



2018-2020
EXECUTIVE

FOLA Legal Aid Report for November 2019 Plenary

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Further to my [May 2019 Plenary report](#), I am including a copy of the [interim report](#), released by FOLA on Thursday August 22, 2019, as it contained a significant update to our membership. I encourage you to review that document, if you have not already done so.

In brief, post the April 11, 2019 Queen's Park release of the Ontario Budget resulting in an unanticipated 133-million-dollar reduction in the Legal Aid Ontario budget for the 2019-2020 year and the further announced budget cut of 164-million-dollars in the 2020-2021 year, FOLA immediately recognized the need for increased monitoring of the situation and also the need of an enhanced active participatory role for FOLA. FOLA Legal Aid interests were previously overseen by one individual. In recent past years Jane Robertson held the title of Legal Aid Chair and I, Terry Brandon, took over a few years back.

The FOLA executive immediately and without hesitation, responded by striking a five-member Legal Aid Committee. This committee consisted of Katie Robinette, as the hired Executive Director for FOLA. Jane Robertson (the current FOLA Treasurer and past FOLA LAO Chair) returned with the then FOLA Family Law Chair, now Honourable Madam Justice Valerie Brown of the Ontario Court of Justice, to protect and contribute on the family law side of the LAO crisis (as some have called the current state of affairs). It should be noted that Sam Mishael has now assumed the FOLA executive role of Family Law Chair and is a welcomed addition to this committee. On the criminal side, Nathan Baker, the FOLA Criminal Law chair joined the LAO Chair, me (a practicing criminal defence lawyer of over 25 years' experience) to jointly advise of the impact of these budget cuts on the practice of criminal law and to advocate on behalf of all practitioner interests herein.

FOLA has been actively engaged with the Alliance for the Sustainability of Legal Aid [ASLA]. Typically, a single executive member is designated to sit on this alliance. However, historically FOLA has had both the Legal Aid Chair and the Executive Director so engaged. Since the budget cuts, FOLA's former Legal Aid Chair, Jane Robertson, has returned to attend at ASLA meetings, bringing with her many years of experience which is much needed and appreciated during these days of transition and change.



WE remind our membership that participation on ASLA joins FOLA with the below list of other member organizations:

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

As an alliance we, at ASLA, have consulted and collaborated with representation from LAO. Joining a portion of ASLA meetings there have been attendees from LAO; including, David Fields, President & Chief Executive Officer, David McKillop Vice President & Executive Director of Policy, Research and External Relations and Kathleen Murphy, Director of Communications and Stakeholder Relations, along with, more recently, Mr. Charles Harnick Q.C., Chair of the LAO Board.

You may recall from the May LAO Plenary Report, that a course of action consisting of a letter writing campaign was being launched and included was a letter of congratulations to Mr. Harnick on his new position. ASLA has moved communications well beyond a simple congratulatory letter.

You may also recall that two separate items of correspondence were sent to the Honourable Caroline Mulroney, Attorney General of Ontario. Both sought a meeting. None was to be had.

However, the Honourable AG Mulroney's replacement, The Honourable Doug Downey has appeared more receptive. As outlined in FOLA's August LAO Report, Attorney General Doug Downey met with ASLA on August 14, 2019 and permitted each stakeholder group an opportunity to speak. During that meeting, FOLA lent support to the Family Lawyer's Association and to the Criminal Lawyer's Association. FOLA stressed the importance of the private bar within these practice areas and the maintenance of adequate funding within the Certificate program. The negative impact of the Provincial Government's funding cuts was the paramount message that FOLA delivered on your behalf.

Also as detailed in the August FOLA LAO Report, on August 15, 2019 LAO Chair Charles Harnick Q.C., held Roundtable discussions regarding Legal Aid modernization and the pending government review of the Legal Aid Services Act. There were three roundtable discussions consisting of criminal law, refugee & immigration law and Family law. FOLA



had representation present at each session. Again, greater details are set out in the earlier aforementioned report.

Furthermore, since this most unusually busy August, FOLA has continued to actively engage, on behalf of our membership. The issue of amendments to the Legal Aid Services Act is a significant area of concern. The government's anticipated timing is unknown but thought to be imminent. ASLA originally, collectively, were fearful of a complete overwrite of the legislation. It is thought that this is no longer the state of affairs but only time will confirm if this more positive thinking is correct.

ASLA meetings typically last two hours and further to the August LAO FOLA report, your ED Katie Robinette (in person) and I (by teleconference) have attended on September 8 and I alone (by teleconference) on October 22, 2019. Weekly teleconferences monitoring the federal election were held on September 25 and October 2, 9 & 16. Once again, I attended all and our ED some.

These meetings have resulted in ASLA formally sending correspondence to the Honourable Doug Downey Attorney General as of October 25, 2019. The submissions therein encourage the independence of LAO from the government and supports a "mixed service model" of private bar and clinic services, including duty counsel. ASLA denotes the private bar as leading the delivery of family and criminal law services and a suggestion that mental health law services be added. It is identified that duty counsel is important to provide same day services but ASLA suggests that "duty counsel only be used where there is a gap in services or where certificates are not available." ASLA strongly supported the maintenance of community legal clinics to assist marginalized groups within the province's communities.

Quality control issues were addressed with ASLA supporting an ability for LAO to self-monitor and govern in terms of removing lawyers from panels temporarily pending remediation or permanently. These were noted as being for serious transgressions. ASLA encouraged the engagement of lawyers to assist in the development of such quality assurance programs.

ASLA did encourage MAG to modernize the administration of criminal law, as has been done for civil law.

In closing, ASLA stressed "that adequate and stable funding for legal aid is essential and must remain a priority." A desire to meet and to discuss issues raised was extended.

FOLA, individually submitted submissions on the potential amendments to the Legal Aid Services Act and stressed that the reference to lawyers as the primary service provider remain. Many concerns have been raised by our lawyer membership about any legislative change in the Act to include paralegals. Such a shift in the Legal Aid Services Act would then allow LAO and potentially could in turn see certificate work going to



paralegals by right. FOLA represents lawyers. Within ASLA, as an alliance, this position could not advance as the Law Society represents paralegals and lawyer interests. Expansion of practice scope and areas of practice is a strong movement within the realm of the LSO benchers. The LSO could not support a stated position to not expand the legislation to include paralegals. FOLA could do so and did. Your local association membership is important to allow us to advocate for you, the lawyer.

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

As I always say: Your voice matters and I welcome your input:

terrylbrandon@sympatico.ca.

In closing, on a personal note, I repeat the closing of the May Plenary Report by encouraging every lawyer who is impacted by the fear factor of changes in our L.A.O. financing and, I now add, the anticipated legislative changes to the Legal Aid Services Act to stay brave and true to your calling as a lawyer.

Know that the various stakeholder groups are active, and the Alliance for the Sustainability of Legal Aid is more engaged and active than in recent years gone by. I encourage you to seek a voice within which ever stakeholder group best represents your practice areas and concerns.

Know, however, that membership in your local Law Association carries membership in the Federation of Ontario Law Associations and representing over 12,000 members of the practicing Bar we do have a role to play with the government and the Alliance.

FOLA is concerned for all lawyers and to that end FOLA executive members will be attending at the Provincial Legislature on February 20, 2020 to represent you the practicing lawyer. Please, as a President or Board member of a local Association, seek input from the Bar and provide to it me. As your Legal Aid Chair, I need information about the budget cut impacts on the public/the clients. I require not broad generalities but specific cases where justice is failing the public. We need examples from the courtroom and on transcript (dates & times). FOLA does care. FOLA wants to represent the lawyer interests and to lobby for the practicing Bar but success rests by demonstrating the impact on the public not lawyers. Your help is needed to make a difference. Again I invite you to write to me: terrylbrandon@sympatico.ca.

In the meanwhile, as always, I thank you as a member of the Federation of Law Associations, for placing your trust in me and I look forward to continuing to serve FOLA in the year to come.

Terry L. Brandon
FOLA Legal Aid Committee Chair &



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"The Voice of the Practising Lawyer in Ontario"

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