

OTLA Submission to the Standing Committee on Justice Policy

Bill 161, The Smarter and Stronger Justice Act, 2020

June 12, 2020

The Ontario Trial Lawyers Association appreciates the opportunity to make submissions to the Standing Committee of Justice regarding Bill 161, The Smarter and Stronger Justice Act, 2020.

The Ontario Trial Lawyers Association (OTLA) was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others, while at the same time advocating aggressively for safety initiatives.

Our mandate is to fearlessly champion, through the pursuit of the highest standards of advocacy, the cause of those who have suffered injury or injustice. Our commitment to the advancement of the civil justice system is unwavering.

OTLA's members are dedicated to the representation of wrongly injured plaintiffs across the province and country. OTLA is comprised of lawyers, law clerks, articling students and law students. OTLA frequently comments on legislative matters, and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

OTLA will be focusing our comments on these specific sections of Bill 161:

1. Amendments to the *Law Society Act*;
2. Amendments to the *Legal Aid Services Act, 2019*; and
3. Amendments to the *Class Proceedings Act, 1992*

AMENDMENTS TO THE LAW SOCIETY ACT

OTLA supports the amendments to the *Law Society Act*, which create a stronger enforcement mechanism, including increasing penalties for misconduct and allowing for firm regulation.

As stated in our submission to the Law Society in 2016 (*Request for Feedback on Advertising and Fee Arrangements*¹), "active enforcement of standards is key to ensuring that the reputation of lawyers in general is not brought into disrepute."

Increasing the maximum penalty for misconduct from \$10,000 to \$100,000 will have a deterrent effect on the few bad actors in the system.

The amendments allowing for firm regulation (rather than just individual lawyers) are another important step. Applying the Conduct sections of the *Law Society Act* to firms (as well as individual lawyers and paralegals) will allow for more effective regulation of firms, especially in regard to law firm advertising. For example, the responsibility for accurate and tasteful advertising should be the responsibility of the firm as well as the individual lawyers.

Furthermore, establishing and maintaining a public register of firms (as contemplated by the new section 61.1.4), is another important step. OTLA members have noticed "alliances" of "firms" marketed on websites and upon review it appears that some of the "firms" are not actual law firms.

¹ <http://www.otla.com/docDownload/716772>

To the credit of the Law Society, those “firms” are now under investigation by the Law Society. Allowing for firm regulation and creating a public register of firms should help that enforcement.

OTLA continues to support any steps that allow for the proactive and quick enforcement of advertising violations. In our previous submission to the Law Society in 2016 (*Request for Feedback on Advertising and Fee Arrangements*), we wrote:

“The perception is that the wrong-doers are free to violate the rules with impunity for months or years without repercussion or sanction. If a firm advertises improperly for many months before voluntarily pulling the offending marketing campaign, the harm is arguably already done. The firm has increased name recognition and potentially market share at the expense of law firms that are operating within the rules.”

That is still a concern. Empowering the Law Society to be able to proactively and quickly shut down advertising violations remains key.

AMENDMENTS TO THE LEGAL AID SERVICES ACT, 1998

As an organization of trial lawyers committed to helping those who are vulnerable, we have some concerns with the proposed changes to the *Legal Aid Services Act*, 2019. We understand that there is a concern that if this legislative is passed, it will limit the ability of low income and marginalized individuals obtaining access to lawyers. OTLA understands that difficult decisions need to be made; however, we do not believe that limiting access to lawyers is the right approach. If there is less funding for legal representation, this will necessarily result in more self-represented people in court. The reality is that with more self-represented people in court, hearings will be longer and may not resolve as efficiently.

AMENDMENTS TO THE CLASS PROCEEDINGS ACT, 1992

OTLA agrees with the position as set out by the Law Commission of Ontario (LCO) as set out in their letter to the Ministry of the Attorney General on January 22, 2020ⁱ. Specifically, “Bill 161 adopts mandatory and conjunctive “superiority” and “predominance” tests at certification. These provisions fundamentally restructure class action law and policy in Ontario by shifting the CPA’s longstanding certification test strongly in favour of defendants.”

CONCLUSION

In conclusion, OTLA agrees with the amendments that are proposed to the *Law Society Act* and would encourage the government to be mindful of potential unintended consequences with the amendments to the *Legal Aid Services Act*, 1998 and the *Class Proceedings Act*, 1992.

ⁱ <https://www.lco-cdo.org/wp-content/uploads/2020/01/LCO-Letter-re-Bill-161-Class-Actions-Final-Jan-22-2020.pdf>