



February 7, 2018

The Honourable Charles Sousa
Minister of Finance
c/o Budget Secretariat
Frost Building North, 3rd floor
95 Grosvenor Street
Toronto ON M7A 1Z1

Dear Minister Sousa,

Re: Pre-Budget Consultations, 2018

I appreciate the opportunity to write on behalf of the Ontario Bar Association (“OBA”) in regard to your pre-budget consultations with individuals and organizations throughout the province.

The Ontario Bar Association

Founded in 1907, the OBA is the largest legal advocacy organization in the province, representing approximately 16,000 lawyers, judges, law professors and students. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists the provincial government with many policy initiatives each year – both in the interest of the profession and in the interest of the public.

Auto insurance reform

Over the summer of 2017, the Ministry of Finance solicited feedback on a series of recommendations regarding the auto insurance system by David Marshall in his Report, *Fair Benefits Fairly Delivered* (“the Report”). Having decades of experience on the auto insurance file, the OBA pointed out in our comprehensive submission that many of the Report’s recommendations are based on unfounded assumptions, proposes to repeat past mistakes regarding reform, and are not in the public interest. To deliver a sustainable solution that consumers need, requires a comprehensive review of both no-fault benefits and tort sides of the insurance system.

In December, the Ministry announced plans to proceed with certain recommendations from the Report, in particular by instituting standard treatment plans for common collision injuries and

“independent examination centres” to assess more serious auto injuries. In our view, these proposed reforms are based on misguided assumptions about how the no-fault benefits system has functioned in practice since its introduction in 1990, and will ultimately make the system more costly and less efficient. We urge the Ministry to reconsider its proposals and, instead, engage in a comprehensive analysis of both the no-fault and tort sides of the system with a view to truly improving the auto insurance regime in Ontario. Achieving the result that is best for Ontario consumers requires a cooperative effort and consensus from stakeholders such as the OBA and organizations on the insurance side.

Judicial infrastructure

In November of 2017, the OBA wrote to the Attorney General to support the request of the Superior Court of Justice (Ontario) for the appointment of additional judges in this jurisdiction. In our view, an appropriately managed increase to the judicial complement is presently the best way to improve access to justice across the Province in criminal, civil and family law proceedings. We believe that the Ministry of the Attorney General may need to commit additional resources (such as additional staff, supplies, office and courtroom space) to support an increased judicial complement. The OBA supports the allocation of the necessary resources to achieve this goal.

Toronto Superior Court of Justice amalgamation project

In the summer and fall of 2017, members of the OBA’s Family Law and Civil Litigation Section executives were provided an opportunity to discuss the proposed amalgamation of Superior Court of Justice operations in Toronto. There is no question that additional investments in the justice system are necessary, including in Toronto, where we currently experience significant pressures on Superior Court infrastructure and operations. The OBA was therefore pleased that the amalgamation project contemplates a minimal increase in capacity for civil and family operations, including meeting rooms and courtroom space.

However, we anticipate that the proposed increase in capacity will have a small impact on current backlogs in the system and will be dwarfed in the long term by the continuing rise in case volume and complexity in the Superior Courts post-*R. v. Jordan*. The anticipated future need is particularly acute given the provincial government’s commitment to roll out Unified Family Courts (UFCs) province-wide by 2025. The OBA strongly supports this significant step forward on UFCs, but in our view the amalgamated space in Toronto will lack the capacity required to manage this expanded case load effectively. We urge the government to consider the project’s long-term viability in light of anticipated future pressures on the Superior Courts.

The Financial Services Regulatory Authority (FSRA)

The OBA wrote to the Minister of Finance in October of 2017 regarding the ongoing development of the FSRA's enabling legislation. The OBA's Pensions and Benefits Law section views three areas as critical priorities for the pension sector, especially with respect to next steps and any imminent legislation building out FSRA's framework: (1) a balanced, statutory pension-specific mandate; (2) distinct pension expertise through a separate pension division within FSRA; and (3) a stepped implementation process. Bill 177 included several legislative proposals relating to the implementation of the FSRA. However, in our view, the objects of the FSRA set out in section 3 of the FSRA Act, as amended by Bill 177, does not go far enough to specify a balanced, pension-specific, statutory mandate.

Contrary to the recommendations in the Final Report on the *Review of the Mandates of the Financial Services Commission of Ontario, Financial Services Tribunal, and the Deposit Insurance Corporation of Ontario*, the FSRA Act currently does not require the FSRA to consider the interests of pension plan stakeholders besides plan beneficiaries (such as employers, sponsors and bargaining agents) in exercising its powers. As well, the statutory objects of the FSRA do not currently include the promotion of healthy, sustainable pension coverage for Ontarians. We will look forward to further developments on this important aspect of the FSRA.

Continued support for legal aid in Ontario

The OBA has previously urged the government to increase legal aid funding as a critical way to help lawyers serve a larger portion of vulnerable people who have family, criminal and refugee matters. This year, I would like to thank you again for acting on a multi-year increase in legal aid funding and expanding financial eligibility thresholds in the spring of 2017. The OBA applauds your government's action to address the longstanding issue of eligibility for legal aid certificates as an important way to increase efficiency in the criminal justice system and improve access to justice in family law for low-income families, victims of domestic violence, and other vulnerable groups.

The OBA was also pleased that the government worked with its Federal counterparts to prevent imminent service cuts to legal aid services for immigrants and refugees in 2017. At the same time, in light of Legal Aid Ontario's Balanced Budget Plan and ongoing service pressures, including regarding the immigration and refugee program, we urge the province to commit to a sustainable, multi-year legal aid strategy, including assessment of financial eligibility levels and associated funding requirements. Failure to do so will lead to increased costs and difficulties for those least able to bear them.

Digital government services

Finally, the OBA continues to support efforts to modernize and digitize government services, where appropriate. In 2017, the government introduced a new online service for filing civil claims. The service, which is now available across Ontario, was met with strong support from our members and we look forward to engaging with the government as the service continues to expand. Beyond the justice sector, our members also support modernization efforts in areas that will grow Ontario's economy for individuals, businesses, charities and not-for-profits. We look forward to supporting a wide range of user-centred digital services – leveraged through technological innovation – that are faster, more accessible, and easier to navigate.

Once again, the OBA appreciates the opportunity to provide input as part of your pre-budget consultations, and I thank you for taking the time to consider these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Quinn Ross".

Quinn Ross
President, Ontario Bar Association