



Family Lawyers Association

c/o Katharina Janczaruk, Chair
701 – 65 Queen Street West,
Toronto, Ontario
M5H 2M5

Tel.: (416)-924-8492
E-mail: kjanczaruk@sympatico.ca
Web: www.flao.org

Via email: submissions@ontario.ca

The Honourable Charles Sousa
Minister of Finance
c/o Budget Secretariat
Frost Building North, 3rd Floor
95 Grosvenor Street
Toronto, ON M7A 1Z1

February 15, 2017

Dear Minister Sousa:

RE: 2017 Pre-Budget Consultations

On behalf of the Family Lawyers Association, we thank you for the opportunity to participate in the pre-budget consultations.

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 the government on the Unified Courts Model for Family Law, the proposed fee implementation at the Ontario Court of Justice and review on representation by non-lawyers in family court and to Legal Aid Ontario on tariff reform. The FLA has been quoted 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 three 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 and restrictions to the issuance of new certificates;
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. Increase in Ontario Works and Ontario Disability Support Plan rates

1. Legal Aid Ontario funding and restrictions on the issuance of new certificates.

For the last three 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 has helped Legal Aid Ontario provide legal representation to some of our most vulnerable clients, including an increase in family law certificates to those fleeing domestic violence.

Unfortunately, Legal Aid Ontario announced on December 16, 2016, that it will be significantly reducing the number of criminal certificates, including those for secondary consequences and for first time accused, to meet a \$26 million budget deficit.

The FLA commends the Attorney General for appointing an external auditor to review and report back on the budget shortfall, and asks that the FLA be consulted as an important stakeholder. The FLA is concerned about the significant budget shortfall at Legal Aid Ontario, and the consequences to our clients, many of whom will be directly affected in their family law or child protection matters if not also represented in their criminal law proceedings. The consequences could range from a greater length of time separated from their children because of restrictive bail conditions, to the risk of having their children taken permanently out of their care because of their unresolved criminal law issues, to losing their job or being deported and thereby putting their families at risk. In addition, the FLA is concerned that family law certificates will be restricted, making it more difficult for clients and children to escape domestic violence and abuse.

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.

We urge the government to remain committed to making lasting improvements to the way low income individuals' legal needs are met. We welcome the review of Legal Aid Ontario by the external auditor, and ask that the government fund legal aid to sustainable levels.

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 in 2015, 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. Increase in Ontario Works and Ontario Disability Support Plan Benefits

The Family Lawyers Association strongly supports an increase in Ontario Works and Ontario Disability Support Plan Benefits. 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.

We recognize that the basic rates for Ontario Works and the Ontario Disability Support Plan Benefits have increased in the past year, but we support a further increase that provides a minimum basic standard of living that allows the most vulnerable lives of dignity without having to choose between basic needs such as shelter or food.

The FLA would like to thank the government for the recent changes with respect to how child support payments are treated for those on social assistance. The ability of parents and caregivers to keep the entirety of the child support payments will have a lasting, positive, impact on their children.

The Family Lawyers Association values its relationships with this government and Legal Aid Ontario 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)

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