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Lundi 11 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
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Monday 11 September 2006

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Lundi 11 septembre 2006

The committee met at 0906 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 Vice-Chair (Mrs. Maria Van Bommel): Good morning, everyone. I welcome you to the standing committee for justice policy.

CITY OF MISSISSAUGA

The Vice-Chair: At this point I would ask that the city of Mississauga's Mayor Hazel McCallion please come forward. Welcome, Mayor McCallion.

Ms. Hazel McCallion: Thank you. Good morning, everybody.

The Vice-Chair: Good morning to you. I just want to lay out that you have half an hour to make your presentation. You can use the entire half-hour for your presentation. If there's time remaining, then there's an opportunity for members of the standing committee to make comments or ask questions. If you would introduce yourselves for the record. We all know who you are, but if you could, please, and then we'll proceed.

Ms. McCallion: Hazel McCallion, mayor of the city of Mississauga. I have with me Mary Ellen Bench, our solicitor, to my left, and to my right is our clerk, Crystal Greer. In the audience are Larry Murphy, who is the court manager in our city, and Doug Meehan, who's the prosecutor. So I've got a team with me that knows what's going on.

Thank you for the opportunity. Bill 14 contains amendments to a number of pieces of provincial legislation relating to access to justice. Schedule B will make amendments to legislation respecting justices of the peace to allow justices who have retired before reaching the mandatory retirement age of 70 to be retained on a per diem basis to deal with the backlog existing in provincial offences courts.

I have written to the Attorney General and to the Premier several times over the last couple of years, expressing my concern about the serious situation that is developing in our provincial offences court, because justices of the peace are not being appointed fast enough. As a result of the lack of justices, our courtrooms are sitting empty. At the same time, serious cases are piling up and are at risk of being stayed because of the length of time it takes to get them to trial.

When responsibility for the administration of provincial offences courts and for the prosecution of Highway Traffic Act and a number of other offences by municipal prosecutors were transferred to the municipalities in 1999, we entered into a memorandum of understanding with the province. Under that agreement, municipalities accepted responsibility for administering the provincial offences courts according to the principles and performance standards set out in the MOU. In order to do this, municipalities receive most of the revenue from fines imposed by the court. This revenue is needed to offset the costs of providing the building, the administrative and prosecution staff, and paying the full costs of the justices of the peace associated with these courts.

While fewer justices can mean less fine revenue to pay these costs, I want to stress that this is not about revenue; this is about the administration of justice. The Attorney General continues to be responsible for the integrity of the administration of justice in Ontario in accordance with the Ministry of the Attorney General Act. The shortage of justices of the peace is certainly challenging the integrity of the system. In fact, municipalities are being forced to add more police officers to lay charges, and then what happens to them?

It was almost exactly one year ago that I was told by the ministry staff at an AMO conference that there was no shortage of justices of the peace. I brought these ministry officials into a meeting in my boardroom with Associate Chief Justice Ebbs and our Senior Justice of the Peace Carole Jadis, who is now retired, to hear at first hand how the shortage of JPs was impacting the proper administration of justice in the city of Mississauga and surrounding areas. Needless to say, they left with a different perspective on the issue. I might mention that Mr. Ebbs came with a letter that he wrote to the Attorney General in 2004, clearly outlining the need for justices of the peace, and yet the staff was advising the minister that

there was no shortage. I can assure you we had an apology from the person who made that statement.

Since that time, the backlog in the Mississauga court is getting worse, not better. While we have seen media reports when new justices of the peace are appointed, what the media do not report is that these appointments don't even keep up with the numbers of JPs who are retiring or who are out of the system due to long-term illness. The presentation by the Association of Justices of the Peace of Ontario on Bill 14, dated April 27, 2006, states that the size of the justice of the peace bench has shrunk from a high of just under 330 three years ago to a level of 305 at the time of the report. Despite a couple of appointments since then, I understand that this number is actually smaller today, around 300.

The availability of justices of the peace in municipal provincial offences courts is also seriously affected by the other duties that these same justices must perform. As Associate Chief Justice Ebbs has advised, demands for the services of JPs in matters such as bail hearings are considered more important than provincial offences court, with the result that the resources available to our courts are quite limited. As a result, we are unable to get the number of justices of the peace to sit in our courts for trials to be heard within a reasonable time. In fact, it is not uncommon to have the limited resources made available to us pulled and reassigned to other duties, leaving us with a gap, and often scrambling to either reschedule trials or, when these things happen on the actual day of court, having to find a justice of the peace who will deal with the dockets from two courtrooms to the extent it is possible to do so.

In the year leading up to July 2005, the Mississauga POA court received 80,262 charges. In the year leading up to July 2006, this number had increased to 85,982 charges. Attached to my presentation, I have included these statistics—as provided to us, by the way, by the Ministry of the Attorney General. In trying to schedule charges, all available court dates have been used and the backlog has grown in the one year alone by 7,500 charges. City staff are working hard to prioritize what charges get scheduled for court because, as you know, charges that cannot be tried within a reasonable time will be stayed as a result of an infringement of subsection 11(b) of the Canadian Charter of Rights and Freedoms.

Even though we work to ensure that our more serious charges are heard as quickly a possible, we are facing more applications to have charges stayed because of delay. In the six months ending July 2006, Mississauga received 371 applications to have charges stayed for delay. During August alone, another 113 applications were received, bringing that number to 484 charges. Clearly, word is getting out that we have a problem.

The time to get to trial has also increased from 12 and a half months to 14 months. In the first six months of this year we have already exceeded the number of 11(b) charter delay applications received in 2005. In this last year, we saw sitting time in our courts decrease by 29%, and a significant amount of that trial time had to be spent arguing applications respecting delays, which resulted in even further adjournments for charges not reached.

Looking forward, between August 2006 and the end of the year, 33% of our courts will be closed, 67 court days, and 40% of our courts will be closed from January to July 2007, 101 court days. We still have 12,000 charges to be scheduled, and we don't know where to put them. Approximately one third of them cannot be scheduled because of the lack of justices of the peace. We can't schedule more charges in the existing court time, as we must follow judicial directives in this respect, and if matters go to trial, further adjournments and further delays would result, not to mention the waste of time of witnesses, including police officers, who must attend court. I took a picture last summer in front of the Hensall court before we took over. There were 12 police cars lined up, when they should be out on the street and in our community looking after crime.

Needless to say, Bill 14 will provide some welcome relief to the system by adding justices of the peace on a per diem basis to deal with this backlog. This is a useful response to all of the letters I have written and meetings I have held to bring this matter forward, and I hope it proceeds without further delay. I appeal to the opposition in that regard. We undertook together to improve services to the public with the goal of putting in place the most modem, efficient and effective justice system attainable. The city is doing its part: We built a new courthouse, and so did Brampton, and we have the staff to meet our obligations. Now it's up to the province to come through with the necessary justices to allow the system to work. By the way, we share justices of the peace with Brampton.

Regarding the other matters contained in Bill 14, I welcome any effort that will streamline or create efficiencies in the current Provincial Offences Act courts. The city of Mississauga has always been proud of the fact that we operate like a business and are pleased to assist in this respect. The proposal for allowing police officers to give evidence through video and audio conferencing instead of attending at court is a change that promises more efficient use of police time. I understand that the Attorney General is in the process of establishing a working group to undertake a streamlining review of the Provincial Offences Act, and we look forward to participating in this, a very major step forward.

Thank you very much for providing this opportunity to appear and bring these matters to your attention. If you have any questions, I would be pleased to answer them or have staff attending with me respond. I must also add that I have a group that is working together to put a report to me on the administration of justice in our area and the problems we're facing, and I will be presenting that to the Premier for action. It's serious. When we have police officers charging people, finding them guilty of crime—asking us to add to our police budget, which is growing rapidly, and, quite honestly, putting more police officers on the street will not succeed unless we have the justice system reviewed and improved.

The Chair (Mr. Vic Dhillon): Thank you, Your Worship. There are about seven minutes left for each party. We'll start with Mr. Runciman.

Mr. Robert W. Runciman (Leeds–Grenville): Thanks very much, Mayor McCallion. That was very interesting. I think it should be alarming to anyone paying attention to the challenges that you're facing and I suspect many other municipalities across the province are facing. I gather you have to be optimistic; I guess you're an optimistic person by nature. But as someone who has spent some time looking at this legislation, I'm not terribly optimistic that it's going to address the many challenges that municipalities like yours are facing currently.

One of the things that I think you and I would—you make reference here in a positive way with respect to the part-time JPs, who under this legislation will essentially be retired JPs, who then can, on per diem basis, provide those services. But there's no indication of what kinds of numbers we're looking at. Of course, you and I both go back long enough that we can remember when JPs in this province were effectively part-time JPs. That was changed by the NDP government to become this full-time, salaried group. I've been a long-time advocate of having a roster of part-time JPs, not simply retired JPs, but folks who can work and who don't have the costs associated with them in the sense of all of the benefits that go along with a full-time employee. I think the system worked very well 15 or 20 years ago, certainly much better than is currently the situation. I would like to see an amendment to this legislation to allow for the creation of a roster of part-time JPs, people who would meet the necessary qualifications. In my view, that would help enormously.

0920

I'm curious about a couple of things, and I'll try not to take up all my time so you have an opportunity to respond. It would be interesting to know, in terms of your court, what's happening with respect to remands. This is a problem that we hear occurring with remand after remand after remand, so that you have some judges, some JPs, remanding cases, where the defence bar is asking for these remands or for whatever other reasons there might be. That is, in essence, not assisting the situation.

When we talk about the Attorney General and Justice Ebbs telling you there's no shortage in terms of pure numbers, maybe they're right, but it's the way the courts themselves are operating. In fact, they are not operating in a very efficient or effective way and they're not dealing with these cases in a timely way. That may be another element of this that merits more consideration than is being given by this legislation.

Another element that I'd like to talk to you about—I heard this from people in my own riding in the united counties of Leeds and Grenville. With the transfer of the POA responsibilities to municipalities, there was also at the time transferred to them something like $2 million of uncollected fines. That has now grown to about $5 million. I guess the significance across the province is really substantial: hundreds of millions of dollars in uncollected fines. Part of the problem is that the municipalities don't have the authority to get the information through the Ministry of Transportation. With the information the province had when they operated the POA, they could go out and go after these folks who weren't paying their fines. Municipalities are not allowed access to the same kind of information, so you can't pursue these unpaid fines to the extent the province could when they had the authority. I'd like to hear what your situation is in your own municipality.

Ms. McCallion: I'd like the staff to comment on it.

Mr. Runciman: Sure.

Ms. McCallion: They're dealing with it every day. They just try to keep me in the picture as to what action should be taken. Mary Ellen?

Ms. Mary Ellen Bench: With respect to the remand issue, we don't keep statistics on the number of matters that are remanded or adjourned.

Mr. Runciman: Do you think we should on a court-by-court basis? I'd like to see that happen and to base it on the judge and the JP numbers. I think that kind of annual reporting would be very helpful and would ensure that those folks are doing their jobs the way they should be doing them.

Ms. Bench: Possibly. However, our experience has been that most of the remands tend to result from the shortage of justices, rather than from delay information. I think the problem you're referring to is one that's more at the higher court level as opposed to at the provincial offences court.

With respect to the uncollected fines, I think that would be a great tool if we could get access to that database. It certainly is an issue that we have that we're trying to deal with. We have some new tools that came in with the Municipal Act, 2001, in terms of using collection agencies, only that hasn't been quite as successful as we would have hoped. So I think it would be very useful.

Mr. Runciman: Okay. I'd like to hear the mayor's reaction to part-time JPs, because she—

Ms. McCallion: The which?

Mr. Runciman: With having a roster of part-time JPs to supplement the full-time.

Ms. McCallion: Yes, as long as they're qualified to do it. I think what the government is trying to do—quite honestly, I've been around a long time. Most of the JPs appointed are defeated politicians. Sorry. And all governments are guilty of that. No one party has that privilege. I think to improve the qualification of justices of the peace is a good move. I think there should be qualifications and there should be a clear process they must go through. Anything to help. If they're qualified, a roster of part-time would be quite acceptable. As long as they're qualified; that would be my position.

Mr. Runciman: Okay. Thank you.

The Chair: Mr. Kormos?

Mr. Peter Kormos (Niagara Centre): Thank you, Your Worship, and your staff. On the matter raised by

Mr. Runciman about your access as a municipality to provincial databases in terms of tracking down convicted offenders and collecting fines, could you be more specific? Could you elaborate and explain what the status quo is and what you need?

Ms. Bench: We have access to the ICON database in terms of the provincial registry. What the province had and what we were looking for in other submissions before—and I think it will come out in part in the POA streamlining—is the same kind of tools that they have to apply fines to get driver's licence information through the Ministry of Transportation database. Through ICON, we can track charges that are registered, and that gives us certain information, but our ability to access the remedies that the Ministry of Transportion has, like applying fines against driver's licences the way that, say, the 407 is able to, those kinds of things would be very useful to us.

Ms. McCallion: It's interesting that the 407 has the right to withhold your licence if you don't pay your bill. I don't know when the government will extend it to Visa. That would be very helpful.

Mr. Kormos: So you can access the Ministry of Transportation right now in terms of their information. How do you do it?

Mr. Larry Murphy: Yes, we can access the information that MTO has, but the largest problem is—

The Chair: Sorry to interrupt. Could I have you introduce yourself first for Hansard?

Mr. Murphy: Yes. Larry Murphy, and I'm manager of the courts admin. in Mississauga. With MTO, if you want access, basically you pick up the phone and you ask about the licence, which is extremely time-consuming, and you can't be doing that. What we really require is that people update their licence information with MTO, but there isn't an automatic feed into the integrated court operating network, so we're operating on old data. A lot of the fines that we're talking about here are pre-1999. I think in our case about $19 million out of $22 million is pre-1999, where there have been collection steps taken.

Mr. Runciman: It's not the case in my riding. It has gone up $3 million in the last few years.

Mr. Murphy: Okay. But at any rate, the large problem, as I said, is that there is an automatic update of the ICON system when MTO is updated. That affects even our trial setting, because people will give us old addresses. We send the trial notice out and it doesn't get to them.

Mr. Kormos: For instance, a parking ticket, where all you have is the motor vehicle plate number, how then do you access MTO? What's the actual process? How do you get the name and address of the registered owner? Is this a voice machine?

Mr. Murphy: Actually, I'm going to admit to my ignorance on this. I look after the part 1 and part 3 side of the business. The parking side is totally separate and I don't have any involvement in that.

Ms. Bench: Our parking control staff does have access to a certain database, and that's what they use, again, through the provincial system. But we don't have anyone here from parking. It's a separate group.

Mr. Kormos: I'm wondering if perhaps Ms. Drent would help us in this regard and give us a better understanding of how municipalities access provincial records. Is it one at a time, is it computer access, is it a telephone conversation, are there any charges back to the municipality for this and why is it that they can't access current information as compared to historical information?

Ms. McCallion: We'll do that.

Mr. Kormos: Yes, if you could help Ms. Drent in that regard, I think that would be helpful to us in terms of understanding this problem across the province. Your point about JPs—I can tell you, Niagara region is in the very same boat.

Ms. McCallion: This is province-wide. Don't think that this is just Mississauga.

Mr. Kormos: The problem is, the government has a majority. If they want the bill to pass, the bill will pass, but we still don't have any sort of commitment, never mind even a sense about how many JPs are going to be appointed, because JPs are being appointed now. There were half a dozen—what?—two or three weeks ago. We haven't been told how many are going to be appointed.

Thank you very much. I appreciate it.

Ms. McCallion: Well, a half a dozen won't do it—nowhere near.

Mr. Kormos: Far from it.

The Chair: Any comment from the government side?

0930

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex): Thank you very much for your presentation, Mayor. Earlier in the process, we had other deputations—and you talked about using police officers in court and the fact that it takes them away from their duties on the streets and in the whole criminal system. So you feel that it's important for them to be able to use video and audio conferencing as a way of testifying at court. We heard last week from one deputation that felt that that impeded a person's right to justice. How would you comment on that?

Ms. McCallion: Well, I support the video 100%. Unless the province wants to pick up the cost of our police services, which it doesn't, it's strictly on the property tax. We're trying to add policemen every year to look after crime because of the increase in crime, as you are well aware. No matter how many police officers you put on the street, when 12 cars are lined up at the Hensall court to do traffic convictions—they should be out on the street, I would think. So I guess it's up to the province whether it wants to fund that portion of the police budget. But it's impeding our activity. I recall a police officer in Toronto on the radio saying, "I arrested a guy this morning with a gun and before I got home at 5 o'clock he was out on the street again."

I really strongly believe, as I know my staff believes, that the justice system needs a complete review and renovation, second to none. I think our administration of justice is favouring the criminal rather than the provision

of protection for the citizens. When I go to court—and I've been to court a few times—and see our police officers sitting there waiting to go into the courtroom—the judge starts at 10 o'clock, and then a lawyer gets up and says, "I want it deferred." So the police officer goes home, and back again. What a waste of time of police officers.

We've got to do something. The administration of justice is costing us an arm and a leg, and it's not performing efficiently, in my opinion. It's time that somebody took the bull by the horns and had the courage to challenge the system and to get some changes.

I've got to tell you, I'm going to prepare a report on what's happening in Peel. I'm not going to the Attorney General; I'm going directly to the Premier to say, "This is the crisis situation that's occurring, and if it's occurring in Peel, it's occurring all over the province." It's not Peel. The time has come that we've got to take action.

The Chair: Thank you very much for your presentation.

THE BATHURST GROUP INC.

The Chair: The next presentation is by teleconference from the Bathurst Group. We're just getting those folks online. Mr. Bathurst, welcome to the committee, and you may begin your presentation.

Mr. William Bathurst: Thank you very much. I'm pleased to speak to the committee this morning. My name is William Bathurst and I operate the Bathurst Group in Chatham, Ontario, a small community in southwestern Ontario between Windsor and London.

My practice deals mainly with insolvency consulting. I talk to people about bankruptcy-related issues. There tend to be legal issues in dealing with that, and I feel that under this new legislation consultants as well as paralegals may be required to be registered. Because of this, I thought it might be worthwhile for someone to comment to the committee on the roles of consultants in the legal process.

It's my view that regulation tends to create a lowest common denominator. In many professions as well as union environments, there is a tendency to protect the people in the profession or the union who get themselves into trouble. The people who do their job from day to day and are very proficient very rarely will ever need the services of a regulatory body.

My fear with this legislation in allowing the law society to regulate the profession is that they will create clones, so to speak, in their own image. The effect of regulation on legal services will cause the cost of those services to increase. It may allow lawyers who do not otherwise hire paralegals to hire them. This may be a motivating factor in regulating paralegals, and you will find that paralegals, possibly hired by lawyers, will be competing with independent paralegals and forcing the cost of the services to go up.

If one really looks at what regulates things in society today, it tends to be the marketplace and the courts. I view regulation as an attempt to keep things out of the court by creating circumstances where, if people follow the rules, a particular item might be dealt with by a regulatory body rather than the courts, and it regulates the marketplace. There are no other professions I could find where their competition regulates them. Accountants don't regulate bookkeepers, dentists don't regulate dental hygienists, doctors don't regulate nurses and things like that. I just don't see why the government is so interested in having lawyers regulate paralegals or purveyors of legal services.

It would be my view that paralegals or people providing legal services be regulated by a society of their peers, just as many other professions do. I think it's important that the government should set up criteria or a bill to create an organization to regulate these, as they have for other services.

In my research, I found that very few paralegals have ever been found guilty of misconduct, whereas it's very easy to find lawyers who have been guilty of misconduct over the years. I don't think it's such a difficult task for the government to set up some type of regulatory legislation to establish something called, say, the society of paralegals to regulate themselves.

There's also a view out there that paralegals are simply frustrated people who couldn't become lawyers or couldn't cut the mustard in school. I don't really think that's a fair representation. I think paralegals or consultants are people who have chosen to assist the public in their various fields of endeavour and who want to do it at a fee that the public can afford.

I hope these brief comments have given you a perspective on the work of consultants and our view of where this legislation sits in the scheme of things. I'd be happy to answer any questions you might have.

The Chair: Thank you very much. We have about eight minutes for each side. We'll skip the NDP and go to the government side. Any questions or comments?

Mrs. Van Bommel: No. Thank you very much for your presentation.

Mr. Runciman: It's Mr. Bathurst, is it?

Mr. Bathurst: Yes, it is.

Mr. Runciman: Bob Runciman from the official opposition. I appreciate your contribution. Some of the comments were dead-on with respect to looking over the history of paralegals and the number who have been found guilty of misconduct or inappropriate behaviour versus members of the legal profession. I think those are valid comments to make.

One of my concerns with respect to this legislation—and I know my colleague Mr. Chudleigh raised the issue about conflict last week. Perhaps that's not an appropriate perspective, but I think an argument can be made that there is a vested interest here. Certainly if you look at what's happening not only with respect to the question of regulation, but I think if you go through this bill and look at the justices of the peace provisions, for example, it's another step towards a full-time, legally trained level of court that thinks of itself as a court, and

sometimes in the worst way—I'm talking about anointed, not appointed. If you take a look at some of the things happening in the courts and the administration of justice, it's again further entrenching the privileges, if you will, of those individuals who have LL.B. behind their names. That's a concern of mine.

0940

One of the things I want to pursue as we go through this process is involving the elected officials to a greater extent in terms of the appointments process for judges and JPs, that sort of thing. Rather than having the lawyers appoint the lay people, for example, having those lay people be, in effect, the elected members of the Ontario Legislature, who represent the people of this province and who then can have some input and scrutiny with respect to who is going to be sitting on the bench and what kind of approach they might take to these continued requests for adjournments, those kinds of issues.

You talked about this concern, and I've heard it from a number of different parts of Ontario—you're talking about the kind of work you do with respect to being a purveyor of legal services, but there are all kinds of individuals across the province, whether they're in banking, real estate or whatever profession they may be in, who have very serious concerns about the broad reach of this legislation, that it's going to impact on them and they'll find themselves in a regulatory stew, and no one seems to know the implications.

I think it's interesting that no one from the government side took an opportunity to respond to that concern. It's not just in your area, but this is a very significant concern across the province. Perhaps you could expand upon what the implications could be for your profession. But also I would encourage someone from the government to provide some assurance for you and others and take the opportunity here to respond and say, "This isn't going to happen. We're only going to amend this legislation in some way, shape or form at the end of the day so that it can't be interpreted in such a way down the road that it's going to impact people like yourself."

Mr. Bathurst: I tend to agree with your comments, but I know my time is coming to an end here, so I'd just like to interject something. There's something that's easy and there's something that's right. The easy thing to do here in this particular case is to give the law society more power than they already have and then say, "Lawyers are the major player in the legal area. Let's allow them to regulate the whole profession. We can abdicate our responsibility as a government and we can let them be responsible." We know that if a bill came out tomorrow called Bill 15, a bill to regulate the legal profession, we'd have such a hue and cry about the required independence of lawyers, that they need to be away from the government, and that these legal services have to be free of political influence and things like that. This is the way I'm looking at this legislation. We're going to give the lawyers the keys to the chicken coop. We'll let the wolves in to manage the chicken coop. It's just awful to me.

If we look at the government's program, whether it's federal or provincial, it doesn't matter what party's in there; there has been a direction away from regulation to deregulation. We've deregulated all kinds of services. Here we are taking a service provided by paralegals that nobody's complaining about, at the insistence of a lawyer—and if you read their briefs for this bill, you can see this is clearly an attempt for them to regulate our profession to their benefit. They believe that if they can regulate our profession to their benefit, that will indirectly benefit the public. I just don't see that.

I'm going to make a very subtle comment. I provide a service that generates a fee. A lawyer charges a fee to provide a service. If you can get the subtle difference between those two things, you'll understand what a paralegal or a consultant does. Thank you.

The Chair: Thank you, Mr. Bathurst, for your presentation.

Mr. Bathurst: I appreciate it.

Mr. Kormos: On a point of order, Chair: I was absent from the committee to try to track down the parliamentary assistant. It is a convention here at Queen's Park that the parliamentary assistant, in the course of his or her stewardship of a bill on behalf of their minister, be present at the committee hearings around that bill. I was loath to raise this for fear that there might have been a personal matter, an emergency in the parliamentary assistant's life, so I went to lengths to determine that there hasn't been. He apparently is simply at another committee today.

I find it very distressing that the government that purports to want this bill to be pursued so vigorously won't even have its parliamentary assistant here to listen to the submissions. It's a matter of great concern for the New Democrats. I appreciate that the Chair can't order the PA to be here, but I tell you I have great concern about the government's commitment to this legislation when their PA can't even bother to show up.

Mr. Runciman: On a point of order, Chair: I want to speak in support of my colleague Mr. Kormos. I think it is highly unusual, and it's really unfortunate that the parliamentary assistant or the minister isn't in attendance this morning. It's regrettable in the sense that we had Mr. Bathurst before us, for example, where an issue was raised about regulation of other professions that could fall under the umbrella of this legislation and have an impact in real estate, banking or whatever endeavour we might be concerned about. The members of the government who were here chose not to comment on that, and that's fair enough because that's the sort of thing, I suppose, that the parliamentary assistant could have addressed—those kinds of concerns. So this is not only a breach of convention, as Mr. Kormos pointed out, but it's also truly unfortunate from the perspective of people appearing before us, where we're not having the opportunity to hear from the government representative, specifically the representative of the Attorney General, when very valid questions and concerns are raised.

The Chair: Any comment? Thank you very much, Mr. Kormos and Mr. Runciman. We do have quorum and

I, as Chair, think that the government members would pass on your concerns and what will be happening here at the committee today.

JOHN BRENNAN

The Chair: We'll move on to the next presentation. It's Mr. Brennan. Good morning.

Mr. John Brennan: Good morning.

The Chair: Are you ready to start your presentation?

Mr. Brennan: Yes. I'll be reading right from the script that was given to you.

Dear Mr. Chair, all committee members and appointees, please accept the submission regarding the newly introduced Access to Justice Act, Bill 14. I feel privileged to stand before you today to make my submission, and I stand before you as a citizen of the province who believes strongly that to ensure access to justice in this province, it will be necessary to make some changes to this bill.

My specific request of you is that you change one word in a specific section of this act and that you refrain from changing one other word that is slated for change. The word that I request that you change can specifically be found in subsection 51.9(1) of the Courts of Justice Act. The current passage reads as follows:

"Standards of conduct

"51.9(1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the judicial council."

I request that you substitute the word "will" for the word "may" in the previous section so that it would read as follows:

"51.9(1) The Chief Justice of the Ontario Court of Justice will establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and will implement the standards and plan when they have been reviewed and approved by the judicial council."

I also request that you refrain from making the change as outlined in item 6 of schedule A in the amendments to the Courts of Justice Act. Specifically, I request that subsection 51.9(2) is left as is so that it would read:

"Duty of Chief Justice

"The Chief Justice shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the judicial council."

The proposed change would have read:

"Duty of Chief Justice

"The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the judicial council."

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I submit to you today that the introduction of the word "any" in this subsection combined with the word "may" in the previous subsection creates a new notwithstanding clause that is very dangerous and will imperil access to justice. I believe that the inferred message here becomes that the chief justice will share standards of conduct for the judiciary, notwithstanding that none exist and notwithstanding that there is currently not any intention of introducing standards of conduct for the judiciary.

To understand the context of my request, I think it is important that I share publicly for the first time the journey that has brought me here today. I have been a practising physician in this province for 20 years. I am a graduate of medical school from the University of Western Ontario, and I am also a graduate of chemical engineering from the University of Waterloo. After 20 years of practice in some of the most risky areas of medicine, I have never had a lawsuit or a college complaint. I am highly regarded by my peers and I am a good citizen of this province and country.

My journey on this issue began several years ago, when I was an expert medical witness in a civil litigation matter. I was the only expert to testify in these proceedings, and the substance of my testimony was not challenged in three days of testimony. For some reason the judge, Justice John McIsaac of Barrie, found it necessary to champion discrediting my testimony once I had left the stand. His conduct and comments in regard to my testimony and character were vicious, cowardly, outrageous and untrue.

Since there was no testimony by plaintiff witnesses to counter my testimony, Justice McIsaac researched the Internet and then declared that my testimony was wrong. He had appointed himself to not only be a physician but also an expert witness on complex medical subject matter. In my work both as an engineer and a physician, one of the definitions of "professional misconduct" is undertaking work that you are not qualified to perform by virtue of training or experience. Justice McIsaac did not feel that his lack of training or experience in medicine was any hindrance at all to his overriding my testimony with his own. He went on to compare me to a wolf, and accused me of either professional incompetence or perjury. Finally, he accused me of participating in a wide-ranging corporate conspiracy to deprive the plaintiff of his rights. This was all based on his own medical research and without my having any opportunity to defend myself from this assault. From my point of view, he purposely set out to destroy both my reputation and my career based on his own flawed research.

I filed a complaint—the excerpt is at tab 1—with the Canadian Judicial Council in June 2005, and it is currently in abeyance, pending the outcome of an appeal. I had tremendous difficulty in filing the complaint because there is absolutely no standard of judicial conduct that is accepted or published. We simply are asked to trust that the judicial council can assess the conduct of a judge against a standard that does not exist. It is the ultimate

irony and paradox that a legal system predicated on laws, standards and precedents for society is administered by a judiciary who have no written standards for themselves.

I researched the complaints process for the Canadian and Ontario Human Rights Commissions and discovered that I needed to file a complaint within a 12-month window. Since my complaints to the judicial council partially involved human rights codes, I filed complaints with both the Canadian and Ontario Human Rights Commissions. Both complaints were not accepted into their system because they have no jurisdiction to investigate judges even for charter of rights or human rights codes violations. I found out that the judicial council had not referred my allegations of criminal wrongdoing—breach of the Regulated Health Professions Act—to the Attorney General. I then asked the Attorney General of Ontario to investigate the criminal components of this complaint, and they declined. That letter is at tab 2.

Since the complaint process was taking so long, I asked the judicial council what happens to my complaint and possible compensation if Justice McIsaac retires before a finding is made. They responded that if he retires, a finding will never be made, and compensation, restitution or restorative justice are never considered if you have been wronged by a judge.

I used to be very angry at Justice McIsaac, as I believe he is a caustic human being and a judge who will issue fatuous judgments and castigate valued members of this society at his whim. I now understand that he does what he does because he is allowed to do it with absolutely no fear of reprisal or threat to his livelihood. The current system where judges have no standard of conduct and virtually no fear of losing their jobs has led to the moral corruption of some judges as well as outrageous conduct, as evidenced by Justice McIsaac. Judges in this province have so much independence and lack of personal accountability that not even the Attorney General of this province will investigate, even if you make allegations of criminal wrongdoing, as I have.

It is now almost a year and a half since I complained to the judicial council, and I have given up any hope whatsoever that they will take my complaint seriously. Worse than that, even if the complaint is taken seriously, there is precious little that they can or will do to Justice McIsaac, based on past history or the legislative framework. There is also absolutely no compensation mechanism for those who have been victimized by the judiciary.

Getting back to the Access to Justice Act, I commend the lawmakers for attempting to bring more access to justice in this province. I submit to you that there can be no justice for any of us if the judiciary are not held accountable. This bill tries to make deputy judges more accountable, but simultaneously makes the judiciary less accountable by not demanding that standards of conduct are developed and adhered to for judges. I implore you to consider seriously the changes I have proposed to introduce standards of conduct for the judiciary.

I would like to finish my presentation with two quotes. The first quote is taken from appendix F of the Courts of Justice Act, where you can find a document entitled "Principles of Judicial Office." The quote is a preface to the document, and it reads, "Respect for the judiciary is acquired through the pursuit of excellence in administering justice."

If this is the mission statement of the judicial council, then they have failed to find a way to implement their own mission statement. I submit to you today that there can be no pursuit of excellence if there are no metrics to measure that excellence, or checks and balances to weed out the weak, mean-spirited or incompetent judges. There can be no respect without transparency and accountability for the judiciary, in my view. It is up to the lawmakers of this province to demand excellence from the judiciary and to develop ways to put checks and balances on judicial conduct and performance.

My last quote is from John Quincy Adams, who tirelessly fought against the corruption that accompanies absolute power. He stated that, "Power always thinks it has a great soul and vast views beyond the comprehension of the weak."

The judiciary in this province and country believe that a "free and independent judiciary" are necessary to proper justice. I agree with this point of view, but I do not agree that the judiciary themselves have enough wisdom or willpower to police themselves. Therefore, mechanisms and methods to control them and compensate their victims must be sought for proper access to justice to occur. None of us can have true access to justice if misconduct and incompetence of the judiciary are not measured and dealt with.

My journey has led me to conclude that the judiciary have far too much power in this country and province, and they have protected this power and their weak members under the cloak of being a free and independent judiciary.

If you proceed with allowing the change of wording in section 51.9(2), then you are introducing a new "notwithstanding" clause that will be used with great force in the coming years by the judiciary to resist efforts to have their own standards of conduct that they must be measured by. If you proceed with the proposed change to section 51.9(2), then Bill 14 itself becomes internally inconsistent with its own stated objectives of openness, accountability and transparency, as well as access to justice.

Thank you for your time. I'd gladly take any questions.

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The Chair: Thank you very much. Mr. Runciman? A couple of minutes each.

Mr. Runciman: Sure. How much time?

The Chair: About two minutes each.

Mr. Runciman: Thank you very much for your submission—very interesting. I share many of your views. I think I've got the JPs mad at me and the defence bar mad at me, and now I'm going to have the judges mad at me, but I tend to agree with virtually everything you've suggested here.

The judges—we've seen it over the years—get very irate, publicly disturbed, if there are questions about their conduct. I've seen them, certainly in Alberta, where they challenged the government at the time when they tried to curtail salary increases for judges. Of course, they took it to a higher level of court, and guess who the court supported in that decision? So I think the fingerprints of the judiciary are all over this legislation. Probably the element that you've brought to our attention is another example of that. I think they have to be held much more accountable to the public. Certainly, I'll be putting forward amendments to address many of those issues.

One of the things I raised here earlier was the Ontario Courts Management Advisory Committee, when we take a look at the appointments process of judges. Right now, that body has judges, defence counsel, Attorney General reps and six people appointed by the AG that the judges and the defence counsel approve. I think those six people should be right around this table, the justice committee, so that the people of the province of Ontario have some input into the kinds of people who are going to be sitting on the bench, who are going to be JPs in this province. Those are the kinds of initiatives that I would like to see. Certainly, I'll take a very serious look at what you've proposed here as a possible amendment from our party. Thank you.

Mr. Brennan: Thank you very much.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you very much for your comments. I truly am sorry that you've had this incredibly unpleasant—dare I put it so gently?—experience with the court, unlike some others, and I've seen what I consider, in a very fair way, some real stinkers, both at the JP level as well as at the judge level. But the vast majority of people on our bench in this province, in my view—and I'm as ready to be critical as anybody—are really very skilled, competent people. We're very fortunate in that regard.

There was suggestion of an appeal. This was a judge-alone trial, I presume?

Mr. Brennan: It was a judge-alone trial.

Mr. Kormos: There was an appeal?

Mr. Brennan: The decision was appealed, and the appeal was heard in March and is still outstanding.

Mr. Kormos: You may or may not know whether or not the judge's insertion of himself into the fray was the subject matter of an appeal.

Mr. Brennan: It was central to the appeal, apparently. I had nothing to do with the appeal because I was a witness, but that was my understanding.

Mr. Kormos: Fair enough. It's interesting. I'd really appreciate it if you'd let us know, because you haven't identified the case, what happens in the appeal, because the law in this regard is that the appellate court is going to decide the extent to which this judge misconducted himself in terms of delivering his final judgment. So I'm as eager as anybody to find out the outcome of that appeal. If you'd let us know, I'd appreciate it. Thank you kindly.

The Chair: The government side?

Mrs. Van Bommel: Thank you very much for your presentation. I certainly appreciate your putting a very personal face on what access to justice is. I wish you all the best.

Mr. Brennan: Thank you.

The Chair: Thank you.

Next, we have Mr. Ian Brown. Is Mr. Brown here?

STANLEY GELMAN

The Chair: Mr. Stanley Gelman? Good morning, Mr. Gelman. We'll just be a minute here, if we can distribute your written submission to all the members.

Go ahead, Mr. Gelman. You have 20 minutes.

Judge Stanley Gelman: Good morning, members of the committee.

I've been a deputy judge in the Small Claims Court of the central west region of Ontario, and I sit in Brampton in the Small Claims Court. I'm also a former member of council of the Ontario Bar Association and I am a member of the Ontario Deputy Judges Association. However, I want to stress that I'm not appearing in any capacity for these two organizations but on my own as a concerned citizen to comment on Bill 14. I've attached my curriculum vitae.

I perhaps bring a unique perspective to this committee in that over the years as a deputy judge, I've actually seen paralegals before me and in operation. Quite a number of these individuals over the years have represented themselves as providing legal services rather than as paralegals. This is misleading and deceptive to the public. I myself have been fooled.

There was one particular incident some six years ago when a gentleman appeared before me, extremely well-dressed, appearing as if he might come from one of the big downtown law firms—beautiful letterhead, soft grey vellum, and it appeared to have the name of a law firm—but as soon as he started talking, I said, "What is he here about? He doesn't know what he's talking about. He shouldn't even be here. This should probably have been in front of the Financial Services Commission." It was a motor vehicle insurance case. I looked at the letterhead twice and finally I saw, in the smallest possible print, "Legal Services." Even on the letterhead was a symbol of justice. It was completely and totally deceptive. Strange as it may seem, the insurance company wanted to pay money. They didn't have to under the circumstances, but they insisted on paying money, and they did. He asked for costs. I refused, because he didn't know what he was talking about. It was a case—and I'm being charitable—of the unknowledgeable leading the blind.

I remember seeing a sign on Yonge Street just south of the 401—big, huge billboard sign—"Sam Rad," with a big picture of Mr. Rad smiling and, underneath that, "Legal Services." What do we mean by "legal services"? The public should know what they're getting. That's what my concern is here, that the public not be deceived,

so that they can make an informed, intelligent choice. Once that's done, I'm content.

I have an analogy to the medical profession. Would you allow the designation of everyone providing any service in the medical field as a "provider of medical services"? I think not. Such a definition could include dentists, chiropractors, naturopaths, medical doctors, nurses, paramedics etc. I don't believe the medical profession would be too happy to have themselves just lumped in one big category as providing medical services or licensed to provide medical services. Again, the public should know what they're getting. That's all I'm asking for.

I'll be blunt about it: There are some excellent paralegals, and they do have a place. Some of them are providing excellent service. But they're the few. A lot of them are misinformed on law, disorganized, don't even know what they're talking about. Very often I have to say, "What are you here for? What are the issues here?" I've never seen anybody get up and say, "This is what we're here for. These are what the issues are." I have to discern that for them.

I have a book here, and I'm not going to get into it, but it's a brief of law of what deputy judges can face, because we don't have any research facilities and we don't have any clerks. Negligence actions are one area. Most of the things that I face are going to be contractual or damages. But there are rumours that the jurisdictional level of the court is going to be raised to $25,000, as it is now in British Columbia and Alberta. Alberta is talking about raising it to $30,000. Well, so what? That is going to bring more lawyers into the situation; it's going to need more knowledge of the matters. I'm going to need factums of law.

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Let me illustrate. I've had two cases on the Warsaw Convention, and most people say, "What are you talking about?" Pearson International Airport is in Mississauga, or in Peel, where I sit. The Warsaw Convention deals with carriage of freight by aircraft. Fortunately, in the two cases, counsel presented me with factums of law that were extremely helpful, and it made it quite easy for me to make a decision. I don't know if a paralegal is going to do that. I've yet to see a factum presented by a paralegal, even though I've asked for them.

Another thing I'm concerned about, too, is the misconceptions. So I want a paralegal to be labelled as a paralegal and a lawyer as a lawyer. Let the public know. I've also seen another for degrees. As I say, are these really existing degrees or has someone just given them to themselves? I've seen the word "CCrim." What does that mean? I don't know. I don't know if any institution has granted that. I've seen the word, on the same letterhead, "CFam," as if you have some sort of expertise in the family law field, because paralegals can appear in the lower courts in family law and in criminal law. It reminds me of a businessman who had the designation after his name "PSD." I said, "What does that mean?" He said, "Hardly anybody ever asks me." I said, "Well, what does it mean?" With a twinkle in his eye, he proudly proclaimed, "Public school dropout." So you can invent these things.

As for paralegals saving the public money, that's fine. Ask what it's going to cost. When I deal with a client, clients will ask me—and if they don't, I tell them, "This is what it will cost." Sometimes, if you're going into litigation, you can't, because you don't know what the other side is going to do or how long this thing is going to be dragged out.

In summation, I'm here as an interested member of the public to see that the public is protected when they choose whom they want to have represent them in front of a Small Claims Court and the word "paralegal" should be used—a lawyer has a letterhead. If you're a lawyer, "B.A., LL.B." or "juris doctor," whatever it is, you know that. Hopefully, that's an indicator of expertise. It may not be in all cases. That's my presentation.

The Chair: Thank you very much. About three minutes, just a touch more; Mr. Kormos?

Mr. Kormos: Thank you very much for coming today. I've been looking forward to you and others like you reporting on some of your experiences in the courts. Quite frankly, I thought the punch line in the commentary at the beginning was that it was going to be some high-priced downtown lawyer who had no idea what he or she was talking about, because I suspect you've been in that scenario as well. As a matter of fact, I've watched judges, fortunately not as counsel before them, admonish lawyers who sometimes have no business being in a particular court because they have no expertise in that area, and that's a problem as well.

Judge Gelman: If I could interject, I do go to continuing legal education, and I remember Judge Killeen lecturing to us. He sits in London, Ontario. He said, "Ladies and gentlemen, when you give me something, please ensure you know what it means, because very often I get material and I don't know what it means and I don't think counsel knows what it means."

Mr. Kormos: I just want to point this out, because we have only two or three actual full-time judicial Small Claims Court judges left in the province. These deputy judges have to understand an incredibly broad range of law and have to be able to deliver quickly, because they don't have the luxury of doing research and delivering a judgment weeks later; they don't. These are sausage factories. You go to some of our small claims courts and take a look. People rely upon these judges. They're paid a per diem of how much, sir?

Judge Gelman: I think it's $232.

Mr. Kormos: Two hundred and thirty-two dollars a day. They have to buy their own clerical supplies. Nobody gives them pens or their judgment books. Is that still the case?

Judge Gelman: We get case books, and we are getting some education once a year.

Mr. Kormos: My goodness.

Judge Gelman: But I take issue with you about it being a sausage factory. I certainly do not address or take lightly any case.

Mr. Kormos: My apologies, but you're under incredible pressure. You're dealing with huge dockets, and you've got to deal with these things in an efficient way, more often than not with unrepresented people, unrepresented litigants.

Judge Gelman: There are quite a few unrepresented litigants.

Mr. Kormos: These are the judges who sought some recognition from the Ministry of the Attorney General a year, a year and a half ago. I'm just telling my friends that we'd better be very, very careful, because deputy judges work for peanuts performing an incredibly important role in that judicial system. I just wanted to make note of that while you were here, so that these people perhaps could follow up in terms of—

Judge Gelman: Might I add this: The vast majority—in fact, most—of the civil cases in the province of Ontario are heard in Small Claims Court.

Mr. Kormos: Thank you kindly for coming.

The Chair: Government side? Ms. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. A number of people have come forward—I noticed you were here this morning as well, so you heard from another deputant the concern about who should have jurisdiction over the setting of standards and the scope of practice for paralegals. What is your feeling on that?

Judge Gelman: I think it should be a combination of the law society and the Ontario Bar Association. From the Ontario Bar Association, you're going to get practical input. We now have a deputy judges' association, and I would also suggest that consultation be had for their input too, especially because we're in the field, so to speak, and could probably provide information that the other two bodies couldn't.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you. I appreciate your insights as well. I think it's interesting that you talk about credentials. In my experience in this place over quite a number of years now, I've bumped into a few lawyers—I'm sort of echoing Mr. Kormos—and you wonder if they got their credentials out of a cereal box as well. So it's not just assigned to this one particular group that appears before you.

I'm curious as well. Mrs. Van Bommel asked you whom you felt should be the regulatory authority here. Everyone that you mentioned here—dentists, chiropractors, medical doctors, nurses—are all self-regulated. I'm wondering why you feel it would be inappropriate for this group to have self-regulation.

Judge Gelman: Because, based on my experience, what standards are there? If you're looking at precedent, I see no standards at all. Anybody can appear as a paralegal. There are no restrictions on them. They do not have to have errors and omissions insurance like lawyers do. There's no disciplinary body. I can't see why the law society, combined with the Ontario Bar Association, can't regulate them. That's my answer.

The Chair: Thank you very much for your presentation.

IAN BROWN

The Chair: I believe Mr. Brown is back. Mr. Brown? This is our 10:20 presentation.

Mr. Ian Brown: Thank you very much, Mr. Chair. Shall I proceed?

The Chair: Yes, you may.

1020

Mr. Brown: My name's Ian Brown. I'm just an average person—not wealthy, not poor. I do struggle to make ends meet as I try to offer my children the opportunities that I enjoyed when I was growing up, and I have, on occasion, had need to access the justice system of the province. Unlike your previous speaker, I'm going to present a view that is based on that experience. In my presentation, I propose to make the point that to subject the paralegal profession to regulation by the law society or any other body controlled by lawyers would be a mistake that will result in a large segment of the population being denied access to justice.

The intent of the bill, as espoused by its name and by the government, is not served—indeed, will be frustrated—by this particular aspect of the content of the bill. I would submit that the bill is flawed in such a fundamental way that this component at least should be withdrawn.

I certainly have no argument with the opinion, as presented by the previous speaker, that the paralegal profession needs regulation, standards of conduct and, indeed, there may have been incidents of misconduct that prove this point. I would note that the legal profession is no different. The solution that seems acceptable for lawyers is self-regulation, not regulation by another professional group, indeed a group that may find itself competing for the same customer—I think that's a very important point—self-regulation; not regulation by someone who stands to benefit from that regulatory role.

In preparing this bill, the government failed completely to consult with the profession it proposes to regulate. I have been told this by numerous paralegals. For this reason alone, this component should be withdrawn and re-examined. Failure to consult with any profession that would be affected in such a fundamental way ought to render such a bill flawed. The paralegal profession will, no doubt, be expressing their concerns, but they should not be relegated to having to do so at the committee stage. It looks suspiciously as though the legal profession had plenty of input while paralegals had none. This is wrong and can only be corrected by going back to the drawing board.

My experience: I have hired paralegals to provide advice on legal matters, assist in the recovery of child support arrears, represent me in traffic court and recover losses resulting from vendor fraud in a house purchase.

I've also referred many friends needing assistance with divorce, both contested and uncontested, small claims and other matters, all to paralegals. Their experience and mine has been, without exception, positive. Indeed, I submit that were this service not available, I would have abandoned efforts to receive justice because the cost-benefit equation associated with the alternative is simply a losing proposition for the client. Let me explain briefly.

In many cases when one seeks a judgment against someone who has behaved inappropriately and basically left you with debts and so on that are their responsibility, the chances of actually recovering money are slim. The tendency, if one has to invest a great deal of money to achieve the judgment, is to simply ignore it, and these deadbeats carry on blithely stiffing other people because nobody can afford to gain a judgment. This is where paralegals can be very valuable. For only a few hundred dollars it's possible to obtain a judgment. I suppose one could do it oneself, but let's face it, we're all busy. I have to work hard to earn the money to make ends meet. I don't have time to be playing this game myself.

Let me tell you a little bit about my own experiences. My first example involves Small Claims Court. I have a number of friends who are lawyers. Most people do not have this option and certainly do not have the $300 to whatever per hour to find out if and how they ought to proceed on a matter. I've had this luxury, and advice I received in one particular instance was that a lawyer would be too expensive so I should take the matter to Small Claims Court myself. I went down to College Park and picked up the forms. I got what advice I could from the staff there, but I went no further because I know nothing about how to present a claim in a way that will have any chance of succeeding. That's what a paralegal can do.

Recently, I had another occasion to go to Small Claims Court. I might add that the problem arose because the lawyers on both sides of a real estate transaction ignored my concerns that the vendor might not deliver the house in the condition it was in when the offer was accepted. Indeed, taxes and water bills were owing and major appliances had been damaged beyond repair. My lawyer's advice: "Go to Small Claims Court." So I am, but this time with the help of a paralegal. In fact, I have been assisted by three paralegals on this case, and I'm completely satisfied with the assistance I'm receiving. While a lawyer might be able to provide the same result, the cost could wipe out any recoveries I might make, so I would just abandon it.

Let's face it: People are rational economic beings. Why spend $10,000 to maybe get $10,000 back? Every day, average people suffer losses due to unscrupulous people. Why should they not be able to recover something through the courts? Why should any recoveries simply end up as revenues to lawyers?

I've also received advice and assistance with traffic tickets. My experiences in this area have been completely positive. The firms assisting in this area charge fees commensurate with the charges, and the many, many companies that engage in this activity are testimony to the demand from the general public.

Finally, I relate to you a situation that is all too common here in Ontario. When I first met my wife, she was in the process of getting divorced. A five-figure legal bill achieved a child support ruling of $500 per month, with arrears to be paid at $100 per month. The lawyer who represented her recommended that the payment be made through the body now known as the FRO, the Family Responsibility Office. That was the last we ever heard from him.

One of many considerations in deciding to get married was indeed the fact that this matter had been settled. Today, the outstanding child support owing on this file exceeds $100,000. Despite following the FRO's rules faithfully, we have received but one payment from them in over 15 years for about $2,000. This one payment was the direct result of tenacious effort by a paralegal who was to have appeared this afternoon. This same paralegal feels threatened by the law society for offering services to assist people seeking uncontested divorces, and, I have just learned, will not appear because of concerns about what might happen.

This is the dynamic that Bill 14 seeks to formalize. It is tantamount to putting the fox in charge of the henhouse. The bill will decimate the paralegal profession and relegate most of them to working, if at all, as clerks to lawyers where their services will be charged out at double what they now charge. But this is not the worst of it. The loss of access to justice through economic constraint for the less well-off in society will be staggering.

I urge this committee to recommend to the government that Bill 14—at least this component of it—be withdrawn pending proper consultation with the paralegal profession, a profession that is ready and willing to engage in self-regulation, a profession that indeed cries out for greater opportunities for training and self-governance. I ask the committee to recommend that a proposal for a suitable form of self-regulation be requested of the profession. I ask the committee to consider the needs of the majority of the population whose incomes are below the national average because I can tell you that if I am unable to access the justice system other than through a paralegal, the vast majority of Ontarians are in the same boat. Thanks very much.

Mr. Kormos: On a point of order, Chair: I was most troubled to hear Mr. Brown speak to us of a scheduled participant feeling intimidated about attending these public hearings. That's a very, very serious matter.

Mr. Brown: I agree.

Mr. Kormos: That anyone—and again, that's all the information we have at this point, and I have no reason to disbelieve Mr. Brown in any respect—should feel threatened or intimidated to the extent where they would not appear before this committee to have themselves heard is a very serious matter. I raise it as a point of order, but I believe it goes to privilege as well—and Mr. Runciman may want to speak to this—in that I'm being

denied and all of us as MPPs are being denied an opportunity to hear from a potential witness because that witness feels threatened or intimidated. I say, Chair, that compels action (1) to determine what the status of this matter is, and (2) to ensure, using the Office of the Speaker and the Office of the Clerk, that a witness is protected from any potential threat and allowed to speak freely before this committee, as we know privilege may well apply—I believe it does—to what witnesses say in these committee hearings as well as us. I'm very concerned, very troubled. This is a very serious matter.

1030

Mr. Runciman: I want to support my colleague Mr. Kormos. When a suggestion is made that someone has been intimidated in terms of appearance before this committee, I think we should all take it very seriously and ensure that whatever investigation can be conducted, be conducted to determine the facts in this matter. If such an occurrence is a reality, we should take the necessary steps in terms of this committee and perhaps even take it to the House if there has been some effort at discouraging a witness to make an appearance and give their views on this legislation. That is a very serious matter indeed.

The Vice-Chair: Thank you, Mr. Runciman. We'll certainly follow up on that particular concern.

At this point we have the rotation, about nine minutes, so that's three minutes each. I believe, Mr. Kormos, that you have the lead on this one.

Mr. Kormos: Thank you, Mr. Brown. I appreciate your participation in these hearings. I suppose the question to be asked that certainly has hovered around this whole process is, why weren't the Cory recommendations, for instance, adopted by the government—a very distinguished, learned, experienced jurist producing some very clear recommendations? Why weren't they adopted even in part by this government?

The other interesting thing, and I come with an open mind to this whole hearing process, is that we haven't heard from any paralegal yet who supports, endorses, regulation by the law society. That causes me some concern, because for this proposal to be legitimate, it has to be accepted in no small part by the people who are going to be subject to the regulation as well. So I'm anxiously awaiting the government to come forward with some folks in the paralegal community who rally around the government's cause of having the law society regulate them.

I'm just indicating that I find it amazing that here we are at this stage in this process and not a single paralegal has come forward wanting to be regulated—as a matter of fact, a very competent panel of three on Thursday afternoon. When I finally put the question to them, you recall that, they said, "Yes, regulated, of course, by anybody but the Law Society of Upper Canada." My goodness, that was a pretty powerful comment. Do you remember the three people who were here: one with a very senior position in a major law firm; two others very competent—it appears to us, I'm sure—in the field of paralegal litigation? Amazing. Remarkable.

Thank you very much, Mr. Brown. You bring a real-life perspective to this. There are other folks who will want to ask you things or say things to you.

The Chair: Thank you. Any comment from the government side?

Mrs. Van Bommel: Thank you very much, Mr. Brown. I certainly share the concern about someone feeling intimidated. This is a very democratic society, and we certainly want to make sure that everyone feels they have the right to be heard. I appreciate your bringing your personal experience to our attention. Thank you very much.

The Chair: Mr. Runciman.

Mr. Runciman: Just quickly; Mr. Brown, thank you as well. The witness who preceded you, Mr. Gelman—you were in the audience, I think, for most of his testimony, at least at the end of his testimony—is the deputy judge of the Small Claims Court. I asked him why he felt that it wasn't appropriate for self-regulation and he gave a laundry list of reasons. I'm just wondering if you have any response to what he said here with respect to why he didn't feel that self-regulation was appropriate.

Mr. Brown: I would respond that I feel from my own observations of paralegals that the absence of any form of structure in the past has made it difficult for them to organize in such a way that they could self-regulate. I think that if there is something good to come out of this proposal, it is that it has galvanized them to have to come together and do that. The government may have had a hard time finding a suitable body to do the regulation, but I think the current impasse that has arisen where you have none of the paralegals at all happy with the arrangement has come to pass because of lack of consultation in the first instance, when this was coming forward. It's something that is going to require a fair bit of work, but dodging that work by handing it off to a group that does have some self-interest in the whole exercise is not a good solution.

The Chair: Thank you very much, sir, for your presentation.

Mr. Brown: Thank you. I really appreciate it.

Mr. Kormos: If I can, on a point of order, Mr. Chair: Perhaps before Mr. Brown leaves—and, again, I'm shocked by the comments he makes about the prospect of a witness being intimidated or fearful of the consequences of appearing here; I really am. I don't know what the process ought to be, but it seems to me that Mr. Brown should have an opportunity—he may not wish to reveal any further information. It's his right, I suppose, to decide to do that. But I'm wondering whether the Sergeant at Arms and his office should be involved and whether Mr. Brown should have an opportunity to give them any information that he wishes to help us reveal the source of this concern on the part of a potential participant in these hearings.

The Chair: I believe the Vice-Chair has already addressed this, and we'll definitely be looking into this.

Mr. Kormos: Mr. Brown is sitting here, and we're going to be breaking for lunch in around an hour. What's

he to do? Let's not be the deer caught in the headlights, for Pete's sake.

Mr. Runciman: On a point of order, Mr. Chair: I would suggest that the clerk is going to follow up.

The Chair: Yes. They will be following up and this will be addressed. I don't know what else there is to say. I have been advised of the concerns and you have advised me also. I believe—

Mr. Kormos: Is Mr. Brown being asked to stick around so that somebody can speak with him, or is he being sent on his way? Please.

The Chair: Perhaps—

Mr. Kormos: Do you realize the seriousness of that allegation that was made just 15 minutes ago? Do you realize the seriousness of that?

The Chair: Okay, we'll have someone speak to Mr. Brown about this.

Mr. Kormos: Please.

The Chair: We're going to be recessing until 11 o'clock. The Ontario Public Service Employees Union is not here, so we'll be breaking for about 25 minutes.

The committee recessed from 1038 to 1104.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: Can I have your attention? We're back for our committee meeting today, and our 11 o'clock presenters are the Ontario Public Service Employees Union. Good morning. If I can have you gentlemen state your names for Hansard, and you can begin any time.

Mr. Mike Grimaldi: Mike Grimaldi.

Mr. Roman Stoykewych: Roman Stoykewych.

The Chair: Thank you. You can start. You have 30 minutes.

Mr. Grimaldi: Thank you. President Casselman is unable to attend today. She has asked me to express her regrets for not being able to attend, but we would like to thank the committee for this opportunity. We believe this is an extremely important matter for our union. We have provided the clerk with a copy of our submission, which sets out our position, and we request that the committee consider it.

As the committee is aware, OPSEU is a trade union that represents employees in the Ontario public service and in what is often known as the broader public service. We represent approximately 130,000 employees at the present time. Our members provide services to the public, and in doing so many of them provide advice, information and representation to members of the general public. Very frequently, their advice-giving and representational functions take place in a sophisticated legal environment. In addition, as a trade union, OPSEU is an organization whose very purpose is to represent our members in a variety of legal contexts. Especially in light of the extremely broad regulatory net that Bill 14 provides, the proposed legislation has an impact upon us in two distinct ways.

However, before addressing this impact and some of the concerns we have with the bill, I wish to state on behalf of OPSEU that we are in favour of this legislative proposal. We believe it's high time to regulate legal agents and paralegals. We believe the legislation is necessary to ensure that people who cannot afford the services of lawyers—and these are mostly working people, the kind we represent—will nevertheless be able to obtain the services of a competent, trained, accountable and professionally regulated non-lawyer agent to assist them.

Based on our experience, particularly in the workers' compensation and employment contexts, we are of the view that the quality and trustworthiness of the services provided by paralegals at the present time are entirely unacceptable. Vulnerable people, particularly individuals with limited language skills who have an even more greatly diminished choice of legal services, are being underserviced at best and terribly exploited on other occasions.

My own personal experience bears on this. I've represented injured workers for over 30 years on behalf of various trade unions. I have witnessed, very much on a first-hand basis, the serious abuses that working people have had to sustain at the hands of paralegals in the workers' compensation area. I'd like to give you a couple of examples.

I had an experience with a group of paralegals in Kitchener who came from a specific ethnic environment. They were forcing injured workers to provide them with a signature on a contract that gave them lifetime control of their claims. They would also make them sign a contract so that the WSIB would send their cheques directly to the paralegal, as opposed to the injured worker, and they would take their money from those cheques and only disburse whatever they determined was left after they had taken their expenses to them. It included a lifetime subrogation of the claim with a 15% withholding of any benefits forever, and also a retainer fee and an hourly amount.

In Niagara Falls, I saw a paralegal take substantial retainers from injured workers across the whole Niagara region and then just simply disappear: never did any work on the files. The injured workers never even knew where their files ended up.

In Welland, we had a paralegal who charged injured workers a stiff fee to photocopy their files, even though the WSIB does this for injured workers for free. The same paralegal was charging $500 for a consultation fee just to obtain a re-examination of a worker's pension. Again, the board provides that service for free.

I'm sure you've heard countless examples, just horrific examples, in these hearings. This kind of victimization should not be permitted to continue in a civilized society. There are excellent training facilities for paralegals in this province, particularly in our college system, and we believe strongly that agents who hang out their shingle to provide advice and representation services to members of the public should be required to complete

them. We also strongly support the requirement that these kinds of services be backed by adequate insurance and that the providers of these services be accountable.

Nevertheless, OPSEU is concerned about the extremely broad definition of what constitutes the "provision of legal services" found in subsection 2(1) of the bill, and then its delegation to the Law Society of Upper Canada the task of further delimiting the appropriate scope for regulation. As the bill currently stands, the law society is thus provided with a virtually unlimited mandate to regulate persons who provide legal advice, information or representation to the general public. Even more troubling for us is that it is the law society that is given the power to determine who should be regulated.

We believe the law society's powers in this respect should be more tightly drawn. Although we are sure that there are other areas that might give rise to similar concerns, our major concern is twofold. First, OPSEU believes that the legislation should prevent the law society from regulating employees working in the public service or for analogous service providers who provide individuals in the general public or their employers information concerning their legal rights and obligations. The way it's currently drafted, it means all government employees who provide this service and broader public sector employees would be regulated by the law society, which doesn't make any sense to us at all. Secondly, OPSEU believes the legislation should specifically exclude the volunteers and employees engaged by trade unions who provide advice and representation in the various legal matters in which they are involved to the employees that they represent.

1110

We recognize, of course, that the law society has indicated that it does not, at the present time, intend to regulate in either of these areas. There's no guarantee that will remain forever, but that's what they're currently telling us. Our first point here is one of political process. Government, and not unelected officials, should determine what are, at bottom, matters of social policy. OPSEU does not consider the law society to be a body that is properly mandated with the task of determining whether whole areas of civil society should be regulated. That is the role of government—I'll return to that a little bit later—and it is a responsibility that should not be, and we suggest cannot be, contracted out in the manner that the legislation proposes.

As indicated a moment ago, our first substantive concern with the legislation is the possibility it presents for the regulation of what are broad swaths of the public sector. OPSEU represents social workers, lay case presenters employed with various ministries and tribunals, public health inspectors, employment standards officers, occupational health and safety inspectors, meat inspectors, and various other employees in the public sector broadly understood. All of these employees, and many others, provide members of the general public information or advice about their legal rights and obligations. Some of these act as representatives in quasi-judicial proceedings. These individuals are highly trained. They perform their duties under supervision, which is often of a professional nature. Frequently, as is the case with social workers, these employees are regulated by a self-governing professional body. Under the definition of "provision of legal services" that is included in the current version of the bill, each of these employees would be susceptible to regulation of their work by the law society and their own professional regulatory body.

The law society, of course, has already recognized that it is unnecessary to regulate employees who provide legal services in this capacity. They are not the problem to which the legislation is addressed, namely, incompetent, unscrupulous and unaccountable agents preying upon individual members of the public. The work performed by members of the public service and the broader public service is invariably performed in the context of highly accountable public institutions, usually the government itself. Their employer is responsible for training them, and it is their employer that is responsible for the quality of the service that is provided. It is the employer that bears legal liability in the event of negligent performance of the duties. In many cases, their work is already regulated by their professional bodies. Finally, in contrast to the mountain of evidence crying out for the regulation of individual non-lawyer agents and paralegals, there is no suggestion that the public has been adversely affected by the absence of regulation for employees providing public services.

This is not a transitory situation. There is no reason to wait and see whether a problem will develop. There is therefore no reason to leave the power to regulate the work of these employees in the hands of the law society. We therefore propose that the legislation be amended to expressly exclude from the scope of paralegal regulation those persons who provide legal services while employed by government or by broader public service agencies providing services to the public. Further, we propose that the legislation be amended so as to preclude from regulation by the Law Society of Upper Canada employees who are already regulated by another professional body.

Our second concern is that the legislation, as currently drafted, may have an extremely adverse impact upon the representation that trade unions provide to workers they represent. OPSEU, like other trade unions in Ontario, by its very nature provides information about legal rights and obligations of employees. It represents employees before the employer and before tribunals. In most regards, the very purpose of a trade union is to establish and enforce the provisions of a collective agreement, which, if nothing else, is a document setting out the rights of employees with an employer on behalf of its members.

Moreover, trade union representation today goes well beyond the simple enforcement of collective agreements. Trade unions provide their members invaluable advice and representation before a broad variety of statutory tribunals in relation to such matters as employment insurance, Canada pension plan entitlements, workers'

compensation matters, and professional licensing and discipline. Moreover, just as we are doing at the present moment, trade unions advance the legislative and political objectives of the members we represent. We submit that this entire range of trade union representation, and not just collective agreement enforcement, ought to be exempted from the definition of what constitutes the provision of legal services.

Historically, and as a matter of social policy expressed in such legislation as the Labour Relations Act, the Crown Employees Collective Bargaining Act, the Colleges Collective Bargaining Act, the Hospital Labour Disputes Arbitration Act and other similar legislation, a trade union is the instrument by which employees' interests are to be advanced both vis-à-vis their employers and also in society at large. The law has never required trade unions to meet the standards of professional representation in the course of the provision of services they provide to their members.

Labour legislation in Ontario and throughout Canada recognizes that trade unions, by their very nature, do not function as professional lawyers in their representational activities. To the contrary, the duty of fair representation found in the Labour Relations Act sets out a very different approach to the issue: Union representation is not to be regulated by the standards of lawyers or professionals in a self-regulating profession, but on the basis of non-arbitrariness, non-discrimination and good faith. That is because trade union representation takes place in large measure through the volunteers that serve in union positions. The large majority of union representation is performed by rank-and-file members, who act as stewards, committee members, local presidents and other similar union officials. These volunteers, of course, do not work on a fee-for-service basis and for the most part receive no compensation for the representation that they perform. The high level of volunteerism present in trade unions makes it a rather unique civil society institution, inasmuch as it advances the social interest in providing employees effective representation vis-à-vis their employers, but it also makes possible a level of participation in shaping one's destiny frequently absent in the experience of many working people. We do not believe that there is any public policy rationale to change this extremely important trade union function.

OPSEU, of course, also employs staff, much of it professional, to provide support for the activities of its members. The same rationale for exempting them from regulation is present as is in place for the employees of the public sector:

The union staff members work on behalf of a large institution that is responsible, both legally and politically, for the quality of the work that is provided to the membership. In many cases, they have the same quality standards that MPPs do: If you don't perform, you don't get elected.

The nature of the work, training, supervision and other support systems of the work that they perform are all arranged by the employer.

None of these individuals work on a fee-for-service basis, and are remunerated on a salary or hourly basis.

To the extent that there are professionals working in the union, they're already regulated by their respective professional bodies.

Overall, the trade union's core representational function is already regulated by the statutory duty of fair representation.

Finally, and perhaps most importantly, there is no identifiable problem concerning the quality of trade union representation that would be meaningfully addressed by regulation by the law society.

Once again, while we appreciate that the law society has indicated that it has no current intention of entering into this area of regulation, we do not believe that the legislation should permit it as a possibility. Regulating the legal service providers in trade unions would change the very face of union representation and, indeed, unionism. It would create a credentialism and professionalization that is contrary to the very concept of the trade union. It would significantly detract from and even eliminate the voluntarism that is so much a part of trade union life, and would impose organizational and financial obligations upon trade unions that they would be unable to meet. To repeat the point we made at the outset of these submissions, this is certainly not a decision that should be made by the law society.

In fact, this is a decision that should be made by the members of the Legislative Assembly. Provincial governments and federal governments right across Canada have increasingly centralized power into the hands of the Premier's office or the Prime Minister's office, leaving legislators with less and less power. We believe that this is just one more attack on the rights of members of the Legislative Assembly. Essentially what this act will do is take away your authority—it diminishes your role—as an MPP to make these decisions, to determine how and what the regulations should be. Why should that be contracted out to any body, whether it's the law society or anyone else? I'm sure that your electors asked you to come to this place so that you could provide these services. These are exactly the types of services you should be providing. It should be your determination how these bodies are regulated and who regulates them. It shouldn't be contracted out to the law society.

Accordingly, OPSEU recommends that the legislation specifically exclude from the ambit of the law society's regulatory power, and thus from the scope of the legislation, the provision of legal services by employees or volunteer representatives of trade unions.

We thank the committee once again for the opportunity to make these submissions. If you have any comments or questions, we would be pleased to respond to them. But please do not contract out what is essentially work that you should be doing, work that it's important that you, as members of the Legislative Assembly, provide. Thank you.

1120

The Chair: Thank you. About four minutes each. Mr. Kormos.

Mr. Kormos: Thank you, both of you. I'm sorry that Ms. Casselman couldn't be here. Please send her my best. I know that Mr. Runciman joins me in that concern of her absence and would ask you to convey his best wishes as well.

You talk about the injured worker and advocacy. Why would any injured worker in this province go to a fee-for-service operator when we've got an Office of the Worker Adviser that has the best-trained, most qualified advocates for injured workers?

Mr. Grimaldi: The Office of the Worker Adviser and, quite frankly, the Office of the Employer Adviser have been underfunded for years. As long as the government continues to underfund those two agencies, many injured workers are at a loss for where to go. There are backlogs in both offices, and both offices are limited in the services they provide, services they used to be able to provide but because of the cuts in funding to both offices are no longer able to provide. So what happens then is that injured workers are scrambling to find proper representation and end up with some charlatan who has hung out a shingle.

Mr. Kormos: So they fall prey, then, to the type of gouging that you mentioned in your submission.

Mr. Grimaldi: Not only do they fall prey to that type of gouging, but in many cases it really bogs down the whole system because a lack of proper representation makes it more difficult for claims to travel through the system. It delays hearings because incompetent paralegals cause delays in the process. So it not only gouges the injured workers; it mucks up the workers' compensation system and in fact causes problems both for the WSIB and for the Workplace Safety and Insurance Appeals Tribunal. If you speak to people who do the hearings, who hear the hearings, in both those bodies, they'll tell you that it's an ongoing and ever-increasing problem because you're getting more and more incompetent representatives, both on the employer and on the worker side, because the Office of the Worker Adviser and Office of the Employer Adviser are not properly funded.

Mr. Kormos: OPSEU knows that the issue of regulation of paralegals has been around for a long, long time. The Cory report, the most recent report, by a very distinguished jurist who comes from the legal community, the lawyer community, recommended self-regulation, and also in his report set out scope of practice. Do you have any idea why the government would not have adopted even part of the Cory recommendations?

Mr. Grimaldi: I think it's really an abdication of responsibility. The Attorney General, in bringing forward this legislation, is really abdicating his own responsibility. It seems to me that it's typical of the type of legislation that's coming out of his office, whether it's with the Human Rights Commission, where he wants to privatize and force people to go to the courts, or whether it's in this regulation, where he's contracting it out to the law society to regulate rather than either developing a regulatory body or allowing the members of the Legislative Assembly, who should have more say in this type of legislation. It's just a complete abdication of responsibility.

Mr. Kormos: Thank you kindly.

The Chair: The government side.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Gentlemen, thank you very much for your presentation. I wouldn't want to be left out in extending best wishes to President Casselman. She's a constituent of mine, actually, and I know her quite well. So do give her my regards.

Mr. Grimaldi: We certainly will.

Mr. McMeekin: I found you presentation to be clear, focused, consistent with what we've heard from others, and in that regard quite helpful. So I just want to say thanks for coming out and sharing your thoughts with us this morning.

Mr. Grimaldi: Thank you.

The Chair: Mr. Runciman.

Mr. Runciman: You can extend my greetings to Ms. Casselman as well. Remind her that she still owes me a libation for some assistance I provided a number of years ago.

Mr. Grimaldi: I will certainly do that.

Interjection: Fee for service.

Mr. Runciman: Fee for service, yes.

Thank you very much. I don't disagree with a lot of what you've said here today. One of the problems, of course, that we've heard, not just from your organization, is with respect to the scope of this legislation impacting on areas that I don't think were contemplated by anyone looking at the specific area of paralegals. We're hearing from the real estate industry, from the banking industry and others who seem to be falling within this, and there are no guarantees being provided by government members, when these concerns are raised during committee or in the Legislature, that this isn't going to happen: "We're going to ensure through amendments at the end of the day very clearly that this is only going to be focused specifically on the one area providing legal services, paralegals," and clearly define what a paralegal is.

One of the things we've heard through testimony and leading up to the committee hearings is the fact that the paralegal community was not consulted. People who are being impacted by the wording of this legislation were not consulted. I'm just wondering if your organization was asked for any input during the drafting process.

Mr. Grimaldi: We were not consulted at all with regard to the drafting of this piece of legislation. In fact, we have had the opportunity to meet with the Attorney General on two separate occasions, and neither time was this issue raised.

Mr. Runciman: Well, that's unfortunate. I've mentioned earlier in the proceedings that there are judicial fingerprints all over this legislation, and not just dealing with this specific area. Everything but the kitchen sink

has been thrown into this legislation, which is again regrettable. Both Mr. Kormos and I raised this. I think all parties agree that regulation of paralegals is the appropriate way to go. It's just the way they've approached this: without consultation and by throwing a number of other complex issues into the mix. We understand that there's some urgency to this and we share that feeling, but the challenges are many and certainly your perspective has been helpful. Thank you very much.

Mr. Grimaldi: Thank you.

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

The next presentation's from R.H. Associates. They are not here yet, so we're going to recess for about five minutes and see where they are. Thank you.

The committee recessed from 1129 to 1148.

The Chair: The committee is called back to order. As you folks may know, the 11:30 witness is not here and it's approaching 12 o'clock, so I think that it will only be in order if we recess now until 1 p.m. What's the wish of the committee? Are we all agreed? We will meet back here at 1 p.m. then.

The committee recessed from 1149 to 1305.

PERSUADER COURT AGENTS INC.

The Chair: This committee is called back to order. Good afternoon, everybody. Our first presentation this afternoon is from Mr. Gerald Grupp of Persuader Court Agents Inc.

Mr. Gerald Grupp: It's a little difficult to get around with a cane.

The Chair: That's fine. Take your time.

Mr. Grupp: Thank you, Mr. Chair, members of the committee. I understand you have copies of my submission, which includes three attachments. They'll be referred to in my submission. I'm just going to read it.

On preparing this document, I asked myself whether I should even bother to appear or spend time on this presentation when certain colleagues of mine have insisted that this bill is a done deal, the government was mind-set to pass the bill and invoke party solidarity to push it through to proclamation, regardless of the efforts made against it. I was told by these colleagues that this effort would fall on deaf ears and that the document will be placed in the dead letter file, along with the Ianni and Cory reports and the efforts of the other presenters to this committee. However, Ms. Rivka La Belle, who appeared before you on September 5 and whom I assisted in the preparation of her submissions, pointed out that even in the face of an apparent lost cause, if no effort is made, then we deserve the fate that we're dealt, so at least we fought.

So this is an effort to reach those on the committee who have reservations on the passage of this bill in its present form but who feel bound by their party solidarity not to follow their conscience. If they do that, they will certainly feel personal and private pangs of guilt when the bill is passed and the result is a miserable failure, resulting in many legal challenges to the statute, and the public of Ontario further suffering when paralegals are beaten into the ground and having no reasonably priced representation in courts and tribunals, no assistance in preparation of paperwork for incorporations, simple wills, powers of attorney, uncontested divorces and other things—for most of which there are already kits that you can buy in Business Depot and Grand and Toy—to help fill out those forms. Those kits could also be deemed to be the practice of law themselves and therefore unlawful.

As reported in the Toronto Star on August 13, 2006, Chief Justice Beverley McLachlin of the Supreme Court of Canada stated, "With the cost of going to court moving beyond the reach of the average Canadian, access to the justice system is an 'ideal' for most people but not a reality." I've attached that report of that speech as an attachment to my address, and I know that it's part of your package. Chief Justice McLachlin did not advocate for paralegals in her address but only rued the state of the justice system where the disadvantaged are, for lack of funds, not able to access assistance in their plight before the courts, and they suffer for it. In fact, the courts suffer for it because people appearing unrepresented usually pose problems for access to justice. The province of Ontario has the opportunity to ameliorate this situation.

The government is doing the correct thing in bringing regulation to the paralegal industry. The problem is that all paralegal groups, at least in this issue, are united that the basis of this regulation is to lump the paralegals in with the lawyers and have them regulated by the Law Society of Upper Canada.

1310

On the face of it, it seems a good and efficient idea: having all legal services regulated by the same regulator. The problem is, Bill 14 suffers from ignoring history. Historically, lawyers and paralegals have been, and still are, enemies. Lawyers have always treated paralegals as illegal upstarts and competitors.

Brian Lawrie was the first to make inroads in the POINTTS decision, which confirmed the right of paid agents to represent persons in those areas where statutes allowed agents to appear. I might say that statutes have allowed agents to appear for quite some time, but the POINTTS decision made it clear that it wasn't just your grandmother, your mother or your father who could appear as an agent; it could be somebody who was getting paid to do it, and that was the significance of that decision. Lawyers have never accepted this reality and have fought for their turf ever since. The Law Society of Upper Canada, which is proposed to be the regulator of all legal services, is not and cannot be an impartial regulator.

The law society has always been the regulator of only lawyers, and that has been for a few hundred years. But it is more than that; it is the advocate for lawyers and always has been. Its corporate structure is unique. It is governed by a large number of member lawyers called benchers. Its uniqueness has evolved over a long history and, therefore, is different from the normal run of

regulators. Its evolution has derived from and continues in its guiding purpose to protect its members, who are the lawyers.

Into this cauldron it is now proposed to drop paralegals. Independent paralegals—that is, paralegals who operate without the need to be employed by lawyers—are a phenomenon less than 20 years old. Paralegals are proposed by Bill 14 to be second-class citizens in this cauldron. They will not have membership in the law society. They will have no say in the operation of their regulator, will be powerless in the makeup of the rules under which they will be regulated and will be at the mercy of the benchers.

There has been no group that has been regulated in this fashion. Midwives and dental technicians, for example—and there are many other examples, such as immigration consultants and people who operate under FSCO—have been granted status of self-regulation, independent from the more powerful group above them, such as doctors and dentists. Those self-regulations have been successful.

Only paralegals have been proposed to be placed, powerless, in the hands of the lawyers, who, as is plainly evident, look upon them as competitors and upstarts who need to be reined in and tightly controlled. The law society is prepared to and will do so if this bill is passed. This will only lead to impairment in the access to justice even more than now exists.

It is certain that there have been paralegal scoundrels. There are also such scoundrels in all professions, either through incompetence, errors of judgment or just plain evil intent. Regulation is designed to control them.

Lawyers have stated that paralegals have a lack of legal training. Regulation is designed to ensure that this is corrected and to recognize that there are grandparents who have demonstrated competence who should be recognized immediately for that competence and allowed to continue to practise.

One must simply look at the provisions of the bill in an overview. The bill mainly deals with provisions that are designed to protect the turf of lawyers from inroads by paralegals who are their competition. The bill outlaws non-advocacy paralegals. These paralegals have been able to provide assistance at reasonable rates to the public who cannot afford lawyers when dealing with simple incorporations, wills, uncontested divorces and many other simple matters which don't really require expensive legal advice. The law society has allowed kits to be sold on the market which give legal advice in their use, but the bill allows the law society the right to ban non-advocacy paralegals in actually assisting the public in the use of these kits, and that's an incongruity. Possibly the law society will be bringing Business Depot and Grand and Toy to court if they continue to sell these kits after this bill is passed. Even the people who publish these kits might be brought to court for that reason.

The bill makes it clear that advocacy paralegals stay in their place and does not provide for paralegals to be given permission to appear in Superior Court—and I actually meant Divisional Court, which is a branch of Superior Court—on appeals from Small Claims Court decisions and tribunals decisions. That's the avenue of appeal. This denies access to justice for those who cannot afford lawyers and cannot even rely on those paralegals who represented them at the original hearings to represent them on the appeals. In most cases, this means that the public either must appear in court on their own or abandon their appeal rights if they can't afford to hire a lawyer.

To take an appeal to Divisional Court through most lawyers is going to cost anywhere from $3,000 to $5,000. When you're taking into account that Small Claims Court and most of the tribunals deal in matters under $10,000, the cost of such appeals is beyond belief, and there have been many of my clients who wanted to appeal and couldn't appeal because they couldn't afford the cost of a lawyer. There are many of my clients who won their case in the tribunals or in Small Claims Court who, when the decision was appealed, couldn't afford to hire a lawyer to prosecute their response to the appeal in Divisional Court.

Paralegals ask only that they be given a level playing field. This bill does not achieve that purpose. It puts paralegals unfairly in the hands of those who do not have respect for them and who intend to squeeze paralegals to eliminate their competition. These statements may not seem politically correct, but they reflect the actual feelings of paralegals towards this bill and must be said. I'm sure you have listened to many paralegals over the last number of hearings of this committee, and these things have all been said.

The next part of my speech says, "Who Am I?" I have a bachelor of laws from Osgoode Hall Law School in 1968 and a masters degree in law, also from Osgoode Hall Law School, in 1978. I have taught law at Sheridan College in the court agent and tribunal program for the last five years. I've taught contracts, torts, administrative law, legal research and writing, advocacy debtor/creditor law and Small Claims Court law. I've taught high school law at Ner Israel Yeshiva for the past 13 years. I practised as a solicitor from 1968 until 1993, and I have practised as a paralegal since 1993 to the present.

I can confidently state that I have a good reputation in all the courts and tribunals in which I've appeared, which takes in the area from Whitby to Milton in the west and from Toronto to Newmarket in the north. I've appeared in the Tax Court of Canada under the summary jurisdiction in more than 30 trials, and have been granted permission under rule 15.01(2) of the Rules of Civil Procedure to appear in the Ontario Superior Court of Justice on more than five occasions. I believe I have an excellent reputation in all of these venues. I've also been a member of the board of directors of the Paralegal Society of Canada for the past seven years.

On the unfortunate side—and I'm not hiding this; I'm taking it right up front—I was one of those persons who made a serious error in judgment, resulting in my disbarment from the law society and a short sentence, ending in

June 1993. I paid the price for my errors, and I believe I have atoned for this over the last 13 years. I believe that if this bill is passed, I will be made to further pay by the law society beyond what the law has set for me. This is as the result of the so-called "good character" clause in the legislation. I believe the law society will punish me by refusing me grandparent status for a licence through this clause, ending my ability to earn a living. At 64 years of age, faced with having to challenge the law society in court without capacity to practise and earn money, my prospects are very low.

To give an example, I point out to you the case of Sébastien Brousseau. That's what the other attachments to my submission are. The case itself is in French because it hasn't been translated into English, but I have a translation of what I consider to be the important parts of the case, which was done by one of my Sheridan College law students, who's a native of Quebec. So you don't have to rely on it, but as this Legislature is supposed to be bilingual, I would presume that, if you want to read the case, there will be translation provided to you.

Mr. Brousseau was convicted of involuntary manslaughter of his mother and served almost four years in prison. After his sentence was served, he successfully attended law school and applied to be admitted to the practice of law. After five unsuccessful attempts to be accepted to the practice due to the Quebec equivalent of the "good character" clause, his case came before the Tribunal des professions. The tribunal took into account his good character, which he'd demonstrated since leaving prison, and ordered him to be accepted to the practice of law.

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One can only wonder why it would take five attempts by Mr. Brousseau to attain what clearly he deserved, and what the reasons were for the five refusals. At some point, a person must be seen to have served his sentence and be recognized for the merits demonstrated after his sentence was served.

At age 64, having successfully practised as a paralegal for 13 years and depending upon the practice to earn a living in my declining years, it may be no wonder why I have an apprehension about what the law society has in store for me. There are at least seven other persons of whom I am aware who are paralegals in the same position. They also have been successful and outstanding paralegals since their troubles and will face the same problem as I.

For this reason, I ask that the "good character" clause in the legislation be amended to require the law society to take into account the factors and actions of each applicant for grandparenting or for regular licence that have been demonstrated since any unfortunate occurrence in their lives. If this is not done, I expect there will be more Brousseaus in the near future.

In summary, I ask that this committee recommend the amendments to the bill which are being asked of you by me and many other submitters. Perhaps this committee should recommend that there be a step back and a new overview look at the whole matter of access to justice, so that this bill will not become known as the access to injustice act. I thank you for your attention.

The Chair: Thank you. We'll start with the government side: about five minutes each. Mrs. Van Bommel?

Mrs. Van Bommel: Thank you for your presentation. Certainly the last part of your presentation was very interesting. It brings to mind the idea that when we talk about—you're talking about the whole issue of good character and grandfathering and that sort of thing. But in terms of the public perception of the profession of paralegal, what kind of image do you think it would convey to the public if disbarred lawyers were to become paralegals? Do you have any concerns about what that would do in terms of the general perception, public perception, of the profession?

Mr. Grupp: I'm going to tell you that I've been practising since 1993 as a paralegal. I have never hidden my past from any of my clients. They know what my past is. That has not deterred them. Secondly, if you do have a chance to read either in French or in English the Brousseau case, that position was addressed by the Tribunal des professions and they have taken the position that it is not going to be something the public will concern itself with, if the person has acquitted himself properly after his unfortunate occurrences, and that a person is allowed to make a mistake.

I'm sure that no one in this room—I'm not saying they made big mistakes, but no one in this room can ever say they never made a mistake in their lives. No one in this room, I hope, has not been forgiven for that mistake or paid for it and then been forgiven. That person's talents should not be thrown into the garbage if the person can prove himself or herself to be a proper, upstanding citizen and has performed in a proper and conscientious and legal manner in the past.

So something that happened to me 13 years ago is unfortunate; it really is. I paid my price for it, but I still have the talents that I have and I can still use them and have used them for the past 13 years to assist the public. Sure, I charge for it, but I don't overcharge, and I've done a lot of good for a lot of members of the public. I don't think that when I was disbarred or when I was given a sentence that they told me the sentence was going to be for the rest of my life. That's what basically happens. It's a form of discrimination. It's probably legal discrimination. If you read the Human Rights Code and you read the Constitution, there's nothing that prevents people from being discriminated against on this basis, but why shouldn't their talents be put to good use? Why shouldn't my talents be put to good use? They have been put to good use for 13 years. They still are; I'm still in practice. I still appear in trials, in tribunals, in tax court regularly. When I leave here today, in two days I've got a trial in tax court and then I've got another trial in small claims—I'm a very busy practitioner. Why should I be discriminated against, and how do you think the public is going to be ill-served by me using my talents for people who can't afford lawyers?

I hope I answered your question. I probably overdid it.

The Chair: Thank you. Mr. Runciman?

Mr. Runciman: Thank you for being here. I'm all for people having the opportunity to turn their lives around. I guess I'm curious, though. I don't know the gravity of the situation with respect to your own disbarment, but I am curious about how you would personally view any regulatory body with respect to reaching a conclusion about good character. How do you arrive at that kind of decision? It strikes me that it would be over some period of time.

I'm looking at your submission. You were disbarred in 1993 and then immediately went into practice as a paralegal, so a brief period of unemployment there. I really am curious about the fact that I don't think any regulatory body would have an opportunity—I think you would want to look at some sort of record of how they approach their responsibilities in life over a period of time: five or 10 years, whatever it might be.

I find it a bit of a contradiction in the sense that you support regulation and you support a sort of reasonableness in terms of an approach to that issue of good character, but at the same time you moved almost immediately—from your presentation—from disbarment to paralegal practice. Do you think that's the sort of thing that should occur?

Mr. Grupp: Well, first of all, I agree with you. I think there should be a "good character" clause. I just think that the "good character" clause should require the law society to look into your record since your problem and until the time you make the application. In my case, it's 13 years. I know that I will get recommendations from many judges and lawyers I have been dealing with over the last 13 years, and one judge—I'm not going to name names—has even told me, "You shouldn't worry about it; they have to take this into account," etc. What concerns me is that the legislation doesn't require the law society to take that into account. It just leaves it up in the air.

Mr. Runciman: That wasn't my point. My point was your view of regulation as an appropriate, fair assessment of good character. In your personal situation, you went from disbarment—immediately, almost—into practice. How would you see that sort of situation under regulation—

Mr. Grupp: It wouldn't happen.

Mr. Runciman: That's right. There has to be a period of assessment.

Mr. Grupp: That's right. The regulator—and I propose it shouldn't be the law society, but if it is—should take into account, even if you get out of jail or have just been disbarred last week and you're applying for a licence as a paralegal, your actions and what efforts you've made to ameliorate yourself and the rest of it. Really, if you were disbarred last week and you're applying this week, I don't think it's going to be a slam dunk that they're going to give it to you; you're going to have to have some period of being able to show that you have atoned for your sins, so to speak, and that you've done something worthwhile to atone for your sins.

Now, obviously, if a lawyer gets disbarred this week, maybe he has to go to work for some organization or maybe some lawyer or maybe some other place to be able to show his good intentions. That's what Brousseau did; Brousseau did that. After he was released from prison he went to law school for three years, and it took him seven, eight or 10 years—I can't remember exactly from the case, but you can read it—before he was starting to make these applications. But when he started to make the applications in what passes for the Law Society of Upper Canada in Quebec, it just took the attitude, "I don't care what this guy's done; throw him out. I don't want to see him."

That's why I'm asking that the words "required to consider these things" be added in, so that it's clear from legislation that the law society has direction from the statute that they have to require, because if you don't, they won't.

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The Chair: Mr. Kormos?

Mr. Kormos: Thank you, sir, for an interesting contribution. I suppose your comments for me are striking because they're in contrast with the recent publicly reported deliberation by the law society when a complaint was made about the character of a woman who sought her call to the bar. That situation, which appears to have been agreed upon by everybody, was a pretty damning one, and in that instance, the appropriate group at the law society, contrary to the expectations I suggest of a whole lot of the members of the public, felt that the circumstances were such and enough time had transpired since the misconduct that she could be called to the bar.

I suppose one of the things that might be helpful is if Ms. Drent—sorry. Ms. Drent has been producing research papers for us at an incredible pace, and I thank her—could get from the law society whatever examples there are of how the law society applies the "good character" provision—I say that very colloquially—in existence now, other than the case recently reported about the woman who sought a call to the bar. For the life of me, I can't recall ever reading about circumstances wherein anybody was denied the bar here in Ontario. There could well be. I don't know.

Mr. Grupp: Her husband went to law school with me and I know her.

Mr. Kormos: All right. So if Ms. Drent could get us that, because I've got some of the same problems Mr. Runciman does. I used to practise law, and down where I come from in small-town Ontario, when a lawyer is disbarred, everybody knows about it. As a very young lawyer, I've got to tell you, the sense of betrayal by a senior lawyer—and some of the disbarred lawyers I know were brilliant lawyers, which made their misconduct all the less comprehensible. But as a young lawyer working very hard and wanting to develop standards and ethics that were amongst the best, the sense of betrayal by a senior lawyer, especially a good one, was

profound. So I suppose that competence to me means not just knowing the nuts and bolts of lawyering but also being trustworthy.

Mr. Grupp: I agree with you 100%. What I'm saying to you, Mr. Kormos, is that people make mistakes. They make big ones, huge ones.

Mr. Kormos: Sure they do. In the course of my legal career, I represented a whole lot of them.

Mr. Grupp: Well, does that mean they have to take themselves to Dr. Kevorkian and end things or does it mean that at some point they can rehabilitate themselves? Even the federal legislation on criminals is called the Corrections and Conditional Release Act. People are expected to be corrected, and people can correct themselves. Yes, there may have been a huge sense of betrayal to you as a young lawyer by whoever it was you're referring to, and I don't blame you for feeling that way, but do you still feel that way today? Has this person still not proven themselves to be—I don't know.

Mr. Kormos: One of the persons is a wonderful paralegal. One of my concerns from the get-go in terms of the regulation of paralegals is, will the paralegal profession be a back door for disbarred lawyers to continue to practise?

I agree with you about the potential for rehabilitation. That's why I want to find out what the law society does now in terms of the standards they apply, whether they do look at periods of time after the misconduct and after the court-imposed penalty. But we've also got Ms. Drent looking at what it means to be an officer of the court, because we've got a group of paralegals here who want an amendment to the legislation to ensure that not only barristers and solicitors but also paralegals are officers of the court. Then, if Ms. Drent would address the issue of good character in the context of officers of the court—because it seems to me there's probably some connection there. I don't know what you have to say about that.

Mr. Grupp: I haven't researched the law regarding officers of the court—maybe Ms. Drent has or hasn't—but when you look at people practising before tribunals or before Small Claims Court and even the summary jurisdiction at the Tax Court of Canada, even though you don't have the official title of officer of the court, you are in fact expected to act in the same way as an officer of the court would. You are expected to talk to the judge in a truthful manner; you are expected to not present tainted evidence; you are expected to act in a proper way. You may not be called an officer of the court, but the judges and the tribunals expect you to act that way. Even in the Tax Court of Canada—these are federal judges—they expect you to act that way too. I have appeared before many federal judges in the tax court and have been told, "You're an officer of the court," and I've said, "Well, I'm not really," but I understand the significance of it and I act in that fashion.

I've won some significant cases in the Tax Court of Canada to do with employment issues, specifically that the employment insurance people did not recognize the fact that a corporate employer was different than a personal employer. I won that case in tax court and the government appealed it to the Federal Court of Appeal. They had to get a lawyer to go there and the first thing he said before the crown lawyer stood up was, "What don't you understand about corporate 101?" It's a different person. If a person says he wasn't related to his employer, and the employer was a corporation, he's not related to his employer. They had to change all of the employment insurance applications across Canada. I'm just tooting my own horn, but that was a significant victory.

The Chair: Thank you.

Mr. Grupp: I'm sorry. I'm getting out of my time, I guess.

Mr. Kormos: Thank you very much, Mr. Grupp. I'm not sure this bill is a done deal. The parliamentary assistant has stopped coming to the committee hearings, so the government appears to have abandoned the bill.

The Chair: Thank you very much, Mr. Grupp, for your presentation.

PATRICK AND ASSOCIATES LEGAL SERVICES

The Chair: The next presentation is from Patrick and Associates Legal Services, Mr. Shane Clair.

Mr. Shane Clair: I'm not a former lawyer, but I like the fact that we have former lawyers working as paralegals. I think they've helped professionalize us.

My name is Shane Clair and I'm a paralegal from Belleville. I got into being a paralegal because I was a property manager. I had to terminate some tenancies in 1990. I went to a lawyer to ask for some help, and the lawyer quoted an outrageous price for this work. So I went to the sheriff—at that time we still had a sheriff in Hastings county—to find out what it was that I had to do in order to do the proper procedures. Back then, we were still operating under the Landlord and Tenant Act, and our last recourse was to go to the Ontario Court (General Division) at that time, where the justices were loath to see people bringing landlord and tenant matters before them, believe me. They would yell at us. So I went to the sheriff and he told me what the procedure was, he showed me what the paperwork was, and I proceeded to do that.

A little while later, a year after that, I met a fellow who owned an Ontario paralegal franchise in the Belleville area. He was a former OPP officer and he was kind of ambivalent about the work. I said, "Well, I'm interested in doing it," and arranged through the Canada manpower program at that time to get a training allowance. I did training through his office with Ontario paralegal. In that context, in my submission, the one entitled Submission to the Standing Committee, I was able to attend various seminars and took courses and had much discussion, and I kept my head down when the various paralegal organizations were warring about who's going to say what about what, but always there was this consistency: that we should have professional standards, that we would like to be regulated, and who

better to regulate us than ourselves? That question has never been answered. How can we regulate ourselves?

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I'm going to start at the end. The way that we can regulate ourselves, simply put, is it's more cost-effective. If you as the government want to make a bill that is going to cost the citizens of Ontario—I think the term is "the body politic"—tens of millions of dollars in an exercise to potentially increase by a slight increment the access of the public to justice and to legal services, then that's a grave mistake. It's a bad political decision. If I come to you and I say, "We can do the same thing and we can do it better. We'll do it faster, and we can do it more effectively in a shorter time for a lot less money," that's called cost-benefit. Business wants to see that. That's what I've come to determine here.

I'm not going to talk a lot about my submission, because it's in writing there. I've been doing this now for 15 years. I've done everything from landlord-tenant to family law, I do a lot of the non-advocacy paperwork, simple wills, uncontested divorces. I do that stuff. I don't solicit that business. People come and say, "Can you do this?" and I say, "Well, here's the reality. If you want this done, I can't give you legal advice. If there's anything that you people haven't discussed or if I think that there's any decision that you might have made here that really you should be talking to a lawyer about," I tell them that. I recommend, I refer people to lawyers.

As a matter of fact, at one point I had the nasty habit, if I came upon two warring factions, of sending them to two lawyers in the Belleville area who hated each other on a personal level, because if you're going to have an adversarial divorce, then have an adversarial divorce. But divorce shouldn't be adversarial. It's one of the things that this access to justice isn't addressing at all: that the destruction of the family in a divorce proceeding is furthered by this adversarial concept. Every person in this room who has been trained as a lawyer was trained in adversarial law. That is unfortunate, because philosophically and from the point of view of what you understand to be the practice of law, this is a problem. It's a problem for the citizens. It's a problem for the consumers of legal services, because they don't want to fight about a lot of this stuff; they just want to get it done. There are a lot of people in Ontario—and in other jurisdictions, but we're talking about Ontario—who won't use lawyers because they don't want to fight. That's the simple truth of it.

So here we're saying, "Okay, we're going to set the LSUC up and further entrench them." I'm going to start with this question, because this is the stuff that concerns me, and maybe I need answers. It's not just rhetorical. Why should the Law Society of Upper Canada have a monopoly on access to legal services in Ontario? You don't have to answer it now. Why should they? Why? The Law Society of Upper Canada is a self-policing body that oversees Ontario's 36,000 practising lawyers. Is it conceivable that maybe we might have enough lawyers, that there are other services and tasks that are being provided? It's possible. How good a job does the LSUC do?

Well, I can tell you that a number of years ago there was a complaint made by the president of the Hastings County Law Association to the LSUC, and this is what it was about: The Yellow Pages sell listings; they sell advertising. As a bonus, if you buy a certain number of listings in smaller non-urban areas like this, they'll put you into categories for no extra cost. What they've done, for years, for paralegals—before we had our own heading in the Yellow Pages—is to put us in under "lawyers." That's where the Yellow Pages placed us. We didn't want to be there. Finally, now, there are enough paralegals so we have our own listing in the Yellow Pages, and that's kind of interesting, too. That's in the last 12 years.

There was a complaint made. The LSUC called me up and said, "You can't advertise in the Yellow Pages under 'lawyers.'" I said, "You know what? I don't care. I don't really even want to be there, because I'm not a lawyer. I provide services that aren't—but if you want to take that up with the Yellow Pages, you be my guest."

My listing hasn't changed. None of the paralegals who are listed under the "lawyers" has changed. Evidently, the LSUC, who knew they could push around one little paralegal from Belleville, wasn't interested in trying to push around Bell Canada, because it's too big a target and there's just too much at risk there. We didn't hear any more about it.

How good a job does the LSUC do? We don't know. We, as the citizens of Ontario, don't know how good a job they do regulating lawyers. We don't know. There is no transparency. Who is the LSUC accountable to? It's accountable to itself. Evidently it's accountable to the Legislature of Ontario, and of course to the courts—it has some accountability there in isolated cases dealing with particular matters, but as a whole, it doesn't have any transparency.

The LSUC is only now—and I refer you to last week's Globe and Mail—instituting a program of active inspectors, inspecting lawyers, aimed at curbing fraud and incompetence and of curing negligent lawyers of bad work habits.

Now, the LSUC says, "Yes, we're the ones who can regulate and manage paralegals," but on the other hand, they evidently haven't been doing such a good job managing and regulating themselves. All the lawyers in the room, I'm sure, think, "Where does this guy get off?" I'm old enough. I can do other stuff, you know.

This gets me. This really disturbs me. You were talking about good character. By the way, just as a matter of information: I haven't had a drink in 18 years. I deal with people regularly—I'm talking about lawyers—who have serious lifestyle difficulties. The law profession does not protect itself by saying, "We have people who are having some lifestyle difficulties."

In industry there are programs. Maybe the LSUC has something like that—I don't know—but what I'm saying is that there are enough hazards out there for private

business people, which is essentially what lawyers are. They're private people. They're running businesses. Most of the lawyers in Ontario operate in firms of 10 or less. That's the reality. They're not all working for the big, huge firms out of Bay Street. I don't know how many people here are from there. It has serious problems, I believe, and though this is anecdotal, I believe it could be demonstrated.

There are serious difficulties in managing the affairs of lawyers who are having difficulties in Ontario, because lawyers are like police. They form this—I don't know what the lawyers call the equivalent of the Blue Line. I don't know what it is, but there should be some recognition that lawyering is a tough, tough game. Practising and formerly practising lawyers—no. It is a very, very tough business. It's not for the faint of heart. It's basically a profession that at the litigation front is "march or die." It's a real tough business, it's extremely stressful, and it takes really tough, strong-minded people to practise law and be lawyers, even in non-adversarial situations. I know that. I've learned that from dealing with lawyers. That's what happens.

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So let's talk a little bit, though, about non-lawyers. In Ontario, there are somewhere between 1,000 and 1,500 independent paralegals, depending on how you define us now. We're not all members of any particular organization because, frankly, we finally have a cause to be unified, and it has caused us to become more unified. As a result, we've been able to have some benefits achieved. So there has been this give-and-take. Some people think that it's too late for us to be a unified front, but it's not too late, because if we are legislated into subservient existence under some law that says you have a monopoly to deliver these rights, then we're going to have some serious challenges under the charter in Canada. There will be some challenges.

We work in arenas where lawyers in private practice are often disinclined to venture: landlord-tenant; uncontested divorces; some of the other tribunals that are available for us to represent people in. Certainly in workers' compensation, there are a few paralegal firms that have specialized in that for years. That's one area that this Access to Justice Act is supposed to be addressing, and you know what? Paralegal participation in working on appeals and working on applications before the Workplace Safety and Insurance Board has improved the delivery of services, and it has made it more viable for lawyers to become involved in that. So there again is this relationship that has happened.

There are many more. We do, of course, Small Claims Court and document preparation. I'm trying to think of all the stuff that I've done: Canada pension appeals. Private insurance companies love talking to paralegals. At least, I've always had a good response from them, and they've always been very responsive. We stay out of litigious situations because I'm not interested in billing hours; I'm interested in resolution. Probably if I was more adept at business, I would be more interested in billing hours. I could learn from a couple of the law firms in Belleville about billing hours, because they've shown me how billing centres work within their firms. They've demonstrated: "This is how you do this." So it's a business practice.

Who are the non-lawyers practising legal services? You've heard all of this, so I'm just running over the same old area. Paralegals: You know that term. A lot of people in the public know paralegals today. Law clerks: Generally, law clerks work for lawyers, judges, sometimes faculties of law. Legal assistants: Is that another title for a paralegal? Is that an assistant to a lawyer? What is that? There are a lot of people who have that designation. Lots of schools run programs for legal assistants. Other terms for us are "non-lawyers," "community legal workers," "advocates working for legal clinics" and, of course, there are the biggest employers of non-lawyers providing legal services. The single biggest employers are law firms, government and private business. It does not mean that they regulate us. It doesn't mean that they have any type of standard. It just means that they're the biggest consumers. So when the government says to me, "We, the law society, mandate our members to consume the legal services provided by these individuals, but we say that you, the general public, the body politic, can't have the same access to legal services," I'm having a real problem with that.

Is that democratic? I don't think so. Is it good business practice? Absolutely not. It's not good business practice because, as I mentioned to you with the WSIB, good business practice there has made that work a little more efficiently, and with some of the issues that are addressed in the Access to Justice Act, we're probably going to see an improvement there. We're probably going to see an improvement in the practice of poverty law. Instead of appeals taking years and years for somebody to be granted an ODSP pension, now it'll be done in months because this process will be speeded up, God willing, under the legislation.

However, I say this: The Family Court rules were changed in 1999 to improve the delivery of services to the consumers of those services—not lawyers, but to the people there.

Do you know what happens in Belleville? If you have something in Family Court, you sit there for endless days.

We've been fortunate in Belleville because there isn't the Unified Family Court, so there has been this division of interests. Luckily, we had lawyers who were justices who were specialists in family law and child protection law. We were very fortunate. Consequently, the judges we had were extremely learned. The lawyers cleaned up their act for a while.

Now what we've seen is the slowing down of the process again. I was granted leave by the court to act on behalf of individuals until an application was brought by the president of the Hastings Law Association against another paralegal to have paralegals banned. We asked the court for leave to represent. The senior justice at that

time, the late Justice Pickett, said, "I don't want to have to deal with this anymore. I'm just barring all paralegals from Family Court." I had sat with Justice Pickett a number of times and said, "I don't care if I can come here because I don't even like coming here. I don't like coming here, but what I can do for people is help them prepare their paperwork very efficiently because if duty counsel is helping them prepare their paperwork, it's rushed, it's written out, it's 10 or 15 minutes." That's the duty counsels who are being paid under the legal aid plan. I can help people. I charge them a modest amount of money and then if they want to use duty counsel and direct them what to do, then that's what they should do.

Too often lawyers are reluctant to take direction for their clients. A lot of clients, especially in family law matters, have a pretty good idea: "I want to have some parenting time. I'm prepared to pay some support. This is how much I can afford. I'm sorry that we have all this awful, nasty hostility between the adults, but let's get on with the real issues here, which are always about parenting." Guess what? The Department of Justice Canada is addressing this right now in their changes to the Divorce Act.

The other non-lawyers—let me see. Property management companies, insurance companies and real estate companies all use non-lawyers to do legal work. Non-lawyers include title searchers: the backbone of the real estate conveyancing business. Real estate firms use secretaries to prepare offers of purchase and sale, legal contracts. They use them. So there's the secretary writing up this contract that represents a huge amount of money. I would say that the fabric of legal services in Ontario is dependent on non-lawyers.

A comparable institution would be the medical industry. Doctors look after their own. Nurses look after their own. Other medical technicians look after their own.

The LSUC has a monopoly. In this day and age, monopolistic control over services provided to the body politic is really a bad, bad decision.

Do independent paralegals need to be regulated? Yes, we do. Good character, insurance, proper training: We need all these things. We need this stuff. But we can do it as a group. We can do it cheaper, more efficiently and faster. We could get the regulations in place. We could get the qualifications. We could have standards in place and get people certified a lot faster than the law society. We are small enough in numbers. We can learn from the mistakes of other professions. We can institute a regulatory and certification process in months for relatively low cost. The PSO has said this repeatedly. If it falls on deaf ears, I'm sorry, but I can say this: the LSUC says that it will take years and millions and millions of dollars to institute the same regulations and certification programs. That's not in the best interest of any consumer of legal services.

1400

One of the things that I handed out was this discussion paper. It's an academic discussion paper, Paralegals: In the Community's Interest? I just quote briefly from some of the information in it. I've been reading so much about paralegals and, from an academic point of view, it's fascinating. There's a huge plethora of considerations that have been done in all kinds of jurisdictions around the world in dealing with this issue.

This is a quote from the paper: "In 1985, the British Parliament ... removed the monopoly that solicitors had over conveyancing." This resulted in more reasonable costs, helped speed up the process, and the competition seems to have improved the overall standards of the practice of real estate conveyancing. The recommendations of the conveyancing committee: the establishment of a governing council for licensed conveyancers; required education, skills and experience standards; mandatory insurance; and a code of conduct. It has now been implemented and the independent conveyancers are now operating. That's since 1987 in England. They did that. They said, "Here's an area where we can have competition."

There's an article here about Bob Aziz, who challenged the lawyers because he felt that they were charging too much for doing real estate work. He forced them, when he was with the bank, to bring down the cost of the legal services that lawyers did; more consistency. So now, if somebody comes to me and says, "Can you do real estate?" I say, "There are some really good lawyers in town here. Their prices are very competitive with one another. They can offer you title insurance, they can offer you protection at a much higher rate," and then I'll give people the names of a couple of lawyers—sole practitioners, by the way. I don't expect these people to send me business, but the individuals I talk to about that stuff, it's in their best interests to do that. It's not in my best interest. If I was just a greedy, manipulating guy, there would be some way that I could grab a little bit more money out of it. That's not the real reason that we do this. It's not the only reason. We're not just in it for the money.

Common complaints of consumers of legal services provided by lawyers: the number one complaint—lack of information. There's no communication. Is the LSUC going to force their membership to communicate better with their clients? Why on earth would they? And how could they? Lawyers are busy people. You usually have to get through two or three desks before you get to your lawyer, unless they're a sole practitioner. Sole practitioners, certainly in our area, are pretty forthright. But people, time and again, say to me, "You know, I had this thing with my lawyer. He never told me what was going on. She never said where we were at and I hated that. I'm paying them good money. I hated not knowing. So I don't want to use that type of service again." I say, "I'm going to tell you everything that I'm doing because I need you to make decisions all along the way. I need you, the consumer of this legal service, to make decisions. I need to be able to inform you."

Insensitivity on the part of lawyers: It kind of goes with this non-communication issue. Many people in-

volved in the process of separation and divorce work out agreements without lawyers because they do not want to get involved in adversarial procedures, and lawyers in Ontario practise adversarial law. That's it. If you're going to make access to justice a more profound statement to the needs of the citizens of Ontario, then do that. Force adversarial law right out of family law, even to the point of having the courts challenge. If there's going to be an adversary, let it come from the bench.

Here's a couple now: They've been married for 20 or 25 years. They've raised their kids. They've come to the decision that their marriage is over. They don't need anybody to tell them. They're perfectly comfortable with this. They have worked out an arrangement, a division of all their assets. They've worked out how they're going to be parents. They've discussed things like what happens at family events. And if they haven't discussed this stuff, if they're talking to me, I ask them those questions: "What are you going to do when your kids get married? What are you going to do when your grandchild goes to get baptised? Are you people prepared to deal with that right now? Can you tell me how you're going to deal with that? Because I want to know. I want to know what you're going to do in five years. I don't want to know if this is convenient; I want to know that you've dealt with some of the hard issues."

People like those discussions. They like to have dialogue about that stuff. That's the way I do it; I don't know how other people do it. But if you're a lawyer and you've told somebody that's come to you and said, "Listen, we both want you to prepare our separation agreement," and the lawyer says, "No, I can't. One of you needs to get a lawyer"—so now you've got two lawyers representing the best interests of the parties. But the best interests of the parties include their families, maybe their friends. The lawyers have no interest in any of that; they only have interests there. If a party says, "Look, I don't want this to be a fight. I want this agreement to be done," very few lawyers will do it; very few lawyers will do a separation agreement for two people. Yet the separation agreements I did are written by some of the best lawyers. The ones that I use are thoughtful, thorough documents that reflect the legal needs and also discuss the social needs.

I see in separation agreements today from lawyers no discussion about when the cost of child support ends. I see no discussion about alternative dispute resolution. They don't put that stuff in there. Well, why don't they? It makes perfect sense to me. If people are this far along in discussing how they're going to deal with their problems, let's give them a vehicle that's mandatory. Make it mandatory for lawyers to put in when you pay child support until. Make it mandatory in this Access to Justice Act when your support ends. Make it mandatory that instead of having to go to court every time you have a difference, there's an alternative dispute resolution process. The Arbitration Act is supposed to deal with that.

This is a quote from the paper by Ms. Noone: "It is unlikely that the role of paralegals can be fully developed" as independent operators until dominance of lawyers in the legal services field is altered.

The Chair: Mr. Clair, you have about a minute left, just so you can wind up, finish up your presentation.

Mr. Clair: My spiel?

The Chair: Whatever you want to call it. There's about a minute left, if you'd like to just—

Mr. Clair: The final question that Ms. Noone addresses in her discussion is, what levels of expertise and training are needed to perform legal tasks? What level? Is it the academics that are supposed to tell us? Is it lawyers—lawyers who rely on the support network to get them to the point where they can practise law effectively? Most lawyers I know are pretty smart people. They're very effective. They're very caring people; they're not insensitive people. They're not people who can't communicate. But the perception that they're suffering from is that they can't deal with their clients because their hands are tied in certain ways. My hands aren't tied that way. I can deal with people on that human level.

What type of training is needed to perform legal tasks? Are they already performed by a variety of legal workers? Yes, they are. Anybody going anywhere, you'll find that. Why don't we develop legal professions linked to levels of legal need? Instead of just this carte blanche saying that the LSUC is the organization in the best position to handle this, I suggest that it's in the best position to handle the regulation of lawyers. The regulation of legal services is best left to those people that are providing it, and if they don't do a good job, then that's the responsibility of our elected representatives.

The Chair: Thank you very much.

Mr. Clair: I'm done? No questions?

The Chair: That's it. There's no time for questions. At 30 minutes, you used up all the time.

LAWRENCE ARKILANDER

The Chair: Next we have Lawrence Arkilander via teleconference. Do we have Mr. Arkilander on the phone?

Mr. Lawrence Arkilander: Mr. Arkilander is here.

The Chair: Hi, there. It's Vic Dhillon, the Chair of the committee. I believe you have 20 minutes. You may begin your presentation.

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Mr. Arkilander: Thank you very much, Mr. Dhillon. Honourable committee members, my name is Lawrence Arkilander. I operate in Belleville. I've been a Small Claims Court agent for just over 10 years in full-time practice, unlike some part-timers that we have in our field. I've made a substantial investment in this field, starting with a two-year program at Seneca College in one of the community college's first-ever court and tribunal agent programs. I also studied commercial law with them and took a civil procedures course at Ryerson University.

I agree that our profession would benefit from regulation, and I actually encourage it. It will provide us with

recognition that I think we lack at this time. But it's wrong to say we're completely unregulated. There are several ways that we are regulated currently. One of them is through the Ministry of Consumer and Business Services, which will investigate practices of any business that a consumer files a complaint about. If it warrants, the police will even get involved, if there's fraud or something involved in that.

Secondly, the rules in Small Claims Court also provide for the judges to exclude any person who they feel is not competent or is not aware of the duties or responsibilities of an agent in Small Claims Court. In essence, we're tested every time we appear in a courtroom by the judges who are present. Now, you really couldn't ask for better scrutiny than that of our profession. But to be regulated by our competitors, which are the Law Society of Upper Canada, I have very serious concerns about.

Now, it's true that no one group represents paralegals. The major reason for that is because it's an emerging career—it's evolving, it's growing. It's sort of a new field. It has been around but it's being recognized now. It's undergoing growing pains, essentially. If I was going to belong to any one group, it would probably be the Paralegal Society of Ontario. Some of the reasons I feel the LSUC is not the right body to govern us are spelled out. I believe you have a copy of my e-mail in front of you. Number one, it's a conflict of interest. As the honourable MPP Ted Chudleigh is quoted in last Friday's Sun, it's like "putting Wal-Mart in charge of Zellers." I said that's not quite accurate. It's more of a David and Goliath situation. The LSUC oversees some 35,700 lawyers. It's true: It's a monstrous, bloated bureaucracy and I really have no desire to be a part of it or to be regulated by them.

Another problem is the underlying resentment by many lawyers towards agents. It's subtle, but it's certainly there. There's often a patronizing attitude. They sort of look down upon us as poor cousins or something, intellectually. Sometimes we're looked upon as wannabe lawyers, but that's not true. That's like seeing a nurse as a wannabe doctor or an architectural technologist as a wannabe architect or a veterinary technician as a wannabe veterinarian; they're not. I love my profession. I'm proud of it and I have absolutely no desire to be a lawyer. I've had people ask me, "Why don't you go through and become a full-fledged lawyer?" It's a saturated field and, in some cases, I've earned as much money as or more than lawyers. I've been living in the same neighbourhoods. Seven years of schooling would probably not benefit me in a lot of ways.

Some of the other reasons—I'd also like to say that I've had lawyers outside of courtrooms, when they were on the other side of a matter, sort of look down upon me, saying that we're not regulated. My response is, I kind of laugh back at them and say, "Well, that would be like saying that issuing drivers' licences makes the roads safer." In addition, any Small Claims Court judge will tell you that some of the agents who appear before them are more competent than some of the lawyers. When I'm trying to sell a customer on using my service, I'll say, "Who do you think is more competent in Small Claims Court: an agent who appears on a daily or weekly basis, or a lawyer who appears once a year, once every five years, once in a career?" And they say, "Well, it would have to be the guy who's there regularly." And I say, "That's exactly the point."

Regulation, as for all businesses, also comes in the form of a caveat emptor—it's buyer beware. Consumers will ask their friends and neighbours who they've used, see if they've used certain agents for Small Claims Court, and they'll recommend the good ones. If you've had a bad dealing with any business, whether it's a paralegal or not, chances are you'll never deal with them again. Bad agents don't last. That's a fact. I see them a few times and then within a year they've disappeared from our profession. They can't get repeat business. A lot of my business is repeat.

I'd also like to point out—you may have seen the annual Léger Marketing poll of professions that Canadians respect. You can go online and find it. It refers to professions that Canadians admire, respect and trust, and it shows that currently only 45% of Canadians admire lawyers. Unfortunately, I'm in the majority that do not. I wouldn't want to be regulated by the Law Society of Upper Canada.

Another thing in favour of paralegals is the lower-cost service to the public. I know first-hand of two cases taken to trial where the lawyers' fees were almost equal to the amount they were collecting or defending—you're looking at paragraph 6. In one case, a law office inadvertently sent me their client's account. They got a judgment for $5,500 and had charged the Bank of Montreal over $4,300. There's something definitely wrong with that.

In another case, when the lawyers argued for costs when they were almost successful at trial—we were suing for about $5,700—the lawyers' account was over $4,000.

I have customers come to me with accounts sometimes—I specialize in account collection—whether they want to sue for $12,000, $14,000, $15,000, $17,000, $18,000, $20,000 even, where I say, "If it's that amount, you may want to go to a lawyer." They just don't want to make the trip to a lawyer's office and be dealing with lawyers for collection of what should be a relatively simple matter. So what they do in Small Claims Court—the legal term is that they "abandon the excess," which means they knock it down from $18,000 or $15,000 down to $10,000, so they don't have to seek the service of a lawyer, because they know that Small Claims Court is less expensive, and it's more expeditious, a faster result. We are their answer.

Another major argument against having the law society govern us is that they don't know what agents do. They're just not familiar enough with how our practices are operated. They don't do the work of an agent, and we don't do the work of a lawyer; we are not the same profession.

In closing, I would like to say that if we must be regulated, we ask to be self-regulated, like all other professions. Regulation by the LSUC could result in restrictions being placed on our areas of practice with an intent to limit competition, and because of that, those are my serious concerns about being regulated by the LSUC.

Any particular questions?

The Chair: Thank you very much. We'll start with Mr. Kormos. Four minutes each.

Mr. Kormos: Thank you, Mr. Arkilander. This is being broadcast on the legislative channel, so what's the name of your company?

Mr. Arkilander: I operate under the name of L.A. Legal Services.

Mr. Kormos: L.A. Legal Services. That's in Belleville?

Mr. Arkilander: That's correct.

Mr. Kormos: And you have an office location?

Mr. Arkilander: Yes, I work from a home office.

Mr. Kormos: Okay. Do you invite people to your home?

Mr. Arkilander: Yes, I do.

Mr. Kormos: By appointment only?

Mr. Arkilander: That's correct.

Mr. Kormos: Okay. What's your phone number?

Mr. Arkilander: It's 613-962-6999.

Mr. Kormos: Thank you kindly. I appreciate your contribution. One of the interesting things is that we haven't heard yet from paralegals who accept the government's proposal of regulation by the Law Society of Upper Canada. A very credible group of paralegals was here last week, my colleagues on committee will recall. Their final comment was, "regulation of paralegals by anybody but the Law Society of Upper Canada."

Are there paralegals who support the proposal contained in Bill 14?

Mr. Arkilander: Not that I have met yet.

Mr. Kormos: You, of course, are endorsing regulation.

Mr. Arkilander: That's correct. I would welcome it.

Mr. Kormos: And why haven't paralegals developed a more united self-regulatory scheme to date?

Mr. Arkilander: That's a very good question. I believe I spelled it out. It's sort of an emerging career at this point in time, and I don't believe it's reached maturity to the point that—

Mr. Kormos: Mr. Grupp's going to start getting his old age pension next year. He's been doing this for 14 years.

Mr. Arkilander: Was that Mr. Grupp who spoke before me?

Mr. Kormos: Yes.

Mr. Arkilander: Oh, yes. I thought I might have recognized his voice.

Mr. Kormos: Okay. But paralegals have been around for 15 or 20 years.

Mr. Arkilander: Yes, they have been, under different names, though. Some people think we're law clerks; some people think we're legal assistants. There has been a struggle by a number of groups, each wanting to be the body to represent the agents, to represent paralegals, and no group has been successful in getting everybody on board yet.

Mr. Kormos: What about the educational standard? Are you a graduate of the Seneca College program?

Mr. Arkilander: That's right—court and tribunal agent.

Mr. Kormos: What do you advocate in terms of minimum educational standards?

Mr. Arkilander: I would suggest that probably a minimum of a year would be adequate. In the two-year program, we had a few of what I would call filler courses. They would just sort of round out—

Mr. Kormos: Like what?

Mr. Arkilander: Well, we had to take immigration, and I've never touched that. We took something else in wills and estates. I haven't touched any of that. I specialize in Small Claims Court.

Mr. Kormos: Do you bill on an hourly fee or do you assess a block amount when you first sit down with a client?

Mr. Arkilander: I assess a block amount.

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Mr. Kormos: What are some of the types of fees that a person could expect to pay when they retain you?

Mr. Arkilander: I do a lot of collection work for businesses and I work on a contingency basis, which is a percentage of monies recovered.

Mr. Kormos: Fair enough.

Mr. Arkilander: I was sort of forced into that initially by my clients. They said, "Well, we'd like you to see if you can recover this debt, but we don't want to throw more good money after bad. Tell you what: If you're able to collect it, you can take a portion of it."

Mr. Kormos: Do you get paid for disbursements?

Mr. Arkilander: Yes, I do.

Mr. Kormos: Thank you kindly, Mr. Arkilander. That's L.A.?

Mr. Arkilander: L is the initial and the surname is—

Mr. Kormos: I know your last name, but the name of your firm again?

Mr. Arkilander: L.A. Legal Services.

Mr. Kormos: In Belleville, listed in the telephone under L for L.A.

Mr. Arkilander: Yes. It's in the Yellow Pages also.

Mr. Kormos: Under what listing in the Yellow Pages?

Mr. Arkilander: Under paralegals. L.A. are my initials, so that's what I use.

Mr. Kormos: Right, of course. Thank you kindly, sir.

The Chair: Thank you, Mr. Kormos. The government side. Any questions or comments?

Mr. McMeekin: Yes, thanks very much, A.L. or L.A. I appreciate your input. Something you said intrigued me. I think in response to Mr. Kormos you were saying that you really didn't know why the paralegals—these aren't your words; I don't want to put words in your mouth, but

it's what I picked out of them—hadn't gotten their act together.

Mr. Arkilander: Correct.

Mr. McMeekin: I wonder how you would feel, as I suspect may be the case—although obviously there will be a lot of amendments if this act goes forward—if maybe there was some provision for a period of time to pass, with some review mechanism there. Maybe there's a time down the road where those who think paralegals should be regulated—and there seems to be a fairly broad-based consensus to that effect—maybe there's a circumstance where the profession is in fact ready to be self-regulated. I don't know; I'm just talking off the top. What would you think of that, if we were to put some sort of time-review provision in the legislation?

Mr. Arkilander: Time review—you're talking about for self-regulation?

Mr. McMeekin: If the bill were to proceed, to review how the bill is working and whether there are some alternative mechanisms, as the paralegal profession that you characterized as being immature and developing had matured a bit.

Mr. Arkilander: And fragmented, I might add. You're saying, proceed with regulation under LSUC and review it down the road?

Mr. McMeekin: Yes.

Mr. Arkilander: I wouldn't recommend that at all. Once it's in place and rolling, status quo is just too easy to maintain.

Mr. McMeekin: Fair ball. I just thought I'd give it a shot. Thanks.

Mr. Runciman: I agree with the witness. It's setting up a regulatory structure, and then the potential of it being abandoned after, say, a five-year review is highly unlikely.

I want to add my thanks for your participation, Mr. Arkilander. One of the things you were mentioning in response to Mr. Kormos was the fragmentation of the profession, the fact that you think it made you vulnerable for what's taking place with respect to this legislation. It's regrettable that there wasn't a body that could have represented the profession perhaps more forcefully with respect to the time that led up to the development of this legislation. But in any event, we are where we are.

I gather that you have no difficulty with the idea of self-regulation. We've heard references to all sorts of other groups, like dental technicians and whoever, that the government of the day has found it appropriate to allow to self-regulate, for whatever reasons. That's a view that you would share?

Mr. Arkilander: Yes, it is; absolutely.

Mr. Runciman: You mentioned in here some of your own experiences with the law society. Is a lot of what you're talking about here anecdotal or have you had some personal experiences that caused you to be cautious—to be polite—with respect to them having greater influence over your day-to-day operations?

Mr. Arkilander: Are you referring to any specific paragraph in my document?

Mr. Runciman: You're talking about the David and Goliath element and the resentment toward agents in the sense that you talk about the LSUC being a bloated bureaucracy. Do you have anything to support those views?

Mr. Arkilander: To buttress that?

Mr. Runciman: Yes, right.

Mr. Arkilander: Yes, I do. I've been patronized by lawyers, because we're in adversarial roles. Ninety-nine per cent of the time I'm representing the plaintiff; they're representing the defendant. I'd say a third of them are respectful to our profession; about two-thirds are sort of patronizing or look down upon us.

When I've been treated roughly by a lawyer, the odd time I've written to the law society and you get a form letter back. Essentially, if you're not a paying client of the lawyer, they won't entertain your complaint. That has been my direct experience. As a result, I've stopped complaining to the law society about any lawyer I've dealt with.

Mr. Runciman: How would you define a paralegal in terms of scope of practice?

Mr. Arkilander: That's a good question. A lot of people—half the population—wouldn't know what a paralegal is until I start to explain to them. Some paralegals do traffic tickets; some are doing uncontested divorces; some like me do nothing but Small Claims Court. The definition would be an independent practitioner of a minor area of law. I guess that's the best thing I can come up with.

Mr. Runciman: I just wonder if that would not capture a lot of the other areas we are concerned about, like real estate, banking and so on. That's one of the difficulties here.

Mr. Arkilander: Yes, I guess it would.

Mr. Runciman: Okay. Thanks very much. I appreciate it.

The Chair: Thank you very much, Mr. Arkilander. Have a good afternoon.

CREDIT CONTROL CENTRAL

The Chair: The next presentation is from Janet Wigle-Vence. Welcome to the committee. You have 20 minutes. You can begin.

Ms. Janet Wigle-Vence: First of all, I'd like to thank the committee for the opportunity to speak to you today. I believe you have a copy of my speaker's notes, and in the interest of time I'm going to skip over some of the details in those notes and leave that to your perusal later.

My name is Janet Wigle-Vence and I'm the legal manager at Credit Control Central. In that role, I'm responsible for all Ontario Small Claims Court actions and I liaison with all the legal service providers we engage to represent our clients in various Ontario courts. Credit Control Central was founded in 1995 and is a full-service collection agency. It is one of the largest—if not the largest—agencies in Canada that specializes in commercial collections.

I'm here today because we're concerned about the implications of Bill 14, schedule C, regarding the regulation of paralegals and the potential impact this legislation will have on our clients. Specifically, we are interested in maintaining the access we have today to affordable and effective paralegals who represent our clients in the Ontario Small Claims Court.

I have reviewed a number of the studies, reports, submissions and debates on this subject and found repeated references in those to the horror stories of the poor quality of representation received by some members of the public from paralegals and the need to protect the public from unqualified persons who offer legal services.

We certainly do not disagree that the lack of formal regulation of paralegals is a cause for concern. However, we do feel that the legislation as it is currently drafted will not address the problem in a timely manner. We believe it will have significant and unnecessary cost implications, the net effect of which will be to limit rather than enhance access to justice for those in the most need of cost-effective representation, those who, through lack of financial resources, choose to represent themselves or rely on paralegals rather than lawyers to represent them in the Ontario Small Claims Court.

We don't feel that the discussions to date adequately present the professionalism of the majority of paralegals with whom we have dealt. That professionalism demonstrated in the absence of formal regulation is more representative and speaks more effectively to the general standards of paralegal practitioners in Ontario than a handful of horror stories.

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We believe that the best interests of the public will be served by self-regulation of the paralegal profession and that the Paralegal Society of Ontario is a logical body to be entrusted with this responsibility.

Let me provide you with a bit of context for some of these observations. First, I pondered on what "access to justice" really means to the public. In June of this year, I attended a seminar which focused on the changes to the rules of the Small Claims Court that were coming into effect on July 1. I was impressed by repeated references to the principle that the Small Claims Court is a people's court. Several of the presenting justices made reference in one form or another to the notion that Small Claims Court should be governed as much by the rule of common sense and the use of common language as it is by the rule of law. It's this reference to common sense and common language that I find very relevant to the current discussion and which helped form my personal definition of what "access to justice" should mean.

For our clients and for the public at large, there are some very pragmatic consideration implied in the term "access to justice": (1) Ease of access to legal remedies, meaning that the rules, forms and guidance documents are written in plain language, that the proceedings are conducted in plain language rather than legalese and that the application of common sense is used in interpreting the rule of law; (2) timely resolution of an action, which includes prompt processing of documents and scheduling of court dates, the rapid movement of case files through the judicial process and limits on the use of stalling tactics that inhibit the progress of actions before the court; (3) effective representation, which means access to professionals who are qualified based on education and/or experience, accountable as defined by a code of conduct and covered by insurance, and vested in their clients' best interests; and lastly (4) affordable representation. Options for representation should include the right to self-representation, but certainly also access to cost-effective representation by a qualified paralegal.

Our firm has been representing our clients in Ontario Small Claims Court actions since its inception over 10 years ago. We find that the rules and forms of the Small Claims Court are sufficiently straightforward to allow us to prepare the required documents and manage our cases in-house. We're authorized by our clients to represent them in court, but with our current volume of files, this isn't feasible, and we therefore rely extremely heavily on paralegals to attend court proceedings on our clients' behalf.

In Ontario, the procedures of the Small Claims Court and the reasonable cost of paralegal services provide us with the opportunity to initiate legal action on our clients' behalf in matters that would otherwise be too costly to pursue. With cost in mind, on claims often as high as $14,000, we recommend our clients proceed with legal action in Small Claims Court, because to proceed in Superior Court, we have to engage our lawyer, and despite the fact that his rates are very competitive, they are still significantly higher than those of the qualified paralegals we have been using. Therefore, the cost savings far outweigh the recovery opportunity that is forfeited by reducing the claim to the jurisdictional limit of $10,000.

We believe our experiences are a microcosm of those of the public at large. In all cases, we're talking about persons or businesses that are seeking legal remedies to address an injustice they feel has been done to them. The challenges—the ability to obtain effective and cost-efficient representation—are the same, regardless of the nature of the injustice.

Specifically in the case of our clients, we're dealing with the failure of a party to pay for goods or services rendered. Many of our clients are individual professionals and small businesses. The economic implications of an unpaid account can be crippling to these clients and have an effect on their employees, suppliers and customer base. In this environment, legal action is only a viable option if it presents a cost-effective opportunity for securing payment of the debt. In Ontario today, we have this option available to us through the Small Claims Court and the reasonable cost of services provided by paralegals.

If I turn for a moment to what I spoke of as the cornerstone principles of access to justice, the first two—ease of access and timely resolution—have, to a large degree, been addressed in the Ontario Small Claims

Court. Changes that were implemented on July 1 were intended to further improve accessibility and timely resolution of matters. While there are some growing pains associated with those changes, we believe they will further these goals and the issues will sort themselves out over time. The current discussion is therefore more specifically focused on the matters of effective representation and affordable representation.

Our experience for the most part has been that the paralegals we have engaged in small claims courts are educated in the matters of law that apply to the proceedings of civil matters, well versed in the rules and procedures of the Small Claims Court and very competent and highly successful at court proceedings. In short, our agents have helped us serve our clients' interests well, have a very high success rate, often against lawyers, and they have provided these services at reasonable prices, which a lawyer cannot match.

We've followed some simple guidelines to help ensure we engage professionals with appropriate qualifications at reasonable prices. These principles are not much different than those that any educated consumer would use in seeking a supplier of a professional service, be that an accountant, an architect, a real estate agent or any number of the other self-regulated professionals in the province of Ontario. We rarely engage lawyers to represent our clients in Small Claims Court. To do so is simply not cost-effective. Our experience with lawyers has therefore been limited to those who are acting on behalf of the opposing litigant. We have discovered that many lawyers do not understand the operation of the Small Claims Court, and several have admitted to us that they do not have the time or the inclination to familiarize themselves with the rules and procedures of the Small Claims Court. They often seem to have difficulty translating legal rhetoric into plain language and common sense. While they're very effective at filing motions that may delay the proceedings of an action, they have ultimately not been successful in court appearances where they are up against our paralegal agents.

There are, in your written copy, two examples that I'm going to skip over at this time, but the point of these examples is simply that the representation by a lawyer does not in any way guarantee a litigant that they will receive effective counsel. In fact, if you measure effectiveness based on results, paralegals acting for our clients have been far more successful and effective than lawyers representing the opposing litigants.

On the subject of regulation of paralegals, we have a number of concerns with the proposed legislation. First, we do not believe the legislation, as it is drafted, serves the best interests of the public, for a number of reasons. By placing the regulation of paralegals within the scope of the Law Society Act, the legislation confuses rather than clarifies the public's understanding of the difference between lawyers and non-lawyer professionals providing legal services. The bill does not actually define the scope of practice, qualifications, governance or rules for regulation of paralegals, but rather it defers these critical decisions to the law society. It casts a broad net that has created confusion rather than clarified the public's understanding of which professionals and which services it is intended to regulate, as has been evidenced by the large number of regulatory bodies that have addressed or are scheduled to address this committee, and by the position in earlier hearings given by the law society representative that these are matters for further investigation.

Therefore, in the short term, the legislation does nothing to address the protection of the public interest or improve access to justice, and we can reasonably expect that it will take months, or perhaps even years, before a clear definition of the scope and executable rules for governance are ready for implementation.

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Second, notwithstanding the law society's good intentions in responding to the Attorney General's request, we do not believe that the regulation of the paralegal profession by the Law Society of Upper Canada is in the best interests of the public.

(1) The majority of the members of the law society do not practise in the same forums as paralegals, such as the Small Claims Court, and are not as well acquainted with the workings of these forums as the paralegals are.

(2) These forums, while governed by the rule of law, forsake some of the formalities of the higher courts in favour of the use of plain language and common sense.

(3) The present cost of services from lawyers ranges from three to five times what paralegals charge for similar services in their areas of practice.

(4) The current proposal for the governing body is made up of less than 40% representation by practising paralegals, meaning that those professionals who have the most knowledge of the workings of these forums will have the smallest voice in their governance. We fail to understand how a governing body can adequately regulate that which it does not intimately understand.

Therefore, we believe there is a high likelihood that intervention by the law society in a regulatory role will lead to the paralegal profession becoming more lawyerly, meaning more rhetoric, less common sense and plain talk, and increased costs for the services of qualified paralegals.

Finally, the potential for conflict of interest, real or perceived, between the lawyers who are the current members of the law society and the paralegals they seek to regulate is not in the public's best interests.

Given that the two professions have very different cost structures, given that paralegals practise in forums where cost is a significant factor in the public's ability to retain professional assistance, and given that the cost of those services is likely to rise significantly if the profession is controlled by the law society, the public's access to effective representation at an affordable price is likely to be significantly reduced, if not totally eliminated, restricting access to justice for those very persons the legislation is intended to protect.

With regard to the argument that paralegals are not mature enough as a profession to be allowed to self-

regulate, the majority of the paralegals we deal with are members of the Paralegal Society of Ontario. While membership in that organization is voluntary, those who are approved to use the PSO designation have met the PSO's standards for education, experience, ethical behaviour and insurance, and those standards are consistent with the concepts of regulation of any body of professionals.

What we feel the PSO is lacking is the teeth that would be provided by legislation recognizing them as the official governing body of the profession, and the critical mass and funding that would come from requiring that any person representing themselves as a paralegal become a member of the PSO.

So in summary, we believe our clients and the public at large will be best served if the existing legislation is redrafted, eliminating the model of regulation by the law society and replacing it with a model of self-regulation of paralegal professionals, thereby providing access to educated, experienced and qualified representation at a rate structure that the public can actually afford.

Thank you for your time.

The Chair: Thank you very much. Roughly a minute for each side for questions, comments. We'll begin with Mr. Runciman.

Mr. Runciman: Thanks for the very comprehensive submission. I gather, as one of the largest users of paralegals through your company—I have to assume you were consulted by the government during the deliberations to develop this legislation.

Ms. Wigle-Vence: No, we were not.

Mr. Runciman: Who was consulted, I wonder? I wasn't here last week and I'm not sure if the Paralegal Society of Ontario appeared before the committee, but could you take just a brief moment to outline how large this organization is and a little bit about their function?

Ms. Wigle-Vence: I do not know what their total current membership is. I do know they are speaking later and I'm sure they'll be able to address that for you. But I do know that our experience with them has been very good and we basically look to them now for the source of the best paralegals. They've given us the best results and the best experiences.

Mr. Runciman: You're suggesting that might be a more appropriate vehicle for regulation?

Ms. Wigle-Vence: I know that all of their members have insurance, they have a code of ethics, they have standards and educational requirements to carry the designation. They have a student membership program and mentoring. I'm an architect by training, although I never actually became licensed, so I understand those concepts of how you develop professional skills and organize a profession so that it can be self-regulating, and they have the characteristics that I would be looking for.

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

Mr. Kormos: Thank you kindly. I know I had to step out, but I have read your material. I'm pretty sure I understand it. Thank you very much for your submission.

What are the issues here? I hear what you're saying. You're like the incredibly competent group that was here last week, the trio of paralegals, law clerks who said, "Regulate us, please, but not by the law society." "Anybody but," I believe was the language that they used. I'm quite eager to hear from paralegals who support the proposal in this bill, because you see, the problem is, you're going to live with the consequences of this legislation one way or another.

Ms. Wigle-Vence: We're a collection agency, but we are a big user of both paralegal and lawyer services, because we have many, many files that are being litigated.

Mr. Kormos: So you see, my concern is that the government can use this majority to pass this bill unamended. Even though there aren't any paralegals who support the proposition in it, paralegals will submit to that regulation. But regulation, unless you're in a Soviet sort of climate of hyper-control, depends upon the regulated people having some confidence, trust, buy-in into the regulation process, doesn't it?

Ms. Wigle-Vence: I absolutely agree with that, and I think it also depends on the public perceiving that regulation as having meaning. I also think it depends on some timeliness. Unfortunately, I feel that there's a little bit of a net cast out and a boiling of the ocean happening and, as somebody with quite a bit of business experience and consulting experience, I know that that can lead to a kind of endless spiral with nothing effective ever actually happening. That's my concern.

The Chair: Thank you very much. The government side—any questions, comments?

Mr. McMeekin: Just thanks. Incredibly detailed, thoughtful and thought-provoking. I really appreciate your presentation.

Ms. Wigle-Vence: I hope you will consider the thoughts.

Mr. McMeekin: I will indeed.

The Chair: Thank you very much for your presentation.

KERRY RAMIREZ

The Chair: The next presentation is from Kerry Ramirez. Is Kerry Ramirez here? Good afternoon.

Mr. Kerry Ramirez: Thank you. Good afternoon.

The Chair: You may begin.

Mr. Ramirez: Thank you. Mr. Chairman, the honourable members of the justice committee, my name is Kerry Ramirez and I'm a paralegal, but I appear before you as an individual.

It is a distinct privilege for someone like me to appear in front of this august body and I am grateful for this singular opportunity. It is at times like these that we, as immigrants, acknowledge and underline how fortunate we are to live in Ontario, which has endured the Family Compact rule in Upper Canada and its outrages, and pay tribute to those old Ontarians and their hard-fought battle for achievement of responsible, representative government. Our diverse society in Ontario must be vigilant to

maintain those hard-fought victories and thereby celebrate and refresh the eclectic nature of Ontario's personality.

It is no accident that Ontario has developed into a diverse community in which each person can find a place in the sun and speak their voice. Again, we must acknowledge and pay tribute to the old Ontario and the old Ontarians who laid the foundation for the opportunities other immigrants enjoy today.

As soon as the sponsor of Bill 14 appeared on the scene, he pronounced that he wanted to have paralegals under the control of the Law Society of Upper Canada, and he has not wavered since. Most independent paralegals tried to give voice to their concerns but it was not to be. Communication was blocked by some who have been referred to and characterized by Mr. Batchelor and bear remembering.

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To me, the entire process of getting here was uncertain and ill-advised since it appeared to be hopeless to resist. The minister had made up his mind, and to object was pointless, I was assured. But then I gained inspiration from Hurricane Carter, who, despite being wrongfully convicted, jailed and put in solitary confinement, said that the system sought to make him feel helpless. The only thing that kept him going was the mantra: "I am not helpless and I will not be made to feel helpless." It is for this reason I put my name forward to speak today.

I want you to know that many paralegals have expressed quite openly that they will not appear, because if the law society were to get what this bill offers, the price they will pay is going to be too great. I speak particularly of the women paralegals who assist other women by producing, quite inexpensively, papers for uncontested divorces and have done so for years, each and every document approved by a judge. It speaks to their competence. My heart moves out to those women.

I was apprehensive, if not fearful, of appearing here, as I said. To my surprise, I am not among strangers. The member Maria Van Bommel is from a farm, as is my wife. Bas Balkissoon is from the Caribbean and, despite the odds, if nothing else, was a catalyst in shedding light on the outrageous MFP issue in Toronto's city hall. Dr. Qaadri is probably the most articulate man in the House. The Chair, Mr. Vic Dhillon, is a Sikh. I have toured the Chudleigh farm and walked among the Malling rootstock of his orchard and enjoyed the fine apple pies made right there on the farm. Acknowledging Mr. Kormos and Mr. McMeekin, I have lived in Dunnville, which is not far from Welland, and now in Hamilton, not far from Ancaster. So I am a little relieved.

I admire the Attorney General for bringing the issue of unregulated paralegals to the House at long last. This omnibus bill, named the Access to Justice Act, is breathtaking in scope. It is designed to give power and authority to the Law Society of Upper Canada to supervise, restrict and control anyone offering legal services. It also includes the issue of appointment of justices of the peace and legislatively forces victims of medical malpractice to purchase annuities, a product sold exclusively by life insurance companies.

Despite the heavy opposition from paralegals and others to this legislation, from bankers to used car sales operations, the minister shows tremendous power by refusing to back down. He has hung on tenaciously with remarkable strength and single-minded purpose—all attributes I thought he sought to eliminate with the pit bull legislation. Maybe his legislation is not as effective as I had hoped. Maybe we are what we fear most.

I came to Canada in 1969. The Premier at that time was John Robarts. Mr. McMurtry, Bill Davis and, I believe, John Tory were in the background somewhere. Together with them, Mr. Robarts and his government created an environment of inclusion and can-do-ness. They opened up government and its institutions to all. Together with Mr. Trudeau, every immigrant felt included from the day they landed in Ontario.

At the feet of Mr. Parker, I was introduced to John Kenneth Galbraith, Saturday Night and Maclean's magazines. I read essays on the BNA Act and much of the act itself. I also learned about the Family Compact. According to the Canadian archives and library, the Family Compact refers to a small group of public servants who dominated the decision-making bodies of Upper Canada around 1830. This Family Compact came about through the desire of John Graves Simcoe, first Lieutenant Governor of Upper Canada, to create a local aristocracy by naming his friends to important political and judiciary positions. Based mainly in York, which is now Toronto, the members of the Family Compact were from Canadian high society with strong ties to the British Empire and who idealized British institutions.

From about 1830, the practice of this autocratic, corrupt, unelected, arrogant group and favoured authorities caused such discontent in the ordinary people in the Upper Canada population that some of the residents rose in armed rebellion in 1837. The rebellion was put down, but the insidiously corrupt form of government which was the Family Compact eventually gave way to representative government. This was Ontario's Magna Carta. The death of the Family Compact form of government changed the name of Upper Canada to Ontario.

One of the institutions in the time of Upper Canada's Family Compact rule and its special dispensation of privilege and class was the Law Society of Upper Canada and its mandate. This mandate has remained virtually unchanged and is the body in whose arms this legislation seeks to deliver all who offer legal services. Once thought dead, the Family Compact lives in Upper Canada's law society in its corridors of amber. If I were Dave Nichol, I would rename the bill Memories of Jurassic Park.

The living anachronism which is the law society has been the bane of the existence of both lawyers and anyone who has had to complain and run afoul of its laws, but the public is concerned about the high cost of lawyers. However, Upper Canada's law society has no desire or mandate to deal with the pertinent issue of

lawyers' fees. Unfortunately, this child of the Family Compact has not fallen far from the tree.

As a means to gain access to controlling its competition in this Bill 14, Upper Canada's law society offers special dispensations to favoured groups by sending out letters indicating, in part, "Not to worry; we will not enforce the enacted laws in this legislation against you." This includes agents at court. The law society has granted positions of prestige to those who side with them. Recall that this is the 21st century and this is 2006. Upper Canada's law society remains as a living relic of the terrible 18th and 19th centuries, and this legislation seeks to breathe further life into it and enhance its reach and power. I urge you to speak up in caucus and offer an alternative to this approach.

I had prepared a presentation which I was to deliver last week, but I was bumped, as you know, because of the alleged conflict of interest on the part of lawyers who sit on this committee. As a result, I was able to view some of the other submissions, and since they all stole my thunder, all that's left for me to deliver are maybe some sparks and the context in which we find ourselves.

Let's eliminate the paternalistic impulse of the Family Compact and allow paralegals to take responsibility for their system and actions. Let the ministry in charge of consumer affairs create legislation. Take this opportunity to change the Access to Justice Act to a means to maybe modernize the mandate of Upper Canada's law society and to reflect the diversity and meritorious nature of Ontario's new society.

I seek not to wag my fingers to members I named earlier, but simply to remind them not to suffer the fate of Colin Powell. You would recall the manipulative use of this most credible minority person by the old boys in Washington to advance an ill-conceived and flawed policy which has benefited the few at the expense of the many ordinary people and citizenry, and the loss of credibility of our dear neighbour, the United States, throughout the world. Today is of particular significance to those people.

It is oft said that the lawyer who has himself for a client is a fool. I say that a paralegal who does not have a lawyer to refer to is equally foolish. We need lawyers. Many of the world's greatest people were lawyers. Mahatma Gandhi and Nelson Mandela were lawyers. Of course, neither may have found employment with Tory Tory, but that's another question. Let us not forget that there were hundreds of lawyers in and out of government who worked tirelessly to jail both Mandela and the Mahatma.

The courts then held that paralegals were not to charge contingency fees but lawyers could, not because contingency fees are fundamentally wrong but that paralegals could not do it.

A great Canadian is Dr. McClure, former moderator of the United Church of Canada. He recognized and facilitated the training and funding of clinics for cataracts in India. He saw the talent of lay people and trained them to do cataract surgery, as it was not necessary for doctors who were more broadly trained and specifically equipped for bigger and better things to do that type of surgery. The public was better for it, the newly trained technicians were better for it, and India was better for it, but the college of physicians and surgeons in India, which body would have to supervise them, did not supervise or discipline these workers.

The unspeakable logic and the rush to super-monopolization of legal services runs contrary to the movement in the wider society against this tide of decentralization, opening up of markets and deregulation of different types. Even Bell Canada has to face competition now.

It is my further submission that this legislation may run afoul of the Competition Act. Although we have been advised by the ministry that the judgment or opinion could not be given until the legislation is passed, I urge the opposition to use its resources to research this issue. In a recent bulletin, the Competition Bureau has indicated its ability and willingness to review the actions of provincial professional bodies.

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I therefore call upon the members of this committee to exercise their individual convictions to speak on the nature of what it means to live in a diverse society and the means to enhance its very best.

I respectfully ask that a moratorium be put on this bill and that the proposal that has been presented at various times and places by the Paralegal Society of Ontario and the Paralegal Society of Canada to form a comprehensive, complete and proper legislatively endorsed system of self-regulation—give them an opportunity to do it and give them a time frame to do it.

We ask that there be funding for legal counsel in the PSC to deal with issues; to stay all litigation on non-advocacy paralegals; and to define in the public's economic and legal interest the scope of work allowed. Any proceedings which the public can do can be assisted with a paralegal.

I thank you for allowing me to speak. My presentation is more prosaic than I had first intended, but there have been so many good submissions and such strong positions taken by paralegals and really credible offers made that I thought we should be able to put something together for the general public.

I also had first requested that public hearings be truly public and have maybe a public marketplace, a town hall, to have the public speak to the issue, maybe having it in different centres: Thunder Bay and North Bay and so on. Unfortunately, this is what we are restricted to.

Those are my concerns. Thank you.

The Chair: Thank you, Mr. Ramirez. A little less than three minutes each side, starting with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Ramirez. I appreciate your participation. This committee, I should let you know, had a memorable three days doing the circuit of London, Ottawa and Thunder Bay. We talked to people to people in each of those communities, and what we did learn, I've got to tell you, is that the huge north of Ontario, all of the north—I identify it in ridings, Kenora–

Rainy River all the way through to Timmins–James Bay—is serviced by one aboriginal legal aid clinic, with a handful of staff and volunteers.

You've given me an opportunity to remind my colleagues that one of the things we were urged to do—and I'm not talking in the context of this bill, because we were dealing with Bill 107—was to make ourselves, the justice committee, available to those very remote aboriginal communities. Quite frankly, access to justice for so many Ontarians is not even in the mindset; it's not even in the realm of possibilities. The bill is about regulating paralegals, not about access to justice.

You should take some comfort in the fact that the government appears to be losing some steam around the bill. You'll notice that the parliamentary assistant has lost interest and is not here today. It's remarkable, because for the 18 years I've been here, the PA stewards the bill through a committee. That's usually a sign that the government has washed its hands of a particular bill when the PA even stops showing up.

As well, we haven't heard from a single paralegal yet who endorses the government's proposal to have the law society regulate paralegals. For the life of me, Chair, how can you have a regulatory scheme when you don't have a buy-in by the parties who are being regulated? Strange.

Mr. Ramirez: May I just comment on that?

Mr. Kormos: Of course.

Mr. Ramirez: I don't think the paralegals are against regulation. As a matter of fact, we are for regulation. It not only helps the public but it also protects us, because we have a framework which we could use. We have some legislation on which we could rely to defend ourselves against frivolous or otherwise unfair claims against us. So it is to the benefit of all.

Again, if it appears that the thing that drives us is concern for the consumers, then let the ministry necessary for formulating legislation for consumer protection be the house in which we should operate our business.

The Chair: Thank you. Government side? Ms. Van Bommel?

Mrs. Van Bommel: Thank you very much, and certainly I want to say thank you very much for coming back. I remember meeting you on the first day when we did end up having to postpone the afternoon, and I appreciate your taking the time to do this.

We just heard previously from a company that uses paralegal services. They talked about the Paralegal Society of Ontario, and you mentioned them as well, as well as the Paralegal Society of Canada. But I also know there were other paralegal associations, professional associations. How many are there in this province? Do you know?

Mr. Ramirez: Well, the two that really look at the interests of independent paralegals—and as you know, independent paralegals are basically small business men and probably not terribly different, except in training and capacity, than singly-operated legal firms.

But there was a paralegal society; I believe it's called the PPSO. They have disbanded. They, we thought as independent paralegals, had very little voice. It was dominated by agents of court, usually ex-policemen. And as a matter of fact, the leader of that now-disbanded company is a bencher in the law society. He is a favoured person, apparently. But the fact is that that branch no longer speaks and certainly has never spoken for independent paralegals. The person who's a bencher was never an independent paralegal. In my opinion, the only credible paralegal associations are the PSO, which is the Paralegal Society of Ontario, and the PSC, which is a federally incorporated paralegal association.

Again, I'm not even sure whether this legislation will necessarily meet or affect the operations of the PSC, but they have been there for a long time, and again, I don't believe there is any paralegal who would consciously do anything or be in a position to do anything to compromise the public's interest and the work that they do.

Mrs. Van Bommel: Is there any requirement on the part of paralegals to belong to an association, regardless of which one they pick?

Mr. Ramirez: Well, as you know, there's no legislation. That's why we're asking for it, because we believe that there's a lot of benefit to be derived when you have people of like mind and like experience imposing certain standards on everyone so that they will do well.

My rhetoric has caused me to lose focus on your basic question.

Mrs. Van Bommel: I'm just asking, is there a requirement on the part of paralegals to belong to an association? You mentioned I'm a farmer. As a farmer, there is a requirement to have a farm business registration, which requires that you at least sign with one of the farm organizations, of which there are also a number.

Mr. Ramirez: No, no. There's no requirement. However, if you are a member of the PSO, they require you to carry insurance. You must carry liability insurance; you must be prepared to be educated; you must be prepared to attend meetings. But the fundamental thing is that they have set up—and I don't have it here with me and I don't know whether you have seen it or not, but certainly there's a whole range of duties that the paralegal association, if not doing now, is prepared to do to make it possible, if you have a credible, self-regulating body, including things like education, requirements of committees that will assist paralegals who get into trouble and assist the public to also assist paralegals who get into trouble. So there are standards and there are requirements, but again we need the legislative credibility to be able to make it happen properly.

Mrs. Van Bommel: Thank you.

The Chair: Mr. Runciman.

Mr. Runciman: Mr. Ramirez, thank you very much for your submission and your appreciation of Canadian and Ontario history. That's the first time we've heard about the Family Compact at these hearings—very much appreciated. What's your background? What did you do before you got into this line of work?

Mr. Ramirez: Well, I was an insurance adjuster and I was also—actually, I have a degree in agriculture and

horticulture. As an insurance adjuster, it became apparent to me that many individuals were coming to insurance companies, getting their matters settled not in their best interests, but certainly I didn't think that the paralegals were either educated enough or properly endowed to do a proper job for the individuals.

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Mr. Runciman: Is your practice limited to that field?

Mr. Ramirez: Well, I'm no longer allowed to, because the legislation has made it impossible for a paralegal, for example, to assist somebody at FSCO unless you register with FSCO. Quite frankly, I resisted doing that because I thought there was something fundamentally wrong about forcing the public to either represent themselves or to go to a lawyer. Those were the only choices. So you either became a complete victim of the insurance companies and their settlements, or you had to hire a lawyer. By the way, the insurance companies, for the most part, would have lawyers representing them. That was one part of it, but the other part of it was that I simply moved into doing accident benefits, and then there was an administrative prevention of allowing claims to be settled within six months of the accident, even though it was in the benefit, and it was done specifically to starve paralegals out of that business. So it had a definite effect. I now confine myself, basically, to rental tribunals and Small Claims Court, but certainly, without the protection of legislation for paralegals, it is difficult to function in a manner and a form that makes you feel that everything is entirely above board.

The Chair: Mr. Ramirez, thank you very much.

PAUL DRAY

The Chair: The next presenter is Mr. Paul Dray. Good afternoon, sir.

Mr. Paul Dray: Good afternoon.

The Chair: You may begin.

Mr. Dray: I've never heard myself referred to as the favoured one before, but I'll speak to that a little bit later. The last speaker seemed to think I was the favoured one.

My name is Paul Dray. I am now a totally independent paralegal. I'd just like to give you a bit of background about myself, but just a plug as Mr. Kormos would say. My company is Paul Dray and Associates, so I speak personally, but I do have a company that does paralegal work.

Firstly, I'd like to thank the committee for the opportunity of being here. My background is, I was a police officer for 13½ years, and I left the police department and went with the municipality. That municipality was Brampton. In 1988, I went into legal services at the city. At that time, I was known as what was called a bylaw prosecutor, because basically, paralegal prosecutors weren't heard of at that time. I think only Toronto had some, and Brampton started it, and as a result, a number of municipalities since then have had them. Now it's just "prosecutor" and we do all the prosecutions. As a result of transfer of responsibility, as Mr. Runciman would have it, his government, we now as municipalities took over the provincial offences and Highway Traffic Act, those types of prosecutions.

In 1995, as a prosecutor, I founded what was called the Prosecutors' Association of Ontario, and we have in that association—I'm the past president—over 350 corporate-end members that do prosecutions right across Ontario, and basically two thirds are paralegals and a third are lawyers. So it's an association that involves both lawyers and paralegals. That's the other thing. I'm not going to come here and badmouth lawyers and I'm not going to badmouth paralegals, because there are good and there are bad in both professions, and I don't think this is the place to do that.

Just a little bit of history: In 2000, the Cory report was released, as you well know. That was a different government. In 2001, I was elected as president of what was called the PPAO, Professional Paralegal Association of Ontario. What we had in mind when that came about was to be the umbrella group for all paralegal associations. They could still be a member of the PSO, which I am, a member of the PSO, the Paralegal Society of Ontario, and that's where I get my insurance. I was there at the founding meeting of that in 1995 as well. At any rate, it was an umbrella group. At that time, our members were the PSO, OAPSOR, and later the PSC came, and they were all members of the Professional Paralegal Association. As a result of that, the law society set up a group called the legal organization group, and it involved the law society, the Advocates' Society, the metropolitan Toronto lawyers' association, the Ontario bar, and CDLPA, the County and District Law Presidents' Association. They set that group up. They then set up meetings with the Professional Paralegal Association of Ontario to develop a regulatory system for paralegals. As a result of that paper, which was released in 2002, it said the law society would be the regulating body. That group was chaired by Charles Harnick. Again, it was law society members and members from those organizations I've spoken of.

I'd just like to correct the apprehension that this PPAO was all agents in court. We had a cross-section of law clerks, government-employed—I was a prosecutor. I had my own business as well privately, so a portion of my work was done privately. So it had a cross, and some of the people on that committee, or on our board of directors—not some; the majority—were independent paralegals. Basically, that paper founded the basis for this legislation—not as it is, but the basis for that.

In 2003, I was appointed as a bencher of the Law Society of Upper Canada. If you can imagine, and I have a lot of paralegals sitting behind me here, all the paralegals believed I was in bed with the law society, and the law society didn't want me in the bed. So it was a bumpy road initially. I've been at the law society on standing committees, as this will be a standing committee. I've been on access to justice, finance, emerging issues, government relations, and the paralegal task force. Also, I'm a member of the appeal panel and we do

discipline hearings for lawyers at the law society, so I'm involved in that.

In 2005, I retired from the city of Brampton and became a full-time paralegal. Now my involvement is that I prosecute for 13 municipalities, a conservation authority, a health unit and the crown attorney's office on retainer letter.

I've given you my background. Now, do I support the bill or don't I? I speak in favour of Bill 14. I guess I'm the lone paralegal and I guess I've always been leading-edge, but there are a number of reasons for that.

First and foremost, it's time. It's time the industry was regulated, and that's for the protection of the public. Also, it will provide licensing, accreditation. It will have "good character" requirements and mandatory insurance to not only ensure protection of the public but ensure that there's a legitimate profession for paralegals. I'm old, I'm retired, but there are a whole bunch of kids—and when I say "kids," students and young people, maybe your sons or daughters—who are going into a profession, and there is no profession now. There is no accreditation; there's no licensing. We need it.

Secondly, education courses are now in place at a number of colleges for a court and tribunal agent. I was heavily involved in what's called an applied arts degree program at Humber College. It's a four-year degree program in paralegal studies. Somebody said, "Why would somebody take a four-year program in paralegal studies rather than go to law school?" About $40,000: That's the reason. For four years at community college, it's approximately $20,000. One year at law school is $20,000. This is where a lot of kids—and it's been such a successful program. We had 400-some students and 60 places, and that's happened every year. It's a very popular course.

The other thing I'd like to mention is, as former president of the PPAO, I know from personal experience that without a strong regulatory body and appropriate regulation, you cannot regulate paralegals. It's been 20 years; we've tried everything. As an organization, the PPAO would send out a letter to somebody where we had a complaint. They just wouldn't respond; nobody would respond. I can give you another major example of that. As president of the PPAO, I believed what people were saying: that everyone was insured in these groups. It was not the truth. I found out, as a result, that there were less than 200 paralegals in the province of Ontario who have insurance. I can tell you: Insurance isn't expensive—in my terms. Mine taxes in as $829 for $1 million in all. I don't think that's expensive, but that's the reality of what's happening.

1520

With every bill there's always a problem, and I do have a problem with one area of this particular bill, and that is membership with regard to the law society. Section 5 on subsection 2(2) sets out who are members of the law society: the treasurer, benchers, barristers and solicitors.

The newly-regulated paralegals will pay dues to the law society; be regulated by the law society; be disciplined, or their privilege to provide legal services be taken away—but they will not be members of the law society, and I am troubled with that. To exclude membership establishes a tone for future conflict and/or division. My theory is that you're either part of the problem or part of the solution.

I'm a member of other organizations. I'm a law clerk and I'm an associate member of the law clerks, and they have affiliate members; they have fellow members. When I was in the police department—they have civilian members of the association and they have police members.

I think it's correctable—it's not something that should stop the bill, but it's something I feel very strongly about. I've voiced my opinion at Convocation with regard to this and I voice it again today, that we almost become second-class citizens in this. I do support the law society, but I would like us to be members of the law society in some way—affiliate, associate or something like that.

Looking at the entire bill, there's a lot of mistrust on both sides. The lawyers think that, as a result of the way the bill's written, paralegals are going to be able to do everything. On the other side, we hear paralegals who are saying, "As a result of this bill, you're going to be able to do nothing." There's a lot of mistrust there.

My experience with the law society is that nobody likes the police, and the law society is the policing agent for lawyers. They go in and do audits at law offices; they are the ones who bring applications for discipline; they are the ones who suspend people who don't keep records. If we went and we had, "Are the lawyers in favour of the law society regulating them?" I would imagine you'd have just as many malcontents come and say, "It shouldn't be the law society. We should have another government body that's independent of the law society to regulate us." If we put the balance, it may be that both sides would have things to say about that.

There has to be a starting place. I believe the legislation is that starting place. It's leading-edge for both paralegals and lawyers. This will be the first jurisdiction in Canada and certainly in North America, I believe—I stand to be corrected on that—that allows independent paralegals or independent people, other than lawyers, to provide legal services to the public directly. This is leading-edge, and when you do that you are going to have bumps, you are going to have problems, and I think there is an infrastructure in place to deal with some of those problems, that being the law society.

Finally, I'd just like to say that the possibilities are endless here for both the government and for the citizens. It doesn't just provide protection; it also opens doors where—and we've heard and I believe that there's a real need for paralegals in family law. I really believe that, in my heart of hearts. This type of legislation opens doors so we can have legal aid. Legal aid is always in trouble with money, but paralegals can't provide legal aid services. Under this it may well be that this opens that door.

The possibilities are endless. It may not be the perfect bill, but it's a starting place. It's for the young people

who are coming out of schools. I think it should go ahead, and if there are minor amendments, so be it. But I believe that it is a good bill, and generally there is support from both the opposition parties on the regulation of paralegals. Who regulates them, I think, is the matter that's an issue.

Thank you, Mr. Chair, and I'm open for any questions.

The Chair: Thank you very much. We'll begin with Mr. Kormos. A couple of minutes each.

Mr. Kormos: Thank you, Mr. Dray. I appreciate your being here and your patience during the course of the day.

Let's find out how privileged you are. I'm told there is one heck of a wine cellar that the benchers have access to.

Mr. Dray: We do have good wine.

Mr. Kormos: Okay. I'm sorry to have to cast this stone myself, but you're damned privileged, Mr. Dray.

Mr. Dray: Thank you very much; yes.

Mr. Kormos: You talk about membership, and I think that's an important consideration and, if you will, a selling point, like the ads on television about credit cards—one of the benefits of.

The other thing, though, is the titles: "licensed to practise law" versus "licensed to provide legal services." We've heard a whole lot of good-meaning people comment about the need to eliminate confusion out there in the public. We created the college of social workers, if you will remember, about what these people can identify themselves as; there's got to be uniformity. I'm concerned that there are no titles in there. We know what a lawyer is; we know what a barrister and solicitor is, maybe; but "licensed to provide legal services"—we've got to have some significant identification of people who are paralegals versus lawyers, I believe.

What would you prefer? Should we be calling a spade a spade, so to speak, and call paralegals paralegals? That's what the public understands, I think.

Mr. Dray: Yes. At one point, when I was president, I thought, "Gee, maybe we can change the title," and the paralegals came down on me, and rightly so. They've worked hard to get this, as we've heard. It's now a designation in the Yellow Pages of Bell—"paralegal."

But the other thing is, if you look at the Law Society Act, previously, without these proposed amendments, nowhere do you see the word "lawyer." And you're a lawyer. The people know what a lawyer does. So that comes through education and through, I think, putting it out exactly what paralegals are allowed to do and what the limits of their licence are. That could be a limited-licence paralegal. The word "paralegal" is not in the legislation, but neither was the word "lawyer."

The Chair: Thank you. The government side. Ms. Van Bommel.

Mr. Kormos: I hope Niagara's wines are well represented in—

Mr. Dray: I understand. I'll make a note of that.

Mrs. Van Bommel: You brought up a number of interesting points, including education standards. You talk about four years in a paralegal course at a community college versus—oh, my goodness—

Mr. Dray: A court and tribunal agent is the other course.

Mrs. Van Bommel: Thank you. Are you suggesting that those would be the appropriate standards? Because I've heard presentations from people who have had some formal education in paralegal as opposed to some who have actually more by experience and in a sort of self-made way become paralegals. Are you recommending a four-year course, or are you saying—are we suddenly going to move into a four-year regime on this?

Mr. Dray: I'm certainly not going to go against Humber College, where I sit on the advisory board, or Sheridan College, where I sit on the advisory board for the two-year. I think this will be an evolutionary process. I'm not recommending the four-year course, but eventually that may be the standard for paralegals; it may well be, in the future. Right now there's a two-year court and tribunal agent course that's offered. I think that is the standard that basically will be the essence of this legislation. I think that's acceptable.

The four-year applied arts allows students, then, to go on to law school if they choose. After that four years, if they choose to go on, they can. It also allows them work experience. So part of it is an articling. It's not called articling; it's called placement, but they actually go out into a paid law office as a paralegal to work. So that's the difference in the two programs. There's a placement in the college, but it's for up to four weeks, possibly six weeks in time, and it's not paid. That's the difference.

The Chair: Thank you. Mr. Runciman.

1530

Mr. Runciman: Thanks for your submission. You seem to be out on an iceberg by yourself here, with every other paralegal taking a different view of this.

I'm just curious. You mentioned Justice Cory's report, which recommends self-regulation. Then, if I have the chronology right, that's when the Professional Paralegal Association came into being. Is that the right—

Mr. Dray: No, it was after that. Cory was 2000. It wasn't until—I'm sorry, yes. My apologies. Cory; I'm thinking of Ianni. Yes, Cory.

Mr. Runciman: I'm assuming that part of the impetus behind the creation of that organization was moving towards self-regulation in response to Cory.

Mr. Dray: That's exactly what it was.

Mr. Runciman: And that was a failed exercise? Is that what has coloured your view of the world at this point in time?

Mr. Dray: Yes. I have a little bit of the background, and at that time, I believe your government was the government of the day. I think they were moving in the direction of the Cory report, and that died. It was basically to regroup and see if they could do it some other way that would be more acceptable to the government and to everybody involved in the process of providing legal services, and that's the direction we took it at the time.

Mr. Runciman: I'm just wondering: What kind of response did you get when you were involved in this organization? You fell apart for what reason or reasons?

Mr. Dray: When I was the president, I held it together. As a result of me being a bencher of the law society, I had a conflict at the time because I was the president of the Professional Paralegal Association, and the direction they wanted to go as a group was different than what—I was at the law society and I had a fiduciary duty to both the law society as a director and to the Professional Paralegal Association, being a director and the president. I felt I could be more effective being inside the tent than being on the outside. I chose to leave the Professional Paralegal Association. As a result, after that, there was infighting, a couple of things happened and then it imploded or exploded. You'd have to ask other people what happened.

The Chair: Thank you very much.

RON BOCSKEI

The Chair: Next up is Mr. Ron Bocskei. Is Mr. Bocskei here?

Mr. Ron Bocskei: I had asked the secretary for an additional 10 minutes to allow my secretary to speak, because her little report speaks volumes, as far as I'm concerned.

But introducing myself: Good afternoon, Mr. Chairman and members of the board. You're no longer a committee; you've been elevated. My name is Ron Bocskei, chair of the ethics committee for the former Hamilton paralegal association. Thank you for this opportunity to speak.

Previously, starting in 1974, for more than nine years I had been working as an employee for a union and then a company. I was deeply involved in grievances, negotiations and all the nuances thereof. After that nine-plus years of in-house training and practice, I started working for myself, entering the provincial court, civil division. Since 1982 I have studied and now handle more aspects of the law than I ever planned for. This year, 2006, I received a seal from the government allowing me to be a commissioner.

I do ask the question: Will I make mistakes? I'm never infallible. But I've also heard a remark—and I believe this came from the law society; I don't remember where—that any person just released from prison could hold themselves out to be a paralegal. That sounds like a viable idea, as such a person has had the time and the access to resource material that a paralegal normally does not. I have not heard, read, nor do I know of any persons in my profession who call themselves paralegals being sent to prison or even actually charged. Even though some lawyers have bilked a client out of tens of millions of dollars, they also have not been sent to prison or charged, although they are no longer allowed to practise law.

For example, the smallest amount that I'm aware of was 12 years ago in Hamilton—that was for, approximately, a $2,000 case, and I don't have all the details on the one that exceeds $70 million that occurred here in Toronto.

I've read lots of these letters. The Law Society of Upper Canada's standard letter involving concerns about lawyers simply reads, "Dear Mr."—or "Mrs."—"We are sorry we cannot deal with your complaint. We suggest you take this matter to Small Claims Court." That's virtually verbatim.

In reading some of the proposed amendments to the Courts of Justice Act, the Statutory Powers Procedure Act, and in particular the proposed amendments to the Small Claims Court, I find myself confined to the area in which I have time to speak, and that which concerns myself, the corporation and the employees thereof. Therefore, I have to address the regulation of, costs to and the education of paralegals.

With regards to regulations, should paralegals be regulated? The plain truth is yes.

The other question is: Who should regulate paralegals? Dr. Ianni, former dean of Osgoode Hall, had it correct when he stated that the Ministry of Government Services, as they're collectively now named, should be responsible, as they are the governing body of business. Lawyers have no God-given right to interfere with business, and should not be the regulators of paralegals. Simply put, don't put the fox in charge of the henhouse.

With regard to the cost and the prices: The insurance fund and the compensation fund—these monies will get passed along to the client. For example, with a simple will, registered for safekeeping, the price would be tripled.

In the public interest, this committee cannot ask, nor intend, that the client pay more for these other features. The reason most people come to a paralegal is because it's less expensive than going to a lawyer.

In family court, where no issues are in dispute, or in a matter of litigation regarding an amount so small it is worth either forgetting about justice—and we're talking about justice—or hiring a lawyer, what you have to keep in mind that there is a limit on how much the court will compensate you; that is, you could win your case and still lose money.

Additionally, quasi-judicial bodies are not without cost. The taxpayers of Ontario would have to guarantee a virtual carte blanche cheque.

With all of the facts on costs, whether hidden or shown, going to a paralegal is going to end up costing as much as going to a lawyer, and the taxpayer is going to have to pay for that right. This government will now be faced with a violation of the trades and competition act. I believe you've heard that mentioned.

A fact of life and of history is that the best type of education is hands-on, not theory: Leonardo da Vinci, when he cut up bodies; and Abraham Lincoln, when he was training to become President of the United States.

Ms. Spence, sitting to my left, now an executive secretary and in training, is one person enjoying that type of education. She's been to several courts including the

Divisional Court. I should have mentioned in here, and I didn't, that she does most of the landlord-tenant cases for our corporation.

We've never had a dispute with learning. We've contacted several credentialed schools. The course fees vary from $892 to $11,000. They've not on the list of schools possibly preferred.

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In the public interest, this committee cannot and should not recommend to the Legislative Assembly of Ontario the third and final reading and passage of Bill 14, the Access to Justice Act.

That we close our offices and cancel court dates would violate one of our codes of ethics. Any others in our profession would tell you that such action would also violate one, if not several, of their codes of ethics.

As far as human rights are concerned, as we are aware, the Humans Rights Code of Canada prevents anyone, including myself, from removing a person's means of income. The first person affected by that legislation would be me, Ron Bocskei, corporate administrator, paralegal and commissioner. Now, he would have a claim, if only there were a lawyer willing to go to the Supreme Court of Canada. The list goes on to directly affect three other persons. Each would have a claim, if only there were a lawyer willing to go to the Supreme Court of Canada.

To avoid violating the Human Rights Code, the Law Society of Upper Canada must step in to criminalize a person's right to be aided by an agent. Either the government is failing in its duties to uphold the rights of Canadians or it is willing to surrender to a type of dictatorship run by the Law Society of Upper Canada. To suggest to me, a paralegal before the pilot project on the use of paralegals got very far off the ground, that I disobey my own conscience—I'm sorry to say, members of the board, that I have a conscience, even if some politicians don't and some lawyers don't. I can't violate the morals instilled in me. To simply lay everyone off—"Who cares?"—lock the doors and go home is not something I can easily do.

Since entering my profession under the provincial court, civil division, the Honourable Roy McMurtry stated in the review of a pilot program which allowed persons to be represented by agents—that is, paralegals—that the "intention was to facilitate more speedy and less costly means of litigation" regarding small amounts of money.

There have been many changes since 1982; however, I have learned each change. I am a subscriber to a company that prints out and sends me annually the civil rules of practice, and I'm always in court, so it's with hands-on learning.

In reviewing past studies and statements, it appears that paralegals at one time were needed. Dr. Ianni stated that paralegals should be regulated by one of the existing bodies of government. Justice Cory also envisioned a scheme whereby paralegals could be regulated. To the best of my knowledge—and especially Dr. Ianni—neither said the Law Society of Upper Canada should act as regulators.

The government of Ontario would be:

—facing a violation of the trades and competition act;

—advocating a violation of ethics;

—violating the Human Rights Code;

—taxing the voters of Ontario more to ensure that they receive less;

—adding a new criminal offence for our overworked courts to deal with; and

—quite apparently abrogating its responsibilities to a type of dictatorship run by the Law Society of Upper Canada.

Since the inception of Small Claims Court as a separate entity and the claim level brought from $400 to $10,000, there appears to have been a force gathering momentum to do away with paralegals by making them wage slaves of lawyers or regulating them out of the business. This has had the support of the Liberal, Conservative and New Democratic parties of Ontario. Each has had a turn in prompting the Attorney General to act. The leader of each party has been or is a member of the Law Society of Upper Canada, and at least one has been the Attorney General. The opinions of the former commissions held by Dr. Ianni, dean of Osgoode Hall, and Mr. Chief Justice Cory have been disregarded, although I at least will admit that several of their words were kept.

In a report by His Honour Mr. Justice Marvin A. Zuker, the Law Society of Upper Canada states that it has commissioned its own report that states "500 stakeholders (100 ordinary people, 200 paralegals and 200 lawyers) were interviewed." With this presentation, we are presenting a partial list of 18 names of Canadian taxpayers who petition you not to send this bill for third reading and passage.

We didn't go from door to door as well. I can be criticized for this—correct. As well, we misplaced the petitions of 75 others, and some of them were clients. Of the lawyers we act for, they have stated that the law society is not doing their job.

It's also mentioned that 200 paralegals were interviewed. That's an interesting statement, as, of all the paralegals I've spoken to from the Niagara River to Midland, Ontario, no one was ever interviewed. We knew about the law, but no one was ever interviewed. The only conclusion that can be drawn from such a report is that it's fraudulent, if not misleading.

Mastering the new bilingual court forms has been a task unto itself. This Access to Justice Act, Bill 14, would make all that learning worthless. Turning the act of advocating for a person into a crime or turning paralegals into the aforementioned wage slaves of lawyers or else regulating paralegals until their demise will not be something the people of Ontario can afford. There was talk of grandfathering and of exempting certain various groups, but none of that seems evident unless this committee and the law society had wished to curry favourites.

Do not take any of my statements as saying that we do not think highly of lawyers. One does property, another

does Family Court, and yet another the appellate courts. Additionally, we refer clients to lawyers because of the complexity of the issue. It is this Access to Justice Act, Bill 14, that is contradictory in the meaning and the application. This is the reason we must oppose it.

Thank you for your time. That concludes my presentation.

The Chair: Thank you. We have about a minute for each side, and we'll begin with the government side. Any questions, comments?

Mrs. Van Bommel: No, but I certainly want to say thank you very much for coming in and giving your presentation.

The Chair: Mr. Runciman.

Mr. Runciman: I just wondered how you felt the regulation should proceed. Are you a supporter of the society? Do you feel that's the appropriate vehicle? I know you mentioned government services here. That's the first time I've heard of that. You're thinking that a ministry could provide the oversight?

Mr. Bocskei: It was the Ministry of Consumer Affairs. It's all encompassed now into the one body. The Ministry of Consumer Affairs—

Mr. Runciman: Right. But you don't support self-regulation, then.

Mr. Bocskei: I don't support—

Mr. Runciman: Self-regulation. Most of the folks who have come before us, paralegals, have talked about supporting the need for regulation and calling for self-regulation rather than having the Law Society of Upper Canada. What you're suggesting in your submission here is that a ministry of the government should provide that kind of oversight.

Mr. Bocskei: You do have a ministry of government that provides that service. In the city I come from, Hamilton, you also have the Better Business Bureau. So a person having a problem can contact either party. As I mentioned with regard to lawyers, I know the letter. I can write it, but I just don't have the names to fill in: "Sorry, we can't do anything for you. We suggest you take this matter to Small Claims Court."

1550

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: One of the areas of complaint we get—or at least I get in my constituency office, and I suspect my colleagues do too—is the very sort of thing you're talking about: people who have a horror story to tell about a lawyer, who call upon the law society to intervene for them, and who get a very legalistic response saying, "This is not within the jurisdiction of the law society," or words to that effect. I want to underscore what you've said in that regard. That drives people right crazy. They've oftentimes had their bank accounts emptied, they've paid fees after fees after fees, and they aren't even close to completing the litigation. They report having been promised the world, and all they get is the service of a notice to be removed as solicitor of record because there's no more money left in the kitty. I've got to tell you, I agree with you. If the law society has a credibility gap, it's in that particular area of people not understanding what the law society can or can't do, and certainly not perceiving the law society as acting in the interests of the consumer of those legal services. That's a problem that the law society has.

Thank you very much. I appreciate your interest in this matter and your contribution.

Mr. Bocskei: I did have one further thing, if you wouldn't mind.

Mr. Kormos: Of course.

Mr. Bocskei: I had spoken to the assistant, Kevin Dwyer, and had mentioned that my secretary would also have a little bit of time to speak. I'd like to introduce you to Ms. Spence. She won't tell you she's a tireless worker and dedicated to the ordinary person and their problems; I'll do it.

The Chair: Thank you very much for your presentation. Your time is up.

JOHN POTTER

The Chair: Next, I believe we have a teleconference. I'm sorry; I'm going too fast here. John Potter.

Mr. John Potter: Thank you, Mr. Chairman, ladies and gentlemen of the committee.

The Chair: Yes, you may begin.

Mr. Potter: Ladies and gentlemen, let me begin by thanking you for the privilege of addressing this honourable gathering today, especially on such a distinguished day as September 11. Quite the memorial five years ago, and I hope that five years from now we will have in place legislation, guidelines, that will make this look like a real working experience for all of us. I am very much in favour of legislation, but I'd like to explain what I'm in favour of and what I'm not and qualify a couple of things before I begin.

First of all, my name is John Potter, and no, I'm not any relation to Harry. There is a family resemblance, I'm sure. I'm a practising paralegal in the GTA and I'd like to preface what I say today by stating that although I serve on executive committees, including the Institute of Agents at Court, and on two advisory councils, one with Mr. Dray at Humber College for paralegal studies and so on, and have been a member of the PPAO and other organizations, I frankly do not speak on behalf of any of them today, simply myself. As they say in broadcasting, the opinions expressed are strictly those of the commentator.

Sometimes it's wise, in my opinion, to look back in history to see how we can guide ourselves, especially into the future. In doing that, I'd like to reflect back with you several decades ago when the word "paramedic" was used to describe proposed programs for lay people to become trained and, most of all, proficient in administering first aid and advanced levels of emergency care to injured people and ill patients before transporting them to the hospitals. I can tell you from personal experience—in those younger days of mine, I was an ambulance driver, and that's what they called us. They didn't call us para-

medics; we were ambulance drivers. We were first-aid instructors, and that was the extent of our qualifications. I can say without any exaggeration at all that there were cries of horror that rang out all across the province when they started talking about paramedics. The very thought that somebody would be administering intravenous, using technical equipment, heart monitoring equipment and so on at the roadside was just foreign to anybody's way of thinking.

But Ontario moved forward and they did an outstanding job. The San Francisco Fire Department was the standard internationally for paramedics. In fact, they even made a television show about it. But to our credit, Ontario designed and implemented one of the most professional paramedic programs in the world, and today our paramedics save more lives and provide faster and better service around all of this province than their counterparts anywhere in the world, in my opinion.

What can we learn from this experience and this awesome success story? First and foremost, that with the proper planning, training, licensing, regulation and follow-up, lay people can be taught to perform "para" anything in a professional, competent manner which meets the needs and protects the best interests of the public. To that end, I applaud the concept of establishing standards and qualifications for the paralegal profession, and I refer to it as a profession as opposed to an industry or any other kind of job description. It is a professional occupation because it is streamlined to the legal profession. Not only in this province but right across the country, we will be the catalyst that starts this ball rolling so that there is a minimum standard of performance for all paramedics, and now, in the years ahead, all paralegals. I'm looking forward to being part of that.

I'm in my 60s and I'm probably going to retire before this is all final legislation and all the i's are dotted and the t's are crossed. But I would like to be a part of supporting this government in getting licensing, regulation, bonding, errors and omissions insurance and education, all the things that are important, into the program without tying the hands of people who are professionally practising, either under the direction of a lawyer or on their own, in a competent and professional manner.

There is one thing I'd like to stress, however, and that's that the paramedic program is not regulated by doctors. They are regulated, they are licensed, they are trained, they are professional beyond belief, but they aren't regulated by doctors. They are regulated not by the Ontario Medical Association but by the department of health. Are they accountable? You bet they are. But doctors don't regulate them.

On the other hand, I think the mistake that a lot of people—paralegals, lawyers and people in the public in general—are making is looking at this and saying, "Well, what's going to happen if?" That's the big question. It's always, "What if? What happens when?" Well, in my humble opinion, we have a long way to go before we have regulation in place that will answer all of the questions and address all the needs of everyone.

Since these points that I'm making today are my opinions and not those of anyone else, I'd like to break them down into 10 points, if I may, and just highlight them. I may not run up to the 20 minutes that's been allocated, but that's fine. I just want to make a few points and ask your input as to how you feel about it. I've seen Mr. Kormos and Mr. Runciman on television repeatedly and I admire their dedication and their hard, fast drive toward getting legislation in place, but I'd just like to bring a few ordinary, everyday questions to the table. Perhaps it's because, in my particular field, in my particular area of practice, I have a bit of an advantage: There is nothing in this legislation that will hurt me—nothing whatsoever. There's everything in this legislation—or many of the things in this legislation can only help me. I don't mean to joke and say that once we're regulated and licensed and everything else, we can all raise our fees. I don't mean it that way.

1600

What I mean simply is that since 1980 I've been a licensed private investigator in this province and I work for 11 major law firms in the city in that capacity. In addition, I'm a paralegal agent. I appear in traffic court and in Small Claims Court. I don't write wills, I don't do divorces, I don't do real estate, and it's only because I choose not to. I don't do landlord and tenant work. One would argue that the only way to test a will is to have the person die. Well, the lawyer who wrote the will could die. What if? You know?

My concerns and the things that I would invite this committee to really focus on are the following: Licensing is key; identification of the person who is providing the service and a licence and a standard of performance that is minimum, regardless what that is; bonding; errors and omissions insurance; accountability; reportability; education, whether that's formal or informal or on-the-job training and college, it doesn't matter, but a standard of education where the person knows of what they speak.

I refer to this word with respect: "articling." How successful would a lawyer be if he or she was called to the bar and was allowed to hang out a shingle instantly, without having articled with a senior person, without having mirrored their activities and having gone through the guidance of a senior counsel? Similarly, paralegals, I suggest, should do the same thing. If you graduate from a college course, be it Humber, Sheridan or any other course, you should still have a period of mirroring or mentoring and guidance similar to articling. I don't care what you call it, but it should be on-the-job training by a senior paralegal.

I also respectfully suggest that paralegals, if they're competent and qualified and licensed and bonded and have errors and omissions insurance, could fulfill another major role and that is being commissioners of oaths.

Finally, one of the bugbears that I think a lot of people have to address, or that they fear, are trust accounts. If you're running a trust account for Small Claims Court—and there's a rumour that the limit will go up to $20,000, but it's currently at only $10,000. Let's say, for example,

that I represented you in Small Claims Court and I was successful in getting back $10,000 plus costs, plus this, plus that and so on, and took my modest fees out of that. I might have $10,000 of your money, and I don't want that to be taken and put in my personal bank account or my company's bank account. I feel that it should be put in a trust account, and from there, that trust account should issue a cheque to you, the client.

Conversely, I work in traffic court. It's not uncommon for us to charge $150 to $450, $500, depending on the nature of the accident or the occurrence. Ninety per cent of the work is done within the first 30 days, and then you might wait—and we've all heard this—anywhere from a year to a year and a half to get a trial date. You can get another agent to handle this in 15 or 20 minutes. Just phone a couple of agents in the IAC or any other major organization and ask them, "Would you handle this case for me? I'm double-booked or I'm sick or I'm in the hospital," and they'll charge each other a modest fee of $50 to $100. So if you had 100 cases at, let's say, $50 each, that's only $5,000. Why would a traffic court agent require a trust account? Why wouldn't he just require what I require as a private investigator, and that's a $5,000 surety bond? Or $10,000, if you think he's going to have 200 cases. That makes more sense, in my humble opinion, than having trust accounts where you move $50 bills back and forth and back and forth.

Those are my concerns. Those are the issues that I came here today to ask about and to mention.

Finally, advertising: One of the major reasons that people don't use paralegals is misleading advertising. I can tell you that there are associations, one of which I'm a member, that refuse to accept certain members, even though they're good, competent people running very successful businesses, because of the way they advertise. That's a shame, because they're good people, but frankly, the way their advertising is projected to the public is misleading, and that's dishonest. I heard a gentleman here today say that lawyers are dishonest. I want you to take those Yellow Pages he referred to. I want you to find a trade, a profession, a career, I don't care, from A to Z that has no bad apples—anything; I don't care what it is. It doesn't exist. So preaching about the bad lawyers, the bad paralegals or the bad this or the bad that, that's a red herring. It's the minimum standards of performance, it's the professionalism, it's the education and it's reaching out to the public and saying, "Here we are. This is what we stand for. This is what we do." Just like doctors don't expect that the lab technicians, the nurses and the operating staff are all bucking for their job or trying to undermine their authority, neither are paralegals trying to undermine the authority, the knowledge and the expertise of lawyers.

For the record, I am licensed, I am bonded, I do have errors and omissions insurance, I do have a standard of accountability through the professional associations of which I'm a member. There is a reportability, there is a minimum standard of education and there is an ongoing education program in place. We do take in young people who are coming out of colleges and mentor with them. So much of what we're proposing is already in place. I'd invite you to get involved physically and communicate with the professional organizations that are paralegals around the province, not just somebody who said, "Yesterday I was doing this job and I'm tired of it, so today I'd like to be a paralegal, and I can spell 'paralegal,' so by law I'm allowed to be one." No, that's not a standard. We have to have minimum standards and we have to have those minimum standards high enough so that the public is excited about dealing with a paralegal and so are lawyers. Quite frankly, a great deal of my business comes from professional lawyers. They have a respect for me and my practice and I have the same for them. I would encourage this committee to promote that good win-win relationship between the law society or any other governing body of the province and the paralegal professions.

I do thank you very much for allowing me the opportunity to speak here today.

The Chair: Thank you very much. We'll start with Mr. Runciman; a couple of minutes each.

Mr. Runciman: Thanks, Mr. Potter. You don't look a bit like Harry.

Mr. Potter: Thank you, sir.

Mr. Runciman: I appreciate you being here. We had an earlier witness—and I gather you were here—Mr. Dray.

Mr. Potter: Yes.

Mr. Runciman: One of the comments he made with respect to—and I'm not quoting him directly, just paraphrasing; my mind is going blank at the end of the day listening to so much of this—trying to get your profession to regulate itself or even organize itself was a bit like herding cats. He was the first witness we've heard who is a paralegal who is supportive of the law society being the regulating authority. I'm just wondering what your experience is. Do you share that view that members of your profession are so challenging in terms of pulling them together, it is impossible to self-regulate, as he is suggesting has been his experience?

1610

Mr. Potter: No, sir, it's not. Quite frankly, I think we came very close to that. There was a point less than two years ago when all the known and registered paralegal organizations, by various titles, grouped together and said, "Let's all be under one umbrella, with one board of directors and one leadership." Unfortunately, what came down from this government after that caused them to say, "Well, what about the 'grey' areas?"

I mentioned that I don't practise in the areas of real estate and so on and so on. I'm not suggesting that that shouldn't be done; I'm just saying that my areas of expertise are not in those areas, any more than a lawyer might say, "Well, I practise family law and not criminal law"—similar. But to answer your question directly, sir, there is no reason at all why we could not at some point in time become self-regulated. Whether it's wise to suggest that we start that way is another thing. I would

respectfully suggest that with the guidance and supervision of a government organization, and, frankly, not the law society particularly—and I don't want to steal anyone else's thunder, but that is very much like putting the fox in charge of the henhouse. But on the other hand, I don't want to see us abandon all the good work that has been done for these past many years. That would be throwing the baby out with the bathwater. And that's your expression, sir. You said that on television.

I think we'd be wise to look at another organization that could look, at a distance and impartially, at any conflict that might exist between a lawyer and a paralegal, or in a legal capacity, and just say that any organization, any government organization, even if it's newly formed, could oversee and monitor paralegals for a given number of two, three years. And eventually, we would be what real estate agents are. They're self-regulated. Insurance brokers, like RIBO and so on: They didn't start off by being self-regulated, but they are now.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you very much, Mr. Potter. You've made a healthy and valuable contribution to the discussion. One of the latter points you made was around the objectionable types of advertising. Are you talking about, "You get found not guilty or it's free"?

Mr. Potter: Sir?

Mr. Kormos: Give us some of the others.

Mr. Potter: I would not, in all honesty, come here and badmouth what some people think are my competition. They're just other people who are in the same business.

Mr. Kormos: I understand. But we've got to understand what you're talking about.

Mr. Potter: Yes. Since you raised that issue, yes, that's one of the things that bothers me personally. And I know—

Mr. Kormos: Does it really work that way?

Mr. Potter: Sir, I have copies of all their contracts, and mine is the only one that says, in big, bold letters: "We do not guarantee to win or provide our services at no cost." Because when I go to Loblaws or Dominion, they don't want to know that; they want cash. So I charge for my time; I charge for my services. I do the very best job I can for a very modest fee. But I don't guarantee to win or it's free. That's just nonsense. What that really means is, "Save you a point or save you a dollar and it's a win." In other words, if I can save you one point off the offence or a dollar off the fine, I've won. You could do that yourself, sir. So my way of looking at it is, I'd like to go to court and I would like to do something for you that you can't do yourself.

Mr. Kormos: What other types of misleading advertising are you speaking of?

Mr. Potter: Things where people say it's X number of dollars for a divorce. Well, yeah. The fees that the government charges, sir, are more than what they're advertising in the newspaper or on these signs.

The Chair: Thank you. The government side.

Mrs. Van Bommel: Thank you, Mr. Potter, for your presentation. Just a bit earlier Mr. Runciman talked about herding cats. I'm sort of getting that sense here as well, that in terms of paralegals we've heard about different associations. We heard about the Professional Paralegal Association, which is now defunct. You said that there was a time where you came very close to being self-regulated about two years ago. Can you tell me what happened there?

Mr. Potter: No, I beg your pardon. If that's the impression I gave you, I apologize. What I said was that all of these known organizations grouped together and agreed to be united under the Professional Paralegal Association of Ontario and then maintained their own individuality. For example, if you're in the traffic ticket group, you would be with the Institute of Agents at Court, perhaps, or another organization. You could still have that membership and learn through their seminars and sessions and regular monthly meetings and so on, but you would also be a member of the Professional Paralegal Association of Ontario.

Unfortunately, as I understand it—and I wasn't on the executive of that organization; I was only a member—we voted as different organizations to disband the PPAO because the legislation that was proposed didn't support all the different areas that the membership of the PPAO practised. Now, in my case, as I said, on the outside it's not going to hurt me personally because those are not areas in which I practise. But am I concerned for the people who do practise in those areas? Of course I am. The people who are good at writing wills or doing estate law or real estate or whatever else: If they're really, really good at it, and maybe they're even lawyer-trained, they should be encouraged to be licensed, be bonded, be insured, have errors and omissions insurance and do their jobs.

The Chair: Thank you, sir. Thank you for your presentation this afternoon.

MCGUINTY AND MCGUINTY LAW OFFICES

The Chair: The next presentation is by teleconference. Do we have Mr. McGuinty on the line? Good afternoon, Mr. McGuinty.

Mr. Dylan McGuinty: Good afternoon.

The Chair: Welcome to the committee. You have half an hour for your presentation. You may begin.

Mr. McGuinty: Thank you very much. Is this Mr. Dhillon speaking?

The Chair: Yes.

Mr. McGuinty: Okay. Thank you very much. I'm not going to take the 30 minutes, I believe, and I'm sure you're all ready to finish up for the day. Let me tell you why I appreciate the time. I'm a small-time lawyer here in Ottawa. I've been practising since 1985. I've always been in good standing with the law society. I got involved when I started reading the materials put out by the law society in the recent past and of course, more recently, the materials put out by your good government dealing with Bill 14.

Here's the way I want to present myself. I don't really deal with big business; I don't even deal with medium-sized business. I'm in a small firm here with a total of five lawyers. For lack of a better term, I serve Ontario families; I serve individuals. The lawyers in my office are also representatives of Ontario families. That's the picture I'd like to paint for you parliamentarians today. I strongly believe that as I speak to you, I represent thousands of lawyers in Ontario who have similar practices. We have a good number of lawyers in Ontario, and that's something that we, you and myself, should all be very proud of. It's an asset. I would say to you that roughly 40% of our lawyers in practice today are like myself and I think we have good input when you're thinking about this bill.

If you boil it down, what is it that lawyers in small firms like mine do every day? If you boil it down, what we do is we meet clients, we listen to clients, and before we provide any kind of legal service, what we do is we provide, to the best of our ability and our training, unbiased independent legal advice. That, I think, is the key to your consideration when it comes to regulating paralegals.

To make my point, I think it would be similar to many constituency offices of MPPs throughout the province. What you do is you meet and you provide advice to constituents. That's what we do. We're like Home Hardware: We have branches all over the province, but we're independent. We're like Tim Hortons: We have branches all over the province, but we're independent. That's how I'd like to present myself to you today.

One thing I'd really like to make clear: I am not speaking to you as someone who's anti-paralegal. I am very pro-paralegal. I am pro-consumer protection; I am pro-access to justice. When it comes to consumer protection and access to justice, I think you can view myself and others like me as the access to justice that the bill is trying to promote. You've got the best solution on the boardroom table. You have lawyers, and we are producing 1,000 lawyers a year, roughly. That is a darn good solution if you're trying to advance consumer protection and, of course, increase access to justice.

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Here are my three or four suggestions for you to consider.

First of all, in the bill I think it's better for the public, lawyers and paralegals if the bill refers to a lawyer as a lawyer and if the bill refers to a paralegal as a paralegal.

The next point: I think it's great the way the bill has a broad definition of legal services, and there's a darn good rationale for that, but what it doesn't have is a definition of the practice of law. The reason I would recommend that is that the practice of law, if defined, identifies for lawyers, paralegals and, above all, the public, which legal services are best provided by lawyers, again, for consumer protection. You'll find that many other provinces in Canada have come to that definition: Manitoba, PEI and BC, to give you examples. Other provinces have done it for that reason.

My next point: I recommend in the bill that you cover something which is now missing, and that is, define the scope of practice of licensed paralegals, for the same rationale as I gave for defining the practice of law. If you define the scope of practice for licensed paralegals, again, lawyers, paralegals and the public will know what they're seeking when they call upon a paralegal.

My rationale for the last point, the scope of practice for paralegals, is mainly based on what the law society report of 2004 came up with. It's not my idea. The law society, I believe, is unbiased. I believe the law society has the public good in mind. In that report they've consulted over 50 stakeholders, over 68 submissions, and defining the scope of practice for paralegals is their very first recommendation. Recommendation number one is absent in Bill 14.

It's very simple; it's very clever. The law society recommends that when we go about licensing paralegals, we simply permit them to do what they may currently do by law and by case law. In recommendation number one of that report, they set out Small Claims Court matters, provincial offences matters, tribunals, appeals under the Provincial Offences Act, etc. It's all there. It's certain. I think if we're dealing with consumer protection, the more certainty in the act, the better.

My last point deals with, I think, an unintended result of Bill 14 and it's the one that concerns me the most. My last point to you is title insurance companies: They are very strong. They have a very good product—title insurance—it's something you see in real estate. Their lobbying efforts have already begun. They've already begun lobbying to promote your bill and at the same time to be exempted from your bill. Again, if you bring certainty to your bill, it will tell the public, lawyers, paralegals and title insurance companies at the outset whether or not title insurance companies may continue their lobbying efforts to be exempt from all of the good control that Bill 14 is promoting. That's my last point, which is the most important of all.

I strongly believe that your offices are best to protect the public when it comes to the different bodies out there that will seeking exemption from the regulations of the bill and, of course, seeking exemption from regulation by the law society, if in fact that's what you end up doing.

One of my final points is, the reason I want you to bring certainty to this is that as recently as June or April, our bencher, our treasurer for the law society, while speaking to the Toronto Star, referred to paralegals being limited to those areas I just mentioned a moment ago, such as Small Claims Court, traffic matters, workers' comp. But then our treasurer went on to say that for now they won't be allowed to do things like simple land transfers or divorces. So you can see our treasurer is reflecting the uncertainty of what the scope of paralegal activity may end up being, and that's one of the main reasons why I'm happy to speak to you today, to bring this viewpoint to you from a lawyer in the trenches.

I'm also a lawyer who encouraged many other lawyers across the province to send their views to all of you, and

you may have received different e-mails from different lawyers which appear unsolicited. I want you to know that it's something that I did on my own. I simply e-mailed and faxed lawyers throughout the province asking them to please take a few minutes to respond to Bill 14 and what it stands for. We lawyers in the trenches are a very quiet bunch, so I'm happy if you have received these e-mails, and I thank you for hearing me out today. I'd be more than happy to clarify or answer questions.

The Chair: Thank you very much. We have about seven minutes for each side, beginning with Mr. Kormos.

Mr. Kormos: I understand the submissions. I appreciate this person having taken time out of what is undoubtedly a far busier schedule than we have. He's got people in his waiting room. I appreciate him taking the time to talk to us.

The Chair: The government side: any questions, comments?

Mrs. Van Bommel: I just want to say thank you as well for your presentation. It's much appreciated.

The Chair: Finally, Mr. Runciman from the opposition.

Mr. Runciman: Yes, thanks, Mr. McGuinty. I appreciate it. I tend to share your view with respect to scope of practice. I hadn't thought of it from the perspective of defining scope of practice for a lawyer, but it's certainly an interesting perspective. With respect to paralegals, I think that is something that is an absolute necessity in terms of moving forward with this legislation.

I have to say, I just asked Mr. Kormos about your interventions with your colleagues to send us e-mails. I can't say that I have received much, if any. I'm not sure if that's a reflection on your efforts. I don't think it is, but perhaps you're going to have to give further encouragement to some of your colleagues.

Mr. McGuinty: Did you mention whether or not you had received any?

Mr. Runciman: No.

Mr. McGuinty: Okay. Well, if you speak to Ms. Anne Stokes, she has confirmed that she's received quite a few and that she's passing them along to the members.

Mr. Runciman: Okay. As individual members, I don't think we're getting them, but maybe that's the process that your colleagues are following.

Once again, thanks for your submission.

The Chair: Thank you, Mr. McGuinty.

Mr. McGuinty: Thank you. All the best.

DME PARALEGAL SERVICES

The Chair: The final presentation today is from DME Paralegal Services. I believe we have Mauline Macdowall. No? Good afternoon.

Mr. Bruce Parsons: My name is Bruce Parsons and I'm acting as agent for Ms. Macdowall.

The Chair: Thank you, Mr. Parsons. You may begin; you have 30 minutes.

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Mr. Parsons: I'd like to say thank you to everybody for allowing us the chance to speak. I'd like to comment, first and foremost, on what I believe is the goodwill of all parties involved. Some of the things that I'm going to say are going to be controversial and interesting. They're certainly going to be a little on the confrontational side.

You heard earlier from Mr. Paul Dray, and I have the utmost respect for Mr. Paul Dray. On the flip side of the coin, the alter ego, if you will, where Mr. Dray felt that paralegals were incapable of being brought together to regulate, I felt that the biggest single failing of all the organizations was to do that, and the principal architect in fact of the steps that paralegals have made in bringing a regulatory proposal together—certainly there's a forerunner to the PSO white paper which you'll see. I have it available electronically.

I'm a last-minute fill-in for Ms. Macdowall because Ms. Macdowall had some serious concerns about speaking to the committee. Ms. Macdowall received a letter from the law society—not recently; September of last year—basically requiring that she change her name because there were some concerns about how it may relate to her area of practice. After the Cory hearings, you may or may not be aware that some of the paralegals who appeared and spoke who were operating in what they call "grey" areas were actually within the next six months approached by the law society. We hear that this is a coincidence, but certainly it's cast a pallor on the process where paralegals come forward to speak.

That being said, I'm going to try to get through my proposal as quickly as possible and allow you to have some questions. Hopefully, I can give you some solid information on what's happening from the paralegal side.

The average wage in Ontario is $31,133. At a minimum hourly rate of $150 plus costs and disbursements, even the most junior lawyer is obviously outside the realm of possibility for the average citizen, regardless of the issue she or he is facing.

This committee has heard about, and indeed dealt with, the issue of the apparent and perceived conflict of lawyers regulating paralegals. You have heard much about vulnerable, unrepresented citizens in the legal system, particularly in the sensitive area of family law. Looking at the above numbers, the cause of this is readily apparent, a fact supported by the Law Society of Upper Canada's study, the Sole Practitioner and Small Firm Task Force, and I quote: "... have surfaced in a market environment characterized by the growing inability of the client population to purchase legal services and/or pay adequate fees for those services."

The accepted version of the conflict is the competition between paralegals and lawyers for clients. In fact, I believe the issue is more complex. Given the inability of the average citizen to access the legal system, the rule of law itself is in danger of falling into disrepute. When the population is deprived of access to the legal system to resolve disputes or for simple necessities of life, the rule of law can only suffer.

The purpose of regulation is set forth eloquently in an important recent report prepared by the Law Society of Manitoba: "No action should be taken unless the regulation will substantially reduce the risk of harm to the public and unless decision-makers are convinced that the effect of implementing the regulatory form will result in greater benefits for the public than the costs." These costs are not limited to the expense of administering the regulatory regime, but must include the cost to the public of reduced competition.

The question becomes twofold: Is the Law Society of Upper Canada capable of regulating paralegals in a cost-effective fashion, and what is the cost of such regulation to the public, including the cost of reduced competition?

Why do paralegals believe the Law Society of Upper Canada will reduce competition? The Attorney General approached the Law Society of Upper Canada requesting their assistance as a regulator for paralegals. The law society had the opportunity to work with paralegals to develop the approach. No request was made. The law society brought forth its own report without the input or involvement of the paralegal organizations. The law society developed, with the colleges, the college advisory group. Again, paralegals are conspicuous by their absence.

The law society proposal to the Attorney General is clear. Where paralegals are permitted to appear by law now, the law society will regulate those paralegals. Where paralegals currently provide services to the public that are not expressly permitted by law, they will not regulate those areas.

The impact of this approach will be to further cast the rule of law into disrepute. Pick up any paper, open any phone book, and you can find dozens upon dozens of paralegals advertising services for uncontested divorces, incorporations and business registrations. These services are to be excluded with regulation and these paralegals prosecuted for unauthorized practice, at a cost to the taxpayer of an estimated $3 million to $5 million per year. That comes from the County and District Law Presidents' Association memo that is attached to my submission. This memo is attached for your review. What this memo does not consider is the impact on the general public of the removal of 1,000 legal service providers—paralegals—who provide those services to the public. Nor does the memo consider the impact on those parties whom those paralegals in question currently represent. What happens with their files? What about the fees they've paid and their issues?

Convocation recently voted to spend hundreds of thousands of dollars to assist sole practitioners and small firms. One of the questions asked in their survey was how much their business was being affected by paralegals. Several members of the sole practitioner and small firm task force also sat on the paralegal task force, including, at one point, the chair, William Simpson.

Recent comments by the treasurer of the Law Society of Upper Canada, Gavin MacKenzie, quoted in the Toronto Star confirm the intent of the law society to dramatically limit paralegal practice.

In the environmental scan of 2000 commissioned by the law society, the satisfaction of clients with services provided by paralegals was the equivalent with that of services provided by lawyers. This survey included the areas targeted by the law society as outside the regulatory scheme.

How can the law society and its treasurer speak so conclusively about where paralegals will practise when the regulations themselves will be set by the legal service provider standing committee as set up in Bill 14? How can the law society and the treasurer be sure that, pursuant to section 4.2, numbers 2 and 3, access to justice is assured by restricting paralegal access in these areas and that banning paralegals from these areas of practice protects the public interest? I would argue that by ensuring licensed, regulated paralegals are available, access to justice is enhanced. I cannot see how banning paralegals from these areas, where the public has obviously voted with their wallets to support paralegals, is in the public interest, nor can I see the use of taxpayer dollars to prosecute paralegals in these areas as being in the public interest.

The law society has argued that the public needs protection from unscrupulous and incompetent paralegals. I suggest that by ensuring that paralegals performing these services are insured, regulated and have a compensation fund, the public interest is more than adequately protected until the competency tests under regulation are established. These paralegals are, and have been for some 20 years in some cases, providing these services. Many paralegals received their training in law offices, performing these same services for lawyers, which services lawyers then mark up and charge their clients. To suggest widespread incompetence of these paralegals flies in the face of the law society's own environmental scan.

The law society and their treasurer can speak publicly about what they will and will not permit paralegals to do under Bill 14, because under Bill 14, Convocation holds the power to overrule the legal service provider standing committee. It is ironic that paralegals are not mentioned by name in their own regulation. Paralegals in other jurisdictions are actually supervised law clerks. So when the Canadian Association of Paralegals, for instance, speaks on behalf of paralegals, they actually speak for supervised law clerks.

Bill 14 proposes that only lawyers will be members of the law society, that Convocation will consist of 40 lawyers, eight lay benchers and two paralegals. If only members of the law society can elect benchers, paralegals are denied the vote electing those 40 benchers who control their fate and membership in their own regulatory body.

The legal service provider standing committee will consist of five paralegals, five benchers who are lawyers and three lay benchers. The lay benchers are to provide public input. In fact, they have already approved the law society's position, without having heard from paralegals.

They will, by virtue of their role as benchers of the law society, be much more attuned to the needs and goals of lawyers—there are 36,000 lawyer members of the Law Society of Upper Canada, and estimates are that there will only be 1,000 paralegal non-members. Further compounding this injustice, the law society has been interviewing paralegals, allegedly for appointment to this committee. Clearly, the government and the law society intend to stack the committee with compliant paralegals.

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Paralegal concerns about the law society intentions have some justification. You can understand why we are a little worried. The law society failed to manage the provision of legal aid in the province of Ontario. The difference between lawyers and paralegals will make it almost impossible for the law society to fairly and effectively manage paralegals. The margins of profit in a paralegal office are small and primarily based on volume. Paralegals tend to excel in one area of law which lends itself to their business model. Lawyers tend to operate on a much bigger scale and may be the most regulated profession in existence. The complexity of the rules governing trust accounts, for one example, would render a traffic court practice unsustainable. How can that be in the public interest?

Paralegals have proposed a form of self-regulation/public regulation that includes the law society. We acknowledge the wealth of experience the law society has in many facets of regulation. We propose a self-funding model, requiring minimal support for start-up, and have a business plan based upon actual paralegal practice, not on solicitors' practice.

You've seen the white paper I am attaching electronically—actually, I have them here on disk, copies of a much larger proposal that came out in 2004. With the conflict between the various paralegal societies, it has been brought forward slowly but surely.

Paralegals have been essentially excluded from the regulatory process to date, but we have a great deal to contribute and have worked extensively on this issue. PSO members—and when I say "PSO," please let the record show I mean PSO and PSC—are subject to a code of conduct and a discipline process and have held errors and omissions insurance since at least 1997.

Recommendations: I would like to see schedule C of Bill 14 pulled out and reworked. In the alternative, I would propose the following revisions: that we enshrine the rights of paralegals to practise in the areas where paralegals have been practising for at least the last five years. Where paralegals provide services to the public, let's let that continue.

Amend the bill to provide that the Attorney General appoint three members of the public who are not lay benchers and not lawyers to provide fair public representation on the legal service provision committee, rather than the current proposal of three lay benchers appointed by the treasurer of the law society.

Amend the bill to allow the two representative paralegal organizations, the Paralegal Society of Ontario/Canada and the Institute of Agents in Court, to elect the initial paralegal members of the legal service providers standing committee.

Enable paralegals to be full members of the law society and eligible to vote for all benchers. There is precedent in the law society's own rules, which provide for regional representation.

Remove the right of Convocation to override the decisions of the legal service providers standing committee. Perhaps a form of binding arbitration would be appropriate in an instance where the parties disagree.

Amend the legislation to allow paralegals to be called paralegals.

Prosecution of all paralegals currently in practice should cease until the committee brings forth regulations establishing licensing standards in each specific area of practice, provided that the paralegal has errors and omissions insurance, is a member of either the PSO/PSC or the Institute of Agents in Court, and the paralegal agrees to submit to the law society's discipline process. This will allow for immediate protection of the public without disruption of the current services to the public while the areas of practice are formalized.

Establish a province-wide information advertising campaign informing the public that paralegals are licensed, regulated and available to provide the public with low-cost legal services in specified areas. The message should not be limited to advertising a complaint process against paralegals.

Finally, this one's a little off topic, but amend Bill 14 to remove from schedule A under the Courts of Justice Act item 18, with the proposed addition of all parts of proposed section 116. The court may currently order periodic payments to injured parties where required. This is the medical malpractice section. This is a blatant attempt by the insurance industry to limit costs. The bill, as proposed, would increase costs to injured parties where they have to seek lump sum payments to make necessary accommodations for everyday living. This is not access to justice but a further erosion of the rights of victims and one more hurdle for an injured party in resuming their daily lives.

I would like to point out just one more thing. In the PSO white paper, our first self-regulation—talked about a fair bit. The actual proposal consists of an 11-member board, of whom four would be paralegals and two would be lawyers. In essence, paralegals are proposing that they form less than the majority of the regulatory body.

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

Mrs. Van Bommel: Thank you for your presentation. What I'm hearing here is that you are not so much concerned about being involved with the law society if we take these recommendations that you have made and incorporate that into the new legislation. Is that what you're saying?

Mr. Parsons: I would definitely prefer not to be involved, but I can certainly say that, with those accommo-

dations, the bill becomes much more palatable to paralegals.

Mrs. Van Bommel: So there is a sense in the paralegal community that they could live with this.

Mr. Parsons: Not as it currently exists, but certainly with substantial changes, yes.

Mrs. Van Bommel: Thank you.

The Chair: Mr. McMeekin?

Mr. McMeekin: Thanks for your presentation. You said it was controversial. I'm not sure. It didn't seem controversial to me, but maybe I'm missing something here.

I'm particularly curious about, when you talked right at the end of your presentation you said, "One other point about self-regulation." Then you said an 11-member body, four of which would be paralegals, and you then emphasized that that would be a minority of paralegals in their own self-regulatory body. Why would you do that? I don't think there's a professional group anywhere in the province where there aren't a majority of the members of that profession regulating their own body. Why would you trade that off so quickly?

Mr. Parsons: It's not necessarily a trade-off, but we've looked at the trends that are out there, and certainly the first thing that we saw was the new accounting act that came in around the same time as we put together the first version. We thought that certainly one concern about paralegals is that people tend to think that we're not necessarily able to bring things together. The other concern is that the law society has some issues with its self-regulation on an ongoing basis. It's a balancing act, if you will, and we hope to avoid that whole scenario. Obviously if the majority of the board is not paralegals, then you remove that conflict.

Mr. McMeekin: I yield to your wisdom, but I would just restate, for what it's worth, I don't know another professional organization anywhere in the province that would sit still for something like that. That's meant as an affirmation, by the way.

Mr. Parsons: Thank you.

The Chair: Thank you. Mr. Runciman.

Mr. Runciman: Thanks for your submission today. There was also a memorandum—I gather you provided this as well—from David Sherman, chair of the County and District Law Presidents' Association. Is that from your organization? I found that quite interesting reading as well, just skipping through it, related to Mr. McGuinty's presentation just prior to yours about the need for a definition of the practice of law. The quote in here is that this "will be of enormous assistance in prosecuting unaccredited paralegals." He didn't say that that was the justification for making that proposal. There is reference here as well that there "will be a substantial undertaking to put these paralegals out of business." These are the folks who would not be, in terms of the scope of practice that's being proposed here.

The other reference is to a financial partnership with the province because they're estimating $3 million to $5 million annually for the first three years of enforcement. Again, another reference to "aggressively pursuing prosecutions." It does raise some interesting questions with respect to what's behind all of this.

The Chair: Thank you. Finally, Mr. Kormos.

Mr. Kormos: Thank you kindly, sir. I appreciate you coming here. I understand the points that you've made. You also understand that qualified—highly qualified, very conditional—support for the bill, which I wouldn't have articulated as support for the bill, is going to be cited at least once, if not twice, if not thrice, by advocates for the bill as your endorsement of the bill. That's the problem with making—albeit highly conditional—gestures of support.

See, we had a trio of—I call them "the silver bullets" because they were supposed to have delivered last week—very competent, experienced paralegals who, when finally pressed, said, "Yes, of course regulate us, but regulate us under the auspices of anybody, anything but the law society." They were unequivocal; they were very, very clear. You've really tried to be fair, and I appreciate that. You also talked about some dispute resolution processes that would provide some relief.

So where do we put you on the ledger? Because we've been looking for the paralegals who support the legislation. Mr. Dray was here today, so I put him on the support side, but he is a bencher of the law society, okay? So may God bless him. Again, the wine cellar is an enviable life. So where do we put you—on which side of the ledger? For or against?

Mr. Parsons: You can definitely put me down as against. I would hope that we've brought forward some suggestions that, moving forward, can be incorporated to make the next go-round a little easier.

I had one meeting certainly as president of the PSO with the law society. Provided we don't discuss areas of practice or the issue of Convocation, I think there are some meetings of the mind, but we've reflected that in our own proposal. Certainly the law society has a lot of experience with regulation and some issues that we have not faced. They also have never regulated anything like paralegals. It would be like taking—

Mr. Kormos: That statement is going to be interpreted any number of ways too, I can tell you that.

Mr. Parsons: Yes. But it would be like taking a fine, fancy French chef with a sous kitchen and putting him in charge of a McDonald's. You can imagine what's going to ensue: It's not going to be good food for a little bit.

Mr. Kormos: Wait a minute: Who's the sous chef and who's McDonald's here? Don't run with that one. Thank you kindly. I appreciate it very much.

Mr. Parsons: Thank you.

The Chair: Thank you, sir. That concludes our committee meeting for today. We'll meet here tomorrow morning at 9 a.m. Thank you, everybody.

The committee adjourned at 1654.

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