



February 13, 2019

Vaia Pappas
Director, Operational Support Branch
Court Services Division

Via email: Vaia.Pappas@ontario.ca

Dear Vaia,

RE: TLA'S SUBMISSIONS REGARDING COURT FEE CHANGES

The Toronto Lawyers' Association ("TLA") is the voice of its 3,700 members who practise law in all disciplines across the Greater Toronto Area.

The TLA has considered the court fee changes proposed by Ministry of Attorney General ("MAG") and offers the following comments.

Consultation Process

Effective consultation brings to light valuable information, allowing the government to make informed decisions, and improves government accountability.

With respect to the consultation process for the proposed court fee changes, the TLA notes that the public was given only two weeks from the date that the proposed court fee changes were announced to provide comments. A consultation period of two weeks is insufficient and unrealistic if the intended goal is to garner broad, considered feedback from stakeholders and users of the justice system. For organizations such as the TLA, it does not provide adequate time for us to meaningfully consult with our members. Moreover, a two-week timeframe for input is disproportional in view of the number of Ontarians – the millions of current and future users of the justice system – who will be impacted by the proposed changes.

Court Fee Changes

The TLA does not support increasing court fees, particularly:

- Increasing certain fees in Small Claims Court to bring them to 50% of the civil court fee amounts; and
- Increasing civil and Small Claims fees that attach to "in-court" services (such as filing a trial record) by 100%.

Such increases are inconsistent with “fostering an accessible justice system,” which, notably, is one of MAG’s stated goals for itself as set out in its 2014-19 Strategic Plan, and which is fundamental to maintaining the rule of law. Quite simply, the proposed fee increases may have the effect of rendering access to civil justice beyond the reasonable means of Ontarians of ordinary or limited means.

Moreover, increasing court fees is particularly hard to justify when the civil justice system is experiencing significant delays. In the wake of the Supreme Court of Canada’s 2017 decision of *R. v. Jordan*, where hard deadlines were set for criminal cases to get to trial, criminal matters are taking priority over civil matters when it comes to getting judicial resources and attention. Extended delays in the civil justice system resulted, impeding access to justice. In certain regions, the wait time for a civil pretrial is nearly half a year, and in some cases, trial is scheduled over a year after the action has been set down for trial. As Justice Moldaver observed in *R. v. Jordan*, “Extended delays undermine public confidence in the system. And public confidence is essential to the survival of the system itself.” While his remark was made in the criminal setting, it rings equally true in the civil context.

The TLA also notes that of the fee items being proposed for increase, the fees for filing a motion for a consent order are slated to be doubled, along with the fees for other types of motions. Motions on consent should be encouraged as they dispose of issues and even actions with little consumption of judicial time and resources. They help alleviate court backlogs and delays. Accordingly, it is our view that the fees for consent motions should be decreased, or at the very least, not increase from the current amount.

The TLA is also particularly concerned with MAG’s rationale for increasing certain fees such as setting an action down for trial. The reality is that in many Superior Court cases it is impossible to reach a resolution until the matter has been set down and is ready to proceed to trial. This does not translate into unreasonable or undue use of the court’s resources, and is punitive towards plaintiffs who are not able to engage in reasonable settlement discussions with their opponents until a trial date has been fixed. Nor does fixing a trial date result in wasted court resources, as the likelihood of settlement is factored into the trial scheduling process. In our opinion, it is punitive to be increasing fees to be paid by those who have to resort to the court’s process to obtain justice.

The proposed court fee increases come at a time when a growing number of people are representing themselves in civil and family courts because they cannot afford to pay for legal representation.¹ While it is commendable that MAG is proposing to raise the fee waiver financial eligibility threshold, which the TLA supports, the proposed court fee increases pose an added financial barrier to justice for the many individuals who do not qualify for the waiver but nonetheless have limited means.

With respect to the changes to the fee waiver eligibility, it is worth pointing out that there is no evidence, at least none made available during the consultation process, that the proposed amounts to trigger the fee waiver are sufficient to alleviate the impact of the

¹ CBC, “More Canadians are acting as their own lawyer because they don’t have a choice” (March 23, 2018). Available online: <https://www.cbc.ca/radio/thesundayedition/the-sunday-edition-march-25-2018-1.4589621/more-canadians-are-acting-as-their-own-lawyer-because-they-don-t-have-a-choice-1.4589633>

overall court fee increases on access to justice. If, for example, the vast majority of civil and family court users would not be eligible for the waiver, despite the thresholds being raised, then the increased thresholds do little in terms of enabling their access to the justice system.

In conclusion, at a time when delays are legion and more and more litigants are choosing to self-represent for cost reasons, the TLA encourages MAG to focus its efforts on realizing greater efficiencies and savings in court operations through for example, increased adoption of technology, rather than by increasing the costs visited upon the people of Ontario.

We thank you for considering these comments, and would be pleased to answer any questions that may arise.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'D. Derstine', with a stylized flourish at the end.

Dirk M. Derstine
President
Toronto Lawyers Association