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Tuesday 5 September 2006

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Mardi 5 septembre 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
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Tuesday 5 September 2006

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mardi 5 septembre 2006

The committee met at 0902 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, 2006 / 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 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning. Welcome to the meeting of the standing committee on justice policy. Today we are here to consider Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

SUBCOMMITTEE REPORT

The Chair: Our first order of business before we commence the public hearings today is a motion for the adoption of the subcommittee report of July 25, 2006. I'd ask for someone to read the report into the record and move its adoption. Mr. McMeekin.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Your subcommittee considered, on Tuesday, July 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, 2006 and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 14 on September 5, 6, 7, 11, 12, 13 and 14, 2006.

(2) That all requests to appear before the committee received by the deadline of April 21, 2006, be scheduled during the public hearings in September.

(3) That organizations be given 30 minutes and individuals 20 minutes in which to speak.

(4) That those that applied after the deadline of April 21 be scheduled in order of first come, first served if a cancellation occurs among those who applied by the deadline.

(5) That clause-by-clause consideration of Bill 14 be held on September 20, 21 and 22, 2006.

(6) That the tentative date that amendments to Bill 14 should be received by the clerk of the committee be 12:00 noon on Monday, September 18, 2006, subject to revision by the committee.

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

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

(9) 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.

(10) 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.

I will move that report, Mr. Chair.

The Chair: Thank you, Mr. McMeekin. Any debate?

Mr. Peter Kormos (Niagara Centre): Perhaps we could be updated on the status of applicants for participation in these hearings. I presume there's an overflow list, if that's not an unfair way to call it. What's the size of it? We haven't had a subcommittee meeting around this for over a month now.

The Clerk Pro Tem (Mr. Trevor Day): You'll have to forgive me. I'm stepping in for Anne Stokes. To the best of my knowledge, I believe we are about 30 requests deep on the overflow. There have been eight people from the original list who have not gotten back to us, so those spots are being held, and we have moved to the overflow list to attempt to get people in. So I'd say, again, I believe we're about 10 or 12 people into the overflow list at this point, where calls have been put out, requests have been made for people to come in. We are holding spots, again from that original group that made them before the deadline for the next week and the following. But for now, I believe it's in the neighbourhood of approximately 30 in the overflow area.

Mr. Kormos: Thank you. I'm not going to belabour the point now, but perhaps we could meet as a subcommittee, Chair, at some point before the end of next week, to try to deal with that and see if there's a way that we can accommodate as many people as possible. It's just a shame to have those people denied an opportunity.

The Chair: Okay. Any further debate? Seeing none, all those in favour? Opposed? That motion is carried.

CANADIAN INSTITUTE OF ACTUARIES

The Chair: The first presentation this morning is from the Canadian Institute of Actuaries. Good morning.

Mr. Jim Christie: Good morning.

The Chair: If I can get you to state your name for Hansard, and you may begin. You have 30 minutes.

Mr. Christie: My name is Jim Christie. I am a member of the board of directors of the Canadian Institute of Actuaries.

I'd first like to begin by thanking you for giving me the opportunity to present the concerns the Canadian Institute of Actuaries has with respect to Bill 14. I'd like to begin by first of all giving you a little background on what actuaries do in Canada, how they're regulated, and then explain why we are concerned that requiring independent regulation of actuaries by the Law Society of Upper Canada is unnecessary and probably illogical.

To begin with, actuaries are professionals who analyze uncertain future risks and assess the financial consequences of that risk. Actuaries uniquely combine probability, statistics, finance and risk theory to do this. They study uncertain events associated with life insurance, property and casualty insurance, annuities, pension or other employee benefit plans, and are often involved in designing ways to decrease the impact of adverse events before they occur.

One significant activity of actuaries in Canada is serving insurance companies—their policyholders, shareholders and management of the companies. They also serve pension plans—their sponsors, active participants and retired members. They do this by filling the roles reserved for actuaries under federal or provincial statute. I'll describe those activities in a little more detail in a minute.

One particular distinctive feature of the actuarial profession in Canada is that it is federally incorporated under an act of the federal Parliament in 1965 to create the Canadian Institute of Actuaries. That act required the institute to "establish, promote and maintain high" levels "of competence and conduct within the actuarial profession."

0910

Normally, professions in Canada are regulated by the provinces, but no province has chosen to regulate actuaries and therefore all actuaries in Canada fall under the review of the Canadian Institute of Actuaries. Because we aren't a regulated profession in the provincial context, anyone can call themselves an actuary and attempt to provide actuarial advice.

However, only those who are members of the Canadian Institute of Actuaries and meet the criteria to call themselves a fellow can actually sign opinions under any of the federal or provincial statutes. So we're here representing the fellows of the Canadian Institute of Actuaries, of which there are 2,500, approximately, in Canada right now.

The Canadian Institute of Actuaries, since its inception in 1965, has adopted guiding principles and bylaws and developed standards of practice in order to ensure that fellows provide appropriate actuarial advice to the public. Our first guiding principle says, "The institute holds the duty of the profession to the public above the needs of the profession and its members." We have a formal discipline process to address any complaints received about the professional work of fellows and/or those under their direction. Penalties under the discipline process can include a fine, a reprimand or expulsion from the Canadian Institute of Actuaries.

Actuaries typically work in the following roles in Canada: They work in insurance companies. Most insurance companies in Canada are regulated by the Office of the Superintendent of Financial Institutions. That's a federal act. The Insurance Companies Act, which governs all insurance companies regulated by OSFI, requires the board of directors or the chief agent to appoint an actuary. That actuary is required to value the actuarial and other policy liabilities of the company; report on the financial position of the company and the expected future financial condition of the company; and report on any matter to the regulator if the actuary believes the matter will have a material adverse effect on the company, and if suitable action is not being taken.

The Insurance Companies Act specifies that the actuary must be a fellow of the Canadian Institute of Actuaries.

Actuaries also work in pension plans in Canada and are subject to the pension standards legislation of each of the Canadian provinces or, in a few cases, under federal legislation. In Ontario, for example, requirements are set out under the Ontario Pension Benefits Act and regulations. Pension plans are also subject to the requirements of the Income Tax Act. The role of the pension actuary in Canada is primarily one of recommending funding levels for a pension plan within upper and lower bounds established by pension and tax legislation. The federal and provincial legislations require the appointment of an actuary and specifies that the actuary must be a fellow of the Canadian Institute of Actuaries.

Finally, actuaries work in government. In Canada, with the federal regulators, they have a number of actuaries on staff. The provincial regulators in Ontario and Quebec also have actuaries. In addition to the regulators, all of the provinces from time to time hire consulting actuaries. Actuaries also provide other services to government, including the Canada Pension Plan.

The Canadian Institute of Actuaries has some concerns about Bill 14. In our view, the legislative net contained in Bill 14 is just too broad. Our review of Bill 14 suggests that many of the business advisory and drafting roles that actuaries provide on a regular basis could be considered activities that come within the scope of Bill 14. It may not have been the intention of the government to regulate actuaries under this licensing regime, but it certainly appears to us that we're going to be swept up in that net.

Our real concerns are with the definition of legal services. Again, we just believe it's too broad. Actuaries, by

their training, are well-qualified—eminently qualified—to deal with many of the issues around pension plans or insurance law, and yet this act would in fact probably require them to be considered giving legal advice in these particular areas.

When an actuary provides an insurance company with a valuation report on their actuarial and policy liabilities, it might very well fall within a definition of completing a document that affects the legal interests, rights or responsibilities of a person. When we report to management on the concerns that we might have about what's going on, that might be considered giving advice to person with respect to legal interests.

Addressing valid policy concerns about the services provided by unregulated paralegals should not result in the inadvertent regulation of FCIAs, of fellows, who are already subject to a regime that encompasses rules of professional conduct, standards of practice and a disciplinary process. And much of their work is already subject to federal and provincial laws or regulations.

We're concerned that the planned solution within Bill 14 to the broad definition of "legal services" by exemption through Law Society of Upper Canada bylaws in insufficient. Such a procedure leaves the legality of many common activities of current and future fellows at the whim of the law society.

Our recommendation is that Bill 14 be specifically amended to exempt fellows of the Canadian Institute of Actuaries, as well as those working directly under their supervision, from its provisions or definition of legal services. We believe the best way to do this is to revise the definition of "legal services" to exclude fellows by adding the words "other than by actuaries who are fellows of the Canadian Institute of Actuaries" to subsection 1(5).

Those are my prepared remarks, gentlemen.

The Chair: Thank you very much. We have about seven minutes for each side. We'll begin with the official opposition. Mr. Chudleigh.

Mr. Ted Chudleigh (Halton): Thank you for coming to the hearing and sharing your thoughts with us.

The definition of legal services: Was your association consulted prior to this legislation being brought in? Was there any consultation that took place with the government and the drafters?

Mr. Christie: We were aware of the legislation and did provide some comment to the drafters. I'm not sure whether that was done before the legislation was introduced or subsequent to its tabling.

Mr. Chudleigh: But you had expressed these concerns prior to the legislation being drafted?

Mr. Christie: We wrote to the Premier in February 2006 expressing our concerns and were on the original list of organizations to appear before this committee.

Mr. Chudleigh: So your concerns were pretty much ignored on the legislation that was drafted?

Mr. Christie: I believe so.

Mr. Chudleigh: The definition of legal services is going to certainly enhance the times in which the legal profession is going to be called in for advice in these matters. Would you say that's very accurate?

Mr. Christie: Yes. One of our concerns is that we're always striving to keep the administrative costs of pensions as low as possible. Many of these plans are quite small and don't have a lot of margin for administrative expenses, so anything that adds to those costs makes pensions that much more difficult to administer.

Mr. Chudleigh: Yes, you get to my point. This is going to increase costs. Lawyers are going to be involved in every aspect of anything that might be remotely construed as giving legal advice or giving advice almost of any kind which would have some kind of legal ramification to it. So it's certainly going to increase costs, to the benefit of the law society and the legal profession.

Mr. Christie: Possibly, certainly. We would hope the law society would grant an exemption, if the bill passes as it sits right now, for actuaries offering advice within their purview, but we don't know that that's going to happen. We don't believe that's the appropriate way to do it.

Mr. Chudleigh: If the law society did that, they would be taking away opportunities from their membership. Do you think that would be something that you can count on the law society to do?

Mr. Christie: I'm not sure how the law society would react, sir.

0920

Mr. Chudleigh: We all have our suspicions.

Under the disciplinary regulations that the actuarial institute does, how many disciplinary hearings would there be in a given year, for instance, that the institute might conduct?

Mr. Christie: It varies from year to year, but it has been in the order of three to five a year.

Mr. Chudleigh: And how many fellows would there be in Canada?

Mr. Christie: There are 2,700.

Mr. Chudleigh: So discipline is really a very minor issue?

Mr. Christie: It's a minor issue in that most actuaries perform professionally; it's a major issue in that an extensive part of the cost of running the Canadian Institute of Actuaries is the discipline process.

Mr. Chudleigh: And you have insurance for these kinds of things?

Mr. Christie: Not as such. The individual actuaries are responsible for their own actions, not the Canadian Institute of Actuaries. The Canadian Institute of Actuaries has insurance to protect its directors and its officers for actions they might commit or undertake in that capacity. At the present time, the Canadian Institute of Actuaries is introducing an insurance program for its members who wish to avail themselves of it. Many of the actuaries don't actually practise in the public; they work for a single employer.

Mr. Chudleigh: So insurance wouldn't be necessary in that case?

Mr. Christie: It's covered under their employer's insurance.

Mr. Chudleigh: Good. Thank you very much.

The Chair: Mr. Kormos?

Mr. Kormos: I'm almost jealous that Mr. Chudleigh was the first to advance the conspiracy theory today and generate a climate of paranoia.

Mr. Chudleigh: Sorry.

Mr. Kormos: But notwithstanding the law society's ability to defend itself, surely doing actuarial work is not within the goals or ambitions of most lawyers I know, never mind within the realm of expertise. I suspect that the problem here is one of negligent drafting and there's going to be a whole lot of focus on this. I suspect the next participants this morning are going to be addressing it as well. So thank you very much for adding the Canadian Institute of Actuaries to the list of many, many organizations that have concerns about the "provision of legal services" definition.

The Chair: To the government side. Mr. Zimmer.

Mr. David Zimmer (Willowdale): Thank you very much for your submission.

Mr. Christie: Thank you.

The Chair: Thank you, sir.

ST. STEPHEN'S COMMUNITY MEDIATION SERVICE

ADR INSTITUTE OF ONTARIO

The Chair: The next presentation is from St. Stephen's Community House and the ADR Institute of Ontario. Good morning. If you could identify yourself for Hansard, and you may begin any time. You have 30 minutes.

Mr. Peter Bruer: Thank you. My name is Peter Bruer. I'm the manager of the conflict resolution service at St. Stephen's Community House. Thanks for the opportunity to speak to the committee on an issue of some importance to us.

I should begin by saying that I'm here on behalf of about a dozen other community mediation services across the province of Ontario. You have my submission in front of you. I should add that the Oakville dispute mediators did speak to me last week and have officially added their name as people on whose behalf I'm speaking. I think, with confidence, though, I can speak for all community mediators across the province. I've written to the minister about this issue in the past, and all of the services, from Sioux Lookout to Windsor and through to London and out east, have identified with the same issues.

We're asking you to alter the Access to Justice Act so that its provisions do not apply to mediators, as they now clearly do. I'll also argue that the present plan, as we understand it, to ask the Law Society of Upper Canada to exempt mediators from the regulations of the bill is not a good idea.

Let me begin, though, by saying a few words about community mediation and the kind of practice that the services I represent use. Community mediation services recruit volunteers broadly representative of the communities they serve and train them to intervene in neighbourhood and interpersonal conflicts in people's everyday lives: noise disputes, parking problems and so on, minor criminal matters referred by the courts or diverted from the courts, anywhere people need an effective working relationship with each other—landlord-tenant disputes, problems within families, although not family mediation. Our goal is to mend the relationships between these people in conflict, to restore their respect and trust for each other. We believe that this ought to be the normal state of our relations with each other.

The first service started in Canada in 1982 in Kitchener. The service I'm with was founded in 1985, over 20 years ago. There are 15 active services in the province, as I've pointed out. We've recently established a standard for training for volunteers and community mediation in Ontario and we're about to set up a province-wide organization to represent our interests and coordinate our activities. Incidentally, there are hundreds of community mediation services around the world, particularly in the English-speaking world: in the United States, in the UK, in New Zealand and Australia. It's a well-established profession. Hundreds of mediators have been practising this sort of conflict resolution for several decades, so let me continue from that position, then.

In brief, we're here to ask you to change the legislation to exempt mediators from its provisions. Mediators, at least community mediators, do not provide legal services as defined by the legislation—I'll explain that further in a moment—nor do we feel it's wise to leave the legislation as it's now written and expect the law society to pass bylaws exempting mediators.

There isn't really any reason why mediation as we practise it should be placed under the jurisdiction of the law society. I probably don't need to belabour the difficulty with the wording "legal services"; it clearly can be seen to apply to the kinds of things that we do: providing legal services and documents that might affect a person's interests or rights in a real or personal property and so on. Community mediation commonly results in written agreements or memoranda outlining an understanding that the parties have reached. For example, community mediation might result in an understanding about how two neighbours agree they will share access to garages at the back of their properties through a common drive or such similar things. The language in the section could be interpreted to say that this is providing legal services.

Community mediation takes an approach fundamentally different from the law. They are carried out in non-legal circumstances; community mediators take great pains to distinguish our services from legal services. As I said, the objective is not the resolution of the conflict really but the mending of the relationship. A community mediator doesn't have any opinion or judgment of the merits or the facts of the effects of the situation being

resolved as judges do, nor does a mediator give any advice to the parties involved, as paralegals or lawyers might do, except in regard to the process that we facilitate, of course. In other words, community mediators are purely facilitators of the process, not evaluators, not advisers. They act for all parties in a situation, and this distinguishes mediators from other sorts of practitioners providing legal services. The mediators never act for one party, but always all parties in a situation.

In these respects, then, community mediation in particular is quite unlike the law or even arbitration. Indeed, it rests on entirely different principles. It doesn't take place within the confines of the legal system, even where court-connected referrals are made to community mediation services. For example, out of several courts in Toronto, the practice is clearly identified as "diversion." It is no more a provision of legal services than anger management courses or many of the other diversion programs that exist in the courts. The process is correctly identified as something else: restorative justice, not community mediation.

Let me add a different sort of reason. That's a very practical concern on our part: that we are not practising law; we're not providing legal services. In fact, the whole point of community mediation is to distinguish it from providing legal services. We've been working hard for 20 years to do just that. There's a different reason, and that is that more and more mediation is being promoted as an alternative to litigation in the legal system for a number of reasons: cost, timeliness, accessibility, cultural appropriateness and so on. The courts, the law schools and other legislation like the Youth Justice Act are part of this trend toward diversifying how conflict is resolved in our society. The Access to Justice Act in its present form, treating mediation like another form of legal service, is essentially a step backward in this respect. It's a denial of the whole direction in policy that this government and others have taken that sets up mediation and alternative dispute resolution as alternatives to the legal system, not part of the legal system. I think all of this speaks to the need to change the Access to Justice Act to ensure that mediators are not covered by its provisions. For these reasons, we're asking that mediators be exempted.

If this necessitates your defining what a paralegal is more clearly, and we acknowledge it may be necessary in doing that to define what a mediator is, fine. Let's have that discussion. The distinctions I outlined just now might be useful. Existing organizations in the field would be happy to have that kind of discussion, I think.

On behalf of St. Stephen's Community House and mediators across the province, thank you. I look forward to the results of the hearings, and I'll happily entertain some questions and then turn things over to my colleague.

0930

The Chair: Maybe we can have questions at the end.

If you'd like to make your presentation.

Dr. Barbara Landau: My name is Dr. Barbara Landau, and I'm a registered psychologist and a lawyer. I now restrict my practice to mediation and other forms of dispute resolution.

I think that, to follow up on what Peter has said, I'm going to start with my conclusion, because I think it's relevant to what you've heard, and that is that I understand the reasonableness of prosecuting unscrupulous individuals who deceive the public by misrepresenting their credentials and offering services fraudulently. However, many eminent members of the board and the judiciary have responded to the public's desire for more efficient, timely and cost-effective multi-door approaches to legal disputes. They've encouraged the development of non-adversarial or alternative dispute resolution, such as that offered by mediators, arbitrators, med-arb practitioners, parenting coordinators and community mediators, who come from many different backgrounds and are selected voluntarily by clients.

It's our position that members of recognized ADR professional organizations or those trained as mediators should either be exempt or not included in the scope of the legislation, because the legislation is defining the practice of law, and we are not practising law.

I'll go back to the beginning: I'm here on behalf of the ADR Institute of Ontario, and we have a number of serious concerns that I think you're going to hear echoed over and over again in these hearings because in our case they impact on mediators, parenting coordinators and arbitrators.

The practice of mediation, parenting coordination and arbitration are not the practice of law, and many of our members are not lawyers. When they are lawyers, as I am a lawyer—I'm not practising law when I'm practising mediation, but this legislation catches everybody in its very large net. So what we're seeking is either to be exempted or, because this is not the practice of law, it's not caught within the scope of the Access to Justice Act.

The law society, in its task force report in May 2004, recommended that mediators and other ADR practitioners be exempt from the act. It didn't end up in its recommendations to the government that appeared in September 2004, but the society made it clear in meetings that we had that they had no intention of regulating mediators or ADR professionals. We therefore urge you to recognize that mediators and other ADR practitioners are not practising law and should not be caught by this legislation.

We have a number of premises and a number of concerns. So we're starting out with the understanding that the act anticipates that certain practitioners, like paralegals and law clerks who are actually carrying out legal services, need to be regulated in some way and that there is an intention to provide bylaws, that the law society will provide bylaws whereby these people can seek licences to provide their services and that those services will be limited in scope and there'll be some clear boundaries.

As we've said before, mediation, med-arb, arbitration, parenting coordination and other forms of dispute resolution should not be included, because they're not provid-

ing legal services. We're concerned that there be no ambiguity in the legislation so that we're not caught by its terminology, which at the present time is extremely broad.

We understand that the objective in part is to protect the public, and I've already indicated that if people are unscrupulous or misleading the public in terms of their credentials, there should be a mechanism for disciplining those people. We assume that the intention was not to prevent other professionals from responsibly offering advice, assistance and conflict resolution services. In fact, other professional groups such as psychology and social work do regulate mediators. When we offer mediation services as psychologists or social workers, we are under the regulation of those professional bodies. They are not seeing us as practising law; they are seeing us as practising a helping profession.

We further assume that the objective is not to unduly restrict informed consumers from selecting professionals other than members of the law society for information and advice. I think you're going to hear from many professional groups who feel that this legislation just goes too far; it's just too broad.

We assume that the act entitled Access to Justice Act was really intended, as part of its intention, to provide the public with options for responsible dispute resolution that are non-adversarial, efficient and cost-effective. Those services may be provided by a wide range of professionals or trained individuals with expertise other than law.

Our number one concern is that the bill unduly restricts the reasonable practices of many professionals. The act, as currently drafted, would limit access to justice rather than improve services to the public. As psychologists, we ran into the very same dilemma because the practice of psychology wanted to define itself so broadly that anybody offering counselling services would have been caught in its net. We weren't permitted to do that because people could choose. They could go to a clergyperson, their mother, a tarot card reader. They could make choices based on, hopefully, information and voluntariness. But we were not permitted to define ourselves so broadly that we caught everybody in our net.

Number two, when we're acting as mediators we're not practising law; however, our work may well involve—I'm quoting the statute now, subsection 1(5): "the application of legal principles and legal judgment with regard to the circumstances or objectives of a person." That statement is too broad, too ambiguous. It can't provide us with legal guidance, and what I'm concerned about is it won't provide the law society with guidance as to who it ought to prosecute.

The next point is that, as mediators, we act as impartial facilitators for a wide range of disputes. In many cases, counsel are present for the resolution of these disputes. When an agreement is reached and a binding settlement document is prepared, it's prepared, in some cases, with lawyers present. They may draft it or we may assist in the drafting of it. It's witnessed, signed in the presence of the parties and their counsel.

In the case of unrepresented parties, as mediators, who, like Peter, helps people resolve relationship disputes, they will work out a memorandum of understanding. As mediators, we instruct people not to sign or witness it in our presence. We encourage them to get independent legal advice if legal interests are at stake. If legal interests are at stake, we strongly encourage them to get independent legal advice. However, according to section 2 of Bill 14, the mere act of drafting the parties' intentions is the practice of law and could open mediators to prosecution. Specifically, section 2 of the proposed legislation states that a person who "selects, drafts, completes or revises" a document that affects a person's interests in or rights to or in real or personal property or a document that relates to the custody of or access to children is providing legal services and can be prosecuted and fined.

As psychologists, we are often involved as assessors. We're asked to prepare custody assessments. As parenting coordinators or family arbitrators, we're asked to resolve issues related to parenting plans. Our results are incorporated either into a custody access report or a memorandum of understanding or an arbitration award. In each case, "a document that relates to the custody of or access to children" could contravene this act or appear to contravene this act. That's subparagraph (6)2(v). That means that if I ask my mother for advice about raising my children, she may be in danger and I might have to point out to her that giving me advice on issues related to children may violate the act.

The next concern is that the act—I've said it already. Our concern is that doing any of those kinds of reports or memoranda or parenting plans all violate the act. This could have a really negative impact on the opportunity for people to select non-adversarial options for resolving their disputes. This is at a time when access to the courts and legal services is financially out of the reach of many people.

I have already given you my conclusion, which is that we should not be covered by this act or we should be specifically exempted from it. It's far too broadly worded. It catches too many people in the net.

Thank you very much for your time and patience. I'm open to questions.

0940

The Chair: Thank you. We'll begin with Mr. Kormos. There's about four minutes each.

Mr. Kormos: Thank you to both of you. I was waiting for your submission.

I say to Mr. Zimmer, these are two very smart, extremely experienced people. St. Stephen's—and I know people are familiar with it—sets the bar for community mediation in this country.

I underscore Mr. Bruer's comments, "Nor do we feel it is wise to leave the legislation as it's now written and expect the law society to pass bylaws exempting mediators." This Legislature has to write the legislation. You can't delegate this stuff away; it would be irrespon-

sible. It would be, in and of itself, delinquent on this Legislature's part if it were to do that.

You know that a big chunk of the presenters to these hearings are going to focus on the so-called definition, the provision-of-legal-services part of the act. I put it to you that you can let us focus on other elements of the act with due attention by simply coming forward and explaining how the government proposes to address this. If you're going to leave it to the law society, then say so, and then these people will have to ramp up their efforts, all right? But you could save a whole lot of people a whole lot of work, energy, effort and grief by simply saying, "Yes, this definition was drafted in an effort to close loopholes"—because that's what I think it is—"that people might try to exploit."

I don't think it's practical to come up with a list of regulations saying, "All of the following are exempted," because once you do that, anybody who isn't specifically exempted is even more strongly included; some sort of equitable argument that they might try to make, they're barred from making it. So that's not the answer. The answer is to draft a definition that achieves the goal of regulating paralegals—and I think everyone here agrees with that goal—but which doesn't throw out so huge a net that you draw mediators, car salespeople, insurance salespeople etc. into the scope of the regulation.

Let's deal with this. Let's not just let it fester. Let's deal with it here and now over the course of this week, and then we can move on to other parts of the bill. It's as simple as that.

Thank you for your participation.

The Chair: The government side.

Mr. Zimmer: St. Stephen's is a great organization. It sets the bar. You and I have worked on a couple of projects over the years, although I haven't met your colleague until today for the first time. Thank you for your presentation.

Mr. Chudleigh: The government commitment is just really outstanding today.

During the period of the drafting of these regulations, was there any consultation with your organization by the government? Did you have any input into it prior to seeing the legislation?

Dr. Landau: We didn't have any input into it prior, but when we saw the draft, we were so concerned that I organized a meeting of representatives of all the mediation associations: the Ontario Association for Family Mediation, which I'm a past president of; the community mediation organizations; the Ontario Bar Association, ADR section, which I'm a past executive member of. We brought everybody together, about 22 people, to the law society with their legal counsel and all raised the same objections. We were told that we would be consulted on an ongoing basis, that we'd be invited back for further discussions. We didn't hear anything. I asked again for another meeting. I was told maybe sometime in the fall. Then I found out that these hearings were happening, and we would have been meeting after these hearings. We were assured at the meeting that there was no intention to regulate us. We do know the specific individuals they're concerned about catching in their net, but it's sort of like putting a bottom trawler out and catching everything in the Grand Banks in order to protect against individuals who have clearly violated the terms of the law society.

Mr. Chudleigh: In your interpretation of this act, if it were to pass the way it was—if you were seeking some advice from mom, you'd need a lawyer present?

Dr. Landau: As a lawyer I'd have to warn her, I'd have to caution her that she might be doing the undue practice of law. I'm hoping one day to be a grandmother and be available to offer advice. I'd be kind of worried that if I did so, I'd be stepping out of bounds.

I just think that the law society has a legitimate concern and they need to regulate the unauthorized practice of law, but this way of doing it is trying to cast the broadest possible net.

I would agree with Mr. Kormos that if they list the exemptions, there are every year new methodologies created for resolving disputes in a non-adversarial way. As a society, we really want to encourage that. We don't want to frighten people out of helping people resolve their disputes reasonably.

The courts now, particularly the family courts—I think about 70% of people who appear before the judges don't have legal counsel. They can't afford it. We want to facilitate ongoing relationships where people need to get along. We want to encourage people to do it that way. This legislation doesn't do that.

The Chair: Thank you very much.

PARALLAX COMMUNICATIONS GROUP

The Chair: Next we have Ken Mitchell. Mr. Mitchell is substituting for our 10 o'clock presenter, Mr. Safronuk, who is not here. Good morning, sir. You have 30 minutes. You may begin.

Mr. Ken Mitchell: Good morning to all the members of the committee, in particular to my friend and the hard-working member from Ancaster–Dundas–Flamborough–Aldershot, Mr. McMeekin.

I'm a consultant to the Paralegal Society of Ontario. Mr. Safronuk was to be with me, but unfortunately circumstances came up and he could not join me today.

Let me first give you a little bit of my background. I'm coming, not simply as a government relations consultant but also a former paralegal. I started Hamilton Paralegal back in 1978, and I provided services to large numbers of members of the bar in the city of Hamilton. So I come with a background both in where paralegals are coming from and where they want to go.

A previous speaker said that she would start with conclusions and go to the beginning. I'm going to do it the other way around, because I want to keep you all on the edge of your seats, listening to every word I have to say.

I'm going to start off by talking to you about my topic, which is the situation that exists in the family courts in Ontario today. I'm going to describe that situation to you.

I'm going to talk to you about a study I did on behalf of the Paralegal Society of Ontario which reinforces that position. I'm going to tell you why Bill 14 as it's drafted doesn't work, and then I'm going to bring you a simple solution, a simple change to Bill 14 that can address a serious problem in today's family courts. Finally, I'll paint a vision for you of the savings, not just the monetary—the economic—savings, but the social savings that can ensue by making some very simple changes to Bill 14.

It was only two weeks ago that Chief Justice Beverley McLachlin told a law conference in Newfoundland that there is an epidemic of non-representation in Canadian courts. She said as many as 40% of Canadians are not represented in courts today.

Seven years ago, Mr. Justice Peter deC. Cory—and you'll hear a lot about the Cory report—noted in his report that deputy judges from the city of Toronto told him that non-representation in Family Court in Toronto reaches levels of 80%. In fact, it was Deputy Judge Zuker who was reported in the Cory report. I am here to tell you that Madam Justice McLachlin was an optimist, and that the numbers are somewhat higher than she quoted.

0950

Two weeks ago, the Paralegal Society of Ontario asked me to conduct a very simple survey. I'm not going to present this as a scientific survey; it's a snapshot, and I'll go into the methodology later. This survey shows the situation as it existed in the family courts of Ontario in the last two weeks. The way this survey was conducted was that we had representatives go into family courts in nine centres in Ontario, and all they did was count the number of cases on the court docket, they went back and recounted the number of parties who were unrepresented, and the numbers were aggregated. That's it. That's what I'm going to talk to you about and report to you. The beauty of this method is that the findings can be validated any day. Any one of you can walk into the Family Court in your own jurisdiction and confirm these numbers.

In the counts, if there were 50 cases on a court docket, generally there were 100 parties, one on each side. There may be more in some situations, and these would have been when government agencies or children's aid societies were involved. Those numbers were discounted, because those parties were virtually always represented by counsel.

Here are my key findings, and they're very simple; it's nothing to blow you away. There were 1,494 cases on the family law lists last week in the courts that we visited; 685 of those parties were there without representation. They were there on their own; they were going it alone in Family Court. That works out to 46%.

There are some observations that I want to make.

Even from our small snapshot, we found that the number can vary greatly from day to day. For instance, in one court, I believe, one day the non-representation was 19%, and the next day it was up to 82%. I think that deals with the types of cases that are on the list. A real, in-depth study needs to be done of the family courts to determine why people are showing up without representation. That wasn't the purpose of this study.

The highest rate of unrepresented parties was in the city of Toronto. In one Toronto court, at 43 Sheppard, the two-day average was 64%. That is Judge Zuker's court, where he practises. It was very close to the 80% that he reported to Justice Cory.

The very highest day rate of non-representation was in Thunder Bay on August 23. This is the day that there were a number of cases under the child protection act on the list. On this docket, there were 84 parties that were not represented. Our agent up there noted that many of the families were of aboriginal descent, and they were appearing in court without any form of legal representation.

That's the situation as we find it in Family Court.

Why doesn't Bill 14 address this? Bill 14 is the Access to Justice Act. Schedule C—that's what I'm here to talk about—is here to license and regulate paralegals, which is a lofty goal, but the licensing in and of itself does not provide any more access to justice. All it does is go some way to ensure that those who are appearing are qualified to do so, but it doesn't ensure any more access to justice.

It may be the position of the government that they'll say, "When we deal with areas of practice in which these newly licensed paralegals can operate, the law society will deal with that, and they will determine whether paralegals can appear in Family Court to help these non-represented parties." Well, my clients at the Paralegal Society of Ontario don't share any optimism that that will be the case. In fact, the reality is that since 2000, when Justice Cory reported these large levels of non-representation in Family Court, absolutely nothing has been done, and it goes on until this day.

I also note that in the study that the law society's task force on paralegals conducted and reported to the government in September 2004, two years ago, they dealt with pages and pages of stakeholders—this organization and that organization, this group and that group—but nobody consulted with the end user of the legal system, the actual person who goes into court as a litigant, and nobody went into the family courts and asked these people who were appearing without representation why: "Why do you choose to go it alone? Why don't you have a lawyer here?" Nobody asked them, "If you had an option of having a relatively low-cost paralegal to help you, would you like to have that option?" The key people in the province of Ontario have never been asked.

Some will say that in the family law rules, rule 4(1)(c), judges of the Family Court are allowed to let paralegals, or non-lawyers, as they refer to them, into their courts to appear. But they must do it by permission and the permission must be sought in advance. That sounds fairly good. Nothing, on the surface, is wrong with that. But the reality is that in case after case, the judges reach for legislation, stretch, and find ways to keep the paralegals out of Family Court. So they can't come in there, even though the Family Court rules allow it. Many of the reasons these judges use for keeping the paralegals out

are actually addressed in your legislation. They say paralegals have no duty of confidentiality. Well, that is addressed in the legislation and regulation. They say they don't report to a regulatory body. That will be addressed. So some of those reasons will disappear.

But the number one reason that every jurist uses to keep a paralegal out of Family Court goes back to the Solicitors Act, section 1, which is an old piece of legislation. It's a bad piece of legislation. It wasn't intended to override the rules of the Family Court and it wasn't intended to override the Law Society Act, but they use it to do that. They say, "Because you are not a solicitor, you can't collect fees and you can't appear in my court, and I can't apply rule 4(1)(c) because that would be neglecting a statute on the books. That would be asking me as a jurist to do something unlawful." I'll come back to the Solicitors Act later on when I have some recommendations for you.

But the absurdity that happens in today's Family Court goes beyond that, because as judges reach and stretch to keep paralegals out of Family Court, they really don't care and they really don't mind if unpaid persons come in and help friends and family in Family Court. As stated in one case—and the case is noted in your submission; Justice Quinn was dealing with the appearance of a non-lawyer, non-paralegal, simply a person who was a friend of the family—"If there is to be a test, I ... think it has to be of the subjective-objective variety; that is to say—does (the party) honestly believe that he would benefit from the assistance of his friend and does that belief appear to be reasonable in all of the circumstances?" And Justice Quinn goes on to say, "Identifying a level of core competence for an unpaid, non-lawyer ... friend is nigh unto impossible and so, when considering such agents, the suitability quotient should not be too high."

So what our judges in Family Court are saying is, "As long as you're not a paralegal, you can come in here and talk to the court, but if you're a paid paralegal, we don't want to see you."

I can tell you—and I brought out my paralegal pass so that the anecdote I'm going to tell you will make some sense. Just about this time last year, I went into Family Court as a non-paid person to help a dear friend deal with resolving a family law matter. The presiding judge would not hear me, would not listen to me, looked through me, and my friend, who is not a skilled speaker, virtually trembling at the idea of addressing a judge, couldn't speak. So we adjourned the matter to another day. We hired a lawyer the next day, paid the lawyer $2,000, and the lawyer sat there while I negotiated a settlement, told the lawyer what to do, what to go in and say, and the lawyer did it. The only function of the lawyer was to repeat my words in the settlement that I drafted to the trial judge: $2,000.

This is the situation in Family Court, and this is what the government needs to address in Bill 14.

I'm going to give you a simple solution, and that is—I'll come back to it over and over again—simply amend schedule C, whether you do it in your preamble or whether you add a specific clause, but give clear direction that the purpose of schedule C is to increase access to justice and that once licensed and regulated, be that by the law society or any other group, paralegals should have the right to appear in Family Court. Then, I suspect you'll see the numbers of non-represented parties decline dramatically and there will be greater access to justice in the province of Ontario.

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The benefits are manyfold.

First of all, the benefits are to the people, the consumers. These are the litigants who go into court. These people will now have a choice: They can get a lawyer, if it's a complex case and they need one; they can get a paralegal to go in and advocate for them; they can hire a paralegal to simply fill out the forms so they get it done right for when they go in; or they may still choose to appear unrepresented. But there will be greater access to justice because the consumer—the Family Court litigant—will have a choice.

The benefits to the court staff—talk to the court staff. The amount of time they spend there filling out the forms and helping people fill out the forms properly is wasted time if a professional can do it. Someone who is skilled in filling out forms can do it for them. So the court staff time will be saved, and that saves the government money.

Talk to the family law judges or simply go back and read the Cory report and see what the deputy judges reported. They talk about—and this is confirmed by Madam Justice McLachlin, where she says the amount of time spent by jurists coaching unrepresented litigants is a drain on the court. "We have to tell them about the process, we have to tell them about the rules, we have to tell them about the rules of evidence, and we have to do that and try and remain impartial," which is not easy for a jurist to do, but God knows, they try to do it.

So judges will be more efficient, courtrooms will be more efficient, lawyers will benefit, because if you allow paralegals into Family Court, then the natural progression is that many family law lawyers will hire paralegals on staff for the purpose of appearing in Family Court on the non-complicated matters, the ones they don't need to be there on. I know there are many lawyers sitting around the table, and if you've been in Family Court—if you've been in any court—on motions day, and you look around and you see the amount of high-priced talent at $300 and $400 an hour sitting there waiting for a case to be called simply to ask for an adjournment, then you can see how paralegals going in to address the court can actually make the whole process more effective.

Of course, the government will certainly benefit because the government will save costs, clearly, if the courts are more efficient, but more importantly, the government and the courts will achieve a level of legitimacy that they don't now have. You can well know that that unrepresented litigant who goes in and walks out with a decision that's unfavourable, walks out with a bad taste in his mouth and thinks, "If only I could have afforded a lawyer, if only I had help," and so on. The legitimacy of

the courts suffer in their eyes. So if you make the courts more effective, if you make them more efficient, if you give them the tools to deliver better decisions, speedier decisions, more just decisions, everybody benefits.

Here are my recommendations to the committee: First of all, amend section 1 of the Solicitors Act so that it allows licensed and certified, regulated paralegals to appear in Family Court. Secondly, amend Bill 14, schedule C, section 19, to include a clause that allows licensed and regulated paralegals to appear in Family Court. As I suggested, that could be done as a specific clause or simply in the preamble, but in some way give direction to the law society that this is a desirable result for the people of Ontario. Finally, adopt the recommendations of the Paralegal Society of Ontario which are contained in your paper, as to the scope and levels of practice which are appropriate for paralegals to handle in Family Court.

You'll hear over and over again from many members of the Paralegal Society of Ontario who are speaking to you in the next two weeks, and they will have one message for you: We are committed to regulation. It's a good thing. But any regulation of the profession must take into full consideration the interests of the general public and Family Court litigants. The Access to Justice Act will fail in its promise if it doesn't provide for the tens and thousands of Ontarians who appear every year in Family Court without legal representation. By allowing regulated, certified paralegals to fill this gaping void, a major step will be solved in the problem of affordable access to justice in Ontario.

Thank you very much for your time.

The Chair: Thank you. We'll begin with the government side, about four minutes each.

Mr. McMeekin: Thanks very much, Mr. Mitchell. As always, a very thorough presentation, thoughtful and experiential. I know a bit about your background and your concern for these issues, so I really appreciate on behalf of the government hearing your perspective today. I'm quite concerned and have, as you know, been concerned for some time about access to court through legal aid or what have you. It seems there are never enough resources to ensure that people do have the kind of access that you and I on a good day would agree they need to have.

I appreciate your specific suggestions and I want to have some time to reflect on those. I'm wondering if you could comment for the committee on the breakdown. How many paralegals are out there who are actually connected with law firms? I guess it ties into the broader question for me and that's the potential benefit or lack of benefit of having paralegals and lawyers all, for purposes of professional conduct, governed by one body, as I understand is being proposed in the legislation.

Mr. Ken Mitchell: Unfortunately, I can't. I don't have any empirical data to support the number of paralegals associated with law firms. Experientially, I find the number is significant. Usually those paralegals classify themselves as law clerks. So you can go to the numbers of the Institute of Law Clerks of Ontario and you can find that number with them. But those law clerks are not always operating in the litigation side. Many of those will be dealing with corporate law, real estate law and so on. But I find from members of the Paralegal Society of Ontario, with whom I've been consulting, that many of them tell me that, although there's no business relationship with law firms, much of their business is referred by law firms, for a number of reasons. Sometimes, the dollar value of the case just doesn't justify the handling of a lawyer and so they refer it to a law firm. In other cases, the lawyer, who has no experience in a particular area of law, will refer that person to a skilled paralegal who they know has experience in that area of law.

Mr. McMeekin: As per your example. You were sitting in court.

Mr. Ken Mitchell: Exactly, but I could give you other examples of lawyers who do motor vehicle accident litigation, and a workers' compensation case comes along, and they will immediately hand it over to a workers' compensation specialist, likely one who's not a lawyer.

The Chair: Mr. Chudleigh?

Mr. Chudleigh: Thank you very much. The paralegals are being overseen by the Law Society of Upper Canada, which is a new system. How is that working out?

Mr. Ken Mitchell: I'm not sure I've got the premise of your question. They're not regulated now by the law society, but that is the purpose of this legislation.

Mr. Chudleigh: But they're going to be.

Mr. Ken Mitchell: You'll hear from members of the board of the paralegal society who will enunciate their position clearly, but paralegals would clearly like to see schedule C removed; further study, including studies in the areas that I've talked about; and bring it back as a piece of legislation in and of itself, because it does warrant a lot of study. As you've heard from other speakers, there are a lot of nuances to this that clearly no government can fully anticipate. Perhaps with the scope of input that comes from these hearings, including from the Paralegal Society of Ontario, there will be enough grist that it will make sense for the government to go back and pull schedule C, and come back with a well-researched, well-written piece of legislation that meets everybody's needs—paralegals', the government's and litigants'.

But having said that, if this legislation is going through, then you've heard from me and you'll hear from other Paralegal Society of Ontario presenters some specific areas. These are intended to be very constructive areas where the government can improve the legislation and obtain its objective, which is to regulate paralegals.

Mr. Chudleigh: Wouldn't it make more sense to have the regulation rest with the paralegals, as opposed to with their supposed competition?

Mr. Ken Mitchell: That's absolutely the preference. That was the recommendation of three studies done over the past: the Di Ianni study—I'm sorry, the Ianni study; I keep confusing it with the mayor of Hamilton. The Ianni study in 1989, the Cory report in 2000, and the Zemans report, which was commissioned by the Paralegal Society of Ontario in 2004, all recommended that paralegals be

self-regulated. There are very few professions in Ontario that are not self-regulated these days. The government generally eschews getting into the regulation business.

Some of the arguments are that paralegals are not mature enough to regulate themselves, but in fact that argument was made about used car dealers and real estate brokers back in the late 1990s. Once they were given the task of being self-regulated, they rose to the challenge. They put the infrastructure in place to do it, and they function fairly effectively today.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you very much, Mr. Mitchell. I appreciate your participation.

The Chair: Thank you very much for your time and your presentation this morning.

The next presentation is from Paul Mitchell of Beaches Paralegal. Mr. Mitchell? He's not here. Is there anyone else here who is presenting this morning? No.

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

The Chair: It's 10:12, so we'll take about a 10-minute recess. We'll be back in 10 minutes.

Mr. Kormos: Nobody's late. We shouldn't create the impression that he's late. If it's 10:35 and he's not here, then he's late.

The Chair: No, that's not the intent at all, Mr. Kormos.

Mr. Kormos: I'm just trying to clear it up, because I'll be making note of the fact at 10:35.

The Chair: We'll be having a short recess for 10 minutes.

Mr. Zimmer: Till 10:30?

The Chair: Till 10:25.

The committee recessed from 1012 to 1032.

ALPHA PARALEGAL SERVICES

The Chair: Seeing that our 10:30 a.m. presenter is not here, we're going to have our 2:20 p.m. presenter, Alpha Paralegal Associates, Ms. Rivka La Belle. Good morning. You have 20 minutes and you may begin.

Ms. Rivka La Belle: My name is Rivka La Belle. I have been a paralegal since 1989 and operate a small paralegal firm as a sole practitioner. My area of practice consists of small claims court, landlord and tenant disputes, and family law matters. Since 1998, the main focus of my practice has been to deal with family matters in the Ontario Court of Justice.

In my previous career, I worked for 20 years as a registered nurse. In 1988 I took a business course at Atkinson College at York University, and then I was trained by another paralegal to start my paralegal business. Thereafter, I have been attending many educational seminars and paralegal courses in college to further upgrade my education in the areas of law which I was interested in.

In 1995 I attended a civil litigation course which was offered by the Institute of Law Clerks at Seneca College. In 1998 I completed the family law course offered through the Institute of Law Clerks at Humber College. I also taught family law one semester at Sheridan College in Brampton. I am a board member of the Paralegal Society of Canada and the Paralegal Society of Ontario.

My submissions to you relate to schedule C of Bill 14 only. I have no issue with the other parts of the bill.

I agree that paralegals should be regulated. However, I support the regulatory framework proposed by the Honourable Peter Cory in his Framework for Regulating Paralegal Practice in Ontario, published in 2000. Justice Cory said that by regulating the paralegal profession, "the public will be protected and boards and tribunals will be assured of adequate representation by qualified, competent paralegals. These goals can only be achieved by the establishment of a governing body which will license and regulate paralegals."

The Cory report recommended the establishment of an independent board similar in structure to Legal Aid Ontario to oversee the regulation of paralegals. Schedule C of Bill 14 proposes to amend the Law Society Act and have the law society oversee the regulation of all persons who are licensed to practise law as barristers and solicitors as well as all legal service providers in a wide range of industry, including paralegals.

This bill will create a regulatory monopoly in the industry. Such a monopoly will cause an increase in the cost of access to justice to both small and medium-sized businesses as well as to the public. Such a monopoly is contradictory to the Competition Act, 1986.

There is an adversarial relationship between the law society and paralegals. Bill 14 puts the regulation of paralegals in the hands of the competition, the law society, which fails to ensure that paralegals will be dealt with on a fair and an even-handed basis, nor does it ensure the best interest of the public consumers. No other professional body—e.g., midwives, nurses, denturists, accountants, mortgage brokers—has ever been forced against its will to accept regulation by a competitor.

On April 18, 2006, the treasurer of the law society, Gavin MacKenzie, was quoted in the Toronto Star stating, "Paralegals will be limited to working in Small Claims Court and on things like traffic cases and workers' compensation claims. Once training standards are better established, services could be expanded, MacKenzie said.

"For now, they won't be allowed to do things like simple land transfers or divorces—services paralegals openly advertise, but which the law society says they can be prosecuted for performing."

Because this bill leaves all the regulatory decisions up to the law society, we can take Mr. MacKenzie at his word and expect that the intent of the law society is to restrict areas of practice of paralegals. As a result, the law society views this bill as nothing more than a licence to get rid of paralegals, the low-cost alternative to expensive lawyers.

This direction in legislation is contrary to what is now the progressive practice in enlightened jurisdictions in free and democratic countries. Their practice is to make laws granting autonomy and maintain the rights to self-

regulation to each organization for the lawyers and non-lawyers.

The following is a quote from a speech delivered by the Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer of Thoroton, delivered in the British Parliament in speaking to the new pending legislation on regulation of legal services in England and Wales. The speech was made on May 24, 2006. The article is attached. Lord Falconer said:

"Our proposals also provide for the creation of an independent Office for Legal Complaints, which for the first time will remove the handling of legal complaints from the legal professions. The OLC will help to foster greater consumer confidence and result in quick and fair redress.

"The draft legal services bill also sets out arrangements to facilitate alternative business structures, which would enable different kinds of lawyers, and lawyers and non-lawyers, to work together on an equal footing. These structures will allow legal services to be delivered in new ways, promoting greater competition and innovation and enabling providers to better respond to the demands of consumers. A range of safeguards will be put in place to protect consumers and demand high standards."

I am urging this committee to remove schedule C of Bill 14 and support a new bill implementing the recommendations of the Honourable Peter Cory, i.e., create a self-regulatory body to regulate paralegals and enshrine areas of practice for paralegals in the legislation.

1040

Access to justice in Family Court: On page 64 of the Honourable Peter Cory's report, it says, "... Justice Zuker stated that in his court, which is located in North York, parties were unrepresented in 50% to 75% of the cases. Justice Brownstone, whose court is located in the East Mall, reported that in 75% to 85% of his cases the parties were unrepresented. From this it can be inferred that many of the most vulnerable people have no representation or assistance whatsoever in their family law problems. I was told that court employees are prohibited from assisting parties in any way, even in preparation of the requisite forms."

These litigants are unrepresented because they cannot afford a lawyer and they do not qualify for legal aid counsel or duty counsel. The majority of parties have no meaningful access to justice. The current system has failed them miserably.

The demand for service far outstrips the government's and the law society's abilities to provide it in an affordable way to those who do not qualify for legal aid and those who have insufficient means to retain a lawyer when average rates begin at $250 per hour plus GST.

Currently, rule 4 of the Family Law Rules provides an avenue to a litigant to ask a judge of an Ontario Court of Justice by way of motion to grant him or her permission to be represented by an agent in a Family Court proceeding to deal with an issue of custody of a child, access and support matters. Some judges have an outright bias against paralegals and will not allow any paralegal to represent a client in their court. Other judges have taken a more enlightened view and have given permission to selected paralegals demonstrating competence to appear in their court. I am one of the very few paralegals who have consistently been granted leave to appear in Family Court in the last 10 years.

The requirement for consumers to ask the court in advance for its permission to have an agent represent them in a court proceeding is an obstacle which is intimidating to consumers in an uncertain and stressful process. It is unfair to the consumer that she cannot expect with certainty that the court will allow her representative of choice, a paralegal, to represent her.

I represented litigants in Family Court matters who for the most part could not afford a lawyer, and without my competent help they would not have had a degree of success in their case had they been forced to handle it by themselves. I also have clients who come to me after their funds have been depleted and they have no more money to keep a lawyer on the case.

For example, I once represented a couple who were grandparents to a teenager. The parents of this child were divorced and both were remarried to new spouses who were hostile to this child. The child was in the sole custody of his mother, who had additional children born to her new family. This child, as often happens, had some heated arguments with his stepfather, one of which ended by the youngster being assaulted by the stepfather. It was not possible for this child to remain in this household.

The grandparents came to see me very shortly after these events, telling me that they wished to have custody of the child, they love him very much and they have a great bond with him. They went to see a lawyer, who told them that they were facing a very complex and lengthy litigation with a questionable outcome. The lawyer asked for a retainer of $5,000 and could not give them an estimate for the entire fee involved. The grandparents, living on a pension, could not afford a lawyer. Fortunately, the judge presiding over this case granted me permission to represent the grandparents. The end result of this matter was that the grandparents were awarded custody of their grandchild. My fee in this matter was $1,000.

The trend in family law is towards mediation and collaborative law. Lawyers are trained to be adversarial, and very few of them really seem to embrace this new trend. This combativeness is costly, often stripping a family of all their savings, assets, equity and future security. Stuck with many unresolved issues, these families and their children are the most vulnerable members of our society. In my experience, paralegals tend to be more collaborative with the opposing counsel or party, or tend to mediate the dispute and practise a non-adversarial style of facilitating settlements. Paralegals have an essential role in helping parties to resolve their differences through mediation and offering lower-cost litigation if it becomes necessary.

A litigant should have a choice of retaining a lawyer or retaining a qualified, regulated paralegal to assist him

with his court matter. Regulations of legal services must leave the consumer a choice in the level of service he/she wants to retain. Paralegals can provide the necessary service at greatly reduced costs, which may well allow litigants to find assistance and appear in court with skilled representation. All stakeholders—litigants, judges, court staff, the government and even lawyers—will benefit from improved efficiencies and cost savings when paralegals are allowed to appear in Family Court.

The government and lawyers can pick and choose to use paralegal and law clerks should they choose to reduce the cost of their legal services as a budgetary and/or leveraging method for service delivery or business profitability. For example, municipalities use paralegals for bylaw prosecution, and the Family Responsibility Office uses social workers to draft separation agreements in which the parties waive their legal rights etc. Unfortunately, the ordinary person is being routinely denied that same ability to reduce their costs and have access to affordable justice.

Legal aid does not have the funding to provide the answer, nor should the taxpayers of Ontario be burdened with the cost of doing so. For example, legal aid will not fund a child support or spousal support variation proceeding. A parent who has an obligation to pay such support as a result of a previous agreement or court order and who then experiences loss of employment or reduction of income, in most cases will not be able to afford a lawyer and will have to continue making support payments before the agreement is varied in court. Duty and/or advice counsel cannot help the party, as most parties routinely fail the legal aid means test, so the party cannot get effective help in pursuing a claim to the court to ask for a change of the existing order. Access to justice is effectively denied. Such a litigant is often branded as a deadbeat, and the director of the Family Responsibility Office can seek—and does seek—licence suspensions, passport denials and now, often at first instance, jail time upon default of paying child support.

This committee has the opportunity to ensure true access to justice by abandoning schedule C of Bill 14 in favour of a new bill granting self-regulation to paralegals, as recommended in the Cory report, or, in the alternative, making changes to this draft legislation to require that the law society allow regulated paralegals the right to appear in Family Court, to be hired as legal service providers in family law matters and to be hired by the public to produce the very documents relied upon in Family Court.

Failure to do this is a fundamental denial of access to justice, particularly for women, low-income Ontarians and new Canadians from ethnic communities, and will bring the administration of justice into disrepute. Ontario will see more miscarriage of justice and process delays. Self-represented litigants will be frustrated with the complexities of issuing, filing and serving documents and in comprehending the paperwork required and the information that is needed. Bad court decisions will ensue when self-represented litigants are unable to articulate and advocate effectively on their own behalf.

I ask this committee to remove schedule C from Bill 14 and ask the Attorney General to prepare a new act based on the Cory task force report or, alternatively, to specify in the legislation the right of licensed paralegals to provide their services in family law matters, permitting them to appear in the Ontario Court of Justice, the Family Court of the Superior Court of Justice and the Superior Court of Justice in the following matters outlined in the Paralegal Society of Ontario's white paper:

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—to prepare, file and otherwise assist the public in the preparation of all paperwork for all matters to be taken before the Unified Family Court of the Superior Court of Justice, the Ontario Court of Justice and the Superior Court of Justice;

—to prepare draft separation agreements resolving all issues, provided that the parties are then referred to a lawyer to obtain the certificate of independent legal advice;

—to assist in the area of family mediation;

—to represent the parties in both the Ontario Court of Justice and the Superior Court of Justice at all stages of the process in the following matters: all applications and motions for child support, child access and for spousal support, including divorce applications; all applications and motions dealing with property issues, including division of the matrimonial home, where the value of the property, excluding the matrimonial home, is less than $25,000; matters involving the Family Responsibility Office, including default hearings and motions to vary existing support orders; matters under the Child and Family Services Act dealing with child protection cases; licensed and certified paralegals shall be entitled to obtain legal aid for qualified clients at approved paralegal rates; licensed and certified paralegals shall be permitted to act as representatives in the court under the legal aid duty counsel program.

In summary:

(1) It is a conflict of interest for the law society to be the regulator of paralegals.

(2) Lawyers have had many years to adjust their practices to address the problem of affordable access to justice, and they have failed to do so.

(3) Under Bill 14, the law society shall have the right to determine areas of practice permitted by paralegals. The law society will restrict the permitted areas of practice, and as a result, the public's access to justice shall be restricted.

(4) The public will face an escalation in the cost of obtaining legal services rather than the decrease in costs that is the stated purpose of this regulation.

I therefore recommend to this committee that schedule C of Bill 14 be removed and a new bill prepared to create a self-regulatory body to oversee the professions, in accordance with the white paper presented by the Paralegal Society of Ontario, which is based on the recommendations of the Cory task force report. In the alternative, amend Bill 14, schedule C, to specify in the

bill itself the permitted areas of practice of paralegals, especially specifying areas of practice in family law.

I thank you for the opportunity to address the committee and for your kind attention and consideration.

The Chair: You're right on. You've used your 20 minutes. Thank you very much for your presentation.

PARALEGAL SOCIETY OF ONTARIO
PARALEGAL SOCIETY OF CANADA

The Chair: The next presentation is from Mr. Paul Mitchell of Beach Paralegal. Good morning. You have 30 minutes. You may begin.

Mr. Paul Mitchell: My topic here today has to do with grandfathering. It's a subject that hasn't been brought up too much, and I don't believe it's in the legislation very much.

Briefly, my background is that I graduated as a law clerk from Centennial College of Applied Arts and Technology in 1983. Since that time, I have operated a paralegal business employing several staff. I am a founder of the Paralegal Society of Ontario, as its membership director, and more recently, I have been involved with the Paralegal Society of Canada, as its treasurer and membership director. From the onset of these paralegal societies, the ultimate goal is to organize everyone involved in paralegal practice and thus bring some credibility to this profession. I was also involved in the formation of the errors and omission insurance program that our members subscribe to as part of their membership.

You will hear from many paralegals in these hearings. The areas of work in which paralegals are involved make it very difficult to make everyone come to the table in a cohesive manner. You will find that we have one thing in common: If done in the right way, we believe that regulation can be a good thing for the people of Ontario and a good thing for paralegals.

The general perception is that at the present time in Ontario, professionals who operate and carry on business in the paralegal profession have no accountability to anyone except the general public. This, of course, is not true. The public, for all intents and purposes, does regulate and control the profession. They regulate the profession by rewarding competent paralegals with their business and putting incompetent paralegals out of business. The courts and tribunals in which paralegals appear regulate the profession. Jurists are adept and not at all unwilling to chastise the incompetent practitioner in open court. This affects a paralegal's ability to attract clients and remain in business. The liability insurers who provide our errors and omissions insurance regulate our profession. Only competent paralegals without a claims history are insurable. The only reason for government regulation of paralegals is to give the general public a single place to turn, if and when they have a complaint about a paralegal's service.

The Paralegal Society of Ontario has taken steps to address the areas of concern and has dealt with some of the complaints to the point that the complainant is now satisfied with the results. These practices were put in place long before any steps were taken by any authoritative body to regulate the profession. The Paralegal Society of Ontario has also developed a code of conduct which members agree to adhere to when they join. These are positive steps that we feel have been taken in our own way to try and bring legitimacy to our profession.

At the present time, there are numerous areas in which paralegals practise. Clear guidelines need to be developed in order to achieve an end result that is beneficial to the people of Ontario, particularly low-income families and ethnic communities, as well as the paralegal profession. Specifically, there are many paralegals who have been practising in niche areas for over two decades, and they have become very proficient in what they do. Any regulation scheme for paralegals must ensure that long-time-practising paralegals may continue to serve.

Historically, the government, when legislating the regulation of a profession in which people have been working for a number of years—the legislation has always included a grace period in which long-time practitioners are exempted from the certification process. The rationale is that long-time practitioners have acquired practical skills in their area of specialty but may not, due to age and other considerations, test well in certification examinations.

The Paralegal Society of Ontario and the Paralegal Society of Canada have developed several suggestions on how long-time-practising paralegals can be grandfathered under this legislation. Bill 14 in its present format gives no consideration for people who have been working in niche areas of the law. Usually, their niche specialty is all they know. Contrast this with lawyers who go to law school and are introduced to all areas of the law, only later developing a specialty area of practice. Paralegals have reversed this process, developing niche skills to high levels of technical expertise, usually through years of hands-on practice. These paralegals restrict their practice to their area of expertise, and it does not make practical or economic sense to require niche experts to write and pass a generalized examination.

Today's paralegal, tomorrow's legal service provider, should not be required to go through a comprehensive certification process. Most paralegals currently in practice will be happy to meet qualifying standards in their niche area of expertise. They do not want to have to go back to school to learn areas of law in which they will never, ever practise.

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The paralegals of whom I speak have core competencies in traffic court, workers' compensation claims, immigration, family law, bankruptcy, and credit and collection. The paralegals of whom I speak practise only in their areas of expertise. A paralegal who manages a worker's compensation claim does not need to know the defences to a careless driving charge. A paralegal who completes forms for an uncontested divorce does not need to know how to arrange an independent medical

examination for a worker's compensation claim. A credit and collection specialist operating in Small Claims Court does not need to know how to complete family law documents.

It would not be in the best interests of anyone—courts, tribunals, government, lawyers, paralegals or the public—to pass this legislation without provisions for grandfathering the right to practise for currently practising professionals. To do otherwise would have three adverse consequences: It will put some paralegals out of business; vital niche skill sets will be lost to the general public; and the cost of these core paralegal services that survive will increase.

There are numerous examples of professionals that have been exempted from mandatory certification or qualification when regulatory legislation was passed. Accountants, insurance brokers, insurance adjusters and real estate agents are but a few. A more common one that people would know is paramedics. They started out being strictly first aid providers. Over the years, people who were left in it were allowed to upgrade to today's skills. They're now referred to as paramedics, where they can use all kinds of lifesaving skills on the scene. Years ago—25 or 30 years ago—they couldn't do that. They were allowed to stay in, and they've stayed.

The solution of the PSO has been set out to the government, and I'll summarize part of it here. Fortunately, there is a solution to this problem. There is a means to serve both the interests of the public—consumer protection—and the paralegal profession. The Paralegal Society of Ontario and Canada recommend the following:

—All practising paralegals aged 60 or older and with at least five years' experience practising in a niche area of law should be fully exempt from the qualification and certification process put in place by the regulator;

—All currently practising paralegals with at least two years' experience practising in a niche area may elect, within two years of the passing of this legislation, to directly challenge the qualification and certification process put in place by the regulator; or, at their own expense, present their qualifications to a peer review committee established by the regulator, whose findings shall be binding.

The public will be well protected, even when currently practising paralegals are exempted from the certification process. Even though exempt from writing qualifying examinations, these practitioners will still be required to take mandatory continuing legal education courses to maintain and upgrade their legal skills.

To summarize, paralegals currently practising have valuable niche skill sets that will serve the people of Ontario. These experts should not be required to acquire skills in areas of law in which they will never practise. If this legislation is passed, it should include provisions for the grandfathering of currently practising paralegals. To do otherwise is a waste of economic resources and will only lead to fewer practising paralegals with the expert knowledge and skills that Ontarians utilize every day.

Thank you very much for the opportunity to speak.

As a point of clarification, I've mentioned in my speech the Paralegal Society of Canada and the Paralegal Society of Ontario. I've been involved with both of those organizations, and here, today, this submission is on behalf of both organizations. Thank you.

The Vice-Chair (Mrs. Maria Van Bommel): Thank you, sir. That leaves us about six minutes for each side. Sir, would you—I'm sorry. The committee would like an opportunity to ask you some questions and make some comments, if that's okay.

Mr. Paul Mitchell: Very well.

The Vice-Chair: Mr. Chudleigh, please.

Mr. Chudleigh: Thank you for coming, sir. I take it you don't feel you're going to get a fair shot from the law society, which is probably true. That's a good sense of your competitors. You suggested that there should be a grandfathering involved. Do you have any suggestion as to what that period of time of service might be? Would five years of experience—are you talking 10 or 15? What kind of—

Mr. Paul Mitchell: In some of the discussions that we've had with the associations it's been in the range of five years. That's what we've been discussing. I don't think we've actually tied it down to whether it's five or 10 years, but at least five years.

Mr. Chudleigh: Has there been any suggestion that in that five years there should have been no complaints against that person through some recognized organization? If there have been any legal situations that have been brought because of their operations as a paralegal, should that be part of that consideration?

Mr. Paul Mitchell: There was some touching on it, but I do personally think that it should be one of the criteria that are involved.

Mr. Chudleigh: Good. Thank you very much.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, Mr. Mitchell. I've not seen the letters "PLL" before. They stand for?

Mr. Paul Mitchell: You'll see a few people have got PLL. In the Paralegal Society of Canada, we applied to Industry Canada, I think it was, to get some sort of a designation. The designation had certain qualifications that had to be met in order to have that designation behind your name, recognized by Industry Canada. The actual qualifications escape me at the moment, but if the committee needs them, I can dig them up and get them for you. Any members who wanted to qualify for that had to be in business for a certain length of time and had to have some references and whatnot presented for them. But we've got the authority from Industry Canada to be able to designate that to anybody who meets the criteria that we've set down for it.

Mr. Kormos: PLL?

Mr. Paul Mitchell: Paralegal litigator. You have to be in the litigation business, collection and suing. "Para," "legal," "litigator."

Mr. Kormos: Hence the two Ls.

Mr. Paul Mitchell: That's right.

Mr. Kormos: Gotcha. Thank you kindly.

The Chair: Thank you, sir, for your time and your presentation.

Mr. Paul Mitchell: Thank you.

MARK BROWN

The Chair: The next presenter is Mark Brown.

Mr. Mark Brown: Good morning, ladies, gentlemen. Actually, I'm a practising paralegal myself. I've been in practice for about five years now. I'm also currently enrolled in Seneca College. I'm taking the accreditation that the law society is proposing. I don't have any problem with that.

There are three proposals that I've asked for to be amended to this bill, the first one being that the law society itself and the government have said that they agree that certain areas of our practice should be in law for paralegals, such as Small Claims Court, tribunals etc. I would like these proposals written into the bill. If it's written into the bill, then paralegals like myself will know that at least we have these areas that we can practise in. If it's in the bill, the Law Society can't unilaterally change this.

This is of great concern to me. As a paralegal, how can I accept new clients when I don't even know if I'm going to be allowed to practise the next month? How can I do this in good faith? I think everyone here will see this as a reasonable request. The law society says they're in favour of it, the government is in favour of it, so why not put it in the bill?

The second proposal I'm asking for is that the Attorney General be in charge of the paralegal regulation committee and not Convocation. As I'm sure you're all aware, the Convocation is going to be 40 lawyers, eight laypersons and two paralegals. To me, this is just ridiculous. Paralegals have no say whatsoever. I feel, according to the Constitution of Canada, it's the Attorney General's and the province's responsibility to regulate the legal system, not the law society. The Attorney General is the one who is elected. I would be much happier with the Attorney General regulating me as opposed to someone I'm competing against. I'm sure everyone can understand that. For example, Canadian Tire would not like to have Wal-Mart determine where they can practise and what kind of business they can do. How could they compete? What's Wal-Mart going to say—"We want competition"? Of course not. If you would do this, you would remove the conflict of interest from the law society.

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The final amendment I have asked for is that as far as areas of practice are concerned, after a two-year transition period in which all paralegals are regulated, we're all controlled, we all have errors and omissions insurance, that they have a look at the Ianni and Cory reports and see about expanding the practice of paralegals and what the law society has said now. To me, it makes no sense whatsoever to have the areas of paralegal practice greatly restricted once they're regulated. When you're not regulated, you can do whatever you want, there are no rules; and when you're regulated, you can't do anything. That's what it says: There are no areas of practice we can do at all. It's up to the law society. Who knows what they're going to say?

Those, in short, are the three amendments I've asked for. You can read them over yourselves. Are there any questions anyone would like to ask of me?

The Chair: Thank you. Government side, any questions?

Mr. Zimmer: You realize, of course, that within the law society there will be a paralegal committee set up. There will be five paralegals on it and five lawyers. There will be three citizens at large, neither paralegals nor lawyers, representing the public interest, if you will, and that committee will always be chaired by a paralegal.

Mr. Brown: I'm happy with that. I have no problem with that part of the legislation. It's just that if there's a dispute and the committee cannot resolve any issues, it's going to go to Convocation, and in Convocation it's 40 lawyers, eight laypersons and two paralegals. To me, this is giving basically a private monopoly to the law society for legal services in Ontario, and I don't see how a private monopoly is going to help competition or lower costs for business, lower costs for low-income and middle-income earners when they need routine access to justice.

The Chair: Mr. Chudleigh?

Mr. Chudleigh: Thank you. I enjoyed your presentation. I like your three amendments. They look like a reasonable approach to the problems that are being faced. I can't understand why anyone would think that the Law Society of Upper Canada is going to give the paralegals a fair shake. I think that both the paralegals and the public at large deserve to have some regulation involved in paralegals; they are doing pretty sensitive things for individuals, in court and otherwise. That's agreed to by all the paralegals I've talked to.

Mr. Brown: Yes, I want regulation. I'm very happy to be regulated.

Mr. Chudleigh: It gives some credibility to the profession, and the regulation would include levels of insurance; it would include certain levels of education. I understand you're currently involved in the course.

Mr. Brown: Yes.

Mr. Chudleigh: Those are all good things. How they expect Wal-Mart to regulate Eaton's—

Mr. Brown: Or Canadian Tire.

Mr. Chudleigh: Does Eaton's still exist? Canadian Tire—it's beyond me. Thank you very much for your presentation today.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Mr. Brown. I don't have as Shakespearean a view of lawyers as Mr. Chudleigh, but I do appreciate your participation here.

Mr. Brown: I just want to make sure that it's in law so I don't have to hope that it can be fair.

Mr. Kormos: Thank you kindly.

Mr. Brown: I hope it will be fair, but I'd like to have it written in the bill so that they have to be fair.

The Chair: Thank you very much.

CARIN CAMPAGNA

The Chair: Is Mr. Kirshin here? No. We'll skip over to Ms. Carin Campagna. I hope I pronounced your name right.

Ms. Carin Campagna: It is closer to "Corinne," but over the years I've answered to "Corinna," "Carolina," and one year "Maria." It wasn't even close. It's actually pronounced "Carin Campagna."

The Chair: You have 20 minutes. You may begin.

Ms. Campagna: May I begin by stating that I am a paralegal, not a lawyer. I appreciate this opportunity to speak before the standing committee today. My name is Carin Campagna. I'm an honours graduate of Seneca College's court and tribunal program, with a certificate in alternative dispute resolution. I have recently opened an office with a colleague of mine to assist the community in Small Claims Court matters. I support the regulation of paralegals, but I do not agree that the Law Society of Upper Canada is the appropriate body to mandate this proposal.

Bill 14 will not only dictate the future of the paralegal profession but it will dictate whether or not the average person, with an average income, is able to file a defence or commence a legal action in Ontario because Bill 14 has provided him with increased access to justice. People are retaining paralegals as an alternative to lawyers more frequently than ever. They are not confused about the difference. They seek us out. They are frustrated with the cost of lawyers versus the quality of the services provided. This frustration is reflected in the magnitude of malpractice lawsuits filed each year against lawyers.

This is about ethics, but this is also about money. Statistics Canada reported in 2004 that there are 3.5 million Canadians living within the low-income cut-off line, 40% being single parents and 865,000 people in this community being children under the age of 18. Family Court has been deprived of legal aid since about 2002. Consequently, women and children have been adversely affected. Mothers unable to afford representation are losing their children in custody battles or giving up valid legal rights to child support. Violence and emergencies are the only avenues left that provide eligibility and access to counsel. How will Bill 14 provide the vulnerable and the underprivileged with increased access to justice?

While my current office operates in the heart of the Greek community, I have had the opportunity to assist a lot of the residents in Little Portugal. Some would come by with parking tickets, rent discrepancies or the ever-popular 403 bill disputes. Others would come in with correspondence from their banking institutions or letters from the Family Responsibility Office that they couldn't understand or respond to. I would respond. One gentleman was penalized over $2,400 for failing to report his earnings to EI. Supporting documents and a few phone calls soon had that rectified and the penalty was reversed; everyday issues that I as a paralegal was happy to address—affordable, reasonable and resolved.

We as paralegals help those who are struggling to raise their families on $12 an hour and cannot afford a lawyer's fee. Those in the ethnic community whose English skills prevent them from defending themselves or those who need a voice at court regardless of whether their case is considered financially viable or not—we help them all.

The recommendations mandated by the task force will effectively eliminate many paralegals who cannot afford to satisfy the catalogue of recommended fees, including, but not limited to, licensing fees, insurance fees and a compensation fund. Additional paralegals may be eliminated by the degree of difficulty in passing the licensing requirement itself. Who will dictate its contents, standard of complexity and cost requirements to pass? This bill will have an immeasurable negative effect on the underprivileged public sector that cannot afford a lawyer by further reducing their access to justice should the paralegal community be abridged.

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In 1998, Mr. Malcolm Heins, who was then president of the insurer for the Law Society of Upper Canada and its members, stood before a standing committee and addressed his concerns for the quantity of claims filed each year against lawyers and the $75 million a year it cost the insurers to resolve these claims. In the previous nine years, he reported that the insurers had paid out $675 million in malpractice lawsuits. Mr. Heins is now the CEO of the law society, and he stated in the March 2006 issue of the Lawyers Weekly that he is "confident that the law society will be able to manage effectively" with the inclusion of paralegals.

Eight years ago, this same gentleman expressed concerns with issues of lawyers' competence, standards of practice, quality of legal services and the claims' negative impact on the public and the profession. It is apparent that the public's confidence in the legal community has not improved in the years since, as reflected in the 7,470 complaints filed against lawyers in 2003, a 19% increase over 2002. In June 2006, in an extended effort to monitor new lawyers, the law society expanded its practice review program.

Given the caseload associated with increased complaints against lawyers, year after year, how does the law society intend to assume the additional role as the regulatory body for Bill 14? Why should the paralegal community have any more confidence in the law society than the general public and communities at large? How does it propose to effectively manage the future of paralegals when it clearly cannot manage its own?

Furthermore, I do not believe the law society to be the appropriate body to regulate the paralegal profession because of the transparent conflict of interest. It is the lawyers—from Justice Cory's report in 2000 to the Ontario Trial Lawyers Association's submissions in 2004

and the Ontario Bar Association's consultation paper in February 2006—who will dictate the rules, regulations and restrictions imposed on paralegals. The professional conflict of interest between paralegals and lawyers will be further augmented with the pending jurisdictional increase in Small Claims Court. This bill demands that an impartial regulatory body would better serve the public by monitoring any anti-competitive behaviour from the lawyers through bills or otherwise and addressing public concerns or complaints objectively.

If the purpose of this bill is to establish a paralegals' code of conduct and a regulatory body to address the public's complaint against a paralegal, how will this complaint translate? It probably means he is applying for compensation for services not rendered or rendered with an unsatisfactory outcome. Essentially, he wants some or all of his money back. He doesn't need Bill 14 to do this. He takes the paralegal to court, just as you would have a lawyer taxed should you feel that his fees were unreasonable or unjustified.

I had the opportunity to assist a client in a complaint filed against a lawyer in 2003. We were successful. The law society determined after an investigation of his practices that he had behaved unethically and that his conduct was questionable. His reprimand was fundamentally a slap on the wrist and his name put in some sort of a black book. Regarding the fee dispute, my client had to retain a lawyer and file an action at court costing an additional $8,000 in legal fees to have this matter resolved in his favour, the point being, if you have a complaint of competency or negligence and you demand compensation, you don't go to the ethics committee; you'll have to file a claim. The public cannot be misled into overestimating the authority of this regulatory body.

In conclusion, I thank you for your time and ask for your support in my move for an independent body, held by paralegals, nominated by paralegals and perhaps monitored by the Attorney General. This is how I believe the paralegal profession will be directed successfully into the future for the benefit of those who need it most.

The Chair: Thank you. About three minutes for each side. Mr. Kormos.

Mr. Kormos: Thank you, Ms. Campagna. I say to the parliamentary assistant to the Attorney General, Mr. Zimmer over there, that if the government can't come up with some paralegals who support this proposal, then the legitimacy of the proposal remains very much in question. So far, all we've heard from paralegals, established ones, long-time ones, is that they support regulation but are concerned about the scheme proposed by the government. Is that a fair observation, Ms. Campagna?

Ms. Campagna: Yes, it is a fair observation.

Mr. Kormos: I wanted to add one more thing, because that's one argument you've got, that it's unfair to have lawyers regulating paralegals, that paralegals are quite capable of regulating themselves, and, as I say, we haven't heard from any paralegals who disagree with you yet. The other position you seem to take is that the law society has done a crappy job of regulating lawyers, so why would we count on it to regulate paralegals? Is that a fair interpretation of your comments? You might not have used that language. You didn't.

Ms. Campagna: It's a fair enough observation. It just appears to me that the law society has had its hands full, and I don't know if it could take on at this time any further responsibilities. As mentioned by Mr. John Wilkinson in February, during second reading, "It's a bill that only a lawyer could love." So I do have my concerns with comments like that. And he repeated it, saying, "Only a lawyer could love this bill." Are you here today?

Mr. Chudleigh: Mr. Zimmer loves this bill.

Mr. Kormos: That's your John Wilkinson.

Ms. Campagna: Just an observation from the second reading. I'm not taking it out of context. That's actually what was said.

Mr. Kormos: Thank you, Ms. Campagna.

Ms. Campagna: Thank you very much.

Mr. Kormos: No, we've got more.

Ms. Campagna: Oh, we have more.

The Chair: Mr. Zimmer?

Mr. Zimmer: Thank you for your presentation and thank you for the very good and capable work you do in your community.

Ms. Campagna: Thank you very much.

The Chair: Mr. Chudleigh.

Mr. Chudleigh: Beating up lawyers is almost as much fun as beating up politicians. It strikes me that we're surrounded by lawyers at this table. Mr. Kormos is a lawyer; Mr. Zimmer is a lawyer.

Mr. Zimmer: I make that two out of seven.

Mr. Chudleigh: Two out of seven. I'm just wondering—

Mr. Kormos: But at 3 o'clock in the morning when the cops are banging on your door, you're going to call one of us, aren't you?

Mr. Chudleigh: No, I'm going to call the chief. I think I'd call the chief. However—

Interjections.

Mr. Chudleigh: I'm in opposition; I can call the chief.

I just wonder if there's not a conflict of interest with lawyers sitting on this committee and making decisions concerning whether paralegals are rightfully represented by the Law Society of Upper Canada. I'm wondering, Mr. Chair, if we should adjourn this hearing until we can get a ruling on that from the Integrity Commissioner.

Ms. Campagna: I would like a better balance to be heard. I'd like a nicer balance.

Mr. Chudleigh: There's not one paralegal on this committee. I think it's—

Mr. Zimmer: But the Integrity Commissioner is a lawyer.

Mr. Chudleigh: He doesn't sit on this committee. I'm quite serious. I wonder if we're doing the right thing, if we don't have some conflicts of interest sitting around this table.

Mr. Kormos: I'd suggest that's a point of order the Chair has to consider. I'm sure Mr. Zimmer agrees with

me that we want to pursue this matter with clean hands, so I would support the proposal that the matter be put to the Integrity Commissioner and that these committee hearings—if it's a matter of integrity, Mr. Zimmer, surely you want to have the seal of approval.

Mr. Zimmer: Mr. McMeekin, a non-lawyer, is going to speak.

Mr. McMeekin: Mr. Chairman, I don't think anybody in this room who knows Mr. Kormos or Mr. Zimmer would for one millisecond question their integrity when it comes to this sort of issue—

Mr. Kormos: As compared to any other?

Mr. McMeekin: —any more than we would question the right of somebody with legal training to put their name forward to stand for public office. The same kind of argument could be made.

I think Mr. Kormos and Mr. Zimmer are first and foremost here to take care of the public interest, not to represent some narrow, partisan professional bias. That's my suggestion. There may be colleagues here who think otherwise, and shame on them if that's how they really feel.

Mr. Kormos: I find that a remarkable comment from Mr. McMeekin, when on other occasions he's been far more scathing about my ability to be fair-minded and independent.

Mr. McMeekin: Never scathing. Never.

Mr. Chudleigh: Mr. McMeekin has mentioned that there's been no one in this room—I wonder if we could survey the room. There seem to be a number of paralegals here, and I'm suggesting that they're the people who are being aggrieved by this process. Perhaps one of them would like to express an opinion as to whether the lawyers on this committee are sitting in conflict of interest or not.

Mr. Kormos: Chair, let's just clear the air and let the Integrity Commissioner deal with this.

The Chair: We'll take that under advisement. I think Mr. Zimmer is here not as a lawyer, but as a parliamentary assistant. We'll take that under advisement, and considering the next person isn't here, we'll recess for lunch until 1:30.

Mr. Chudleigh: And will you seek a ruling from the Integrity Commissioner on this issue?

The Chair: We'll seek a ruling on this.

Mr. Chudleigh: Thank you very much.

Ms. Campagna: Could I just clarify that you'd be seeking a ruling from the Integrity Commissioner today, sir? When would that be?

Mr. Kormos: It could take weeks.

The Chair: We don't know—

Ms. Campagna: It could take weeks?

The Chair: It may not be the Integrity Commissioner, but we will seek further information on that. Thank you. This committee is recessed until 1:30.

The committee recessed from 1132 to 1333.

The Chair: Good afternoon, everybody. We're resuming our meeting here this afternoon. First, I want to address Mr. Chudleigh's concern about the conflict of interest. I'll just read this out here:

"Members indicating a conflict:

"It is not the responsibility of the committee, committee Chair or committee clerk to determine whether a conflict of interest exists. Members with a possible conflict of interest or a belief that one may exist for another member should seek the advice of the Integrity Commissioner, as outlined in the Members' Integrity Act."

That being said, I'd like to state the following quote from the Members' Integrity Act:

"Conflict of interest

"2. A member of the assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest."

For the record, the definition of "private interest" is set out in section 1 of the act as follows:

"'Private interest' does not include an interest in a decision,

"(a) that is of general application,

"(b)"—which is the important part here—"that affects a member of the assembly as one of a broad class of persons, or

"(c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly."

Having said that, I hope that addresses Mr. Chudleigh's concern. Mr. Kormos?

Mr. Kormos: I'm sorry, but it doesn't. In fact, it further muddies the water. Mr. Zimmer, Ms. Elliott, the Conservative member of this committee and colleague of Mr. Chudleigh's, and I of course are lawyers. Although I don't currently practise law and haven't since 1990, I am a member in good standing of the law society. Mr. Zimmer indicated that he was as well, and I'm confident Ms. Elliott is too. I haven't seen her name in the back page of the ORs—I don't think I've seen it ever. Mine showed up from time to time over the course of the years for late payment of fees, but that's a different story.

You create a problem now. I suggested to you that Mr. Chudleigh's unfortunate intervention was a point of order. If you agree that it was a point of order, it leaves it to you to determine whether or not it was in order.

Now you raise a red flag. You say that it is incumbent upon members to seek the counsel of the Integrity Commissioner. That is certainly how I hear your comments as Chair. You then create a serious problem. You're the Chair, and we—

Mr. Zimmer: I'm a bit late. Where are we?

Mr. Kormos: We're in a little bit of hot water, Mr. Zimmer, because of the ruling the Chair made.

Mr. Zimmer: Which was?

Interjection.

Mr. Kormos: That's precisely the point. I suggested to you that Mr. Chudleigh was making a point of order. If it was a point of order, it's for you to determine whether

or not it was a valid point of order. Rather than determining whether or not it was a valid point of order, you go to the extraordinary length of reminding us of our responsibilities under the Members' Integrity Act.

Mr. Zimmer: May I just ask the Chair to read back so I just know what—

Mr. Kormos: You want to compound this?

Mr. Zimmer: I want to have the context of the—

Mr. Kormos: Be careful what you wish for.

The Chair: Thank you very much, Mr. Kormos. The ruling was that it's not up to me as a Chair or the committee to determine if there's a conflict of interest. That is a ruling.

Mr. McMeekin?

Mr. McMeekin: I just want to say that my understanding of the rules, in particular around integrity, is that it's up to each individual member to determine whether or not they are in conflict. If Mr. Kormos, for example, believed he was in conflict as a result of the earlier discussion, he'd be not only entirely in order but would be morally required to recuse himself from the session.

Mr. Kormos: Do I have the floor or not, Chair?

Mr. McMeekin: So the way—the way—

Mr. Kormos: What's going on here? I don't need lessons in morality from a Liberal.

Mr. McMeekin: No, no. I'm not giving anybody a lesson. I'm just commenting on what my understanding of the process is. If anybody feels they have a conflict—I think this is what you were saying—

The Chair: Absolutely.

Mr. McMeekin: —it's up to them to determine it and to declare it. In the absence of that, we assume there's no conflict.

The Chair: Mr. Kormos?

Mr. Kormos: No. Okay. See, I don't need instructions, in my morality, in the Members' Integrity Act, from Liberals. The problem is that Mr. Chudleigh raised a concern. He raised it to you. Mr. Zimmer and I were very candid in acknowledging that we were members in good standing with the law society.

Mr. Chudleigh, the Conservative, very, very adamantly criticized the presence of lawyers on this committee, indicating that it was a conflict of interest, in his view. Mr. Chudleigh is not here this afternoon—I don't understand why, because one would have thought that he would have wanted to follow through on the strong ground he took this morning.

Your response, which is to cite the Members' Integrity Act, rather than to dismiss with no further comment Mr. Chudleigh's point, then puts people in the interesting position of—because you've talked about the need for members to inquire of the Integrity Commissioner whether or not we are in violation of any standard. Surely if Mr. Chudleigh was out of order, and the Chair had no further interest in the matter and saw no validity to the observations Mr. Chudleigh made, it would be incumbent on the Chair to merely say that, rather than carrying it on with citing the Members' Integrity Act. So, again, this is problematic.

I would invite the Chair to merely indicate that Mr. Chudleigh, dare I say it, was so far in left field—no, I won't give him that much credit—was so far out of the ballpark that it had no merit and was of no interest to the Chair. By going further and purporting to remind members of their obligations, you are equivocal in your response. That causes me some concern, because far be it from me to want any of these folks to think that an experienced member like Mr. Chudleigh could have had some basis for his concern about Mrs. Elliott being a lawyer, and his dismissiveness of her, his own colleague, by inference; and Mr. Tory being a lawyer, and, by inference, his dismissiveness of his own leader. Good grief, Joe Tascona, then, I suppose, wouldn't be able to sit on this committee either, or any other number of people. So I really need some direction, I need your help, since you've waded into this. Throw us a life ring.

The Chair: Thank you, Mr. Kormos. What I stated was, it's not my position—it's not for me to decide whether it's a conflict of interest. I can't validate Mr. Chudleigh's concern. He can pose any question, and there may be something that I can't address. So that's the ruling, and I suggest we move on with our next presenter this afternoon, as I see no benefit to your argument. If you feel, or anyone else feels, that there's a conflict, it's there; everyone knows. I just repeated it for the record. I don't see what the issue is here.

Interjections.

The Chair: I don't think that's the case. I think we'd be better using our time if we moved on with today's meeting.

Mr. Zimmer: On a point of order, Mr. Chair: May I just have a hard copy of the ruling?

The Chair: Absolutely. We'll get copies for you.

Mr. Zimmer: Can I just—just while you're making copies?

The Chair: Okay, we'll move on.

Mr. Kormos: On a point of order, Mr. Chair: I suppose the Chair might have simply said that Mr. Chudleigh was out of order by imputing motive, contrary to the standing orders which apply here.

Mr. Zimmer: On a point of order, Mr. Chair: I'm asking for a five-minute recess. I need a hard copy of the ruling. I've just read it, and I need five minutes.

The Chair: I've said it many times. The ruling was that I can't rule on that. Do we—

Mr. Zimmer: A five-minute recess.

The Chair: A five-minute recess? Okay.

The committee recessed from 1344 to 1406.

The Chair: This committee is called back to order.

Mr. Kormos: Chair, with apologies to people who are here to make presentations this afternoon, I'm asking for unanimous consent that this committee adjourn until tomorrow morning at 9 a.m.

The Chair: Is there unanimous consent? Agreed. We're adjourned until tomorrow morning at 9 a.m.

The committee adjourned at 1407.

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