



# The Advocates' Society

## La Société des plaideurs

May 17, 2023

VIA EMAIL

Ms. Goldie Ghamari, M.P.P., Chair  
Standing Committee on Justice Policy  
c/o Thushitha Kobikrishna, Committee Clerk  
Whitney Block, Room 1405  
99 Wellesley Street West  
Toronto, Ontario M7A 1A2

Dear Ms. Ghamari and members of the Standing Committee on Justice Policy:

**RE: Bill 102, *Strengthening Safety and Modernizing Justice Act, 2023***

The Advocates' Society writes to express our concerns regarding the impact of proposed amendments in Bill 102, the *Strengthening Safety and Modernizing Justice Act, 2023*, on judicial independence in Ontario.

Established in 1963, The Advocates' Society is a not-for-profit organization representing approximately 5,500 diverse lawyers and students across the country, including approximately 4,500 in Ontario—unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting a fair and accessible system of justice, excellence in advocacy, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, inclusion, and reconciliation with Indigenous peoples in the justice system and legal profession.

As courtroom advocates, members of The Advocates' Society believe that a strong, vibrant, and independent judiciary is fundamental to our Canadian justice system and essential to upholding our country's democratic values and the rule of law. The Advocates' Society has published a statement on judicial independence, entitled [Judicial Independence: Defending an Honoured Principle in a New Age](#); you may find the statement helpful to the Standing Committee's consideration of our comments on Bill 102.

### **I. Overview**

The Advocates' Society is concerned about amendments proposed in Schedules 3 and 5 to Bill 102 that direct Ontario's provincially-appointed judiciary to undertake education on specific topics and require court leadership to report to the executive and legislative branches of government regarding the education that judicial officers have received on these topics. These proposed amendments undermine judicial independence and risk compromising public confidence in the judiciary. As such, The Advocates' Society recommends these amendments be removed from Bill 102. In the alternative, we suggest that

particular proposed provisions be framed in a non-mandatory manner, in line with equivalent federal legislation.

## **II. The Proposed Amendments**

Schedule 3 to Bill 102 proposes to amend the *Courts of Justice Act*<sup>1</sup> to change the qualifications for appointment as a judge of the Ontario Court of Justice. The new proposed criterion is that “The person undertakes to participate in such courses as may be designated for newly appointed judges by the Chief Justice of the Ontario Court of Justice under subsection 51.10.1 (3).”<sup>2</sup>

Schedule 3 to Bill 102 proposes further amendments to the *Courts of Justice Act* to operationalize this new requirement for eligibility for appointment as a provincial judge. Bill 102 will add a new section to the *Courts of Justice Act* to provide the Chief Justice of the Ontario Court of Justice with the power to establish and designate courses on specific topics for newly appointed judges and for the continuing education of judges on the Court:

### **Establishment of courses**

**51.10.1** (1) The Chief Justice of the Ontario Court of Justice may establish courses for newly appointed judges and for the continuing education of judges, which may include courses respecting,

- (a) sexual assault law;
- (b) intimate partner violence;
- (c) coercive control in intimate partner and family relationships; and
- (d) social context, which includes systemic racism and systemic discrimination.

### **Courses re sexual assault and intimate partner violence, consultation**

(2) The Chief Justice may, in establishing courses respecting matters mentioned in clauses (1) (a) to (d), consult with such persons, groups and organizations as the Chief Justice considers appropriate, which may include survivors of sexual assault, survivors of intimate partner violence and persons, groups and organizations that support these survivors, including Indigenous leaders and representatives of Indigenous communities.

### **Designated courses**

(3) The Chief Justice may designate courses, including courses established under subsection (1), for newly appointed judges. [...] <sup>3</sup>

The amendments will further require the Chief Justice to submit an annual report to the Attorney General providing information about the courses established on these topics, and the Attorney General is required to table the report before the Legislative Assembly:

### **Report**

**51.10.1** [...] (4) No later than February 28 in each year, the Chief Justice shall submit to the Attorney General a report setting out the following information:

1. The title, duration and dates of each course established by the Chief Justice respecting matters mentioned in clauses (1) (a) to (d) that was offered to judges during the previous calendar year.
2. A description of the topics covered in each course.
3. The number of judges who attended each course.

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<sup>1</sup> R.S.O. 1990, c. C.43.

<sup>2</sup> Bill 102, Schedule 3, Clause 2, amending s. 42(2) of the *Courts of Justice Act*.

<sup>3</sup> Bill 102, Schedule 3, Clause 3, adding new s. 51.10.1 to the *Courts of Justice Act*.

### **Tabling of report**

(5) The Attorney General shall cause a copy of a report submitted under subsection (4) to be tabled in the Legislative Assembly on any of the first 10 days on which that House is sitting after the Attorney General receives the report.<sup>4</sup>

Schedule 5 to Bill 102 proposes analogous amendments to the *Justices of the Peace Act*,<sup>5</sup> altering the qualifications for appointment of justices of the peace in similar fashion;<sup>6</sup> providing the Associate Chief Justice Co-ordinator of Justices of the Peace with the power to establish education courses for new and other justices of the peace on the specific topics listed above;<sup>7</sup> and requiring the Associate Chief Justice Co-ordinator of Justices of the Peace to annually report information about the courses established and the number of judges who attended them to the Attorney General, who will place the report before the Legislative Assembly.<sup>8</sup>

While the goal of the proposed amendments is laudable, The Advocates' Society is concerned that these legislative provisions – which effectively direct the judiciary to undertake education on specific topics – will negatively impact the independence of Ontario's provincial judiciary. The preservation of public confidence in the impartial and independent administration of justice is a core element of the justice system.

### **III. The Importance of Judicial Education, and Its Relationship to Judicial Independence**

Judicial education is critical to maintaining and improving judicial competence, and by extension, the quality of justice in Canada. Judges must be educated about changes in the law and society on an ongoing basis. The Advocates' Society unquestionably endorses a robust approach to judicial education and training on a wide variety of issues, including sexual assault law, family violence, coercive control in intimate partner and family relationships, and social context issues, including systemic racism and discrimination.

Judicial independence is a cornerstone of the Canadian justice system and ensures that judges can make their decisions free from external influences or interference. To preserve judicial independence, it is essential that the continuing education of judicial officers be in the hands of those who will safeguard that independence.

In order to maintain the independence of the judiciary, judicial education must remain under the control and supervision of the judiciary and free from outside influence. The duty of a judge is to administer justice according to the law, without fear or favour, and without regard to the wishes or policy of the executive or legislative branches of government. As observed by the Canadian Judicial Council,

Judicial independence is a fundamental principle of our justice system. It stipulates that judges must make decisions with integrity and impartiality, free from the pressure of external influences. Training sessions

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<sup>4</sup> Bill 102, Schedule 3, Clause 3, adding new s. 51.10.1 to the *Courts of Justice Act*.

<sup>5</sup> R.S.O. 1990, c. J.4.

<sup>6</sup> Bill 102, Schedule 5, Clause 1, adding new s. 2(1.4) to the *Justices of the Peace Act*.

<sup>7</sup> Bill 102, Schedule 5, Clause 2, adding new ss. 14(4)-(6) to the *Justices of the Peace Act*.

<sup>8</sup> Bill 102, Schedule 5, Clause 2, adding new ss. 14(7)-(8) to the *Justices of the Peace Act*.

provided to judges must therefore serve the interests of justice alone and not that of external forces, governmental or otherwise.<sup>9</sup>

#### IV. The Advocates' Society's Concerns and Recommendations

In light of these fundamental principles, legislative requirements for legal education and training of the judiciary in specific areas are of concern and should be resisted. The Advocates' Society is concerned that efforts by legislatures to dictate what judges are taught as part of mandatory judicial education risk interfering with the perception of judicial neutrality. The independence of the judiciary is too important a principle to allow it to be undermined or diminished in any sense, no matter how laudable the objectives of the legislation might be.

These concerns are exacerbated by the proposed requirements for the Chief Justice of the Ontario Court of Justice and the Associate Chief Justice Co-ordinator of Justices of the Peace to submit annual reports to the Attorney General regarding the content and particulars of the courses established on specific topics, which reports will be tabled in the Legislative Assembly.<sup>10</sup> The cumulative effect of this legislative scheme is the potential to politicize both judicial education and the judiciary, as well as erode judicial independence. Accordingly, judicial education should remain under the control and supervision of the judiciary and free from outside influence.

The Advocates' Society strongly recommends that the new proposed sections 51.10.1(4) and (5) of the *Courts of Justice Act* and sections 14(7) and (8) of the *Justices of the Peace Act* be removed from Bill 102. In the alternative, we recommend that the requirements that the Chief Justice and the Associate Chief Justice Co-ordinator of Justices of the Peace "shall" submit this report to the Attorney General be amended to "should" submit this report, in accordance with the equivalent provisions in the federal *Judges Act*.<sup>11</sup>

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<sup>9</sup> Canadian Judicial Council, [Basic Principles Supporting the Training of Judges](#). To that end, the Canadian Judicial Council has signed a Memorandum of Understanding with the federal Minister of Justice on judicial education, which "affirms, in keeping with the requirements of judicial independence, that the education that judges receive following their appointment to the bench must be controlled by the judiciary itself, free from outside influence or interference" (Department of Justice, "[Backgrounder: Memoranda of Understanding between the Canadian Judicial Council and the Government of Canada](#)", April 28, 2022.)

<sup>10</sup> Proposed ss. 51.10.1(4)-(5) of the *Courts of Justice Act* and proposed ss. 14(7)-(8) of the *Justices of the Peace Act*.

<sup>11</sup> See *Judges Act*, R.S.C. 1985, c. J-1, s. 62.1 (**emphasis** added):

**Report — seminars**

**62.1 (1)** Within 60 days after the end of each calendar year, the Council **should** submit to the Minister a report on the seminars referred to in paragraph 60(2)(b) on matters related to sexual assault law and social context, which includes systemic racism and systemic discrimination, that were offered in the preceding calendar year. The report **should** include the following information:

- (a) the title and a description of the content of each seminar, its duration and the dates on which it was offered; and
- (b) the number of judges who attended each seminar.

**Tabling of report**

**(2)** The Minister shall cause a copy of **any** report received to be tabled in each House of Parliament on any of the first 10 days on which that House is sitting after the Minister receives the report.

## V. Practical Considerations

The Advocates' Society observes that even if implemented in their current forms, Schedules 3 and 5 to Bill 102 would provide little to no additional benefit to Ontarians.

The *Courts of Justice Act* already requires the Chief Justice of the Ontario Court of Justice to establish a plan for the continuing education of provincial judges and to make it available to the public; the legislated goals of the plan include maintaining and developing judges' professional competence and social awareness.<sup>12</sup>

The Ontario Court of Justice's current Continuing Education Plan for 2020-2023 sets out the robust judicial education and training available to new and sitting judges of the Court, including core programming provided by the Court's Education Secretariat (a joint committee of the Ontario Court of Justice and the Association of Ontario Judges), as well as education and resources provided by the Canadian Association of Provincial Court Judges and the National Judicial Institute. In particular, newly appointed judges are required to attend specific, intensive education programming, as well as to shadow senior judges for several weeks prior to swearing-in. Newly appointed judges also benefit from a formal mentoring program.<sup>13</sup> The Ontario Court of Justice's current Continuing Education Plan for 2020-2023 highlights that

social context education is now seamlessly integrated into most of the programs presented by the Education Secretariat and the Ontario Court of Justice. Social context issues related to equity, diversity, and inclusion are now addressed in most of our programming including topics such as cultural competence, awareness of unconscious bias, domestic violence, sexual assault law, anti-black and indigenous discrimination and racism and the experience of vulnerable populations that are overrepresented in the criminal justice system.<sup>14</sup>

The *Justices of the Peace Act* also already requires the Associate Chief Justice Co-ordinator of Justices of the Peace to establish a plan for the continuing education of justices of the peace.<sup>15</sup> The current plan states that "The Education Plan for the justices of the peace of the Ontario Court of Justice (OCJ) encompasses both initial education and mentoring of newly appointed justices of the peace, as well as continuing education programs for all justices of the peace."<sup>16</sup> One of the principles underlying the Justice of the Peace Education Plan is as follows:

5. Education encompasses a broad variety of topics, including education on legal and jurisdictional issues, an understanding of the role of a judicial officer, ethical issues impacting on judicial conduct, the development of specific skills necessary to perform the functions of a justice of the peace, and the development of an awareness of social and cultural context in which social issues and challenges may arise and manifest themselves in judicial proceedings.<sup>17</sup>

The Advisory Committee on Education (a joint committee of justices of the peace appointed by the Court and the Association of Justices of the Peace of Ontario) coordinates the planning and presentation of

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<sup>12</sup> *Courts of Justice Act*, ss. 51.10(1)-(3).

<sup>13</sup> Ontario Court of Justice, [Continuing Education Plan 2020-2023](#).

<sup>14</sup> Ontario Court of Justice, [Continuing Education Plan 2020-2023](#), at p. 2.

<sup>15</sup> *Justices of the Peace Act*, s. 14(1).

<sup>16</sup> Ontario Court of Justice, [Justice of the Peace Education Plan](#) (2018), at p. 1.

<sup>17</sup> Ontario Court of Justice, [Justice of the Peace Education Plan](#) (2018), at p. 3.

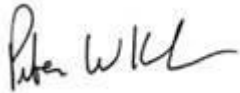
education programs. In particular, newly appointed justices of the peace are provided with nine weeks of intensive workshops and formal mentorship.<sup>18</sup>

## **VI. Conclusion**

While the goals of the amendments proposed in Schedules 3 and 5 to Bill 102 are undoubtedly admirable, The Advocates' Society believes the bill will negatively impact judicial independence in Ontario, while offering little practical benefit to Ontarians. The Advocates' Society submits that judicial independence is better preserved and enhanced when responsibility for judicial education remains with the judiciary and strongly recommends that these proposed amendments be removed from Bill 102, or alternatively that the language used in the equivalent provisions in section 62.1 (1) the federal *Judges Act* be adopted.

Thank you for the opportunity to make these submissions. We would be pleased to answer any questions you may have.

Yours sincerely,



Peter W. Kryworuk  
President

### **Attachments:**

1. The Advocates' Society, *Judicial Independence: Defending an Honoured Principle in a New Age* (April 2020)

**CC:** The Honourable Michael S. Kerzner, M.P.P., Solicitor General of Ontario  
The Honourable Doug Downey, M.P.P., Attorney General of Ontario  
Vicki White, Chief Executive Officer, The Advocates' Society

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<sup>18</sup> Ontario Court of Justice, [Justice of the Peace Education Plan](#) (2018), at pp. 4-6.