

**Regional Senior Justice Daley Address re: Facilities
November 19, 2018 Assignment Court (Brampton)**

Introduction:

No still photography or audio or video recording shall be conducted until permitted by the Court Order to follow.

Good Morning and welcome to the Superior Court of Justice. This is the Civil Assignment Court for the scheduling of civil and family Trials.

As I understand that authorized representatives of the media may be present here today, in view of the importance of the issues I will shortly address, and in view of the broad public interest at stake in these issues, I am making an exceptional Order, at this time, pursuant to Section 136 (3) of the Courts of Justice Act.

The terms of this Order are as follows:

(1) Still photography, audio and video recording of my remarks to follow in a moment are allowed, as an exception to Section 136 (1);

(2) Still photography and video and audio recording shall only be conducted during my remarks to follow

and all photography and video and audio recording shall be terminated at the conclusion of these remarks;

(3) There shall be no photography, video or audio recording of any area in the courthouse other than within this courtroom , namely courtroom #211, and only during my remarks prior to the commencement of the Civil Assignment Court;

(4) Upon completion of my remarks, I will recess briefly before the commencement of the Assignment Court and during that time all video, photographic and audio recording equipment is to be removed from the Courtroom;

(5) There shall be no photography or video or audio recording of any persons within the courtroom other than the Court and the administrative staff within the courtroom incidental to the presentation of my remarks. Thus no photographs or audio recording is to be done with respect to any other persons within the courtroom including members of the public and lawyers in attendance;

(6) There shall be no questions or comments from representatives of the media, lawyers in attendance, or members of the public – – prior to, during or following my remarks.

Authorized members of the media may now proceed to take still photographs and make audio and/or video recordings in accordance with the terms of this Order.

Before proceeding with the Civil Assignment Court, I wish to offer the following remarks with respect to the status of the Brampton courthouse and the current facilities and scheduling challenges experienced by the Superior Court:

1. Today, before we schedule future matters at this trial scheduling assignment court, I wish to advise and explain the reasons why there will continue to be significant delays in the hearing of all future Brampton matters, and why we will have no choice but to regularly transfer cases outside of Brampton. I provide these remarks today because I believe, for transparency, the Bar and the public are entitled to understand why sufficient courtrooms and related courthouse facilities are not available in Brampton, why relief has not yet arrived, and why this problem is only expected to get worse.
2. The lack of available hearing rooms and judicial office space for the Superior Court of Justice in Brampton has now reached a breaking point. Please note that I am not addressing courtroom facilities and judicial chambers issues related to the provincial Ontario Court of Justice. It will be left to that Court to make its own remarks, if it chooses.

3. As is well known, this courthouse facility was too small shortly after when opened in 2000. It remains grossly undersized to accommodate the people of Peel region, which includes Brampton, Mississauga and Caledon. One in ten Ontario residents reside in Peel region, which represent the 5th largest population in Canada. Peel has enjoyed three decades of growth, which growth is only expected to continue.
4. As I will explain, the Superior Court of Justice has engaged all the appropriate channels within the Ministry of the Attorney General to seek timely solutions to the pressing space demands in this courthouse. In addition, we have done all that we can to maximize all of our available space. We have sought to work in a collaborative manner with staff in the Attorney General's office, in accordance with the Memorandum of Understanding between the Attorney General and the Chief Justice dated May 8, 2008, but without little or no success.
5. Despite all of these efforts, and due to the inaction and, willful blindness on the part of the provincial government to address these space challenges, we are now faced with very real and unacceptable delays in the hearing of all matters in Brampton.

6. In spite of the fact that the province of Ontario remains in breach of both its constitutional and statutory duties to provide suitable courthouse facilities for the citizens of Ontario in Brampton and elsewhere, and upon inviting the office of the Attorney General to send counsel on her behalf to receive these remarks, I was advised by her office that it was declining the invitation to send a legal representative for this occasion.
7. Not only is the situation entirely frustrating for all who seek a timely resolution of their cases, but it results in an immense disservice to those who live and work in Peel Region. The sole responsibility to address courthouse facilities rests exclusively with the provincial government, under the *Constitution Act* of 1867, as well as under the *Ministry of the Attorney General Act*. Furthermore, section 71(c) of the *Courts of Justice Act* requires that the administration of the courts be carried out in such a manner that the public's access to the courts and public confidence in the court is upheld.
8. Furthermore, under the Memorandum of Understanding between the Ministry of the Attorney General and the Court, the Ministry is required to collaborate with the judiciary when making decisions on courthouse capital planning. In that process, the Ministry must consider the dignity of the court and the importance of the rule of law,

openness and access to justice, functionality, and the efficient use of public resources.

9. Regrettably, the Ontario government has failed and refused to live up to its responsibilities, despite being implored to do so countless times over many years by the Superior Court of Justice. As the Supreme Court of Canada has said in *R v Askov* and *R v Morin*, the lack of institutional resources cannot be an excuse used by the Crown to deny an accused's right to a timely trial. A similar argument may be made for families who are in crisis and desperately require the court's intervention.

Background

10. By way of background, since 2000, every effort has been made to maximize the use of all courtrooms and the mere two pre-trial rooms that have been assigned for Superior Court use in Brampton. This effort has been nothing short of extraordinary. It has required enormous amounts of time and energy by staff and judges of the Superior Court to manage from among the very limited spaces within this building. In some instances, we have scheduled courtrooms by the hour!
11. In September 2011, Chief Justice Smith wrote to the Attorney General seeking an urgent and immediate solution to the lack of available courtrooms in Brampton. At the same time, requests were made to

have additional offices built for judges, since several Superior Court judges did not have offices to work from. Shortly thereafter, the Chief Justice and the former Regional Senior Justice, Justice Van Melle, met with staff at the Ministry of the Attorney General to discuss the construction of at least three additional courtrooms and additional conference rooms. On-going discussions were also occurring to resolve the shortage of judicial offices.

12. By December 2012, with the support and ingenuity of architects at the Ministry, an agreed plan was put in place to add modular units to the ground floor of the Brampton courthouse. Once implemented, it would have seen the construction of 2 jury courtrooms, 1 non-jury courtroom, and 2 conference settlement rooms. It had the support of the Attorney General and was anticipated to be complete by June 2013.
13. Regular reports were provided to this Court on the status of this project, although no construction ever commenced. This project was the subject of repeated delays. The provincial government offered little or no explanation for the delay.
14. By August of 2014, more than a year after the project was to have been completed, work still had not commenced on this project. Ministry staff no longer provided any reports. Several letters were sent to urge

the Ontario government to move forward with the previously agreed plans.

15. On November 10, 2014, former Attorney General Madeleine Meilleur wrote to Chief Justice Smith to advise that the modular addition would not be constructed. The Superior Court of Justice was not consulted on this decision, nor were we given any advance notice. In its place, a permanent 6-floor addition to the Brampton courthouse would be built, but the government would only be “fitting out” the basement and the first two floors, leaving the remaining 4 floors a vacant shell. In other words, courtrooms would only be built in the basement and first two floors. Some would be for use by the Superior Court of Justice, and some for use by the Ontario Court of Justice.
16. It has become clearly evident to all, since that time, that the idea of only partially completing the courthouse addition is folly at its highest. Not only does it not make any economic or practical sense to delay the completion of the remaining floors – this is simply further evidence of the provincial governments continuing breach of its statutory and constitutional duty to provide appropriate courthouse facilities to this court.
17. It is now more than seven years after the Chief Justice Smith’s request for an urgent solution to this issue, and

over four years since we were advised that this new addition would be built.

18. Over these years, many Brampton jury and non-jury trials have had to have been transferred to Kitchener, which is not within this region, and to Milton, Guelph and Orangeville. While cases have been moved to these centres over the past decade, it has come at considerable and unnecessary inconvenience and expense to litigants, Legal Aid Ontario, police services, the Ministry of the Attorney General, and the Public Prosecution Service of Canada. The vast majority of this expense is borne by the taxpayers of Ontario.
19. This interim solution of transferring cases was never intended to be a long-term solution, although it seems to have no end in sight. As each of you entered the courthouse today, you would have seen that construction of the addition is still not complete. It was to have been completed in September of 2018, then it was delayed to January 1, 2019 and then delayed again to April 1, 2019. We have been advised that this latest date is no longer feasible due to construction delays. Coincidentally, we were advised this past Friday, November 16, that the new occupancy date for the Brampton courthouse addition is now July 18, 2019. However, effective that date there will be no additional court rooms completed, but only some judicial retiring

rooms that could be used on a short-term basis as judges' chambers. Thus, no relief will be offered in terms of providing additional courtrooms for the Superior Court at Brampton. In this latest news from the Attorney General, no date was offered as to when the construction of courtrooms would be completed and available for use by the Superior Court.

20. Further, the Ministry the Attorney General promised that 6 retiring rooms in the courthouse addition were designated for the Superior Court, to be used temporarily as judicial chambers until the 6th floor of the addition was completed. However in the latest news received from the Attorney General, last week, it is notable that no details whatsoever were provided with respect to the number and location of the retiring rooms in the addition, which are supposed to be available for use in July 2019.
21. We remain in a situation of not having sufficient courtrooms, conference settlement rooms, or judicial offices, with no information about when they will be available.
22. As of today, there are 29 Superior Court judges and a Master assigned to sit in the Brampton courthouse on criminal, civil and family cases. Even if the courthouse addition is partially completed as proposed by the Attorney General, the number of judges scheduled to

preside on a week to week basis will far exceed the number of courtrooms available for the Superior Court in the Brampton courthouse.

The Situation Today

23. The problem now is infinitely worse than it was seven years ago when the Chief Justice made her urgent plea for more space, or even four years ago when the former Attorney General promised this addition to the courthouse.

24. In these intervening years, *R v Jordan* was released by the Supreme Court of Canada in 2016. As is well known, that decision places significant time imperatives on when criminal trials are to be concluded from the date of charge. This additional pressure has been placed on top of the very heavy workload that already existed in the Brampton courthouse.

25. The federal Minister of Justice has responded with the appointment of two more judges to the Court in Brampton. We are tremendously grateful to the federal government for these additions to the Court's judicial complement.

26. However, these new judges require offices from which they can work to read materials and write their decisions, and courtrooms from which they can hear and decide cases. The Ministry of the Attorney General

was given well over a year's advance notice of these anticipated additions to the Court's judicial complement, yet absolutely nothing was done to accommodate them.

27. The Ministry has proposed that our newest judges work from retiring rooms in an area of the courthouse on the second floor, adjacent to where the addition is being built. Normally we would accept this as a temporary solution, but this area of the courthouse has suffered from leaks, water damage and mould – all related to the construction of the addition.
28. Madam/ Registrar, I would like entered as exhibits to my remarks today the following photos taken last week of the proposed area of the courthouse impacted by this mould and water damage, and where the Ministry proposes judges use as offices.
29. No air quality testing has been done in the proposed retiring room which has been suggested as temporary judicial chamber space by the Ministry of the Attorney General, in spite of the presence of mould and water leakage in the adjacent chambers and hallways.
30. In good conscience, I cannot assign judges to work in an area of this courthouse where mould has been found, until it is proven to be safe. In any event, these retiring rooms would only serve as very temporary offices for judges, since these spaces are to be demolished as part

of this Brampton addition project. In fact, they were to have been demolished on October 15 of this year. Despite many requests, the Ministry has yet to advise where safe, functional and permanent judicial offices for these new judges will be created.

31. I wish to be very clear about the chronic lack of office space for judges in Brampton. The chronic shortage of office space has been an issue the Ministry has been well aware of since at least 2011. This is not about status or some notion of prestige of the judiciary. We have judges in the courthouse 7 days a week and some of our judges are routinely here from 6 am to midnight. For over a decade, we have exhausted all of the judicial offices on the 6th floor, and many of our full-time judges are trickled around the courthouse in any available resort-to space that exists. These resort-to spaces are now the full-time offices of many of our judges. Yet, even after all such spaces have been engaged, we still have no safe or functional spaces for some of our judges to work. We have, in the recent past, resorted to having 2 full-time Superior Court judges sharing the same chambers. This is unheard of in any court.
32. The problem is further compounded by the failure of the Ontario government to begin any construction to “fit-up” the interior of the remaining four floors of the Brampton addition – floors 3 to 6. These floors sit and will remain

vacant until Treasury Board approves funding to complete these floors. The Superior Court has not been advised whether a submission has or will be made to Treasury Board for the completion of the interior of these remaining four floors of the addition.

33. The completion of these remaining four floors is desperately needed by the Superior Court of Justice. The sixth floor, in particular, must be completed if all Superior Court judges in Brampton are to have a safe and functional office from which to work. Without an immediate commitment to complete floors 3 through to 6, we will still be confounded with insufficient courtrooms, conference rooms and judicial offices to hear and decide cases Brampton's heavy caseload.
34. Also, there is absolutely no possibility for a Unified Family Court being established in Brampton, unless these remaining four floors are "fit-up" as courtrooms, conference rooms and judicial offices. With the support of the Ontario Court of Justice, the Superior Court of Justice, and all major bar organizations in this province, the Ontario government committed to seeing Unified Family Courts roll-out province-wide by 2025. But, in Brampton, it is not feasible to consider UFC expansion until the Ministry commits to fully constructing these remaining floors.

35. The shortage of courtrooms in Brampton will be particularly acute when 2 of Brampton's existing courtrooms (211 and 212) will go out of commission temporarily as part of this courthouse addition project. I understand this is to occur imminently.

Impact on Hearing Dates in Peel Region

36. To demonstrate the scope and urgency of the problem, and to allow a full appreciation of how this impacts litigants in Peel region, I would like to reference our "time-out data" as of November 1, 2018.

37. The Superior Court records "time-out data", which captures the earliest date that the Court can offer parties a hearing date for matters in each of the Court's areas of work – criminal, family and civil. It reflects the time out to the next available hearing date. In other words, this data provides a point-in-time snapshot of how soon a hearing date can be offered.

38. As of November 1, 2018, the earliest hearing date that could be provided for:

- a. A family case "long" motion requiring more than 1 hour of oral argument is 8 months. That is, the earliest a family motion can be heard is at least 8 months from now. A family trial that needs more than 5 days cannot be heard earlier than 16 months from now. For families and children in Peel region who are

in crisis and who require the court's immediate intervention, we can and must be able to do better.

- b. Similar time-outs exist for civil matters – 8 months for a long motion, and 16 months for a trial that is longer than 5 days. These are equally unacceptable for civil litigants and businesses that operate in Peel Region.
- c. For criminal matters, the earliest date that we can provide a short or a long trial is about 10 months. That is, over the next 10 months, we are fully booked. There are many cases that would be in jeopardy under *R v. Jordan* if we had to wait that long to hear them, so we have had to prioritize those cases, rendering others potentially in jeopardy. It is a case of Wack-A-Mole that requires the constant oversight of Justice Bruce Durno, as Brampton's leading criminal judge. This is especially so, now that we have no certainty as to when the promised new courtrooms will be available.

39. These time-out reports define in a quantifiable way how the lack of courtrooms, conference rooms and judicial offices impact the public that the judiciary serves. The inability of the Court to provide timely justice to litigants is a very real failure of the administration of justice.

Impact on Public's Trust

40. These continuing and enduring failures slowly but surely chip away at the public's confidence in our justice system. They cast doubt on how effective the court can and should be. They result in costs being wasted on court attendances that do not meaningfully advance a case. They create very real frustrations for parties, lawyers, witnesses and jurors. They underscore how delayed the Court is in implementing technology solutions, as compared to other public and private sectors where common technology solutions are in wide use.
41. These criticisms are often cast at the judiciary – a branch of government entirely independent and separate from the legislative and executive branches of government. Yet it is the executive branch of the Ontario government who is entirely responsible for these facilities problems plaguing the administration of justice in Brampton.
42. Perhaps most troubling is that, despite the Attorney General's statutory and constitutional superintendent responsibility over the administration of justice, too little is being done too late to address these problems. I know from my own discussions with Chief Justice Smith and staff in her office that the Chief Justice has done all that she can to raise alarm bells with the most senior staff

within Infrastructure Ontario and the Ministry of the Attorney General. Notwithstanding these repeated pleas, there remains insufficient investment in courthouse facilities, or investments made far too late.

43. The Ontario government – past and present – is either wilfully blind to the erosion of trust caused by its failure to take timely steps to address the facilities crisis in Brampton, or it believes that spending on this courthouse will not result in more votes. Either way, the government’s inaction is unconscionable and inconsistent with its obligations to the public in Peel region.

Use of Alternative Facilities

44. On January 13, 2015, former Regional Senior Justice Van Melle, wrote to Mr. Anthony Moustacalis as President of the Criminal Lawyers’ Association and asked that her letter be shared with all members of that Association. In Justice Van Melle’s letter, she recounted much of the history that I have spoken about today. She also advised that because of the lack of space in Brampton and the Ministry’s failure to address this issue in a timely way, some Brampton cases would have to be heard in either Kitchener, Milton or Orangeville. We have also moved cases to Guelph.

45. We have engaged this solution for many years now. It comes at great expense and inconvenience to litigants and their families, Legal Aid Ontario, the Ministry of the Attorney General, witnesses, Police Services and the Public Prosecution Service of Canada. Much of this unnecessary expense is borne by taxpayers.
46. Transferring Brampton cases to other centres has a very real impact on the people who live and work in Peel region. We have received letters of complaints from lawyers, members of the public and families of litigants who have been unable to attend these other court locations outside of Peel region by public transit, creating real access to justice obstacles.
47. For a variety of reasons, including accessibility to public transit, these alternative court locations are not feasible.
48. Milton itself is a facility that suffers from countless problems. Over-crowding, lack of any space for juries, structural impediments that create security risks, pest infestations, and recurring discoveries of mould are merely a few of the problems in this facility. In excess of \$2,000,000 has been spent on mould remediation at the Milton courthouse thus far, with an additional \$600,000 forecasted to be spent on further mould remediation relating to another recently discovered mould infestation. The Milton courthouse is not a feasible option, even for the short term. At this dilapidated

courthouse, we patiently await for construction of the New Halton County Consolidated Courthouse, which I understand will not be complete until 2022 at the earliest.

49. Late last Friday, we received word from the Attorney General's office that Treasury Board had approved the construction of the New Halton County Consolidated Courthouse to be built in north Oakville.
50. Our Court is extremely pleased and grateful that this courthouse will be built. In the interim, other options for Brampton trials will still need to be considered.
51. Kitchener has a new and large courthouse, but when it has its trial sittings scheduled, Brampton cases that would otherwise be sent to Kitchener may not be sent there if the court at Kitchener has no space available. Moreover, there is a real access to justice concern when litigants, their families, and witnesses in Peel region are unable to access this courthouse by public transit. The travel from Peel Region to Kitchener is significant and there is no easily used public transit.
52. As to the Orangeville courthouse as an option, the Ministry of the Attorney General promised, as part of its temporary relief for Brampton matters, that the Superior Court would have exclusive use of a former courtroom used for Provincial Offences Act prosecutions. That

courtroom is owned by the County of Dufferin and the Ministry entered into a lease to allow the Superior Court to use it. However, there have been instances when the Superior Court has not been able to use it, because it was needed by the County of Dufferin, or because 30-days advance notice was not provided to the County. Regrettably, this was a term that the province negotiated as a term within the lease with the County, which does not reflect any understanding of how the Court schedules. We have still tried to book this courtroom as often and as early as possible, and we will continue to do so. Its demand will certainly be required when the 2 jury courtrooms (211 and 212) are temporarily out of commission in Brampton as part of the addition project.

53. As I have explained, none of these interim solutions are ideal and they come at immense cost to the government and the public and as well they pose significant inconvenience for all concerned. And now we are left with few options in terms of scheduling future matters.
54. Twenty-eight (28) years after the *Askov* case, the Region of Peel – the victim of chronic under-resourcing in terms of its court facilities – today finds itself in what has unfortunately become perpetual facilities crisis management. It has impacted the public's access to justice, it has eroded trust in the institution of the Court,

and the capacity of an independent judiciary and an independent Bar to exercise their core functions without interruption by government. The Ontario government must commit to timely and sufficient facilities planning for the Brampton courthouse, consistent with its future anticipated growth, with the necessary funds made available to support its effective operations.

Impact on Future Scheduling

55. As a result of the foregoing, we will continue to do all that we can to ensure timely hearing dates.
56. One new tool that we have no choice but to implement is the transfer of certain civil and family cases to the Toronto region court facilities at 393 University Avenue. Two courtrooms on the 19th floor of 393 University Avenue will be regularly scheduled for Brampton civil and family matters until at least September of 2019. We understand that this is the date upon which the Ministry's lease with the landlord for this space will expire.
57. I recognize that there will remain transportation challenges and inconveniences for many residents in Peel region, particularly those who rely on public transportation. However, given that the public transportation systems in Toronto are more extensive than in other centres, like Kitchener, I am hopeful that

the courthouse in Toronto will provide fewer obstacles than the courthouse in Kitchener. Toronto, however, will only remain a potential solution only until September of 2019.

Concluding Remarks

58. On behalf of the Superior Court of Justice and the citizens of Peel Region, I strongly urge the province to immediately obtain Treasury Board approval for the completion of floors 3 to 6 inclusive in the Brampton courthouse addition, as partial construction of the courthouse addition represents a completely irresponsible decision with no connection to the real needs of the citizens of this region or this court.
59. The only viable solution to this crisis is the completion of the entire courthouse addition.
60. Further, the province must now advise when courtrooms and judicial chambers for the Superior Court will be available in the partially constructed addition, including the 6 retiring rooms which were promised to the Superior Court and which will be used as temporary judicial chambers pending the completion of the full addition.
61. It is imperative that that information be provided to this court at this time as scheduling of trials and other

proceedings in this court is regularly done as long as 2 years out into the future.

62. Chief Justice Smith has consistently and tirelessly advocated on behalf of the Superior Court in Central West Region, for both timely judicial appointments and for the necessary courthouse facilities, so that the judges of this court can carry out their statutory duties, as they undertook to, at the time they took their oaths of office.
63. On behalf of all of the judges in Central West Region, I wish to extend our sincerest thanks and gratitude for Chief Justice Smith's efforts on behalf of our court and the citizens of Peel Region.
64. All who seek justice in this courthouse are owed and deserve far better from the Province of Ontario. It must immediately step up and comply with its constitutional duty to those who live and work in Peel Region, as they deserve no less than that.
65. This concludes my remarks. Court will now recess until recalled and Madam registrar and the trial coordinator will proceed to deal with consent matters off the assignment court list.
66. As directed by me at the opening of these remarks, all photography and audio and video recording shall now cease.