



Family Lawyers Association

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The Honourable Charles Sousa
Minister of Finance
7 Queen's Park Crescent
7th Floor, Frost Building
Toronto, Ontario, M7A 1Y7

January 31, 2016

Dear Minister Sousa:

RE: 2016 Pre-Budget Consultations – Legal Aid

On behalf of the Family Lawyers Association, we thank you for the opportunity to participate in the pre-budget consultations. The Chair of the Family Lawyers Association spoke at the 2016 pre-budget consultations in Toronto, held on January 18, 2016. These submissions are to elaborate on the points raised in the brief in-person presentation.

The Family Lawyers Association (FLA) is governed by a twelve member volunteer Board and the FLA's membership consists of Ontario lawyers working primarily for low income people and mainly in the Ontario Court of Justice, who have extensive experience in the areas of family law and child welfare. Many of the FLA's members are also on the personal rights panel of the Office of the Children's Lawyer. Accordingly, the focus of the FLA has been to work towards improving legal aid and advocating for changes to laws or procedures which impact our client base.

The FLA has provided submissions to Legal Aid Ontario including positions papers on tariff reform, submissions to the government on the 2015 Review of the *Child and Family Services Act* and submissions to the Motherisk Review. The FLA has been quoted extensively in the media on a variety of issues.

On issues relating to government funding, the FLA has written submissions for the Pre-Budget Consultations in the past two years and we have met with the Ministry of the Attorney General and meet regularly with Legal Aid Ontario staff about our concern in protecting the rights of our most vulnerable, low income citizens. Through our work with low income individuals, we have become increasingly concerned with the level of poverty of families in Ontario, the lack of sufficient resources for individuals with mental health issues and, in particular, the shortage of resources for youth with mental health issues.

The FLA urges a commitment from the government on four issues which will have a significant impact on the legal services delivered to low income individuals. They are:

1. Legal Aid Ontario funding to increase financial eligibility and tariff reform;

2. Increased funding to the Office of the Children's Lawyer to provide parity in hourly tariff for agents on the personal rights panel to the Legal Aid tariff;
3. Increased funding to court services; and
4. Changes to the treatment of child support payments paid to social assistance recipients.

1. Legal Aid Ontario funding to increase financial eligibility and tariff reform

For the last two fiscal periods, we have seen significant increases in funding to Legal Aid Ontario, for which the FLA commends the government. The increase in funding has enabled some important and long overdue changes to Legal Aid Ontario which will help to make good legal representation more accessible to more low income Ontarians. While these are very important steps, they are only first steps and we urge the government to remain committed to making lasting improvements to the way low income individuals' legal needs are met.

A significant development is the increase to the financial eligibility cut-off for the granting of legal aid certificates. While the increase is commended, it should be noted that the income cut-off remains several thousand dollars per year below the income a person would need to have to be able to retain counsel privately. Even with the increase, there are many working people who do not qualify for even a contributory certificate, but qualify for other social services such as subsidized day care and subsidized housing.

The FLA strongly supports a major expansion of the contributory certificate program, which would mean an immediate infusion of funding, but which would largely be recovered in the long term. Many individuals who do not qualify for legal aid under the current guidelines cannot afford the significant retainer required, but are able to make small monthly payments towards part or all of the cost of legal services. Given the amount of work required at the commencement of family law proceedings, few lawyers working on the legal aid tariff are able to provide this level of financing for legal services. Legal Aid Ontario, however, could and should do that.

The Family Lawyers Association strongly supported the significant increase in the child protection tariff hours which occurred in November 2014 and we believe that this is making an impact on the ability of counsel to defend individuals where a child protection agency is seeking to remove children from the family. The FLA urges that similar attention be given to domestic matters to help those individuals struggling with such issues as custody, access, spousal and child support, restraining orders and obtaining an equitable share of marital assets. We have provided a discussion paper to Legal Aid Ontario and we hope to continue to have productive discussions. Legal Aid Ontario generally recognizes that family law has become more complicated, which means that more time must be spent by lawyers to address the issues, but they need the additional funding to be able to implement changes that are generally acknowledged to be necessary.

2. Increased funding to the Office of the Children's Lawyer to provide parity in hourly tariff for agents on the personal rights panel to the Legal Aid tariff;

Up until 2015, the Office of the Children's Lawyer was granted additional funding each year so that they could match the increase in **the** Legal Aid tariff for OCL panel members. Last year, that did not happen and as a result, the hourly rate paid to panel members representing children and youth in domestic and child protection matters are still paid at the 2014 Legal Aid rate. The Children's Lawyer understandably declined to take money out of her budget to give agents an increase at the

expense of being able to represent fewer children and youth. It is our submission that the very necessary representation of children and youth should not be at the expense of those dedicated lawyers who do the work. We urge you to provide a sufficient increase to the Office of the Children's Lawyer budget so that they may pay their agents at parity with the lawyers representing their parents.

3. Funding to court services

The FLA is concerned about the impact of reductions in spending on court resources or services or the failure for funding to keep pace with new and increasing demands to our family court system. All aspects of dealing with the court are impacted.

The reduction in court funding is felt at the filing counter. The FLA conducted a survey of services at 311 Jarvis Street, one of the courts in which its members frequently appear. Fifty-two lawyers responded to the survey. All respondents identified a decline in counter services in the courthouse. Over half reported a decline in the last year. Respondents cited difficulty in obtaining the timely processing of court orders or fax requests for consent orders (referred to as Form 14B motions). Respondents also cited difficulty in communications with court staff with staff not answering or returning phone calls. The savings in reducing court services is illusionary as the client, or where the client is legally aided, LAO, picks up the cost of inefficiency.

Inadequate funding is felt in the courtroom itself, particularly in the area of child protection. The FLA identified the timely resolution of child protection matters as a significant concern in its submissions on the Five Year Review of the *Child and Family Services Act*, submitted on December 22, 2014. The FLA was concerned about the systemic failure to adhere to the timelines for child protection set out in the governing statute and *Family Law Rules*. For instance, section 51 of the *Child and Family Services Act* provides that the court shall not adjourn a hearing for more than 30 days unless all parties present and the person who will be caring for the child during the adjournment consent or if the court is aware that a party who is not present at the hearing objects to the longer adjournment. Parties in child protection matters typically are pressured to consent to a longer adjournment as there are no earlier dates on which a judge is available. There have been some creative innovations to lessen the burden on court resources such as use of focused hearings under Rule 1 of the *Family Law Rules*; however, no amount of creativity can remedy an already overburdened court system.

4. Changes to the treatment of child support payments paid to social assistance recipients

A substantial number of the clients that our members represent on legal aid certificates, and the families that we are involved with as OCL counsel, are in receipt of Ontario Works or Ontario Disability Support Plan Benefits. We see close-up the negative impact that poverty has on single parents and children in many areas, including health, ability to achieve academically and to have any ability to participate in recreational and social activities.

The Family Lawyers Association strongly supports an increase in Ontario Works and Ontario Disability Support Plan Benefits. Rather than funding all of it directly from tax dollars, however, we recommend that the government change some of the rules around child support paid by the other parent. Currently, that child support is deducted dollar for dollar from social assistance entitlement when actually paid, but many support orders are in substantial arrears.

The Family Lawyers Association urges the government to follow the example of the British Columbia government and stop the practice of deducting child support payments in their entirety from social assistance entitlement. At a minimum, we propose that child support be treated the same as money earned by the custodial parent. Those rules allow that parent to keep the first \$200 of monies earned without deduction and only a percentage is deducted after the first \$200.00. It is a small amount of money but that would make a real difference in the lives of our clients, both adults and children, who survive on social assistance.

When acting for counsel for both Recipients and Payors, and as counsel for the Family Responsibility Office or the Ministry of Community and Social Services seeking to enforce Support Orders, we frequently hear the argument from the paying parent that the children do not benefit from the payments that they make, and some judges are sympathetic to that position where the Payor is earning a relatively low income or where the issue is repayment of a substantial amount of arrears. It does not assist the government in recouping social assistance costs by having Assignments of Support Orders if they are not being paid, and there are many of those. There is also the cost to the Ministry of Community and Social Services to retain counsel to defend the arrears when the Payor with substantial arrears inevitably brings a Motion to Change and rescind the arrears, and in many cases some of the arrears are rescinded. While this will not work with all payors, it has been our experience that they are more likely to pay the support where their child has an actual benefit.

With respect to special expenses, these are expenses for the benefit of the child directly and should not be deducted from the custodial parent's Ontario Works or Ontario Disability Support Plan Benefits. In order to ensure that the special expense monies go where intended, the court may order payment of special expenses for post secondary education, orthodontic work or tutoring directly to the college or university towards tuition or directly to the third party providing services. This would allow the child or children to have a direct benefit of monies ordered for that purpose and this would reduce funding required for OSAP and free or subsidized dental care. Again, the court can be reluctant to order the Payor parent to pay special expenses where it would not actually go to that special expense as it would be deducted dollar for dollar from the Recipient's social assistance benefits.

The Family Lawyers Association values its relationships with this government and LAO and, in particular, the opportunity to comment on ways to improve the functioning of our legal system so as to achieve access to justice and alleviate the genuine hardships of its most vulnerable constituents.

Yours truly,

Katharina Janczaruk (Chair)

Jean Hyndman (Co-Chair)

On behalf of the Family Lawyers Association Board