



FOLA-LAO Report, Fall Plenary, 2022

The situation for the private LAO Certificate Lawyer continues to be dismal at best. This is acknowledged by the Federation of Ontario Law Associations. We have heard your pleas of frustration.

There has been no tariff increase nor hourly rate increase for certificate work in over seven years. Since the last Fall and then Spring Plenaries: Nothing has changed, despite our efforts to serve your needs.

FOLA continues to actively participate with the Alliance for Sustainability of Legal Aid along with others stakeholders.*

FOLA also persists in advocating to LAO and to MAG. Whether it's an informal discussion with the chairman of the board Steve Pengelly to meetings with David McKillop's replacement Aileen Page (LAO Vice President, Strategy and Public Affairs) & Lisa Bernstein (LAO Lead, Justice Partners Relations) - your voice matters and is being expressed.

LSO Law Foundation revenues form a significant portion of the operating revenues of LAO. The 2019–2020 timeframe saw approximately \$90 million transferred to the budget of LAO representing some 20% of the total LAO operating revenue.

The time span of 2020–2021 saw a significant drop in the LSO Law Foundation contributions. Interest-rates were down and the real estate/civil levy revenues were down. Investment income was down. The result was a reduction of approximately \$30 million. Simple math: a decrease of \$60 million from one year to the other.

In combination, with the Foundation financial issues, the provincial government had cut \$130 million to legal aid in 2019.

Needless to say there have been significant negative impacts on Legal Aid Ontario. The financial shortfalls have resulted in reductions to services on offer.

These significant financial hurdles have obviously impacted the realities where the private bar lawyer has seen no increase in compensation, although well deserved.

We all appreciate that the standard cost of living has gone up. Overhead costs to run a law office have only increased both in terms of rent, utilities, supplies and staffing costs

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to name only a few expenses. The pandemic has seen significant hikes in the cost of living overall.

In the balance, there has been no increase to compensate the private bar lawyer completing certificate work.

In fact, LAO has implemented new standards for admission to panels and standards to stay on panels. The demands are great.

LAO has also revamped the online billing process creating significant extra administrative work for the private bar certificate lawyer to complete in order to be reimbursed. The degree of information required is often prohibitive to the ability to designate the task to a staff member. It is appreciated that this further burden taxes the practising lawyer, especially in the context of the LAO time constraints on mandatory billing deadlines.

LAO has also revamped their certificate online amendment process, once again with significant additional information being required. This is a hurdle to the practising certificate lawyer to delegate to staff and again this demands personal attention by the lawyer to manage the practice of law when utilizing a legal aid certificate for funding.

Significant extra administrative work must be done by private bar certificate lawyers, beyond the practice of law. Meanwhile, the administrative surcharge has been removed from all LAO certificate payments and legal counsel cannot bill LAO for any phone calls or correspondence or time spent on the LAO administrative tasks. In short, the time necessary to complete LAO administrative tasks has increased with zero compensation to the practising lawyer.

All of the above is appreciated by FOLA. We have heard your concerns.

It is worthy of note that in 2021–2022 the province of Ontario transferred \$50 million to Legal Aid Ontario to allow operations to continue.

The questions are:

Now what?

What is next?

How can LAO have meaningful sustainability in this economic climate?

Timing continues to be critical - as it is apparent that LAO will not be able to offer stable legal aid service to eligible applicants without an increase in funding.

The questions continue:

Where will that money come from?

How do we access it?

LSO has shared with me, as your FOLA Chair, the realities of self representation within the judicial system, as follows:

50% of the participants in Family Court are self represented.

80% of matters in urban centres are self represented.

Civil and Appellate Courts now see up to 40% of the individuals attending as self represented.

Unfortunately, statistics on the criminal law side were not on offer.

We are told that “litigants are unable to retain and sustain lawyers due to a lack of funds”. We are told that a 2013 National Self Representative Litigants Project, saw 53% of self represented people began their case with the services of a lawyer. We are told that a 2017 similar study found an increase to 68%.

Historically the federal government, over 25 years ago, contributed 50% of the cost of legal aid but today that number is closer to 25%. There is no long-term funding commitment from the Federal Government with regard to immigration and refugee legal aid funding. Commitments are made one year at a time.

We are told that it is becoming increasingly difficult to convince lawyers to take immigration and refugee bar certificates due to the long-term instability.

Many family law practitioners refuse LAO Certificate Work.

I asked LAO representatives about criminal law and I was informed that: criminal defence lawyers, as stated according to LAO, are still entering the practice of certificate work and senior counsel apparently are not exiting the practice. FOLA has not seen any actual statistics but LAO maintains statistics and we are told LAO is apparently not concerned with the availability of private bar members willing to take criminal law certificates.

As long as there are lawyers willing to do the work, with no pay increase in over seven years, then I guess there is no incentive for LAO to remedy a broken system that appears from the inside perspective not to be broken.

As your FOLA LAO chair, along with Executive Director Katie Robinette, we have invested countless hours attending meeting after meeting after meeting. Letters have been sent to lobby both levels of government. Active engagement in subcommittees with ASLA have been undertaken.

As your FOLA LAO Chair, I wish to be the voice of the practising certificate LAO lawyer and I am thinking it is now time for us to step up our joint efforts.

I ask you: What do we do?

All of the stake holders for the sustainability of legal aid are at the same impasse.

The Ministry of the Attorney General has significantly increased funding to the Crown offices and courts without any corresponding funding increase on the defence side. That MAG commitment is identified as 72 million dollars over the next two years to hire new Crowns and staff.

Executive Director Katie Robinette and I need to hear from you. We need you to send in your life experiences. We would welcome your suggestions as to how we may improve our lobby with MAG.

We want to hear from you. As we are rolling out of this pandemic into what's called post pandemic days, now is the time to find the money to support LAO.

The courts are significantly backlogged and funding lawyers will help with the issue of self representation. Government investment has a large return when the monies are placed into legal aid services. It has been suggested that the rate of return on investment in justice services and such programs is between 9\$ and \$16 Canadian for every one dollar spent by the government.

Please, send your stories from the practice and your suggestions as to solutions.

To properly be your voice, we need to hear from you.

Remaining faithfully in your service,

Terry L. Brandon
FOLA LAO chair

*other stakeholder membership organizations, participating with ASLA are:

Association of Legal Clinics of Ontario

Criminal Lawyer's Association

Family Lawyer's Association

Law Society of Ontario

Ontario Bar Association Refugee Lawyers

The Advocate's Society

The Mental Health Legal Committee

