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Mercredi 26 avril 2006

Standing committee on justice policy

Comité permanent de la justice

Access to Justice Act, 2006

Loi de 2006
sur l'accès à la justice

Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
Greffière : Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 26 April 2006

Mercredi 26 avril 2006

The committee met at 1003 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Vic Dhillon): Good morning and welcome to the meeting of the standing committee on justice policy. This morning we're going to be considering Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005.

Our first order of business today is to read the report of the subcommittee. Do I have somebody to volunteer to read the report?

Mr. Lorenzo Berardinetti (Scarborough Southwest): Mr. Chair, can I move the adoption of the report of the subcommittee?

The Chair: The report has to be read into the record. Sorry.

Mr. Berardinetti: Do you want me to read this into the record?

The Chair: Yes.

Mr. Berardinetti: The standing committee on justice policy subcommittee on committee business, report of the subcommittee:

Your subcommittee considered on Thursday, April 13, Monday, April 24, and Tuesday, April 25, 2006, the method of proceeding on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 14 on Wednesday, April 26, and Thursday, April 27, 2006.

(2) That an advertisement be placed for one day in the Toronto Star, Globe and Mail, National Post, Toronto Sun and Metro newspapers, and also be placed on the ONT.PARL channel, the Legislative Assembly website and in a press release.

(3) That the ad specify that opportunities for video conferencing and teleconferencing may be provided to accommodate witnesses unable to appear in Toronto.

(4) That the deadline for those who wish to make an oral presentation on Bill 14 be 5 p.m. on Friday, April 21, 2006.

(5) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will advise the Chair so that a subcommittee meeting may be called to make decisions regarding meeting dates and witnesses to be scheduled.

(6) That additional days for public hearings be held in September before the House returns to hear from all those that have made requests to appear so far.

(7) That the time allotted to organizations and to individuals be subject to the discretion of the subcommittee to accommodate a broad range of witnesses with reasonable time limits.

(8) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill and background reviews prior to the public hearings.

(9) That the committee plan to meet for the purpose of clause-by-clause consideration of Bill 14 before the House returns in September at a date to be determined later.

(10) That each party make a statement for five minutes each at the beginning of public hearings.

(11) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(12) That requests for reimbursement of travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(13) That the committee meet in room 151, if possible, for public hearings and clause-by-clause consideration of Bill 14 depending on availability of the room.

(14) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Is there any debate?

Mr. Peter Kormos (Niagara Centre): Recorded vote, please.

The Chair: Mr. Kormos has asked for a recorded vote. If there's no debate, I'll put the question. All those in favour?

Ayes

Balkissoon, Berardinetti, Kormos, Orazietti, Runciman, Van Bommel, Zimmer.

The Chair: Seeing that everyone is in favour, I declare the motion carried.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006 SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2005 sur la législation.

The Chair: The next order of business is, each of the parties will be making a statement for up to five minutes, and we'll begin with the official opposition.

Mr. Kormos: With respect, Chair, it's the government's bill. It seems to me that they should lead off any comments on it.

The Chair: That's fine. We can have a five-minute statement from the government side.

Mr. David Zimmer (Willowdale): Let me just take a very few minutes to outline or highlight the principal themes of Bill 14, the Access to Justice Act. We'll get into the details of it over the process of working this bill through the system, but just the principal themes.

This legislation, if passed, is going to modernize and improve people's access to the justice system. It'll provide greater openness, transparency and accountability. It will regulate paralegals, reform and streamline the justice of the peace system, amend the Provincial Offences Act, the Limitations Act, the Courts of Justice Act and create the new Legislation Act.

The Ministry of the Attorney General has consulted extensively on this bill, including meeting and speaking with the bar, the business community and consumer protection groups.

Regarding the amendments to the justice of the peace system, the proposed reforms to the justice of the peace system will ensure a more open and transparent appointment process and will establish minimum qualifications standards to ensure public confidence that qualified candidates will be appointed.

The proposed reforms would also increase flexibility in scheduling by providing for per diem justices of the peace who would be dedicated exclusively on a temporary basis to specific matters such as Provincial Offences Act proceedings. This is something that municipalities have been asking for.

Regarding the amendments to the Provincial Offences Act, these amendments will permit witnesses to be heard by videoconferencing or other electronic means, allowing police officers to provide evidence from locations outside of court and would also permit alternative mechanisms for resolving disputes arising from municipal bylaw infractions such as parking and the like. This also is something that has particular appeal to the municipal world.

Regarding the regulation of paralegals, the regulation of paralegals will increase access to justice by giving consumers a choice in qualified legal services, while at the same time protecting people who get advice from non-lawyers.

With respect to the amendments to the Limitations Act, these amendments to the act will increase confidence in the justice system by allowing businesses to reach their own arrangements on limitation periods and allow individuals to agree to extended limitation periods. This will facilitate business and the economy.

Regarding amendments to the Courts of Justice Act, these amendments will provide greater transparency and accountability in the justice system, including requiring publication of information of various court operations.

Regarding the new Legislation Act, briefly, this legislation will clarify how laws are published, used and cited and allow statutes and regulations published on the E-laws website to be used as the official version. This will bring aspects of the legal system in line with current high-tech electronic process, if you will.

These are just the principal themes and highlights of the proposed legislation. I look forward to getting into the detail as we work our way through this process.

1010

The Chair: Thank you, Mr. Zimmer. Mr. Runciman?

Mr. Robert W. Runciman (Leeds–Grenville): Thanks, Mr. Chairman. I appreciate the opportunity. I want at the outset to acknowledge the support of the government members with respect to the subcommittee report. That's very much appreciated. I know that Mr. Kormos and I, after receiving word from the clerk of the committee with respect to the numbers of people who wished to appear, felt it was critical that we have an opportunity for anyone who got in prior to the deadline date to appear before the committee and be heard. That has now been recognized by the government. I think there was considerable concern about the possibility of ramming through something as complex as this piece of legislation, with the wide range of ramifications in the justice area and the impacts on a whole range of Ontarians.

Mr. Kormos can speak for himself, as everyone knows, extremely well, but I think it's fair to say that both opposition parties were supportive of legislation coming forward that would provide for regulation of paralegals and that both opposition parties had indicated that to the government and to the Attorney General. In fact, on a number of occasions, Mr. Kormos actually encouraged the Attorney General to bring it forward.

Regrettably, from our perspective, when it did come forward, it was sort of a kitchen-sink catch-all with respect to a whole range of initiatives that make this a much more complicated initiative, to say the least. As a result, we're not able to deal with the paralegal question in as expeditious a fashion as I think most of us would have liked to have seen. But that's the reality. I know that Mr. Zimmer talked about the Attorney General consulting extensively. I think that would be a surprise to a lot of stakeholders and a lot of people who have expressed an interest in appearing before this committee once they became aware of some of the implications of this legislation.

Certainly, beyond the paralegal issue, we've heard over the past number of weeks a whole range of concerns about that issue, especially the so-called broad definition of legal services. I think it's fair to say that's a significant concern to a number of professions, and we'll be hearing from them over the course of our hearings. Hopefully, at the end of the day, we can address those concerns in a way that not only represents the interests of the proponents of this legislation but all those who have expressed concerns about the way it is currently drafted.

Going beyond that, in my opening comments in the Legislature I touched on a whole range of issues—the amendments to the Courts of Justice Act, the creation of this new position of chief administrator. We want to, through the course of this, pursue with government members and the Attorney General the rationale for that position and assurance that this is not another instance of building a bureaucracy. We'll be looking for an explanation of the binding authority change from the current situation.

We want to talk about what we describe as the defining matters within judicial authority and the AG and the chief justice's memorandum of authority. We think we require, and we're certainly looking for, an explanation for the need for the MOU in the judicial responsibilities.

We're also going to be looking at—my limitation on time here—this whole issue regarding the Ontario courts management advisory committee. We think this legislation could be an opportunity to remove what some people have viewed as biased screenings and introduce a role for the legislative branch. I know the government has talked about democratic renewal, and this could be an opportunity for the legislative branch, the elected officials in the assembly, to play a role. I think the mere fact of having open hearings would be popular, at least among non-lawyers, and hopefully would preclude any real ringers being appointed by the Attorney General.

The Chair: Thank you, Mr. Runciman. Mr. Kormos?

Mr. Kormos: First, I want to thank Philip Kaye, Avrum Fenson and Margaret Drent—who is here with us today, of course—who as legislative research officers provided us with some incredibly valuable background material. I appreciate their work on this.

This bill was introduced for first reading on October 27, 2005. Nobody here has to tell the government how you get legislation passed: You pass it by calling it for debate. The House sat through till mid-December 2005, and the bill wasn't called once for second reading debate. The government certainly didn't have it as a priority then. We returned for a three-week mini-session. Bill 14 wasn't a priority then. Finally, here we are in this spring session, the bill is called for second reading—not inappropriately; it's about time—and frankly receives considerable attention and participation in the debate, at least on the part of opposition parties and their members. We see this as very important legislation; it's been a long time coming.

There have been a whole lot of reports and studies and good thinking and hard thinking done around the whole issue of the regulation of paralegals. But one of the impediments around Bill 14, and we said this on the occasion of first reading back in October, was that rather than come forward with a clean stand-alone bill regulating paralegals, the government came forward with an omnibus bill, making it far more difficult to focus on the issue of regulation of paralegals. I regret; I had every hope that this bill would be resolved by June 22, when the House rises for its summer break—quite frankly, I expect the government to sit here every single day up to June 22; none of this baloney about leaving a week or two early. If the government says it has bills to deal with, let's sit here in this Legislature and deal with them.

The opposition parties agreed—we acquiesced—to advertising these hearings only in Toronto newspapers, along with the legislative channel. That generated 109 submissions, plus more than a few others who were late and who still may well appeal to this committee to be heard. Had there been advertising across the province in smaller- and small-town Ontario, I am convinced, in view of the fact that Toronto advertising alone generated 109 submissions, there would have been at least 10 times that many. I regret that on a bill as significant as this, because it is significant legislation, there won't be the thorough and extensive and pan-provincial consultation that there should be. But we're prepared to, dare I say it, compromise in that regard, just as opposition parties were eager to find creative ways at the subcommittee level to accommodate 109 submitters without bending to suggestions from the government that only 10 minutes per submitter would be adequate. Unfortunately, there just wasn't the opportunity to get unanimity in terms of availability and scheduling to find a creative solution.

Understand, of course, that yesterday the government, which insists that it needs Bill 56 for third reading before the summer break, before June 22, on getting second reading voted of Bill 56, referred it to this very committee. That means there isn't a snowball's chance in hell not only of Bill 14 being completed in committee, but that Bill 56 will ever see the light of day. Yet the government insists that it's a priority that it has to pass—it's this emergency measures act, the phony one that does nothing about staffing police forces, firefighters or hospitals, the real responders to emergencies. It is indeed unfortunate.

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I recall pleading last spring with the Attorney General on almost a daily basis to get the paralegal regulation legislation into the House for first reading. We couldn't guarantee we'd finish second reading, but we were prepared to start and sure as heck try. But the bill was nowhere to be seen, and didn't see the light of day until October 27, 2005. Then I recall clearly, when Andrea Horwath, the member for Hamilton East, asked the Attorney General questions in the House about the shortage of JPs in Hamilton, that Mr. Bryant stood up and Harnicked, Harnicked, Harnicked—that's Harnick with a capital H, for the benefit of Hansard. In response to Andrea Horwath's questions, he Harnicked and said the failure of

Bill 14 to be passed prevented him from appointing an adequate number of JPs. That is an outright Harnick, Chair.

The Chair: Thank you very much.

LAW SOCIETY OF UPPER CANADA

The Chair: The next order of business is the public hearings. The first witnesses are the Law Society of Upper Canada, if they could please come up. You have 30 minutes to make your presentation. Any time remaining will be divided among the three parties for questions. Please state your names for the record.

Mr. Gavin MacKenzie: Good morning. My name is Gavin MacKenzie. I serve as the treasurer and head of the Law Society of Upper Canada, as we still quaintly call it. To my left is Malcolm Heins, who is the Law Society of Upper Canada's chief executive officer. In that capacity, Mr. Heins is the senior staff member and chief executive officer of the organization.

On behalf of the law society, let me thank you at the outset, Mr. Chairman and members of the committee, for the opportunity to speak to you this morning about Bill 14 and specifically about the paralegal regulation provisions of Bill 14, to which we're going to confine our remarks. We're looking forward to responding to any questions that members of the committee may have, and I'll try to be fairly brief in my opening remarks so that we can leave as much time as possible for questions.

The law society, as every member of the committee will know, is the regulatory body for the 35,000 lawyers in the province of Ontario. It was created by an act of the Legislature in 1797, hence the name, the Law Society of Upper Canada, and has been regulating lawyers' conduct for over 200 years. Its mandate is to govern the legal profession in the public interest.

I'll be confining my remarks this morning to those provisions of Bill 14 affecting the amendments to the Law Society Act specifically dealing with paralegal regulation. Those amendments are important to the law society, but they're more important to consumers of legal services in Ontario. That's because the amendments will fill a long-standing gap in consumer protection in the province. We commend the Attorney General for his leadership in attempting to fill that gap through these provisions of Bill 14. It's a difficult and controversial issue which has been outstanding for many years, as everybody here will know. There are many problems arising from the current lack of adequate consumer protection.

As you probably know, the law society was asked by the Attorney General to create a proposed structure for the regulation of paralegals in Ontario. We put together a task force which consulted with 60 stakeholders. Those included paralegal organizations, of course, and legal organizations and members of the public who were interested. During those consultations, the law society was told a number of horror stories by members of the public or about members of the public who had been ill served by unregulated paralegals.

To give you just one example, we were told about a woman who had very limited skills in the English language who was injured in a car accident in which she lost her hand. A paralegal settled the case on her behalf for $47,000 and took half of the $47,000 settlement. Fortunately, a lawyer was able to reopen the case later on. Again, it was only one of many disturbing stories we were told about people who were inadequately trained, who were completely unregulated, who do not have the rules of professional conduct governing their standards of competence and ethics that, for example, lawyers do.

Members of the public have had no recourse to a regulatory body to resolve their complaints in those situations. When problems arise in the provision of services by lawyers, the public can look to the law society to address those concerns. The effect of Bill 14 will be to give members of the public the same recourse in respect of paralegals that members of the public have with respect to members of the legal profession.

Some paralegals provide a very useful service to members of the public; for example, the many former police officers who very competently represent members of the public in traffic court. But today those people are unfairly linked in the public's mind with unscrupulous and incompetent paralegals who are unregulated and don't meet the standards of conduct or ethics that we expect of members of the legal profession.

The additional duties of regulating paralegals in the public interest can be accomplished, in our respectful submission, most efficiently, most effectively and most economically by the law society rather than by creating a new regulatory body. We've seen the experience of many self-governing professions around the world where a problem has been created by multiple regulators being created for like professions.

For example, in England and Wales there is one body to regulate solicitors, another to regulate barristers, a third to regulate legal executives, a fourth to regulate notaries and a fifth to regulate paralegals, and it has essentially created two problems. It has created a problem in that there is enormous public confusion about whom to contact when they have a complaint. It reduces accountability and creates inconsistencies in the administration of regulatory affairs for related professions.

It's for that reason, too, that we commend the Attorney General for suggesting the law society, which has been doing it very effectively, we like to think, generally speaking, for many years as far as the legal profession is concerned, which has the infrastructure, which has rules of professional conduct, which has professional liability insurance requirements so that people are protected in cases of misconduct or negligence on the part of lawyers. We have admission standards; we have systems for creating credentials. It's our respectful view that the law society is the organization that is best positioned to undertake the regulation of paralegals.

The development of the model embodied in the bill has been a collaborative process involving, as I said at the outset, extensive consultations with various stake-

holders, and we're grateful to all those who participated in the process. The model set out in schedule C of the bill is in fact a framework for regulation rather than a detailed prescription. Much detail remains to be worked out, and that's a wise approach in our view, for several reasons.

First of all, because it's an innovative approach, it's important that it be flexible. Generally speaking, the regulation of paralegals in a form such as this is a first in Canada. The committee that will be charged with the responsibility of devising the detail of such questions as training requirements, areas of practice and the like will consist of five paralegals, in the first instance appointed by the government, by the Attorney General, including one who will be the chair of the standing committee, so that the committee will be chaired by a qualified paralegal in the first instance selected by the Attorney General but in due course elected by the paralegal's peers.

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It will consist also, in addition to those five paralegals, of five elected benchers of the law society who are, generally speaking, senior members of the legal profession who are well-regarded by their peers, who are elected in quadrennial elections to the law society's governing body, as well as three laypersons, who are neither paralegals nor elected benchers—in other words, neither paralegals nor lawyers.

So we have the balance there. We have the benefit of the expertise of those involved in the regulation of the legal profession. We also have the expertise of those who are actual practising paralegals, who can be assumed to be sensitive to the types of problems that paralegals encounter in their daily practices.

Mr. Kormos: On a point of order, Mr. Chair: Could you please rule on the use of BlackBerries so we at least can give the impression of giving these people our full attention?

My apologies.

Mr. MacKenzie: Not at all, Mr. Kormos. Thank you.

The Chair: Thank you, Mr. Kormos. I'd ask members and everyone else to please refrain from using BlackBerries or any other devices while the presentation is taking place. Thank you.

You may continue.

Mr. MacKenzie: Thank you, Mr. Chairman.

The point I was making, essentially, is that this standing committee, which will have a great deal of work to do if and when Bill 14 becomes law, is well positioned, because of the expertise of its members and the public input that it will have, to devise a scheme that will deal with such issues; for example, what paralegals may call themselves, how they may advertise their services, what rules of professional conduct will govern them, what insurance requirements will be in place, what admission requirements there will be and the like. We regard it as highly desirable that that committee have the flexibility to develop proposals on those issues.

Let me elaborate on just one of those, and that's the question of what paralegals may call themselves in advertising their services under Bill 14. I do that because I gather there's a proposal from at least one lawyers' organization, the Ontario Bar Association, to the effect that the word "paralegal" should appear in the bill and that there should be a strict demarcation between paralegals and lawyers. Part of the concern about that is that the term "paralegal" is very vague. Indeed, the fact that the public doesn't really understand what a paralegal is is part of the problem we've had while paralegals have been unregulated. It's a term that's sometimes used notably in the United States to describe employed law clerks, or what we would ordinarily call law clerks, employed by lawyers to do work under the supervision of a lawyer. It's used to describe people who hold themselves out to do what we would think of in the law society as solicitor's work, which we regard as the unauthorized practice of law, generally speaking now. It's used to include traffic court agents, small claims court agents and agents before different tribunals. What we would see as part of the work of the task force, and part of the work of convocation as the governing body of the law society, would be a licensing process that might permit, for example, a former police officer who appears in traffic court to call himself or herself a traffic court agent. We would think that that would be a much more accurate description than "paralegal" for the work of that person. Similarly, it could be that the paralegal task force, the provision of legal services group that I described, might say that somebody could hold themselves out as having sufficient expertise and training to appear before the Workers' Compensation Board. The best descriptor of that person might be "Workers' Compensation Board agent." We'd be very concerned that if the word "paralegal" found its way into the legislation and any of those persons were allowed to call themselves paralegals, that might leave the misleading impression among members of the public that their areas of practice, their qualifications, are broader than they really are. It's for that reason that our respectful submission to this committee is that Bill 14 has it right in its present form, that it's undesirable to use the term "paralegal" in the legislation.

Having said that, I do want to point out that the Ontario Bar Association and most of the other organizations of which we are aware, whom we have dealt with on our task force at the law society, agree on first of all the need for regulation of paralegals. I don't think that these days there's any real dispute about that, and we do regard it as important that this bill receive attention as a matter of urgency in the interest of protecting members of the public. I think there's general agreement too, certainly on the part of the Ontario Bar Association, other groups that we're aware of, that the law society, for the reasons I've outlined, is the appropriate body to regulate paralegals in light of the experience that it has doing that.

There was an article recently that you may have seen in the Toronto Star that described the law society as finding itself in the middle of the debate, between some paralegals on the one side who would like to be un-

regulated or who seem to fear the consequences of regulation by the law society, and groups such as the OBA on the other side of the debate who represent the legal profession and who take a somewhat different view from that of the law society. It may well be that we are in the middle in that sense. I'm sure there are some lawyers around the province who would prefer to be unregulated too, but that surely isn't something that should motivate the Legislature to decide that paralegals shouldn't be regulated in the way proposed.

Our goal as the regulator of paralegals, should we be given that opportunity by Bill 14, will be the same as our goal as the regulator of lawyers these last 209 years, and that's to promote high standards of competence and ethics in the public interest.

So thank you again for the opportunity to address you on Bill 14. I will be happy to attempt to answer any questions that members of the committee may have that you think I may be of assistance to you on.

The Chair: Thank you very much. We have a little bit over a minute left for each side. So we'll start with the official opposition.

Mr. Runciman: I thank you for your presentation. I am curious with respect to a number of issues and I'm obviously not going to have time now, but I know you're aware that we've been contacted by a range of people—the Ontario Real Estate Association, the Intellectual Property Institute of Canada—a whole range of folks who are concerned about consequences in terms of, in this case, trademark agents. I'd like to hear you. I'm not quite sure how you would deal with all of these organizations and individuals who are engaged in activities that they believe would fall under this legislation and create significant challenges for them.

Mr. MacKenzie: I think, again, it's very important that there be a definition, in our view, of the provision of legal services. If there's a specific part of that provision that raises a legitimate issue as far as some particular provider of legal services is concerned, it will be up to the standing committee on legal services to think through the implications of that and decide whether this is a group that, in the public interest, really should be regulated or whether there is a good reason to exclude them from the ambit of the scheme for the regulation of paralegals.

Mr. Runciman: You don't see that as a role for this committee and for the assembly?

Mr. MacKenzie: I certainly wouldn't discourage you from getting into that, but I think it's important at the same time that the committee recognize the desirability of having the benefit of the expertise of the five paralegals who will be on the committee as well as of the five elected benchers and the lay people who are charged with the responsibility of working this through in detail.

The Chair: Thank you very much. Mr. Kormos?

Mr. Kormos: The Chair, not inappropriately, introduced you as speaking on behalf of the law society of Ontario. Since we're secularizing the profession with things like licensing, maybe an amendment to change the Law Society of Upper Canada to the "Law Society of Ontario" would be welcome by you.

Mr. MacKenzie: Actually, it wouldn't.

Mr. Kormos: There we go.

Mr. MacKenzie: It's been a matter of some debate, as you know, Mr. Kormos.

Mr. Kormos: And far less colonial in its perspective.

Look, one of the concerns out there is with respect to subsection 2(10) of the bill, which will become amendments to section 1 of the existing Law Society Act, and we're talking about the definition of "legal services." A broad range of communities has expressed concern about that. Mr. Runciman referred to it. One of them is the community of dispute resolution practitioners, especially mediators, preparing minutes of settlement in the course of a mediation. How are we going to assure those people that they're not going get caught up in a very broad definition of "legal services?"

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Mr. MacKenzie: I think the preliminary question you have to decide is whether it's desirable that they not be caught up in that definition. If they are providing legal services, if you have a mediator who's not a lawyer regulated by the law society and not regulated by any other body, who's serving as a mediator preparing documents, such as minutes of settlement in a dispute resolution process to which two lay people are privy, perhaps the answer to the question is, they should be regulated, they should be trained and their credentials should be recognized by a body such as the law society, so that the public is adequately protected.

Mr. Kormos: That's going to generate some reaction this afternoon.

Mr. Berardinetti: Mr. Chairman, I just want to raise a point of order very briefly. I've just been watching the time, and I wanted to mention this to Mr. Kormos and Mr. Runciman: I think we're supposed to go until 11:50, so I'm just wondering, timewise, if they have extra time for speaking. I do apologize for interrupting. I thought we were going to 11:50. My watch, not my BlackBerry, says that it's 10:40.

The Chair: Thank you, Mr. Berardinetti. That was an error on my part and I do apologize. The law society had 30 minutes and I had marked it down for 20, so that's an extra three minutes for each side. You have about four-and-a-half minutes, and you may begin now. Then we'll go back to Mr. Runciman and Mr. Kormos for about three minutes each. Again, my apologies for that.

Mr. Berardinetti: I just wanted to perhaps—

The Chair: Yes. We'll start with you. You have four-and-a-half minutes; then we'll go back to Mr. Runciman—

Mr. Berardinetti: I'll defer to the parliamentary assistant, who knows the bill better than I do.

The Chair: Mr. Zimmer, you may begin.

Mr. Zimmer: I take it the gist of the law society submission is that it shares this government's view that this is, at least with respect to the paralegal fees and indeed the rest of the bill, essentially an exercise in con-

sumer protection, while at the same time being respectful of the needs and the working conditions of both lawyers and paralegals. But the consumer protection issue is really the trump card here. Is that—

Mr. MacKenzie: Yes, that's correct.

Mr. Zimmer: I've just got a couple of questions: How do you envisage the law society governing and managing paralegals who don't want to be managed, who are in effect ungovernable? There's an expression with respect to lawyers about "ungovernable lawyers." How will you handle that issue with respect to paralegals?

Mr. MacKenzie: I think you have to break that down into two categories. First of all, paralegals who are not licensees, people who refuse to either obtain the credentials or to be governed, under Bill 14 can be prosecuted for the unauthorized practice of law or for doing things that are permitted to be done only by licensees under the act. The act also gives us the authority to obtain civil injunctions through the courts to prevent them from doing things that only lawyers or paralegals licensed under the legislation are permitted to do.

We also have to consider that from the point of view of paralegals who are licensed, but whose licences permit them to do only certain specified activities. For example, if you had a paralegal whose licence permitted her to only appear before the Workers' Compensation Board, because that's what her training and qualifications permit her to do competently and ethically, and that person were to prepare wills or do other work that is not permitted by her licence, then that person also can be disciplined through the law society's disciplinary process or can be subject to the other remedies under the statute.

The Chair: That's all the time we have for the government side. We'll go back to Mr. Runciman. You have about three minutes.

Mr. Runciman: I'd like to pursue a little bit the questions on the issue that both Mr. Kormos and I were raising. I was intrigued by your response with respect to the fact that there would be five paralegals so they can make a reasoned decision with respect to these individuals who may represent other professions which are not normally looked upon as paralegals. I guess I'm intrigued by that. I don't think that would give much comfort to the Canadian Institute of Mortgage Brokers and Lenders, for example, or, as I mentioned earlier, the Intellectual Property Institute.

If I hear you correctly, Mr. MacKenzie, I think you said that groups, organizations or individuals who are not regulated—it seems to be a consistent message. In some of the materials, we've received an amendment that would exclude any regulated profession from the scope of the legislation, which would seem to address the concerns. I'd like to hear your views on that.

Mr. Malcolm Heins: As you pointed out earlier, we're aware of the many letters that have been sent in, and have indeed replied to many of them that were addressed to us as well. What we've said, in essence, is really twofold. First of all, we need a wide definition of legal services in order to regulate, so that we are able to capture all of those individuals who may decide not to try to come in within the act. Otherwise it's very difficult to actually prosecute them.

The second component of the structure of the act, and an important one, is the ability to exempt its application to other regulated professions, for instance. At the moment, the act is conceived with that authority being with the law society, pursuant to its bylaw-making authority. As you point out, some groups have expressed some reservations about that. What we would say in reply to that is that given our public interest mandate as a regulator of legal services, we see ourselves as competent to make those exemptions. Indeed, if you look at the report, which I think is part of your material, that we prepared on these issues there's a long list of people and professions that we would be exempting.

If it was felt in the public interest that it would be better to perhaps put some more transparency into that or some more public interest injection, we could see that being done by regulation as well, which would give government oversight to the process.

Mr. Kormos: Once again, thank you. I found it interesting that in the beginning of your opening remarks you illustrated the need for this legislation with the example of a paralegal in a personal injury situation where the award was about $47,000 and the paralegal took half of it. You should know that the types of complaints that come into my constituency office are about that type of billing as it applies to lawyers as well as paralegals. Understand that. I'm telling you, it doesn't just take place with rogue paralegals.

Mr. MacKenzie: But doesn't that make my point? If a lawyer takes advantage of a vulnerable client in that way, that lawyer can be disciplined for doing that. The problem now with the case that I was citing was that a paralegal apparently took advantage of a vulnerable person who didn't speak English well, settled the case for far, far less than it was worth and took half of the proceeds; and because that paralegal was totally unregulated, there was nothing that the victim could do other than get a lawyer who, through the grace of God in that case, was able to reopen the case.

Mr. Kormos: But I tell you again, sir, that my experience in my constituency office in small-town Ontario—maybe things are different here in Toronto—is that complaints to the law society about billings and what are perceived as excessive billings by lay people are amongst those complaints that are least likely to be resolved in favour of the complainant.

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Mr. MacKenzie: But the complaint in that case wasn't just about the billing. There's a mechanism for any member of the public who complains about a lawyer's bill outside of the law society's process for that member of the public to have that bill reviewed, as you know, by an assessment officer who can review it and reduce it. The problem there wasn't that a person was over-billed; it may have been part of the problem, but the underlying problem was that an unregulated, untrained,

avaricious paralegal took advantage of a vulnerable member of the public and that avaricious and perhaps incompetent paralegal could do so with impunity.

Mr. Kormos: I understand. Let's understand that avaricious regulated practitioners are going to continue to do that.

What do you have in mind for grandparenting? There is a whole wealth of number of people, especially paralegals, out there with proven skills, demonstrated skills, people doing advocacy at any number of levels of tribunals and courts. What do you have in mind in terms of grandparenting?

Mr. MacKenzie: We fully expect that there will be grandparenting.

Mr. Kormos: How?

Mr. MacKenzie: I can't tell you in detail the answer to that now, but we do expect that everybody who wishes to be grandparented, who wishes to become a licensee under the Law Society Act without going back and taking a two-year college course and going through whatever other requirements that person must fulfill, will have an opportunity to come to the committee and come to convocation to say, "I've been practising as a traffic court agent for the last 15 years. My clients are very happy with the service I provide," and I fully expect that that person will be permitted to practise.

The Chair: Thank you, gentlemen, for your presentation.

Mr. MacKenzie: I'm grateful to you, again, for the opportunity to speak to you. Thank you.

BEN TRISTER

The Chair: The next presentation is from Mr. Ben Trister. He's the past chair of the Canadian Society of Immigration Consultants.

Mr. Ben Trister: Good day.

The Chair: Good morning, Mr. Trister. You have 20 minutes to make your presentation. You may begin.

Mr. Trister. Thank you. Firstly, I appreciate very much the opportunity to speak to you today. I am before you as the past chair of the Canadian Society of Immigration Consultants. If I could briefly give you a little bit of my background, I'm a lawyer, just so you know. I head the immigration practice group at a firm called Borden Ladner Gervais and, for a time, I was the national chairperson of the Canadian Bar Association's immigration section. During that time, I was asked by the then federal Minister of Immigration, Denis Coderre, to chair an advisory group on how to best regulate immigration consultants.

We made a report that essentially called for the creation of a corporation that would be designated by the federal government to regulate immigration professionals who practised Canadian immigration law. The idea was that the body would be set up so that for the first two years the board would be dominated by non-immigration consultants and that after two years, which actually corresponds with this month, there would be a handover of authority and the consultants would elect a majority of people to the board so that it would be a self-regulated profession.

The reason I decided to request to impose on your time is because I think the experience has been an important example of what you can expect if Bill 14 doesn't go through. If we don't get a consistent overriding regulator of legal services in Ontario, one alternative is to have many regulators. Some of the professions may be ready to regulate themselves. Others, like immigration consultants, are not.

This doesn't give me pleasure to say because, of course, I was the person who was most in charge of regulating that profession, and for me to come to you and say I think it's been a failure and should be replaced by a different model perhaps doesn't speak well of my abilities as chair of the advisory committee or of the society. But I met with significant problems in dealing with the consulting community and their so-called leadership. The result of that, and I will give you specific examples, is that what has transpired has not been in the consumer's interest, nor has it been in the interests of the consultants who are regulated.

What happened in the consultants' case is that people were appointed to the board who didn't have experience establishing a regulatory body. The result of that is that when you give people an organization that has a $3-million-plus budget and you have people running the show who aren't qualified to do it, then chaos can ensue. That, for example, would be why, to the best of my knowledge, as of today, over two years after the organization was set up, I don't believe there has been a single discipline hearing in the existence of the organization. I may be out of touch by about one or two months, but for the time that I was there, there were no discipline hearings at all.

In addition, we had board members who were getting paid exorbitant amounts of money. I resigned over the issue of the vice-chair, who is now the chair of the organization, who was an immigration consultant, who collected compensation from the society in the six figures for a part-time job that was not at the time authorized by the board. He and the treasurer, who's also a consultant and a good friend of the then vice-chair, went to the staff member who is in charge of accounting and said, "Pay him at this rate," and the board didn't know.

When this came out—this was in the media—one would have expected that there would have been a hue and cry on the part of the consulting community and something would have been done. But nothing was done, because the consulting community was scared that if they actually called attention to the problems that existed at the organization—which not only included excessive compensation of board members, but we couldn't keep professional management. We had two CEOs resign. We had other board members resign in protest over how business was being conducted. We had an audit that was done, the results of which were never reported to the membership. The costs of membership are way over what

the costs would be if they were members of a body such as the law society, because if everybody is regulated under one umbrella, there are economies of scale. To be a CSIC member, when I left, you had to pay $2,600 a year for the privilege.

The professional testing of members is suspect. It has not been conducted in the manner in which the board was advised it would be conducted.

All these problems exist, and yet the consulting community is scared to say anything about what's going on at the board because they don't want the whole exercise to be brought into disrepute. So you have an organization where the people in it at the directors' level are benefiting from it. The members aren't benefiting; it's costing them a lot of money. The consumers aren't benefiting, because there are no meaningful standards of discipline and hearing mechanisms that are applied.

It basically has been a waste of money. It's been a noble endeavour but, at the end of the day, it hasn't produced what we hoped it would have produced. That has a lot to do with the relative immaturity of the regulated members to step up to the responsibilities of self-regulation. So while it's nice in principle, in practice there is so much self-interest going on that if you don't begin the process at least with a long period of time in which independent people are regulating the profession and giving them the skills and support necessary to progress to self-regulation, you're going to end up in a situation like CSIC, which has been very unfortunate.

Over time, that organization may make progress, but I can tell you that when I was there, they had 1,600 members and they were charging $2,600 per in order to meet the costs—there are fixed costs that you have to have. I'm told that there are now slightly over 500 members because so many people who are in the profession have resigned from membership because they weren't satisfied with the organization, didn't think it benefited them, and many of them are now practising without even being members of CSIC. They just continue on in their businesses. A lot of people haven't passed because they weren't competent to practise in the first place, even with the relatively easy standards that CSIC has put in place for continued membership in the profession.

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When I was chair in the beginning of the organization, I sat with Mr. Heins of the law society and told him, "If you folks regulate paralegals in Ontario and you include immigration consultants, then you're going to kill the entire federal regulation project, because the majority of CSIC members are from Ontario. If you take their membership out of CSIC, CSIC would die, because it wouldn't have enough support or funding." In this case, if Ontario acts, it jeopardizes the ability of practitioners in other provinces to continue to practise, because they may not be able to sustain a federal regulator by themselves. I used to think that was a bad thing, but now I think it's a good thing, because you can't assume that individual professions in individual areas of law will be able to provide the same level of consistency as one overall regulator.

Mr. MacKenzie talked about the law society being in the middle. I was in the middle because I was a lawyer who was heading up the validation process for the existence of the immigration consulting profession over the objection of many of my colleagues who think that consultants shouldn't practise at all, but if they do, then they should be regulated. So I said, "Consultants aren't going away. We should regulate them." Unfortunately, I don't see a legitimate way of regulating this profession other than what is proposed in Bill 14. I've lived through the process, and that's why I came today: just to tell you that I think Bill 14 would be a significant advance. It has been a long time in coming and would be helpful to consumers of immigration services.

That having been said, I asked Mr. Heins if it was contemplated in the schedule that he referred to that immigration consultants would be exempted, and he said yes, so I think that speaks to the point about who should determine what those exemptions are. I have a sympathy for the Intellectual Property Institute of Canada's argument that they've been around for 50 years in terms of being a regulated profession. Nobody, to my knowledge, challenges the quality of the representation that they provide or the accountability that they're subject to. I don't know that it would benefit consumers in—I think that organization has the strongest case, in my view, for an exemption from the law. But you're going to get into—somebody is going to get into the murky decision-making of what area of law should be dealt with by what group, and that's going to be a very unpleasant position to be in, and every one of them is going to be a fight with people on different sides. Whatever committee is going to deal with the immigration consultants exemption at the end of the day, I'm going to be there to say, "Stop," and CSIC's going to be there to say, "Go." You can multiply that by however many areas of law in which paralegals are regulated. I don't know how you'd want to resolve that. Do you want the political accountability, or do you want the benefit of leaving it to independent people who are skilled? I don't know the answer to that. I will leave that to you. That's what you're elected for.

I think those are pretty much the points I wanted to make. I'm happy to answer questions if there are any.

The Chair: Thank you very much. There are about three minutes for each side. We'll begin with Mr. Kormos.

Mr. Kormos: So if CSIC, the Canadian Society of Immigration Consultants, were to die, you'd consider that a mercy killing?

Mr. Trister: Yes.

Mr. Kormos: But you've also been told that the law society contemplates exempting CSIC members or immigration consultants from their supervision?

Mr. Trister: I think it would be CSIC members, but I'm not sure. I haven't seen it. I don't know the answer to that specifically.

Mr. Kormos: That's interesting, and the reason I asked is because it seems that if I want to join CSIC and pay their fees, to whatever end, and relieve myself of any

supervision by the law society—Mr. Zimmer, that doesn't seem to be very logical, does it? It's like joining the Bandidos to avoid having to acquire a 1%er Hells Angels patch.

Mr. Trister: That's a colourful analogy.

Mr. Kormos: Mr. Zimmer?

You've read the act, especially as it applies to so-called paralegals, and you see the definition of "legal services" as broad as could possibly be. Should we be concerned about the fact that this is a wide, huge net that could capture everything floating out there with no political oversight, but rather the oversight of the law society?

Mr. Trister: There are advantages to statutory self-regulation and the independence of the regulator. After all, lawyers deal with the government on the other side all the time. It's not always great to have the government directly involved, but I do think there could be a legitimate role for the government to have oversight over who's in and who's out.

If I could just make one very quick point: One of the key problems with CSIC is that it's not a statutory self-regulated body; it's just a corporation. That means that the only benefit you get from being a CSIC member is that the government will talk to you if you're a CSIC member or if you're a lawyer, but there's nothing illegal about calling yourself an immigration consultant, practising as an immigration consultant and marketing yourself as such, and not being a CSIC member. You're free to do that. It's just that the government won't talk to you; they'll talk to your client directly. That's a very weak model for regulation.

Mr. Kormos: I'm going to wrap up, but I've got to tell you that the biggest single number of complaints I get in my constituency office is with respect to lawyers, not paralegals—that doesn't mean I don't support the prospect of regulating paralegals—and the second-biggest complaint comes from clients of immigration consultants.

Mr. Trister: I don't doubt that.

Mr. Kormos: When you look at some of the stuff that's been prepared for these people, who pay huge chunks of money, oftentimes ethnically exploited by somebody they identify with because of a linguistic bond or an ethnic bond—some pretty miserable stuff being done out there.

The Chair: Thank you, Mr. Kormos. Mr. Zimmer?

Mr. Zimmer: I'm pleased to see that your principal concern—you see the benefit in this legislation—is the protection of the consumer. While we want to be respectful of lawyers and paralegals and people working in the immigration field, the trump card is protection of the consumer.

I do share your concerns, and I understand your submission. I was the assistant deputy chairman of the Immigration and Refugee Board of Canada when they were going through the process of setting this up. I like to remind myself from time to time that I flagged all the concerns you just expressed now. I think you and I had a number of conversations at the time this was working its way through. So I'll just leave it at that. I understand your submission.

Mr. Runciman: Mr. Trister, thanks for being here. Perhaps I wasn't listening closely enough, but when you began your presentation you were talking about the need for independent people at the outset; I think that is essentially what you said. Is that a criticism of what is transpiring here, or do you look at the way this—I know you said you'd toss back, in terms of the political accountability, a decision we have to make. Was that a veiled criticism with respect to the way this is being structured? I'm just looking for your input in respect to your comments—a little elaboration.

Mr. Trister: I'm not sure of the comment to which you're referring.

Mr. Runciman: In terms of establishing this and making decisions, you talked about independent people at the outset as critically important.

Mr. Trister: You mean who makes the decisions about who falls within this scheme and who doesn't?

Mr. Runciman: That's right.

Mr. Trister: I think it's very challenging. I suppose I would favour a kind of mix, really. I think there will be so many mundane issues that this committee would not want to occupy its time with, but I think there should be a process that would allow the committee to be involved when bigger, more contentious issues arise that have greater implications.

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On immigration consultants, there will be some contention as to whether they're in or out. The law society may have put them on the list because it's such a yucky area. They don't want to get tainted by the people who—that could be one reason; there could be self-interest in the law society as to whom it takes on and whom it doesn't that may not purely reflect the consumer's interest.

Forgive me for saying such a thing; I love you.

Laughter.

Mr. Runciman: You referenced the intellectual property institute, and I made a comment earlier with respect to their recommendation about exempting any regulated profession; essentially, a sort of blanket exemption that we could incorporate in the legislation as an amendment. Do you think that would address many of the concerns we're hearing?

Mr. Trister: Personally, I think the committee ought to reserve the right to stay involved when it wishes to and leave the rest to the good folks at the law society.

The Chair: Thank you for taking the time to appear before us.

Mr. Trister: My pleasure.

ONTARIO TRIAL LAWYERS ASSOCIATION

The Chair: The next presentation is from the Ontario Trial Lawyers Association.

Mr. Russ Howe: Good morning. As I sit here, I'm now scratching my head after those comments. I'm trying to figure out if I get—

The Chair: If I could just interrupt, can I get you to state your name for the record?

Mr. Howe: Sure. Russ Howe.

The Chair: Thank you very much. You have 20 minutes—actually, I made a mistake again. You have half an hour.

Mr. Howe: I planned for 20 minutes. You'll be happy.

The Chair: Any time you don't use will be divided up to ask any questions. You may start.

Mr. Howe: Thanks. I just have to try to figure out now if I get to put a Bandidos patch or a 1%er patch on my robe when I go to court, since I'm a law society member.

Mr. Kormos: You tell me which one is more applicable.

Mr. Howe: I don't know. I guess I'll have to ask the law society.

I should start by telling you in about 30 seconds who we are. The Ontario Trial Lawyers Association is a non-profit organization of 1,100 lawyers across the province. We represent accident victims in personal injury cases. The perspective I'm going to bring to this issue under Bill 14—two issues, actually—is that of the injured accident victim. I don't know anything about immigration; I don't know anything about divorce. I'm here to talk about people who are injured in various types of collisions or through medical negligence or those sorts of things.

First, I want to talk about the schedule C paralegal regulation. I have to start by saying we are eminently pleased that the government is finally stepping in to regulate this. We think it's a big step forward and long overdue. If this legislation is done right, this is an opportunity for the Ontario government to give injured accident victims the protection they need as consumers of legal products. I have to praise you for moving forward on this. We're really pleased about it.

We at OTLA have two things we don't like about the paralegal regulation scheme; actually we have three, but I'm only going to talk to you about two and leave the boring one for the written submission that is coming.

The first is a problem with titles. They're confusing and we think the consumer may be confused by some of the titles that are going to be used. The scheme, as I understand it, is set up to make anybody who provides legal services or practises law a licensee of the law society. To be frank, I know it's not that important to you guys, but we're not very fond of the term "licensee." It makes us feel like hotdog vendors. I think it does a disservice to the service that barristers and solicitors have provided in this province for hundreds of years and we should go on from there.

I understand that licensees are going to be divided into two classes. We don't like being called licensees, by the way; we kind of like "barristers and solicitors," "lawyers" and those sorts of things. Licensees are going to be divided for the public, as I understand it, into two classes: those who are licensed to practise law and those who are licensed to provide legal services.

For people who sit around and stare at documents all the time and tear words apart, there may be significant differences in those two phrases, but it is hard for the public to distinguish between "practise law" and "provide legal services." We think simpler, better language can be used to specify the difference. As I understand it now, "practise law" is going to refer to lawyers. We should say that they are not people licensed to practise law; they are barristers and solicitors. You might want to call them members of the law society; you might want to call them lawyers. On the other hand, "provide legal services," I understand, is the term we're going to try and use to catch paralegals and separate them out from lawyers. A more clear term is needed so the public can understand that it's a paralegal or a paralegal agent. I can imagine a paralegal with a sign saying, "I'm a licensee of the Law Society of Upper Canada, licensed to provide legal services." It's going to be very hard for your average consumer—or perhaps the person we should really worry about, the language-limited consumer—to distinguish between someone licensed by the Upper Canada law society to provide legal services and someone who's licensed to practise law. We really need to make the language clearer so that we tell the public exactly what we're doing and who is what. That's one step I'd like to take.

The second question on paralegals, and I'll move through it fairly quickly, is that there's no definition, as it stands now in the drafts I've been given, of the practice of law. It seems that perhaps the intent is to pass the definition of the practice of law, as opposed to providing legal services, off to the law society or others to deal with in a regulatory fashion. We feel that many other provinces have been able to provide definitions of the practice of law, and this is fundamental to the scheme. This is something that we think is so fundamental to the legislation that it shouldn't be downloaded. The practice of law should be defined in the legislation. It's not regulatory; it's not one of the tertiary matters that should be handed down. It could be changed far too quickly, as we know, in my experience, how quickly regulations can be changed as opposed to legislation. The practice of law is too important to put in regulation, which effectively means that when the government of the day doesn't like the definition, they can change it without significant debate or going through the bill process. We don't think that's right. We think it's far too fundamental to leave it to be so easy to change.

The second issue I want to talk to you a little bit about is the proposal to amend the Courts of Justice Act—this may not be a sexy subject for most of you—to add a new section, section 116.1, which will effectively force victims of medical negligence to structure the future care costs portion of their settlement. If I represent a young child or an adult who gets an award that is rather large, with respect to future care costs, it forces them effectively, for those of you who don't understand the structuring aspect of this, to buy an annuity with that money, as opposed to doing what they want with it.

There are a lot of difficulties in the medical malpractice field, and I've got to give you just a little bit of background to help you understand why this is not the right way to attack this issue.

There have been two major commissions in the province and in Canada done on medical malpractice and the problems: The Dubin commission and the Pritchard commission. Interestingly, neither of those studies came to the conclusion that future care costs should be mandatorily structured, which is what this section of the act calls for. It gives you perhaps an escape loophole, but the mandatory structure is still in place. The problem is, there is a cost problem in the medical malpractice field. My belief is that's why the Canadian Medical Protective Association, the CMPA, which this government funds, of course—you're probably aware that you pay between 65% and 90% of doctors' premiums to the CMPA, so it's effectively a publicly funded organization. They have alleged, or tried to make movement, that it's too expensive to do medical malpractice cases. On that case, they're dead right: It is too expensive to do medical malpractice cases. But if you look at the facts, it doesn't have anything to do with future care costs. So what I'm going to say to you at the end of my submission is that there is fat to be trimmed, but don't trim it from the victims; trim it from the rich guys. You're trimming it from the wrong place.

In the real world of medical malpractice, the facts are these: For the last 10 years, the number of claims has been going steadily downwards. Less doctors than ever, less hospitals than ever in this country are being sued—a steady downward trend for 10 years. Judgments—that is, the amounts awarded against doctors and hospitals—have either been steady or going down for the last three years. So if there's fat in the system, it's not because there are too many claims and it's not because the judgments are too big.

In fact, the Pritchard commission and the Dubin commission both came to the same conclusion: The fat in the system is the way these cases are being defended by the CMPA. The numbers are stunning: About 50% of the money that goes into the CMPA is going to defending the cases. So half the money that is set aside or used to help young children who are injured by a doctor's negligence, or to help a woman who has a breast removed unnecessarily, or to help a gentleman who has the wrong surgery done on the wrong leg and will never walk properly again, is going to the legal defence of these cases.

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That is obscene. There is no insurance company that operates on a model anywhere near 50% of defence costs, and it is simply an opportunity for a group of individuals who feel that they can milk the public trough to make money. It's screwing up the system for the victims.

The studies found two other interesting things: (1) the inflation in the system, the only inflation in the system, is defence costs, going up at about 11% a year, which kills the rate of inflation; and (2) something in the neighbourhood of 10% of victims of medical negligence will ever receive a nickel of compensation. So the trickle-down is massive. Only 10% of the victims of this problem are going to receive any compensation from this money the government is putting in. It's a horrible situation as we speak.

So the solution that's being proposed, or the adjustment that's being proposed—and it's supposed to save $12 million—is to take away the options of the injured person on what they have to do with their money, and I want to talk to you just a little bit about structured settlements and why there are some disadvantages to this. If you do want to cut fat in this bill, look elsewhere than the victim.

A structured settlement can't be changed once it's set up. It's a stream of income. If a court decides an individual needs $2,000 a month in care costs, the new scheme means they're going to get $2,000 a month till the time they pass away, completely inflexibly. There is no way to adjust it. There's no way to take it in or take it out. This is governed by the Revenue Canada tax act, and once it's in, it's in. So there's no way to adjust it, and it creates a number of problems for us.

First, it creates greater complexity in the litigation, and it's going to create more litigation expense. To be frank with you, lawyers are going to make more money on it. We're going to go in and argue about what kind of structure should be used, how long the structure should be for, what kinds of rates of mortality should be used. You're just creating a whole bunch of legal issues that don't exist today, and you've already got a system that's sucking way too much money out of it into legals that aren't getting to accident victims or medical negligence victims. So, one, you're going to make it legally more complicated.

Secondly, you're tossing out about 200 years of common law, with no evidence to say it's reasonable. The Supreme Court of Canada has made it clear in the Andrews v. Grand and Toy case that victims should be able to do what they want with the money that's awarded to them. I'm a moderate fan of a fair-sized government, but this is a Big Brother move. You're going to step in and tell these people what they can do with their money and throw out the common law without proper evidence that this is going to save you any money. In fact, when the top structure broker in Ontario, Frank McKellar, was asked this by the CMPA, he told them that there is no way he can calculate the amount of savings that are going to occur. So this bill is going to take away the historical rights of victims without any proper evidence as to how much money that's going to save. If you could just say to me that this is going to save $100 million, or a real figure with proper evidence, it might be debatable, but you can't steal people's rights when you don't know the benefit of stealing.

Going beyond that, there has been an argument advanced, I understand, in some quarters that structured settlements take away the mortality issue, that if you guess that a person, when you give them a lump sum, will die at a certain age and you guess wrong, the struc-

tured settlement, since it goes on monthly as long as they live, deals with that issue. That's a red herring and in fact that's false. When you buy a structure, you have to assume a mortality rate. They don't give you a structure for free. You've got to put a certain amount of money in. One of the key features in determining how much money has to go into that structure is the mortality rate of the individual who's going to receive the money, when they're going to die. So the argument that this does away with mortality issues at trial is simply dead wrong. We're still going to hire mortality experts and we're still going to be fighting about how long these severely handicapped children or injured people are going to live. So don't buy the argument that there's a cost saving coming into this.

Lastly—there are a couple of more issues on it—future care costs are based on estimates, and if the projections are wrong, you give the victim no flexibility. Let me give you an example. Let's say there's an individual who receives an injury, and they determine that his care cost should be $2,000 a month because of something with his leg that severely inhibits his lifestyle. If five or 10 years after the accident a new medical technology or a new treatment becomes available at a cost of $50,000, he'll never be able to accumulate the capital to afford it. So he will have to live with that for the rest of his life and never have access to new and more expensive technologies. There's no flexibility because all he gets is $2,000 a month. However, if he had been awarded that amount of money in a single lump sum and invested it properly, like most plaintiffs do, he would have that $50,000 available to access that new technology to make his life better.

What you're doing by putting the money for future care costs into an annuity that the claimant has no control over is you're handcuffing them for the rest of their life as to what they can do and what treatments they will have. If I represent a 10-year-old today who suffers a serious injury and he lives to 65, you're effectively denying him the next 55 years of technology to make his life better; you're taking all that discretion away from him. It's a terrible thing to do.

The other reason the CMPA likes this, or some people like this, is that annuities are all held by insurance companies, and the insurance companies make profits off these annuities. So whatever millions of dollars in care costs will now be held by insurers, who make a profit off it. There are of course commissions on annuities and structures, so I guess the structure broker is going to make a commission. But that's not what this act is supposed to be about. We're supposed to be protecting the consumers and the injured in this province instead of putting handcuffs on them. For those of you who don't understand annuities, they are held by large corporations. There is some risk, although I will tell you it's not that large, that the annuity-holder can go bankrupt, and then of course the plaintiff is left with nothing; it's taken out of his hands.

To summarize on the medical care cost issue and on the structure broker issue, what you're doing with this bill is, you've got an inflationary problem—I guess there's a reason you're addressing this—in the medical malpractice field. The real inflationary problem is in defence costs: highly paid lawyers with large firms charging significant amounts of money and defending some cases that really should never be defended. Somebody has decided somehow that the way to address this problem is by telling victims, "You can't do what you want with your money. We're going to lock it up and we're going to tell you what to do with it. We going to tell you what to do with it, today, for the rest of your life, and we'll never let you change it. We'll deny you access to an investment opportunity. If you choose to spend that money on a better technology to make yourself better, you're not going to be allowed to do that. If you do a little bit better down the road and you want to start a small business with some of your money to contribute to the community, we're not going to let you do that either. We're just going to give you a stream of payment, and Big Brother is going to tell you what to do with your money."

What you're doing in this case, unfortunately, is robbing the poor, the injured victims, to pay the rich, the lawyers. I think section 116.1, proposed for the Courts of Justice Act, is absolutely abhorrent. There's no value to it, and unfortunately there's no good evidence to justify this theft of rights.

Those are all my submissions. If you have any questions, I'm happy to answer them.

The Chair: Thank you very much. That leaves about five minutes for each side. We'll begin with the government side.

Mr. Zimmer: This idea that the structure, the provision for future care—that somehow five years down the road the medical technology is going to change, and because the structure didn't contemplate that, that technology's not going to be available: Is that technology not available through the public health care system?

Mr. Howe: Interestingly, the future care costs—some of them are and some of them aren't. Let me give you an example. I've represented quadriplegic individuals who are married, and they hope someday to have children. The technology has changed rapidly in the way that they can fertilize their wives from the position of being a quadriplegic or advanced wheelchairs. So if, instead of getting a certain amount of counselling every month for the fact that he'll never have children, a new technology evolves that the $10,000 or $20,000 and would allow him to have children, he can't accumulate that capital; he has to sit on those $2,000 a month. And nursing costs, all sorts of treatments, are not covered in Ontario. Only parts of wheelchairs are, only very small fractions of home renovations are here, and as you're probably aware, very serious services for some of the injured people, such as physiotherapy and various versions of chiropractic, have been delisted.

Mr. Zimmer: My second question is, you have made the point that an injured person, in terms of their future care, in your view would be better off with a lump sum,

and they can prudently invest and manage that money and provide for contingencies that may be five, 10 or 15 years down the road. I agree; I suppose a very sophisticated person, an investor who understands money management, could make that sort of provision. But what about those persons who don't have that level of sophistication or in fact don't have the current wherewithal where they can set aside monies and so forth and so on? So they're living a little closer to the wire and will use that money for current expenditure. Aren't they better off with an ironclad structured settlement that guarantees the provision of future health care services, even allowing for some of the exotic treatments like fertilization and so on that may not be covered?

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Mr. Howe: You're entirely correct about that. The obvious example is the individual who's not competent to handle their money—not just not prudent or a good spender; someone who's not competent. The courts now, as we sit here, have jurisdiction to order structures where they feel it's in the best interests of the plaintiff. What you're doing is you're turning the shotgun around. You're saying, "You're not entitled to your money anymore unless you prove to us that you're really, really good." Right now, the courts have a jurisdiction to say, "If you're incompetent or you can't handle this money, we're going to order a structure." You see it in cases where there are children or unsophisticated individuals or the brain-injured. You're turning the onus around. You're making the individual prove they are competent to get their money. You're assuming that everybody is a child and incompetent, rather than assuming they are competent. You're taking away—you're putting handcuffs on the judges as well. You're making it mandatory to do the structure. Judges, to be frank with you—I know they don't get to come to testify—they hate mandatory. They like to have some discretion, because when they spend two or three weeks or four weeks or a month at a trial and get to know somebody and their history, they feel they can make a good decision.

Mr. Zimmer: Am I incorrect that, in the settlement of a serious motor vehicle injury, there could be the payment of a lump sum up front to cover pain and suffering, if you will, together with a structure to guarantee future health care?

Mr. Howe: Absolutely. There are—

Mr. Zimmer: That being the case, then, the person's got the best of both worlds. They've got a lump of money up front for the pain and suffering aspect of it, and they've got a structure in place to guarantee future health care.

Mr. Howe: As long as the structure and the pain and suffering money are adequate. Of course, you've got a deductible on the pain and suffering money and a limit on the pain and suffering money.

Mr. Zimmer: Yes, but isn't that the function of the lawyer to make sure that that upfront pain and suffering payment is adequate?

Mr. Howe: The lawyer is limited by the law. The maximum pain and suffering money you can achieve in Canada is $300,000, and in this province you have to give $30,000 of it back to the insurance company under the Insurance Act. You've got a $30,000 pain and suffering deductible.

Mr. Zimmer: Thank you very much.

The Chair: Mr. Runciman?

Mr. Runciman: Mr. Howe, I want to thank you for your submission. I found it very interesting and informative. I wasn't aware of these concerns. You obviously have been involved with these kinds of actions. Is this something where your organization, broadly speaking, would be very much involved in these kinds of actions?

Mr. Howe: Absolutely. This is all we do.

Mr. Runciman: Were you consulted by the government with respect to these changes? We heard about this exercise of broad consultation.

Mr. Howe: Absolutely; we were consulted and we expressed our concerns all the way along. I'll criticize this government for a lot of things but not for consulting us on this issue. They were fair to us on that.

Mr. Runciman: I wondered when you described yourself as a moderate fan of fair-sized government. In any event, I really appreciate your submission.

What happens in these cases with the victims? Who funds them with respect to their legal costs associated with these cases?

Mr. Howe: Medical malpractice cases, which this act applies to, are almost all done on a contingency basis. You have to realize that the defence, on average, will spend $95,000 a case defending them. Ontarians just don't have $95,000 to come drop in my trust account to fight on a dollar-for-dollar basis. Effectively, I carry the risk, or other lawyers carry the risk.

Mr. Runciman: What, on average, is the contingency? Is it 50%? How does it work?

Mr. Howe: Not even close. It varies. At my office we charge 20%. Other offices I know charge 30%. It really, I think, depends on the risk and the size of the case.

Mr. Runciman: I see; okay. With respect to your comments related to paralegals—I guess this pretty much lines up with the positions taken by the Ontario Bar Association.

Mr. Howe: Which is precisely why I went through it quickly. I knew they were presenting ahead of me. We're pretty much ad idem on that issue.

Mr. Runciman: So your organization doesn't get involved in criminal cases at all?

Mr. Howe: We do not. We have members who do more than one type of work, but our organization does not do studies in that field or lobby in that field.

Mr. Runciman: So you haven't had a really serious look at any of the other elements that are contained within this legislation?

Mr. Howe: We have not. We've looked primarily at paralegals who operate on accident benefits at the Financial Services Commission. Obviously this is an issue, because the Financial Services Commission has passed their own rules to try and get a handle on paralegals. We're very pleased that the government is finally dealing with it.

Mr. Runciman: Thank you again for bringing this to our attention. I certainly wasn't aware of the implications of this part of the legislation. It's something I think we'll pursue and ensure, as best we can from an opposition bench, that the appropriate changes are made.

Mr. Howe: Thank you. It's not a very sexy issue. There aren't that many people injured by medical negligence, but when they are, they need help.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, sir, for coming here. Yes, indeed, I appreciate very much you raising this new 116.1, because I didn't know a whole lot about it. I really didn't understand it. I put "insurance company" beside it. It just struck me that somehow, somewhere, somebody had to be benefiting from it. So help me connect the dots here.

Mr. Howe: Sure.

Mr. Kormos: I'm from Welland. That's small-town Ontario, okay? Just help me connect the dots. This only applies to victims of medical malpractice.

Mr. Howe: Correct.

Mr. Kormos: Not to victims of automobile accidents.

Mr. Howe: No, or if a pharmaceutical company sells me a bad drug or—

Mr. Kormos: Because victims of automobile accidents get raked over the coals on that $30,000 deductible.

Mr. Howe: They have a whole different other set of problems.

Mr. Kormos: Yes, their pockets are being picked in a totally different way.

Mr. Howe: And more aggressively.

Mr. Kormos: Yes. But 116.1—

Mr. Howe: Although you shouldn't look at this government, because it was a Tory bill that's picking their pockets, to be fair.

Mr. Kormos: I remember Runciman and I fighting the last Liberal government on behalf of innocent accident victims. You weren't even near out of law school by then.

Mr. Howe: The Peterson regime; I recall it well.

Mr. Kormos: You read about it. In any event, 116.1 only applies to medical malpractice victims, right?

Mr. Howe: Correct.

Mr. Kormos: It doesn't apply to any of the other victims.

Mr. Howe: Correct.

Mr. Kormos: It doesn't create new law, because courts already have the jurisdiction to award a structured settlement.

Mr. Howe: Correct.

Mr. Kormos: Parties have the capacity to negotiate a structured settlement as all or part of the award.

Mr. Howe: Absolutely.

Mr. Kormos: So what's going on? What's the interest being served here, Mr. Zimmer? If it only applies to medical malpractice, it seems, then, that the insurer of doctors has an interest in this section.

Mr. Howe: There's a fundamental misunderstanding in that statement. There is no insurer of doctors. There's the Canadian Medical Protective Association, which is a government-funded body. The way insurance companies will make money off this is that they hold the structures and they make commissions and money off the investment of the money.

Mr. Kormos: The CMPA, that's colloquially—I told you I was from Welland.

Mr. Howe: Sure, but they're really not an insurance company.

Mr. Kormos: All right, but they're the ones who defend doctors vigorously.

Mr. Howe: Very.

Mr. Kormos: They go to the ropes, right?

Mr. Howe: Absolutely.

Mr. Kormos: No cost is spared.

Mr. Howe: I haven't seen it.

Mr. Kormos: And that's why you say that only 10% get to an award, right?

Mr. Howe: That's correct.

Mr. Kormos: So doctors fund the CMPA.

Mr. Howe: The government funds it.

Mr. Kormos: What about OMA involvement?

Mr. Howe: I understand that it's part of the agreement between OHIP and doctors, the way they're remunerated. Depending on what your specialty is, 65% to 90% of your premiums to CMPA are paid directly by the government.

Mr. Kormos: Who do you think got to the government on this? Connecting the dots, where should we end up?

Mr. Howe: I believe that the CMPA believes this is in their best interests.

Mr. Kormos: Because it—?

Mr. Howe: I think it gives them a negotiating tool to say to plaintiffs, "Well, we can settle this case without a structure or a judge is going to force a structure on you." It gives them another negotiating tool before trial and it gives them a way, on some calculations, which I don't think are valid, to save money on claims—not defence costs, but claims.

Mr. Kormos: On awards.

Mr. Howe: On the victim.

Mr. Kormos: Yes. And who ends up paying for that? Who suffers? If they benefit, who suffers?

Mr. Howe: The victim gets less money.

Mr. Kormos: Does that seem fair, Mr. Zimmer, from your perspective?

Mr. Zimmer: You're asking the questions.

Mr. Kormos: Yes, I am. I want to know if you think that seems fair.

Thank you very much. I appreciate your raising 116.1.

Mr. Howe: That's what we're here for. Thank you for your time, gentlemen and ladies.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: The next presentation is from the Association of Municipalities of Ontario. Good morning.

Mr. Brian Rosborough: Good morning.

The Chair: Can you please state your name for the record?

Mr. Rosborough: Yes. Ladies and gentlemen, my name is Brian Rosborough. I'm the director of policy of the association of municipalities and am very pleased to be with you here today.

Our president, Roger Anderson, sends his regrets. He's on his way to the northwestern municipal conference in Thunder Bay today and isn't able to be with us, so I'm delighted to be here in his stead. I have a copy of my speaking notes; it's being circulated now.

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The Association of Municipalities of Ontario—AMO—is, I believe, well known to the committee members. AMO represents Ontario's municipal governments and advocates on behalf of those governments and the property taxpayers and residents they represent. AMO's member municipal governments govern and provide key services to approximately 10 million Ontarians—approximately one in three Canadians, in fact.

AMO well understands the need for improved access to justice. We are very supportive of the intended outcomes of this bill in terms of modernizing and improving the public's access to the justice system, including improvements to the justice of the peace system. We appreciate the task of this committee to achieve that end, as well as the members' appreciation of the particular challenges facing the municipal sector in helping to deliver justice services in our communities.

I plan to comment on only two of the bill's six schedules, for two reasons. First, the committee will receive submissions from our sister associations that specialize in delivering justice-related services. Second, AMO strongly believes that while the bill contains many important provisions, one schedule in particular is long overdue and must be brought forward and passed as expeditiously as possible. Given this, we're thankful for the opportunity to share our perspectives on Bill 14 today.

For years, AMO and others in the municipal sector have advocated the need to address the critical shortage of justices of the peace in Ontario. This shortage has resulted in case backlogs, cases dropped and losses in revenue to municipal governments as a result of uncollected fine payments for potential prosecutions. Most importantly, this shortage has compromised access to the justice system for the residents of Ontario, both those who have broken the law and the communities that have to uphold the law.

AMO has been joined by the Municipal Court Managers Association of Ontario, the Municipal Law Departments Association of Ontario, the Prosecutors Association of Ontario, the Ontario Association of Chiefs of Police and the Ontario Association of Police Service Boards in advocating for more justices of the peace to be appointed across Ontario. I should say, it's an issue and a challenge for municipalities of all sizes in all parts of Ontario. It's not specifically a large urban issue or a cities issue; it affects communities in every part of the province. However, despite our efforts to date, few appointments have been made over the years by successive governments.

Moreover, even after a justice of the peace is appointed, there is a significant training period, which still leaves municipalities with a void. Worse still, even if a justice of the peace is appointed, it does not guarantee that they will be working on Provincial Offences Act issues. Many letters received from the Attorney General indicate that bail hearings and warrants get priority over POA offences, for obvious reasons.

In the past, the Attorney General's office has suggested that a budget does not exist to support the hiring of justices of the peace. However, under the transfer agreements signed by municipalities and the Attorney General resulting from the transfer of POA responsibilities by the previous government, a formula was created for municipalities to pay the costs of justices of the peace used for POA offences. Shortages also exist due to scheduling difficulties, illness, workload responsibilities and retirements. Unfortunately, this chronic shortage has had a profound impact on Ontario's municipalities.

As a result of the lack of justice-of-the-peace resources and the consequent backlog of cases being tried, municipalities and the province may both be in breach of the memorandum of understanding between the province and municipalities regarding POA issues, which states that "the confidence of the public in the justice system must be maintained through every effort by all parties. To this end, open access to the system and a fair and timely process must be assured."

The shortage of justices of the peace also results in police officers waiting sometimes for hours to meet with a justice of the peace on warrant issues. This waiting time results in fewer police officers on the street, a diversion of police resources and added costs for municipalities. Furthermore, citizens are not being served appropriately. Some accused persons are, we understand, being held beyond 24 hours since there's not a justice of the peace available to make decisions about remand and release. When cases are dismissed due to delay, municipalities lose potential revenues resulting from uncollected potential POA fine activities. All of this is in spite of the fact that the funds do exist to hire justices of the peace, because municipalities pay the province for the court time of justices of the peace on POA matters. In sum, more justices of the peace must be immediately assigned to meet the shortage.

That's why today we are making really but one request, and that is, if it is not in this committee's will to expedite the passage of the bill in its entirety, to separate and fast-track schedule B, which we consider to be time-sensitive in regard to the issue of appointment of justices of the peace. AMO recently—in March—wrote to the Attorney General and the leaders of both opposition parties with a request to separate and fast-track schedule B for some of the reasons I've mentioned. The main reason for this was that we believe the proposals contained in schedule B are fairly straightforward and po-

tentially not contentious and could bring immediate relief to Ontario's POA courts, unlike the remainder of Bill 14, which, as we've heard this morning, may contain some potentially contentious issues. We suggest that by separating schedule B the Legislature could provide immediate relief to a pressing concern while allowing adequate time, if needed, for discussion of the remaining sections of this important piece of legislation.

AMO is very pleased that schedule B contains: proposed changes to make the appointment of justices of the peace more transparent; the inclusion of minimum qualifications for justices of the peace; the ability for retired justices of the peace to be hired on a per diem basis to hear specific matters, including POA offences; and the provision for an expanded Justices of the Peace Review Council.

These changes will provide municipalities with greater access to justices of the peace specifically to preside over POA offences. Since municipalities already pay an hourly rate when justices of the peace preside over POA cases, it will not result in new costs but will provide access to a wider pool of justices of the peace to clear up case backlogs. Moreover, the new generation of justices of the peace will be better prepared for the challenges that face them.

We have urged in our correspondence, and we do urge, all three parties to lend their support to the changes proposed in schedule B.

Beyond schedule B, we draw your attention to two other issues where we would like to indicate our support in regard to schedule E that affect the municipal sector. AMO supports the proposal to allow POA witnesses to provide testimony electronically. We believe that this could help solve the problem of law enforcement officers not always being available to appear in court. This additional flexibility could help alleviate dropped cases and ensure that valuable police resources are perhaps better directed to community policing initiatives and activities. AMO also supports the ability to use alternative mechanisms for resolving disputes about municipal bylaws, such as parking violations and other things.

In conclusion, the proposed changes in Bill 14 specifically in regard to schedule B are a good first step toward improving the efficiency of the justice system in this province from the municipal perspective, and AMO looks forward to working with the government to develop the supporting regulation in this regard.

Simply put, we want schedule B in force as soon as possible, so that Ontario's communities can acquire the additional justices of the peace that they urgently need. We believe it's imperative to move quickly to enact schedule B in order to provide immediate relief to the provincial offences court system by enabling the appointment of per diem justices.

I'd like to thank members of the committee for the opportunity to speak to with you today, and we'd be prepared to answer any questions.

The Chair: Thank you. That leaves about four minutes for each side. We'll start with the official opposition; Mr. Runciman.

Mr. Runciman: Thanks very much for your submission. It's an issue that I certainly had an interest in with respect to the availability of JPs. Obviously the number of JPs is a concern of the municipal sector with respect to the Provincial Offences Act. As you're probably aware, the unavailability of JPs has long been a concern of the policing community, especially on weekends and in the early morning hours, and the refusal of JPs over the past seven, eight, 10 years now, since I think it was the NDP government did away with per diem JPs. There seemed to be this growing trend in terms that judicial independence was the overriding mantra, that competence and public interest seemed to take second place in many respects. With judicial independence, they don't go into jails anymore to do bail hearings, they don't go to the police stations. Now that they're on salary, of course, they're not going to get out of bed on weekends. I can't tar everyone with the same brush, but I know that this is a significant problem and has significant costs, which are picked up by the police services and the correctional system, as a matter of fact, in the province because of the so-called judicial independence issue that seems to be infecting JPs.

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I'm pleased that the government, through this legislation, is bringing back per diem JPs, but I think the limitations are too severe with respect to their ability, and they're only talking about retired JPs performing in this role, as I recall the legislation. So that's a concern of mine.

I wanted to talk a bit about the Provincial Offences Act with you. One of the concerns with the transfer of responsibility for the POA—and I found this in my own riding. When the United Counties of Leeds and Grenville assumed this responsibility, there was something like $2 million in unpaid fines. That has now grown to, I think, $5 million in unpaid fines. Apparently, prior to the transfer, the provincial government had the ability to work with the Ministry of Transportation to go after these folks who were refusing to pay their fines, to get their location and go after them. Now, with the municipalities having that responsibility, they no longer have that access. So these unpaid fines, which are very significant in terms of costs or benefits to a region—they're frustrated and it's growing on a regular basis.

I don't assume that that's isolated to Leeds and Grenville. I think it's a significant problem across the province and I'd like to hear your views on it.

Mr. Rosborough: It's a related issue and one that many of our members, even quite recently, have started to raise as an issue to put on the forefront of our advocacy agenda. Recently I received some information from the city of Windsor, for example, which has quite astronomical amounts of unpaid fines. There have been variable experiences with different municipalities across the province. It's not something that I have currently in-depth knowledge of, but it is something that we have agreed to explore further in the work that we do at AMO

and to bring forward a detailed analysis in terms of our advocacy work.

The Chair: Mr. Kormos?

Mr. Kormos: The government whip is taking attendance.

Why do you think it's necessary for schedule B to become enacted before the government can deal with the shortage of justices of the peace?

Mr. Rosborough: We believe that schedule B contains some important innovations in terms of justices of the peace. For example, the provisions around the hiring on a per diem basis of retired justices is something that can take currently trained and experienced justices of the peace and put them back into action quite quickly.

To my knowledge, there's not a range of systemic barriers that prevent any government from appointing justices of the peace, but we do believe that some of the measures in this bill have very solid public policy backing behind them and are to be supported. One of them is that, with the hiring of retired JPs on a per diem basis, that can expedite the process.

Mr. Kormos: I agree with you. Hallelujah. Finally some minimum standards for justices of the peace. That's been a pork barrel of political patronage. Short of building your brother-in-law a liquor store—and those days are long gone—what we've got left is appointing justices of the peace.

What's interesting, though, is the most recent judicial appointments—there were two announcements. Mr. Runciman, you might find this interesting. The one out of Sudbury had, in the last two tax years, donated money to the Liberal Party. But he was sort of like me, desperately trying to win the Princess Margaret lottery; he'll keep buying them till he wins. In the two prior years, he was donating to the Conservative Party. He finally, obviously, grabbed the brass ring.

My concern is that even when schedule B passes—the government has a majority and they haven't shown any disinclination to let it pass—number one, that won't necessarily prompt the government to appoint more justices of the peace; number two, it won't necessarily address the patronage because the process set out in the bill merely provides for the vetting of applicants, and then applicants who are cleared are presented to the Lieutenant Governor in Council.

The notorious decision, Askov and Melo—I remember it well—goes back to 1987, the last Liberal government. Mr. Runciman will recall that; he was here. We started seeing serious charges tossed out of court because of delays because of, among other things, shortages of justices of the peace, judges, courtrooms. Here we go again, 19 years later. We still have those same problems, and yet another Liberal government. What can I say? What can I add?

Mr. Rosborough: To your first point, this is not the end of our advocacy with the Attorney General and the current government on this issue. Hopefully, with an expeditious passage of this bill and this section, we'll continue to work with the attorney's office to make sure that he understands what a serious issue this is for municipalities and how the lack of JPs is undermining our ability to administer the POA.

Mr. Kormos: Thank you kindly, sir.

The Chair: Mr. Zimmer?

Mr. Zimmer: I understand you're concerned to see that this bill gets through ASAP, particularly schedules B and E. I've been hearing for months from AMO, and various members of AMO, the importance of this issue. I well remember a meeting with Mayor Hazel McCallion when she, in her inimitable, forceful way, left me with the very clear message to carry back to our government to move on this issue. We're happy to have moved on it.

I do look forward to the full co-operation of Conservative and NDP colleagues in seeing that this bill is passed ASAP and on a priority basis.

The Chair: Thank you very much.

That concludes our business for today. This committee stands adjourned until tomorrow morning, Thursday, April 27, in the same room at 10 o'clock.

The committee adjourned at 1158.

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