

# FOLA: Province paying lip service to consultation on critical issues

**By AdvocateDaily.com Staff – May 2019**

The Ontario government's lack of commitment to meaningful consultation is striking another blow to access to justice, says Michael Winward, chair of [The Federation of Ontario Law Associations](#) (FOLA).

[Winward](#), partner with Hamilton law firm [Mackesy Smye LLP](#), says the provincial government has failed to adequately consult stakeholders in a series of initiatives involving justice in recent weeks.

Deep within the April 11 provincial budget, the government introduced legislation that effectively puts a halt to an individual's rights to sue the government through the [Crown Liability and Proceedings Act](#), which would replace the current [Proceedings Against the Crown Act](#), he tells AdvocateDaily.com.

"The bill will make it extremely difficult and, in some cases, impossible, for a member of the public to sue the government in tort," he says. "The new law will make it so challenging and cost-prohibitive that most members of the public won't even try."

There is, however, some expectation that the bill could face a constitutional challenge if it is implemented, Winward adds.

As an example, he points to a recent case handled by his firm in which a client sued the government for not providing him with adequate protection while in jail. The man was severely beaten by other inmates resulting in serious brain injury.

"With this legislation, prisoners or people wanting to bring action against the police or authorities are going to be either denied, or it is going to be exceptionally difficult or costly to do so. It is going to strike at the most vulnerable people we have in not being able to pursue their rights against the state," Winward says. "Their rights of action would be taken away by this legislation, and there was no consultation on this whatsoever, it was just buried in the budget."

FOLA, which advocates for a better justice system that recognizes the crucial role lawyers play and how the legal profession is critical to the functioning of Ontario's economy, its social fabric and its democratic institutions, outlined issues of concerns at its May 2019 Plenary session with law association presidents.

Winward says other areas where there was no notice or consultation was the 30 per cent cut in legal aid funding and the withdrawal of financing in refugee and immigration cases.

“It came down like a guillotine. It’s obviously another significant blow to the most vulnerable people in Ontario,” he says.

When the government called for a stakeholder consultation meeting on auto insurance reform in early May it provided just five days’ notice, considered not adequate for the stakeholders to prepare presentations and free up the time in their busy schedules, Winward says.

“It wasn’t really good faith consultation when they provided inadequate notice,” he says. “If they’re going to consult, then they should allow sufficient opportunity for stakeholders to prepare and make any necessary changes in their commitments, possibly consult with their boards, so the consultation is meaningful, informed and as effective as possible. By not doing that, they’re consulting in name only.

“All of this demonstrates a pattern of this government either not consulting at all on very significant public policy justice issues or, if they do, it’s not a consultation that’s conducted in good faith,” Winward says.

“It behooves the government to act in good faith when they’re going to make significant policy decisions, particularly those that affect the most vulnerable people in Ontario.”

In contrast, legal regulator the Law Society of Ontario has been reaching out in a comprehensive manner seeking feedback on its efforts to facilitate access to justice, Winward says, adding that the government’s approach signals that it has little interest in addressing issues that have been identified as major societal and legal concerns.