
JP-11

ISSN 1710-9442

Legislative Assembly
of Ontario

Second Session, 38th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 38e législature

# Official Report of Debates (Hansard)

**Thursday 27 April 2006**

# Journal des débats (Hansard)

**Jeudi 27 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

**Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

**Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

**Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

**Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

**Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8. e-mail: webpubont@gov.on.ca

**Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8 courriel : webpubont@gov.on.ca

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# STANDING COMMITTEE ON JUSTICE POLICY

# COMITÉ PERMANENT DE LA JUSTICE

Thursday 27 April 2006

Jeudi 27 avril 2006

*The committee met at 1002 in room 151.*

## 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 (Mr. Vic Dhillon):** Good morning, everybody. Welcome to our second day of hearings on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005.

## ASSOCIATION OF JUSTICES OF THE PEACE OF ONTARIO

**The Chair:** This morning the first presenters are the Association of Justices of the Peace, if you could come forward, please. You have 30 minutes, and if you could state your name for the record.

**Ms. Mary Cornish:** My name's Mary Cornish and I'm the legal counsel for the Association of Justices of the Peace of Ontario. I have provided a brief which I hope all of you have been able to obtain. It sets out the issues that we want to raise.

First of all, the association, as the name indicates, represents the justices of the peace with respect to issues affecting their bench and the administration of justice. This is a distinguished, dedicated and hard-working bench. In this regard, to give a context for their appearance in front of a legislative committee, the Supreme Court of Canada, in the PEI reference case, has commented favourably on the role that associations of the judiciary can play, in a restrained way, in terms of commenting on matters and regulation of issues between the judiciary and the executive branch and the Legislature in matters relating to the administration of justice. So in that respect that is the reason why we are here today, and we appreciate that this is a unique position to be in, but we have before the Legislature an act in relation to the regulation of the justices of the peace.

I can say at the outset that we welcomed the statement by the Attorney General back in January 2005 that he was calling for a new collaboration with the judiciary and a particular recognition of the role justices of the peace play in the criminal justice system, and also the increasingly complex issues that they face in adjudicating within that system. So in that respect the Bill 14 amendments have come forward, and certainly the association looks forward to working with the Attorney General with respect to the issues that are raised in that bill.

A number of the amendments and comments that we are making are issues which we have raised with the government over the last year in terms of communications we've had with them. They're summarized on page 3 of the brief. I'll highlight them and then I'll review them shortly so that there is time for questions, which I imagine the committee may have.

The first proposed amendment is an amendment to the Justices of the Peace Act, and it actually should read "section 6" rather than "section 9." Section 6 of the Justices of the Peace Act would be amended to provide for a mandatory retirement age of 75 rather than 70. The current Access to Justice Act doesn't make any amendment to that provision, but as you may all know, we've had a bill which ends mandatory retirement in Ontario, and this proposed amendment would be consistent then with the age of retirement for the rest of the judiciary in Ontario, who all are required to retire at the age of 75 as the result of the provisions in the Constitution Act federally.

The second amendment is a proposed amendment that we have put forward—and the actual text of the amendments are set out at chart A of the brief—to have a similar remuneration framework process for the justices of the peace as there is for the provincial court judges. I'll review and summarize that with you. Again, that is an area that is not currently touched by the amendments in the Access to Justice Act.

The third set of amendments are in fact matters that have been brought forward by the Access to Justice Act, and they provide for an amendment for an additional justice of the peace on the Justice of the Peace Appointments Advisory Committee; that the regional senior justices of the peace would be permitted the same substitution opportunity as granted the regional senior judge with respect to that committee; and that the senior justices of the peace for the native justice program would also be permitted to participate when dealing with

appointments with respect to the native justice of the peace bench. As many of you may be aware, there is in fact a system of native justices of the peace, so we're wanting to make sure there is that participation. As well, with respect to the issue of non-presiding judges—and I'll explain further some of the differences between presiding and non-presiding—we are asking that the bill specifically provide that the non-presiding justices who have been currently recommended for progression should in fact be progressed, and that should be stated within the bill itself.

Then we have some comments that are at the final part of the brief with respect to the establishing of minimum qualifications, the changes to the review council and allowing retired justices of the peace to serve on a per diem basis, but all of those are comments and support with respect to the provisions that are set out in the bill with respect to those matters.

If I can just highlight for a moment, before I go through those amendments, the profile of the justices of the peace—and I think there's sometimes some misunderstanding with respect to that. As you know, it is primarily a lay bench, but many people come to the justice of the peace system with substantial life experience—business and community experience—and experience in the legal system. As well, the average age of the justices of the peace on appointment is approximately 50, and as a result of the new minimum qualifications, many people already come to their appointment with many more years of work experience than 10. In terms of the association's calculations, by far the vast majority of the justice of the peace bench already have postsecondary education and the majority of them have university degrees. A variety of them in fact have law degrees. So the composition of the justice of the peace bench is one which already is quite distinguished. Certainly the association supports the establishing of the minimum qualifications that are set out in the bill, but we also wanted it to be clear that you already have a justice of the peace bench which meets those qualifications, and we look forward to that process being institutionalized within the bill itself.

As well, in terms of presiding and non-presiding justices of the peace, this is another one of these matters that is confusing, because non-presiding justices of the peace preside over a great number of matters within the bench, and in fact preside over bail hearings; a non-presiding justice of the peace presides over bail hearings. What non-presiding justices of the peace don't do is preside over the provincial offences proceedings—in other words, all the trials under the various statutes, and I have set them out in the brief itself; there are dozens and dozens of provincial statutes that are proceedings—as well as some federal proceedings. So there is a very significant and quite complex set of duties which justices of the peace have, and increasingly they have assumed various of those duties that have come down from duties which provincial court judges used to perform.

**1010**

In fact, Ontario is unusual across the country, and there's a statement in the brief from Justice Ebbs indicating that many other provinces' provincial court judges carry out what justices of the peace in Ontario do. Essentially, what happened in Ontario is that a significant number of the functions which were carried out by Superior Court justices were transferred to the provincial court judges, and then provincial court judge functions were transferred down to justice of the peace functions.

That is the bench that you are currently dealing with. Section 4 of the brief talks about the comprehensive delivery of those services, in the sense that you have those services being provided at times seven days a week, 365 days of the year, so you have justices of the peace travelling all over the province each day and you have a very significant demand for those services. That's set out on page 7 of the brief, that there has been a very significant increase in the demand for justice of the peace services at a time when actually, relatively, the number of justices of the peace has been reduced. Those statistics are set out with respect to the matters which are on page 7. For example, there were approximately 330 justices of the peace three years ago; there are now 305. On December 31, 2004, a management complement plan of the court called for an additional 50 justices of the peace. Since then, you have also had retirements. So there is this increasing demand for the services, and various of the amendments that are in fact being put forward under Bill 14 will help to deal with some of those issues.

If I can then start to deal with the issue of ending mandatory retirement, in a way the matter is a simple one in that the Legislature has already decided that it is not appropriate to have mandatory retirement in Ontario for other Ontarians. The only exception to that provision that was set out in the Human Rights Code—and it's actually a provision which is found in the brief at the bottom of page 8 and the top of page 9—was with respect to judicial officers. In that, it says that the exception is that the judicial officers will be dealt with according to their respective pieces of legislation, and the pieces of legislation determine the age at which they are to retire.

As I indicated before, the Constitution Act for federally appointed justices says that it's to be 75. The civil masters, case management masters, retire under the Courts of Justice Act at 75, as do provincial court judges. We ask that that provision be implemented with respect to justices of the peace as well. We asked the government to make this amendment. The government's response to that was that this was a remuneration issue and should be dealt with as part of the remuneration commission. Our position is that this is a human rights issue for the justices of the peace and that the Legislature already decided that any remuneration implications of a mandatory retirement issue did not override the right of justices of the peace, and other Ontarians in fact, to be able to retire based on their own choices and abilities. So we are asking that the matter be dealt with as an amendment to the Access to Justice Act to provide for the similar retirement age.

Apart from the human rights issue and the issue of whether the current provision of the act would in fact violate the charter, there are a number of public policy

reasons why you would want to do this. The act allows the per diem justices of the peace. Provincial court judges can now continue, after they formally finish full-time, to work on a per diem basis after age 65, for example, and provide a very important contribution to the court in terms of their continuing to provide those kinds of services and flexibility to the court. That also occurs in the Ontario Superior Court.

So now what you are doing is having justices of the peace being required to retire, who in fact have very important contributions that they could continue to make and could help with respect to the current shortage of justices of the peace. Furthermore, in terms of a recruitment issue, a lower retirement age for justices of the peace in the justice system doesn't make sense for those who wish to have the flexibility to work past age 70.

That is our presentation with respect to that issue.

If I can move on to the request for a fair and constitutional remuneration framework, the submissions that are set out here are quite detailed and I'm only going to try and briefly summarize them for you.

Justices of the peace have a different remuneration commission framework and criteria than provincial court judges. We are asking that they be the same. This is the process by which remuneration is determined. We are not talking about whether or not the remuneration should be the same; we're talking about whether or not the remuneration process should be the same. As some of you may be familiar with, because of the judiciary's independence, the Supreme Court of Canada has indicated that there needs to be an independent framework for setting out and a commission that makes recommendations with respect to their remuneration.

In Ontario back in the early 1990s, the Ontario government negotiated with the provincial court judges a framework agreement which was incorporated into the Courts of Justice Act and which provides that the independent commission's recommendations with respect to remuneration are binding on the government. That is the current law which is in effect for provincial court judges.

In the PEI reference case which actually came after that, the Supreme Court of Canada commented favourably on the activity of the government in negotiating with the judges with respect to the appropriate remuneration framework. As you may know, it is otherwise impermissible for the judiciary to negotiate directly with the government with respect to remuneration because of their independent status and it is that reason why the process is set out more independently through the commission.

At the same time the government negotiated that framework, it actually set up an independent ad hoc commission for justices of the peace, using the same criteria and purpose clause that the judges did but putting it in an order in council. That commission, in 1995, evaluated the work of justices of the peace and made a report. The then government rejected the report, and after a number of years the Association of Justices of the Peace of Ontario took the government to court. In 1999, the divisional court ruled that the government had violated the principles of judicial independence and was required to set up an independent remuneration commission for justices of the peace. That remuneration commission was set up and is now regulation 319/00 in the current Justices of the Peace Act.

But that process had what we describe in the brief as "inferior criteria" and also was not binding and did not have the purpose clause. It was not negotiated with the association of justices of the peace, but was imposed unilaterally by the government.

We then proceeded through two independent commissions subsequent to that remuneration framework, and last March we put forward these proposals to have the government adopt the provincial court judges' framework. We set out in the brief how the government has argued that the inferior criteria and the lack of the purpose clause in fact do not permit justices of the peace to bring forward a number of what we think are important factors. For example, the justices of the peace, apart from Manitoba judges, are the only judiciary in Canada who don't have a section in the clause which says any other relevant factor may be brought forward to a commission. A variety of these arguments have been used by the government and private commissions to restrict what can be considered by them.

It is our position that it makes sense for the judiciary that act as partners in this Ontario court of Justice to have the same remuneration process. If you look at appendix A, it sets out the chart and compares the various provisions, and sets out essentially an amendment to the Justices of the Peace Act and regulation which would mirror the provincial court judges' remuneration process. We are now in the process of moving forward to the fourth commission, which will likely commence hearings in the fall, so we are asking for that to be considered by the Legislature.

**1020**

If I can then move on to the next set of amendments, which relates to the justices of the peace appointments committee. We're asking for an additional justice of the peace to be put on the appointments committee to ensure that there is no decrease in the judicial representation. At the moment, for example, in the provincial court judges process, three of the 11 members of the council are in fact judges. We are also asking to make sure that the quorum provisions make it clear that any decision of the committee needs to have a justice of the peace input with respect to the decision of the appointments committee. As I indicated before, it's very critical and important to the justices of the peace bench that there be a fully functional and operational native justice of the peace system, so it is very important that there be representation with respect to that.

With respect to phasing out and progressing the non-presiding justices of the peace, as you'll see when you take a more detailed review of the duties of non-presiding justices of the peace, they're very substantial. I think currently it is very important for the bench that they be in a position where they can contribute as fully as they can.

There are many that are currently, as they phrase it, ready to be progressed but have not been progressed. As you may see when you review the brief, there's a very substantial pay difference currently between the justices of the peace who are presiding and non-presiding. They have not been progressed, so we're asking that that occur. This will also open up a significant number of other justices of the peace who can then deal with matters under the Provincial Offences Act, which would also help in terms of access to justice.

I've already commented with respect to the minimum qualifications. We're pleased with the amendments with respect to the review process for justices of the peace. Allowing the retired justices of the peace to retire and serve on a per diem basis we think is very appropriate, and if the mandatory age of retirement is extended, that would provide for further judicial resources.

Those are all our submissions, and I would be happy to take questions from the committee.

**The Chair:** Thank you very much. There are about three minutes left for each side. We'll start with the official opposition. Mrs. Elliott?

**Mrs. Christine Elliott (Whitby–Ajax):** Just a question with respect to the appointments committee now. There's one person that's allowed, one justice of the peace?

**Ms. Cornish:** Yes.

**Mrs. Elliott:** In terms of the total number of people, what percentage would that bring it up to?

**Ms. Cornish:** Well, the current bill is structured so it's an alternative in the core. It can be either somebody who is a judge or somebody who's a justice of the peace, and what we're saying is you have to have a justice of the peace.

**The Chair:** Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** Thank you very much, Ms. Cornish, for a valuable contribution. I am fascinated by the disparity between provincial judges' retirement age and JPs' retirement age, and I think the government has some explaining to do in that regard. I, of course, don't delight in noting that they were exempting provincially appointed judiciary from their much-ballyhooed legislation purportedly eliminating retirement age.

I recall the event you're talking about in 1995. The process was a three-year process?

**Ms. Cornish:** The provincial court judges' negotiation took place in 1992 and ended up in amendments to the Courts of Justice Act in 1993. In 1993, there were discussions with the justices of the peace which ended up in an order in council, I think in late 1993, and that then proceeded to a report in 1995. The report came out in 1995, just as the government changed, and as a result of these criteria, using the same criteria that judges have, it made a very substantial increase to the justices of the peace salary. The justices of the peace currently still only make $4,400 more than that report recommended back in 1996, and of course the government did not implement that report.

**Mr. Kormos:** Would a salary based on a percentage of the provincial judge salary not be a similarly acceptable approach?

**Ms. Cornish:** Certainly from the Association of Justices of the Peace, their position is that there should be a link between them. The issue is, what is the link? What is the appropriate remuneration in relation to that? We think the most appropriate comparator relationship is between themselves and the provincial court judges; not that they should make the same remuneration, but that there should be a link between them of some sort. That would be the easiest way in terms of moving forward with respect to these commissions, to make them simpler and more efficient.

**Mr. Kormos:** It would be very efficient to simply say "a percentage of the provincial judges' salary," wouldn't it?

**Ms. Cornish:** It's interesting; at the current time, actually, civil masters by statute make the salary of a provincial court judge, for example. The Legislature has already decided that that link should be made. I don't think anybody has yet sorted out a particular percentage. Of course, in a way, it will always depend upon what sets of duties are given to each bench. But you do have provincial court judges and justices of the peace across the province, both in the same sets of courts and really making very disparate—

**Mr. Kormos:** The Ontario Association of Chiefs of Police, in their now notorious report on justices of the peace, which was, as I recall reading it entirely anecdotal, entirely basically reports back from various jurisdictions, prompted concerns about some of the observations made in that report: JPs who don't want to or decline to go to local lockups, local county jails, detention centres, to do remands, who don't want to do late-night duty in the police stations. Can you comment on that?

**Ms. Cornish:** I think, as we've tried to set out in the brief itself, the justices of the peace already have very extensive obligations. We have justices of the peace in night court; we have justices of the peace in weekend bail courts; we have justices of the peace driving many hours a day. It's a very hard-working court, and there are a number of issues related to delivering those judicial services. I think the bench as a whole looks forward to working with all of these partners in the system in terms of trying to sort out the best way to do it. One of the best ways to do that would be to appoint more of them.

**Mr. David Zimmer (Willowdale):** Just on the retirement issue, as you know, the judges have a supernumerary status where they can retire at 65, or at least go on supernumerary status.

**Ms. Cornish:** And so do justices of the peace, but they can only do it to 70.

**Mr. Zimmer:** Ah, that was my question. Then not allowing the retired justices of the peace to serve on a per diem basis, how does that complement the so-called supernumerary status? How do they link together?

**1030**

**Ms. Cornish:** Because once you're doing that as well, you can in fact—you now have justices of the peace at age 70 who have to stop working, who could otherwise continue to serve on a per diem basis until age 75 if they chose. Some may work only for part of the year with respect to that. For example, many senior justices in all of the courts sometime are also the justices who are involved in training, because they're the ones who are most able to do that. Even if you appointed a justice of the peace now, there's a significant amount of time that's used in initial training before that justice of the peace is able to start to work fully, and certainly senior justices would be involved in being able to do that.

**Mr. Zimmer:** Just on the appointments committee, I gather what you'd like to see, roughly, is the justices of the peace appointments process mirror the provincial court appointments process committee.

**Ms. Cornish:** We want what we've actually said here, which isn't exactly a mirror. What we pointed out was that in fact in the provincial court judges, there are actually three. There's nowhere near three in this process. In fact, the core of the process, of the core committee, could potentially have no one on it who is a justice of the peace.

**Mr. Zimmer:** Last question: On the so-called non-presiding justices of the peace being recommended for progression, how does that recommendation process work now?

**Ms. Cornish:** As I understand it, the Office of the Chief Justice makes a recommendation with respect to those who can be progressed. I understand, however, that there are also remuneration implications to progressing, and I gather those are forwarded to the—I think ultimately the ministry has to deal with it.

**Mr. Zimmer:** What are the criteria for progression? Do you have any thoughts or knowledge on that?

**Ms. Cornish:** I'm not sure I can assist you with that. All I know is that there are some that are already currently ready to be progressed and that the statute could in fact progress them.

**Mr. Zimmer:** Is it your sense that it's a performance issue, a skills issue or an experience issue?

**Ms. Cornish:** I think it's a remuneration issue.

**The Chair:** Thank you very much.

## ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

**The Chair:** The next presentation is from the Ontario College of Social Workers and Social Service Workers. Good morning and welcome to the committee. Could you please state your names for the record?

**Ms. Glenda McDonald:** I'm Glenda McDonald. I'm registrar of the Ontario College of Social Workers and Social Service Workers.

**Ms. Debbie Tarshis:** I'm Debbie Tarshis, and I'm legal counsel to the Ontario College of Social Workers and Social Service Workers.

**The Chair:** You have 30 minutes. You may begin any time.

**Ms. McDonald:** Thank you, first of all, for letting us appear before the committee. We're pleased to do so.

The Ontario College of Social Workers and Social Service Workers is a regulatory body created under the Social Work and Social Service Work Act. We regulate two professions: the professions of social work and social service work. Currently, we have approximately 11,000 members. As with most regulatory bodies, our primary duty in carrying out its objects is to serve and protect the public interest.

The college understands that Bill 14, the Access to Justice Act, would, if passed, regulate paralegals and give consumers a choice in qualified legal services while protecting people who get legal advice from non-lawyers. The college supports the regulation of professions in order to protect the public from harm.

In terms of our main conclusions and recommendations, we wish to say that we support the regulation of professions in order to protect the public from harm. In particular, the college supports the regulation of paralegals by the Law Society of Upper Canada as being in the public interest.

However, the college is concerned that the description of legal services under Bill 14 is so broad that it would include services that are currently performed by members of our college. The college proposes that Bill 14 be amended to exclude those classes of professionals that are not intended to be regulated by the Law Society of Upper Canada, specifically members of the College of Social Workers and Social Service Workers.

By way of background, the college is a regulatory body, as I've said, created under the Social Work and Social Service Work Act. We regulate the professions of social work and social service work. We have approximately 11,000 members. We serve and protect the public interest in the carrying out of our objects.

Social workers and social service workers are employed in a broad range of settings in which health care and social services are delivered. Many social workers and social service workers are employed in hospitals, schools, group homes, shelters, correctional facilities, children's aid societies, the Office of the Children's Lawyer, family service centres, income support programs and home health services. Many social workers are also self-employed in private practice, providing mediation services and alternative dispute resolution.

Social workers help and empower individuals, families and communities to resolve problems that affect their day-to-day lives. People consult social workers when they are going through difficult periods in their personal, family and work lives. Social workers help identify the source of stress or difficulty, make assessments, mediate between conflicts, offer various forms of counselling and therapy, and help people to develop coping skills and find effective solutions to their problems.

Social service workers also work with a wide range of clients and, in so doing, use assessment, evaluation and

referral skills. Furthermore, social service workers develop an appropriate treatment and/or action plan for the particular client group with whom they are working. Social service workers intervene in crisis situations, and depending on specific job requirements, social service workers may provide counselling to individuals, families or groups regarding emotional problems.

The concerns of the college with respect to Bill 14 relate to the breadth of the description of the provision of legal services, and that services performed by members of the college would appear, on their face, to fall within this description.

In our brief, we specifically note the definition of "legal services" as provided in Bill 14, but I won't repeat it here in the interests of time. Specifically, we're concerned with the description of "legal services" in the bill and the definition of "representation in a proceeding."

Social workers work with children in a number of settings, including family counselling, child welfare proceedings and custody and access proceedings. They may conduct custody and access assessments or investigations on behalf of the Office of the Children's Lawyer. In these roles, they may "select, draft, complete or revise a document that relates to the custody of or access to children," which as you may know is one of the definitions of "provision of legal services" within the proposed bill.

Social workers who provide mediation services or alternative dispute resolution may also draft parenting plans, memoranda of understanding, minutes of settlement or agreements with respect to child and spousal support, any of which may be considered to be "a document that affects the legal interests, rights or responsibilities of a person," again contained within the definition of "legal services" in the bill.

Social workers also act as evaluators under the Health Care Consent Act and as assessors under the Substitute Decisions Act. Both of these roles involve the assessment of an individual's capacity, and a social worker's role may include "selecting, drafting, completing or revising a document for use in a proceeding before an adjudicative body," which again is in the definition of "legal services," such as the Consent and Capacity Board.

Also, a social worker who is a capacity assessor may be involved in "selecting, drafting, completing or revising a document that relates to the estate of a person or the guardianship of a person."

These are but a few examples of the types of functions performed by members of the college that appear to fall within the description of provision of legal services under Bill 14.

Section 26.1 of Bill 14 prohibits a person who is not a licensee of the Law Society of Upper Canada from providing legal services in Ontario. Section 26.1 of Bill 14 also prohibits a person who is not a licensee of the Law Society of Upper Canada from holding out or representing that the person is a person who may provide legal services in Ontario. A person who contravenes section 26.1 is guilty of an offence and, on conviction, is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for each subsequent offence.

**1040**

The college understands that Bill 14 contemplates that the Law Society of Upper Canada may, by bylaw, permit persons or classes of persons who are not licensees to provide legal services in Ontario and to prescribe circumstances in which persons who are not licensees are permitted to provide legal services. While these provisions of Bill 14 appear to authorize exemptions to be made by bylaw enacted by the Law Society of Upper Canada, in the view of the college, exemptions from the provision of legal services should be addressed in the legislation itself so that it is the Legislature that determines the persons who should be exempt from the description of the provision of legal services.

To do otherwise is to take this important public issue of who should be governed by Bill 14, and who should not be, out of the hands of the Legislature. In particular, those persons who are already members of a regulated profession and subject to the standards of practice and regulatory processes of a regulatory body should be assured by legislation that they can continue to provide the services they provide as members of a regulated profession without being required to become licensees of another regulatory body.

For these reasons, the college proposes that Bill 14 be amended by excluding those classes of professionals that are not intended to be regulated by the Law Society of Upper Canada, specifically members of the College of Social Workers and Social Service Workers, which also includes members of the college who practise the professions of social work or social service work through professional corporations.

For such purpose, the college proposes that section 26.1—to be added by section 22 of schedule C of Bill 14—be amended by:

(a) adding subsection (9) as follows:

"(9) This section does not apply to a member of the Ontario College of Social Workers and Social Service Workers or a corporation incorporated under the Business Corporations Act that holds a valid certificate of authorization issued under the Social Work and Social Service Work Act, 1998."

(b) making subsections (1) and (2) of section 26.1 also subject to subsection (9).

The college also proposes that any other amendments as may be advisable or necessary in order to exempt members of the college from the application of Bill 14 be made.

That's the end of our presentation, and thank you for the opportunity.

**The Chair:** Thank you very much. We have about seven minutes each. We'll begin with Mr. Kormos.

**Mr. Kormos:** Thank you very much. I appreciate the submission because it's been a matter of concern for a whole lot of us here. As recently as yesterday, Mr. Runciman, on behalf of the Conservatives, raised it with respect to any number of professional and other regulated

professions, like mortgage brokers, real estate agents, for example.

I specifically put the issue of mediators to the spokespeople here for the law society and the response, quite frankly, was shocking because the suggestion was that perhaps people preparing minutes of settlement, minutes of agreement should be people regulated by the law society. That's my recollection of the response by the law society spokespeople here. So that was pretty alarming.

Mr. Zimmer, please, you did focus on subparagraph vii of paragraph 2 of subsection (6):

A person who "selects, drafts, completes or revises,...

"vii. a document for use in a proceeding before an adjudicative body."

That's pretty imprecise and broad. Let's take a look at what they include in adjudicative bodies naturally: obviously courts, provincial courts, federal courts, tribunals, federal and provincial, commissions or boards, federal or provincial, and arbitrations—private arbitrations, literally, where since they're private, one expects the parties to be able to have unfettered ability to choose who will be their representative, their advocate. I think you've raised some alarms.

But what about your proposition? This is where the flaw is in the bill, Mr. Zimmer, because the college has come up with an amendment where you exempt members of the college. I appreciate the amendment, but surely you don't want to blanket-exempt members of the college who might be in fact providing legal services in a way that is contrary to the spirit or the intention, as we perceive it, of the act, do you?

**Ms. Tarshis:** I think a member of the college who is acting outside the scope of practice of social work is subject to the regulatory jurisdiction of the college and therefore would be subject to discipline proceedings by the Ontario College of Social Workers and Social Service Workers. I think the appropriate manner to deal with that kind of issue would be through the regulatory processes of the college that regulates the members.

**Mr. Kormos:** Sure, and that's where it has to be clear that the exemption applies to members of that college doing work that is sanctioned and regulated by that college.

There was other shocking evidence yesterday by a spokesperson for the federal organization of immigration consultants, who explained to us that it was his understanding that the law society would exempt from regulation immigration consultants who belonged to this voluntary federal body. Again, Mr. Zimmer, that was rather peculiar, wasn't it? It's sort of like saying—and the OBA probably wouldn't mind this proposition—if you join the OBA, then you could tell the law society to go pound salt. That's effectively what the law society said to the spokesperson as he understood their comments about belonging to the federal organization of immigration consultants, and if you belong to that federal body, you could then hold yourself out as a paralegal/immigration consultant without worrying about the law society supervising you. You've highlighted and focused on some real problems here that are going to take a little bit of time to unravel. I'm hoping that the government will respond appropriately. Thank you very much.

**Mr. Zimmer:** Thank you for your submission. We recognize the great work that the college does in assisting people working through some very difficult social issues and the like.

On page 5 of your submission you say, "Social workers work with children in a number of settings, including ... counselling, child welfare proceedings and custody and access proceedings." It goes on to say, "In these roles, they may 'select, draft, complete or revise a document that relates to custody of or access to children.'" And further down, "Both of these roles involve the assessment of an individual's capacity, and a social worker's role may include 'selecting, drafting, completing or revising a document for use in a proceeding before an adjudicative body,' such as the Consent and Capacity Board." It goes on to say that you may also be involved in, again, "'selecting, drafting ... or revising a document that relates to the estate ... or the guardianship of a person.'"

Those narrow issues of selecting, drafting and preparing documents and consents in front of adjudicative bodies, which have real legal consequences—somebody may be giving up something or acquiring something. There can be complex legal issues involved in that narrow piece of work: selecting documents, executing documents and advising on documents and consent orders and the like. Where would you draw the line as to when someone at the college, a social worker—how far would they get into this process of assisting with documentations and consents in front of adjudicative bodies before you might be concerned that they're getting into legal issues beyond their skill and training? How do you protect against people not getting the right legal advice in those narrow matters?

**Ms. McDonald:** We're certainly not proposing that people not seek legal advice and instead get advice from social workers. What we're commenting on is that part of the role of social workers in activities that they're already able to do and doing well could be caught by the definition of legal services as set out in Bill 14. As our legal counsel said earlier, it is within the standards of the profession that people are to know the extent and the parameters of their competence and not to act beyond those. We're not suggesting that social workers would substitute for lawyers or paralegals in these kinds of situations, but we're saying that some of the activities that they currently perform in these functions, which they're able to do, are authorized to do and do well, could be caught by the definition.

**1050**

**Mr. Zimmer:** One of the backgrounds to the Access to Justice Act we talked about yesterday—people refer to it as a consumer protection piece. We're really protecting the end user, in this case people who are using your services. How do we ensure that persons working with a college member receive the right advice, that is, they get the right social worker advice? What's the guarantee that

the social worker knows where to stop and call in the paralegal or indeed the lawyer?

**Ms. Tarshis:** I think in many respects it's the rationale for why you have different professionals regulated in the public interest by different regulatory colleges. To some extent, it's not significantly different from a social worker appreciating that he or she shouldn't be providing nursing services. You rely on the regulation of the profession by the regulatory body in the public interest to ensure that its members act within the scope of practice and within the scope of their competence, and if members are not so doing, they will go through the appropriate discipline proceedings within their respective college. I think the issue of how you delineate between scopes of practice and preventing professionals from acting beyond the scope of their practice is one that is handled through the regulation of various professions and their professional bodies.

**Mr. Zimmer:** Do members of your college receive specific training or course work on where to draw that line between moving into legal services or moving into nursing advice, as you said? Is that a specific component of training programs?

**Ms. Tarshis:** The educational background for social workers ranges from a bachelor of social work up to a Ph.D. in social work. The extent to which the educational programs go into where the limits of one's practice stops will depend on the various faculties that are providing the educational background.

**The Chair:** The official opposition.

**Mrs. Elliott:** I'd like to thank you for your presentation this morning, because you are again highlighting some of the significant concerns that we have with respect to the definition of legal services. While I appreciate what your goal is in terms of sort of a blanket opting out of social workers and social aid workers, I share Mr. Kormos's concerns that there may be situations where there are some legal services that are being conducted. So my suggestion would be that you may want to consider adding something along the lines of acting within of course the scope of their work, as defined by the act, but then you run into the problem again of what legal services are. So we go around in a circle and come back to a very imprecise definition. I think that's something we're all trying to deal with. I'm not sure that a blanket opting out is perhaps the answer, but I think we do need to look more closely at the definition of legal services, because it's leaving all kinds of groups—yours being one of them—in a quandary about where you end up. It's difficult to advise your members where to stand when it hasn't been clearly defined.

I thank you for drawing attention to this.

**The Chair:** Thank you very much.

## PROSECUTORS' ASSOCIATION OF ONTARIO

**The Chair:** The next presentation is from the Prosecutors' Association of Ontario, if you can please come up. You have 30 minutes. Please state your names for the record.

**Mr. Doug Meehan:** Good morning, honourable members. My name is Doug Meehan, president of the Prosecutors' Association of Ontario. With me today is Jane Moffatt, vice-president of the association. I'm also the manager of prosecutions with the city of Mississauga, and Jane is a prosecutor with the regional municipality of Durham.

Thank you for the opportunity to address the committee this morning. We are very pleased to have this opportunity today to make comment on the general direction and specific provisions contained within Bill 14, the Access to Justice Act.

I will preface our comments by telling you a bit about our association. The Prosecutors' Association of Ontario was formed in 1995 by Paul Dray, who, by the way, is the first paralegal appointed as a bencher of the law society. Our association is comprised of legal counsel and prosecutors from municipal, provincial and local agencies. In 2005, our membership consists of over 330 prosecutors who specifically practise within the provincial offences courts, from Thunder Bay to Niagara and from Windsor to Ottawa. Our mission is to promote integrity, professional standards and independence of prosecutions through education. The mandate of the legislation committee, chaired by Ms. Moffatt, includes monitoring programs and initiatives of provincial or federal governments which impact the prosecution of provincial offences.

Bill 14, the Access to Justice Act, will of course significantly impact upon the prosecution of provincial offences, specifically in relation to paralegal regulation, amendments to the Provincial Offences Act and justice of the peace reform. These are the three areas in which our presentation will focus.

I will briefly speak to the issue of paralegal regulation, and the balance of this presentation will be delivered by Ms. Moffatt.

First, let me say this on behalf of our members: congratulations. Congratulations to the Attorney General and to this government for tackling head-on the controversial yet critical issue of paralegal regulation. For years, every justice stakeholder has agreed that regulations are necessary, but they could not agree on an approach. By involving stakeholders, developing greater consensus will result in a regulatory regime that will have a significant impact on the quality and integrity of the provision of paralegal services in the province. Paralegal regulation will improve access to justice, while ensuring protection of the public through a system which demands accountability by the providers of such services.

Last year, it was announced that a college advisory group was being formed—a partnership between the Law Society of Upper Canada and Ontario community colleges—charged with developing educational standards and programs related to the licensing and regulating of paralegals. Other than the training provided by the Ministry of the Attorney General to its own staff, our

association is the only provider of provincial offence prosecution educational training in Ontario. Our annual workshops and week-long training conferences bring together a remarkable diversity of experience relating to provincial offence prosecutions and enforcement, including experienced counsel, crown attorneys, directors of crown operations, prosecutors, police, judges and justices of the peace. As such, we renew our offer to assist in the development of educational standards and programs for licensed paralegals.

Defendants charged with provincial offences are often represented by paid defence agents, paralegals who specialize in provincial offence matters, most commonly in the area of Highway Traffic Act contraventions. Prosecutors in the provincial offences courts work with these people every day, most of whom are experienced agents who welcome paralegal regulation and who deserve the recognition and respect that passage of Bill 14 will provide to their profession.

**1100**

The prosecutors' association recommends that rather than referring to both lawyers and paralegals as licensees, they be referred to simply as lawyers and paralegals. Those terms may be defined at the outset of the legislation and otherwise used consistently throughout. The public generally understands what a lawyer is and generally understands what a paralegal is. Using commonly understood terminology will minimize confusion from the public.

Paralegals, lawyers and all other justice partners have very strong views on what is or is not appropriate when it comes to paralegal regulation; you have heard and will continue to hear from them. At the end of the day, not everyone will be happy; full consensus may not be possible. Listen to the stakeholders, consider their concerns and make amendments to the bill as necessary, but we urge the government to stay the course and pass this legislation. It is too important to the citizens of Ontario to be delayed any further.

At this time, Jane Moffatt will continue our presentation, addressing the issues of amendments to the Provincial Offences Act and justices of the peace reform, after which we will be pleased to answer any questions you might have.

**Ms. Jane Moffatt:** Thank you, Doug, and good morning, ladies and gentlemen of the committee. May I also add my personal congratulations on the initiative demonstrated by the Attorney General in moving forward on the regulation of paralegals. This long-awaited legislation will ensure that the public has a broader range of legal service providers to choose from, while ensuring that those services are provided by licensed professionals.

First, I will briefly comment on the proposed amendments to the Provincial Offences Act found in schedule E. In these times of limited court and judicial resources, it is critical that alternative and creative methods of adjudicating disputes be considered, particularly for very minor offences. Providing the initial groundwork to permit alternative dispute mechanisms for certain municipal bylaw contraventions is a good place to start.

Of course, parking tickets are the most obvious type of disputed offence that could benefit from an alternative dispute mechanism. These offences, after all, are absolute liability, meaning that an explanation or excuse for the offence is not a defence to the charge, although it may affect the appropriate amount of the fine. These matters are currently heard and disputed before full-time presiding justices of the peace.

We urge the Attorney General and Mr. Gerretsen, the Minister of Municipal Affairs, to consult broadly with the municipal sector to give effect to your plan to divert minor bylaw offences from the court stream. Various groups have expertise to offer both direction and guidance on this issue. You've heard from some of them, and you will continue to hear from others. They are: AMO, the Association of Municipalities of Ontario; MLDAO, the Municipal Law Departments Association of Ontario—those are the lawyers who are employed by your municipal partners; AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario; MCMA, the Municipal Court Managers Association; and, of course, the Prosecutors' Association of Ontario.

Naturally, any alternative dispute resolution model should provide that the ultimate arbiter of disputes be independent from any actual or perceived bias or influence by the enforcing authority.

This government is also proposing that witnesses be permitted to give evidence by video, audio or telephone conference, or other electronic means. We welcome the suggestion that today's available technology be used to allow witnesses to give evidence in any number of ways rather than in person, limited of course to ensuring a defendant's continued right to cross-examine that witness and to test that evidence.

The amendment appears not to be limited to witnesses giving evidence at trial. Subsection 83.1(2) contemplates that this could also apply to a step in the proceeding under the act. There are many steps or processes outside of a hearing that could benefit from the use of modern technology.

However, there is broad concern within the justice community and among the public regarding this section. In what circumstances would video evidence be permitted, and in what communities? How will it be implemented? Is a defendant's right to cross-examine and test the evidence preserved? This amendment to the Provincial Offences Act does not answer these questions. Rather, it is anticipated that regulations will subsequently be passed to give effect to this section. Therefore, it is critical that the Attorney General consult broadly with persons and groups within the justice community, including the judiciary, prosecutors and municipal court managers who will be central in the implementation phase of any such change.

These two amendments to the Provincial Offences Act contained in the bill reflect a commitment by the Attorney General to streamline the prosecution of provincial offences. We know that Mr. Bryant has also committed to a full review of the Provincial Offences Act in order to

put in place the most modern, efficient and effective justice system attainable. We know he has done that because that is encoded in the memorandum of understanding he entered into with municipal partners who are now responsible for operating the provincial offences courts in the province. Our association is pleased to have been invited to take an active role in the upcoming POA streamlining initiative. We are actively developing proposals that will further improve the prosecution of provincial offences and service to our community.

I will speak next to the issue of justices of the peace reform. It has been a long time coming, and we again congratulate the government for this initiative. Minimum qualifications and an interview and appointment procedure that allows for a more open and transparent process are critical to ensure the public's continued confidence in both the justices of the peace bench and the administration of justice.

The Ontario Court of Justice publishes a comprehensive application process for judges, yet none exists for justices of the peace. We are pleased that the new justices of the peace advisory committee envisioned in this bill will, among other things, develop a candidate application form, make public the procedure and criteria, and otherwise advertise for applications within each region.

The Justices of the Peace Act will be amended by Bill 14 to include provision for per diem justices of the peace. The prosecutors' association agrees that permitting a full-time presiding justice of the peace to change status to per diem will, in the long run, offer much greater flexibility in scheduling, particularly in these areas: jurisdictions where there is very high volume and demand; and presiding over multi-day or multi-week trials. Some quite complex matters dealing with environmental legislation and so on are heard before justices of the peace. It's not a 20-minute trial; it could be a two-week trial. Oftentimes, if there was a per diem justice of the peace available who could come in and deal with those rather than take away from the day-to-day workload, that would be very useful. Of course, a per diem justice of the peace would be able to cover colleagues' vacations and short- and long-term illnesses where the court of justice is not in a position—it can't hire a justice of the peace on contract; let's put it that way. So per diems would open that flexibility.

In the short term, however, this amendment may result in a reduction of the full-time justices of the peace bench complement throughout the province. Justices of the peace may choose, well before their 70th year, to convert status from full-time to per diem, and we would expect that. A reduction in the current number of full-time justices of the peace that passage of this section would cause will have damaging short-term consequences.

There is a significant shortage of justices of the peace in Ontario. It has become a chronic problem. It's a critical problem that has had devastating consequences on the level of service provincial offences courts are able to provide to the public. The province downloaded responsibility for the administration of provincial offences courts to the municipal sector in the late 1990s and through to 2002. One of the goals was to reduce the delay in bringing provincial offences matters to trial and to at least maintain the level of service that was in effect at the time of the transfer of responsibility.

The municipal sector has invested significant and long-overdue funds on improved and expanded provincial offences court facilities, additional staff and modernized technology and equipment. The three members of the prosecutors' association who are here—Mr. Dray, our immediate past president, myself and Mr. Meehan—represent the municipalities of Brampton, Mississauga and, myself, Durham region. In Whitby, we just opened up our brand new court facility. Last year, Mississauga opened up a brand new provincial offences facility, as has Brampton. Millions of dollars have been invested into these facilities, but they don't get used if there's not a justice of the peace available to sit on the bench. They were built because they're needed.

**1110**

The result of the lack of justices of the peace is that existing courtrooms, let alone these new courtrooms, do sit empty across the province. Although the Attorney General has announced 26 new appointments since the Liberal government has come to power, you should understand that that includes progressions from non-presiding to presiding which are considered new appointments in these numbers. These appointments fail to cover natural attrition, let alone increased demand for judicial services.

I'll give you an example of the problem of failing to cover even natural attrition. In Durham region, my own jurisdiction, there are significant court closures due to lack of judicial resources. Central east region, which is the judicial region of which Durham is part, has seen the retirement of seven justices of the peace in 2004 and 2005. That's seven in total over those two years. An additional five justices of the peace will retire in 2006, just up until July. That's an anticipated total of 12 justices of the peace in 2004, 2005 and through half of 2006. What appointments have been made to central east in that period? There was one new justice of the peace appointed for central east in December 2004 and one again in August 2005.

There are similar problems in most jurisdictions across the province. At least in southern Ontario, this appears to be the norm, not the exception. As a result, provincial offences courts have been directed to be closed for days and weeks on end. Consequently, public confidence in the administration of justice is eroded. Defendants and civilian witnesses, often the victims of these offences, observe that justice is not served. Oftentimes, this is the first exposure that any member of the public will have with our system of justice. Therefore, it is imperative that confidence in the system is maintained. Otherwise, we risk disrespect for the law and our ability to enforce it.

No new appointments have been announced anywhere in the province since December 2, 2005, almost five months ago.

All of the associations that I mentioned and rattled off earlier, plus more, have written to the Attorney General

extensively over the last number of years regarding the shortage of the number of justices of the peace. The Attorney General is in receipt of dozens of municipal council resolutions calling upon him to act in relation to this shortage.

The Attorney General has stated that the recent new appointments have been made through an interim process modelled after the criteria set out in Bill 14. The Ontario Court of Justice has identified the need for more justices of the peace. The Attorney General and the court have not agreed on the ideal complement required in the province; therefore, a consultant has apparently been hired to study and make recommendations on that issue, and that study is apparently ongoing.

In the meantime, the Prosecutors' Association adds its voice to others, as it has many times, and urges the Attorney General not to delay in making further appointments. We understand there is a one-year training period for new justices of the peace; therefore, there is an urgent and immediate need for Mr. Bryant to act. Use the interim criteria that have been developed; don't wait for the passage of this bill. Both the Attorney General and Ontario Court of Justice can agree, we are sure, on the minimum number of justices of the peace needed, even if the ideal complement has yet to be determined.

We welcome the justice of the peace reform contemplated by Bill 14 and congratulate the Attorney General on moving forward with this issue. We would caution, however, that proclamation of the per diem provisions be deferred until such time as a significant number of new justices of the peace have been appointed and trained, so as not to aggravate the existing shortage.

Once again, on behalf of Doug Meehan, myself and the prosecutors we represent across the province, we thank you for this opportunity to address the committee and for your attention. We'll be happy to take any questions that you may have.

**The Chair:** Thank you very much. There are about three minutes left for each side, so we'll begin with the government.

**Mrs. Maria Van Bommel (Lambton–Kent–Middlesex):** I'm looking at the comment you made on page 3 about how you would refer to paralegals and lawyers, and the discussion around licensees. Yesterday, we heard from a group who felt that how you would title paralegals would be based on their specialty, so that if they were traffic court, they would be a traffic court agent, so that the public would understand the extent and the scope of their practice. But you're saying here that it should still be just lawyers and paralegals. How would you make it clear to the public, in terms of paralegals, what specialties they would have?

**Mr. Meehan:** I think probably we could preface it with what you indicated earlier. We just want them referred to as paralegal, perhaps known as a Highway Traffic Act paralegal, just not as a licensee. We think that will add confusion to it, because as we indicated, generally everybody understands what a lawyer profession does but perhaps not a paralegal. Perhaps if it's "paralegal restricted to Highway Traffic Act" or somehow annotated in that regard, then the members of the public would know that they're dealing with Highway Traffic Act matters—something along those lines.

**Mrs. Van Bommel:** I also note that you talk about using technology, the available technology. I represent a rural riding, and I know that one of the things that has always been a bit of a barrier for a lot of my constituents is the thought of having to travel a great distance to an urban centre to testify as a witness. I think in terms of the technologies that will allow us, it would probably encourage people to come forward as witnesses, where in the past one of the things that was kind of in the back of their minds before they made that decision might have been, "Do I have to travel to the city? I'm a senior. I may have witnessed something, but I don't necessarily want to come forward because it means travelling to an urban court." So I'm very pleased that you support that.

**Ms. Moffatt:** We also envision, if I may, that the initial implementation of video conferencing would have the greatest application initially, frankly, in the north where distances to travel, both for civilians and police witnesses, is of an immediate and great concern. Perhaps once a pilot is rolled out in the north, it can then be applied to other jurisdictions and see how it would work.

**The Chair:** The opposition?

**Mrs. Elliott:** I also had a question regarding giving evidence by video or other electronic means, and my question is about some of the concerns you expressed about the circumstances under which it might be employed or not. I was wondering whether your association had given any thought to any types of proceedings or any circumstances where it might not be appropriate.

**Ms. Moffatt:** When the bill was announced last fall, there was some perception in the community, which I think was incorrect, that this could be resolved in just a written statement by a witness, a police officer or perhaps a sworn affidavit. Of course, naturally that raises big concerns, because a person who has been charged has the right to face their accuser—a basic principle—and to ask them questions, to test that evidence and to perhaps reduce its strength in order to proceed with their case. The Prosecutors' Association feels that that basic tenet of procedural fairness should be maintained.

I don't expect that this government is anticipating to proceed with statement or affidavit evidence for a careless driving charge, or perhaps even a speeding charge, and I would encourage you not to. What we would envision is that the technologies in the courtroom are timed for when the proceeding is to start so that the witness is available off-site and that it is a live feed, just as if the person is there. That would be the ideal scenario.

**1120**

The way it has been drafted, there are provisions that other than a hearing, other evidence in a provincial offence proceeding relating to a step could also benefit from that technology. Again, particularly in the north, where a police officer, for example, needs to—a justice of the peace would issue a process, an information would

be sworn in front of a justice of the peace, a police officer or another person has to appear in front of a justice of the peace in order to have that information sworn and then a document called a summons goes to a person, which tells them they have to come to court. Again, if that would save that witness—whether it's a police officer or somebody else—having to travel who knows how many miles to a local justice of the peace intake office, then that could be very, very useful.

**Mr. Kormos:** Thank you kindly for coming in—a valuable contribution. Ms. Drent provided us with some research on video conferencing vis-à-vis the Criminal Code and the civil rules, which of course indicate that there's a high level of discretion used on the part of the judicial authority granting permission. So I appreciate your comments. There's a big difference between an eyewitness in a careless driving charge and a police officer swearing out a warrant.

Most provincial prosecutors, I trust, still tend not to be lawyers.

**Mr. Meehan:** I would agree with that, yes.

**Ms. Moffatt:** Many are, but the majority are not.

**Mr. Kormos:** That's to your credit. Many years ago, as a young lawyer, I learned a whole lot from lay provincial prosecutors about some of the legal minutiae as well as courtroom skills and talent, so I have great admiration for them.

The shortage of justices of the peace has been a recurrent theme here, especially over the course of the last three years. What is most troublesome is that from time to time the Attorney General, Mr. Bryant, has said, "Well, I can't appoint new justices of the peace until Bill 14 passes." Yet it's clear that he can, because he did as recently, Mr. Runciman and Ms. Elliott, as December 2005, three months after his bill was introduced. My concern is, while we generally applaud and support, with some criticism, the upgrading of the JP profession, because I think that's generally what the bill does, we're left with concerns about the fact that even when this bill passes—and it's now clear that because the Attorney General has been greedy about the amount of chamber time that he wants to use up for any number of pieces of legislation, this bill won't pass until the fall—the government, even with Bill 14, isn't going to appoint new JPs. What's the problem? Are there no applicants out there who have the qualifications?

**Ms. Moffatt:** I think there are plenty of very good people across the province, sir.

**Mr. Kormos:** So there are all sorts of people who are, in your view and in your experience, because you work with them on a daily basis—and you're in as good a position as any to know what kinds of skills a JP needs. So we've got the qualified people; the passage of Bill 14 isn't an impediment. We know that because the government did appoint one or two JPs in December 2005. What's the problem? We've got the courtrooms, huh?

**Ms. Moffatt:** We do indeed.

**Mr. Kormos:** But the lights are off; nobody's home?

**Ms. Moffatt:** In many cases, and far too frequently, that's true.

**Mr. Kormos:** Help me. I really, dearly need your help: What's the problem? Why aren't JPs being appointed?

**Ms. Moffatt:** I think the minister could better answer that question than I can, but it may very well come down to the basic thing that prevents many governments from doing what they know they should be doing: It may come down to money. I don't know.

**Mr. Kormos:** Thank you kindly, folks.

**The Chair:** Thank you very much.

The last presentation is from Rosalie Muraca. Is Rosalie here?

**Mr. Kormos:** What time is it, Chair?

**The Chair:** It's about 20 after 11. She wasn't expected to appear till 11:30, so if we could maybe recess for 10 minutes.

*The committee recessed from 1125 to 1138.*

**The Chair:** The time now is about 11:35. The last presenter was Ms. Rosalie Muraca and it doesn't seem like she's here. There's no sense in holding everybody up and waiting, so we will adjourn this committee until some time in September. Thank you very much.

*The committee adjourned at 1138.*

## CONTENTS

Thursday 27 April 2006



**STANDING COMMITTEE ON JUSTICE POLICY**

**Chair / Président**
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

**Vice-Chair / Vice-Présidente**
Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

Mr. Bas Balkissoon (Scarborough–Rouge River L)
Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)
Mrs. Christine Elliott (Whitby–Ajax PC)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot L)
Mr. David Orazietti (Sault Ste. Marie L)
Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

**Substitutions / Membres remplaçants**
Mrs. Carol Mitchell (Huron–Bruce L)
Mr. Robert W. Runciman (Leeds–Grenville PC)
Mr. David Zimmer (Willowdale L)

**Clerk / Greffière**
Ms. Anne Stokes

**Staff / Personnel**
Mr. Avrum Fenson, research officers
Research and Information Services