

F.O.L.A. Legal Aid Report for May 2019 Plenary - Terry Brandon, FOLA Legal Aid Chair

Further to my Report for the November 2018 Plenary, as most, if not all Ontario lawyers appreciate, on April 11, 2019 Queen's Park released the 2019 Ontario Budget resulting in an unanticipated significant impact on the finances of Legal Aid Ontario [L.A.O.]. It was the first budget released by the Ford government since being elected in June 2018.

In particular, a 133-million-dollar reduction in the L.A.O. budget for the upcoming 2019-2020 year was imposed, with a further budget cut of 164-million-dollars in the 2020-2021 year. Worth note is that L.A.O. commenced the new fiscal year on April 1, 2019 without consideration or anticipation of such drastic reductions in funding. In brief, we are told by L.A.O. executives that for 2019-2020, \$456 million was expected but L.A.O. will now receive \$323 million.

Furthermore, the provincial government mandated that L.A.O. was no longer to fund refugee and immigration law services with money from the provincial government nor money from the Law Society of Ontario Foundation funding, but rather to use solely funds from the federal government. Obviously, the federal government revenue source is not currently adequate to absorb these additional expenses.

The full impact of these shifts in financing is not known.

Your F.O.L.A. executive met, in Toronto, on the morning of April 11, 2019 but without the benefit of the budget information. Katie Robinette, Executive Director of F.O.L.A., was carefully monitoring and reporting the budget developments to the Board later that same day. As your L.A.O. Chair, I too was monitoring these developments.

F.O.L.A. is an active participant in the Alliance for the Sustainability of Legal Aid [A.S.L.A.]. Other member organizations include:

Association of Community Legal Clinics of Ontario  
Criminal Lawyers' Association  
Family Lawyer's Association  
Law Society of Ontario  
Ontario Bar Association  
Refugee Lawyers Association  
The Advocate's Society  
The Mental Health Legal Committee

This group met at the Law Society of Ontario [L.S.O.] on April 16, 2019. Some member representatives attended in person and others by teleconference. Both Katie Robinette (F.O.L.A. E.D.) in person and I, by teleconference, attended on behalf of our membership.

Needless to say, the focus was on the budget. All member groups expressed dismay and frankly, shock.

You should know that in advance of the budget release A.S.L.A. met on February 11, 2019 and there was an active discussion about expectations and anticipations with respect to the upcoming budget.

Representation from L.A.O., consisting of David McKillop Vice President, Policy, Research and External Relations and Kathleen Murphy, Director of Communications and Stakeholder Relations, did attend for a portion of the February meeting to update all stakeholders as to L.A.O. thoughts and status. Even with this extra input, no one predicted the eventual reality.

In advance, of the stakeholder portion of the April meeting, L.A.O. representatives returned to update us as to the current state of affairs. Thereafter, a vibrant discussion was held. Competing interests of the L.A.O. clinic side and the certificate side almost sent us into a Lord of the Flies scenario. Ultimately, looking at the greater, unified good, a course of action consisting of a letter writing campaign was agreed to and correspondence was drafted and circulated to the stakeholder representatives by email for review and individual organization approval.

Lenny Abramowicz, as Chair of A.S.L.A. executed the letter to the Honourable David Lametti, the Minister of Justice and Attorney General of Canada, with a goal being to assure L.A.O. of full funding for immigration and refugee law while pursuing a constructive resolution of the dispute with the province. Concern about the impact on refugees and immigrants was stressed. The desire to work together to reach a solution was stated.

Correspondence was also sent to Mr. Charles Harnick, Q.C. to congratulate him on his new position as Chair of the L.A.O. Board of Directors and an urgent plea was made welcoming a meeting to discuss the current budget issues and to work for sustainability of L.A.O. services.

Lastly, two separate items of correspondence were sent to the Honourable Caroline Mulroney, Attorney General of Ontario. The first identified the "vital role" of L.A.O. with services to "individuals in the most dire circumstances" and the impact on L.A.O.'s capacity to serve given the "significant funding cut." It was stated that: "Not only will vulnerable Ontarians be denied the legal recourse they deserve but the entire administration of justice could be thrown into disarray." An urgent request was made for a meeting to discuss these matters. The second letter addressed issues specific to "the elimination of funding for refugee and immigration law services." The plight of the vulnerable individuals affected by the budget cuts and the need for immediate restoration of funding was detailed. Again, a meeting was requested, at the same time as the other meeting sought, to discuss all issues.

These four letters dated April 29, 2019 do not have any known reply, to the author of this report, as of May 3, 2019. But as your L.A.O. F.O.L.A. Chair, I am keen to monitor the situation and to serve as your eyes and ears but also to advocate where needed.

A follow-up A.S.L.A. meeting was held on May 1, 2019 and again I attended, as did E.D. Katie Robinette and your past F.O.L.A. L.A.O. Chair Jane Robertson. We three, on teleconference, participated as the various representatives of the participating organizations shared their thoughts about how each group may individually tackle this significant issue. Subsequently, a

drop box link was shared on May 2, 2019 by Lenny Abramowicz to allow each stakeholder to share their activities.

This takes us to our current position, sitting on the heels of our upcoming Plenary next week.

Your voice matters and I welcome your input: [terrylbrandon@sympatico.ca](mailto:terrylbrandon@sympatico.ca).

In terms of L.A.O.'s response, David Fields as President and C.E.O. of L.A.O. immediately (after the April 11, 2019 budget) announced that L.A.O. would no longer fund refugee and immigration law services outside of transition costs. L.A.O. states that it plans to stay within the federal funding envelope but, of course, is also seeking enhanced federal funding. The current estimate is \$13 to \$16.5 million of federal funds for new services this fiscal year. Prior to the cuts, the budget was \$30 to \$34 million for 2019-2020 for refugee and immigration certificates and staff services. A stated commitment to honour current outstanding Certificates was made.

We are advised by Kathleen Murphy on April 13, 2019 that David Field's L.A.O.'s forecasted revenue last year was \$495 million. From the province after a \$44 million claw back was money in the range of \$391 million dollars. The anticipated 2019-2020 provincial side from the budget last year was \$456 million. This included a \$20 million increase based on financial eligibility (up to \$106 million from \$86 million). Before the April 2019 announced Budget, L.A.O. anticipated a budget of \$562 million (with the financial eligibility enhancement included). The sum is now reduced to \$445 million. The anticipated deficit is \$53 million.

Enhanced Law Foundation revenues are factored into this calculation to reduce the deficit.

Kathleen Murphy further told us that L.A.O. cannot reconcile the Provincial Government L.A.O. numbers to the L.A.O. statistics on hand.\*

It is F.O.L.A.'s good fortune that Mr. Fields is planning to attend our May F.O.L.A. Plenary and to address the current status of L.A.O. and to open the floor for questions. My oral report will be cancelled to grant more time to you with Mr. Fields.

In closing, on a personal note, I encourage everyone who is impacted by the fear factor of changes in our L.A.O. financing to stay brave and true to your calling as a lawyer. Join whichever stakeholder group best represents your sentiments and seek a voice. In the meantime, let us keep our eyes on our duties and responsibilities and the greater good for our clients. Once again, as in the past, I thank F.O.L.A. for placing your trust in me and I look forward to continued service in the year to come.

Terry L. Brandon

L.A.O. F.O.L.A. Chair & South-West Regional Representative

\* Following the original posting of this article, it was brought to FOLA's attention that David Field has now indicated that *"we can confirm that the numbers cited by the Ministry of the Attorney General are as reported in our Annual Reports prepared by LAO and published online. Any discrepancies can be attributed to an unreported change in the way that LAO reports on certain court-based services."*

*Post Script: Not to detract from the more serious and pressing issue above, I do wish to report that Nathan Baker and I as Board members are volunteering on two separate L.A.O. Advisory committees. Respectively, we are serving on the Youth Panel Standards Advisory Committee and the Mental Health Panel Standards Advisory Committee. If you have comments or questions, please, let us know. Your input is always welcomed.*

*On the issue of Budget cuts and L.A.O., I also did attend (along with E.D. Katie Robinette) an L.A.O. Emergency Stakeholders Meeting on April 17, 2019. It was at the invitation of Mike Belmore of the Society of United Professionals. As the L.A.O. Chair for F.O.L.A., I had not previously been in contact with this group. Dozens of individuals attended a dinner with many more teleconferencing in. It was incredibly hard to participate and to hear by telephone as there were some technical difficulties. The representation appeared to span a large array of interested parties. The purpose was expressed as the organization of a response to the budget cuts. I have heard nothing more since the meeting but my email contact information was provided.*