



FEDERATION OF ONTARIO  
LAW ASSOCIATIONS

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DU BARREAU DE L'ONTARIO

### **Legal Aid Update - August 2019 - FOLA**

FOLA has been busy this month with a series of important meetings with both the Attorney General and the Chair of Legal Aid Ontario. Below is a brief overview of those meetings.

#### **1). Association for the Sustainability of Legal Aid (ASLA) meeting with Ontario's Attorney General at the Ministry - Aug 14, 2019**

FOLA Executive Director Katie Robinette attended in person while FOLA LAO Chair Terry Brandon was present by teleconference to discuss the recent cuts to Legal Aid Ontario and the upcoming review of the Legal Aid Services Act.

##### List of organizations at the table:

Chair of Legal Aid Ontario  
Legal Aid Ontario staff  
Attorney General of Ontario  
Minister's staff  
Law Society of Ontario  
Refugee Lawyers Association  
Criminal Lawyers Association  
Association of Community Legal Clinics of Ontario  
Ontario Bar Association  
Advocates' Society  
Mental Health Legal Committee  
FOLA

Each stakeholder group presented 2-minute oral submissions for consideration by the Attorney General and, given the short amount of time offered to each, the Minister did welcome additional written submissions as follow up.

FOLA stressed the negative impact that these cuts have on the public, plus the resulting negative impact on the operation of the judicial system. We also stressed the importance of both the role of duty counsel and the certificate program. FOLA echoed many comments put forward by the Criminal Lawyers Association and the Family Law Lawyers Association, as our members overlap and the concerns regarding legal aid are shared.

These comments included:

The cuts are already leading to an increase of self reps;

They are indirectly impacting women and children;

The recent cuts are leading to even more unbalanced proceedings where one party has a lawyer and the other does not; and

Cuts are going to lead to increase in costs elsewhere in the system (mental health, social services).

On hearing the various submissions, the Hon. Attorney General Doug Downey expressed a desire to know not only the impact of the budget cuts but also the solutions that may be available within the limited resources that we have as a government/society. He added that there are many challenges within the system that need to be tackled.

Regarding the modernization and review of the Legal Aid Services Act, it was explained that the modernization process is being managed by both Legal Aid Ontario and the Ministry of the Attorney General. Of note is the fact that the Act, as it stands, is outdated (it was passed in 1998). LAO and the MAG are working in cooperation on this initiative and legislation is expected in Fall 2019.

All those interested in providing input should do so at the earliest possible opportunity to ensure that both LAO and MAG can review in advance of the pending legislation. Note that the Minister would not commit to an exact date for either submissions or legislation.

ASLA closed the meeting by officially requesting that next year's anticipated budget cuts be cancelled.

**2). Legal Aid Ontario Roundtable discussions with LAO Chair, Charles Harnick - Aug 15, 2019 regarding legal aid modernization and the review of the Legal Aid Services Act.**

Three separate meetings of stakeholders were held: Criminal Law; Refugee & Immigration Law; and Family Law. FOLA was represented at all three meetings. LAO Chair, Charles Harnick chaired all three meetings and all three were attended by Ontario's Attorney General.

Each session was Q&A style meetings with common questions at all three sessions including possible improvements to the tariff system, ease of access for the public, and quality assurances/measurement. The single biggest theme from the attendees at each discussion was the need for technological improvements in all areas of Ontario's justice system. LAO mentioned, at each session, the need to improve its ability to remove panelists (arguing that the authority should be vested with Legal Aid Ontario rather than within the legislative framework as it exists now). In fact, more autonomy for LAO to execute its mandate within its funding envelope was a common need from LAO staff and chair. LAO perceives itself to be too restricted through the legislation to be as agile as it wishes to be to amend processes and procedures.

Chair Charles Harnick welcomed further thoughts in the form of a brief or simple email by Sept 6<sup>th</sup>.

A) Criminal Law:

FOLA Executive Director Katie Robinette, in person, and LAO Chair Terry Brandon, by teleconference, were able to participate in the hour and a half Criminal Law panel.

Complete list of stakeholders in attendance:

Chair, Legal Aid Ontario  
Legal Aid Ontario Staff  
Legal Aid Ontario Board Member, Christa Freiler  
Attorney General of Ontario (MAG)  
MAG staff  
Law Society of Ontario  
Toronto Lawyers Association  
The Advocates Society  
Superior Court of Justice staff  
Ontario Court of Justice staff  
Legal Aid Ontario  
Ontario Bar Association  
Criminal Lawyers Association  
Federation of Ontario Law Associations  
Defence Counsel Association of Ottawa

This meeting opened with the LAO Chair asking the room what concerned them the most regarding legal aid and criminal law.

Of note, the CLA mentioned that there were far too many minor offences making their way through the system. This led the Chair to ask if there was a role for LAO to play in running a diversion program. Although there were no strong opinions one way or the other, it was noted that such a program could add to the workload of duty counsel. Access to Criminal Panel lists and the private bar was questioned (LAO lists are very out of date). This led to a discussion about the need for better administration and technological improvements at LAO.

This then segued into a discussion about quality control and how this can be better be ensured. One suggestion from the room was the applicability of a peer review system and the need for improved access to training programs and CPD.

Regarding tariffs, comments included the fact that the processes and tariffs don't currently line up and suggested the need for LAO to ensure the tariffs better reflect the reality of practice. Regarding cases not going to trial, FOLA suggested that an expansion of eligible cases within the mid-case management regime would be beneficial as requests for discretionary increases post-services are typically unsuccessful or inadequate.

It was suggested that lawyers be allowed to file applications on behalf of clients since they often do not file properly themselves or may be constrained by mental health issues; the Chair of LAO seemed amenable to this change. Other suggested changes to the application process included enabling the application process to start at the courthouse as well as providing the ability to flag other issues (refugee/family) at the start of application process.

Of final note, many stressed that budget cuts to one area of the judicial system simply result in an increase in service demand in another branch of government, resulting in no real savings and possibly even increased costs.

B) Family Law:

FOLA Executive Director Katie Robinette was in attendance while the Family Law chair, Valerie Brown participated by teleconference.

Complete list of stakeholders in attendance:

Legal Aid Ontario Chair  
Legal Aid Ontario staff  
Legal Aid Ontario Board Member, Christa Freiler  
Attorney General of Ontario (MAG)  
MAG staff  
Ontario Assn of Child Protection Lawyers (OACPL)  
Law Society of Ontario  
Ontario Bar Association  
Ontario Court of Justice staff  
Superior Court of Justice staff  
Chief Justice of the Ontario Court staff  
Association of Family & Conciliation Courts - Ontario  
Riverdale Mediation  
Federation of Ontario Law Associations  
Domestic violence advocate

Aside from technological improvements (courthouse technology, increased opportunities for e-filing, offer more options for remote access) and improvements to the tariff structure, allowing certificate and duty counsel to work together (especial per-diem duty counsel) and giving lawyers more autonomy in case management within the funding structure were the biggest concerns with the existing system. Notably, lawyers should have better access to funding earlier on in the case. The need to “front-end” services to clients cited as a necessity that could also assist in preventing more cases from going to trial. Also mentioned as ways to assist in pre-trial work and/or trial prevention was the funding of motions and early-stage expert reports.

Regarding the ability of LAO to better ensure quality of service to the public, it was suggested that improvements be made to LAO's memos (which are a little out of date and difficult to search) and website (make it more user-friendly), as well as improve access to domestic violence and child protection training.

C) Immigration & Refugee Law:

FOLA Executive Director Katie Robinette attended in person while FOLA LAO Chair Terry Brandon was present by teleconference. Note that FOLA did not contribute to this conversation. Rather, we attended as observers only.

Complete list of stakeholders in attendance:

Legal Aid Ontario Chair  
Legal Aid Ontario staff  
Legal Aid Ontario Board Member, Christa Freiler  
Attorney General of Ontario (MAG)  
MAG staff  
Canadian Association of Refugee Lawyers (CARL)  
Refugee Lawyers Assn (RLA)  
Ontario Bar Association  
Federation of Ontario Law Associations  
Mennonite Coalition for Refugee Support (Kitchener)  
Matthew House (Toronto)

LAO Board Chair Charles Harnick was pleased to announce that the federal government had made a one-time funding commitment of over \$25 million to offset the deficit for this year given the provincial budget cuts to refugee and immigrant legal aid and shared the now announced news that, as a result, LAO would restore funding to pre-April 15, 2019 levels (when certain services were suspended) as of the following day (Aug 16, 2019). For Refugee Protection Division matters, while coverage remains the same, the way LAO authorizes it has changed for an interim period - they would now issue a Basis of Claim-alone certificate and a second nine-hour certificate for the RPD hearing. Clients who received a BOC preparation-only certificate between April 15, 2019 and August 16, 2019, would now also be eligible for a RPD hearing certificate.

President and CEO of Legal Aid Ontario, David Field, advised that certificates will issue over the course of the next year with two stages to the process. Clients would be required to reapply at the 2<sup>nd</sup> stage. LAO did note that they would consult with stakeholder groups moving forward to ensure that this is the most effective method over this interim period.

The meeting then followed the same Q&A format as noted above. This group immediately cited the need to settle the constitutional debate with the federal government over jurisdiction of funding and the need to ensure stable, sustainable funding.

This room tended to be quite pleased with the existing system and shared that the quality of service is generally quite high. It was suggested that the LAO re-introduce a mentor program, to which idea the LAO Chair seemed amenable as long as long as administration costs are kept to a minimum).

Regarding tariffs, the room shared similar concerns to those in other meetings noting that LAO should always be asking itself if the tariff adequately recognizes the needs of the practice. Also, the need for less bureaucracy and barriers to responding to a discretionary request is critical to ensure lawyers are best able to serve their clients.

Access to local services is critical and this is also true when it comes to refugee clinics, which are currently scarce in most communities across Ontario. Refugees and immigrants are frequently in a bind regarding the need to move outside of urban centers due to high rents vs. maintaining access to legal (and other social) services. Use of technology and remote or part-time satellite refugee clinics was suggested as a solution.

The room (including the LAO Chair) also seemed to agree that test cases play an important role in the LAO system. This acknowledgement is, of course, in light of the recent cuts to test case funding.

Again, the application process was identified as problematic.

## **CLOSING:**

The modernization of legal aid and the LAO/Ministry's review of the Legal Aid Services Act is, as we can see from these Roundtables, underway and, while no firm date has been offered as to the legislative timetable, LAO has asked that all comments and submissions be sent to their attention no later than September 6<sup>th</sup> 2019.

In advance of FOLA's submission, we are once again requesting your individual or association input and commentary about the statute. What are your thoughts, concerns, suggestions?

The FOLA Legal Aid committee next meets on August 28 to discuss our position on the LASA amendment issue. Your input is welcome and most appreciated. Please, write to the Executive Director Katie Robinette at [katie.robinette@fola.ca](mailto:katie.robinette@fola.ca) and/or the LAO Chair Terry Brandon at [terrylbrandon@sympatico.ca](mailto:terrylbrandon@sympatico.ca). We will do our best to incorporate your comments in our pending submission to the LAO (due Sept 6<sup>th</sup>).

In the meanwhile, FOLA remains active in our commitment to serve you in this important time of LAO transition.

## **FURTHER READING**

Click here to access the [Legal Aid Services Act](#)

Attached:     Legal Aid System Modernization Project consultations framework  
                  Legal Aid Modernization Project 2019 - Terms of Reference  
                  A document summarizing client, service providers, and community organization  
                  feedback from Legal Aid Ontario