

Submission on Bill 245, Accelerating Access to Justice Act, 2021

My name is George Thomson, and I am a former judge and a former Deputy Attorney General for Ontario and for the Government of Canada. My public sector career extends back to before Attorney General Ian Scott introduced the legislation that created Ontario's unique judicial appointment process and has included working for the governments of all three provincial parties.

The JAAC process is in my view one of the most important changes to this province's justice system to have taken place during my lengthy career working in that system. Over the past 18 years, I have worked on justice reform projects in over 12 countries around the world and I can tell you that the Ontario model (not the federal model) for appointing judges is universally praised as one of the best examples anywhere in the world of a truly independent appointment process.

Considering this, I would argue that the onus is clearly on those who would change that process to provide compelling reasons for doing so. So, for example, an important goal is to strive to ensure that the Ontario Court of Justice is representative of the population it serves. Relying on this goal to justify changing a model that has done more than any other appointment process in Canada to achieve greater diversity on the Court, is a weak argument at best. I know the Committee takes very seriously the support for diversity in the present section 43 (9). And there is nothing in the history of models used elsewhere to suggest that giving the Attorney General more names to consider leads to even greater diversity.

The Bill before you has some improvements, for example the introduction of technology to allow for a faster, more efficient process. However, in one respect it is much, much worse than the earlier drafts the Attorney General released for discussion. I refer here to section 43(11), which is the section that ensures that the confidentiality of the JAAC process is preserved. It includes an exception that would allow the Chair to disclose to anyone information collected about any applicant. It is a broad authority that is not limited by the later section dealing with when information about the appointment process can be given to the Attorney General.

When you add to this the power in section 43 (5) to appoint a Chair for as little as one year, it creates the obvious risk of a Chair feeling under pressure to give the Attorney General or others information as the possible price of remaining in the Chair position. The issue is not what one Attorney General says he **would** do but what any Attorney General in the future **could** do. 43 (11) will also likely have an impact on those applying to the Committee in the future with no assurance that the Chair will not release the confidential information they provide. If your Committee does nothing else, it should remove “except as authorized by the chair of the committee” from 43 (11) and provide the Chair with at least a three-year term.

While I have other concerns, I will make only one other point. The requirement for six names and the power to ask for six more will inevitably be seen as a move away from the independent model that has been so widely praised around the world. I am reassured that it speaks only to recommended candidates and the Committee is able, under section 43 (8), to advise the Attorney General that there are not more candidates that rise to this high standard. However, no one should doubt that this will create the sense that these amendments are designed to enable greater political involvement in the appointment process. The Committee role would be more like other models that only identify qualified candidates and the government then has a lengthy list to choose from. The architects of this model, Ian Scott and Peter Russell, would have no doubts about the intent of such a change.

George Thomson