

June 12, 2020

Legislative Assembly of Ontario Standing Committee on Justice Policy
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2

Dear Mesdames/Sirs,

Omni Bridgeway Submissions to the Legislative Assembly of Ontario's Standing Committee on Justice Policy re. Bill 161

On behalf of Omni Bridgeway, thank you for the opportunity to present to the Standing Committee on Justice Policy regarding Bill 161. Please find attached to this letter a schedule reflecting my remarks to the Committee.

We wish to take this opportunity to again highlight our recommendation at paragraph 27 of the attached remarks, recommending that Bill 161 clarify that appeals from a motion seeking the approval of a litigation funding agreement be made to the Ontario Court of Appeal. Though modest, this change would promote clarity, certainty and efficiency, and be to the benefit of plaintiffs, defendants and the administration of justice broadly.

Yours sincerely,



Paul Rand
Chief Investment Officer (Canada)

D + 416 583 5720
prand@omnibridgeway.com

Encl.

Schedule I

Statement of Paul Rand, Chief Investment Officer (Canada) Omni Bridgeway, to the Standing Committee on Justice Policy
Bill 161 - Public Hearing - Wednesday, June 10, 2020

1. On behalf of Omni Bridgeway, thank you for the opportunity address the committee to share our perspective on Bill 161 as it pertains to third party litigation funding in the class action context.
2. My name is Paul Rand, Chief Investment Officer of Omni Bridgeway (Canada). I am responsible for overseeing the investments and operational activities of the Omni Bridgeway across the country. I am joined by my colleague Naomi Loewith who is Legal Counsel, as well as an Investment Manager and Director of Strategic Partnerships for the company in Canada.
3. Omni Bridgeway, a global litigation funder, supports the goals of Bill 161 to promote fairness, clarity and efficiency in respect of the provision of third-party funding for class actions. My remarks will focus on this aspect of the proposed legislation.
4. In the seven minutes of time allotted, I will first provide a description of litigation funding, second describe Omni Bridgeway's business, and third propose a minor drafting recommendation that would add clarity to the litigation funding provisions in a manner that is consistent with the Government's proposals.
5. The concept of litigation funding is quite straightforward. A funder, who is not a party to the litigation, agrees to pay all or part of cost of pursuing litigation in return for a fee or a share of the recovery upon success.
6. The expenses covered by a litigation funder can include either lawyers' fees or out-of-pocket disbursements or both.
7. It will not surprise members of the committee that complex litigation can cost hundreds of thousands of dollars and more often millions of dollars. A litigation funder helps overcome this significant barrier to the pursuit of a meritorious claim. Litigation funding is a valuable tool to enhance access to justice.
8. In addition to paying for the upfront expenses of a law suit, in a loser-pays court system like Ontario, most litigation funders will agree to pay court-ordered costs.
9. Litigation funding is generally provided on a non-recourse basis. If the claim fails, the funder receives nothing and, typically, remains liable for lawyers' fees and other disbursements to be paid, together with any adverse costs that it has agreed to cover.

10. The benefits of litigation funding to a claimant are obvious: they receive capital to pursue their claim where they might otherwise be unable to.
11. What may be less obvious are the benefits to other participants in the legal system. For a defendant; the involvement of a well capitalized and professional funder offers reassurance that the plaintiff will have the means to satisfy adverse cost orders that may be granted by the court in favour of a defendant. From the court's perspective, a properly resourced claimant means that the courts benefit from well prepared cases argued by capable counsel.
12. Litigation funding is well-established in many common law regimes across the globe. In the past five years, it has become much more common in Canada, making this an appropriate time to codify principles governing litigation funding for class actions. Ontario is the leader in this regard.
13. Let me pause to note that while we are focused here on class actions, litigation funding may be provided for a range of disputes. Indeed, for Omni Bridgeway, our core business in Canada focuses on providing funding for business-to-business litigation, commercial arbitrations, and insolvency matters.
14. Let me move to the second part of my comments; a brief description of Omni Bridgeway so as to offer you with an understanding of what a sophisticated market participant in this industry looks like. This is relevant to you because we bring the perspective of a professional funder, with decades of experience across the globe.
15. Omni Bridgeway Limited has been a pioneer in the litigation funding market for more than 30 years. We have offices in 10 countries, including in Canada, Australia, the U.S., the United Kingdom, Germany and Holland.
16. In 2016, Omni Bridgeway became the first international funder to open Canadian operations, then under the name Bentham IMF. Today, we have nine staff, including seven lawyers, in our offices in Toronto and Montreal.
17. Our team members previously practised at leading Canadian firms and corporations before joining Omni Bridgeway, and are active members of the profession. We are engaged in legal industry organizations and volunteers with Pro Bono Law Ontario.
18. The company is publicly listed on the Australian stock exchange. We provide detailed market reporting and disclosures. Clients, counsel, governments and other interested parties can review our capital adequacy, returns and global commitments.
19. With our global foot print, and local presence, a public company structure, and a legacy developing the litigation funding market, Omni Bridgeway considers itself one of the world's most experienced litigation funders.

20. Through this experience, we have developed rigorous criteria for deciding whether to provide funding in a case. We accept fewer than 5% of the cases where applicants seek funding. We decline cases that we do not believe are meritorious, or where the involvement of the funder would erode the returns such that the class members would not receive a fair share of any outcome.
21. Access to justice and the integrity of the judicial process align with the interests of sophisticated funder like Omni Bridgeway.
22. Turning to Bill 161. My comments are focused on Schedule 4 of the Bill, and in particular section 33.1.
23. The provisions of Bill 161 relating to litigation funding largely codify key aspects of the relevant common law. Indeed, Omni Bridgeway was involved in many of the cases that have developed this jurisprudence, and many of these provisions reflect what we consider best practices.
24. By way of example, it is appropriate in the context of class actions for a third party funding agreement to be contingent on court approval. We consider it useful that the Bill's drafters have itemized what is required for court approval in such instances. This promotes certainty and efficiency.
25. This in turn ensures Ontario is predictable regime for funders and in turn developing a competitive funding market that yields the best results for litigants.
26. Turning finally to our recommendation. We note that the drafters of the Bill clarify at section 27(1) that the appeal route from a certification motion is to the Court of Appeal. In doing so, the proposed legislation promotes clarity and efficiency.
27. We believe that a similar approach could be taken with respect to appeals from a decision on whether to approve a litigation funding agreement. Accordingly, we recommend that the legislation clarify that an appeal from a decision on litigation funding agreements be to the Court of Appeal. Doing so would offer clarity on this procedural question, and align with the sensible approach taken elsewhere in the legislation.
28. Thank you for your time.