March 6, 2019

Standing Senate Committee on Legal and Constitutional Affairs
Senate of Canada
111 Wellington St
Ottawa, ON K1A 0A9

Attention: Senator Serge Joyal, P.C.
Chair, Standing Senate Committee on
Legal and Constitutional Affairs

and

Ms. Keli Hogan
Committee Clerk

Dear Senator Joyal and Ms. Hogan:

Re: Bill C-75

We, the Law Society of Ontario, respectfully request to appear before the Standing Senate Committee on Legal and Constitutional Affairs to discuss Bill C-75, its effects on access to justice, and a proposed amendment to counter these effects.

Bill C-75 at present increases the default maximum penalty for all summary conviction offences from 6 months to two years less a day of imprisonment. Given that section 802.1 of the Criminal Code prohibits paralegals, lawyer licensing candidates, and law students (“regulated agents”) from appearing before a criminal court if the defendant is an individual and is liable to imprisonment for a term of more than six months, the unintended effect of this change is a limitation on access to justice.

Regulated agents currently provide affordable and accessible representation to clients who have been charged with summary conviction offences. Under the proposed Bill C-75, these regulated agents will lose the ability to appear before courts on summary conviction offences because the new default penalty will exceed six months imprisonment.

The implications on access to justice are plentiful. Without the ability to access these regulated agents, more people facing longer sentences will go without representation. Moreover, for a variety of reasons, it is expected that these newly unrepresented will disproportionately be people from Indigenous, racialized, or immigrant communities. As
a result, we expect to see more vulnerable people – unable to afford counsel – being subject to greater rates and lengths of incarceration.

There are also well-founded concerns that the change to the default maximum penalty for all summary conviction offences will lead to longer court delays and a weakening of the constitutional rights to counsel and to be tried in a reasonable time. Finally, we remain concerned about the change’s encroachment on law societies’ authority to determine the scope of legal services provided by its licensees and training candidates.

We recommend one simple, straightforward amendment to Bill C-75 to rectify these problems: the maintenance of a separate category of summary conviction offences that are subject to a default maximum penalty of six months’ imprisonment. This would allow the regulated agents identified above to continue to represent clients who have been charged with certain summary conviction offences.

Our organization is bound to protect the public interest, to maintain and advance the cause of justice and the rule of law, and to facilitate access to justice. It is these duties that compel us to appear to before the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-75.

Please let us know if you require anything further. We look forward to our appearance and discussing the above in more detail.

Best regards,

Sheena Weir
Executive Director
External Relations and Communications
Law Society of Ontario