

# **MEMORANDUM OF UNDERSTANDING**

## **BETWEEN**

### **The Attorney General of Ontario**

(Hereinafter called the “Attorney General”)

## **AND**

### **The Chief Justice of the Ontario Court of Justice**

(Hereinafter called the “Chief Justice”)

## **PREAMBLE**

The Attorney General and the Chief Justice acknowledge the mutual benefit of a collaborative, dynamic and productive relationship in the administration of justice in the Province of Ontario. Each recognizes that they both have important roles and responsibilities with respect to the administration of the courts and the promotion of public confidence in the court system in Ontario.

The Attorney General and the Chief Justice are both committed to the principle of judicial independence and to providing the people of Ontario with an open, fair, and modern justice system.

The Attorney General and the Chief Justice operate under the principle of financial accountability, and recognize that the Attorney General is accountable to the Legislative Assembly of Ontario for the proper use of public funds allocated for the administration of justice in the Province.

This Memorandum amends and replaces all previous memoranda of understanding between the Attorney General and the Chief Justice.

## **1.0 INTRODUCTION**

### **1.1 Purpose of Memorandum of Understanding**

The purpose of the Memorandum is to set out areas of financial, operational and administrative responsibility and accountability between the Ministry of the Attorney General and the Ontario Court of Justice.

## 1.2 Definitions

In the Memorandum of Understanding:

“Attorney General” means the Attorney General of Ontario;

“Chief Justice” means the Chief Justice of the Ontario Court of Justice;

“Court” means the Ontario Court of Justice;

“Court Services Division” means the Court Services Division of the Ministry of the Attorney General;

“JITO” means the Judicial Information Technology Office

“Judiciary” means all judges and justices of the peace of the Ontario Court of Justice;

“Memorandum” means the most current, signed memorandum of understanding between the Attorney General and the Chief Justice of the Ontario Court of Justice;

“Ministry” means the Ministry of the Attorney General of Ontario; and

“Office of the Chief Justice” means all persons and activities associated with the Ontario Court of Justice, funded through the Court Services Division, administered by the Executive Legal Officer under the direction of the Chief Justice.

## 1.3 Legislative Authority

The Memorandum is entered into under subsection 77(3) of the *Courts of Justice Act*. In the event of any conflict between the Memorandum and any statute, the statute prevails.

## 1.4 Approval

The Memorandum will take effect on the date of its signature by both the Attorney General and the Chief Justice.

## 1.5 Processes for Review or Amendment

The Memorandum remains in effect until it is amended by mutual agreement in writing between the Chief Justice and the Attorney General.

Upon the appointment of either a new Attorney General or a new Chief Justice, the Memorandum shall remain in effect until it is amended by mutual agreement in writing between the parties.

#### 1.6 Public Availability of Memorandum

Pursuant to subsection 77(5) of the *Courts of Justice Act*, the Attorney General shall ensure the Memorandum is made available to the public, in English and French.

## **2 ROLES AND RESPONSIBILITIES**

### 2.1 Role of the Attorney General

The Attorney General is responsible for the following:

- a) Presenting the budget of the Office of the Chief Justice as part of the estimates of the Ministry;
- b) Reporting to the Legislature;
- c) Ensuring that the Office of the Chief Justice is informed of Ministry and Government of Ontario financial and administrative policies that apply to the operations of the Office of the Chief Justice;
- d) Administering all matters connected with the operation of the Court and all matters connected with judicial officers, other than matters assigned by law to the judiciary and matters assigned to the judiciary by the Memorandum;
- e) Promoting fair, accessible and timely criminal, provincial offence and family justice services; and
- f) Promoting fair and timely appointments by the Government of Ontario of new judiciary and senior judicial administrative positions within the Court.

### 2.2 Role of the Chief Justice and the Office of the Chief Justice

1. The Chief Justice is responsible for the following:

- a) Supervising and directing the sittings of the Court and the assignment of judicial duties pursuant to the *Courts of Justice Act*;
- b) Recommending names to the Attorney General regarding the appointment and re-appointment of Associate Chief Justices, Regional Senior Judges and Regional Senior Justices of the Peace;

- c) Appointing other judicial administrative positions;
  - d) Determining the nature and scope of representation by judiciary and Court employees (including the Executive Legal Officer) on Ministry or related committees, working groups or initiatives; and
  - e) Promoting fair, accessible and timely criminal, provincial offence and family justice services.
2. The Office of the Chief Justice is responsible for all matters affecting the financial and administrative responsibilities of the Court, which include:
- a) Effectively and efficiently managing the operations and human resources of the Office of the Chief Justice, and its annual budget;
  - b) Notifying the Attorney General, as far as possible in advance, of all vacancies in the judiciary, including the requirements of each vacancy;
  - c) Managing the allocation of judge and justice of the peace salaries and benefits, with the exception of pension benefits;
  - d) Overseeing:
    - o judicial education;
    - o legal, policy, financial, administration, travel, human resources, and communication functions, and furniture and equipment relating to:
      - the Office of the Chief Justice,
      - the Offices of the Regional Senior Judges and the Regional Senior Justices of the Peace, and
      - the carrying out of the responsibilities of the Chief Justice.
    - o judicial expense allowances;
    - o complement management;
    - o per diem judge program;
    - o per diem justice of the peace program;
    - o hospitality;
    - o relocation expenses;
    - o ceremonial expenses; and
    - o judicial attire.
  - e) Providing direction to the Court Services Division and JITO regarding the storage, maintenance, archiving, release and access to all Judicial Information and Court Information in accordance with Section 4.
  - f) The offices (and employees therein) that are the exclusive responsibility of the Office of the Chief Justice are:

- Office of the Chief Justice, including the Centre for Judicial Research and Education –Toronto;
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – Central East Region;
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – Central West Region;
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – East Region;
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – Northeast Region;
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – Northwest Region;
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – Toronto Region; and
- Office of the Regional Senior Judge and Regional Senior Justice of the Peace – West Region.

### 2.3 Role of the Ministry of the Attorney General

The Ministry of the Attorney General is responsible for:

- a) Providing modern and professional court services that support accessible, fair, and timely justice services;
- b) Storing, maintaining and archiving Court Information and Judicial Information, and releasing and providing access to such information, all of which is to be undertaken by the Court Services Division and JITO in accordance with Section 4;
- c) Providing regular and special statistical information and services, which shall be done in accordance with Section 4;
- d) Providing financial, human resource, audit and other administrative and corporate support services to the Office of the Chief Justice, in accordance with government policy;
- e) Participating in an annual process with the Office of the Chief Justice to jointly identify and prioritize capital initiatives relating to court houses across Ontario. The capital planning process will involve officials of the Ministry, and designated judges or employees of the Office of the Chief Justice;
- f) Supporting accessibility needs in the workplace (including providing furnishing and equipment required to accommodate a disability), in accordance with legislation and procedural protocols;
- g) Providing judicial support services that are not the direct responsibility of the Chief Justice as noted in the Memorandum through the Court Services

Division or by other ministries or agencies (e.g., the Ontario Pension Board), as appropriate;

- h) Supporting Judicial Library Services, in consultation with the judiciary;
- i) Working collaboratively with the Court on security, threat risk assessments and emergency planning matters regarding the administration of justice, particularly with respect to courthouses. The parties agree that they will work with and make recommendations to the appropriate policing authorities on such matters as necessary;
- j) Providing legal representation to all judicial officers, where appropriate, on matters that arise as a result of the performance of the official's judicial functions. Where there is an apparent conflict of interest (as identified by the ministry, the affected judiciary or the Office of the Chief Justice), the Office of the Chief Justice will retain private sector legal counsel, in accordance with ministry policy;
- k) Providing security services through the Justice Sector Security Office (JSSO) as the "single point of contact" for province-wide security services to the judiciary; and
- l) Providing French language services to the Court in accordance with Ministry policy.

#### 2.4 Role of the Executive Legal Officer

The Executive Legal Officer is responsible for:

- a) Exercising the financial, human resource and related administrative responsibilities of the Office of the Chief Justice and, for the purposes of financial and administrative management, shall have the appropriate authority and responsibility as delegated under the Ministry's delegation framework;
- b) Acting as a liaison between the judicial and executive branches of government while reporting through the Assistant Deputy Attorney General – Court Services Division, and subject to the authority of the Chief Justice pursuant to section 76 of the *Courts of Justice Act* to direct court staff; and
- c) Serving as a member of the Court Services Division, Divisional Management Committee.

### **3.0 FINANCIAL, ADMINISTRATIVE, CONFIDENTIALITY, COMMUNICATION and INFORMATION TECHNOLOGY ARRANGEMENTS**

#### **3.1 Funding**

The operations of the Office of the Chief Justice are funded out of the Consolidated Revenue Fund through the annual Estimates process.

#### **3.2 Preparation of Annual Budget**

The Office of the Chief Justice shall participate in the Ministry's annual budget planning cycle. All funding is through the Program Review Renewal Transformation (PRRT) cycle or other ministry financial processes .

The Attorney General and the Chief Justice agree that no changes to the Chief Justice's operating budget shall be made by the Ministry without prior consultation with the Chief Justice.

#### **3.3 Policies and Procedures**

Financial and administrative policies and procedures of the Office of the Chief Justice shall conform to all Ministry financial and administrative policies and procedures, with any exemptions to be approved by the Office of the Chief Justice.

#### **3.4 Provincial Auditor**

The financial and administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry. Correspondence with the Provincial Auditor pertaining to the Provincial Auditor's Report will be forwarded to the Chief Justice by the Attorney General, and any response made by the Attorney General to the Provincial Auditor shall be subject to prior consultation with the Chief Justice.

#### **3.5 Annual Report on the Administration of the Courts**

The Attorney General shall report on the administration of the Court in accordance with the requirements of section 79.3 of the *Courts of Justice Act*, following consultation with the Chief Justice.

The Ontario Court of Justice will report on judicial administration highlights of the Court through the Ontario Court of Justice website as directed by the Chief Justice.

### 3.6 Ongoing Consultations and Communications

Given the division of roles and responsibilities described in the Memorandum, the Chief Justice and the Attorney General agree that collaboration and consultation on significant matters of judicial administration, court administration and justice system reforms affecting the Court are necessary to promoting an accessible, modern and effective justice system.

The Attorney General and the Chief Justice acknowledge that all communications should be done in a timely manner regarding any program, policy or legislative changes, including knowledge of any federal legislative changes, or initiatives that may affect the judiciary and the administration of the Court.

The Attorney General and the Chief Justice will meet at least annually to discuss matters of mutual interest regarding the administration of the Court.

The Deputy Attorney General and the Chief Justice will meet at least annually to discuss matters of mutual interest regarding the administration of the Court. The Deputy Attorney General will be the primary Ministry contact for the Chief Justice.

Consultations and communications between the Attorney General and the Chief Justice are subject to any confidentiality and privilege obligations to which either may be subject.

### 3.7 Public Information, Outreach and Openness

The Attorney General and the Chief Justice are committed to improving the level of public understanding about the role played by the courts and judiciary in Ontario's justice system. To this end, they will continue to foster a productive dialogue between courts administration, the judiciary, the legal community, the media and the public.

### 3.8 JITO and Information Technology Support to the Court

The Attorney General and the Chief Justice agree to maintain a judicial technology environment with comprehensive security and privacy specifications for judiciary, considering principles regarding judicial independence and security of judicial information outlined in the Canadian Judicial Council's publication: *Blueprint for the Security of Judicial Information 2004* (as updated).

Justice Technology Services will work with the Court and JITO to provide direct and appropriate information technology support services to the judiciary.

The Attorney General will ensure that information technology services provided to the judiciary do not infringe upon judicial independence, and in particular do not limit JITO's capability to segregate Judicial Information or to comply with JITO's obligations under Section 4.



JITO is responsible for:

- Advising, and consulting with, the Court on information technology and telecommunications services;
- Coordinating the development of multi-year strategic technology plans for the Office of the Chief Justice and implementing management information systems to meet the operational needs of the Office of the Chief Justice and all regional offices.
- Storing, maintaining and archiving, and releasing and providing access to, Judicial Information as set out in Section 4.
- Assessing new information technology systems and changes to existing systems to ensure compliance with judicial information security requirements.

Any governance or responsibility changes relating to JITO require the agreement of both the Attorney General and the Chief Justice.

## **4.0 JUDICIAL INFORMATION AND COURT INFORMATION**

### **4.1 Definitions**

Judicial Information means information the release of which would impair judicial independence and includes: personal judicial information, information relating to judicial assignments, court policies and programs (including educational programs) relating to the judiciary, and information and material in any form generated by, or at the request of, the Court, its judiciary or employees.

Court Information means information other than Judicial Information that relates to proceedings before the Court, and includes: court records relating to individual cases; court calendars and dockets; court activity reports whether in paper or electronic format; and all related reports, data and statistics.

Judicial Information and Court Information also include all such information contained in any electronic or other case tracking or recording systems managed by or on behalf of the Court.

### **4.2 Format**

Judicial Information and Court Information may be in paper, electronic or other format, and include all reports, data, statistics and other extracts derived from them.

#### 4.3 Storage, Maintenance and Archiving of Judicial Information and Court Information

Judicial Information shall be stored, maintained and archived by JITO on behalf of the Court, and in accordance with the direction of the Office of the Chief Justice.

Some Judicial Information may also be in the possession of the Ministry. Such Judicial Information shall be stored, maintained and archived on behalf of the Court by the Court Services Division, and in accordance with the direction of the Office of the Chief Justice.

Court Information shall be stored, maintained and archived on behalf of the Court by the Court Services Division, and in accordance with the direction of the Office of the Chief Justice.

JITO and the Court Services Division shall store, maintain and archive Judicial Information and Court Information in such a way as to ensure that such information remains within the sole custody and control of the Court at all times.

#### 4.4 Release of, and Access to, Judicial Information

The Court Services Division and JITO shall not release, or provide access to, Judicial Information to any person or organization (including any person within the Ministry or the Government of Ontario) without the prior consent of the Office of the Chief Justice.

#### 4.5 Release of, and Access to, Court Information

- a) Policies and procedures governing the release of, or access to, Court Information will be in accordance with relevant legislation, case law, and judicial orders, and based on the principles of openness, judicial independence, data accuracy, proper administration of justice, proper purpose, compliance with the law and effective use of public resources.
- b) The Court Services Division and JITO shall release, or provide access to, Court Information only in accordance with the following:
  - (i) The *Court Services Division Policies and Procedures on Public Access to Court Files, Documents and Exhibits*. These *Access Policies and Procedures* shall not be revised without the prior consent of the Office of the Chief Justice.
  - (ii) Standing agreements between the Court Services Division and the Office of the Chief Justice regarding the on-going release of statistical reports and data extracts, as well as access to electronic court case tracking systems. As provided in paragraph 4.7, the Court Services Division and the Office of the Chief Justice shall maintain, and update

regularly, a list of such standing agreements.

(iii) The release of, or access to, Court Information not provided for in paragraphs 4.5(b)(i) and (ii) requires the prior consent of the Office of the Chief Justice.

c) The following applies to the release of, or access to, Court Information to the Ministry for purposes related to the Ministry's business planning, statutory and constitutional functions:

(i) The Office of the Chief Justice agrees that Court Information provided to a specific person or division within the Ministry pursuant to the standing agreements referred to in paragraph 4.5(b)(ii) may be used by other persons or divisions within the Ministry for purposes related to its business planning, statutory and constitutional functions.

(ii) The Office of the Chief Justice will not withhold consent to the release of, or access to, other Court Information that the Ministry requires to perform its business planning, statutory and constitutional functions, in particular in relation to its accountability for the administration of the courts in matters not assigned by law to the judiciary, unless such release is clearly inconsistent with the principles set out in paragraph 4.5 (a). Such Court Information shall be provided to the Ministry in a format appropriate for Ministry use.

(iii) The Ministry agrees not to share outside the Ministry any Court Information it receives, or has access to, for purposes related to its business planning, statutory and constitutional functions, without the prior consent of the Office of the Chief Justice.

(iv) Where the Office of the Chief Justice withholds consent to the release of or access to Court Information to the Ministry, the Office of the Chief Justice will provide a reason to the Ministry for doing so.

#### 4.6 Requests for Judicial Information and Court Information and Notice Regarding Court Ownership of Judicial Information and Court Information

a) The parties agree that the Court Services Division and JITO, as the case may be, shall present requests for Judicial Information or Court Information that require the consent of the Office of the Chief Justice in a form acceptable to the Office of the Chief Justice, including using a template Business Case for Access to ICON Information or other similar document.

b) The Office of the Chief Justice may authorise Ministry staff other than those within the Court Services Division and JITO to act as liaison for purposes of obtaining any consent required by this Section.

- c) Subject to paragraph (d), where the Office of the Chief Justice consents to the release of Judicial Information or Court Information, the Court Services Division and JITO, as the case may be, shall inform the requester in writing that the released information is being provided with the Court's consent and for the specified purposes.
- d) The parties presume that the media will publish information it receives pursuant to this Section, and agree that paragraph 4.6 (c) does not apply to information provided to the media.

4.7 Regular Meetings Regarding Processes and Protocols for the Release Of, and Access To, Judicial Information and Court Information

- (a) Senior officials from the Ministry and the Office of the Chief Justice shall participate in regular on-going meetings to ensure that:
  - (i) the application of the governing processes and policies set out in this Section are working effectively for both parties;
  - (ii) a list of the standing agreements referred to in paragraph 4.5(b)(ii) is in place and updated regularly regarding the on-going release of statistical reports and data extracts and access to electronic court case tracking systems, and
  - (iii) processes and protocols for granting and revoking access to court case tracking systems are in place and regular checks are completed to ensure compliance.

**5.0 SENIOR JUDICIAL ADMINISTRATION APPOINTMENTS TO THE COURT**

The Attorney General and the Chief Justice are committed to ensuring a fair and transparent selection process for the Associate Chief Justices, Regional Senior Judges and Regional Senior Justices of the Peace positions within the Court. Accordingly, the Chief Justice and the Attorney General support the following approach:

- 5.1 Pursuant to the *Courts of Justice Act* and the *Justices of the Peace Act*, the Lieutenant Governor in Council is responsible for the appointment of the Associate Chief Justices, the Regional Senior Judges and the Regional Senior Justices of the Peace of the Court. The Attorney General is responsible for taking these appointments to the Lieutenant Governor in Council and, wherever possible, the Attorney General will do so prior to the completion of an incumbent's term, in order to allow for an orderly transition.
- 5.2 The Chief Justice shall recommend to the Attorney General names for appointment for each vacant senior judicial administrative position. The Chief

Justice's recommendation shall be based upon full consideration of the judiciary of the Court who have expressed an interest in such an appointment.

- 5.3 In addition, the Chief Justice, prior to making the recommendation to the Attorney General concerning the appointment of an Associate Chief Justice, Regional Senior Judge or Regional Senior Justice of the Peace, shall consult with those persons who may be affected by such an appointment. Without limiting the scope of the consultation, the Chief Justice will consult with the current or previous incumbent, representatives of the Association of Ontario Judges or the Association of Justices of the Peace of Ontario, individual judiciary as appropriate, and any other person who is expected to work closely with the person recommended for appointment.
- 5.4 The Chief Justice's recommendation to the Attorney General for each vacancy shall be made prior to the completion of an incumbent's term, in order to allow for an orderly transition.

## **6.0 STAFFING**

### **6.1 Appointment of the Executive Legal Officer**

The Chief Justice, or designate, will be consulted on, and shall approve, any appointment to the Executive Legal Officer position.

### **6.2 Trial Coordination**

While trial coordinators and designates are within the Court Services Division in terms of Government of Ontario reporting requirements, the trial coordinator or designate, when performing duties as trial coordinator, has the function and responsibility of providing support and assistance to the Office of the Chief Justice and the Regional Senior Judges.

#### **a) Day-to-day direction of trial coordinators:**

The day-to-day direction of a trial coordinator, as it pertains to the execution of duties as a trial coordinator, is a function and responsibility of the Offices of the Regional Senior Judges, subject to managerial supervision by the Court Services Division. All decisions related to the staffing of the office of trial coordinators, including all performance management, are made by Court Services Division in consultation with the Offices of the Regional Senior Judges.

- b) Trial coordinators and providing access to Court Information and Judicial Information:

Trial coordinators and designates shall not provide access to Court Information or Judicial Information except in accordance with Section 4. Trial coordinators must refer all requests for Court Information or Judicial Information from individuals inside or outside the Ministry to the Regional Senior Judge or the Office of the Chief Justice.

### 6.3 Conditions of Employment

The employees of the Office of the Chief Justice are public servants appointed under the *Public Service Act*. Public service staffing policies, superannuation and other employee benefits and conditions of employment and collective agreements apply to all employees assigned to and within the Office of the Chief Justice in the same manner as other employees of the Ministry.

### 6.4 Delegation of Authority

All positions named in the Memorandum have the ability to delegate or designate authority.

## 7.0 ONTARIO JUDICIAL COUNCIL AND JUSTICES OF THE PEACE REVIEW COUNCIL

### 7.1 Independence

The Ontario Judicial Council and the Justices of the Peace Review Council (the "Councils") operate as independent bodies as established by the *Courts of Justice Act* and the *Justices of the Peace Act*.

### 7.2 Financial and Administrative Authority of the Councils

The operating budgets of the Councils are a component of the budget of the Office of the Chief Justice.

The Registrar of the Ontario Judicial Council and the Justices of the Peace Review Council, who reports to the Executive Legal Officer, will oversee the proper use of public funds allocated to the Councils.

The Chief Justice and the Attorney General recognize the respective Councils' independence and ability to carry out investigations of complaints and fulfill their legislative responsibilities as the members of the respective Councils determine appropriate.

### 7.3 Staffing and Resources

The employees of the Office of the Councils are employees of the Office of the Chief Justice with the same conditions of employment as other employees of that office.

To ensure the appropriate use of public resources, the Councils will use the financial, human resource, and technology support available from the Office of the Chief Justice, as needed, and be supported by JITO and the Judicial Library Services.

**Dated at the City of Toronto on August 10, 2016**

***Lise Maisonneuve***

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**The Honourable Lise Maisonneuve  
Chief Justice  
Ontario Court of Justice**

**Dated at the City of Toronto on August 24, 2016**

***Yasir Naqvi***

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**The Honourable Yasir Naqvi  
Attorney General**