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Mr. David Field
President & CEO
Legal Aid Ontario
Atrium on Bay,
40 Dundas Street West, Suite 200
Toronto, Ontario
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January 9, 2017

Dear Mr. Field,

Your recent announcement that Legal Aid Ontario is running a significant deficit and that cuts to many front-line services are needed to balance the budget is very troubling to FOLA and to our members.

Your announcement does make note of a few initiatives that we applaud but it, and other statements made by you in the media since then, have affirmed our fears that there are significant differences of opinion and philosophical approach between LAO management and the private bar.

For example, in your announcement, you state that you will "freeze salaries at 2016/17 levels to minimize impact on staffing", that you will "lower administrative costs to 10 per cent across the board, in line with administrative costs in the provincial government" and that you will "not fill vacancies where possible ...". These are all important and worthwhile steps to restoring fiscal balance, but they underline what we have been saying for many years which is that LAO was becoming too big and too bureaucratic. By growing the complement of staff to the degree that you have, LAO has lost its ability to adapt to the case-loads across Ontario. A more efficient and effective method would have been to direct funding into private-bar certificates where legal aid becomes one of a few sources of client revenue for lawyers. By having more "in-house" duty counsel on staff, the pressure to direct cases to these staff is greater and this staff growth has led to a situation of ever-growing cost and limited ability to adapt.

Similarly, the directive to "lower administrative costs to 10%" is also indicative of a system that has become too expensive. When the additional funding was announced last year, we asked why 10% of that new money was going to administrative overhead and why 5% of that funding was going to new staff. We wondered why additional funding directed to already existing programs would require so much administrative overhead. It stands to reason that the costs of administration on (for example) \$300 million of programming would be nearly the same as administering \$350 million. The administrative systems, technology and infrastructure should not be substantially more expensive just because the dollar value was higher. This is especially the case since the gross certificate numbers today are at the same levels they were six years ago, except now LAO is covering that same case load with 385 in-house lawyers, versus 65 lawyers six years ago.

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The decision to freeze community clinic salaries, deny community clinics access to 2017-'18 "FEG funding" and cutting the clinic system's budget by \$1 million will also have a direct impact on service levels and result in layoffs of lawyers in the clinic system. The impact on the most vulnerable clients in our justice system is worrying.

Most troubling, however, are the statements attributed to you that "most of the time it makes more economic sense to hire a staff lawyer, instead of a private, per-diem lawyer." You went on to say: "We pay private bar lawyers an hourly rate that exceeds more than \$120 an hour, and we have staff on salary and we don't pay them that kind of money ... So the math between the two is very different."

With respect, we disagree with your math and suggest that your stated costs do not attribute an accurate number to the administrative and other costs of in-house, duty-counsel. The \$120 per hour that you pay private-bar lawyers covers both the lawyers' cost and their administrative overhead. An honest comparison would note that the full costs of duty counsel include salary, pension and benefits, administrative support, expenses as well as a portion of the management cost at Legal Aid Ontario. We suspect this total would be higher than the mythical "\$120/hour".

In other recent media, you have suggested that you would be open to an external audit of your operations and that you are confident that "this has not been the result of mismanagement". We applaud your willingness to do this, but would strongly suggest that the auditor be mandated to examine the relative cost of in-house duty counsel versus the private bar certificate system and to determine the best and most appropriate mix, both from a financial perspective, but also what is best for clients. We are confident that this review will determine that LAO has, in recent years, overreached in favour of more in-house duty counsel to the detriment of the public treasury and to clients in the family, criminal, landlord/tenant and refugee justice system.

FOLA has long enjoyed a productive relationship with Legal Aid Ontario, based on candid and honest dialogue between us. We want to continue this productive relationship and to provide LAO a platform to inform the practising bar across Ontario of your plans and initiatives, but also to be a conduit for the concerns and ideas of the bar for LAO. We look forward to continued dialogue on this topic in the months to come.

Sincerely,

Eldon Horner
Chair
Federation of Ontario Law Associations

Jane Robertson
Legal Aid Committee
Federation of Ontario Law Associations

cc. John McCamus, Chair, LAO Board of Directors
David McKillop, VP Policy, Research & External Relations
FOLA Executive; FOLA Presidents