



April 15, 2016

VIA EMAIL & MAIL

The Hon. Brian Gallant,
Premier of New Brunswick
& the Hon. Stephen Horsman,
Minister of Justice and Solicitor General
P.O. Box 6000
Fredericton, N.B.
E3B-5H1

RE: APTLa Comments – Proposed Changes to Judicature Act

Mr. Premier & Minister Horsman:

We have become aware of a proposal of the New Brunswick Government with regard to charging plaintiffs administrative costs relating to certain civil jury trials in the province. With this letter, we are expressing our deep concerns with such an arrangement.

Trial by jury is a key element of a free and democratic society. It evens the playing field for anyone who has been harmed, injured, abused or cheated; by allowing them to have their suit heard and considered by a panel of peers. The jury is guided in the law by both counsel and a Judge. The panel hears and weighs the evidence, deciding both on legal advice and community standards whether the case of the plaintiff against the defendant is a proper one for redress.

It is a duty of citizens in a democracy to participate in this element of the Justice System. While it may be a duty that takes time and is not without inconveniences, it shows in a concrete way how our Justice System works. This is especially true in the case of suits against government agencies and offices. It is crucial to see and understand that such suits can be brought forward and will be handled fairly, and without regard for economic standing or financial wherewithal.

Being asked to pay for the costs of a jury trial is - on a fundamental level - an access to justice issue, and entirely undemocratic. Libel, slander, malicious arrest, malicious prosecution, and false imprisonment are very serious matters. If you are the victim of them, you should not

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have an additional costs burden placed on you (or the expense of counsel having to make additional applications and court appearances) just to advance your claims. Those with means will be able to seek redress of harms and injuries committed against them; but those of low incomes, the unemployed or the impecunious will not be able to afford to pursue their rights and claims. This is not fair, and not part of our Canadian democracy.

On a national level, we are unaware of any other jurisdiction in Canada or any other common-law country with such a costs arrangement. We further note that the Chief Justice of the Supreme Court of Canada has formally and repeatedly suggested that access to justice is a real concern in our country. It is our view that the Government of New Brunswick should not be making it more difficult and more expensive for its citizens to pursue justice in the province.

Access to a jury trial is not a floodgates issue, especially in New Brunswick. There are very few jury trials permitted in this jurisdiction, and those that do proceed have merits determined through Case Management meetings with the Court and the Discovery process. While the Province may not wish to be the defendant in some of the actions affected by the proposed change to the Judicature Act – if it is the defendant, it should not be putting the plaintiff to additional effort and expense through legislative measures. That is an unbalanced system, and justice is neither being done or being seen to be being done.

Finally, we see no evidence that this part of the Justice System in New Brunswick is being overused or abused. If there are additional costs, the Judges conducting such trials already have the ability to make cost awards as they deem appropriate in all of the circumstances. Indeed, a system offering judicial discretion is preferred over one that makes awards to government automatically.

In as much as Canadians find a two-tiered Health System to be undemocratic and distasteful; so too is a two-tiered Justice System. Charging plaintiffs to pursue claims especially for malicious arrest, malicious prosecution, and false imprisonment is a backward step in fairness and democracy; and therefore we implore you to reconsider this change to the Judicature Act.

Thank you for your consideration of this matter.

Sincerely,



Donald A. MacBeath, Q.C.
APTLA President