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Judicial appointment changes a 'power grab'

Lawyer groups argue new process would allow for patronage selections

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Organizations representing racialized lawyers have all come out against the Ontario government's proposed changes to judicial appointments, which the attorney general says are partly needed to improve diversity on the bench.

Major organizations representing Black, Asian, South Asian and Muslim lawyers told the Star they didn't ask for these changes. They argue the new system will lead to the perception that the appointments of provincial court judges in Ontario is no longer an independent and impartial process and could allow for provincial governments to make patronage appointments.

"We see this as a power grab dressed up in the very thin veneer of purported diversity," said Nader Hasan, a member of the legal advocacy committee of the Canadian Muslim Lawyers Association.

"Our view is that diversity and excellence are best preserved by maintaining the independence and integrity of the current process."

Added Raphael Tachie, president of the Canadian Association of Black Lawyers, "It's challenging to read something that says, 'We're doing this to increase the diversity of the judiciary,' when the equity-seeking groups didn't ask for it."

Ontario Attorney General Doug Downey said the proposed changes to the judicial appointment process would allow for diversity. Major organizations representing Black, Asian, South Asian and Muslim lawyers say they didn't ask for the changes. Richard LautensToronto Star file photo

In an omnibus justice bill tabled at Queen's Park last month, Attorney General Doug Downey proposed several changes to the way provincial court judges are appointed.

It includes significant changes to Ontario's Judicial Appointments Advisory Committee (JAAC), the independent panel of judges, lawyers and members of the public that vets judicial applicants and submits a ranked short list of at least two candidates to the attorney general.

Under the proposed amendments, that shortlist would grow to at least six candidates. "It allows for a bigger look at what's out there in terms of creating some diversity and creating more choice," Downey told the Star when he tabled the bill.

The attorney general could also reject the six-person shortlist and ask to see the names of the next six candidates, as he is currently permitted to do with the two-person shortlist. Downey says

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he has already asked the committee to provide shortlists with more than two names, and that this change merely formalizes that practice.

Janani Shanmuganathan, a board member of the South Asian Bar Association, argues that allowing the attorney general more choice in who to appoint to the bench leaves room "for a partisan or patronage appointment - some sort of appointment based not on the selection criteria or on who is best fit for the job, but for other reasons."

A spokesperson for Downey maintained that the proposed changes reflect feedback received from lawyers and "justice-sector partners" and will ensure the appointments process remains non-partisan.

"We believe it is responsible to update the system to help Ontario's bench better reflect the evolving diversity of the province's communities," Nicko Vavassis said in an email.

Another proposed change would mean the three legal organizations with representatives on the committee - the Law Society of Ontario, the Ontario Bar Association and the Federation of Ontario Law Associations - would no longer pick their own representatives, but would submit a shortlist of candidates for the attorney general to choose from.

"That will allow us to manage balance and diversity on the committee itself as well," Downey told the Star last month.

The attorney general already picks the seven community members on the 13-person committee.

Legal groups representing racialized lawyers say improving diversity on the bench is a laudable goal, but say they struggle to see how the government's more significant changes would accomplish that.

"Is there a problem with diversity on the JAAC itself? I don't think there is. No one has complained there is an issue," said Emily Lam, chair of the advocacy and policy committee and board member at the Federation of Asian Canadian Lawyers.

"The irony is Mr. Downey himself has described JAAC as the gold standard, so why does he need these changes?" Lam said.

"The concern is that this is actually for partisan purposes, and I think that transparency and fairness call for a discussion to be had by Mr. Downey with stakeholders and the public before taking any further steps."

The Federation of Ontario Law Associations said it did not receive much of an explanation from Downey for the proposed change to selection of committee members.

"It has been suggested that it might be to achieve some greater diversity; however, given that the (attorney general) appoints the majority of the committee and the fact that our bench is quite diverse, it does not appear that we have an issue in this regard," federation chair Bill Woodward said in an email.

"This change gives the appearance of allowing the (attorney general) to have even greater control over the composition of the JAAC."

The Law Society of Ontario and the Ontario Bar Association have not objected to the proposed changes, and told the Star that they support a system that produces diverse judges.

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