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ELECTRONIC COURTS OVERHAUL LIKE A 'LAMBORGHINI WITHOUT AN ENGINE,' LAWYERS TELL AG

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Electronic courts overhaul like a 'Lamborghini without an engine,' lawyers tell AG

23.02.2022 Jack Hauen 0

A lot has changed in two years – but not everything.

Staffing shortages and access to justice were top concerns at the Federation of Ontario Law Associations' (FOLA) annual "lobby day" – a series of meetings with Attorney General **Doug Downey**, as well as staff from the Ministry of the Attorney General (MAG) and other relevant ministries. Lawyers said the meetings were productive, and that they hope the attorney general takes action on some key items.

The Federation of Ontario Law Associations (FOLA) unifies dozens of regional bar associations in the province. It provides an overarching group to lobby on behalf of all Ontario lawyers simultaneously.

FOLA held its [first annual lobby day in February 2020](#), just before the pandemic.

Back then, the Progressive Conservatives' electronic overhaul of the courts was still getting started. **Lindsey Park**, Downey's then-parliamentary assistant, has since [left the Progressive Conservatives](#) after a vaccine dispute. [Judicial appointments](#) that could [tilt courts in favour of the governing party](#) were another hot topic in 2020.

The electric slide

This year's lobby day, conducted via Zoom, focused largely on staffing issues hampering the Tories' movement of Ontario's legal system away from paper-based forms. While it's meant to speed up the system, some say it's had the opposite effect.

Sam Misheal, FOLA's family law chair, said he's a big fan of the convenience of the new system. But without enough staff, it's like a "Lamborghini without having an engine."

Previous paper-based applications were either rejected on the spot or accepted "forthwith," he said. The online system has an official wait time of five business days – but that's if you're lucky. Misheal said he filed for a case conference – a meeting between the lawyers and judge on the case – on Jan. 31, and received a response on Feb. 17.

That can be critical for time-sensitive matters with statute-of-limitation issues, he said.

Lawyers have also had issues with CaseLines, the cloud storage platform used to file court documents, said **Allen Wynperle**, the chair of FOLA's courthouse issues roundtable. One lawyer whose court date was rescheduled didn't realize they had to re-upload all their documents, and the judge didn't end up seeing them until a last-minute scramble, he said.

Ontario should have provincewide rules for filing documents, Wynperle added. Lawyers often work in more than one jurisdiction, and the mishmash can get confusing, he said.

Misheal said Downey told lawyers the government has allocated a "substantial amount of funds" to the issue and "is working around the clock to hire staff and to deal with the backlog."

Misheal said he hopes that's true. Wynperle said he and the rest of FOLA are ready to help.

Downey declined through his staff to be interviewed for this piece. His office didn't respond to

written questions.

Legal aid

Another major issue raised – legal aid – has dogged the PCs nearly their entire time in office. The government [cut 30 per cent](#) of Legal Aid Ontario's (LAO) budget in 2019, leading to concerns about [access to justice for marginalized people](#).

The cut means new lawyers with six-figure debt can't realistically choose a career in legal aid, said **Terry Brandon**, FOLA's legal aid chair. And since there hasn't been an hourly fee increase in seven years, LAO is facing an "exodus" of senior counsel.

Legal aid lawyers are often working at 25 per cent of their normal rate, Brandon said. The cost to run a clinic has gone up "monumentally" with overall inflation, without an increase in funding. And LAO often refuses to pay lawyers for all the hours they worked, since a "person of modest means" would not have reasonably paid for those services, she said.

"Well, it's true enough, but a person of modest means wouldn't be able to hire the lawyer at all," she said.

Instead, the test should be "something along the lines of, 'What would a competent lawyer in similar circumstances have reasonably done?'" she said.

Downey was "very receptive" to the issue when she brought it up, Brandon said.

Misheal added that the current income [threshold](#) for Legal Aid Ontario to pay for one's lawyer is too low. A single person has to make \$18,795 or less per year for financial aid to kick in.

"Even at \$20- or \$24,000 – the reality is, someone who is on a \$24,000 salary a year, I just fail to see how they can be self-supporting and sustain themselves, and in addition to that, have the ability to afford a lawyer," he said.

Putting \$1 into legal aid saves \$6 for taxpayers, Brandon said, noting that the more self-represented people there are in courtrooms, the more time judges have to spend explaining basic rules at hearings – and the more clogged the system becomes.

New Democrat attorney general critic **Gurratan Singh** said the LAO is "grossly underfunded," leading to issues with access to justice.

"It creates more cost, more backlog, and overall, it creates a weaker legal system," he said.

Real estate

Other issues were far from "sexy," as **Mark Giavedoni**, FOLA's real estate co-chair, put it. Giavedoni is a real estate practitioner – often Canadians' first point of contact with the legal system, when they buy a house.

He raised issues with slow turnaround times for processing land titles; a lack of clarity on how retroactive the government's Jan. 1 *Planning Act* amendments are; and how best to ensure cottage owners reap the benefits of positive covenant

Items like these don't make headlines – outside of sites like *practicePRO* – but they're key for how hundreds of legal professionals do their jobs.

And since even Giavedoni doesn't have a lot of contact with government staff throughout the year, he said his meeting with MAG and Housing Ministry staff was important. Staff were "attentive," and there are some takeaways for parties to reconnect on later.

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