Steven M. Barrett
Direct Line: 416.979.6422
Fax: 416.591.7333
sbarrett@goldblattpartners.com
Our File No. 99-964

January 12, 2021

Hon. Doug Ford, Premier	premier@ontario.ca
Hon. Doug Downey, Attorney General	attorneygeneral@ontario.ca
Hon. Christine Elliott, Minister of Health	christine.elliott@ontario.ca
Hon. David Corbett, Deputy Attorney General	David.Corbett2@ontario.ca
Hon. Helen Angus, Deputy Minister of Health	helen.angus@ontario.ca
Dr. David Williams, Chief Medical officer of Health	dr.david.williams@ontario.ca
Dr. Barbara Yaffe, Associate CMO of Health	Barbara.Yaffe@ontario.ca
Dr. Dirk Huyer, Coordinator of the Provincial Outbreak Response	dirk.huyer@ontario.ca
Adalsteinn (Steini) Brown, Dean of the Dalla Lana School of Public Health	adalsteinn.brown@utoronto.ca

Dear Sirs/Mesdames

Re: Courthouse Safety

As set out in yesterday's news release from the Office of the Premier, effective midnight Thursday January 14, the government will be issuing a stay-at-home order, requiring everyone to remain at home with exceptions for permitted purposes or activities, such as going to the grocery store or pharmacy, accessing health care services, for exercise or for work where the work cannot be done remotely. This is expressly aimed at limiting people's mobility and reducing the number of daily contacts with those outside an immediate household, and all businesses are required to ensure that any employee who can work from home, does work from home

The undersigned below, representing judicial officers and employees working in Ontario's courthouses, are collectively writing to each of you to urgently request that, in the present emergency circumstances involving the heightened spread and risk of COVID-19, in-person court proceedings should no longer be allowed, unless in exceptional circumstances they are determined to be absolutely necessary.

As you know, such terms were implemented during the first wave of COVID-19, from the end of March until early July, at a time when the COVID-19 pandemic was not as serious as it has now become.

Indeed, we know now what we did not know with certainty during the first COVID-19 wave in the Spring and early summer: remote hearings and appearances work – and permit access to justice in correct balance with public safety.

In the circumstances, the Government must now redouble its technical support of remote hearings and appearances in courthouses and jails to ensure access to justice for those who unable to access the requisite technology to participate. Our jails must receive necessary resources and technical capacity to permit remote trials, hearings and appearances, and must provide access to remote services as needed by courts and counsel. As well, steps must be taken to assist those who, due to poverty or mental health concerns or physical disability do not have or cannot access necessary technology. In these limited circumstances, giving deference to those raising the issue, it may be necessary to permit and facilitate in person appearances for these individuals.

Where an in-person hearing is absolutely necessary - and this will be a rare and exceptional circumstance - all reasonable and necessary precautions and safeguards must be in place, as recommended by ECOH (the independent health and safety expert retained by various associations). Indeed, given Public Health Ontario's recent and long overdue recognition of aerosol transmission of COVID-19, and the use of portable air filters as an effective counter-measure, adopting ECOH's recommendations regarding HVAC and air exchange are all the more critical.

As the Premier recognized last Friday in relation to the current spread of COVID-19 and the threat to our health care system and the lives of Ontarians, **"this is getting out of control and we have to do whatever it takes,"** that **"when you see the modelling, you'll fall off your chair,"** and that Ontarians must **"hunker down at home as much as they can"** until the vaccine is more widely available.

Indeed, on Monday the Premier went so far as to warn that **"our health-care system is on the brink of being overwhelmed and we must take every precaution to keep our most vulnerable safe"**, and that **"other people's lives are in your hands."**

Unfortunately, to this point, the Ministry and court administration have not recognized the compelling public health and safety need to ensure that all proceedings (including set dates, bails, motions and trials) must now take place virtually, as was recognized in the first phase of the pandemic during the Spring of 2020, at a time when the public health situation was not as serious as it is now. In person court proceedings must be limited to exceptional circumstances where it is not possible to conduct virtual and remote proceedings. In our collective view, the failure to mandate this requirement falls well short of heeding the Premier's advice to do "whatever it takes" to protect public health and safety and limit contact and interaction.

It is abundantly clear that we have reached a critical juncture for public health for all of those that participate in the Justice system in Ontario, and the Ontario public at large. While we all had hoped that the second wave of the COVID-19 pandemic would not have generated the level of infection that would overwhelm our hospitals and medical system, that day is now upon us.

There have been over 50 positive COVID-19 findings at courthouses in Ontario since December. Last night, there was an outbreak declared at the Guelph Courthouse due to three positive

cases "with an epidemiological link occurring in the same work area within a 14-day period where all cases could have reasonably acquired their infection in the workplace."

This is no longer a question about how safe our Courts are or should be. Rather, it is about the urgency of how to diminish people leaving home, taking public transit and gathering in groups indoors, particularly given that our medical and health care system is now overcapacity.

If we are to be responsible and meet minimal levels of rationality needed to prevent the court system from further contributing to this public health emergency and crisis, we must take steps to significantly limit the number of people that travel to, between and occupy public courthouses and courtrooms. No in person proceedings should be permitted unless they are absolutely necessary and cannot take place virtually.

Where that standard of necessity is met, which will be a rare and exceptional circumstance, all reasonable and necessary precautions and safeguards must be in place, as recommended by ECOH. Obviously, any further expansion of Phase 3 in person court capacity should cease.

The undersigned request the immediate implementation of this proposal.

Yours very truly,

Steven M. Barrett
Goldblatt Partners

Justice James R. Chaffe
President, Association of Ontario Judges

Her Worship Veruschka Fisher-Grant
President, Association of Justices of the Peace of Ontario

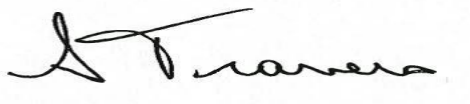
Tony Loparco
President, Ontario Crown Attorneys Association

Jeremy Glick
President, Association of Law Officers of the Crown

David McNairn
President, Association of Justice Counsel



Warren (Smokey) Thomas
President, Ontario Public Service Employees Union



Scott Travers,
President, Society of United Professionals

cc:

Chief Justice Lise Maisonneuve
Samantha Poisson, Assistant Deputy Attorney General
Justice James R. Chaffe, AOJ
Her Worship Veruschka Fisher-Grant, President, AJPO
Tony Loparco, President, OCAA
Betty Vavougios, OCAA
Jeremy Glick, President, ALOC
David McNairn, President, AJC
Chris Leafloor, AJC
Warren (Smokey) Thomas, President, OPSEU
Neil Martin, OPSEU