

March 14, 2023

The Honourable Doug Downey
Ministry of the Attorney General
McMurtry-Scott Building
11th Floor
720 Bay Street
Toronto, ON M7A 2S9

VIA EMAIL: doug.downey@pc.ola.org

Dear Minister Downey,

**RE: PROPOSED CHANGES TO PROCESS FOR APPOINTING NEW CHIEF JUSTICE OF THE
ONTARIO COURT OF JUSTICE**

I am writing to you on behalf of the Toronto Lawyers' Association ("TLA"). The TLA represents the interests of more than 3,700 members who practice law in all disciplines across the Greater Toronto Area. Our membership, and our Board of Directors, represents the full diversity of our profession in Ontario. Included among our members are many lawyers who practice regularly before the Ontario Court of Justice.

The TLA is concerned about changes to the process for appointing the Chief Justice of the Ontario Court of Justice that have been recently announced by your office. Currently the process allows the current Chief Justice to provide his or her views on candidates for their replacement to the Attorney General, and funnels communications from the other Judges of the Court about candidates through the Chief Justice's office.

The changes proposed by your office would instead see candidates send their applications directly to you. It is not apparent that the current Chief Justice will remain involved in the process under this new system, and you have indicated that you will "personally and directly conduct discreet inquiries" about potential candidates.

The TLA echoes the concerns expressed by the Association of Ontario Judges, among others, about this proposed application process. The current system preserves the independence of the judiciary and minimizes direct interaction, and therefore the potential for inappropriate contact, between members of the judiciary and political actors. That system also takes advantage of the

experience and institutional knowledge of the current Chief Justice when selecting their replacement.

The TLA supports your objectives of “rethinking how justice is delivered in this province by building a modern, accessible and fair justice system that works for all Ontarians”. We do not believe, however, that changes to the appointment process for the Chief Justice of the Ontario Court of Justice – particularly in ways that give rise to significant concerns about the independence of the judiciary and separation of powers – are related to those laudable goals.

There does not appear to be any principled reason to depart from the current system for appointing the Chief Justice, and it is TLA’s view that the current system is preferable to the proposed changes announced by your office. Alternatively, if you remain of the view that changes to the current process are necessary, the TLA suggests leveraging the expertise of the Judicial Appointments Advisory Committee (“JAAC”) by expanding their mandate to include responsibility for preparing a short list of candidates for the position of Chief Justice. This would take advantage of an established and successful appointment process, while avoiding concerns related to the independence of the judiciary, separation of powers, and possible inappropriate political influence.

We encourage your office to reconsider these proposed changes and either maintain the *status quo* or implement a new process that utilizes the JAAC as you make the very important selection of a candidate for the office of Chief Justice of the Ontario Court of Justice.

Thank you for considering these comments. Our Executive Committee would be pleased to discuss these comments at your convenience, should you find additional consultation beneficial.

Yours very truly,



Erin O'Donovan
President
Toronto Lawyers' Association