

## Criminal

# Criminal and youth lawyers worried about new Toronto 'mega' court

By Carolyn Gruske

(May 23, 2018, 2:22 PM EDT) -- A new courthouse being built in downtown Toronto is raising concerns in the legal community, and is especially troubling to defence lawyers and young offender advocates.

The facility, which will be located at 11 Centre Avenue — a site owned by the province and located just to the north of Toronto City Hall — has a price tag of approximately \$956.4 million and is being developed to be a "mega" court.



Artist rendering of the exterior of the new Toronto court which will be located at 11 Centre Avenue.

When completed (construction hasn't started yet because an archaeological excavation needed to be completed first), it will house what Infrastructure Ontario refers to as "many of the [Ontario Court of Justice's] criminal courts operating across the city," as well as "drug treatment courts, an Indigenous

Persons court, youth and mental health courts, and accommodation for victims and vulnerable persons, with all associated court and agency support spaces."

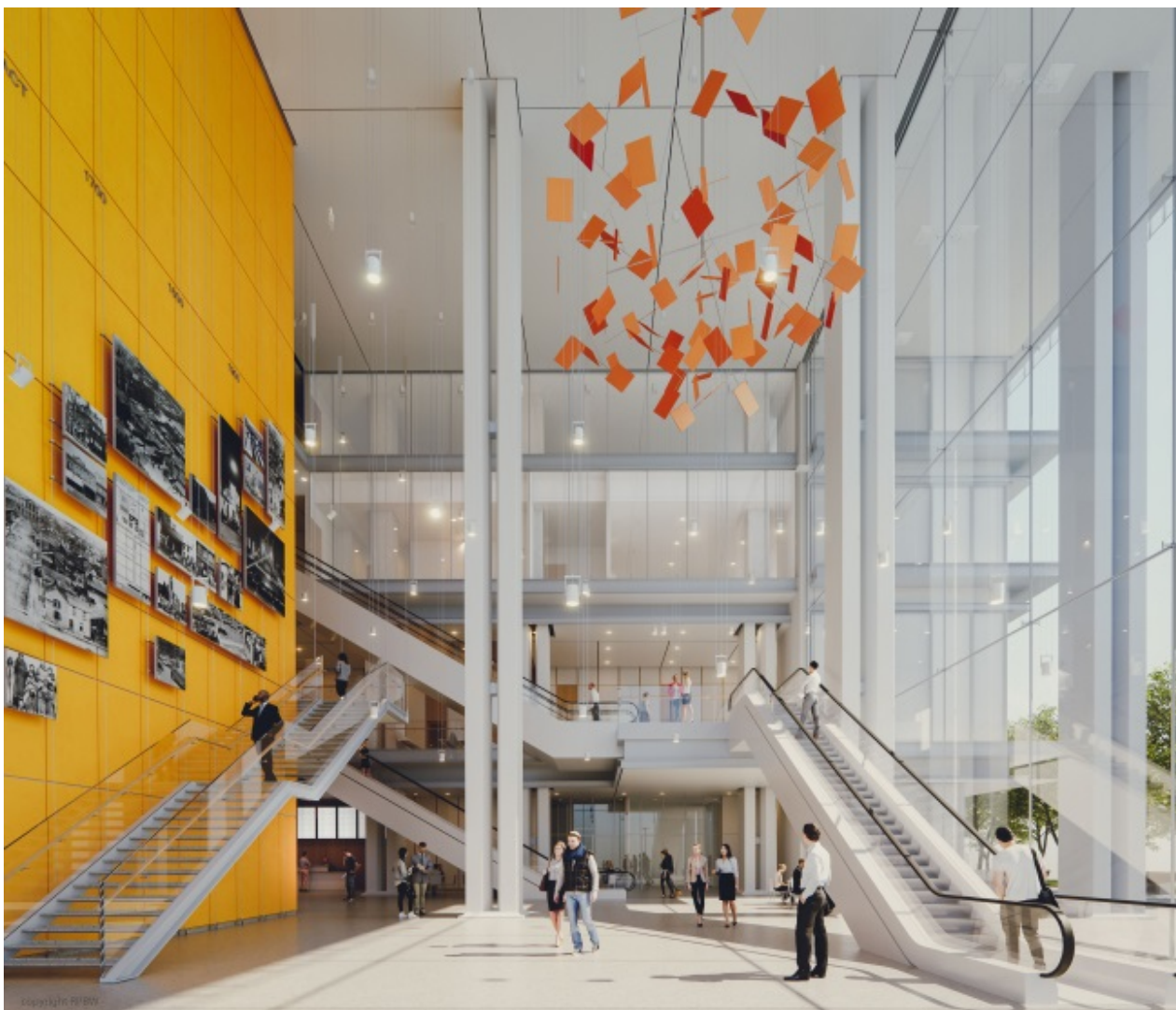
The facility will have closed-circuit television and video conferencing capabilities, a "barrier-free environment" and "a single point of entry with magnetometers, baggage scanners, continuous video surveillance, and separate corridors to ensure the security of judges, members of the public and the accused."

That single point of entry is one of the features causing a specific concern among other general concerns. Many advocates for young offenders dislike the idea of youth court being held in the same building as general criminal court, because they feel youth are better served by specialized facilities with staff dedicated to handling young offender matters. Some don't think it's safe for at-risk youth to be associating with adult offenders, which will happen if everybody has to use the same set of doors.

"Court officers, their mandate stops at the doors of the courthouse, so if you have a young person that is out in front talking to those involved in the adult system, the idea of there being security to somehow protect these vulnerable youth, it's just not going to happen," said Emma Rhodes, a youth advocate who practises child protection and youth criminal law in association with Paradigm Law Group. "Toronto has very sophisticated criminal networks, very sophisticated organized crime, why would we put youth in with that population?" .

She said there will be more responsibilities placed on lawyers to protect clients if they have to appear in the new courthouse.

"Part of it is going to be ensuring my client has a safe way home. The plan is to have youth on separate floors, but we'll have to watch where our clients are going and essentially monitor what's going on. But when you have a busy list, and most lawyers do, it's just another responsibility and another thing to be conscious of — that you'll have to ensure the safety of your client. That's going to be another part of it — watching your client, seeing who they are talking to, where they are going, and trying to keep them safe."



Artist rendering of the interior of the new Toronto court.

Rhodes is dismayed by the possibility of dismantling a system that is already working for the benefit of young offenders. Currently, the province operates a court located at 311 Jarvis Street in downtown Toronto that serves as a youth court, a family court and an integrated domestic violence court. The court is also home to a number of organizations that offer services and programs ranging from counselling, to mental health support to a breakfast and lunch program.

"It is a courthouse dedicated to helping youth so they are not put back into the criminal system. The judges there have child protection experience, so they understand the intersection of child protection and youth criminal. So the child protection judges aren't going to be going to the new courthouse," said Rhodes. (The new facility will not be housing family court.)

Peacebuilders International Canada is one of the organizations that has an office at 311 Jarvis. The charity runs a restorative court-diversion program at the site and provides support services to young people. Sara Fruchtmann, the communications and public policy co-ordinator at Peacebuilders, feels a lot of expertise will be lost if the youth court is placed in the new building.

"We recognize one of the reasons the 311 Jarvis model is so successful is because every single person in the courthouse is an experienced expert at working with young people. They'll meet regularly — youth workers, Crowns — to talk about issues going on in youth communities, so that when the young people come in they know how to deal with them. It's really hard to create that youth-focused model in a courthouse that is designed to deal with hundreds of adults every day.

She added that despite some consultations with the legal community, the government hasn't been

entirely transparent about how the new facility will operate.



Dirk Derstine, Derstine Penman Criminal Lawyers

"The problem is, [the Ministry of the Attorney General] hasn't really explained how service delivery works, and for anyone that we work with, including lawyers, judges and other youth support workers, there is a lot of concern about how they are planning to create more equitable services in a primarily adult-designed courthouse," she said.

"It doesn't feel like it's increasing access to justice. It feels like it's diminishing access to justice for young people, and we are interested in taking a broader definition of access to justice and one that's not just about courts and legal services."

Gaining physical access to the new court is one concern that lawyers have about the new courthouse. While the downtown location is convenient to those in the city's core, reaching it from the outskirts of Toronto where transit services are less than ideal or driving into the downtown and finding street parking (the courthouse won't have its own parking lot) will be challenging, especially for populations that struggle with mobility issues, mental health problems, financial issues or even work conflicts.

The location is even posing a challenge to defence lawyers, due to the fact that bail court won't be housed there. Instead, it will take place in the northwest part of the city, at 2201 Finch Avenue West.

"From our point of view, all of the bails — and bails have always taken place in the context of a provincial courthouse — will be hived off to the old 2201 building...and we have real concerns about that from a whole series of bases," said Dirk Derstine, president of the Toronto Lawyers Association and partner at Derstine Penman Criminal Lawyers.

"Bail hearings, in a nutshell, are never planned. Your guy phones you in the middle of the night and says, 'I've been picked up.' If the idea is that almost all of the criminal lawyers in Toronto are going to be in one building, why do you put bails in a completely other building? If I'm doing a trial in one building, I can slide downstairs and say hi to my guy who has been arrested on bail, but I certainly can't do that if he's literally all the way across town at Finch and [Highway] 400. The idea of putting the bail centre up there — our view is that's a very poorly thought-out idea."



Michael Lacy, Brauti Thorning Zibarras LLP

Michael Lacy, president of the Criminal Lawyers' Association and partner at Brauti Thorning Zibarras LLP, expressed some doubts about the court's capacity to handle what is likely to be an increasing workload in the future.

"With any new construction undertaken by the ministry in relation to courthouses, it is often the case that by the time you end up building these structures, they are already filled to capacity and you don't have as much room as you need. I think they are doing their best to anticipate the needs of the court going forward. We believe there is going to be a significant downloading of trials onto the Ontario Courts of Justice when the federal government's Bill C-75 goes through and gets rid of preliminary inquiries. You will see more and more cases being tried in the Ontario Court of Justice, putting demands on that court, I would think, and potentially creating more of a crisis of trials getting heard within 18 months or even less time than that. That's one of the concerns we have — whether they've accounted for this increase in volume that we anticipate."

Roots Gadhia is a defence lawyer who is very familiar with overcrowded courts and the challenges presented by a lack of space.

Although based in the Etobicoke area of Toronto, she often finds herself in Brampton, a city of over 590,000 people roughly 45 kilometres northwest of the new courthouse site. The courthouse in Brampton is undergoing a renovation to add additional courtrooms, but Gadhia, doesn't expect the addition to be enough.

"In four or five years, we'll be having this exact same conversation," she said.

"Because there is a very large immigrant population, you have the standard problem associated with being an immigrant, which is police targeting. Because of police targeting, there are a lot of arrests. So if you speak to any criminal lawyer in the GTA [Greater Toronto Area] or southern Ontario, many will say to you, 'that's where the money is. Brampton is now where the money is.' Its halls are full of clients, there is always work."

To get around the space problem, Gadhia said entire trials are being moved to Kitchener or Guelph or Orangeville or Owen Sound in order to ensure they are held in a timely manner under Jordan rules. This means bussing juries to different cities, paying for cab rides for defendants, Crowns and judges. Defence lawyers have to find their own way.

She recently had a manslaughter case where moving the trial to a different city became a major issue and resulted in an application specifically addressing the potential move. (In the end, a courtroom opened up locally and the trial didn't need to be relocated.) It's that perspective that makes her wonder how the new courthouse in Toronto will be able to handle all of the demands on it.

"There are a lot of problems associated with the whole amalgamated courthouse. It's going to create havoc in the system. I'm just glad I'm planning on retiring before it turns into what it is, because I don't think the courthouse will be built for at least another five or six years, if not longer."

*Artist renderings of the courthouse by Renzo Piano Building Workshop*