

LEGAL AID TALKING POINTS - FOLA 2023

MAIN ASKS:

- The province's financial commitment to Legal Aid Ontario should be increased from \$350M to \$480M annually to support desperately needed investments in legal aid: This level of funding would bring the government's commitment to legal aid back to the levels outlined in the 2014 provincial budget
- 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
 - Increase the availability of duty counsel, to improve the service level and functioning of the legal system
- Making the \$52M funding commitment from the 2022 Budget, where the province committed to provide funding to LAO in the event of a shortfall of Law Foundation revenues, permanent
- Invest in technologies that will save the system money, include equipping jails and detention centres with zoom capability to allow for virtual hearings without having to transport inmates to and from court for small matters

TALKING POINTS

- FOLA strongly believes that the private bar and our legal aid clinics are the foundations for the provision of legal aid services in criminal and family law as well as mental health
- Instability of LSO Foundation financing of LAO and corresponding need for government intervention
- The need for government intervention to control LAO financing stability
- LAO's hourly rates have not changed since 2015
- COVID factors - increased needs for private bar lawyers to address delayed court cases and to avoid court users absent representation which only feeds into delay and enhances taxation of court resources
- Update LAO billing to allow for virtual resolutions
- No public benefit to charges being stayed; it's better for government to adequately budget financing for LAO
- It's better for society that cases are adjudicated on merits - not to delay applications
- LAO risks losing seasoned counsel by continuing to fail to properly compensate counsel (these are not indexed to cost of living increases, let alone increased overhead costs)
- Need to address the challenges of attracting young lawyers to the rosters
- LAO expects quality work and is implementing base minimum standards for lawyers, but LAO needs to provide adequate tariffs to ensure lawyers achieve competency of service for the public - the hourly rates have not changed since 2015!
- The Government's \$72 million to Crown/Court operations for new hires has led to an imbalance of justice
- LAO is on a trajectory towards expansion of more expensive unionized staff lawyers as

private roster members are losing ground

- Improve transparency in the way in which certificates are approved or denied
- Lawyers, who care more about their clients and the court system, often do the work necessary on behalf of their clients, are punished by undue bureaucracy when trying to get reimbursed by LAO. For example, when requesting discretion to be compensated for time already worked (and at a much reduced, fraction of the lawyer's true hourly rate value) LAO uses the wrong test to assess payment to these diligent lawyers by subjectively claiming a reasonable person of modest means would not pay for the lawyer to do (ie: reading all witness statements). The test should be about what a competent lawyer in similar circumstances would have reasonably done. The current test is overly broad and subjective. It also fails to look at fulfilment of LSO rules of Professional Conduct Standards.

KEY POINT TO LEAVE ON

As members of FOLA and our Law Associations, we want to work with you to help with any policy initiatives impacting justice. Failure to properly finance private bar lawyers through a healthy LAO certificate program results in spin-off costs of added time in court, policing costs, Crown resources poorly used and a corresponding cost to society taxpayers given delay.

RESOURCES

1. [Legal Aid Services Act 2020](#)
2. [LAO Rules & Policies](#)
3. [LSO Consultation Policy](#)
4. **Financial Sustainability issues and Law Society Funding:** Note that as per the LSO Act, one of the Obligations of the LSO is to fund Legal Aid through the Law Foundation and that regarding the application of funds, the "board shall apply the funds of the Foundation for such of its purposes as the board considers appropriate, but at least 75 per cent of the net revenue received in each year under clauses (2) (b), (c) and (d) shall be paid to Legal Aid Ontario. 1998, c. 26, s. 106 (1, 2); 2006, c. 21, Sched. C, s. 72 (2); 2020, c. 11, Sched. 15, s. 56." (<https://www.ontario.ca/laws/statute/90l08>- Section 55)
5. **The Alliance for Sustainable Legal Aid (ASLA):** FOLA is a member of ASLA, which is a group of representatives of various legal service providers all reliant on LAO funding to some extent. The group meets approximately once a month to discuss common areas of concern and is currently reviewing LAO's Rules and Policies as well as sustainable funding.