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An Interview with the Attorney General of Ontario

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Attorney General of Ontario, the Honourable Doug Downey, David Milosevic

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David Milosevic:

Good afternoon, Mr. Attorney General. Thank you so much for joining the OBA.

Attorney General Downey:

I'm really glad to be here. It's great.

David Milosevic:

Well, we appreciate your time.

I was hoping you can give some of our readers a sense of how you approach the task of court modernization as Attorney General.

Attorney General Downey:

My approach is informed by my experience. And my experience before was a lawyer, as you would know if you saw that interview. I was a court clerk, so I was the person behind, on the other side of the counter, actually receiving documents for filing. I did that for two summers, in the Barrie Courthouse, doing family law, and did all the adoptions for a period of time in that courthouse.

Attorney General Downey:

I went and did a master's in judiciary administrations, like a master's of public admin, but focused on the courts. And Carl Baar, Dr. Baar, led the program. There were six of us in the program per year. It's a very specific focus on how systems should run. And when I finished that degree, I got a job as a court registrar, so the person sitting in front of the judge. My job was working with new judges to help them learn how the paperwork happened, and how the system happened, because they're new on that side of the bench.

Attorney General Downey:

So I did that for a year, and then I went to law school. And coming out of law school, then of course I articulated, fell in love with law, the actual practice of law, and have my own experience from that.

Attorney General Downey:

By the time I got to the seat, this spot, as attorney general, I had these different perspectives on how the system worked and didn't work, and quite frankly, a file folder of things that I thought needed to be fixed. We've gone well beyond that. But no, I came at it with a real sense of purpose.

David Milosevic:

That's a real depth of experience that you bring to the task, Mr. Attorney General. How would you characterize the justice system before the pandemic and the greatest challenges facing it before the pandemic?

Attorney General Downey:

I would say it was broken, in the sense that some of the systems weren't functioning the way they were designed. And everything was designed with a good purpose, but it became like a Gordian knot, is what I used in an interview when I was talking about auto insurance, and it applies here.

Attorney General Downey:

It just, it got tangled up in itself, to the point where it wasn't necessarily serving its original purpose. And we've had an opportunity over this last year to come at things with fresh perspective, and not just try and untangle the knot a bit, change entirely how we do things. And that's leaving behind inefficient systems and putting new ones in place.

David Milosevic:

It's fair to say that the response required to the pandemic was a fairly urgent one.

Attorney General Downey:

It was very urgent.

David Milosevic:

How would you say the urgency of that response promoted changes that were otherwise slow to happen in the time before the pandemic? How did that help?

Attorney General Downey:

It helped because it brought all of the justice partners together. It brought the OBA, it brought the judges, it brought the clerks, it brought everybody together. Because we knew what outcome was needed, we knew we had to produce something, and it caused us to have to do something. And if somebody had a vision, we could work through that vision, and we could create a policy around it, we could find the tools for it, and we could implement it.

Attorney General Downey:

Because if we didn't, failure was not an option. Human lives, people are caught up in the system with very, very serious ramifications. And so everybody came at it with a real sense of purpose and were willing to try something. And I would have to say that the sense of risk, the level of risk people were willing to take, was higher. We were willing to trust each other that we all knew our respective strengths.

Attorney General Downey:

And the chief justices, you spoke with them, the chief justices all have depths of experience. Chief Justice Morawetz had spent 10 years in modernization, trying to modernize from his perspective the courts. So we all came together. And my background, my perspective, the things that I wanted to do, all the pieces just came together at the right time.

David Milosevic:

And if we take a look at those things, how would you see the system in your ideal world, about five years down the road?

Attorney General Downey:

It's going to look different again. We set some, I guess I'll say, pillars in place. We've set some pieces in place, but people have shifted their mindset. We've gone from saying, how would we do that to why wouldn't we do that?

Attorney General Downey:

People are encouraged, and there are a lot of really smart people, a lot of people who have great ideas. They never thought in a million years that they would be able to influence change. But combined with social media and other avenues, we're able to bring in ideas in real-time and work through them.

Attorney General Downey:

I'll give you an example. When we first got into the pandemic, into the emergency orders, of course, I got a call from a lawyer, who I've known for a long time, and he said, "My daughter's practicing law. She's doing wills and estates. We have a problem. We need to figure out something because people are signing wills in parking lots or not getting them done at all."

Attorney General Downey:

We didn't go through the regular policy process. We convened practitioners, had discussions about what could happen. We worked through very quickly, about 11 days from start to finish, we landed a solution. And I can tell you, that just would not have happened in any other time. And yet I believe we landed on the right solution. We didn't even just come up with one, we came up with one that worked, it was practical, was going to work in the field, and was embraced.

David Milosevic:

I asked the chief justices this, and among the bar, there's a feeling in at least the middle and younger generation that this modernization effort is an unalloyed benefit.

But I always like to think when we assume that something is just an unalloyed good, are there any people who are losing out in the process? And when we look at this change, how much are you focused on potential losers in this process, and what we might be able to do to make sure that there aren't such losers?

Attorney General Downey:

I have long history, in terms of community involvement, working, whether it be with Big Brothers Big Sisters or Quantis, which is focused on kids. I started with some others, a free mediation program through a legal clinic, in conjunction with a legal clinic. I am very focused on the people who need to access the system.

Attorney General Downey:

So we are going digital first, but we are not doing digital only. And we have to recognize that there are people that need access to our system, that quite literally don't have a phone. And that seems odd to you and I, who, you probably have two phones. But there are people who don't have phones, and if they have phones, they don't have more than 100 minutes on them. We have to have the system built for all users.

Attorney General Downey:

Tribunals have just recently announced that they will have a physical location for some people to come if they need that kind of access. I believe we have to build the system for everybody. But it doesn't mean that we can't do things like electronic engagement, and hearings, and pretrials, and all that stuff. We can't not do that just because somebody else can access it with current tools. We have to give them the tools somehow, indirectly.

David Milosevic:

How far was the ministry involved in the whole CaseLines project?

Attorney General Downey:

That was my office. We stood CaseLines up. We moved very quickly. There were other justice partners that wanted different systems until we showed them. Again, this was a collaborative effort. We said, well, what functionality do you want? Because CaseLines really has this, this, and this. And we came to a consensus and said this is where we need to be, and we launched it. And again, very quickly. It moved very fast.

Attorney General Downey:

Even things like automating forms. When we came into this, we had basically a few forms in small claims even. Or a few forms in the main courts, and now we're near 500. It didn't take a lot of capital investment to do. It took a willingness to do it and people who were within the ministry knowing that that's the direction we wanted to go. And once they knew that that was the direction we wanted to go, they started to do things with their own initiative that matched with that, and it created a real snowball effect. And we're still in it, we're still moving. We're not done yet.

David Milosevic:

How has the budget of the ministry changed as a result of all these things? How are we handling them from a budgetary point of view?

Attorney General Downey:

It's a challenge. Money is always a challenge. Absolutely. We've made some tough decisions. We've made some really tough decisions on we would really like to do this, but we need the resources to do that, and we need to move things system-wide. I'm watching the capital projects to make sure that the ones that we have in the ground are still on track, and staying on budget, and not diverting resources that we would otherwise need. And we're managing all of that.

Attorney General Downey:

And when we go through our process internally in government, we know our files, I know the files. I know what CaseLine looks like. I know what some of these pieces are because my team looks at them very closely. We're very, very involved in granular, in them. So when we go to get approvals for things, my colleagues have a confidence that we've done our homework, and we're not bringing them things just because we thought it was a bright idea.

David Milosevic:

Is there an overarching philosophy, idea, guiding, at least your view, of where resources should be allocated, where resources should be prioritized in the AG's tasks right now?

Attorney General Downey:

I would say that I want the resources resulting in improvements for people accessing the system. That's different than saying we need the resources to allow lawyers to do their jobs or allow other... Everything has to result in better service for the public. And that's a real focus for me, that if we're doing something, how does this cascade to a point where it's actually helping somebody trying to access the system?

Attorney General Downey:

I would say, it is sort of business-oriented. And again, I was in private practice for 20 years. And so I turned a key in a door, and I was last in line to get paid, and if I didn't have clients, I didn't have money. So you had to service the client. And that attitude of servitude is an intentional choice. And that's what I'm trying to drive, is that we're creating that attitude of servitude.

David Milosevic:

If we look at the ministry's relationship with the bench and the bar in this push toward modernization, how would you characterize the relationship, and what could be done, especially for the bar, perhaps to assist in this modernization process?

Attorney General Downey:

I would characterize it as excellent. The engagement from any time we ask for assistance or insight, we have an embarrassment of riches of people that want to do it. And they want to do it for the right reasons. They actually want to fix the system. And it can be any area of law. It can be civil, criminal law, really anything. And people are coming forward with good ideas.

Attorney General Downey:

So the second part of the question is what can they do? They can keep giving us ideas because we're not done. And we can steal from experiences in other jurisdictions. We can think about things, we can see if they might work. But everything's on the table. We really want everybody's best ideas. And I keep hearing them. I pick them up off Twitter. Somebody will say, hey, whatever. I think the profession's come to learn, that if they put something, and they tag me, I will see it.

David Milosevic:

And you touched upon it briefly, but the relationship with the chief justices and with the courts, how would you characterize that?

Attorney General Downey:

I don't know what previous attorney generals, how their relationships were. But I would say it's probably among the best it's ever been. We talk regularly. There's no issue that we can't talk about.

David Milosevic:

It really has been striking as you said, attorney general, how the bar has come together to help in these changes that were all in a way forced upon us. So from the OBA's perspective, we'd like to thank you very much for taking some time to speak with us.

Attorney General Downey:

Well, thank you for that. And I have to say, when I talked about my experience, I didn't talk about my experience with the OBA.

Attorney General Downey:

I was treasurer for four years with the OBA, and I was secretary for one before that. So I've been on the executive committee for a period of time, understanding how the profession, the power of the sections and the reach of the OBA. My team reaches out to the OBA and other associations as well. But I was very involved with OBA, and I have a good understanding and high appreciation for the amount of work that lawyers will do, quite frankly, for free to improve the system, not just for lawyers but for everybody.

David Milosevic:

Well, thank you very much for that, attorney general. And thank you so much for taking some time to speak with us.

Attorney General Downey:

Thank you.

David Milosevic:

Thank you, sir.

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