



COURT OF APPEAL FOR ONTARIO
COUR D'APPEL DE L'ONTARIO

December 5, 2022

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

Dear Attorney General Downey,

Re: The Ontario Line and Metrolinx at Osgoode Hall

I am writing to you in my capacity both as the Associate Chief Justice of Ontario and as the acting President of the Court of Appeal for Ontario to raise pressing concerns about the delivery of justice to the people of Ontario in light of Metrolinx's Ontario Line construction plans on and around Osgoode Hall. This includes preliminary steps scheduled for this week to be conducted on the lawn of Osgoode Hall, which I was only notified of via media and community notice. My concerns are shared by Chief Justice Geoffrey Morawetz of the Superior Court of Justice, who has had an opportunity to review this letter. As such, I am writing on his behalf as well.

I acknowledge that transit modernization in Toronto is a necessary and laudable objective. Nothing in this letter should be taken as disputing the need for improvement to the public transportation system, including the building of the Ontario Line. My concerns are limited to the decisions being made with respect to the Osgoode Hall property and the affect those decisions will have on the administration of justice.

As it currently stands, I have no confidence that the structural integrity of Osgoode Hall can be preserved, that the safety of the occupants of Osgoode Hall and those who attend at Osgoode Hall can be maintained, or that justice can be accessed and delivered from Osgoode Hall if this project proceeds as contemplated. Until that confidence is achieved, no step should be taken by Metrolinx on or around the premises of Osgoode Hall.

As you know, the Court of Appeal for Ontario sits at the apex of Ontario's court system. To put this into perspective, fewer than one percent of the cases heard by the Court of Appeal for Ontario are later heard by the Supreme Court of Canada. This means that the Court of Appeal for Ontario is, with extremely rare exceptions, the final litigation stop for those who

live, work and do business within the Province of Ontario. Critically, Osgoode Hall is the singular seat for the Court of Appeal for Ontario and has been since 1850. Therefore, the Court of Appeal for Ontario serves all Ontarians directly from Osgoode Hall.

As you also know, Osgoode Hall is also a seat of the Ontario Superior Court of Justice, as well as the seat of the Chief Justice of the Superior Court of Justice. The Divisional Court sits in Osgoode Hall and many of its judges do their work in chambers in this building.

With that context in mind, I wish to convey to you in the clearest of terms that the Metrolinx plan, as currently contemplated, directly threatens not only the ability of the Court of Appeal for Ontario and the Superior Court of Justice to deliver justice in Ontario, but to keep justice accessible in Ontario. To this end, I have deep concerns about Metrolinx's stated intention to enter upon the Osgoode property to start the process of pursuing a project that will, as currently contemplated, undermine the administration of justice in Ontario.

I will not use this opportunity to review the content of an expert report that has been prepared and provided to Metrolinx, which clearly sets out bare minimum remedial steps that must be taken by Metrolinx in order to minimize some disruption to justice within Osgoode Hall. My concerns are heightened by the fact that, at this stage, Metrolinx has not even agreed to the bare minimum remedial measures recommended in the report. Additional issues, including those related to accessibility and safety, as well as foundation issues also need to be addressed.

While limited communications have taken place, the fact is that much critical work is left to be done to ensure that all concerns surrounding Metrolinx's plan are fully addressed, assuming that they even can be addressed, before Metrolinx takes the first step toward implementing its plan on the Osgoode Hall site. At a minimum, we need to reach a level of satisfaction that justice can be continuously accessed and delivered to the millions of people that this Court serves throughout the duration of any contemplated plan by Metrolinx.

Sincerely,



The Honourable J. Michal Fairburn
Associate Chief Justice of Ontario
Court of Appeal for Ontario

c.c.: The Honourable Geoffrey Morawetz, Chief Justice Superior Court of Justice
Jacqueline Horvat, Treasurer of the Law Society of Ontario
David Corbett, Deputy Attorney General, Ministry of the Attorney General
Phil Verster, President & Chief Executive Officer of Metrolinx