

Remarks by
Attorney General Doug Downey
at the
2019 Federation of Ontario Law Associations
Plenary Assembly
In Toronto
Thursday, November 14, 2019
4:00 p.m.

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Event description	
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Arrival and departure details	<p>ARRIVAL</p> <ul style="list-style-type: none"> • AG to arrive <p>DEPARTURE</p> <ul style="list-style-type: none"> •
Agenda	
Audience and dignitaries	<ul style="list-style-type: none"> •
Media	<ul style="list-style-type: none"> •
Notes (need to know)	<ul style="list-style-type: none"> •
Contacts	<ul style="list-style-type: none"> •

INTRODUCTION

Thank you, Mike [Mike Winward, FOLA Chair] for that introduction.

Although I was active in my local law association in Simcoe County, I have never had the privilege of attending a FOLA plenary session.

So, it is an honour that I get to attend this, my first ever FOLA plenary, as Attorney General.

[Small Claims Court Story]

Today marks almost 5 months since I was sworn in as Ontario's 41st Attorney General.

A very busy 5 months.

And a very productive 5 months.

I have used this time to talk with many of the key players in our justice sector – and this had included continuing dialogue with those I have been working with in the sector for the past 20 years.

But I have also had the opportunity to connect with many others:

- Victim supports groups;
- Police officers;
- Staff in our community legal clinics;
- Lawyers in private practice;
- The team at Legal Aid Ontario; and
- Members of the judiciary in our provincial and superior courts.

My Parliamentary Assistant, Lindsey Park, has also spent the summer meeting with local law associations to hear directly from lawyers across the province about ways we can improve the justice system.

And most importantly, both Lindsey and I have taken time to meet with the *most* important stakeholders in the justice system – the people, families and businesses we are here to serve.

Above all, it is the people who interact with the justice system that need to have confidence that the rule of law is upheld, and justice is being administered.

Unfortunately, when we talk to people –
whether it be:

- Lawyers;
- Paralegals;
- Members of the judiciary;
- Police;
- Victims of crime; or
- The public that we are here to serve

– we hear over and over again that
Ontario's justice system has grown too
complex and outdated.

And it's in need of reform.

Let me assure you, I am listening. Lindsey is listening. Our whole government is listening. And we are in complete agreement.

We too can see how complex and antiquated the system is.

And we know change is needed.

Smart, sensible change.

This started with my predecessor –
Caroline Mulroney – who began working
towards this goal immediately after taking
office.

She met you a year ago in Waterloo.

And at that time, she made clear that our
government is committed to making
changes to the justice system that better
respect people's time and money.

And we have acted on that commitment.

For example, we have expanded the availability of small claims court and simplified procedure, so that people and businesses have access to faster and easier processes to resolve small and modest disputes.

Thanks to the work of Justices Archibald and Edwards and the whole of the Civil Rules Committee, we have not only expanded access to simplified procedure, but further simplified the process through statutory and rules changes, which include the elimination of civil juries in these matters.

These were changes designed to remove unnecessary delays and costs for litigants.

And these changes came about – in part – because we heard from you.

Change takes time, but in the coming weeks and months, the insights Lindsey and I have gained will form the basis of some proposed legislative and regulatory reform.

The changes I will propose are based on my experience in private practice, as an active member of my local law association and member of the Ontario Bar Association executive and, most importantly, based on the conversations I have had with lawyers like each of you before, and since, becoming the Attorney General

Any changes I put forward will be guided by two fundamental principles:

- 1) First, as Attorney General I need to ensure that the public maintains faith in our judicial system; and
- 2) Second, we need to make it possible for the people of Ontario to avoid legal disputes altogether, and where they cannot, ensure they are able to fairly resolve those disputes faster, more affordably and with fewer barriers.

There are lots of opportunities for smart reforms based on these guiding principles.

For example, the Law Commission of Ontario has made recommendations to improve class proceedings and to create a simplified procedure for small estates.

And other jurisdictions have surpassed Ontario in their modernization of judicial review statutes and laws regarding forfeiture of proceeds of unlawful activity.

And the way we carry out some basic tasks ancillary to the justice system – like notarizing or commissioning documents – has not kept pace with technological developments.

Suffice to say, there is lots to do to make it easier for Ontarians to fairly resolve their disputes faster and more affordably.

[pause]

Maintaining faith in the justice system is an equally pressing challenge.

One item I believe needs to be addressed is the way Ontario appoints our judicial officers – judges and justices of the peace.

Having worked in the Courts, studied judicial administration, practiced for 20 years, and spent 5 on the Board of Directors of the Ontario Bar Association...

...when I was appointed as Attorney General, I held a suspicion that the judicial appointment process in Ontario was flawed.

In this room, there are many senior and seasoned lawyers from all parts of our great province.

For any of you that have applied for a judicial position in Ontario, you will know our judicial appointments process leaves much to be desired.

I believe we must do at least three things:

- 1) We must use technology to make the system more efficient and affordable;
- 2) We must fill vacancies faster; and
- 3) We must identify more qualified candidates.

Let me unpack that.

On my first point, the current process is paper-based. Think about this. Every applicant sends 14 copies of a 20-page application to an appointed body called the “Judicial Appointments Advisory Committee”.

Staff then take 13 of these copies and courier them out to all corners of the province to members of the committee.

We're talking about 500,000 pieces of paper per year being shipped around the province, and sometimes lost in the process, at exorbitant costs.

And candidates that are not selected for an interview or who are selected for an interview but are not determined – in the opinion of the Advisory Committee – to be one of the top two candidates, do not know that they are not recommended.

I believe the senior members of the bar that apply for judicial office deserve to know if their application isn't proceeding.

On my second point, the system is simply too slow.

In the time it takes from the Court first identifying a vacancy that needs to be filled, to me actually receiving a recommendation from the Advisory Committee, a year or more can elapse.

This is because the committee seeks candidates for each vacancy and does not advertise for candidates until after a vacancy is identified.

If we did nothing other than adopt the federal judicial appointments process, which maintains a constantly refreshed list of senior lawyers deemed qualified for appointment to the Superior Court, Cabinet would be in a position to appoint qualified candidates immediately upon a vacancy being identified.

In the aftermath of the Supreme Court of Canada's *Jordan* decision, we cannot afford to waste time when it comes to appointing qualified Judges.

And although hundreds of senior members of the bar are putting their names forward into the process every year, the Advisory Committee is presently only providing the Attorney General with the candidates it deems to be the top two of all applicants, from which I then select one name to recommend to cabinet.

Quite frankly, I believe the Advisory Committee's review and interview process is too subjective, such that qualified applicants – including, perhaps some people in this room – are not even getting called for interviews, let alone recommended for consideration by me and Cabinet.

Switching to a “pool” system like the federal government should ensure we are enlarging the list of recommended candidates from the Advisory Committee, so that more excellent lawyers are being considered for appointment.

We absolutely cannot have a system that enables the appointment of unqualified candidates.... but it is also wrong to have a system that excludes qualified candidates from consideration.

And we need more qualified candidates just to keep the justice system running.

The numbers from our recent Justice of the Peace recruitment process starkly demonstrate the problem.

888 people, including members of the bar and community leaders, applied to fill 31 vacancies.

The Justice of the Peace Appointments Advisory Committee spent close to half a million dollars reviewing those applications and interviewing over 200 candidates, and in the end, only provided 20 names for consideration for appointment by me and Cabinet.

Think about this – that is only two-point-two-five percent of applicants – not even enough to fill two thirds of the 31 vacancies.

So, although I believe we need advisory committees to assist the Attorney General in identifying qualified candidates for these important jobs, we cannot have a system that lacks transparency and is paper-based, slow and expensive, and excludes many qualified candidates from consideration.

And that's exactly what we have right now.

So I have been exploring and discussing ideas for a more transparent, faster, and fairer model for filling our judicial vacancies on the provincial court.

Some things will not be on the table.

I believe we need statutorily enshrined minimum qualifications for judges and justices of the peace.

And our process in Ontario should remain as, or more, robust than the one that currently exists at the federal level for Superior Court appointments.

And I believe that members of the bar have an important role to play in ensuring applicants for judicial office are up to the standard the public expects.

Because it is the public who needs to have faith in the judicial system and the judiciary, and it is my responsibility, first and foremost, as Attorney General to maintain and strengthen that faith.

[PAUSE]

I will leave you with this....

In the months and weeks ahead, our government will be working hard to deliver on some common-sense changes, big and small, to the legal system by updating old laws and simplifying complex processes. Because we want justice that works for all Ontarians.

And I cannot do it alone...

Our legal system only works when people are working together to solve problems and advance smart, effective change.

And what I ask of all of you is to continue participating in current and future discussions – whether it be about statutory reforms around criminal forfeiture, class proceedings, Legal Aid, or the development of regulations around the judicial appointments process, I want to hear from you.

Over the coming weeks you will hear more from me and my team, as we initiate and implement some of what I have just mentioned.

I would be happy to take questions. Thank you. Merci.