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March 2, 2020

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

Dear Minister Downey:

Re: Reforms to Judicial and J.P. Appointment Process

I would first like to thank you for allowing the Federation of Ontario Law Associations (FOLA) to consult with you and your staff regarding the reforms to the judicial and justice of the peace appointment process. Throughout this process, you generously made time available to us to listen to any concerns expressed.

Having had an opportunity to digest the details of the meeting on February 27th and the press release that followed, I am hoping that you are still open to discussion. There are a couple of discrete matters that cause us concern.

First, FOLA has no objection to the minimum number of candidates on a list from the JAAC being increased from two to six. Our concern relates to the additional list of candidates who the JAAC has classified as either "highly recommended" or "recommended", coupled with an Attorney General's seemingly unfettered power to reject the original list of six and ask for new lists.

The optics of a judicial appointment process that would allow an Attorney General to reject the Committee's short list an indefinite number of times without having to publicly account for those rejections, is not good. Public confidence in such a system would be eroded, and for good reason. Independence and transparency in the judicial selection process must not only be done, it must be seen to be done.



If an Attorney General is going to receive a list of "recommended" and "highly recommended" applicants, we feel it appropriate that on an annual basis, the Attorney General publish the number of times a list of six was sent back to the committee for each judicial vacancy. That way, there is some transparency and independence in the process so that the public can have some assurance that judicial appointments have been free from political interference.

Our second concern relates to the proposal that each of the three legal associations (OBA, FOLA and the Law Society of Ontario) submit a list of three Committee candidates, as opposed to putting forward their candidate of choice. We have not been provided with any evidence as to what is deficient in the current process that would necessitate the Attorney General having the control to pick from a list of three. If there was a long history of the three legal associations putting forth "cookie cutter" Committee members, we could understand your concern. However, to our understanding, that is not the case. There is certainly nothing preventing an Attorney General from asking these three legal associations to be mindful of Ontario's diverse population in choosing their respective Committee members. Otherwise, we see no compelling reason as to why each of these three legal associations cannot appoint their own member to the Committee, particularly recognizing that an Attorney General already has the power to appoint seven of the thirteen Committee members.

I do thank you for your consideration and hope that we can continue to move forward in a positive and constructive way so as to ensure that the people of Ontario can have confidence that the judicial appointment process in Ontario maintains its current standards of transparency and independence.

Yours truly,

MICHAEL J. WINWARD,
FOLA Chair

MJW:rg