



*Bill 102 - Strengthening Safety and Modernizing Justice
Act, 2023*

Submitted by: **Ontario Bar Association**
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Justice Policy**
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ONTARIO
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BARREAU DE L'ONTARIO
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Executive Summary of Recommendations

The Ontario Bar Association (OBA) appreciates the opportunity to provide comments on Bill 102-*Strengthening Safety and Modernizing Justice Act, 2023*. As is more fully set out below, we respectfully make the following recommendations:

- Police Education (Schedule 1 – *Community Safety and Policing Act, 2019*)
 - The OBA strongly recommends the continuation of the requirement that new police recruits have a post-secondary education;
- Small Claims Court (Schedule 3 – *Courts of Justice Act*)
 - The OBA supports the expansion of the jurisdiction of the Small Claims court.
- Education of Judges and Justices (Schedules 3 and 5 – *Courts of Justice Act and Justices of the Peace Act*)
 - The OBA supports the goal of supporting the rights of victims, but is concerned that the proposed amendments, as written, will:
 - compromise the perception of judicial independence and impartiality; and
 - create an appearance of unfairness for accused persons.

The Ontario Bar Association (OBA)

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. We provide updates and education on every area of the law to combined audiences of 20,000 lawyers annually. Each year, through the work of our 40 practice sections, which include leading experts in their field, the OBA provides advice to legislators and other key decision-makers to ensure the justice sector works effectively and efficiently to support access to high-quality justice for Ontarians.

This submission was jointly prepared by members of the OBA's Criminal Justice and Insurance sections, which include lawyers who practice in every region of Ontario. Members of these sections represent a wide range of clients within the Insurance and Criminal bars and have significant expertise and experience.



Comments and Recommendations

Police Education - Schedule 1, para. 33

The OBA recognizes that numerous police services across Ontario have identified the need to increase the number of officers through the recruitment process. We support the government's intent "to support recruitment efforts at a time when local police officers have significant challenges in doing so";¹ however, the OBA does not support reducing the educational requirements for police proposed in paragraph 33 of Schedule 1, which would repeal and replace clause 83(1)(f) of the *Community Safety and Policing Act* – which itself has not been proclaimed. The removal of post-secondary educational requirements for police recruits will not address the underlying problem identified as the purpose of this amendment: to address issues of reduced police recruitment. In fact, there is a high risk that the proposed amendment will undermine its intended purpose and exacerbate one of the leading causes of reduced police recruitment: decreased public confidence in the police². **More education, not less, is what is needed to restore confidence in police services in Ontario, and thereby hopefully make it a more attractive career option.**

The government got it right in the *Community Safety and Policing Act*, 2019, which includes the requirement of post-secondary education for new recruits. At that time, the government cited improving trust as the goal. The Government should not now retract its admirable goal of restoring trust in police by requiring recruits to have a post-secondary education and the necessary skills that recruits develop through that education.

¹ First Reading, <https://www.ola.org/en/legislative-business/house-documents/parliament-43/session-1/2023-04-26/hansard>;

² The Royal Canadian Mounted Police in British Columbia recently identified "a declining interest in policing" as a leading cause of lower recruitment.² See e.g.: *Eva Uguen-Csenge, Alan Regan, B.C police forces struggle with recruitment and retention, CBC News, May 9, 2023, https://www.cbc.ca/news/canada/british-columbia/b-c-police-forces-struggle-with-recruitment-and-retention-1.6836566*. Chief Adam Palmer of the Vancouver Police Service also presented a report to the Vancouver Police Board in October 2021 that confirmed applications were at "an all-time low", which is a trend across North America and that the trend was "impacted by COVID, the defund the police movement and social disorder following the murder of George Floyd in the United States."² Young people in Ontario have also identified the public's lack of trust and respect for police as a deterrent from applying to be a police officer.² . See *Bobby Hristova, Here's why police are struggling to recruit new officers – and why some still want to wear a badge, CBC News, March 28, 2023, https://www.cbc.ca/news/canada/hamilton/police-recruitment-hiring-1.6782361*.



Requiring new recruits to have a post-secondary education also accords with the recommendations of both the Mass Casualty Commission *Turning the Tide Together* Report and the *Independent Police Oversight Review* Report (the Tulloch Report).

The Tulloch Report also made the following recommendations:

46. Notably, the College of Policing should play a key role in modernizing the education of police officers, both at the Ontario Police College as well as colleges and universities. This means evaluating, updating, and renewing police studies and law enforcement-related course offerings at post-secondary institutions. And it requires transforming the Ontario Police College from what may be viewed as simply a training facility into an educational institution. This may include setting a multidisciplinary curriculum for a professional policing education degree, developed in consultation with other academic institutions. A degree program with well-defined expectations and consistent standards will lead to better accountability, transparency, and legitimacy of police services.

47. **For most professions, a recognized system of accreditation for formal educational programs helps to demonstrate that graduates of these programs have the required knowledge, specialized skills, and adequate preparation to carry out the responsibilities of their role.** This provides reassurance to the public that those people who are deemed eligible to enter the profession are doing so competently. ...³ [emphasis added]

The Mass Casualty Commission emphasized that “policing agencies must be learning institutions: capable of recognizing and responding to the changing expectations of the societies and communities of which they are part, and capable of learning from their own past actions in order to do better in the future.”⁴ The Commission specifically found that the **“existing Canadian standard of police training outside Quebec is inadequate to equip police for the important work they do and for the increasingly complex social, legal and technological environment in which they work” and recommended that province and territories “establish a three-year degree-based model of police education for all police services in Canada.”**⁵[Emphasis added]

The public’s confidence in police institutions will only decrease with the removal of a requirement that new officers have a post-secondary education, especially considering that the exact opposite has been recommended by two separate public commissions.

The proposed amendment **also creates a significant risk that *Charter*-infringing errors by exceptionally young officers without sufficient education will cause our judicial system to**

³ <http://www.policeoversightreview.ca/ReportoftheIndependentPoliceOversightReview.pdf>

⁴ <https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-Volume-5-Policing.pdf>

⁵ <https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-Volume-5-Policing.pdf>



dismiss criminal charges, including serious charges against potentially dangerous individuals.

Lowering educational standards and hiring police officers straight out of high school will increase the chances of officer mistakes on the job, including errors that violate Canadians' fundamental rights enshrined in the *Charter of Rights and Freedoms*. The damage that *Charter* violations cause to the rule of law and respect for policing are self-evident. With respect to the trial process, such errors can cause serious criminal charges to be dismissed for reasons unrelated to whether the accused committed the offence.

Our Courts continually update and refine the requirements for *Charter*-compliant policing. Officers today must have the education, training, and experience necessary to keep up with ongoing significant changes to the law that affect their duties in the community. The successful prosecution of criminal cases depends on police officers knowing and respecting *Charter* rights. When police officers breach those rights, Courts appropriately respond with various remedies, such as excluding evidence, staying proceedings, and reducing sentences.

Maintaining the post-secondary education requirement ensures that Ontario's police officers have the necessary knowledge and critical thinking skills to avoid *Charter*-infringing errors that violates Canadians' fundamental rights and imperil serious criminal prosecutions. It also means that new police officers will be slightly older and will have more life experience, job experience, and skills necessary to be a police officer. Post-secondary education provides more than just academic training. It allows young persons to mature, learn, and reflect on serious issues facing our communities, and develop the crucial problem-solving and critical thinking skills necessary for modern policing. Expecting 18- or 19-year-olds without this experience to succeed in this complex field is an unrealistic bar to meet. Young officers with little post-secondary education and accompanying life experience will be more likely to make the types of mistakes that not only create issues for the public standing of police but also prevent serious criminal cases from being adjudicated on the basis of whether the alleged offences were committed.

Recommendations of the OBA

- The OBA recommends maintaining the requirement that new police recruits have a post-secondary education and remove the amendment to the contrary from Bill 102 before passing. Doing so will add to the public's confidence in police institutions.
- The OBA also recommends that the Ontario Government work with federal, provincial, and territorial ministers and police services "to establish national standards for a common, university-based approach to police education" as recommended by the Mass Casualty Commission.



Small Claims Court - Schedule 3, para. 1

The OBA supports the proposed amendment to section 23 of the *Courts of Justice Act* set out in paragraph 1 of Schedule 3 with respect to the requirement that leave of the Small Claims Court be required for matters to be commenced in the Superior Court.

The Small Claims Court plays a critical role in providing access to justice. It moves quickly and, for the most part, efficiently. While some litigants make strategic choices to file in Superior Court (e.g., right of discovery, medical examinations, third party production orders, etc.) the Small Claims Court exists to dispense timely justice on smaller disputes.

Recommendations of the OBA

- The proposed amendment to section 23 of the *Courts of Justice Act* set out in paragraph 1 of Schedule 3 should be passed.
- The OBA also respectfully suggests consideration be given to increasing the monetary threshold for Small Claims Court matters. This would serve to alleviate some of the civil backlog that exists.

Education of Judges & Justices - Schedule 3, para. 3; & Schedule 5, para. 2

The OBA lauds the government's stated goal of ensuring that "victims and their children receive the support and justice they deserve."⁶ However, we are concerned that the proposed amendments in paragraph 3 of Schedule 3, and paragraph 2 of Schedule 5, could:

- compromise the perception of judicial independence and impartiality; and
- create an appearance of unfairness for accused persons.

The proposed amendments to the *Courts of Justice Act* and the *Justice of the Peace Act* to specify that courses may be established for newly appointed judges and justices of the peace and for the continuing education of judges and justices of the peace, which may include courses respecting:

- (a) sexual assault law;
- (b) intimate partner violence;
- (c) coercive control in intimate partner and family relationships; and
- (d) social context, which includes systemic racism and systemic discrimination.

⁶ Second reading: <https://www.ola.org/en/legislative-business/house-documents/parliament-43/session-1/2023-04-26/hansard#para763>



The proposed amendments would also require the Chief Justice of the Ontario Court of Justice and the Associate Chief Justice Coordinator of Justices of the Peace submit an annual report detailing the title, duration, and dates of the established courses respecting items (a) through (d) above, as well as a description of the topics covered in each course, and the number of judges who attended each course. This report is to be submitted to the Attorney General who shall, in turn, cause a copy of the report to be submitted to the Legislative Assembly.

Protecting Judicial Independence and Impartiality

Not only is impartiality important for all Ontarians; independence is a fundamental constitutional principle that is critical to the Canadian legal system. Impartiality includes not only that justice be done, but also that it is seen to be done. The Supreme Court of Canada has described the principle of judicial independence as embracing both the independence of individual judges, and the institutional or collective independence of the court of which that judge is a member. In respect of the latter, the Supreme Court has stated:

[T]he institutional independence of the judiciary reflects a deeper commitment to the separation of powers between and amongst the legislative, executive, and judicial organs of government... [A]lthough judicial independence had historically developed as a bulwark against the abuse of executive power, it equally applied against "other potential intrusions, including any from the legislative branch" as a result of legislation.⁷

The proposed mandatory reporting requirements that would allow the government to monitor the judiciary's adoption of its suggested courses would inadvertently create a situation where the government is in a supervisory role over the content and delivery of judicial education. The jurisprudence is rich in rules governing permissible and impermissible modes of judicial reasoning. These rules guard against the unfair treatment of complainants in the justice system, and include:

- prohibitions on reliance on behavioural assumptions;
- prohibitions on reliance on stereotypical reasoning;
- requirements to be sensitive to the diverse background of witnesses, and the varying demeanour of witnesses;
- requirements that judges provide sufficient written reasons for judgments, which can be examined by the defence and the Crown for error. Judges who violate rules surrounding the permissible and impermissible modes of reasoning may be subject to appeal, and a subsequent reversal of their decision.

⁷ *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997 CanLII 317](#) (SCC), [1997] 3 SCR 3 at paras. [118](#), [125](#) [citations omitted].



- Requirements that judges treat intimate partner violence as an aggravating factor on sentencing.⁸

Justices of the Peace, who will primarily encounter these issues in the context of bail hearings, are already required to consider whether the accused is charged with an offence “in the commission of which violence was used, threatened or attempted against their intimate partner.”⁹ In such instances, the Justice of the Peace must also consider the imposition of an ankle monitor, as well as conditions prohibiting the accused from communicating with the complainant or attending at any place or geographic area.¹⁰ Accused persons charged with such offences who have a prior conviction for an intimate partner violence offences are *presumptively* detainable, and bear the burden of establishing why they should be released.¹¹

For these reasons, in short, the OBA respectfully submits that the proposed amendments infringe on judicial independence and are unnecessary to ensure an impartial and competent judiciary.

Creation of an appearance of unfairness for accused persons

To maintain public confidence in the criminal justice system, justice must not only be done but must be seen to be done. This requires balance. The proposed list of stakeholders to be consulted should include other important perspectives, including defense and Crown voices; individuals and organizations who represent the wrongfully convicted, and those who work with groups who are over-represented in the criminal justice system.

Recommendations of the OBA

- The OBA supports the goal of enhancing victims’ rights; however, we respectfully submit that the means chosen to do so with these specific proposed amendments will be disadvantageous to the long term-repute of the justice system.
- The OBA supports the importance of on-going education for members of our judiciary, however, compelling the suggested education could have a negative impact on the notion of judicial independence. Legislation already exists and is sufficiently broad and flexible to permit the judiciary to develop education on current and relevant social justice issues that

⁸ Section [718.2\(a\)\(ii\)](#) of the *Criminal Code of Canada*, RSC, 1985 c C-46

⁹ Section [515\(3\)\(a\)](#) of the *Criminal Code of Canada*, RSC, 1985 c C-46

¹⁰ Sections [515\(4.2\)](#) and [\(4.3\)](#) of the *Criminal Code of Canada*, RSC, 1985 c C-46 as amended by s.1 of [Bill C-233](#), *An Act to Amend the Criminal Code and the Judges Act* (violence against an intimate partner)

¹¹ Section [515\(6\)\(b.1\)](#) of the *Criminal Code of Canada*, RSC, 1985 c C-46



pervade our justice system. Judges should be accredited in rules that ensure fair application of the law.

Conclusion

Thank you for the opportunity to provide our comments and recommendations. As always, we welcome further discussion as you move forward.