

Submission to
The Standing Committee
on the Legislative Assembly

Re Bill 245

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In carrying out senior policy roles with both the provincial and federal Attorneys General I witnessed first hand the evolution of Ontario's provincial criminal court from the mid-1970's through to the turn of the century. Among other roles I was the head of policy for Ontario's AG when Ian Scott created the first appointments advisory committee, and I was thereafter on secondment to the federal AG working on criminal procedure reforms when major Criminal Code amendments were passed to expand the jurisdiction of the provincial criminal courts.

From these perspectives I was able to first see, and then to build on, the vastly increased professionalism, expertise and public respect that flowed from Ontario's creation of a truly objective appointments process. In particular, the evident expertise that flowed from that process played a significant role in generating Criminal Code amendments that gave provincially-appointed judges increased jurisdiction. And this, on its own, dramatically increased access to justice given that the provincial courts sit in a great many more locations than do the s. 96 courts.

But access to justice was also increased in a more fundamental way: the non-partisan nature of Ontario's appointment process immediately encouraged a much more diverse range of candidates to put their names forward for consideration. Whether women, or racialized individuals, or simply individuals outside traditional (white male dominated) networks, the fact-based perception that the process was objective brought forward numerous highly qualified individuals who otherwise would have felt there was no point in applying. Their appointments in turn increased both the perception and reality of enhanced access to justice for all and, with that, public confidence in the courts.

And yet Bill 245 puts all this in jeopardy. The Bill manifestly brings politics and insider connections back into the appointment process in ways that will discourage applications from the very communities we need to see represented on the Court. Talented people will not waste their time competing in a process that structurally favours groups of which they are not a part.

This means that whatever the intentions of the current AG may be, the process he is proposing will inherently reduce the diversity of the pool from which he makes appointments. He may indeed believe that he can enhance diversity by seeing more names from among the applicant pool, but he will not have access to many of the best individuals from diverse communities because they simply will not have applied to be in that pool.

Since being initiated by Ian Scott, the current system has worked to the satisfaction of 14 Attorneys General (7 of those were Conservatives, including 4 of the 9 who served for roughly a year or more). No evidence has been put forward by the current AG to refute their confidence in the system. Without such evidence, and with history showing us the damaging impacts the changes will have, the Committee should block this regression from what has been one of the proudest achievements of Ontario's criminal justice system.