



The Advocates' Society La Société des plaideurs

September 17, 2018

The Hon. Caroline Mulroney
Attorney General of Ontario
Ministry of the Attorney General
11th Floor, 720 Bay Street
Toronto, ON M7A 2S9

Dear Madam Attorney,

It was a pleasure to meet with you, Mr. Wilson and Mr. Hillier on September 6. As I emphasized during our meeting, we appreciate the robust consultative relationships we have had with your predecessors and look forward to working with you to improve the justice system for all Ontarians.

I write to elaborate on our discussion regarding pressing issues in the Ontario justice system and to emphasize The Advocates' Society's priorities with respect to those issues.

Enhancing Access to Justice

Unified Family Court

Ontarians are far more likely to be impacted by a family law case than any other court proceeding. Of all family proceedings commenced in Ontario, whether before the Ontario Superior Court of Justice or the Ontario Court of Justice, nearly 20% are commenced in Toronto.

The Unified Family Court ("UFC"), which consolidates the family operations of the Ontario Superior Court of Justice and the Ontario Court of Justice, was introduced as a pilot project in Hamilton in the late 1970s. Since then, families, judges and lawyers in the regions which have implemented a UFC system have appreciated the benefits of a single courthouse to deal with all family law issues, whether they fall under federal or provincial jurisdiction. Still, 40 years after the introduction of the first UFC in Canada by then Attorney General McMurtry, there is no UFC in the most populous city in the country; and while there are plans to roll out UFC in outlying jurisdictions, the rollout for Toronto appears to be delayed for several years. Jurisdictions without a UFC, such as Toronto, continue to bear increased costs, delays and procedural confusion, all of which impact access to justice.

For some time now, there has been a general willingness of the Federal and Provincial Governments to implement a UFC in Toronto. The main impediment is the absence of an appropriate physical space for the Court. The previous Government of Ontario had originally contemplated that the new Toronto courthouse to be built on Centre Avenue would house family law operations from both the Superior Court of Justice and the Ontario Court of Justice as well as consolidating Ontario Court of Justice criminal law operations. The Advocates' Society was disappointed to learn that the new courthouse will only achieve the second of those objectives.

There is an urgency to locating a suitable space for UFC in Toronto, ideally in the downtown core to remain in close proximity to the Superior Court of Justice operations in the Osgoode Precinct (i.e. near 393 University Avenue, 361 University Avenue and Osgoode Hall).

As I discussed in our meeting, the real solution – and one that would best address access to justice concerns – is for the Government of Ontario to prioritize the construction of another courthouse outside the downtown core to serve both Superior Court of Justice and Ontario Court of Justice operations generally. Such a courthouse would optimize the benefits of transit and other infrastructure projects now underway in Toronto Region. The Advocates’ Society urges your Government to prioritize the building of such a courthouse.

Sustainable Legal Aid

The Advocates’ Society is a proponent of sustainable legal aid funding which will maximize the reach of legal services to low-income Ontarians. The Advocates’ Society understands that the Auditor General is conducting a review of Legal Aid Ontario and that there is a need to ensure that the agency is operating efficiently. Regardless of the outcome of the Auditor General’s review, there are important roles for Legal Aid Ontario programs as well as legal aid services provided by the private bar in enhancing access to justice for low-income Ontarians.

It is essential that Ontario’s legal aid system maintain both public service delivery (through, for example, courthouse duty counsel and community legal clinics) and representation by the private bar (through legal aid certificates). An exclusive public-defender system raises concerns with respect to conflict of interest and choice of counsel. The involvement of the private bar on an as-needed basis is an important complement to the assistance that can be provided by salaried duty counsel and clinic lawyers.

Promoting the Efficient Use of Public Resources

Consolidated Government Service Delivery

Community justice centres would provide an opportunity for significant progress in reducing recidivism among convicted persons from marginalized communities, including those living with mental health issues, those living in poverty and homeless persons. Community justice centres break down traditional silos around government services and provide related services in one centre. A holistic approach to crime reduction and social improvement enhances overall efficiency in service delivery, and reduced recidivism reduces the demand for judicial resources and legal services.

The Advocates’ Society was encouraged by the work of the previous Government of Ontario on community justice centres and its thorough research on the implementation of these centres in Toronto (Moss Park), London and Kenora. The Advocates’ Society’s Courthouse of the Future Symposium in November 2017 brought together various justice stakeholders to discuss and conceptualize of community justice centres. With your Government’s priority on the efficient delivery of government services, we hope your Government will continue to support this initiative.

Federal Judicial Complement

The Advocates' Society believes there is a need for a more transparent and evidence-based process for the appointment of federal judicial positions across Canada. In this connection, The Advocates' Society will be making recommendations on the responsible allocation of federally-appointed judicial positions, including those in Ontario, that will be based on an evidence-based study that will examine the efficiency of the current use of judicial resources.

The Advocates' Society would welcome the opportunity to work with your Government on this project and would be grateful for your assistance in obtaining relevant data.

The Advocates' Society is also cognizant of the number of current vacancies for justices of the Ontario Superior Court of Justice and encourages your Government to work with your federal counterparts to have those vacancies filled expediently.

Efficient Use of Judicial Resources

The Advocates' Society applauds your Government for examining innovative ways to reduce the demand for court resources. We have consistently advocated for court resources to be used as efficiently as possible through our thought leadership publications, including our *Best Practices for Civil Trials* and our *Paperless Trials Manual*. Both of these resources are available on our website at www.advocates.ca under "Resources".

The Advocates' Society encourages your Government to expand the use of duty counsel and *per diem* counsel for family law proceedings, especially in the Ontario Court of Justice. Various studies show that anywhere between 50 to 80% of all parties to family law matters before the courts are unrepresented. Unrepresented litigants place a strain on judicial resources and contribute to the inefficiency of the justice system generally. An increase in duty counsel and *per diem* counsel, who could provide legal advice to parties and assist with their navigation through a complex legal proceeding, would help to increase the efficient use of the courts.

Protecting Public Safety

New Toronto Courthouse

While the modern facilities which will be available at the new Toronto courthouse represent a significant improvement over the facilities currently used for Ontario Court of Justice operations, members of The Advocates' Society remain concerned about a centralized model which brings together all Ontario Court of Justice criminal court operations – and which results in a high concentration of members of rival gangs in a high-traffic area of Toronto. As the Toronto Police Service's risk assessment report indicates, the consolidation creates a heightened risk of gang-related violence in the downtown Toronto core. We expect that your Government will take these important concerns into account to ensure the safety of all users of the courthouse and those who live and work in the surrounding areas.

Courthouse Security

The Advocates' Society continues to hear concerns about courthouse security in Toronto, particularly from those who use the Ontario Court of Justice and judges, lawyers and parties to family law cases in the

Ontario Superior Court of Justice. Our members have expressed frustration with the slow pace of remedial action by the previous Government of Ontario.

Working Together Towards Reconciliation

Guide for Lawyers Working with Indigenous Peoples

The *Guide for Lawyers Working with Indigenous Peoples*, which The Advocates' Society published in partnership with the Indigenous Bar Association and the Law Society of Ontario, is a helpful resource for lawyers to learn about important historical and cultural elements that provide context for the professional relationships among Indigenous persons, their lawyers and other participants in the justice system. The *Guide* also provides practical tools to help lawyers represent Indigenous clients as effectively as possible.

The *Guide* is available on our website at www.advocates.ca under "Resources". We would welcome opportunities to promote and distribute the *Guide* as an educational tool and resource to litigators working with Indigenous peoples across Ontario.

We wish you well in the role of Attorney General of Ontario – one of great importance to the administration of justice in this country – and we look forward to continuing our dialogue with you on these and other justice issues.

Yours truly,



Brian J. Gover
President

C: Michael Wilson, Chief of Staff, Office of the Attorney General
Joseph Hillier, Senior Policy Advisor, Office of the Attorney General
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