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Ontario

Our Reference #: M-2020-10192

August 24, 2020

Katie Robinette
Executive Director
Federation of Ontario Law Associations

Email: katie.robinette@fola.ca

Dear Katie Robinette:

In our continuing effort to keep Ontarians safe and maintain the administration of justice during the COVID-19 outbreak, my team at the Ministry of the Attorney General and I have worked closely with justice partners to establish new and innovative ways of delivering justice.

The needs of the justice sector have changed during this outbreak, and the demands on the system will continue to evolve as we begin to see the province reopening in stages. To address these changes, we will continue to act on the guidance of public health experts, and we will continue to work together to develop new ways of conducting matters.

As part of these ongoing efforts, I am writing to seek your input and perspective on legislative potential changes to the mandatory mediation program and a single-judge model (building on the current One Judge Pilot Program) in the Superior Court of Justice. I believe both programs have a lot of merit in promoting access to justice and facilitating efficient means of resolution.

Mandatory Mediation Program

Currently, mandatory mediation applies in Toronto, Ottawa and Essex County to certain civil actions under Rule 24.1 of the *Rules of Civil Procedure* (the “Rules”) and to certain estates, trusts and substitute decision matters under rule 75.1 of the Rules. The Rules require the parties to actions that fall within the scope of the program to engage in a mandatory mediation session early in the litigation process to discuss the issues in dispute and explore settlement options.

Under the Rules, parties may agree to select a mediator from the mediation roster or one who is not on the roster. The parties pay mediators directly for their services, as well as all other costs associated with the mediation. A roster mediator is assigned if the parties cannot agree on the selection of a mediator or fail to do so within the time prescribed by the Rules. Roster mediator fees are prescribed by regulations under the *Administration of Justice Act*.

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I am interested in identifying reforms that would improve early resolution of civil disputes and increase access to justice in civil proceedings through the potential expansion of the mandatory mediation program and enhancements to make it more affordable and efficient for litigants and lawyers. To that end, I am seeking your views on the following questions:

1. Should mandatory mediation be expanded to apply throughout Ontario? Should the types of civil actions that mandatory mediation applies to under Rule 24.1 be expanded?
2. Is mandatory mediation facilitating early resolution of civil disputes in your/your membership's cases?
3. Should mediation be made mandatory prior to filing an action with the court? If so, how could access to justice be maintained for those unable to afford mediation fees?
4. How often have you/your organization's members used the mediation roster used in your region?
5. Where you/your organization's members have used the roster, has the mediator been selected on consent of the parties or appointed by the mediation coordinator?
6. Are mediation rosters adequately supporting mandatory mediation requirements under the Rules (e.g. mediator availability, mediator expertise)? Why or why not?
7. What are the challenges/issues facing the current mediation roster process and how could this process be improved?
8. Should the requirement for each party to pay an equal share of a mediator's fees in a Rule 24.1 mediation matter be changed? If so, how should fees be allocated?
9. What are other improvements that can be made to the mandatory mediation program to make it faster, easier, and more affordable for litigants?
10. Are the needs of litigants with limited financial resources being met by pro bono mediation services and/or the Access Plan?

I would welcome any additional comments you may have on the mandatory mediation program that have not been captured by the questions above.

Single-Judge Proceedings

I am also considering legislative reform to implement a single-judge model in civil proceedings. This approach would identify civil proceedings that would be heard in their entirety by a single judge. Under such a model, the Legislature or its delegate would require all stages in a particular proceeding to be heard by a single judge. The judiciary would remain free to determine which judge would hear the proceeding and when the various stages of the proceeding would be scheduled.

Objectives of this potential reform include:

- Promoting consistent rulings within a case and enabling a judge to oversee compliance with their court orders;
- Enabling parties and counsel to predict what the judge may or may not do at the next stage of a case;
- Allowing the judge to become very familiar with the parties, counsel, and the various legal issues, thereby saving judicial time spent on learning new case files; and
- Promoting prompt and full disclosure and make it more difficult for a party to delay disclosure, when that person must face the same judge every time.

I am seeking your views on the following questions in order to determine whether applying the one-judge model to case management in Ontario would result in more effective and efficient civil proceedings:

1. Should a single-judge model be applied to all civil proceedings in Ontario? If not, what exceptions to the single-judge model would you propose and why?
2. Should parties' consent be required prior to a proceeding becoming a single-judge proceeding?
3. In what, if any, circumstances, should a single-judge proceeding be able to be reassigned to another judge?

Your valued input and ongoing collaboration will help us continue to work with partners to build a justice system for the 21st century that is more accessible, responsive and resilient for Ontarians.

I would be grateful to receive your views in a written submission to Ms. Amanda Iarusso, my Director of Policy and Legal Affairs, by email at amanda.iarusso@ontario.ca no later than September 11, 2020.

Once again, thank you for your consideration. I look forward to receiving your views.

Sincerely,

A handwritten signature in black ink that reads "Doug Downey". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Doug Downey
Attorney General