Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

JP-23

Standing Committee on Justice Policy

Moving Ontario Family Law Forward Act, 2020

1st Session
42nd Parliament

Wednesday 14 October 2020

Chair: Roman Baber
Clerk: Thushitha Kobikrishna

Journal des débats (Hansard)

JP-23

Comité permanent de la justice

Loi de 2020 faisant avancer le droit de la famille en Ontario

1re session
42e législature

Mercredi 14 octobre 2020

Président : Roman Baber
Greffière : Thushitha Kobikrishna

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

https://www.ola.org/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

House Publications and Language Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service linguistique et des publications parlementaires
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

ISSN 1710-9442

CONTENTS

Wednesday 14 October 2020

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 14 October 2020

Mercredi 14 octobre 2020

The committee met at 0901 in room 151 and by video conference.

MOVING ONTARIO FAMILY LAW FORWARD ACT, 2020

LOI DE 2020 FAISANT AVANCER LE DROIT DE LA FAMILLE EN ONTARIO

Consideration of the following bill:

Bill 207, An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters / Projet de loi 207, Loi modifiant la Loi portant réforme du droit de l'enfance, la Loi sur les tribunaux judiciaires, la Loi sur le droit de la famille et d'autres lois en ce qui concerne diverses questions de droit de la famille.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Good morning, everyone. The Standing Committee on Justice Policy will now come to order.

We are here for public hearings on Bill 207, An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters.

As a reminder, the deadline for written submissions is 7 p.m. on Thursday, October 15, 2020. The deadline for filing amendments to the bill is 5 p.m. on Friday, October 16, 2020.

We have the following member in the room: MPP Lindsey Park. The following members are participating remotely: MPP Lucille Collard, MPP Parm Gill, MPP Suze Morrison, MPP Monique Taylor, MPP Mike Harris, MPP Sheref Sabawy and MPP Aris Babikian.

We are also joined by staff from legislative research, Hansard, interpretation and broadcast and recording.

To make sure that everyone can understand what is going on, it is important that all participants speak slowly and clearly. Please wait until I recognize you before starting to speak.

Are there any questions before we begin?

We have one presenter today. The presenter will have seven minutes for their presentation, followed by questions from members of the committee. The time for questions will be broken down into two rounds of seven and a half minutes for the government members, two rounds of seven and a half minutes for the official opposition and two rounds of four and a half minutes for the independent member.

Are there any questions?

ONTARIO ASSOCIATION OF CHILD PROTECTION LAWYERS

The Vice-Chair (Ms. Effie J. Triantafilopoulos): I will now call on the Ontario Association of Child Protection Lawyers. You will have seven minutes for your presentation. Please state your name for Hansard, and you may begin.

Ms. Tammy Law: Good morning. My name is Tammy Law. I thank the committee for allowing us to participate. I am the president of the Ontario Association of Child Protection Lawyers.

The OACPL has been recognized as a leading voice in child welfare. The OACPL is a specialist organization in child welfare, as all of our members have dedicated a large portion of their practices to child protection. We are experts in child welfare.

The OACPL has made written submissions to the committee. The OACPL welcomes the work this government has done in family law; however, we have concerns about the appeal routes proposed for child protection.

The third alternative proposed in our submission, a direct appeal to the Ontario Court of Appeal, is our primary recommendation. I note that this recommendation has been echoed by both the OACAS and the Office of the Children's Lawyer.

I also understand that Mr. Misheal, who testified yesterday on behalf of FOLA, has contacted the Attorney General's office to communicate his support of this proposal as well; that is, one direct appeal to the Court of Appeal for child protection.

Our agreement on this issue is important. It means that experts from all sides of a child protection proceeding agree on one unified submission: a direct appeal to the Court of Appeal. This is a necessary amendment to this legislation and is in the best interest of children. It promotes a quick and simple route of appeal and, most importantly, does not compromise fairness for the parties.

The last point is important. Parents, like everyone else, want a quick resolution to their case; however, speed is not the only issue. Fairness cannot be sacrificed at the altar of convenience. As multiple courts have noted, the right expressed in the Child, Youth and Family Services Act is not just to have a case heard quickly, but it is also to have it heard fairly.

Appeal routes which change depending on where the parties live are inherently unfair to parents and children in this province. This is particularly so in child welfare,

which disproportionately impacts our women, people of colour and Indigenous communities. It is unfair that these historically disadvantaged groups be subjected to different levels of justice by the mere fact of where they live.

To put this in perspective: There are now roughly 20 Ontario Courts of Justice across the province. These include some of the busiest jurisdictions in Ontario, including Toronto, Brampton, Milton and Windsor. It also includes courts to many Indigenous communities, such as Brantford, Sudbury and Thunder Bay. It is unfair to say to the families and children who live in these areas that their child protection matters deserve only a final appeal to a single judge at the Superior Court, while their neighbours in Hamilton and Ottawa get an appeal to a panel of three judges.

It is also unfair to make families in OCJ jurisdictions wait for unified Family Courts, which may or may not ever happen. I note that in Toronto, we have been waiting for the UFC for more than 10 years, in order to have the same appeal routes as our neighbours.

Not only is the geographical differentiation unfair, but erecting barriers to access to Courts of Appeal, as proposed, is also unfair. Child protection law is not like private family law. Child protection implicates charter and Indigenous rights, unlike any other area of family law, and may lead to the permanent severance of parental ties, the capital punishment of family law. Given the severity of the consequences of these decisions, it is most important that child welfare cases be permitted access to the Court of Appeal. Our highest court in this province must provide guidance and direction to these cases, to ensure that they are fairly decided across the province. This means that access to the Court of Appeal must be feasible and possible.

The importance of the availability of an appeal to the Court of Appeal cannot be emphasized enough. The Court of Appeal plays a major and important role in ensuring that miscarriages of justice do not occur. Our province has gone through multiple inquiries and commissions related to miscarriages of justice in child welfare, including the Motherisk Commission and, to some extent, the Charles Smith inquiry. These inquiries were all prompted by cases that were heard at the Court of Appeal. To block access to the Court of Appeal is to risk future miscarriages of justice in a system that has already experienced significant criticism over the years.

Comments were made yesterday about how Bill 207 aims to reduce costs and simplify process. These are laudable goals, and a direct appeal to the Court of Appeal is consistent with these aims. The Court of Appeal is a specialist: They are specialists in charter rights appeals and matters of provincial importance. Their decisions create consistency and minimize confusion about legal issues across the province. Clarity and consistency in the law lead to better judicial decisions, less litigation and, in turn, fewer appeals. This, in turn, reduces delay and costs.

A direct appeal to the Court of Appeal meets the objectives of justice as stated by this government. In contrast, final appeals to the SCJ, for some courts, and to divisional courts in others, as proposed in the current legislation, fail to address issues of consistency, legal clarity and fairness across the province, which will only increase costs to the system and litigants.

Those are my seven minutes, I hope. I'm happy to answer questions.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Thank you for your presentation, Ms. Law. We will now proceed to the round of questions, and the first round will start with the official opposition for seven and a half minutes. MPP Taylor?

Oh, pardon me. Just before you get started, I also wanted to recognize that MPP Kusendova and MPP Singh have joined.

Ms. Natalia Kusendova: Yes, hi. Good morning, Chair. Good morning, everyone. This is Natalia Kusendova, and I'm calling in from Vaughan, Ontario, this morning. Thank you.

Mr. Gurratan Singh: Good morning, everyone. I'm Gurratan Singh, MPP for Brampton East, and I'm calling in from Brampton.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Thank you for indicating your presence. We'll now start with the questions. MPP Taylor.

0910

Miss Monique Taylor: Good morning, Tammy and David. Thank you so much for joining us here in this committee, and thank you for your written submission that came in beforehand. It was your written submission that brought awareness to me of the problems that would occur within the appeal process. I can't thank you enough, truly, for raising this issue. Now as I'm seeing further submissions come in, we're seeing it from the children's lawyer, which is also on the same page as you. So I'm happy to see that.

We know that families have been outgunned by children's aid and by the courts for decades and have been left with no tools and without the access to justice that they truly needed. To further complicate that process by changing the appeals process that would completely outgun them again is just completely unfair, and I'm so grateful to see you here today.

I want to give you some time to talk about reference cases that were probabilities that could happen and what families would face when these changes came through if they go through as is right now. Could you highlight for some of the other members as well as for myself what could happen in these cases when they don't have access to the appeal courts?

Ms. Tammy Law: Sure. And I welcome David Miller, who is the treasurer of our organization, to also join in.

One of the largest problems we see is the leave requirement. As the committee members may be aware, most of the clients who have child welfare involvement are on legal aid. Given the current funding issues with Legal Aid Ontario, it is impossible for parents to retain lawyers who are able to do both a leave requirement and also then a substantive appeal on the current hours that are allotted by legal aid.

This is also not to mention the severity of the delay. Over the past few years, there have been several major cases at the Ontario Court of Appeal that went through several layers that took a long time. I think there was one appeal that took three to four years from start to finish. This is an injustice to the family, both for the parents and for the children. They need quick resolutions, but they also need proper resolutions.

The two major cases I can think of in the last two to three years were decided at the Ontario Court of Appeal and were reversed. Decisions that were made to completely terminate parental rights were actually reversed and either sent back to trial, which is, again, another costly delay, or there were substitute decisions which said parents can now have some contact with their children. So there are significant consequences to this very problematic set of steps that we have in the proposed legislation.

I don't know if David wants to join in on this.

Mr. David Miller: Good morning to the committee. My name is David Miller. I'm the treasurer of the Ontario Association of Child Protection Lawyers. I've been a child protection lawyer in Toronto representing parents for over 25 years.

We have to remember what these cases are about and what's at stake in these cases. These aren't family law cases. Child protection cases are different. They involve charter rights and they involve outcomes that could permanently sever a family, permanently sever parents from their children, where they won't be able to see their children anymore. Those are often the cases that get appealed, that go through the appeal courts.

The courts have called it the most profound order that a Canadian court can make. It's what's called an extended society care order or what used to be called a crown wardship order. It's been called the capital punishment of family law. But we have to remember, this isn't exactly family law. Child protection is its own area of law. It's a combination, almost, of family—it has aspects of criminal law; it has aspects of civil law. It's so important in these cases to have access to the Ontario Court of Appeal, which does have expertise in child protection and expertise in appeals, as opposed to a single judge.

When we're talking about access to justice, when we're talking about reducing costs—which is a goal to admire—it makes a lot of sense in private family law, but in child protection law, in 99% of those cases, the applicant is the state; the applicant is the government. Access to justice doesn't mean a lot to the parent—in that case, access to justice for the parent means access to a court that can decide the case: access to the Ontario Court of Appeal.

Miss Monique Taylor: Thank you so much for this. You're absolutely right. As the child critic for the past nine years, I've heard from so many families who have already been outgunned, not having the proper lawyer, running out of legal aid. We've heard very clearly through this committee that 50% to 80% of people who even start with a lawyer do not end with a lawyer, because they run out of money, and many of these families are very vulnerable. We're talking about poverty. We're talking about mental health.

Then we have a government who are talking about reform to the child welfare sector, making it proactive as to how we can keep families better together. I think this is one more step that can truly make sure that we get to the right outcome at the end of the day, because things do happen and things are turned over in the appeal courts. So I think it's so important for the government to see this, and then for the committee members to hear this plea for making sure that when we change the appeal laws, we're doing it for the right purpose, in the best interest of the child. By the sounds of it, the changes that are currently before us are not in the best interest of the child or in the United Nations rights of a child.

Thank you so much for your presentation, and thank you so much for being here with us today and for making sure that your voices are heard in protecting our most vulnerable families. I really appreciate it.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): We have 26 seconds left, if there are any comments from either of the presenters. Okay, that's fine. Let's move on, then, to the next round of questions, and I'll call on the government. MPP Lindsey Park.

Ms. Lindsey Park: I want to thank you for taking the time to appear at committee today. I understand you've had good discussions in the last 24 hours with the Attorney General's office. I know he's very interested in hearing from you guys on this.

I just thought I'd take the opportunity to thank you for your written submission. I thought I'd refer to that. I noticed three alternatives are proposed in your submission. I wondered if you could walk through those with us, and perhaps advise if there's one you would prefer or if they all achieve a similar outcome.

Ms. Tammy Law: Sure. Our first preference, even though it's listed on the bottom, is a direct appeal to the Ontario Court of Appeal. We believe that that is the fastest route and the route we should take to get to the correct result.

The other two alternatives were proposed because David and I and the OACPL are not privy to information about workload for the courts or any of those other practical issues, and so we thought that we would also provide two other alternatives in the event that there were other considerations outside of what we have submitted. That involves basically removing the leave requirement, so we would suggest that option number one would be our second preference, because it would remove the leave barrier. The reason for this, as I had earlier alluded to with MPP Taylor, is that with legal aid being the way it is and in terms of delay, we do not want that additional leave requirement to further delay cases and to put further resource pressures on the system, which we all admit we do not have. The first one, though, would be our second option, because it promotes a certain fairness that we all can get to the Court of Appeal without leave.

The third one is basically the appeal route we have now, which would permit the court cases from the Ontario Court

of Justice to at least get to a panel of three judges at the Ontario Court of Appeal. That is our third preferred option, which is to leave it as it is now.

0920

But if we want to rank them in terms of our preference, it would be the third one, the first one and then the second one.

Ms. Lindsey Park: Excellent. I just have a follow-up question. Maybe if you can give us your elevator pitch, if I can call it that, on why these cases should be treated differently than other family law cases. We see an exception already made in the appeal routes, for example, for the Hague convention cases that are dealing with child abduction; obviously, an international convention and inter-jurisdictional issues, so I think that sort of explains itself as to why a direct appeal is beneficial in those cases and appropriate. I just wanted to get your perspective, if you could give your main reasons why you think these cases should be treated differently.

Ms. Tammy Law: As alluded to by Mr. Miller, the severity of what is involved in child welfare—if we're looking at the Hague cases and abductions, to a family and children experiencing the system, it is equivalent to an abduction. It is a removal of children by the state to a situation where you could potentially never have access or contact with that child ever again. So the severity of the issue is significant, and as I alluded to in our written submission, the Supreme Court has stated and alluded to that severity. So it's not only just a bunch of lawyers talking about it, but the Supreme Court has, and also our families have, said so. And so in that circumstance, it's very important to have a quick and direct route to our highest court who will resolve these issues.

Also, we have to take a look at the Indigenous issues that are involved. In a lot of areas in the north of our province, and even, frankly, outside of Toronto, there are lots of Indigenous issues that relate to child welfare. Those cases are only beginning to be litigated, and the impact is community-wide. The impact of child welfare on Indigenous peoples is a community impact; we have heard this repeatedly from various experts about child welfare. We're not only impacting on one individual when we talk about Indigenous communities, we're talking about people who are in the child protection proceeding. We're talking about an entire community.

In those cases, we really need a higher court to express a consistent, rational and logical opinion about issues that come before it. I think it would be doing a huge disservice to many communities in our province if we do not take that seriously.

Ms. Lindsey Park: Excellent. I'm appreciating this dialogue. So just to play devil's advocate, just to stress-test the argument a bit here, I don't think anyone disputes that it's important that there is an appeal route. I guess the real question is why is a three-person panel at the Divisional Court not a sufficient appeal process, compared to a three-person panel at the Court of Appeal? Maybe again, just for the benefit of really getting clarity on your position, if you could clarify that.

Ms. Tammy Law: Sure, and I'll let David join in as well if I've missed anything. There is a precedential value about having matters go to the Court of Appeal. Matters that go to the Divisional Court will always be seen by various jurisdictions as being, "Well, it may not be definitive. There is a further leave requirement. You may go to the Court of Appeal." There are disputes about precedent. It doesn't create the consistency that we actually need in this province. We need one statement, and the best is to come from the Court of Appeal. So it's very important for our families to have access to that.

Also, the Divisional Court has many problems with respect to a sitting schedule, as I'm sure the committee is aware from the very well-written submissions of the Office of the Children's Lawyer. There are huge delays at the Divisional Court. My last appeal to the Divisional Court took eight months to complete from start to finish. Our experience at the Court of Appeal is it's much reduced: better case management, better for families in general.

I don't know, David, if you want to join in on any of this.

Mr. David Miller: Yes, and in terms of these changes—

The Vice-Chair (Ms. Effie J. Triantafilopoulos): I regret to say that we are out of time on this round of questioning.

May I also now call on the independent member, four and a half minutes. MPP Collard.

M^me^ Lucille Collard: Actually, this is a good segue because the last question that was asked to you by MPP Lindsey Park was actually the question that I had, so I would like to give you, Mr. Miller, the opportunity to complete the answer about the difference between getting an appeal before a panel of three judges as opposed to one judge of the Superior Court and how this would have an impact. You've talked about the precedential value and I understand that, but maybe explain the impact on the family and the people, if you could, please.

Mr. David Miller: For these changes, the panel for a Divisional Court is only available for the UFC cases. For the cases from the Ontario Court of Justice, they will have just the appeal to the single judge of the Superior Court of Justice.

The importance here, as Ms. Law stated, is child protection law is so important that we want to have uniform child protection law across the province, not different cities and different areas having different practices and different law. We have to remember the risk of miscarriages of justice in these cases is so dire, so high. We really have to get it right.

I represented some of the Motherisk families. The Motherisk families were families where they lost their children, their children were taken away, made crown wards, adopted out—and later found out that the evidence from the Motherisk lab at the Hospital for Sick Children that was used in those cases, through that appeal, was not reliable. The problem in these cases is there's no remedy. The children were adopted out. There was nothing I could do to get the children back with the family. It was done.

It's so essential to get it right in the first place, and that's why it's so essential that there's access to the Ontario Court of Appeal.

M^me^ Lucille Collard: Yes, thank you for that comment. It's very useful to better understand the context of a court system and how precedent needs to be used and how the Court of Appeal's rulings carry an impact for future rulings. I think that for people that are not lawyers, maybe it's important to understand that, so thank you for that clarification.

You also spoke in your brief about the impact on Indigenous children, who are overrepresented in child welfare. Could you explain how the new appeal route would impact more of these families, and why?

Ms. Tammy Law: Sure. The committee should know that—I've been personally involved in various Indigenous cases up in Sudbury that are very, very complicated. We now have a new federal legislation, as well, that overlays the provincial legislation in terms of Indigenous child welfare. It is a burgeoning area, and these changes have come as a result of the many-years-long advocacy of the Indigenous community. The issue we have now is we have new areas of law that are coming up and being litigated in court at the OCJ at all levels, and they need to be decided by a higher court so that everyone has direction as to how this new type of law, the new federal legislation and its interaction with the CYFSA, interacts. We need a definitive statement.

It would not be appropriate or sufficient for those types of issues that affect communities from all across the province to be decided by divisional courts, which are still very local. So the importance of that for those communities is huge. There could be potentially a significant amount of Indigenous litigation that happens in the next few years, and we do need a court to be able to manage and to express opinions that would be relevant for the entire province.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Thank you, Ms. Law. We're out of time.

I'd like to now start with the second round of questions. We will start with the official opposition. Who will be—MPP Taylor, would that be you? MPP Singh, sorry.

Mr. Gurratan Singh: Thank you. Ms. Law, just to recap broadly, you were saying that direct access to the Court of Appeal allows for a consistency in terms of local jurisdictions being able to access justice?

0930

Ms. Tammy Law: Yes, so I say that a direct appeal to the Court of Appeal is necessary for consistency but also for the quality of the decision-making. We have a highest court who is very familiar with appeals, charter rights, Indigenous rights, and as much as the divisional courts are populated with excellent judges, we need the highest jurists in our province to decide on those very important issues that also have an impact, I must say, on other areas of the law. So a charter determination in child welfare will impact on other areas of the law, and similarly with Indigenous rights. There is a significant impact to the issues that are being litigated and which require an opinion.

I do want to note that the miscarriages of justice issue is very important. The Court of Appeal has basically been the court which has discovered miscarriages of justice historically, both with Motherisk and with the Goudge inquiry. Those were all cases from the Court of Appeal, and that's the type of expertise we need in this area because we need to get it right the first time. We don't want to be coming back in 10 years to be doing this again, right?

The Vice-Chair (Ms. Effie J. Triantafilopoulos): MPP Singh.

Mr. Gurratan Singh: And this would be—you're talking about matters that initially flow through the OCJ and then an appeal goes straight to the Court of Appeal as opposed to the Divisional Court. Is that the clarification? Am I clear on that understanding, or no? Like a matter is first dealt with at OCJ then goes straight to appeal as opposed to going to OCJ, divisional, then off to appeal, correct?

Ms. Tammy Law: Exactly, yes. I mean—

Mr. Gurratan Singh: And is the—go ahead.

Ms. Tammy Law: Yes—

Mr. Gurratan Singh: And I'll be interjecting a little bit, so if you can keep me unmuted, that way I can share the conversation.

Ms. Tammy Law: Okay, I apologize. Yes, our proposal is a direct route. If this was a normal type of litigation, a lot of people would say, "Well, why not have several routes?" But we've already discussed the issue of delay, and I think that there is value in not delaying for these families. So how do we get to the fairest result, the best result in the least time possible? That would be a direct route.

Mr. Gurratan Singh: And this would be consistent with other areas of law as well in which on appeal you generally have that direct access to the Court of Appeal as well, correct?

Ms. Tammy Law: Many areas; I would not say all. I don't know, I don't practise in other areas, but I know that many areas have a direct route.

Mr. Gurratan Singh: And you were not consulted by the government on Bill 207?

Ms. Tammy Law: The first time I spoke with the government on this issue was on September 28, and we were not consulted prior to that. However, I do want to say the discussion that we are having, I think, is very consistent with our experience of child protection law. I think that many people lump us into family law, and that's just not the case. I think it's an honest mistake; I wouldn't put much stock on that. It's just that we weren't consulted.

Mr. Gurratan Singh: Further to that, we've seen substantial cuts to legal aid by this government since its mandate. Has that had an impact on your area of law and individuals with respect to your domain and their ability to access justice?

Ms. Tammy Law: I have written a lot on this and I don't know if we have enough time to go into legal aid. It would be a huge discussion. But the cuts to Legal Aid Ontario have definitely impacted on our clients if not with

respect to direct service work, then with respect to because child welfare clients often have criminal law issues, immigration law issues, housing issues, so an overall cut to the system has significant impacts on the ability of our clients to actually get their children back.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): MPP Singh.

Mr. Gurratan Singh: Thank you. So it's fair to say that the cuts to legal aid have negatively impacted clients in your area of law's ability to access justice.

Ms. Tammy Law: I would say that, yes, it has; in particular, the quality of justice that we can get.

Mr. Gurratan Singh: What do you mean by quality of justice? Can you expand on that?

Ms. Tammy Law: Access to a lawyer is the first step, but the lawyer needs to be adequately funded in order to assist, right? Also, as I alluded to before, the other factors in a person's life that involve the legal system need to be adequately addressed. If I have a client who has a child welfare issue, but also has an immigration issue and cannot get legal help for the immigration issue, it doesn't matter what a great lawyer I am for child welfare. That person is going to lose their kids, because they're going to be deported and their children will be here, for example. Or if I'm a great lawyer, but my client cannot access landlord/tenant help, I'm not going to win my case.

Mr. Gurratan Singh: It's fair to say, as a whole, that when you properly fund legal aid, when you properly fund people's ability to access justice, you create a more just system, a more streamlined system and a better system overall. Would you agree with that statement?

Ms. Tammy Law: Yes. There have been studies that suggest that every dollar you spend on legal aid is a $6 savings on our system.

Mr. Gurratan Singh: Perfect. I just want to end with—Chair, how much time do I have left?

The Vice-Chair (Ms. Effie J. Triantafilopoulos): A minute and 28 seconds.

Mr. Gurratan Singh: Thank you. What I want to ask, finally, is that this piece of legislation purports to make a better system, but we've heard from a lot of folks who said there are other steps we need to be taking to create more justice. What would you like to see to create a more just and fair system with respect to family law?

Ms. Tammy Law: That's a very broad issue, MPP Singh.

Mr. Gurratan Singh: If you had, like, a top three, the top three things that come to mind.

Ms. Tammy Law: Well, as you've heard in this committee, I do want the appeal route fixed. That's my top wish for this committee.

There are wider issues. You've already highlighted funding legal aid as another issue, which is significant for us particularly with respect to the ability to fund experts for us, to avoid miscarriages of justice. That's the second issue.

The third issue is that I truly hope that all of our clients can have lawyers, that we can access justice. It is impossible. This system is hugely complex. It's extremely, extremely tough for self-represented litigants, and we want to make that better.

Mr. Gurratan Singh: Thank you.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): We have about 11 seconds to go, if anyone else wants to make a final comment before I turn it over to the government—I think we're out of time. Okay.

May I recognize MPP Sheref Sabawy.

Mr. Sheref Sabawy: As I understand it, the purpose of that legislation, Bill 207, is modernizing the process and enhancing or simplifying access for families to access the court system. From your experience, as I am not a lawyer or from a law background, can you please help us and help the committee to understand a little bit the differences between the current, the proposed and your submission's proposal, by walking us through a case? Just take any case and give us a kind of route for the three scenarios—the current scenario, what the government is proposing through Bill 207, and what your submission is proposing—if you don't mind.

Ms. Tammy Law: David, do you want to do it? Or I can do it.

The current legislation we have right now is—let's take two people. One person is living in Toronto and one person is living in Hamilton. Hamilton is a unified Family Court—UFC—jurisdiction; Toronto is an OCJ. In Toronto, your appeal route under the current, unchanged legislation would be OCJ to SCJ to OCA, without any leave. So you could appeal all the way through; there is no leave requirement.

Now, in our experience, most people will not even appeal once, and if they appeal once they will only stop at the SCJ. That's in our experience; however, there are some cases that go to the OCA, particularly ones with significant issues like crown wardship or extended society care. The Hamilton person, with a unified Family Court, goes to a panel of the Divisional Court with three judges and then, with leave, to the Ontario Court of Appeal. That's the old legislation.

The thing that you guys are now proposing is that in Toronto, you would go to OCJ and then the SCJ, and you would have only a leave to the OCA, which in effect is a significant barrier and will never happen. We will not go to the OCA; it is impossible. If you're in Hamilton, you will get an appeal from one judge from the UFC to three judges at the Divisional Court, and then you will go to the OCA. Again, it's very difficult to go to the OCA after that.

0940

Our suggestion is that everybody in Toronto and Hamilton, no matter where you live, will get one appeal to the Ontario Court of Appeal, and that's it. In our submission, that is the simplest and fairest route.

Mr. Sheref Sabawy: Okay. I'm trying to understand some of the reasons for the delay you had mentioned in your speech before. During your time to speak, you mentioned that one case took eight months from beginning to end. I understand that slow justice is injustice, and especially in the case of having children and stuff like that, it's more critical to get it fast. But can you explain to us

where this delay is coming from? Is that from the procedures, or from the unavailability of enough courts or enough judges? What could be okay as a scenario to improve that delay?

Ms. Tammy Law: My experience with an eight-month delay for one appeal—so that's not the length of the entire case; it's just on one appeal to the Divisional Court—is related to the sitting schedules of the Divisional Court. I think the submissions of the Office of the Children's Lawyer actually go into this in quite a bit of detail, about some of the scheduling issues with respect to the Divisional Court and also the availability of judges, and then the availability of counsel, because they only sit certain weeks in a year. Also, they don't have case management.

We have found in our experience in appeals to the Ontario Court of Appeal that it's much more efficient, because of, as referred to, things like case management and the fact that their sitting schedule is practically year-round. They have been very good at prioritizing on child welfare cases in recent years, and so we think we get better justice at the Ontario Court of Appeal because of these things and because of the expertise of that panel.

Mr. Sheref Sabawy: Just to clarify, this eight months—you are talking about one appeal?

Ms. Tammy Law: One appeal from the Superior Court to the Divisional Court.

Mr. Sheref Sabawy: So in that case, when we talk about three levels, we are talking about three times eight months to get to the final?

Ms. Tammy Law: Or more.

Mr. Sheref Sabawy: Or more?

Ms. Tammy Law: The initial case is usually quite lengthy. You need to either get to a trial or summary judgment, and then they can have an appeal.

Mr. Sheref Sabawy: But now you have a third layer. You have three stops to get to the final decision.

Ms. Tammy Law: Exactly.

Mr. Sheref Sabawy: Do you agree with me that that is a longer route? Maybe there's a comfortable point—

Ms. Tammy Law: Yes, three courts is definitely a longer route. This is why we're proposing just one stop.

Mr. Sheref Sabawy: Okay. That's all my time. Thank you. I would pass the mike to Aris.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): MPP Babikian. You have about two minutes.

Mr. Aris Babikian: Thank you, Tammy and David. My question is: Let's say that the committee took under consideration your advice of one stop, which is the OCA. What are the ramifications in the OCA with delays and other things? Do you envision, do you see, any kind of problem?

Ms. Tammy Law: I hope David will speak on this, because he has many experiences on appeal. Our experience is that if we're talking about workload, we don't actually think it will increase significantly the workload of the Ontario Court of Appeal, basically because we are talking about a very small subsection of all the cases of family law, of child protection cases that are heard in Ontario—a very, very small subsection. In our experience, many people do not appeal, and the ones that appeal really, truly have been advised to appeal by their lawyer because of a legal issue.

As you can imagine, there are many barriers to appeal already. For example, the legal aid barrier is a significant one. Most people will not need to be taking that appeal unless there is actually a legal route. We don't actually think it will increase the work significantly. Of course it will increase, but I also know that the Court of Appeal is very cognizant about delay and case management, and they do try to case-manage.

Our experience also is that in many cases when you file the notice of appeal, there are settlement discussions that happen between—

The Vice-Chair (Ms. Effie J. Triantafilopoulos): We've reached our time allotment.

Let me call upon the independent member. MPP Collard.

M^me^ Lucille Collard: You've alluded to and you've tried to explain why leave is a significant barrier. Can you just give us a little bit more explanation about why is it such an insurmountable barrier for cases to proceed?

Ms. Tammy Law: I keep on looking at my friend David to see if he wants to interject.

Mr. David Miller: I can.

Ms. Tammy Law: Yes.

Mr. David Miller: I can. The leave requirement is a high bar. It requires significant merit to the case, or to the area of law in general. The issue needs to be of some general importance, so not just looking at that particular case and looking for justice within that particular case. It's a wider test. It provides this other threshold to meet that's very difficult in practice, in cases.

M^me^ Lucille Collard: Is it because the legal aid lawyers are not well-equipped to actually meet all these requirements?

Mr. David Miller: No, they can. It provides this higher bar than just providing justice for that child. It's a bar looking at—it has to be an issue of some importance.

We have to remember, and this goes back to what was being asked before about delay: every level, every threshold we put into the system causes delay. So the changes the government is proposing here with OCJ to SCJ to leave at the Court of Appeal—it's just adding a layer. It's adding that leave layer, and every time you add a layer—months; six months, usually, at a minimum.

I do a lot of appeal practice. The initial case will take one to two years, often. The first appeal will take six months to a year—the eight months that we were talking about, that's not unusual at all—and then the next appeal will take six months. It adds up. In the meantime, we have a child who is in limbo and we have a family that is in limbo.

This won't raise the workload of the Ontario Court of Appeal in any significant way. Our submissions are focused on the CYFSA and on child protection. There aren't that many appeals. There already are tests that sort of weed out cases that don't have merit. The main one is,

legal aid has a merit requirement. You won't get legal aid unless a lawyer can demonstrate merit. To get a court to order state funding of counsel—which is, if you don't get legal aid in child protection, that's another option you can get—it also has a merit requirement. So this doesn't add anything in terms of weeding out cases that don't have merit.

M^me^ Lucille Collard: Thank you very much for this precision; it's helpful. Now, I just want to have your insight on—there is a very human issue here at hand, above just the precedent values and above the speediness. What happens to the child during this whole process?

Mr. David Miller: The child is in limbo. The child is waiting for permanency. Again, we're talking about months and years. For example, if this is an extended society care case where we're talking about appeals, what used to be called a crown wardship case, and the child is in foster care in the meantime, and the plan of the children's aid society is an adoption and the plan of the parent is to return back to the parent, we have a child in a foster home waiting for the case to be decided where we know the child is going to have to be moved. The child cannot relax while they're there. It is not a stable place. One of the problems—

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Thank you, Mr. Miller. We've come to the end of the time.

M^me^ Lucille Collard: Thank you very much.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Members, that concludes our business today. I'd like to thank Ms. Law and Mr. Miller for presenting before us.

As a reminder, the deadline to send in written submissions will be 7 p.m. Eastern Daylight Time on October 15. The deadline for filing amendments to the bill will be 5 p.m. on Friday, October 16, 2020.

The committee is now adjourned until 9 a.m. on October 19 for clause-by-clause consideration of Bill 207. Thank you.

The committee adjourned at 0950.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Roman Baber (York Centre / York-Centre PC)

Vice-Chair / Vice-Présidente
Ms. Effie J. Triantafilopoulos (Oakville North–Burlington / Oakville-Nord–Burlington PC)

Mr. Roman Baber (York Centre / York-Centre PC)
Mr. Will Bouma (Brantford–Brant PC)
M^{me} Lucille Collard (Ottawa–Vanier L)
Mr. Parm Gill (Milton PC)
Ms. Natalia Kusendova (Mississauga Centre / Mississauga-Centre PC)
Ms. Suze Morrison (Toronto Centre / Toronto-Centre ND)
Ms. Lindsey Park (Durham PC)
Mr. Gurratan Singh (Brampton East / Brampton-Est ND)
Mrs. Nina Tangri (Mississauga–Streetsville PC)
Ms. Effie J. Triantafilopoulos (Oakville North–Burlington / Oakville-Nord–Burlington PC)
Mr. Kevin Yarde (Brampton North / Brampton-Nord ND)

Substitutions / Membres remplaçants
Mr. Aris Babikian (Scarborough–Agincourt PC)
Mr. Mike Harris (Kitchener–Conestoga PC)
Mr. Sheref Sabawy (Mississauga–Erin Mills PC)
Miss Monique Taylor (Hamilton Mountain ND)

Clerk / Greffière
Ms. Thushitha Kobikrishna

Staff / Personnel
Ms. Heather Conklin, research officer,
Research Services
Ms. Lauren Warner, research officer,
Research Services