

SUBSCRIBE NOW FOR UNLIMITED DIGITAL ACCESS

Focus On

Business | Labour & Employment | Wills, Trusts & Estates | Family | Criminal | Civil Litigation | Personal Injury  
In-House Counsel | Insurance | Intellectual Property | Immigration | Natural Resources | Real Estate | Tax

Home &gt; Other Areas of Practice

## Other Areas of Practice



## Should Ontario law society sponsor judicial exchange program?

Friday, August 27, 2021 @ 3:16 PM | By Michael Lesage

Share Print

Tweet Email



Michael Lesage

As September approaches, another school year is again upon us. Ideally, the situation concerning COVID-19 will continue to improve, and provided that is the case, foreign exchange programs will likely resume. Such programs typically partner local students with students abroad and involve both hosting the foreign student and visiting with the host family in return. They are touted to offer a number of benefits, including exposure to and immersion into the foreign language and culture. That got me to thinking, should the law society sponsor a judicial exchange program for Ontario's judicial leadership?

Initially, Ontario operates a somewhat unique attrition based legal system, focused primarily upon serving those with financial resources and time (think insurance companies). Under that general rubric, perhaps unintentionally, our courts have succeeded in driving lawyers from whole areas of the practice, such that family proceedings for example, are now largely "people's courts," increasingly devoid of lawyers. That leadership, exemplified by the various rules committees (which continue to require time consuming and redundant procedures well out of proportion to the resources of the parties or the matters at stake), is slowly being rolled out to benefit other areas of law as well, such as personal injury. Ultimately, what better way to function as a pillar of democracy than allowing, no effectively requiring, each litigant to represent themselves in court, regardless of their education, training or experiences? Indeed, Ontario's special legal traditions have much to offer common and civil law jurisdictions alike.

To heed off a potential criticism, many will doubtless point out that Ontario operates a common law legal system, much like the U.S. or U.K. However, the English common law has its basis in the Magna Carta, which does not tolerate justice delayed. Meanwhile, as recently published statistics indicate, Ontario suffered exorbitant delays across the board in all types of legal proceedings (criminal cases not reaching trial within 30 months; family cases remaining outstanding after a year; and civil cases not making it to trial for six to eight years), even prior to the court system collapsing (distressingly, the system still hasn't fully reopened, trials continue to be delayed and no plans have been publicly announced to clear out the backlog). To be clear, it takes Ontario much longer to resolve all types of cases than either the U.S. or U.K., despite enjoying similar levels of funding to U.S. jurisdictions. It necessarily follows that either Ontario isn't a true common law jurisdiction, or is failing to follow a central tenet of the common law under which it supposedly operates.

Conversely, in other areas, Ontario's courts lead the way. For instance, having recently discovered the (existence of the) Internet, and upon being forced to accept documents digitally, courts administration was initially at a loss, and largely provided the documents submitted to judges and scheduled hearings. That resulted in matters being adjudicated upon the merits (often promptly), with judges ultimately being forced to make difficult decisions. It was utter chaos. Thankfully, as courts administration learnt to operate computers, they learnt that they were just as capable of rejecting documents filed electronically. Recently obtained statistics indicate that the Toronto courthouse is now rejecting more than one-third of all civil filings, meaning only two-thirds to go. It will be difficult, but with continued strong leadership from the judiciary and the Ministry of the Attorney General, I am confident our court system can get there.

Of course, to secure partners for a judicial exchange, it will be necessary to pretend that Ontario's judicial leadership doesn't have all the answers (as no foreign judges would want to partner with us, simply to be lectured to). Thus at least at first, we must be modest about our system's inherent superiority, despite the strength of our subjective beliefs that is in fact the case. Given our history of accomplishing less in more time and at higher cost, this may seem somewhat of a stretch, but it should ultimately be worth it, given the valuable lessons we have to share with the world.

Next, some may question why the law society should get involved in matters concerning the courts, after all, aren't the law society's hands full running a restaurant and tirelessly working to craft a more perfect workplace diversity policy, all while spending more money year over year? Moreover, isn't the law society already doing all that is required, by testing that lawyers entering the profession are competent to look up items via the use of an index, and then selecting a corresponding letter (i.e. the bar exam)? Hasn't it already nailed what is required to be a lawyer in Ontario?

At some point in the past, that may of course have been true, but it must be remembered that the law society is Ontario's "mother of lawyers," birthing not only senior staff at the Ministry of the Attorney General but also lawyers and ultimately judges. By failing to ensure that candidates entering this pipeline are familiar with such basic concepts as statistics and benchmarking, it does the public a disservice and the law society effectively fails to fulfil its statutory duty of facilitating access to justice (why for instance aren't you seeing these statistics on the homepage of the court's website and why was our court system such a backwards mess prior to COVID-19?). In the law society's defence, that statutory duty has only been around for about 15 years, meaning it is still contemplating a response.

Thus, to atone for past inaction and to address the present set of circumstances, it will be necessary for the law society to "think outside of the box." While our courts, like the law society itself, have in past been largely content to operate off of feelings, hunches and intuition, this has not led to superior or even average performance. Thus, by taking the initiative and acting as judicial matchmaker and sponsoring a judicial exchange program, the law society can ensure that the senior judicial leadership is exposed to how their counterparts are dealing with the exact same problems abroad, in many cases faster and more efficiently.

For instance, our court leadership may be interested in how American courts collect statistics and set benchmarks and goals for system-wide performance. Likewise, court leadership in China, Russia and North Korea may be interested in adopting Ontario's techniques on rejecting documents. Ultimately, would such an exchange not further the development of the common law, in determining whether Ontario's courts operate more similarly to the former or the latter?

*Michael Lesage is a trial lawyer and the founder of [Michael's Law Firm](#), a litigation boutique that specializes in complex cases involving professional negligence, business litigation, insurance coverage disputes and cases of serious injury. When not representing clients, he can often be found playing competitive sports. He also sits as a bencher at the Law Society of Ontario. You can e-mail him at [michael@michaelsfirm.ca](mailto:michael@michaelsfirm.ca).*

Illustration by Chris Yates/Law360

Interested in writing for us? To learn more about how you can add your voice to [The Lawyer's Daily](#), contact Analysis Editor Peter Carter at [peter.carter@lexisnexis.ca](mailto:peter.carter@lexisnexis.ca) or call 647-776-6740.

## Related Articles

- [The Friday Brief: Managing Editor's must-read items from this week](#)
- [Post-pandemic austerity will require Ontario's judicial system 'to work smarter': chief justice](#)
- [Ontario's chief justices call for reinvestment in legal aid at court opening ceremony](#)
- [Politicization of senior appointments alarms Tribunal Watch Ontario | Gary Yee and Raj Anand](#)
- [Trump's criticism of judiciary called 'threat to the rule of law'](#)

## Featured



Roomies and Zoomies: Pandemic has sparked new terms, some innovation in law school teaching

## Latest

Labour &amp; Employment

[Ontario courts to observe new National Day for Truth and Reconciliation](#)

Real Estate

[Alberta Court of Appeal refuses to discharge restrictive covenant](#)

Supreme Court of Canada

[SCC refuses to hear Nygard's challenge to bail denial as he awaits outcome of U.S. extradition request](#)

Tax

[Search warrants and Canada Revenue Agency](#)

Field Law

[Firm's community fund program taking applications](#)