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November 22, 2019

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

Dear Attorney General:

Re: Review of the JAAC

I would first like to thank you for attending at FOLA's Plenary last week. Our members always appreciate the effort made when an Attorney General takes the time to speak at our Plenary.

You no doubt know that your comments at our Plenary have drawn a great deal of attention, particularly in light of some of the information that has come forward earlier this week.

On consulting with a great many stakeholders in Ontario's justice system, I have yet to hear any complaint as to the quality of the judges in the Ontario Court of Justice. In fact, I am universally told that Ontario's provincially appointed judges are of the highest quality and caliber. These judges are hearing increasingly more complex cases, are ruling on important matters of Charter Rights and do an exemplary job serving the people of this province.

If your Government intends to alter the process by which Ontario's judges are appointed, I would respectfully ask that you reflect on the old adage that if it is not broken, don't fix it. Based on the quality of the members of the Ontario Court of Justice, our system does not appear to be broken. While no system is perfect and can always be improved upon, FOLA would be very much concerned if the government is considering any type of significant overhaul in the manner by which judges are appointed in this province.

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When I heard you speak at our Plenary last week, I was given to understand that you were typically provided only two names from which to appoint a judge. My impression from your speech was that you were looking to be provided with more names, which I took to mean a list of four, five or maybe six names. Section 43 of the Courts of Justice Act provides that the JAAC shall give the Attorney General a ranked list of at least two candidates whom it recommends.

Since our Plenary, I have read comments in the press which seem to indicate that you might be looking for a significantly expanded list of judicial candidates, perhaps in the hundreds. I am uncertain as to the accuracy of such comments, but if that is indeed the case, it causes us great concern for the obvious reason that within such a large list will be names of those who are very supportive of whatever government happens to be in power, whether it be Progressive Conservative, Liberal or NDP. This raises obvious patronage concerns and if there is one place that patronage does not belong, it is in the court rooms of Ontario.

If you are contemplating reforms to the manner by which judges are appointed in this province, I would respectfully urge you to first consult broadly and openly with the justice stakeholders to ensure that the integrity of the judicial selection process in this province is maintained. To that end, I do appreciate being given the opportunity to meet with you next Tuesday afternoon.

I understand that the current system of selecting judges is approaching its 25th anniversary. This system has served the province well. It is in the public interest that the judges who are appointed in the next 25 years will be no less exemplary than the judges appointed in the previous 25 years.

On behalf of FOLA, I thank you for giving us the opportunity to discuss this very important issue with you.

Yours truly,

MICHAEL J. WINWARD,
FOLA Chair

MJW:rg