



The Advocates' Society

La Société des plaideurs

November 20, 2019

VIA EMAIL

The Honourable Doug Downey, M.P.P.
Attorney General of Ontario
Ministry of the Attorney General
720 Bay St., 11th Floor
Toronto, ON M7A 2S9

Dear Attorney General:

RE: Review of Provincial Judicial Appointments Process

We understand that your government intends to reform the process for appointments to the Ontario Court of Justice. The Advocates' Society has not yet been consulted on the potential reforms or any proposed legislation. Accordingly, we do not know precisely what changes are proposed. Based on your own public comments, however, we are deeply concerned that your government intends to make changes to the important role of the Judicial Appointments Advisory Committee ("JAAC"). Among other things, it appears your government intends to remove or materially alter the ranked short list feature of the current appointment process. The announced changes threaten to undermine public confidence in the appointment process and have significant implications for public confidence in the quality and independence of Ontario's judiciary.

The Advocates' Society, established in 1963, is a not-for-profit association of more than 6,000 members throughout Canada, including approximately 5,000 in Ontario. The mandate of The Advocates' Society includes, among other things, making submissions to governments and others on matters that affect access to justice, the administration of justice and the practice of law by advocates. Our membership has a strong interest in maintaining the independence of the judiciary.

As you know, the former Attorney General Ian Scott introduced the current system for judicial appointments to the Ontario Court of Justice in 1988. It has received high praise from lawyers and non-lawyers alike as having increased the quality of appointments and curtailed the possibility of partisan political considerations in the appointment process. Many observers have also commented that the short list system used in that process has had a positive impact on the appointment of women and minority candidates and the representativeness of the provincial court bench.

The Advocates' Society has repeatedly endorsed Ontario's current judicial appointments process as exemplary in terms of openness, transparency, merit and diversity. We have repeatedly recommended that the federal government emulate Ontario's judicial appointments process for all appointments to the federal bench, including those to the Supreme Court of Canada. We consider the current process for appointing judges to the Ontario Court of Justice to be a model for an independent judicial appointments process.



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As courtroom advocates, members of The Advocates' Society have a compelling interest in ensuring that the process by which judicial appointments are made is beyond reproach. We believe that a strong, vibrant and independent judiciary is fundamental to our Canadian justice system, and that it is essential to upholding our country's democratic values and the rule of law. Judges are responsible for adjudicating disputes that involve the government and government action; this is the very reason that judicial independence from the other branches of government is essential. To that end, the process by which judges are selected should be one that increases public confidence in the appointment process, eliminates political partisanship, and ensures judicial excellence.

A key feature of the current appointments process is the JAAC's provision of a ranked short list of recommendations to the Attorney General, who is required to make the appointment from that list (see ss. 43(8), (9), and (11) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43). The JAAC is an independent committee comprised of members of the judiciary, the bar, and the public. The JAAC is positioned to use its collective skill and experience to objectively identify the strongest candidates for appointment. The Advocates' Society strongly recommends retaining the ranked short list feature of the appointments process in its present form for two reasons. First, it ensures that the most qualified candidates are chosen and that a high standard of excellence is achieved. Second, by limiting the size of the list and requiring that the appointment be made from the list, the risk of real or perceived political partisanship is greatly reduced.

We understand that steps to reform the current process and remove this key feature may be imminent. It is regrettable that matters have reached this juncture without your government having consulted with the independent bar. The courts are a co-equal branch of government with a constitutional mandate. The judicial appointment process is a complex area of government action with serious implications for matters affecting the life and liberties of Ontarians. Changes to this foundational element of the Ontario justice system should be developed only through meaningful consultation with justice system stakeholders. Ontario citizens reasonably expect such consultations to occur on important changes that will directly affect the administration of justice in the Province.

The Advocates' Society would appreciate an opportunity to consult with you on how to ensure that any necessary reforms respect Canadian constitutional principles and other foundational values that underlie the current appointment process. Staff of The Advocates' Society have already contacted your office to arrange a meeting to begin those consultations and we await your response.

Yours sincerely,

Scott Maidment
President