement that works in favour of the Society's members, OPG, and ratepayers across the province. Bill 124 removes the ability for public sector unions to make similar, mutually-beneficial, tradeoffs in the future.

## HEALTH CARE

**RECOMMENDATION:** *Maintain stable funding for health care through increases equal to inflation plus population growth and aging, at a minimum.*

The Society is concerned about its members' and their families' ability to access quality health care. Long wait times and overcrowded hospitals impact our members across the province. Cuts to public health, autism funding, and other vital services will deny families access to the health care they need. The Society is calling on the Government to reverse cuts to health care, and to maintain stable funding for quality public health care through increases equal to the rate of inflation, population growth, and aging.

## EDUCATION

**RECOMMENDATION:** *Reverse the cuts to education, and provide adequate funding to maintain class sizes and provide high quality K-12 education.*

**RECOMMENDATION:** *Increase funding for grants instead of loans and expand eligibility for non-repayable grants to all post-secondary students.*

The Society's membership consists of engineers, lawyers, scientists, accountants and other highly educated professionals. Our members know first-hand the importance of quality public elementary, secondary, and post-secondary education. The Society believes that our members' families deserve the same quality education they received, and Ontario as a whole is stronger when we invest in quality education.

That's why the Society is concerned about this Government's approach to public education. The Government has decreased per student funding, and they have increased average class sizes. The Government's attempt to shift towards e-learning will further erode the quality of education our students receive.

The Government has also made it more difficult to access post-secondary education. In the previous budget, the Government cut funding for the Ontario Student Assistance Program (OSAP) by $670 million, and removed the 6-month interest free grace period from the provincial portion of student loans.

## END PRIVATIZATION

**RECOMMENDATION:** *Undertake a review of contracted out services, and identify which services should be brought back in house.*

A recent report by the Columbia Institute[7] shows that many services can be offered by the public sector at higher quality and lower cost than in the private sector, prompting governments to bring these services back in house. The province should undertake a review of contracted out services, examining the scale of past contracting out in the province, and identifying services that should be brought back in-house. If the government is serious about controlling expenditure, the first place it should look is to see which services can be brought back in house, providing better public services at a more efficient cost.

[7] Keith Reynolds, Gaëtan Royer and Charley Beresford, 2016. "Back In House, Why Local Governments are Bringing Services Home" http://www.civicgovernance.ca/wordpress/wp-content/uploads/2016/06/Columbia_Back_in_House_May_16_2016_English_web.pdf

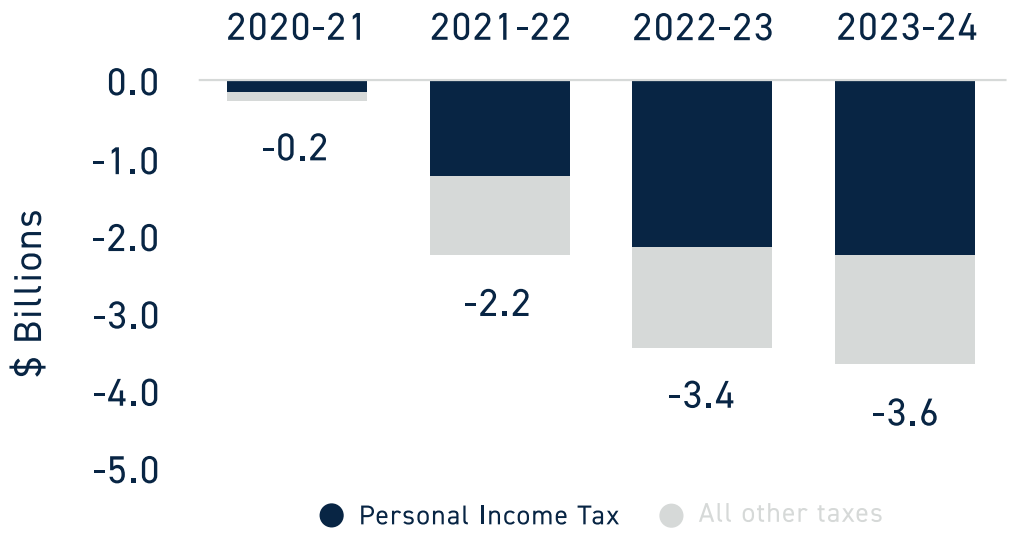
# ADDRESS REVENUE ISSUES

**RECOMMENDATION:** *Do not proceed with the unannounced tax reductions, and instead invest in improving the vital public services our members and all Ontarians rely on.*

Any examination of the province's budget balance cannot look at the expenditure side alone. The province's revenues are an equal component of the province's fiscal situation, and attempts to reduce the deficit through spending cuts alone severely limit the province's ability to achieve budget balance in an equitable way.

A recent report by the Financial Accountability Office of Ontario (FAO) identified that the Government's "fiscal plan includes tax cuts and spending programs that have not been publicly disclosed."[8] The FAO states that these unannounced tax measures are planned reductions in personal income tax, and the gasoline tax, which they estimate will reduce revenues by $3.6 billion in 2023-24.

## REVENUE IMPACT OF UNANNOUNCED TAX MEASURES




Source: Financial Accountability Office of Ontario[9]

The Society opposes any revenue reductions while the Government continues to cut the vital public services our members rely on. If the Government has the fiscal capacity to reduce revenue, then it has the ability to adequately fund Ontario's public services.

[8] Financial Accountability Office of Ontario, 2019. "Economic and Budget Outlook: Assessing Ontario's Medium-Term Budget Plan. https://www.fao-on.org/en/Blog/Publications/EBO-fall-2019

[9] Financial Accountability Office of Ontario, 2019. "Economic and Budget Outlook, Spring 2019". https://www.fao-on.org/en/Blog/Publications/EBO-spring-19#_ftnref32

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