

FOLA LOBBY DAY 2023 RECAP



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On March 7, 2023, approximately 50 lawyers from Law Associations across Ontario logged onto Zoom for a full day of meetings as part of FOLA's Virtual Lobby Day. Following some welcoming remarks from FOLA's Chair, Douglas Judson, and a review of some logistical information from FOLA's Executive Director, Katie Robinette, participants settled into a marathon array of Open Forums and Roundtables. Below are the highlights (in chronological order).

OPEN FORUM WITH THE ONTARIO NEW DEMOCRATIC PARTY OFFICIAL CRITIC FOR THE ATTORNEY GENERAL

Our first session of the day was an Open Forum with MPP Kristyn Wong-Tam (Toronto Centre), the Official Opposition Critic to the Attorney General. Kristyn Wong-Tam shared our concerns about the need to increase funding to legal aid and the need to find efficiencies in the system through modernization.

MPP Wong-Tam also addressed her concerns with [Bill 46: Less Red Tape, Stronger Ontario Act, 2023](#) pointing to proposed changes to the Courts Of Justice Act. Under the Act, Subsection 44 (2) of the Courts of Justice Act provides that a former provincial judge may be designated to serve as a provincial judge on a part-time basis, not to exceed 50% of full-time service in a calendar year. Bill 46 seeks to amend the subsection to raise this limit to 75% until April 1, 2024. MPP Wong-Tam is concerned that this is an expensive quick fix that could, in fact, worsen the problem if retired Judges are not sufficiently competent using existing (but new for them) technologies.

MPP Wong-Tam added that they will be watching for substantial funding commitments in the upcoming Budget (expected on March 23rd) and will participate in the Public Accounts Committee proceedings when the Committee deals with the [2019 Auditor General's Reports on Correctional Services and Court Operations](#) (scroll down a bit when you click on the link to 2019). MPP Wong-Tam also flagged the upcoming (and long delayed) report from [Tribunal Watch Ontario](#) which will most likely find that there is an access-to-justice crisis at some of Ontario's most important adjudicative tribunals, including the Landlord and Tenant Board and the Human Rights Tribunal Ontario.

After taking a few questions, MPP Wong-Tam encouraged Law Association members to feel free to contact their office any time. MPP Wong-Tam can be reached at KWong-Tam-QP@ndp.on.ca.

LEGAL AID ROUNDTABLE

We were then joined by Anthony Galea, Senior Policy Advisor to the Attorney General, who met with Law Association members who accept Legal Aid certificates and/or work in Legal Aid Clinics. Led by FOLA's Legal Aid Committee Chair, Terry Brandon, our members reiterated the need for sustainable and reliable funding for Legal Aid. Specifically, we called on the government to increase funding for Legal Aid to \$480M annually (from \$350M) to support desperately needed investments in legal aid. We pointed out that this level of funding would bring the government's commitment to legal aid back to the levels outlined in the 2014 provincial budget.

We stressed that these funds should be used to: Increase the eligibility thresholds so that more Ontarians qualify for legal aid; increase in the tariffs for the certificate bar, and an increase in operational funding for the clinics, to improve the sustainability of the system; and increase the availability of duty counsel, to improve the service level and functioning of the legal system.

We further asked the government to invest in technologies designed to save the system money and improve efficiency and make upgrades to technology in institutions and clinics to support virtual hearings.

FOLA pointed out that currently, many lawyers are simply not accepting Legal Aid certificates due to the low pay and unduly cumbersome administration. Similarly, cuts to Student Legal Clinics mean that less students are getting early exposure to legal aid work and, therefore, less likely to take on legal aid cases throughout their careers. We pointed out that exposure to legal aid work often starts in the student legal aid clinics within all of Ontario's law schools.

Examples were given citing vulnerable people not being able to get their certificates accepted by lawyers – leading to Ontarians having no choice but to have to advocate for themselves as self-representatives.

We also informed Mr. Galea that our requests were shared by the Alliance for Sustainable Legal Aid (ASLA), of which FOLA is a member and offered ongoing support as the government works to restore trust in legal aid and once again make Legal Aid Ontario the leading model for the rest of the world as it once was.

FAMILY LAW ROUNDTABLE

Next, Laura Oliver and Logan Rathbone, FOLA's Family Law Committee Co-Chairs, led our Family Law Roundtable with Anthony Galea, Senior Policy Advisor, MAG.

Ms. Oliver and Mr. Rathbone alerted Mr. Galea to ongoing problems with the Family Law Portal. Notably, files are getting rejected for no reason and trust monies are not being refunded in a timely manner.

It was also flagged that online systems need to be improved and staff need better training. For example, in the Family Responsibility Office, lawyers still have to use fax machines and files are not responded to. Staff are overworked and unhappy and seemingly will not calculate interest on arrears. For almost anything outside of the norm of a T4 employee who is having their wage garnished they are largely ineffective.

Delays are epidemic (for example Milton is currently booking the end of May) and if a matter is pressing but not urgent - the ensuing delay then creates urgency.

We suggested the government create a Family Law triage system as many of the matters that end up in court (and certainly the vast majority of family law matters that end up in trial), include one or both parties with a personality disorder, a serious mental illness, and/or an addiction issue. If the government were to explore ways to manage this better, FOLA would be happy to assist.

We also urged the government to continue the expansion of the Dispute Resolution Officer Program throughout the province and speed up the expansion of the Unified Family Court. We explained that Family law matters take up a significant amount of court time and use a great deal of the available judicial resources. The DRO program, which allows senior family law practitioners to hold conferences and ensure files are ready for judicial intervention, represent a tremendous untapped resource for jurisdictions that do not yet have use of the program. The unified family court allows for specialist judges to deal with family law matters under the case management approach provided for in the Family Law Rules. This approach allows Judges to deal with matters on a continuum rather than on a 'one off' basis. Mr. Galea said that Ontario's AG continues to raise this issue with the federal government and suggested FOLA do so as well as much depends on the appointment of SCJ Judges. FOLA pushed back on this a little noting that the federal government says that the province needs to submit business case plans and does have authority over OCJ Justices. FOLA urged better communications and asked that Mr. Galea identify the specific roadblocks in case there is some way that FOLA can better assist.

Mr. Galea offered to make himself available via email for any additional follow up. He can be reached at anthony.galea@ontario.ca.

COURTHOUSE ISSUES ROUNDTABLE

Long before the pandemic, Law Association members have encountered problems dealing with the Courts. However, since the pandemic, FOLA has been proactively working with MAG staff and the Courts to address member issues in real time. Some, however, are larger than just a one-off e-filing matter or undue delay. As most people interacting with the Courts know, delays are a massive problem. And while most legal professionals are extremely grateful for the technological advancements the ministry and the Courts have made since the pandemic, there are some issues we felt needed to be raised during our Lobby Day.

The main frustration is that different courts, and even individual judges within those courts, are using the technologies differently. To address this problem, FOLA urged Karthi Gobinath, Director of Policy, MAG, to push for the adoption of some universal standards for technology use in different types of court sittings.

FOLA also called on the government to standardize points of contact for all courthouses, noting that, at present, there are myriad of contacts and separation of duties in individual courthouses, which is unrealistic for counsel who are now representing clients across Ontario.

While most lawyers agree that CaseLines has been a helpful courtroom tool, we recommended that the government explore ways to integrate it into the filing system to develop an end-to-end solution that supports the needs of the parties, the judiciary, and the public (who are entitled to an open court). This includes improving OntarioCourtDates.ca to display Zoom links and accurate courtroom locations with dockets.

We added that courtroom technology needs to be upgraded with secure internet throughout and to ensure all virtual participants in a hearing are able to view the entire view of all participants.

Finally, in an effort to accelerate the reduction in backlogs, MAG and the Courts need to address the unacceptable level of frivolous filing rejections.

OPEN FORUM WITH THE PARLIAMENTARY ASSISTANT TO THE TREASURY BOARD PRESIDENT

For the first time at one of FOLA's Lobby Days, we were joined by the Parliamentary Assistant to the President of the Treasury Board. Fortunately for us, the PA is currently Todd McCarthy, MPP (Durham), who is also a Past President of the Durham Region Law Association. PA McCarthy acknowledged that the increase in self-represented litigants burdens the system and causes undue delays. He agreed that we need to have a sustainably funded legal aid system and said he noticed we had done that in our recent [Budget Submission](#). He added that he, too, recognizes the need to assist the Courts in being able to meet public expectations and that he will continue to make that case to his colleagues. When asked about the need to implement a one-platform solution for Court Filing, he said that the OCJ and the SCJ are cooperating on finding a solution and that we should expect an announcement shortly.

PA McCarthy mentioned that he recently attended the ribbon cutting at the new Toronto Courthouse and used that as an opportunity to point out that by increasing the ability to conduct hearings virtually, this should help speed up the system by allowing Judges to oversee matters outside their jurisdiction.

After taking questions from our members, PA McCarthy assured members that we could count on him to be a knowledgeable advocate for our justice system among his Caucus colleagues.

It should be noted that one of the questions asked to PA McCarthy was around the 2019 Auditor General's recommendations and whether those would play a role in Budget considerations. PA McCarthy said that as the Committee is just now getting started in their review of those Recommendations, it is unlikely that specific issues will be addressed in the 2023 Budget but did not rule out the possibility of addressing them in the next Budget.

REAL ESTATE LAW ROUNDTABLE

For our Real Estate Law Roundtable, members were joined by Karthi Gobinath, Director of Policy, MAG, Anthony Galea, Senior Policy Advisor, MAG, and Miles White, Senior Policy Advisor, Ministry of Finance. During this session, which was led by Mark Giavedoni, Chair of FOLA's Real Estate Committee and the focus was on five main issues:

The first was to stress the value of real estate lawyers and the important role they play by noting that, for over 100 years, they have been a valuable ally to the government in ensuring that the public has confidence in the Land Registry System in Ontario and in limiting incidents of fraud and abuse that are well documented. Both individuals and businesses benefit from a stable, reliable system and a system which creates efficient transfers of real property. We further noted that an underappreciated benefit to having lawyers interact with the public on all land transactions (save for the re-financing of mortgages) is that these lawyers often provide the only direct contact point for the public with the justice system. Real Estate lawyers, particularly in smaller and more remote communities, tend to have active real estate practices. Experience, and overwhelming anecdotal evidence confirms that clients buying, selling, or borrowing use the interaction to seek input on many other important legal issues including wills, power of attorneys, matrimonial questions, and business or other matters. Once introduced to their real estate lawyer, members of the public feel comfortable in future to reach out to "their lawyer" to make inquiries.

Those lawyers may then assist or be able to direct people to government or other resources and/or to experts in a particular field.

The second issue we raised dealt with the Land Titles System and the need to support the existing system with Land Transfer Tax Revenues. We pointed out that, over the past few years, we have seen extraordinary growth in the price of residential real estate, and to some degree agricultural land and commercial properties. These increased prices have been accompanied by a significant growth in the volume of registrations in Ontario and the Land Transfer Tax alone generated over \$5.6 Billion in fiscal 2021-2022. We pointed out that the tax collected does not appear to have been invested back into the system and called on the government to invest these revenues into the system to hire more staff and ensure that documents are certified in a timely fashion. We flagged a concern that the closure of the physical Registry offices in an effort to create efficiencies, has actually led to a lack of a single point of contact where lawyers, surveyors and others can clarify procedures for unique or complicated matters.

Our third main issue was to once again raise the issue of conveyancing and called on the government to amend the Property Act. Specifically, FOLA would like to see the government introduce legislation to reverse the common law on positive covenants with respect to existing shared services or access roads. We pointed out that, at present, only negative covenants continue to affect land once it is resold to a future owner. We suggested that this could be easily remedied by adding the option of joint use and maintenance agreements.

Fourth, we flagged the delays in tribunal proceedings and Small Claims Court and reminded the government that if revenues from land transfer taxes were to be used to fund the system, these delays could be greatly reduced.

Our final point was related to the federal government's prohibition on the purchase of residential property by non-Canadians. FOLA called on the Ontario government to alert the federal government to serious issues in the Act and to request that the Act be challenged. We listed our concerns with the Act (unclear drafting/regulations, a disproportionate application or enforcement across the country, unreasonable thresholds for control, and a focus on penalizing brokers, agents, vendors of residential property, lenders and lawyers) and offered our support to the Ontario government noting that FOLA has already sent letters to the federal government outlining our concerns.

SPECIAL MEETING WITH THE MINISTER FOR FRANCOPHONE AFFAIRS

Two of our French speaking members were able to meet with Hon. Caroline Mulroney, Minister for Francophone Affairs. They addressed the need to make improvements and investments in French services in the justice system. Specific requests include the need to appoint more bilingual Judges, increase staff at the L'Original Courthouse, appoint an independent French Language Services Commissioner, and the need to improve French language services in Tribunals.

CRIMINAL LAW ROUNDTABLE

Our final Roundtable of the day was our Criminal Law session. Chaired by Terry Brandon, FOLA's Legal Aid Chair and a Criminal Lawyer, we were joined by Peter Copeland, Director of Policy & Stakeholder Relations, Ministry of the Solicitor General & Karthi Gobinath, Director of Policy, Ministry of the Attorney General.

FOLA addressed the need to invest in technology in jails and institutions that can help facilitate remote communications between lawyers and their clients, noting that such technologies save the

system money by reducing transportation costs for both the client and the lawyer (especially those who are with Legal Aid). Improvements to “Access Defence” was also among the key issues and the need to explore alternatives to JVN (as it is currently incompatible with Court Services Platforms such as Zoom). Mr. Copeland told us that the government’s goal is to have 90% of the adult population in jails able to conduct matters virtually by the end of 2023. He also mentioned that the government is working towards a fully remote “Access Defence” in a couple of years that would allow for video and virtual file sharing.

Our Criminal Law session also addressed the need to increase funding for Legal Aid, stressing that there is a need to expand the eligibility for certificates to the private bar and increase rates. The recent investments the government has made for new crowns won't help much if accused are all self-represented, thus slowing down the system and causing inefficiencies.

We also discussed the issue of Bail Reform. First and foremost, we reminded the government of the importance to strive for a system which respects the presumption of innocence and the right to reasonable bail, which supports individuals in the community as much as possible. We argued that the best way the government can help the system as it relates to the bail system is to increase funding (hire and retain court staff, appoint more judges, etc) to ensure speedy trials and deal with the backlogs slowing down the system. We suggested that the government also increase funding for the bail supervisor programs and the improve the ankle monitoring system for those on bail. Mr. Copeland noted that the government remains supportive of both Bail verification programs like John Howard Society and the ankle monitoring program while acknowledging the need for assurances and safeguards against tampering.

As a final note, we stressed the need for increased French speaking staff pointing out that some Law Associations such as Prescott et Russell struggle to find staff who can assist them and their clients.

OPEN FORUM WITH THE ATTORNEY GENERAL OF ONTARIO

Our final Open Session was with Ontario’s Attorney General, Hon. Doug Downey, MPP (Barrie-Springwater-Oro-Medonte).

The AG opened with a few remarks noting, impressively, that the Courts have heard over 5 million matters virtually and have invested \$64 million in an effort to fully wire the Courts since the onset of the pandemic measures. He noted that his ministry is committed to seeing through a digital transformation of the justice system and is working to break down barriers. He added that the Ministry of the Attorney General is working with the Ministry of the Solicitor General on prison modernization and bail reforms noting that we should expect more information in the near future as both he and the Solicitor General will meet later this week with the federal Minister of Justice.

The AG was asked about funding commitments to legal aid in the upcoming Budget, reminding him that we need substantial investment in clinics and to certificate funding. Hon. Downey was told that in some areas of the province, the lack of lawyers taking certificates due to the low remuneration is so dire that Ontarians have no choice but to self-represent. The Minister informed us that discussions are ongoing with the Board of Legal Aid Ontario over certificate funding but suggested that funding for clinics requires a province-wide conversation with a goal to improve the clinic system as a whole. Also on the subject of legal aid, we flagged the issue of relying on Law Foundation funding due to the inherent unpredictability of funding. The Minister said that changes have already been made at Legal Aid Ontario to allow them to bank funds to safeguard against interest rate fluctuations.

He addressed a question about the expansion of Unified Family Courts pointing out that this is fully dependent on the appointment of Judges at the federal level and that his government is ready to act. He added that this subject comes up every time he meets with the Federal Justice Minister and that he will do so again this week.

Courthouse staffing and retention was also flagged as an issue, especially in the Ottawa area as Ontario staff are paid, on average, 20% less than their federal counterparts. This has led to people getting hired at the provincial level only to leave soon after for a higher paying job with the federal government. The Attorney General acknowledged this issue and said that his government has taken a first step to address this issue by reclassifying some staff positions, thus moving them to full time positions that come with benefits. He admitted this was just a start and that he continues to work on solutions.

We also pressed on the Attorney General a desire to adopt a “virtual first” initiative, stating that we don’t want to revert back to the way things were before. Much progress has been made since the pandemic and we should be prioritizing remote options for all matters that don’t require either the client or their counsel to physically be in Court.

To address the huge backlog and long delays, the AG was pressed to hire more Judges as soon as possible, to which Minister Downey said that he begins the appointment process as soon as individual vacancies come up.

We also addressed the need for an end-to-end e-filing system and the need to standardize processes and procedures across the province. While this is something that the government is working on (and we are expecting an announcement on an end-to-end system shortly), the AG acknowledged that some systems are a bit more difficult to change. He specifically pointed out that the Writ filing system, which currently requires Writs be filed in each County and can’t, at present, be filed in a centralized location. He cited a number of reasons for this but did say that he would welcome a discussion about this specific issue.

Our final question was about the government’s modernization plans regarding the Family Responsibility Office, which still use outdated technology such as fax machines. The AG said that this was under the responsibility of his cabinet colleague, Hon. Kaleed Rasheed, MPP (Mississauga East—Cooksville), Minister of Public and Business Service Delivery. Minister Downey will speak with him about this and encouraged FOLA to do the same.

WRAP UP WITH REPORTS FROM ALL ROUNDTABLE CHAIRS

We closed the day with Session highlights from each of our Roundtable Moderators so that those participating in Lobby Day for only select sessions could learn about what was discussed throughout the day. We also identified key issues that required follow up.

INDIVIDUAL MPP MEETINGS

In addition to the above Forums and Roundtables, over a dozen participants also met with their local MPP during the day with approximately six additional one-on-one Law Association members arranging meetings later in the week with their MPP. Issues discussed echoed those noted above but these meetings also covered some specific matters as they relate to Law Association members’ local communities.

MEDIA

Immediately following our Lobby Day, FOLA sent out a [Post Lobby Day Press Release](#) and we will be sure to share all articles stemming from our event.

WHAT COMES NEXT

To all those who attended, please be sure to send any relevant follow up materials or questions to Katie at katie.robinette@fol.ca and we will continue to work to get responses to some more in-depth questions.