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Mercredi 13 septembre 2006

Standing committee on justice policy

Access to Justice Act, 2006

Comité permanent de la justice

Loi de 2006 sur l'accès à la justice

Chair: Vic Dhillon
Clerk: Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 13 September 2006

Mercredi 13 septembre 2006

The committee met at 0907 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'm going to call the public hearings of the standing committee on justice policy to order. We are hearing Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

FIRST CANADIAN TITLE

The Vice-Chair: Our first presenters are First Canadian Title. You have 30 minutes to make your presentation. If you don't use the entire 30 minutes, then there's opportunity for members of the standing committee to ask you questions or make comment on your presentation. Before you start, if you would introduce yourselves for Hansard. Thank you very much, and welcome.

Ms. Wendy Rinella: Good morning. Thank you for the opportunity to appear. My name is Wendy Rinella, and I'm with First Canadian Title. Joining me today is Professor Paul Paton from the faculty of law at Queen's University in Kingston. Professor Paton's specialty is ethics and professional responsibility.

Before I provide a proper introduction to Professor Paton and why I've invited him here today, I'd like first to provide you with some background about our company and our competitors.

First Canadian Title is Canada's leading provider of title insurance for residential and commercial transactions, real estate transactions and other related products and services. Established in 1991, we pioneered the concept of title insurance in Canada. Title insurance is a form of consumer protection to protect the insured from risks to their property title. Fifteen years later, we've helped protect millions of Canadian owners and lenders from unforeseen circumstances affecting their title to real and personal property.

Currently, First Canadian Title employs over 1,000 people across Canada. In Ontario, about 625 people are employed at our home office in Oakville and at affiliated companies in Hamilton, Mississauga and London. Currently, First Canadian Title's home office is undergoing an expansion that will house an additional 150 employees.

We'd like to begin by saying that we support the need for paralegal regulation. While we recognize and support the importance of paralegal regulation, we have grave concerns about the breadth of power provided to the Law Society of Upper Canada through Bill 14. For reasons we outline in our submission, which I believe has been distributed to you and about which I'll be speaking to you today, we consider the law society to be our commercial competitor. There are five other title insurance companies that actively compete in the Ontario marketplace. You'll hear from Steven Offer of Chicago Title, another of our competitors, later this morning.

We recognize that it may seem unusual for us to refer to the regulator, the law society, as a competitor, but they are. The Law Society of Upper Canada's wholly owned subsidiary, the Lawyers' Professional Indemnity Co., doing business as LawPro, which I will refer to as LawPro, provides professional errors and omissions, or E&O, insurance to lawyers practising in the province of Ontario. LawPro has a monopoly on the provision of E&O insurance to lawyers in Ontario and under Bill 14 will have a monopoly on E&O insurance for all licensees of the law society. In addition to professional indemnity insurance, in 1996 LawPro began selling title insurance under the product name TitlePLUS. TitlePLUS is now sold in eight other provinces in Canada, so we have been competing against the law society for a decade across Canada.

Since the introduction of Bill 14, we've been concerned about the reach of the law society and its ability to regulate our activities, especially as we consider the law society to be our commercial competitor. We have been advised by our legal counsel, Earl Cherniak, Queen's Counsel, that our business-to-business transactions are caught by the new definition of legal services in Bill 14. A copy of Mr. Cherniak's opinion is included in our written submission in appendix E.

The bill provides the law society with broader powers to regulate, including the power to seek injunctions

without a prior conviction or charge, which is section 26; to conduct investigations on the basis of suggestions, section 49; and the power to choose whom to exempt from the bill's regulatory scheme, under section 10, through their bylaw-making authority. As such, we have been requesting that an exemption from law society regulation be specifically included in the legislation, especially as we believe it's unfair and inappropriate for us to have to seek permission to continue our business operations from our competitor, the law society.

The Attorney General advised us that there is no intent to capture our activities, and that based on his office's interpretation, we were not caught in the legislation. While this may be comforting, it's not the legislative assurance we sought, and we believe it's important to ensure that there is no room for argument that the law society might regulate our activities. So we requested the support of the law society that an exemption for our operations and products be included in Bill 14, because of the inherent unfairness of being asked to seek an exemption in provincial law from a competitor.

The law society responded that they have no intent to regulate us. I think they made similar comments to others. Furthermore, the CEO of the law society advised us that "LawPro's affairs and that of its title insurance subsidiary are managed by a separate board of directors charged with running the affairs of the insurance company," and that "the law society will not jeopardize its 200-plus years of self-governance through the misapplication of its authority." In his view, there is no conflict between the law society's regulatory activities and its commercial activities as a provider of title insurance in the Ontario marketplace. These letters are in appendix C.

We take issue with this view, particularly when the law society's CEO as well as five of the governors, or benchers, of the law society sit on the board of LawPro. In light of this response from the law society, we asked Professor Paton to review Bill 14 and to examine the relationship between the law society and its title insurance business. We also asked him to review law society reforms being pursued in the United Kingdom. Professor Paton is a noted scholar on professional ethics and corporate governance and has counselled numerous organizations, including the Institute of Chartered Accountants of Ontario and the law society. His opinion is also included in the written submission in appendix D.

I now ask you to provide the highlights of that, Paul.

Mr. Paul Paton: Thank you very much, Madam Chair, for having me here this morning. I appreciate the opportunity to speak to the members of the committee.

As Wendy has noted, First Canadian Title asked me to review Bill 14 and in particular to examine the relationship between the Law Society of Upper Canada and its activities as a commercial provider of title insurance in the Ontario marketplace. First Canadian provided me with a copy of the legal opinion they obtained from Earl Cherniak, which Wendy has referred to, and his conclusion that First Canadian's activities are caught by the expanded definition of legal services.

As I note in my report, which is part of the submission that Wendy has provided you, and as I'll mention later here, I take no position on that issue. I acknowledge that there's a conflict between the position of the law society and the position of Mr. Cherniak on that issue. What I do in the report, though, is refer to that opinion and that conflict as important background for the discussion of the regulatory reach and the commercial activities of the law society.

As Wendy has noted, I am a professor at the faculty of law at Queen's University, where my teaching and research focus on legal ethics and professional responsibility, the regulation of lawyers and accountants, and issues of corporate governance in the legal profession. I have worked with different organizations, including the Law Society of Upper Canada. In that context as well, I want to make it abundantly clear that my comments this morning and in the opinion relate to the structural issues of conflict that I perceive as potentially arising based on Mr. Cherniak's opinion. It's in no way, shape or form any commentary on the activities of any of the individual benchers or the CEO of the law society exercising their authority.

There are essentially two parts to the opinion that's included in the materials. One part reviews the commercial activities of the law society in its activities as the owner of a wholly owned subsidiary engaged in the business of title insurance, and the other part provides a brief look at current developments in England.

I make two general conclusions: First, in England, government has actually taken a very different direction than what is being proposed in this bill. Rather than actually delegating greater authority to the law society or the Bar Council in England to regulate the conduct of those engaged in providing legal services, a draft legal services bill introduced in the UK Parliament on May 24 of this year in fact brings the regulation of legal services closer to government. It also removes existing restrictions on the business structures through which legal services could be provided. That's a very different direction than what is being proposed here.

Second, and more importantly for the purposes of the narrower issue Wendy has identified about the commercial activities of the law society, I concluded in the opinion that if indeed Mr. Cherniak is correct and the business-to-business activities of First Canadian Title are captured by the legislation's grant of authority to the law society to regulate legal services providers, the legislation would in my view place the law society in the position of having the discretion and authority to regulate the conduct in that case of a title insurance provider with which its wholly owned subsidiary is competing in the marketplace.

The matter, as Wendy has noted, is further complicated by the fact that the law society's own benchers and CEO sit on the board of LawPro, thus putting them in the position on the one hand of making decisions on the regulation of legal services providers with whom the wholly owned subsidiary is competing while at the same

time exercising fiduciary duties as directors of LawPro. As a result, there is a very real prospect that other providers will at least question whether there is any bias in the exercise of the law society's regulatory function because of the structural conflict that might end up resulting, even where the individual bencher, directors and the CEO are diligent, careful and prudent in fulfilling their duties.

I want to go on briefly to discuss a couple of extra dimensions that I note in the report. As I've noted, the law society disagrees with the position of Earl Cherniak, and the Attorney General has indicated that it was never his intention to have First Canadian's activities included, particularly as they are regulated already by the Financial Services Commission of Ontario.

That, for me, is actually the critical issue and one from which the balance of my opinion flows, but as I've noted, that's an opinion that was the result of Mr. Cherniak's work. If it were clear that the law society did not have the power to regulate these business-to-business activities, then the rest of that issue would actually be moot: They wouldn't be engaged in regulating their commercial competitor. But there is still the question that I pose in the report of why a regulator is engaging in activities in the commercial marketplace through a wholly owned subsidiary.

In that direction, there is an odd state of affairs, with the body responsible for regulating the legal profession engaged in commercial activities when, in the amendments that are being proposed to the Law Society Act, there is a new section 4.2 which says that the law society, in carrying out its functions, duties and powers "shall have regard" to:

—a "duty to maintain and advance the cause of justice and the rule of law";

—a "duty to act so as to facilitate access to justice for the people of Ontario";

—a "duty to protect the public interest"; and

—a "duty to act in a timely, open and efficient manner."

So why does the law society own an insurance company? The present Law Society Act says in section 5, "The society may own shares of or hold a membership interest in an insurance corporation incorporated for the purpose of providing professional liability insurance to members and to persons qualified to practise law outside Ontario in Canada." That's the present section 5, and there's no proposed amendment to that section.

0920

That certainly is within the prerogative of the Legislature to decide. I can understand that the genesis of that section may be some concern that lawyers would be uninsured or unable to obtain insurance in the commercial marketplace.

As I note in the report, in England they do this very differently. In England, the law society or the regulator responsible sets out minimum insurance requirements for professional liability and then leaves it to the commercial marketplace for members to source. They actually provide a list on their website of a whole series of private insurance companies from whom members may end up attempting to obtain insurance.

In 1990, under section 5, the law society established LawPro to provide mandatory and optional supplementary professional liability insurance to lawyers. It's that same company that, as Wendy has noted, since 1996 began offering a title insurance product, TitlePLUS.

The distance between the law society and LawPro is also a question for some debate, and Wendy has already mentioned the view of the CEO of the law society. I'd suggest that that issue merits your careful scrutiny.

The CEO of the law society confirmed that LawPro is in the business of title insurance. He asserted that "LawPro's affairs and that of its title insurance subsidiary are managed by a separate board of directors," and he claimed that "the law society's obligations to regulate legal services in the public interest should not and will not be affected by the activities of a separate company."

I agree that the obligations to regulate should not be affected; the problem is whether there's room for perception that they might be. In my view, there's a valid concern about that.

It's clear, for the reasons I set out in the opinion, that the law society has a financial interest in the activities of its wholly owned company, LawPro, though I found it difficult to discern from the reports publicly available precisely what that financial interest is. In the report, I go through in detail what I was able to find from recent reports to convocation from the law society's finance and audit committee. It doesn't make specific reference to income received from the law society's commercial activities in insurance. The auditors do put the errors and omissions insurance fund and Lawyers' Professional Indemnity Co. together as what they call a "related entity" for purposes of the financial statements, and they note that the E and O fund provided the general fund with income derived from its surplus earnings. In 2005, that was $2.5 million; in 2004, $3 million.

So there is a close financial connection and a relationship between the board of LawPro and membership in convocation, the body ultimately charged with responsibility for regulating lawyers and now legal services providers. That's worth probing.

Further, even the law society's own rules of professional conduct acknowledge a close relationship between the law society and TitlePLUS. Rule 2.02(13) provides that "If discussing TitlePLUS insurance with the client, a lawyer shall fully disclose the relationship between the legal profession, the society and the Lawyers' Professional Indemnity Co." That's a rule of professional conduct.

There's nothing further in the commentary about the dimensions of that relationship that the lawyer has to disclose, just clear recognition that there's something sufficiently close about the relationship that requires that, as a rule of professional conduct, a lawyer has to talk to his or her clients about it, something they don't have to do in respect of other title insurance products.

It's also worth noting that LawPro's mission statement provides that it's "to be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession."

As I see it, Bill 14, if enacted as it has been proposed, presents the possibility that you've got a company that's a wholly owned subsidiary of the regulator of the legal profession with "enhancing the competitive position of the legal profession" as an explicit mandate.

I wouldn't take issue if, for example, the Canadian Bar Association wanted to do that. The CBA is a voluntary organization, a professional association of lawyers, which takes a leading role in advocating on behalf of lawyers but whose work transcends what might be considered partisan interests, and their submissions are often taken into account by legislators and courts as an important contribution to the dialogue about key issues affecting the public interest. But the CBA is not a regulator; the law society is.

In terms of other directions about regulation, there has been a fundamental transformation in the United States post-Enron about the way that Congress actually charged the Securities and Exchange Commission with developing rules to govern lawyers engaged in practice before the commission. There is much more government direction there than ever before.

Similarly, in Australia there has actually been a move to what's labelled co-regulation, bringing the law society closer.

So, in that respect, the general direction of this bill is quite contrary to the developments in other places. I've suggested in the report that there is at least a question arising about the authority being granted to the law society in respect of its wholly owned subsidiary and the potential for a conflict of interest in the exercise of that regulatory function in the commercial marketplace.

Ms. Rinella: In conclusion, we would ask legislators to consider what we believe to be a number of critical questions that must be asked as they are making their decisions on Bill 14:

(1) Is the law society a regulatory body or is it a commercial entity? Regulator or competitor?

(2) Is the province going to delegate a very broad power to an unelected body, despite the recognition by many groups that have appeared before you that the activities of many regulated professions and industries are captured in this expanded authority?

(3) Is the province going to retain control and ensure its legislative intent is realized or is it going to hand all exemption-making power over to an unelected body?

(4) Finally, are legislators going to force title insurers to ask their competitor for an exemption in provincial legislation to continue its business operations?

We are requesting specific amendments in Bill 14 to provide title insurers with stability and certainty, to retain the status quo and to protect 625 jobs at First Canadian Title alone and to remove the conflict of the law society as a regulator engaging in commercial, competitive activities.

In our written submission, we've requested a number of amendments similar to what other organizations have raised. But, as you might note, we have a few other issues. I will be appearing later with Steven to raise a number of these, but I want to focus on a few right now.

The first is the province retaining authority to make exemptions from the broad legal definition in the legislation in the form of a regulation-making authority. I heard the chair of the paralegal task force, William Simpson, say that if it's not given to the law society through their bylaws, then it will be cast in stone. I think that's a false dichotomy. It's not an either-or proposition. You can have exemptions right in the legislation; you can also have the law society being able to make some exemptions themselves; and then you can have an appeal-to-Caesar clause, a regulation power by the province that they can grant exemptions if the members of the public do not receive satisfaction from the law society. So I don't think it's an either-or proposition.

Secondly, we'll ask that the validity and the enforceability of a document that is being insured by a licensed and regulated title insurance company be exempt from the law society, because these are underwriting transactions between two financial institutions and they have no impact on the province.

We'd also ask that Bill 14 be amended to change the wording to ensure more stringent requirements on the law society to seek injunctions and launch investigations. Injunctions should include convictions and charges, not just suspicion and suggestions.

Finally, we'd ask that the legislation include provisions to prevent the law society from engaging in competitive commercial activities. Regulators should not be engaged in or hold interests in commercial activities. This is against the public interest.

I'm not going to read the rest of my comments. I know Ted McMeekin has already speed-read them, so I'm quite comfortable with that. In conclusion, I'd just like to say that the intent of the regulator will always be suspect if it is engaged commercially in a related business interest. Thank you.

The Chair (Mr. Vic Dhillon): We'll begin with the official opposition. Mr. Runciman. Three minutes each.

Mr. Robert W. Runciman (Leeds–Grenville): Thanks, Wendy and Professor, for being here. This is a very interesting and, in some respects, intriguing presentation. Certainly I hadn't been aware that the law society was in a competitive position with a business or industry such as yours, so this is an interesting revelation and I think it will be helpful, hopefully, as we proceed.

I have been talking about, since we began the hearings, having a scope of practice with respect to the regulation of paralegals. It is very clear and doesn't sort of open the door as wide as the wording in the legislation before us does, capturing a whole host of people who have, I think, expressed very legitimate concerns, as you have here today. Hopefully, government members are going to recognize those as legitimate concerns when we get down to the short strokes next week in clause-by-

clause consideration of the legislation and amendments that will be tabled by, I suspect, all three parties.

I'm intrigued by the fact that the law society—and I'm not trying to be anti-law society, and I hope no one is interpreting it as such, but I suggested yesterday to Mr. Simpson that perhaps the approach in this process would have been more one of collaboration in working with the various organizations who have concerns so that we can work in a collaborative way to achieve a piece of legislation that's going to meet, I think, the end wishes of all. We have paralegals appearing here every day saying, "Yes, we support regulation; we think it's in the best interests of the industry."

0930

I think what's happened, in fact, from the law society's perspective—and maybe I'm being unfair and they'll chastise me later—is they have not made the effort to reach out and offer that olive branch and try to find ways to work with everyone who has concerns. Some of the language that's been used in terms of prosecutions and so on has only added fuel to the fire, if you will, in terms of those concerns. So, hopefully, over the next week or so we can find ways to work together to achieve what we all hope is going to be a good piece of legislation and meet the goals of all of us, including those in the paralegal industry.

So, once again, thank you. I think this is going to be most helpful as we go forward.

The Chair: Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you, both of you. This is disturbing stuff, and let me tell you why: because nobody else has told us about it. First, Ms. Drent has been incredibly competent and efficient at producing research material to prepare for us a profile of LawPro. It's amazing, in view of the length of time it has taken this government, never mind previous governments, to put forward this legislation—and this isn't even minutiae—that these things wouldn't be contemplated, considered and addressed in the context of how the legislation is written.

Everybody knows what it is that everybody is trying to do, and that's to regulate paralegals so that the public can be protected against incompetent, unscrupulous paralegals, and to the extent that that can happen, one is still skeptical, because I'm not sure that the law society has been totally effective in protecting people against incompetent, unscrupulous, avaricious lawyers. But that's the nature of the beast. One of the fundamental problems is that if the legislation is designed to regulate paralegals, it doesn't even start at the starting point; it doesn't say that. It doesn't define what a paralegal is and say that this is the community of people this legislation will, one way or another, regulate. That's why you're drawn into it: because it fails.

I can't think of a rational person who ever would have thought that the discussion around regulating paralegals meant regulating people in banks who are loan officers; mediators who help parties to a mediation draft minutes of settlement; real estate agents who prepare real estate offers of purchase. What in the world is going on?

I remember tugging on Michael Bryant's coattails on a daily basis in the spring of last year, saying, "For Pete's sake, Bryant, introduce the bill so perhaps we can consider it during the summer." Not the summer of this year; the summer of last year. And all the moaning and groaning and crying and complaining and pulling of hair and gnashing of teeth and, oh, this was so imminent, and the pressure was on—no bill.

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

Mr. Kormos: Thank you very much. The government has got some answering to do here. A serious problem has been raised.

The Chair: The government side—Ms. Van Bommel.

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex): Thank you for bringing this to our attention as well. I guess the question really is, how did the law society get into the business of title insurance and even insurance in general? Was there at one point a gap in the market, a lack of providers? Is there a professional reason for having done that? Do you know why the law society would be doing this?

Ms. Rinella: My understanding of the history is that First Canadian Title was the first provider of title insurance in the marketplace in a substantive way. In 1995, they entered into a relationship with lawyers who were providing mortgage refinances to Canada Trust and they decided to do a pilot project in Hamilton. As a result, they were title-insuring mortgage refinance transactions with Canada Trust. Instead of getting a survey and a lawyer's opinion that cost $850, it would cost the individual—the borrower—$350. At the same time, instead of taking three weeks, it took them three days. So we had phenomenal growth throughout the 1990s. As a result of that, a number of lawyers who were involved in real estate looked at the incursion of title insurance as a competitive issue. Although I'm so young that I wasn't around for it, I'm told that in 1995 there was a slate of benchers who were elected on the specific issue of dealing with title insurance. They set up a committee and the committee reported to convocation, and one of the recommendations they made—and maybe Mr. Kormos can verify this, as a lawyer—was that—

Mr. Kormos: And very much having been around in 1995.

Ms. Rinella: —the errors and omissions provider should also provide TitlePLUS as a competitive answer to the title insurance that First American Title—at the time that was our name—was offering to Canadians. So it was a competitive move by the law society. That's my understanding of the history. I can certainly present documents. I think Paul was showing me that some of the election mandates the benchers were running on at that time were to assist real estate lawyers and address competitive issues with title insurance companies.

The Chair: Mr. McMeekin.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Thank you very much for your presentation. It's been said that politicians campaign in poetry and govern in prose, to which I would add that

good government is narrowing the gap between the two. When you put something down on paper, that's certainly prose. I'm struck with a couple of things, and I want to make it clear in terms of both the poetry and the prose that I'm not here to enhance the competitive position of lawyers. Let me make that clear. I don't think anybody here is. That having been said, I'm struck by the reference to the opinion by Cherniak, the thrust that, while regulation is needed, it can't be too inclusive—the reference from the law society to a number of groups being excluded and some difference of opinion there. I love the reference in terms of poetry—the appeal to Caesar. I think the AG will like that. That's a good kind of phrase. Since it has never been his intention, and there's a consensus that we need to regulate, I think your suggestion about retaining the right to further exempt—presumably Caesar's right to further exempt—is brilliant. I really like it. I think it makes sense. In those areas where there is some lingering doubt or disagreement, the government can then intervene. So I want to thank you for that and for the insights you've brought. This is not cast in stone. It's not even wet cement yet, so we'll work on it.

The Chair: Thank you for your presentation.

0940

ONTARIO BAR ASSOCIATION

The Chair: The next group is the Ontario Bar Association.

Mr. Runciman: On a point of order, Mr. Chair: I gather we have a gap in our schedule later in today. We had a request from a recent graduate of Osgoode Hall who would like an opportunity for a 10-minute appearance, a brief appearance, to outline some of his views with respect to the legislation. I think we have agreement amongst all three parties, if we can contact him, to give him that opportunity.

The Chair: All agreed? That's fine. Thank you.

Good morning. You have 30 minutes and you may begin any time.

Mr. James Morton: We do have a full 30 minutes, Chair?

The Chair: Yes.

Mr. Morton: Great. My name is James Morton, and I am the president of the Ontario Bar Association. You do have our written submissions. With us, to my immediate right, from our paralegal task force, is Virginia MacLean, Queen's Counsel, and just to her right is Steven Rosenhek, also from the paralegal task force. They are going to be speaking to schedule C from our submissions on paralegals. To my left is Wayne Gray, and Mr. Gray is going to be answering questions only with regard to the limitations issues in schedule D.

At the outset, I want to thank the committee for hearing us today. We are here today to try to put to you the position of lawyers in the province. I want first briefly to highlight our position on two areas which are perhaps less contentious than paralegals: the issues arising with regard to justices of the peace in schedule B and the amendments to the Provincial Offences Act in schedule E.

Very briefly, with regard to justices of the peace, they are an extremely important part of our justice system. They are the people who, for the main part, determine whether bail is granted, and as you can see in our submission, that is a critical element in the justice system. Proper and full qualification of justices of the peace, in our submission, is essential.

With regard to schedule E, the amendments to the Provincial Offences Act, we agree that technology must be kept current. We have to ensure that justice is done substantively and decisions are not based upon technicalities and difficulties of having police officers and the like attend at provincial offence matters. But it is essential that the right of cross-examination be maintained through whatever technology is used. Cross-examination is the most powerful engine of truth that the justice system has discovered, and it needs to be protected.

Just before turning to Ms. MacLean to continue, I wanted to make one comment as Ontario Bar Association president. We want to note our view that the law society has consulted widely with all relevant stakeholders within the legal community and it is our view that the law society is the appropriate regulator. My friends will expand on that point, and perhaps we could turn our submission over to Ms. MacLean, Queen's Counsel.

Ms. Virginia MacLean: Good morning, members of the committee. One thing I'd like to emphasize before I start is the fact that the last presenters clearly indicated to you what the Ontario Bar Association was. I was very pleased to hear that from the last presenters. We are the largest volunteer association of lawyers in Ontario and we are a branch of the Canadian Bar Association, which is the largest association of volunteer lawyers in Canada. So we represent a substantial number of members in this province and we come to you from that perspective, which also explains why we have been involved in this process for a very long time.

Right back in 1986, there was a private member's bill before a committee of this Legislature and that bill was going to regulate paralegals. That particular bill did not proceed. We had a position on the bill. We attended before the committee back in 1986-87. It died on the order paper. In 1988, the then Attorney General, Ian Scott, established the task force on paralegals, chaired by Professor Ianni of the University of Windsor law school. That was the penultimate report on paralegals. That was in place, and it was finished. He went about the province, he did studies, he met with people, he prepared his report and it was submitted to the government in 1990. Now we are into Mr. Kormos's lifetime.

In 1990, that particular task force included a number of recommendations. We established a paralegals committee at that time and it was our recommendation that the cornerstone of consumer protection in professional regulation is allowing the public to identify different legal service providers. The consumer must be able to make an informed choice and distinguish regulated

professionals from other legal service providers, and they should be able to distinguish among regulated legal professions.

In 1998, we established a paralegals task force. I would note that the Ontario Bar Association, or the Canadian Bar Association–Ontario as it was at that time, has been driven by our members. Our members see the messes that were left by paralegals. They had to clean them up, and they had great concerns. That's where we came from, where we said there is a need to regulate paralegals.

In 1998, we undertook to retain a consultant to do a survey of 1,400 Ontario residents to see what their perception was of paralegals. One of the interesting things that we found out is that the public didn't realize that paralegals weren't regulated. They had a misconception about the regulation of paralegals, and although they were cheaper—it was the regulation and lack thereof that was making them cheaper—they had no concept. But in that survey they certainly supported regulation of the paralegals.

So we're down to the point in 2000 where we had input into the Cory commission that was the appointment of the government. That commission inquiry that was held in 2000 resulted in a report in May 2000. We attended at those hearings and were present every day. We operate through sections that have particular special interests in a number of areas. Our section chairs attended and made presentations to Mr. Justice Cory throughout those hearings.

We're now into 2004. The Law Society of Upper Canada prepared a consultation paper on the regulation of paralegals. That regulation paper brought together the interested members of the profession in trying to address the issues relating to regulation of paralegals. We initially took the position that we were opposed to the law society—the regulator of the legal profession—regulating paralegals. We agreed initially with Mr. Justice Cory that the paralegals should be self-regulated. But realizing the economics of the situation and realizing the reality of who is out there as paralegals that we didn't know, we thought that what was being proposed was the right answer. As President Morton has indicated, we strongly support the law society as the regulator.

We're now up to the position that we think the law society is the most appropriate body, and we think they can effectively regulate and enforce paralegal activity. However, we do have a number of fundamental concerns and differences with the law society with respect to the bill which is before you, and with schedule C of Bill 14. Steven Rosenhek will now address those particular issues.

Mr. Steven Rosenhek: We're obviously very pleased to be here to make submissions on this long-awaited bill to regulate paralegals. As Virginia MacLean has told you, OBA has been studying, making recommendations, advocating and working with stakeholders for more than 20 years, and making recommendations to successive governments for more than 20 years, on this issue.

We wish to make three recommendations, which are directed to the protection of the consumer of legal services. We believe that our recommendations, if accepted, will reduce confusion in the mind of the average member of the public, who we feel should be able to make an informed, knowledgeable choice as to which service provider he or she wants to hire, arrived at with a clear understanding of who they are hiring and the services that that person is entitled to perform.

Recommendation 1: We recommend that the legislation use the term "paralegal" or "paralegal agent" to describe non-lawyers who provide services. The bill, in its current form, describes those individuals as "persons licensed to provide legal services." We consider that terminology to be overly broad and potentially very confusing to the average member of the public.

We believe that the term "paralegal" or "paralegal agent" is far more appropriate and clear to the public. After all, it is the term that the government has been using for decades, as recently as its press release this week, which describes this bill as regulating paralegals. It's the way the law society described these individuals in its various consultation papers: the final report of the paralegal task force, Task Force on Paralegal Regulation, Regulating Paralegals: A Proposed Approach. It's the way Mr. Cory described them in his report, A Framework for Regulating Paralegal Practice in Ontario. Perhaps most importantly, it's the way paralegal groups describe themselves.

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So it's a term that has been used for at least 20 years, from the time the government first introduced the private member's bill, Bill 42, that Ms. MacLean referred to, in 1986. It's the way everyone has been describing these individuals in the submissions before this very committee. It's a term the public understands. It's a term the public is familiar with.

To use an amorphous term like "person licensed to provide legal services" is only to muddy the waters and guarantee confusion. The risk is that the consumer won't be clear on whether they're hiring a paralegal or a lawyer. You may say, "Is this a real risk?" It most certainly is. The letters of complaint that we receive from members of the public tell us loud and clear that consumers over and over again make the assumption, the mistaken assumption, that the person they are hiring is a lawyer, only to find out later that that person was a paralegal, and as you already have heard from others before you, there are some terrible horror stories out there.

We fail to see any good reason why the term "paralegal" isn't used. On the other hand, we see lots of good reason in terms of potential confusion to the public to use it. The point should be to make the public less confused, not more confused, and we believe that unless the terminology is changed, the public will be confused. We urge you to call paralegals what everyone else in Ontario—except, it appears, the legislative drafters of this bill—calls them: paralegals.

A related recommendation is that lawyers should not be described as licensees. The bill proposes two classes of licensee: one licensed to provide legal services, paralegals; and one licensed to practise law, lawyers. The average member of the public should, in our view, be able to clearly differentiate between the two types of service providers. Calling them both "licensees" will definitely confuse.

A picture is worth a thousand words. This is found in our submission at page 13. I ask you rhetorically, will the average member of the public be able to note the subtle distinction between these two business cards: one, which describes Tim Jones as licensed by the Law Society of Upper Canada to provide legal services; and the other, which describes David Smith as licensed by the Law Society of Upper Canada to practise as a barrister and solicitor? We say to you, absolutely not. We urge you to call lawyers what they have been called for as long as there has been a Law Society of Upper Canada: members of the law society.

Recommendation 2: We recommend that the legislation contain a definition of "the practice of law." The bill, as it is before you, contains in section 1 a very broad definition of "the provision of legal services." It is designed to be so broad as to include everything that a lawyer and a paralegal will be doing in the future. We recommend that, in addition to that definition, there should be a definition of "the practice of law." The regulations made by the law society will eventually set out what paralegals are entitled to do pursuant to their licences. A definition of "the practice of law" would tell members of the public what lawyers can do. In that way, in our view, the public would be better able to understand the differences between the services that lawyers and paralegals can provide. That will reduce confusion in the minds of the public, and as a matter of public protection, consumer protection, we urge you to find that the public needs to know this in order to make informed choices.

It is not hard to do. There is a definition of the practice of law found in the BC Legal Profession Act, 1997, and the statutes of many US jurisdictions. In our view, the benefit of adding this definition to the practice of law will be to make consumers able to make more informed choices about the type of service provider they are hiring by drawing a clear distinction between the two.

Recommendation 3: We recommend that the bill state explicitly that the law society can exempt certain professionals on a class-wide basis. As you know and as you've heard from others, the current proposed regulations include the power of the law society to exempt certain professionals. These might include people like union representatives, trustees in bankruptcy, mediators, as Mr. Kormos referred to, etc. That is, of course, necessary because of the very broad definition of the "provision of legal services" that I alluded to earlier, under which these groups might otherwise be caught and subjected to licensing requirements. We just want to make clear, and we believe the law society agrees with this, that the law society can do this on a class-wide basis rather than on an individual basis. In other words, all trustees in bankruptcy can be exempted, rather than on the individual application of each trustee who wishes to apply.

Thank you.

The Chair: We'll begin with Mr. Kormos: about five minutes each.

Mr. Kormos: Thank you very much.

Firstly, I appreciate you've shifted in your view as to the appropriate regulatory body, and there's an argument to be made. I understand the argument.

My question is this. You are leaders in the legal community. You're very experienced, talented people, as lawyers, as I presume all of you are. We've also had other litigators here. One of the things you do, one of the things you're skilled at doing, is making persuasive arguments. You persuade judges to make rulings that sometimes leave the public shaking their heads. You persuade juries to find on behalf of your client. You negotiate. You sit down and settle things with other litigators representing their parties by reaching compromises. Why hasn't the legal profession been able to persuade any substantial element of the paralegal industry that the law society could be an appropriate, fair and effective regulator? Why hasn't there been negotiation and compromise and accommodation such that—because it's awfully difficult to support this bill when there isn't substantial support for the proposition from the community of people who are going to be regulated by it. That's my dilemma. What's going on?

Ms. MacLean: I guess, Mr. Kormos, the issue is that there is no defined community. There have been meetings, and I'm fully aware that the law society has diligently met with a number of associations that hold themselves out as representing the paralegals. They've done this on many occasions. But they have split away and they have splintered, and there's no cohesive group that says, "We represent all paralegals." That is the difficulty. But there have been attempts made, and I'm fully aware of what those are.

Mr. Kormos: Okay, because the only paralegal who has supported the proposition has been Paul Dray, who is also a bencher, and unfortunately, by virtue of being a bencher, that, in the minds of many, perhaps colours his opinion.

The other issue is tolling agreements and the comments on the limitation period, because that's something that I think we are at risk of overlooking if we don't pay closer attention to it. We've had some discussion about it. I'm concerned and interested in, because you make reference to—for instance, the bank that imposes upon their customers a 30-day time frame within which to report a discrepancy in terms of banking balance. And you'll recall the Ombudsman's report yesterday talked about the forged cheque, $4,900, that the Ombudsman only ordered half payment of because the customer wasn't able to prove that he had exercised appropriate care for his cheques. I just found that strange.

What about that scenario? Is it dealt with by the existing Limitations Act? Obviously not, because banks can do it, along with others. Do the amendments help at

all? Should there be amendments to protect consumers? I understand contracting and negotiating a tolling agreement, but should there be protection for consumers against that sort of arbitrary imposition? Because that's not extending the limitation period; it's seriously restricting it, isn't it?

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Mr. Wayne Gray: I think the answer to all of those questions is no. It was never dealt with prior to 2002 in the Limitations Act. There was no attempt to prevent contracting out of limitation periods, in particular shortening them. There was no attempt in the 2002 Limitations Act to deal with 30-day notice provisions in these types of contracts. In fact, one of the arguments has been that the parties can still enter into account verification agreements that limit the consumer's right to object to accounts for 30 days, and that this Limitations Act is not intended to affect that type of agreement. So it creates confusion as to what the intent was.

The Chair: Thank you. The government side.

Mr. McMeekin: Thank you so much for your presentation. The particular emphasis, or perhaps re-emphasis, on the importance of definition was, for me as a non-lawyer, particularly helpful.

I want to sort of pick up a little bit on where my colleague Mr. Kormos was around his sense of buy-in here. To do so, I would just reference the task force on paralegal regulation. I'm a bit of a history buff, so I go to the history first because it ties so intimately into process. It makes reference to Attorney General Flaherty, then it reads—this paragraph I found intriguing:

"In the spring of 2001, David Young succeeded James Flaherty as the Attorney General and indicated an interest in developing a regulatory framework based on consensus between the legal and paralegal communities. In a letter dated October 31, 2001, Mr. Young said, 'the government remains committed to protecting consumers who use the services of paralegals.' Mediation was proposed but deferred in favour of a process designed to develop consensus among the legal stakeholders."

I did note with some interest—I've gone up and down the list several times—there were some 61 groups consulted.

I guess my question, fundamentally, is, is it your position, do you believe, that the legislation, notwithstanding your concern about definitions, does in fact represent a broad-based consensus between the legal and paralegal communities with respect to how to move forward?

Ms. MacLean: That's a very difficult question to answer. Certainly I've been involved in this since the beginning, and I'm aware of what Mr. Young was attempting to accomplish. There were meetings, and everything was discussed. To the best of our knowledge, as the legal profession and all the major associations involved who are lawyers, we did try to include as many of the paralegal groups as possible. There was an attempt, and I think it's the best attempt that was made, to bring them together. As you can see from this committee—all I can say is yes, I think there was an attempt, and I think it's as good as it's going to get in terms of getting them together.

Mr. McMeekin: That's fair. I guess our dilemma here is, usually if something is being communicated as a consensus, it's a little more obvious than it appears to be before the committee.

Ms. MacLean: Unfortunately, they aren't incorporated. They splinter away. That's the difficulty we have in dealing with them.

Mr. McMeekin: That's a dilemma; I appreciate that. Thanks.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you for being here. I think we appreciate the dilemma with respect to trying to achieve a consensus, but we're being told on a fairly regular basis that there is widespread support, and they seem to be somewhere out there in the ether. We're not hearing from them, if indeed that support is there amongst that particular profession.

I want to say at the outset that I am more than a little disappointed in your recommendation that I'm reading here that justices of the peace should be holders of Canadian law degrees. The great unwashed may think that's a little bit self-serving and may interpret it in that way. There are others from the outside who think the profession is a bit incestuous.

I guess I look askance at this because my uncle was one of the last lay judges in this province. He was a police officer, a deputy chief of police in Brockville, and I know the profession. A lot of members of the profession resented someone sitting on the bench who didn't have LL.B. behind his name. But I talked to so many people in the policing community, and more broad-minded members of the legal profession, who thought he was probably one of the best provincial judges to ever sit on that bench—common sense: "Get on with the job."

I've talked to another one who was one of the last lay judges too who served out of London who went into a court. Many of these people didn't get the permanent positions; they had to be relief judges because of the bias against them. He went into a court where there was a three-month backlog, most of it because of adjournments granted by the judge. He cleaned that up. If you'd had three or four adjournments, "Get on with the case," and he cleaned that backlog up in the two or three weeks he was relieving.

When I see the members of the profession saying, "We're the only people who can do this job," I want to tell you I'm one guy who gets my back up a little bit about that sort of thing.

I think a lot of members of the public, the great unwashed, would share that perspective. I'm one who thinks, in terms of JPs, that we should have a group of JPs who are on a per diem basis, who can work the three-o'clock-in-the-morning calls from the police. The folks who are now in this fully salaried lifestyle think of themselves as a court sometimes in the worst way—anointed, not appointed—and that's another thing that irks me to no end.

In any event, I've gotten that off of my chest. I know that some of the views on paralegals that I am surprised at include recommendation 2 on page 12: "The services that paralegals can perform will be determined by the law society and outlined in the regulatory bylaws." I guess you're supporting that. I'm curious, given that you were listening to the previous witnesses, as to why you have taken that stance. I suggest that the law society can exempt on a class-wide basis, leaving those tools, if you will, in the hands of the law society. Certainly we're hearing significant concern from regulated professions who are going to be captured by this. I'm wondering why you felt compelled to support those initiatives.

Mr. Morton: Perhaps I could begin, Mr. Runciman. Thank you for raising those concerns. There is no question that the lay provincial judges and the lay justices of the peace have done a magnificent job, many of them. There's also no question that per diem or part-time JPs are necessary, and we encourage the enhancement of those numbers.

The main reason we suggest that justices of the peace should be drawn from qualified lawyers is because their work is of tremendous importance and it is equally important, we say, as the work done by Ontario Court of Justice judges and indeed Superior Court of Justice judges. They do a different job, but their job is equally important, and for the present, Ontario Court of Justice judges are not lay judges. The same qualifications, the same requirements ought to apply. We shouldn't have a justice system where the qualification, if you like, of an individual who can keep people in prison for a lengthy period or release them varies, as it were, from place to place.

Mr. Runciman: What do you think about the requirements for your mandatory linguistic duality and gender-balanced diversity? Those are mandatory requirements under this legislation for a JP appointment.

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Mr. Morton: We don't have difficulty with that. We think the justice of the peace bench should reflect society as a whole. We do think, however, that in addition to that, justices of the peace, particularly because of the very complicated situations they face, and we see the bail situation has been in the media a great deal, should have the full qualifications of being called to the bar.

Mr. Runciman: I disagree.

Mr. Morton: And I respect the disagreement. I'd ask Mr. Rosenhek to address the remainder of your comments.

Mr. Rosenhek: With respect to the issue of exemptions, because we consider the law society to be the best, most experienced and most appropriate regulator, we consider that they will act appropriately, fairly and even-handedly in respect of exemptions. What we're focusing on is the fact that there may not be clarity in the bill as it now reads in respect to the issue of class-wide exemptions. There's an issue as to whether or not the government could also have a power to exempt if it considered there to be an inappropriate way in which that was being done.

But for our purposes, we're satisfied that the law society will act fairly. It has already indicated in a preliminary way to a variety of groups that have approached it that it intends to exempt them and to do so in an appropriate way in the future, should other groups come along. Therefore we have some confidence from those types of assurances that have been given to date.

The Chair: Thank you very much for your presentation.

ASSOCIATION OF LEGAL DOCUMENT AGENTS

The Chair: The next presentation is from the Association of Legal Document Agents.

Mr. Ken Mitchell: I can't stay away from this place.

The Chair: Good morning. You may begin your presentation, but I'm going to have to get you to state your names for Hansard. Thank you very much.

Ms. Eileen Barnes: Good morning, Mr. Chair and members of the committee. My name is Eileen Barnes. I am the current president of the Association of Legal Document Agents and the Paralegal Society of Ontario.

With me today is Ken Mitchell, consultant to the PSO, who will answer any questions about the technical aspect of our white paper which has been distributed to you today.

I'll tell you a little bit about my own background. I've operated my business as a paralegal practising in family law for 18 years. I've completed most of the Institute of Law Clerks of Ontario courses, including one in family law in 1998. I'm currently close to completion of a certificate in family mediation at McMaster University.

I would like to give you the paralegal perspective today.

The paralegal paradox: Throughout the course of these public hearings, we have heard over and over again from members of the Ontario bar and their fellow travellers that those paralegals can't self-govern because they can't get their act together. We have heard many pejoratives from our lawyer colleagues to describe our profession, words that I will not dignify by repeating them here. Yet, despite the hyperbole of Ontario barristers and solicitors, every day thousands of Ontarians rely upon paralegals for the most basic legal needs: for affordable access to justice.

I am here today to tell you a different story—the story of how paralegals arrived at where we are today and the story of what we have done to prepare for tomorrow. I will begin by walking you through our brief 25-year history, and then I will tell you about our solution. Ms. MacLean has already given a brief summary of the history, but I will give it to you from the paralegal perspective.

In the late 1970s and early 1980s, a growing number of legal agents began representing people in court for a fee. No case law supported their advocacy; these agents were prosecuted vigorously by the Law Society of Upper Canada under section 50 of the Law Society Act, which reads:

"Except where otherwise provided by law,

"(a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor."

In 1980, the professional organizations committee of the Legislature considered and rejected paralegal practice.

In 1983, in what I believe is an unreported case, Karol Belkowski, who had been charged with unauthorized practice under section 50 for the heinous act of producing paperwork for uncontested divorces, was acquitted. Mr. Belkowski had taken this business over from his father, so obviously this practice was nothing new at the time.

In 1986, the Divisional Court, "creating a new calling of paralegal," handed down the POINTTS decision. The law society did not appeal the POINTTS decision.

On June 16, 1988, then-Attorney General Ian Scott is quoted in Hansard announcing the Ianni commission: "There are estimates that now as many as 1,000 paralegals are operating and carrying on business in Ontario."

He added: "Bill 42, a private member's bill, was before the standing committee on the administration of justice in May and June 1987. The bill, it should be noted, proposed that the Law Society of Upper Canada, through a subcommittee, should regulate paralegals in Ontario. It would appear that the solution proposed by Bill 42 is not the appropriate answer to the paralegal question in Ontario at this time, but it also appears that there is a consensus among interested groups in this area, including the paralegals who appeared before the legislative committee, that further study of the larger issues is needed because we are, especially if their position is correct, on the frontier of what may be a profound change in the marketplace of legal services."

In the same debate, NDP leader Bob Rae stated: "I refer the Attorney General"—

Mr. Kormos: I was with you until now, Ms. Barnes.

Ms. Barnes: No, he's in support: "I refer the Attorney General in particular to questions of conveyancing and real estate transactions. I myself for a number of years have questioned why it is that lawyers need to have a monopoly on such simple legal transactions as the sale of a house, for example; whether it is essential, in fact, to have a lawyer's fee for that kind of transaction when it is, from a legal standpoint, a relatively simple transaction. Indeed, with computerized land tenure registries, it seems to me less and less necessary for the full panoply—and, I might add, cost—of the legal profession to be borne by the poor old consumer."

Ernie Eves, Premier in waiting, told the Legislature in the same debate: "This is a long-overdue announcement, especially in the light of the commitment by the Attorney General early in 1987 to introduce legislation immediately following the decision of the Ontario Court of Appeal. I say it is overdue because I note by the statement today that this report is not expected until the spring of 1989."

So when this committee asks what paralegals have been doing all these years about self-regulation, you should also ask, more appropriately, what have the successive Ontario governments been doing for the last 26 years?

The Paralegal Association of Ontario was the first organization of paralegals, and Brian Lawrie, president of POINTTS and the hero of the POINTTS decision, was one of its founders. This group was not registered as a non-profit corporation but as a business corporation because, at that time, the application to establish the PSO as a non-profit corporation was blocked, purportedly by the Law Society of Upper Canada.

In 1987, a group of paralegals in Ottawa were successful in registering two non-profit organizations, the Paralegal Society of Canada and the Legal Agents Society of Ontario.

Around 1990, the Institute of Agents at Court was founded by a group of traffic ticket agents to represent a niche group of paralegals. Also in 1990, the Ianni report was released, then immediately shelved. The government of the day didn't hear what it wanted to hear.

At that time, I was involved with the two Ottawa paralegal organizations: the PSC and Legal Agents Society of Ontario. After the release of the Ianni report, the law society redoubled its intimidation and prosecution of paralegals. Paralegals kept their heads down and each hoped that they would not be the target of a law society persecution.

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I was lucky. An investigator came to me, and he badgered me, trying to get me to draft a separation agreement for him. His ruse was transparent: He gave me a spiel about how his wife had thrown him out; he was living at the cottage and had no phone. I refused to prepare his separation agreement, but he pleaded and begged until I agreed to do it as a favour. I told him I would not charge him for what I drafted because I was not comfortable with it. Had I charged him money for the service I rendered, I would not likely be sitting here today. The law society would have persecuted me out of business. By the way, that same law society investigator who tried to set me up did set up an excellent paralegal by the name of Norine Earl. She was prosecuted and continues to be persecuted to this day. I will return to that later.

From 1991 to 1995, paralegals kept quiet, trying to stay below the radar of the Law Society of Upper Canada. Post-Ianni governments had failed us. We had no organization and, most importantly, no money to fight the law society. I inherited the two organizations, the Paralegal Society of Canada and the Legal Agents Society, by default as board members left the profession. The paralegal association was dormant except when the press needed a quote and Brian Lawrie's name came up on the Rolodex. The Institute of Agents at Court continued to meet, but their scope was limited to traffic court issues in the main.

In 1995, David and Jodi Putnam began to organize paralegals. All paralegals owe David and Jodi a debt of

gratitude. In April of 1996, the Legal Agents Society changed its name to the Paralegal Society of Ontario and, in September 1996, a new board was elected. Paralegals finally had a voice.

Unfortunately, all our members except for the court agents were afraid of prosecution under section 50. Our members over the years have been bankrupted trying to fight law society prosecutions. These prosecutions had the effect of dividing us; we could not bring ourselves to trust our leaders who stepped forward.

In 1997, the board of the Paralegal Society of Ontario decided to meet with the government and the law society. Errors were made; the Paralegal Society board at the time did not keep the process open and transparent. Our membership was split and the Paralegal Society of Canada was resurrected. Eight years later, in common cause, the Paralegal Society of Ontario and the Paralegal Society of Canada are again united, and that would include the Association of Legal Document Agents as well.

The history of the last eight years is the history of the law society and the Attorney General feeding the frustration and confusion of paralegals, talking only to those paralegals who agree with them and pitting them against their colleagues.

The Professional Paralegal Association of Ontario was a construct of "fellow travellers," paralegals who faced little threat from the law society and who were enthralled with the prospects of law society membership. Its members voted the PPAO out of existence because the PPAO board refused to represent the views of its membership.

As Mr. Kormos said, when the silver bullet trio, two of whom were ex-PPAO board members, appeared before you, they were unable to present to you that the majority of paralegals in Ontario support the law society. The fate of the PPAO speaks directly to that point.

Why does the Attorney General speak exclusively to those who agree with him and decline to listen to the views of the majority? As the president of the Paralegal Society of Ontario, I'm here to tell you that the views you have heard for the last two weeks are reflective of the views of the overwhelming majority of paralegals in Ontario. Yesterday, Linda Pasternak posited that the majority of paralegals are not here because they agree with Bill 14. Ms. Pasternak is misinformed. The majority of paralegals are not here for a variety of reasons: time, distance, client demands and, of course, fear of persecution by the Law Society of Upper Canada.

The paralegals who have appeared before you are the ones who have determined to take a stand: to fight for access to justice for our clients and to resist the seduction of promises of appointments to the standing committee or increased income from sustaining a lawyer monopoly on legal services. The Paralegal Society of Canada and the Paralegal Society of Ontario are united. We believe that the Institute of Agents at Court and OAPSOR, the Ontario Association of Professional Searchers of Records, will also join with us in a co-operative effort.

Our members want regulation, but not by the Law Society of Upper Canada. Regulation by lawyers can never provide true access to justice for our clients, the working poor in Ontario, who without our help are almost completely left out of the justice system today. So we have the PSO solution.

Let me ask you this question: How many lawyers do you think would submit to the rule of the law society without the weight of the penalties contained in the Law Society Act? The fact that paralegals have struggled so valiantly to organize is a testament not to failure, but to our dogged commitment to keep going until we are given the tools we need to accomplish our objectives. Paralegals have never received the slightest bit of assistance or encouragement nor have they been given the organizational tools that would help them self-regulate. The PSO wants this committee to give it those tools and then get out of its way. Give us a reasonable amount of time, free from the fear of prosecution, to put our plan for self-regulation into place.

The PSO white paper outlines a road map for self-regulation. There are other options. Unlike the Attorney General, we do not take the position that it must be our way or nothing. We are willing to look at any option, other than the law society, for regulation. Over the years, we have advocated for different regulatory models, including regulation by the then Ministry of Consumer and Commercial Relations, now the Ministry of Government Services, wherein a paralegal registrar would oversee the licensing of paralegals until such time as the profession was ready for self-regulation. During the Harris government, the trend was to self-regulation. Most of the professions regulated by that ministry were given self-regulatory powers.

The sticking point has always been the definition of "the practice of law," which has caused so much consternation at these hearings. To be honest, it is not a difficult task. It is only difficult when one of the parties—that is, the law society—does not want to cede any ground to paralegals and fights tooth and nail to keep paralegals out of as many areas of legal practice as possible.

Naturally, paralegals want the best deal possible; naturally, we want as broad an interpretation as possible on the areas of law in which we may practise. We, however, are reasonable. We understand our skill sets and our limitations. Our white paper on licensing and self-regulation contains a proposal for the areas of practice in which paralegals are qualified to perform. Mergers and acquisitions is not one of them; I don't know what paralegals Mr. Simpson of the paralegal task force talked to who said that they wanted mergers and acquisitions as an area of practice, but had he taken the time to consult with the PSO, he would have found our approach quite responsible.

The anger that some lawyers' groups demonstrate towards the very idea of paralegals treading on their turf is palpable. I would remind you of what Mr. Justice Cory had to say in his report:

"I would emphasize that it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the law society should not be in a position to direct the affairs of the paralegals."

The Paralegal Society of Ontario has taken the following steps to prepare for self-regulation and to advance a quality proposal for self-regulation to the government of Ontario:

—amalgamated three associations representing the interests of paralegals into one such organization, so there is now only one organization which represents the broad majority of paralegals, along with the Institute of Agents at Court, which is a separate organization we believe will co-operate with us;

—established a code of conduct for paralegals equal to the code of conduct for members of the Law Society of Upper Canada;

—developed a business plan for a self-regulated profession, including a funding model that requires no permanent funding by the taxpayers of Ontario;

—developed areas of practice guidelines consistent with the principle of affordable access to justice, the principle of competition in the marketplace and demonstrable need for competent and competitive services in specified areas;

—adopted community college educational programs as the minimum standard for admission to practice;

—put in place a mandatory errors and omissions insurance requirement; and

—developed grandfather provisions, including a peer review protocol.

The white paper distributed today contains the PSO plan for self-regulation. You have asked what we have done to prepare for self-regulation. Please read our white paper. It is a road map to a better way: for paralegals, for the court system and, most importantly, for the people of Ontario.

Thank you for your attention here today. I will now turn this over to Mr. Ken Mitchell, who's going to read a short portion from the white paper for you.

1030

Mr. Mitchell: Thank you very much, Eileen.

Before I give you just a brief overview of our white paper, I do want to respond to a speaker who preceded us from the Ontario Bar Association. He came to you and said, "We would really like you to define 'legal practice' in this bill." He said, "Take a look. They've done it in British Columbia." Don't buy that Trojan horse. Paralegals in British Columbia are not an endangered species; they don't exist. So if you want to put paralegals out of business in Ontario, follow the advice of the Ontario Bar Association.

I would like to take you through the white paper for licensing and self-governance, and I'm only going to highlight a couple of points. I think one will address a concern that Mr. McMeekin brought up yesterday, and there may be others, and I'll be happy to answer any questions.

The Paralegal Society of Ontario, in its white paper, is urging the government to withdraw schedule C, introduce a professional paralegal act, and authorize paralegals to license and regulate themselves.

If we do this, a professional paralegal act can define the scope of practice, list exemptions, establish a licensing board, define powers and duties, establish qualifications for licensing, establish a board of governors, define powers and duties, and put together a monetary model that will make that organization self-sustaining. It begins with defining "paralegal" in this act. How do you do it? It's very simple.

The crux of the matter would be: A paralegal would be defined as a non-lawyer who provides legal services for hire or reward. Once you define it that simply, so many of the groups that have come to you and said, "Exempt us, exempt us," don't have any concerns. Those who are offering advice to friends and family or are doing it within an organization don't have concerns. Then you can get into the sectoral exemptions that were talked about, and some of those are very commonsense. If a person is providing legal advice to his own employer, his employer is in fact the regulator. If he's doing it for a government organization, the government organization is the regulator. So we can provide sectoral exemptions that get honed right down to the purpose of the regulation, which is to regulate the independent paralegal.

Our white paper proposes a licensing board, and yesterday Mr. McMeekin said, "Why would you have a majority on that board being non-lawyers?" We put a lot of thought into this, and there is a reason. Part of the chauvinism that is so apparent in the current bill before you and in the position of the law society is that they say, "We, lawyers, are the only stakeholders here."

So the present bill has this legal services providers committee with five lawyers, five paralegals and three laypersons, but we recognize there are many stakeholders: paralegals, of course; lawyers, of course, because they will be dealing with paralegals. But the court system, the judicial system, the deputy judges and the tribunalists from the Workers' Compensation Board and the landlord and tenant boards are stakeholders too, and they should have some say in this licensing process. Of course, the community colleges that have put together tremendous programs to train paralegals are stakeholders. Of course, the consumers, the people who use paralegals, are stakeholders. So let's have a board that's not overwhelming but gives all of those stakeholders a chance. That's why we said we'll be happy with four paralegals there and seven non-paralegals if it comes from a broad spectrum of society, not just lawyers. That's why we crafted it the way we did.

The licensing board will take care of licensing elements, complaints, disputes, resolution and enforcement, and the balance of this professional paralegal act should provide for a board of governors to take care of the other administrative elements: putting together the continuing

legal education programs, the insurance programs, running the organization and so on. So our professional paralegal act would divide the governance into two distinct bodies.

It contains a revenue model, which I think is very important. It hasn't been addressed so far. The current legislation is going to let the law society regulate, and the law society will come up with the cost of regulation and will charge that back to the paralegal in a huge fee. We've been told it will be as much as a lawyer will be charged. We're saying that the cost of regulation should be transparent. The person who is using it in the end should know what it costs. So our model would allow for a tariff or a charge on every paralegal bill that is paid by the client right up front so that they know the cost of regulation. That's transparency; that's fair.

Our vision is that if you give us the tools, as Eileen stated, and give us a time frame, we can do this in six months, because the hard work is done. We can regulate this profession, we can put it together, but we need the tools, and that's what our white paper gives you.

The Chair: Thank you very much. We'll start with the government side: about three minutes each.

Mr. Bas Balkissoon (Scarborough–Rouge River): I have two questions. I notice that this white paper is dated September 2006, but I suspect a lot of this has been put in place in the past. Has this, or a similar framework, at any time been given to a previous AG or the current AG?

Mr. Mitchell: Yes. We met with Mr. Zimmer just about this time last year, I believe it was, and he was the first to receive the white paper. We've distributed it to many MPPs, and I believe all the spokespersons have received it from us, the critics for the various parties.

Mr. Balkissoon: Have you had a chance to speak with the AG directly?

Mr. Mitchell: No, we haven't, and we have requested that opportunity.

Mr. Balkissoon: So your strong belief is that if you're given the tools and you're given six months, you'll be able to put it together.

Mr. Mitchell: I think we could do it in less than six months. Six months is a very reasonable period of time.

Mr. Balkissoon: Thank you very much, and thank you for taking the time to be here.

Mrs. Van Bommel: Just a couple of questions to Ms. Barnes. How many paralegals are there in the province? We seem to be having difficulty getting a handle on the numbers.

Ms. Barnes: Estimates range from 1,000 to 5,000 or more. There were more of them floated at other times. It depends on how you define a paralegal. There are a lot in the ethnic community where they don't even advertise; it's just word of mouth. It's really difficult to get a hard number that you can work with. But I would say, given my experience with them, there's probably somewhere in the neighbourhood of between 2,000 and 2,500 that we would be able to identify.

Mrs. Van Bommel: How many of them are members of the PSO?

Ms. Barnes: The current list that we have right now is somewhere around, I think, 250 full members. The student members, I'm not sure; I believe that's around another 50 or 60.

Mrs. Van Bommel: I also noticed that on the second-last page of your presentation you were talking about the work and the steps you've been taking in terms of preparing for self-regulation. You talk about having developed grandfathering—we say grandparenting—provisions.

The whole issue of good character and being of good character: How do you define that? Do you have a standard or guidelines that would help you if you were ready to do the grandparenting? Because, like you say, there are so many people out there that you really can't identify at this stage. How would you bring them in in terms of grandfathering, and do you have guidelines for good character?

Ms. Barnes: Yes, we do have guidelines for good character. They would have to have references. We would have to be able to identify that they had been in practice for a certain length of time. We would need to have samples of their work. But definitely those are guidelines that we would expand upon if we—maybe Ken can—

Mr. Mitchell: Perhaps I can take you right to our white paper, schedule C, where we have eligibility for licensing.

The Chair: If you could just finish very quickly.

Mrs. Van Bommel: That's good. I'll look at that, then. Thank you.

The Chair: Mr. Runciman?

Mr. Runciman: Thanks for being here today. I think your white paper is impressive. It does lay out a solid road map to self-regulation, although I think, not to be too cynical, the die is cast. We have this legislation in front of us and I suspect the die was cast a number of years ago when Mr. Bryant was appointed as Attorney General. Congratulations on doing this fine piece of work. It's regrettable. I don't believe it's going to carry the day at this stage. Maybe I'm a cynic, but it's difficult to see Mr. Bryant and his colleagues backing away from this in any significant fashion at this point in time.

1040

Your first submission—the pages aren't numbered, but you're talking about the Professional Paralegal Association of Ontario and the history there. We've had a number of people appear before us, the law society and others, who have talked about the disintegration of that organization, which I guess was created in the wake of Justice Cory's report and recommendations on self-regulation. This has sort of been cast in the light that getting paralegals together is like trying to herd cats, that this is a pretty tough group to pull together. They suggest quite clearly that the reason this organization wasn't a success was because of that fact; that you folks couldn't find a clear path to proceed, unlike your white paper on licensing which you have before us here; that you're the authors of your own demise, if you will. I'd just like to hear your view on it, because you're suggesting here that

this was—I'm putting a word in here that's not here—a conspiracy, if you will. They refused to represent the views of your membership and so this was a design to frustrate you.

Ms. Barnes: No, I wouldn't call it a conspiracy. I wouldn't go that far. It's just that paralegals are not lawyers. Most of us are sole proprietors. We work on a very thin margin of income and we don't have a lot of time to spend on these issues. When the PPAO was first started, they were supposed to be a lobby group for the other organizations, and that was how it was started, but when the Cory report was shelved, what happened was that everybody went back to earning money. I mean, we have to live. The PPAO then went on their way and what happened was, they started talking to the law society and the Attorney General and they were brought around to the idea that the law society was a good idea. By the time they actually came back and told us, the members, we decided that wasn't the case and we didn't agree with it.

Mr. Kormos: I don't know what the status is of this bill. The parliamentary assistant for the Attorney General is a no-show for the third consecutive day now. That says something, because the convention is that the PA represents the minister, in this case the AG, and stewards the bill through the process. So for three days in a row the parliamentary assistant can't be bothered being here. Part of me says maybe the government realizes this bill has lost traction. At the same time, it's a majority government. In three years' time I haven't seen very many government members vote against government legislation, including time allocation motions. So the government could use time allocation to force this through, and I suspect that right now in the Ministry of the Attorney General there's consideration of that. I don't know if Mr. Runciman agrees, but I suspect that's being considered. So maybe, as they say down in Niagara, you're peeing in the wind.

Interjections.

Mr. Kormos: It's all for naught. It's a done deal. But having said that, I appreciate you'd like to see the bill scuttled, right? Shelved?

Ms. Barnes: Yes.

Mr. Kormos: The problem is, you're saying that in six months you could set up this regulatory regime. The reality is that in 20 years it hasn't happened—not through your fault. I suspect one of the reasons is because the very people who most need regulation are the ones who wouldn't participate and collaborate: the renegades, the fringe operators etc. who wouldn't collaborate in this broader effort.

Why aren't paralegals who are concerned about the bill proposing backup positions, saying, "Well, if the bill's going to pass in any event, at least accommodate us to this extent: (a), (b), (c) or (d)"? Why hasn't that happened? Have we heard any of that yet? We haven't heard any of that.

Mr. Mitchell: Yes, I think you did. I think Bruce Parsons, the past president, spoke two days ago and really did give a good summary of the flaws in schedule C that could be rectified to make a bad bill better. That was the purpose of his presentation. I take it back to Bruce Parsons's presentation.

Ms. Barnes: Also, I have to reiterate that we would prefer to see schedule C scrapped, and that is why basically we don't really want to offer—because we think, to allow the law society to step in with their own bylaws—

The Chair: Thank you very much.

Mr. Kormos: Check that wind direction.

CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

ONTARIO ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

The Chair: The next group is the Canadian Association of Insolvency and Restructuring Professionals and the Ontario Association of Insolvency and Restructuring Professionals. Good morning.

Mr. Norman Kondo: Mr. Chairman and honourable members, we thank you for this opportunity to speak to Bill 14. My name is Norman Kondo and I am the president of the Canadian Association of Insolvency and Restructuring Professionals. When I started, we were actually just the CIA, Canadian Insolvency Association. I am a lawyer but I've spent my career in the not-for-profit sector. I remember when the chair of the association hired me, he said, "Norm, a trustee is someone who wants to be a lawyer but wants the respectability of being an accountant." So the majority of our members hold professional designations as accountants.

Making the joint presentation with me today is Angela Pollard. She is the president of the Ontario Association of Insolvency and Restructuring Professionals. She is a certified management accountant, a certified fraud examiner, a trustee in bankruptcy, a chartered insolvency and restructuring professional and in practice full-time. She will be able to describe to you the types of assignments that our members, their employees, agents and servants perform on a daily basis and why they do not require regulation under Bill 14.

We did a written submission in June. I believe the committee members were provided with that, but they may not have them here today, so I may just refer briefly to the introduction as to who we are. We represent at least 80% of the practising trustees in bankruptcy in Canada. As I mentioned, our members hold the CAIRP certification mark and they act as trustees in bankruptcy. They are officers of the court. They carry out statutory duties under the Bankruptcy and Insolvency Act, including the preparation of various legal documents, all under the supervision of the superintendent of bankruptcy, but members also act in other capacities, including monitoring under the Companies' Creditors Arrangement Act, court-appointed interim receivers, court and private

appointed receivers, receiver and manager and agents for secured creditors.

The primary reason that we are here today is to urge you to exempt trustees in bankruptcy, their employees, agents and servants from Bill 14. We would ask that this exemption be specifically part of the bill and not leave it to exclusion by regulation or in the bylaws of the law society.

As we understand it, the purpose of Bill 14 is very clear. It's the result of long discussion and negotiation to address the issue of protecting the public from unregulated providers of paralegal services.

1050

If I could just read a little excerpt from the bill—this is the part that caught the attention of our associations. It's in paragraph 7, subsection (6). It talks about the provision of legal services and it says:

"Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following: .... Selects, drafts, completes or revises.... a document that relates to a matter under the Bankruptcy and Insolvency Act (Canada)...."

I guess I do find it rather strange to be here as the president of a national association talking about Ontario legislation that may affect my members.

Trustees in bankruptcy, their employees, agents and servants are regulated in at least one of the following ways:

There is the code of ethics for trustees, enacted as rules under the Bankruptcy and Insolvency Act, which require that: "Trustees, in the course of their professional engagements, shall apply due care to ensure that the actions carried out by their agents, employees or any persons hired by the trustees on a contract basis are carried out in accordance with the same professional standards that those trustees themselves are required to follow in relation to that professional engagement."

As I mentioned before, the vast majority of practising trustees belong to CAIRP, and rule 11 of our rules of professional conduct reads as follows: "A member who is associated with non-members in professional practice shall be responsible to the association for any failures of such associates to abide by these rules of professional conduct." And we do have a professional conduct committee and discipline committee and a very formal process to deal with complaints from the public.

About 70% of our members hold professional designations in accounting or law, as well as being licensed as trustees in bankruptcy—the majority of these are chartered accountants—and they are all subject to regulation by their respective professional bodies.

The institutes of chartered accountants of Canada recognize members of our association as specialists in insolvency and restructuring, and they actually allow them to use the CA.CIRP designation to denote that they are chartered accountants who have a unique specialty in insolvency and restructuring.

I would suggest that the law society licensing trustees in bankruptcy, their employees, agents and servants would be analogous to requiring that Ontario lawyers, their employees, agents and servants who practise in the area of insolvency and restructuring be licensed by the Superintendent of Bankruptcy. The national insolvency section of the Canadian Bar Association has 1,700 lawyers who denote themselves as practising in this area.

Other assignments that our members carry out: As noted in our submission, Parliament recognizes the need for skilled, regulated professionals to carry out insolvency and restructuring work. Not all of this work is done under the Bankruptcy and Insolvency Act. Statutes of Canada, chapter 47, which has been enacted but is not yet in force, requires that receivers and CCAA monitors be trustees in bankruptcy. That exact reference is in footnotes 7 and 8 on page 4 of our written submission.

In summary, I'd just like to emphasize again that our members, their employees, agents and servants are regulated, they continue to be regulated, and Bill 14 should specifically exclude them.

Now Ms. Pollard will discuss some of the situations and some of the documents that our members prepare in actual practice so that you can have an appreciation for the type of work they do and the type of supervision that it's subject to.

Ms. Angela Pollard: Thank you very much, Norm. Thank you for the opportunity to allow us to speak here. I do really appreciate it. I think, as the president of the Ontario association and representing all trustees in bankruptcy across the country, we're very concerned with the bill and how it's going to increase our regulations, being regulated by the law society.

I don't know how many of you are familiar with insolvencies, but I'll give you a general idea of what we do so that you have an idea. A trustee in bankruptcy, if a person is insolvent or feels that they have financial problems, an individual, will go to a trustee in bankruptcy and meet with them to go through their financial situation and their financial affairs. The trustee will take that person through a number of steps outlining the Bankruptcy and Insolvency Act, the obligations that the debtor will have in becoming an undischarged bankrupt and, as well, they will go through options that are available. In the Bankruptcy and Insolvency Act, there are a number of options that are available to an individual who has financial difficulty. I know that some of the documentation has been submitted, and I can see some of you are looking at that documentation as I'm speaking.

What happens is, the individual comes in and meets with the trustee; they go through the financial affairs of the bankrupt—the individual. They come to a solution to finish or solve their financial problems. In your documentation you'll see the that first form is actually an assignment in bankruptcy. It's a legally binding form that actually makes the individual bankrupt. It allows them to start a fresh life; it allows them to look at unloading their debts. So this form, which is a standard form, is a prescribed form under the Bankruptcy and Insolvency Act, which is a federal act, and all trustees have to prepare the same form. It's a standard form.

Once this form is prepared, a statement of affairs is also prepared. That outlines all the assets, the liabilities, the creditors and the actions that the individual has taken over a period of time, in accordance with the Bankruptcy and Insolvency Act, and it is a prescribed form. Then what would happen is that these forms would be sent to the Superintendent of Bankruptcy's office. The Superintendent of Bankruptcy would accept these forms and provide the individual with a file number—a number that shows that they have now filed an assignment in bankruptcy. The trustee and its staff, agents and servants will go through the collection of the assets, dealing with the creditors and a creditors' meeting if that's required.

Once the bankrupt has completed all of its duties, it will come up for its discharge. The individual will get discharged from its debts. There are two ways that that's done: The Bankruptcy and Insolvency Act allows the trustee in bankruptcy to issue a certificate of discharge which legally releases them of all of their debts or, if there have been problems with the administration of the estate, the trustee will make application with the court to have the court hear this matter. The court is generally a registrar in bankruptcy or a judge who will hear the matter and determine the fate of the bankrupt. So in both cases in these situations and individuals, we are regulated by the Superintendent of Bankruptcy and we attend in court to deal with problems that we cannot deal with under the authority that is given to us under the Bankruptcy and Insolvency Act.

If an individual or a corporation comes in to us and they're not really totally insolvent, they have some assets, some reasonable assets where they can make a proposal to their creditors, we will prepare proposal documentation. You've probably heard of a proposal out there, but in most cases it really would have been under a CCAA. Air Canada is like a proposal—just a larger proposal. Canada 3000 was a proposal, but it's really a CCAA; it's another form of a proposal.

What a proposal is, is the debtor will come in and they will say, "These are the assets we have and this is what we can offer to our creditors." The creditors' debts will be compromised, so they will get 10 cents on the dollar, 50 cents on the dollar, whatever it is, for their debt. The creditors have the right to approve or reject the proposal. If the creditors accept this proposal, then a trustee in bankruptcy will attend in court to get the court to sanction that proposal. So, again, we're going through a number of steps to make sure that the proposal is properly filed and meets with all the terms and conditions that are under the Bankruptcy and Insolvency Act and that the court feels are necessary in order to protect all of the stakeholders involved in a bankruptcy and insolvency process.

1100

The other type that Norm had mentioned was a monitor under the Companies' Creditors Arrangement Act. Most of you have probably heard of those. They're large insolvencies of large corporations where trustees in bankruptcies generally act as monitors and advisers to the corporations themselves. What we do is deal with the contracts that are out there with the creditors, we deal with the union, we deal with the landlords and we enter into, with the company and with the blessing of the court, a number of different contracts and arrangements to help this corporation to be able to survive, move forward and come back out of the CCAA.

We assist in the preparation of the plan of arrangement. It's a legal document that is binding upon all the creditors and all of the stakeholders once it is accepted. We attend in court on a regular basis for approval of all the steps that we take under a CCAA application. So even though a CCAA is not monitored by the Superintendent of Bankruptcy, it is monitored by the court.

I just wanted to give you an idea of the number of different things and how we are monitored as we go along, besides the fact that most trustees are members of CAIRP and, if they practise in Ontario, would be members of OAIRP. Most of our members are qualified professional accountants. Some of our members are certified fraud examiners. A significant number of our members have other regulatory bodies for professional designations that we're presently holding.

What I really would like to reiterate is we are looking for an exemption for the trustees in bankruptcies, their servants, their agents and employees, because they all assist us in performing the documents and our work in order to assist an individual or a company to restructure.

Norm, do you have anything else?

Mr. Kondo: I have nothing else.

Ms. Pollard: Thank you.

The Vice-Chair: Just give me a moment. I need to see where we are in this process. I believe we have about 15 minutes at this point for questions and comments. I need to understand who is in the rotation. Mr. Runciman, I'll let you start the rotation.

Mr. Runciman: That's very generous of you, Chair.

Thank you for being here. I appreciate it. I guess we're going to hear today and perhaps tomorrow from a number of already regulated professions that are captured by this legislation and are being re-regulated, if you will. My perspective on this is that we should have a blanket amendment to the legislation which will remove all of those already regulated professions from being captured by this expanded authority.

I'm curious about your involvement in this process, if there was any. Were your organizations consulted at all in terms of the development of the legislation to regulate paralegals?

Mr. Kondo: No. This came as a great surprise. I actually discovered the existence of Bill 14, was informed of it, by Michel Gérin from the Intellectual Property Institute of Canada. It came as a great surprise.

Mr. Runciman: What have you done subsequently? Have you had any contact with the Attorney General's office to convey your concerns, any direct, face-to-face contact with the Attorney General, his parliamentary assistant or any of his staff?

Mr. Kondo: No, we haven't.

Mr. Runciman: Have you made any attempt to discuss your concerns with them?

Mr. Kondo: No. We were relying on the committee hearings to make our position clear. It seemed fairly obvious, I guess.

Ms. Pollard: The Ontario association did go to the Ontario Bar Association and discuss this matter with them. They were kind of surprised to see that we were part of the regulations and that we would be captured under it. As you heard them speaking earlier today, they specifically requested that trustees in bankruptcies be exempt from this process.

Mr. Runciman: I find it curious that organizations such as yours are apparently being caught off guard by some of these initiatives. Obviously you don't monitor at the provincial level. Do you monitor at the national level? It's surprising that there's no ongoing effort, especially with an interventionist government like the one currently in office, to monitor their activities and their initiatives.

Mr. Kondo: I guess the real answer to that is we are a national organization. We have fewer than 900 members. We just don't have the resources to be monitoring every piece of provincial legislation particularly. The resources and time and energy of our members on a volunteer basis just to deal with federal legislation is significant, and the Ontario association does not even have any full-time staff.

Mr. Runciman: I'm not endorsing any company, but there are private providers that can monitor at very modest costs to your organization if something pops up that would have an impact, either directly or indirectly, on your members. I would suggest, given the tilt of this current government, that you consider something like that in the future.

Mr. Kondo: We have looked at that. On a federal basis, that's not a problem. We have an excellent relationship with the legislators and with the policy people, but on a provincial basis, it's just not something we—

Mr. Runciman: The difficulty is getting changes once the door has been opened, and that's always a challenge.

Mr. Kondo: I appreciate that.

Mr. Runciman: Thank you for being here.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: I'm sorry I wasn't here in the room. I had to make some phone calls, and while doing those, I was monitoring you on the closed-circuit television.

I understand the issue; I understand your point. You get no quarrel from this side, from either Mr. Runciman or me. It's a fundamental problem with the way this whole bill was drafted. Everything in the bill is unique in terms of just shotgunning—hyper-shotgunning—and then saying, "Oh, by the way, anybody who isn't to be regulated will be specified, not even by regulation of the government"—although I'm not a fan of that; I'd rather this were being debated right here and now and we developed a definition of "paralegals," who everybody hopes to see regulated—"but by bylaw of the law society."

We already heard a reference to the need for some sort of appeal from the law society. No provision for that, which I find interesting.

Look, I know that at one point the government was hell-bent to get this thing passed, wrapped up, slid through the Legislature, but I really think, amongst other things, we've got to get the law society back here for what might be an extended period of time to respond to some of these issues and find out exactly how they respond to them and what they have to say.

This exemption by bylaw is nuts. It's not feasible, it's not workable, it's not practical, and it's not helpful. We could be solving it by defining "paralegal" in the first instance, which means we won't have to worry about a long list of exemptions talking about who it is the legislation intends to regulate. The issue of who regulates them is another one that's obviously still not resolved.

Thank you. You've brought yet another—not point of view, but another professional organization for whom there's no need—you shouldn't have to be here. You should be out there helping people who—seriously—have serious financial difficulties as we lose more and more manufacturing jobs here in the province of Ontario and as electricity rates are forcing people out of their houses even though Mr. Parkinson gets a $500,000 bonus for driving up electricity rates by—what, 55%, Mr. Runciman?

Mr. Runciman: Yes, 55%.

Mr. Kormos: Plus free rides for himself and kiddies on the Hydro One helicopter. And Reverend Ellie, Ms. Clitheroe—I don't want to leave Mr. Parkinson out there alone; this is a never-ending tale—Reverend Ellie—mind you, she's doing prison ministry. I don't know whether that's an acknowledgement on her part as to the real nature of her behaviour while she was at Hydro One. She's suing because she doesn't want to have a $200,000 pension; she wants a $250,000 pension.

The Vice-Chair: Mr. Kormos, can we stay to the topic of the day, please?

Mr. Kormos: That is on topic. We're talking about bankrupt Ontarians who can't afford to pay their bills, and Reverend Ellie Clitheroe wants to have a pension of $250,000 instead of $200,000 after ripping off the taxpayers for millions of dollars and sponsoring that boat down there in the Bahamas.

The Vice-Chair: Thank you, Mr. Kormos. The government side, please.

1110

Mr. David Orazietti (Sault Ste. Marie): I have no further questions and the government side doesn't have any questions, but we want to thank you very much for coming in today and making your presentation.

The Vice-Chair: Thank you as well for bringing in your perspective.

Mr. Kondo: Thank you for hearing us today. I came by subway.

FNF CANADA AND CHICAGO TITLE INSURANCE COMPANY OF CANADA

The Vice-Chair: I would like to call forward FNF Canada, please. Good morning, and welcome to standing committee.

Mr. Steven Offer: By way of introduction, my name is Steven Offer and I am the senior vice-president of Fidelity National Financial Canada. With me is Wendy Rinella. I'll let you introduce yourself.

Ms. Wendy Rinella: I was here this morning and I'm just here to lend my support to Steven. I'm the director of corporate affairs for First Canadian Title.

The Vice-Chair: Thank you. You have 30 minutes to make your presentation.

Mr. Offer: Thank you very much. As indicated earlier, my name is Steven Offer and I represent Chicago Title Insurance Company of Canada and FNF Canada. These two related corporations have operations in Mississauga, providing 250 people with jobs. As indicated, my colleague Wendy Rinella represents First Canadian Title and spoke earlier regarding related concerns of title insurers.

As title insurance and document processing companies representing almost 900 jobs in the province, we would like to begin by saying that we support the need for paralegal regulations and we support the law society as the body to do the regulation. However, while we recognize and support the importance of paralegal regulation, we have grave concerns about the consequences of the wording of the legislation and the breadth of unrestricted power provided to the parent of our competitor, the law society, through Bill 14.

I'll begin by giving a brief overview of what we do. We are actually involved in two major streams of business. The first is the direct sale of title insurance. Title insurance is a form of consumer protection that benefits the policyholder. A policyholder can be an individual, a corporation or a lender. The policy protects their interest in real property by indemnifying against loss that may be suffered if the title is other than as stated in the policy. It includes a duty to defend the insured's interest in the title in addition to the indemnity coverage. It also provides insurance in respect of several other matters in connection with title, such as access to the property and marketability. More importantly, it also provides protection with respect to what are referred to as off-title problems—defects, liens or encumbrances—that are not shown on the certificate of title, and it insures against some future events, the most significant of which is fraud.

Title insurance is not like traditional forms of property and casualty insurance that are distributed through insurance brokers. It is distributed to the members of the public through lawyers in the purchase of a home and is provided through a business-to-business transaction between two financial institutions—the title insurer and a commercial lender—when a lender will purchase a policy directly from a title insurer.

The model of operation for programs providing new homeowners and their lenders with a residential policy in a real estate purchase transaction is relatively similar for all title insurance companies. The lawyer advises the client on the purchase of a policy. The policy is then ordered by the lawyer from the title insurer and then sold through the lawyer to the new homeowner.

Our second line of business is the service we corporately provide to a lender through what we describe as lender programs. Under these programs, we provide a title-insured mortgage for the lending institution in accordance with what is referred to as the mortgage approval. This service is rendered by our companies to the lender. We provide no legal service to the customer of the lender, but it is important to note that the customer of the lending institution always has the option of obtaining a lawyer if they so desire. In essence, our companies provide an option in the mortgage transaction.

After giving a brief overview as to what we do, we'd like to now focus in on our concerns. There are potentially devastating consequences for us in this bill if it passes into legislation as is and if the law society exercises the full authority of power granted to it in Bill 14.

To fully appreciate the basis of our concern, it is important to know that sitting here today are representatives of only two of six title insurance companies operating in Ontario. One of our competitors is LawPro, a wholly owned subsidiary of the Law Society of Upper Canada that engages in the title insurance business. The law society is the sole shareholder of LawPro, which sells title insurance under the name TitlePLUS through lawyers to lenders and homebuyers. Six members of the law society board and executive, including the CEO, are members of the LawPro board.

It is equally important to know and understand that in addition to what we have just stated, title insurance as a product and an industry is highly regulated through the federal Office of the Superintendent of Insurance and their provincial counterpart, the Financial Services Commission of Ontario. In addition, title insurers must conform to many acts and regulations ensuring consumer disclosure and protection requirements. Unique to Ontario—and I think I'll just step aside for a moment; it's important to know that both of our companies, though headquartered in Ontario, are national in scope and conduct business in every province and territory—under regulation 666 of the Ontario Insurance Act, title insurers are required to have an external lawyer conduct a title search every time they issue a policy. As with all lawyers, the law society as their professional regulator may impose rules of professional practice, audit, investigate, discipline, fine and levy insurance premiums on lawyers providing this statutorily required service to title insurers.

As such, we are in direct competition for business sold through lawyers with a title insurance product owned by their professional regulator, which can, as I've indicated earlier, impose requirements and conditions on their activities related to title insurance. It is not currently a

level playing field when the lawyer's own professional regulator is involved in the same business.

Under the proposed definition of "legal services" in the bill—and I apologize for restating it in full—it is stated that in Ontario "a person provides legal services if the person does any of the following:

"2. Selects, drafts, completes or revises,

"i. a document that affects a person's interests in or rights to or in real or personal property," including family property.

The word "completes" in the clause I've just read captures the service that our companies provide. This is the service we provide to lenders. We have been told that this is an unintended consequence of the legislation, that the legislation was not designed to impact upon our business. But without change to the wording of the legislation, the worst-case scenario is that, the day after the passage of this bill, the law society would launch an investigation into our companies for the unauthorized practice of law or legal services and, using their new-found power of injunction, apply to the courts to put an immediate halt to our operations.

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This scenario is possible under the legislation because the definition of legal services is so broad that it captures our underwriting in lender programs and therefore enables the law society to launch such investigations. As well, there are no exemptions from the broad definition in the legislation. Exemptions under Bill 14 are the sole purview of the law society. The government retains no authority to grant exemptions. We, as companies, must rely on the goodwill of our competitor—the law society and its successive administrations—to provide us with an ongoing bylaw exempting our operations. Lastly, the law society has a new power to seek injunctions on businesses even though no prior conviction or charge exists.

And so, members of the committee, we bring to you some recommendations for your consideration, but before we do, we want to advise the committee that in addition to being here today, we have been part of a coalition with other industry and professional associations to raise concerns about the need for amendment to the legislation, exemptions in the legislation and the need for the government to retain authority to grant exemptions.

Now to our recommendations: As we indicated earlier, we provide a document-processing service to lenders. Under these programs, we provide a title-insured mortgage for the lending institution in accordance with the mortgage approval. The definition of legal services in Bill 14 is so broad that it would capture these business-to-business transactions. The public is not involved in these transactions between these financial institutions. As such, we would submit that these transactions should be exempt from Bill 14 as this is not, as we understand from the Attorney General, the intent of the legislation. So our first recommendation for your consideration is to remove the word "completes" from the proposed definition of legal services.

To our second point: Our companies, as part of our underwriting and on behalf of our lender clients such as banks, credit unions and other financial institutions, have been engaged in the completion of mortgage documents largely through computer programs and the advancement of technology. We have been using in essence the same operational model for over a decade, and there have been no concerns flagged by our regulator—OSFI or FSCO—with our practices. In addition, our model has not been the subject of complaints from the lenders whose interests we insure. So our second recommendation is to exempt in the legislation a person who provides any service that is primarily clerical or administrative or primarily involves the processing or production of data or documents where the service does not include the material application of legal principles and legal judgment by the person.

To our third recommendation: The mortgage documents that we prepare for a lending institution are title-insured. A customer relying on title insurance is afforded a no-fault-type indemnity as to the validity and enforceability of their interest in the land, be that as an owner or mortgagee. Title insurance is a product that provides consumer protections, as it protects the title interests of the policyholder. So our third recommendation is to exempt in the legislation any document the validity and enforceability of which is being insured by a licensed and regulated title insurance company from law society regulation.

Lastly, the only means to obtain an exemption in this legislation is to seek a bylaw from the law society. There are a number of problems with this approach. The law society has a board of directors elected by its members that changes regularly. There is no guarantee that there will be ongoing bylaw exemptions for our companies or other regulated businesses and professions. If enacted, Bill 14 would create uncertainty, as the law society would have sole discretion to grant and revoke exemptions to its paralegal regulatory regime. This lack of clarity on exemptions in the legislation creates instability for many professions.

Bill 14, in granting complete authority for regulating legal professions—both lawyers and paralegals—is moving in completely the opposite direction of recent reforms in the United Kingdom, where co-regulation with government, not self-regulation of lawyers, has been the outcome of recent reforms. That original paper in the United Kingdom is entitled Putting Consumers First.

Our companies consider it fundamentally irreconcilable that under this legislation we must request an exemption from our competitor. We are being asked to seek permission from our competitor to continue our business operations. The law society is our competitor.

So our fourth and final recommendation is to include in the legislation a regulation-making authority by the province to grant exemptions.

We recognize that Bill 14 fixes the problem of paralegal regulation for Ontarians. We ask that this bill not create other problems by passing Bill 14 without intro-

ducing amendments to fix these unintended and unanticipated consequences.

We thank you for your time. We are happy to take any questions.

The Chair: Thank you very much, Mr. Offer. Mr. Kormos. Five minutes each.

Mr. Kormos: Now just a minute: The bill very specifically provides for the law society, by bylaw, to exempt certain groups from their regulation. You believe that the law society is the appropriate regulator for paralegals. You do.

Mr. Offer: We believe there's a role that the law society can play in the regulation but not in the exemption piece.

Mr. Kormos: But is the law society the appropriate regulator for paralegals?

Mr. Offer: I believe there is a role that they could play. Yes, absolutely.

Mr. Kormos: So the paralegals should trust the law society to regulate them, I presume you're suggesting. No answer.

Mr. Offer: Oh, did you have a question?

Mr. Kormos: Yes. The law society should be trusted by paralegals to regulate them, huh?

Mr. Offer: Yes.

Mr. Kormos: And they should be able to trust the law society not to act capriciously or unfairly, right?

Mr. Offer: Yes.

Mr. Kormos: How come you don't have the same level of trust?

Mr. Offer: We are requesting in the legislation that the exempting powers be retained by the government. We believe that because we are in direct competition with the law society in two areas. The first is in the sale of title insurance polices and the second is in the work that we do with respect to providing a service to lending institutions. We think that the government is the area in which exempting powers should be found. That was the issue of our presentation.

Mr. Kormos: You make a point, and the paralegals make the same point, because they say they're in direct competition with lawyers with respect to the provision of a huge number of legal services and they think it's the government that should provide for scope of practice etc.

I hope you folks are getting ready, because Minister Phillips made his announcement with respect to the land titles fraud issue. It appears that he's finally going to address the Chan and Liu decision from the Ontario Court of Appeal, which basically had to reconcile two conflicting sections of the Land Titles Act, but there was nothing about moving the land titles assurance fund from the status of insurer of last resort. That should be of interest to your industry, shouldn't it?

Mr. Offer: Yes.

Mr. Kormos: And there was nothing about restoring the integrity of the land titles system to prevent the registration of forged or otherwise fraudulent documents. That's of interest to your industry, isn't it?

Mr. Offer: Absolutely. We think the statement of the minister last week is a good and important first step. We're going to be awaiting further action.

Mr. Kormos: I've got to ask you, because this raises again the whole role of title insurers: When you are called upon to access the land titles system to basically certify title for a lender, a bank, do you go beyond the documents? I think the courts called it the curtain principle, although it brings to mind visions of the Wizard of Oz, and you know what happened when you pulled back the curtain there. Do you go beyond the documents?

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Mr. Offer: It's an interesting question. In Ontario, in fact, the searches of title must be done by lawyers. We are the only jurisdiction in Canada where that regulation—regulation 666—does require that lawyers provide that type of report. There will be, in each title insurer, looking at not only what is on title but looking at potentially deleted instruments and things of this nature. But right now we are taking the registry system as it appears.

Mr. Kormos: If a discharge of mortgage—I'm not sure that's the current terminology—in land titles is registered, one should be able to rely upon that.

Mr. Offer: Interesting; those are exactly the questions and issues that are before lots of people: the integrity of the registry system and who can rely, who should be able to rely and who's protected. Statements of last week are important first statements but there's more work that has to be done on it.

Mr. Kormos: I'm looking forward to those committee hearings. You'll be there, won't you?

Mr. Offer: Possibly so; absolutely.

The Chair: Mrs. Van Bommel?

Mrs. Van Bommel: Thank you for your presentation. On your second page you talk about the lawyer advising the client on the purchase of a policy, which is your title insurance, and then the policy is ordered by the lawyer and then sold through the lawyer to the new homeowner. Do consumers approach you directly or is it always through a lawyer, and who makes the final decision? You say there are six title insurance companies in Ontario. Who makes that final decision about what company will be used?

Mr. Offer: In a traditional real estate transaction, the purchase of a home that many of us have gone through, the product of title insurance is brought forward by the lawyer, the client of the purchaser, to the purchaser. They will talk about what title insurance provides, its benefits, and the actual purchase of the policy will take place by the lawyer to a title insurer of their choice, the price of which will be incorporated into legal fees and disbursements.

Mrs. Van Bommel: So consumers never actually directly approach you?

Ms. Rinella: We do get phone calls and then they get directed back to deal with lawyers. Just to add to what Steven said, there is a rule of professional conduct for lawyers that they have to talk to their clients about all options to protect title, including title insurance.

Mr. Offer: It is important to know, again, that in Ontario under regulation 666, all of the searches, before you can issue a policy of insurance, must be done by a lawyer.

The Chair: Mr.McMeekin?

Mr. McMeekin: Thank you again. That's an interesting twist on an old phrase, you know, the prospect of biting the hand that feeds you. We were told earlier that the Attorney General had given assurance that it wasn't his intent to have you regulated under the law society. So I hear you saying, if I can be so bold in the recommendation about the "appeal-to-Caesar clause," I think somebody called it, that that would seem on the surface to be a logical point. I'm just a rural backbencher. What do I know about it?

The other thing I would ask: Is it your position that if it ain't broke, don't fix it, and if it ain't broke, for goodness' sake don't break it? Is that what you're saying?

Mr. Offer: I'd have to get some clarification: What isn't broken and not to fix? Our point with respect to the exemption—and I think Mr. Kormos was alluding to this as well—is that we have companies that provide services which are in competition with what can only be referred to as "our competitor." We believe that the legislation, the purpose and the principles are designed by government. If there is to be any exemption, those who are seeking the exemption should go to government to be granted an exemption, not to "our competitor." It is akin—and I'm going to overly simplify this somewhat—to Wal-Mart asking the permission of Costco to locate on a particular corner. We believe that government ought to retain the duty, the obligation, to exempt those who come before it, ensuring that the purposes of the bill, in whatever final form it happens to be, are met. That's the fundamental basis for our concern.

Mr. McMeekin: Fixing it isn't giving your competitor a monopoly to control its competitors. Fair ball.

Mr. Offer: Right.

The Chair: Mr. Runciman.

Mr. Runciman: That isn't the first time we've heard the Wal-Mart analogy. The paralegals have used it as well. There might be more of an argument in terms of the independence of the law society with respect to paralegals than there is in this situation, given the revelations related to LawPro and the involvement of benchers and others on the board.

I'm just curious, Mr. Offer: Given your background as a former MPP and former cabinet minister, was there any effort to involve you or your company directly, in terms of consultation, in the preparation of this legislation?

Mr. Offer: No, Mr. Kormos, there wasn't. But on that, I would like to say that there was a—

Mr. Runciman: I wear a tie, by the way.

Mr. Offer: Pardon me?

Interjection: That's Mr. Runciman.

Mr. Offer: Oh, I'm sorry, Mr. Runciman.

Notwithstanding my past, I was not sought out. But I would like to say that the Ministry of the Attorney General at many levels—I can only speak for myself—has been open to meetings and trying to understand exactly what we do in the service we provide, and being caught within the definition was inadvertent. They've been pretty straightforward with us. So although we've not had a hand in any of the consultation piece, they have always been to open to listening to our concerns.

Mr. Runciman: Inadvertence is pretty common practice with respect to this government's legislation. We have a bill before another committee today dealing with well over 100 government amendments, so that shows you the kind of consultation and planning that goes into some of the bills we have to deal with.

I gather that the Attorney General, despite his openness to listen to you, has not given you any assurances that the bill will be amended in such a way that it would address your concerns.

Mr. Offer: As a matter of fact, we have been told that although it's inadvertent and it was not designed to capture the type of work we do for our customer base, we of course have to come before committees and we have to indicate to all what our concerns are and the basis for them. So we are going to do what everyone must do. We're going to be leaving it in your able hands to assess what we have said and the fundamental basis of our concern, especially in terms of exempting and the provision of some suggestions as to how that might be fixed.

Mr. Runciman: So your former colleagues have left you twisting in the wind.

Mr. Offer: Thank you very much, Mr. Runciman, and members of the committee. It's always a pleasure.

Mr. Kormos: Chair, if I may, I have another request for Ms. Drent, who sits there with apprehension, and I understand. We've had two presentations today by title insurers. I've already asked her to get us a handle on LawPro. I think it's important that we understand who the title insurers are in Ontario and how their product is sold. We know that it's sold through lawyers, but does every lawyer sell for every company? Are they effectively like insurance brokers? Do they only have relationships with some insurance companies? How do the insurers compete? Are there rate differences? Although there appear to be minimum product standards set by regulation, is that one of the areas of competition? Are lawyers compensated for selling or facilitating in the purchase of a particular bit of title insurance? Then, if there are any data on the new transactions, and Mr. Phillips's ministry may well be able to provide this—there are thousands, of course; Mr. Phillips alluded to that in his press conference—how many are accompanied by title insurance? In other words, what's the frequency of title insurance on titles in our land titles system? Finally, the requirement that I'm sure is in the statute and regs. for reserves.

Ms. Margaret Drent: Reserves?

Mr. Kormos: Reserves. Let me tell you why, Chair and Ms. Drent. Land title insurance appears to protect title to a property for ever and ever. Does that apply—and I presume it does only to that owner who purchased the title insurance. And then how do we protect the

owner? I live in a 95-year-old house and I'm only the second owner on title. So that means we've had people in there for over 50 years, the same owner. How do we ensure that a purchaser of title insurance 55 years down the road is still going to be able to access assets in the context of—I appreciate that failures of insurance companies are few and far between, but there have been some dramatic ones. So what happens to those people?

Ms. Drent: Is there a guaranteed fund?

Mr. Kormos: Yes, within the industry, within the private sector industry. Again, the role of the law society's LawPro: presumably Mr. Offer's company is a profitable company. As you know, I suspect that most insurers are. Is LawPro run on a different basis? What is its style? Is it like a co-op? Is it a co-op type of style? Again, how do its fees vary from the private sector?

My apologies to you. I know this isn't going to come to us tomorrow, but I really think it's important in the context of the concerns that have been raised.

The Chair: Thank you, Mr. Kormos.

Mr. Kormos: Thank you, Chair.

The Chair: Frank DiLena? Not here? Okay. We've got Joseph Colangelo, a person who is on our priority list, who is on his way. I understand he's near here. We'll be breaking for about 10 minutes.

The committee recessed from 1143 to 1205.

The Chair: This committee is called back to order. It doesn't seem like the next presenter will be here in the next little while, so in everybody's interests we'll be breaking for lunch. We'll meet back here at 1:05. Thank you very much.

The committee recessed from 1206 to 1306.

JOSEPH COLANGELO

The Chair: Good afternoon. We're resuming our hearings this afternoon. Our first presenter is Mr. Joseph Colangelo. Good afternoon, sir. You have 20 minutes. You may begin.

Mr. Joseph Colangelo: Mr. Chair, members of the committee, thank you for permitting me this opportunity to appear before you and make submissions. My submissions will be restricted to comments on the amendments to section 116 of the Courts of Justice Act, namely the provision requiring that there be mandatory structured settlements in medical malpractice cases. I've handed out my curriculum vitae and some speaking notes. I hope to leave sufficient time for questions.

Insofar as my personal background is concerned, I hope that I bring some unique perspective to the discussion. As you will see from my background, up until 1999 I was with the firm of McCarthy Tétrault, which largely, in my practice at least, defended physicians. Since that time, I have been in private practice. So my representation of people in medical malpractice cases is now on behalf of injured persons or plaintiffs. So I've seen both sides of the street, so to speak.

I hope to be of some assistance to the committee in their deliberations on the appropriateness of the amendments to section 116. These amendments, in my view, are fraught with problems. The solution to a fair and efficient compensation system for those who have unfortunately suffered as a result of errors in the delivery of health care lies elsewhere. This is not the solution.

The main purpose of the amendment appears to be cost-saving. In my view, that cost saving has not been demonstrated or, at minimum, has not been demonstrated to be substantial. If the amendment is made, in my view, the transaction costs, specifically the legal fees of both injured persons and defence, will increase, because there will be an inevitable debate played out before a judge about the appropriateness of a structured settlement.

Furthermore, the bill does not provide for any accountability for the alleged savings. There is no structure, no mechanism in the bill to demonstrate that if in fact these savings, however modest, are achieved, they will be achieved. If there are cost savings, in my view they will be borne at the expense of the injured parties, and that simply is not fair. In the end, I believe that this will increase court costs, increase the cost of litigation to the parties and, ultimately, to the public.

This amendment, in my view, as a matter of law, is flawed, incomplete and likely unconstitutional. The theory of the amendment is that there is some crisis in the cost of health care litigation. That case has simply not been made out. In fact, according to the CMPA annual reports, the cost of settlements has decreased from about $153 million in 2001 to $116 million in 2005. There are other ways in which cost savings can be achieved, more significant savings. The problem with the system right now is that transaction costs, legal fees, are high.

As you know, the CMPA, to the extent of some 90%, is funded by the public. Since 1986, any increase in the annual fees payable by doctors to the CMPA has been borne by the Ministry of Health. So it is the public funding a defence system on behalf of physicians. In essence, the public ensures that the doctors up front have unlimited access to justice, but most members of the public who are injured as a result of medical malpractice have to rely either on paying as they go or they have to rely upon a contingency fee arrangement with the plaintiffs. They do not get up front access to justice. But in the end, historically, over 50% of CMPA's costs are defence costs, the costs of lawyers and expert witnesses. If you assume that the other 50% or more goes to plaintiffs to pay for damages, there is a built-in component to that payment of about 10% to 15% to pay or contribute to the costs of the plaintiff's lawyer. So in the end, you have a system that pays upwards of 65% of every dollar for transaction costs for lawyers, and 35% goes to victims. In my respectful submission, we, as a society that believes in fairness and justice, simply cannot allow that to happen.

The savings, as I read the CMPA submission, are about $2.7 million annually. If you look at the CMPA annual statements, defence costs have increased by 25%, from $92 million in 1991 to $115 million in 2005. Can we be even 10% more efficient in litigation costs? Sure

we can. That's a saving of $11 million a year just by reason of efficiency in defence costs. But who is monitoring this? We, as the people of Ontario, are paying 90% of the dollars that the CMPA spends on defence costs, but who is monitoring the efficiency in that expenditure? That is where the real savings are to be made.

Unfortunately, in medical malpractice cases, indefensible cases are not being settled promptly. As a profession and as a system trying to ensure fairness, we are not following the wisdom of my profession, which has been around for years, that the sooner you settle a medical malpractice case—or any case that is bad—the better. The significant savings come from early offers, and this has recently been demonstrated in the United States. There is a professor at Harvard who has been researching the Moore-Gephardt amendments to early tort reform. In the United States, early offers, early settlements, have achieved savings of between US$200,000 and US$500,000 per case. If you think that only $50,000 per case would have been saved by early offers, the saving to the CMPA and to this government would have been in the order of $19 million last year. But it is simply not happening.

The statute, in my respectful view, is likely unconstitutional. It draws a distinction between those who suffer injury or physical or mental disability. Section 15 of the charter enumerates those grounds as inappropriate grounds for discrimination. If you suffer mental or physical disability as a result of medical malpractice, you are treated differently than if you suffer physical injury or mental disability as a result of the injury caused by anybody else. Regardless of whether my argument is correct or not, you can see that there will be a constitutional debate about this, and therefore increased legal fees.

When I heard the submission of Dr. John Gray, the chief executive officer of the CMPA, on this issue, I took him to say that somehow these provisions should be mandatory, because that's how the trend of the law in the past and the comments of the judges on the issue have been going. I disagree. If you look at the decision of the late Chief Justice Dickson in Andrews and Grand and Toy, and of Justice McLachlin, as she then was, in a case called Watkins and Olafson, it's clear that the judges were not asking that they be required to impose a structured settlement; they were asking for the discretion to do it. But the bill has made the structured settlement mandatory. The onus then shifts to the plaintiffs to demonstrate that it's not fair.

I have negotiated and concluded many structured settlements, and I can tell you that the debates and the discussions that go on between the lawyers as to the appropriateness of structured settlements are extensive. What you're now asking is that that discussion and that consultation with bankers, financial people and structured settlement specialists be taken from the lawyer's office and played out in front of the judge. We will spend weeks of court time debating those issues.

Structures do not necessarily save you money. There's one basic principle that all personal injury lawyers adopt: the lower the interest rate, the less likely that a structure is going to save you any money. Depending on the circumstances of your client—his or her age, the interest rate, the window over which the structure will be funded—a structure may or may not be a good idea. The bill turns everything on its ear and says, "Impose a structure, and then let's have someone"—typically it's going to be the plaintiff—"demonstrate to a judge why it shouldn't happen": more court time, more expense and, in my respectful view, a big waste of time.

These are the ways, in my view, that tort reform in this area should be approached. There has to be a reduction of legal fees, and certainly there must be accountability for the legal fees that we spend. If the Ministry of Health is spending tens of millions of dollars annually to fund medical malpractice costs, the minister must have the power to have the Provincial Auditor review the books at the CMPA. If I were paying those kinds of legal fees on behalf of a third person, I would require the right to have the accounts of the lawyers whose fees I'm paying assessed by an officer of the Superior Court of Justice. It's called taxing the account. In addition, if I were funding an organization to the tune of 90%, simple, basic, good commercial law principles would say, "I want some representation on your board of directors." There are accountability issues here to be addressed before you go any further.

When you talk about tort reform, the Pritchard report has now been around for almost two decades—15 years, more correctly—and nothing has been done about it. We need a system that is more efficient. We need a system where there is an early assessment of these cases by both plaintiffs and defence. I am not here to suggest that the defence is the only one that ought to be participating in efficiency. Plaintiffs have a role too. Early reports from expert witnesses should be obtained and exchanged, and there should be mandatory mediation of these cases as the outset, with both sides presenting their reports at an early stage, with representatives of the CMPA and the doctors attending the mediation.

It will surprise you to know that none of this is happening right now. Reports are not exchanged until 90 days before trial. Typically, on the pre-trial or at a mediation, when we try to work these cases out, a representative of the CMPA is not to be found. They don't attend. That is contrary to common practice in the insurance industry, and I've represented a number of insurers. We can do better. This is simply not enough, and the "not enough" is going to be on the backs of the victims.

Thank you for listening to my submission. I would be more than happy to answer any questions.

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The Chair: We'll start with the government side, a couple of minutes each.

Mrs. Van Bommel: Thank you very much for a very interesting presentation. You certainly bring quite a different perspective to the table.

I note on your presentation in your written document on page 4 you talk about "hybrid action." Could you go

into a bit of detail on that and explain to me what you mean by "hybrid action"?

Mr. Colangelo: Sure. If you look at the text of the amendment, the mandatory structured settlement provisions apply to a medical malpractice action. The statute does not address a situation where a person is perhaps injured in a car accident. The person in the car accident says, "The driver who hit me was negligent," and then he or she comes to hospital and is treated by a health care practitioner and there is super-added negligence. That's the hybrid action. The driver of the car that struck the person will be sued, plus the health care practitioner: the hybrid action.

The legislation just simply does not address what happens there, because unless you make structured settlements applicable to all injured people, regardless of who injures them—a doctor or otherwise—in a hybrid action, a judge is going to be left with saying, "I have to impose a structured settlement with respect to the medical malpractice piece, but I'm back to the old common law with respect to the driver who hit him. What do I do?" There's no answer to that in the legislation.

Technically, what is likely to happen is that creative members of the bar, in order to get around this section, are simply going to find some non-health-care practitioner to sue, in order to make it a hybrid action and take it out of section 116.1.

That doesn't make any sense. That's just going to add to the complexity of the legal issues. The legislation does not address the hybrid action.

Mr. Runciman: I enjoyed hearing from you. I missed last week's hearing so I missed the testimony you referenced. Mr. Kormos will have some response to some of that.

One thing strikes me with respect to structured payments: In mandating structured payments, isn't there an inherent commentary with respect to victims, the competence of victims to be involved, in terms of how this should be settled? Isn't this supreme arrogance in terms of the suggestion that we're the people who can determine what's appropriate for you in the sense of how you should receive compensation for the injuries you've received as a result of malpractice? It just strikes me as supreme arrogance to be telling victims that this is the way it's going to be.

Mr. Colangelo: It raises a very interesting point about lack of flexibility. There is insufficient flexibility in the statute in order to tailor the remedy in a structured settlement to the specific requirements of a victim. I believe that most of our judges would be concerned about two things: one, that their hands are tied; and two, that they don't have that flexibility. Plus, if you look at the reasons for the decision of Justice Dickson in Andrews and Grand and Toy and of Justice McLachlin in Watkins and Olafson, one of the things they were talking about was the fact that structured settlements are inherently complex. Although they'd like the liberty, but not the requirement to consider them, the one aspect of tort reform which this does not pick up is periodic review of judgments.

I've represented clients in family law cases. As you may know, payments under the family law regime can be altered and amended, depending on change of circumstances. In those two cases, Chief Justice Dickson and Justice McLachlin, as she then was, there's a cry out for the periodic review of judgments. I must tell you that for infants, this is terribly unfair.

I've represented children three, four and five years of age, and I have to start the trial by looking the judge square in the eye and saying, "Look. You've got one chance to get it right, once and for all, and you'd better get it right, because I can't come back."

Mr. Runciman: A glaring weakness; I agree with you. You talk about 90% of legal costs for the CMPA being carried by taxpayers, so you could explain to me—

The Chair: Very quickly, Mr. Runciman.

Mr. Runciman: —medical malpractice insurance, which physicians carry, and I guess there is some subsidization by the taxpayers with respect to that. This is a different kettle of fish that we're talking about, so in essence, we're not only subsidizing as taxpayers the insurance coverage but also—is this a different horse that we're talking about?

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: Go ahead.

Mr. Colangelo: The taxpayers fund 90% of the premiums that the doctors pay to the CMPA. Of that money, 65% of that pot represents legal fees, more or less. If you look at OHIP bulletin 4431 and bulletin 4414, you'll see what the contribution of the public to the CMPA pot is.

Mr. Kormos: Incredible. Thank you very much. This schedule has received nowhere near enough attention. I am grateful for your being here. We were, very regrettably, led down a garden pathway by spokespeople for the CMPA. They, quite frankly, misrepresented what Osborne said, what McLachlin and Dickson said, and Ms. Drent. I should have remembered Osborne, because of course that was the Osborne report that reared its head during the insurance wars in 1988 and what prompted the Liberals to implement no-fault insurance, and that was such a wonderful benefit to innocent accident victims.

"The court shall": Would you prefer that was "may" or would you prefer that it was "shall, at the request of the plaintiff," but not necessarily "shall, at the request of the defendant"?

Mr. Colangelo: It should be "may" in order to make it fair, but you're still going to have the problem with its constitutionality.

Mr. Kormos: Sure. Now the other thing. We remember Mr. Kolody, the father of a very young kid apparently who's the plaintiff in litigation in Ottawa area—that's all we know; it's all we should know—who made a very articulate presentation about what protection from inflation means, because it's not defined here: whether it means inflation and its variations or whether it means the CPI. Is that of concern to you?

Mr. Colangelo: It certainly is. It's a concern, because in the negotiation of a structure, you can, in a pre-negotiation, bargain for indexing. But if that is removed

and the judge imposes a structure, and if he or she gets it wrong, you're locked in.

The Chair: Thank you, Mr. Colangelo.

Mr. Kormos: This schedule has no business being in this bill.

Mr. Colangelo: If I might leave a copy of bulletins 4431 and 4414 with the clerk of the committee, it might be a useful resource for him.

The Chair: Do you have copies there?

Mr. Colangelo: Yes.

The Chair: Sure.

Mr. Colangelo: Mr. Chair, members of the committee, thank you very much. I appreciate it.

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COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

The Chair: The next group is the County and District Law Presidents' Association. Good afternoon. You may begin. You have 30 minutes, and if you could identify yourselves for Hansard before you start, that would be just great.

Mr. Ormond Murphy: Thank you, Mr. Chair, and thank you to the committee for hearing our presentation. We are here representing the County and District Law Presidents' Association. My name is Ormond Murphy and I'm chair of that group. With me is Randall Bocock, who is second vice-chair and also chair of our paralegal committee. We've come today to address only the issue with respect to the paralegal legislation.

Firstly, to explain to the committee who the County and District Law Presidents' Association is, we represent the 46 county law associations. So throughout the province, each county has a law association. There are 46 of them outside, 47 in total including Toronto. You've already heard from the Toronto Lawyers Association; we represent the other 46 counties. Outside of Toronto, it is typical that most practising lawyers are members of their county law association. Therefore, we represent the practising bar outside of Toronto.

The issue of paralegals is not one that's been limited just to Toronto or outside of Toronto—it's a provincial problem—but it's of particular concern to us outside of Toronto and therefore it's been a major focus for my association for the last 25 years.

Why is it that we are concerned by paralegals? Well, there are a number of answers to that, but the first one I will tell you is that it's because when there's a problem, when the mess gets created, who cleans it up? It's always the lawyers who end up cleaning it up, and the fact is that that costs the public money. The public doesn't always differentiate between a paralegal who has charged them to do something which they haven't done properly. Consequently, when the mess gets sorted out, it's the lawyer who has to do it, at cost to the public, and we end up wearing the bad name even though it's not our fault.

As I said, there are a number of reasons why we feel that if other professionals are going to deliver legal services, they should do so competently, but this is a matter that's been pressing. It's a significant issue in some of our smaller towns where indeed paralegals are significant in terms of practice. It's not something, in my respectful submission, that has been, over time, properly addressed. The fact of the matter is that these individuals are essentially practising law without a licence. That situation, that status quo, can simply not be allowed to continue.

My friend Mr. Bocock has prepared the written brief. He is much more familiar with the exact wording of the text of the bill, so I'm going to ask him to make the presentation with respect to our particular issues.

Mr. Randall Bocock: As Ormond has indicated, my name is Randall Bocock and I'm the second vice-chair of the County and District Law Presidents' Association. For the past three years, I've been the chair of the County and District Law Presidents' Association paralegal committee.

In terms of our group, we meet twice annually in plenary, which is to say that every president who is the president of a law association across the province of Ontario meets in session over a two-day period. We call that a plenary session. The County and District Law Presidents' Association has studied the very issue of paralegal regulation for 25 years, I might add, but in terms of the present impetus and Bill 14, schedule C, in relation thereto, the entire County and District Law Presidents' Association has dedicated a full session at each of its last six plenaries over the last three years on the topic of this schedule to Bill 14.

In short, the County and District Law Presidents' Association has conducted a fulsome review of the issues, a detailed deliberation of schedule C to Bill 14 and, in substance, heartily supports the proposed legislation and urges its speedy passage, subject to the outcome, of course, of these committee hearings and the will of the Legislature.

The inclusion of the definition of "legal services," the delineation of those practising law and those providing legal services, the proposed governance structure, proposed guidelines for licensing, discipline, practice standards, continuing education and, quite importantly, mandatory errors and omissions insurance ensure that the legislation will work once passed. It will work, subject to two outstanding matters which must be addressed post-passage.

The first is the allocation of appropriate seed capital to the establishment of the additional infrastructure which will be necessary for the regulation of legal service providers, commonly known previously as paralegals; and secondly, the speedy development by the Law Society of Upper Canada of the scope of activities in respect of which legal service providers may practise or which they may engage in.

In CDLPA's view, and I gather in the present view of the law society, the areas of legal service for the purposes of those licensed to provide legal services should be limited to, firstly, Small Claims Court, where there is no

permanent waiver of general damages for personal injury; secondly, provincial offences court, where there is no long-term prospect of incarceration; thirdly, tribunals, agencies and commissions which permit representation by agents presently; and lastly, other bodies which presently permit legal agents to appear.

Notably, non-advocacy roles such as the preparation and drafting of instruments, contracts, documents, wills, separation agreements, powers of attorney and the like should not be permitted for legal service providers. Errors in these areas, as mentioned by my colleague Orm Murphy, are discoverable much later in time, are not generally susceptible to remedial court orders for rectification, and result in irreparable and irrevocable harm where errors do occur.

Finally, the drafting decision of the drafters not to utilize the term "paralegal" and provide a definition for that term is, we in the County and District Law Presidents' Association believe, both forward thinking and laudable. The licensing of legal service providers will be task-specific and so the use of the term "paralegal" would borrow from what we view to be injured and past terminology and mislead members of the public away from the limited scope of the licensing regime proposed under the legislation. It may in fact likely lead to the notion in the minds of the public of an additional professional designation and a new order of professionals, which is clearly not within the intent of the legislation nor, frankly, needed for the purposes of a regime of regulation.

The balance of the County and District Law Presidents' Association's comments, which I will spare you, is included in our submitted material, which is a summary of our presentation today. I would simply say finally that I would like to thank you for the opportunity to appear both on behalf of myself and Ormond to speak to you today. We would be prepared to answer any questions you might have in respect of this. I would reiterate that the County and District Law Presidents' Association, which represents the member lawyers across the province of Ontario of those local law associations, supports the broad public interest and goals of Bill 14, specifically schedule C thereto, and encourages its speedy passage.

The Chair: We'll start with the official opposition; seven minutes each.

Mr. Runciman: Thanks for your contribution here today. I am curious, though, given the scope of this legislation—the Attorney General opted to throw everything but the kitchen sink into this in terms of court administration and other changes to the Law Society Act, the Justices of the Peace Act, the Limitations Act, the POA. There's a whole range of areas that I would think would be of some interest to the county and district law associations.

To me, it sends out the wrong message. We've heard a lot of concerns over the course of the hearing process about the approach of the legal profession to this legislation and it's all been focused on paralegals. There are so many other impacts here of significance, which I know Mr. Kormos and I certainly have an interest in and concern about. I'm just really baffled by the fact that virtually every lawyer appearing before us is talking about what could be construed by some as self-interest. I'm wondering why in the world you don't have any commentary on any other element or impact of this legislation other than paralegals.

Mr. Murphy: Firstly, I don't think, in terms of being an association that represents lawyers—from your perspective, Mr. Runciman, I can certainly see that there would be other issues that have ramifications to the public. Remember, our constituency here and the people I represent are practising lawyers primarily outside the city of Toronto. In terms of the issues that have come up before us in Bill 14, the paralegal issue is the one that's been paramount in our concern. That's why we have addressed it. Other associations, who are more focused in on specific issues like the previous presentation that you heard, may have their own distinct feature, but certainly our association considers this aspect, schedule C of the bill, to be paramount in our consideration.

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Mr. Runciman: This is not a criticism; I guess virtually everyone who has appeared has a self-interest in the sense of the protection of their own organizations or businesses and the impacts, negative or otherwise, this might have. I'm looking at the bigger picture, where I think there's a role here to play for your profession in offering members of the Legislature input and advice with respect to this whole range of dramatic changes, in some respects, that the Attorney General and this government are putting before us.

As I say, it's passing strange and it raises doubts about some of the other positions taken. I'm not surprised by what you've submitted here. We've heard this from a number of other organizations and certainly we'll be taking it into consideration as we go forward. So thanks again for being here.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, gentlemen. I share a great deal of Mr. Runciman's concerns. That's why you heard me express gratitude to Mr. Colangelo, who was here just a few minutes ago, talking about section 116, a very serious matter, yet there's a paucity of interest in it from members of the bar. That's where it's got to come from because the general public doesn't know about this kind of stuff unless you're like M. Kolody, who's personally and tragically involved because he's a parent of an innocent victim; similarly with the Limitations Act amendments; similarly with the amendments that have the capacity to seriously change how evidence is given in provincial offences proceedings. So there we are.

I heard you when you said that lawyers clean up the mess, the basket cases that come into your office. The problem is, lawyers only clean them up if there's enough money left in the bank account to fund the cleaning up of the mess. Look, operating a law office is an expensive proposition: the overhead, the ongoing education, the report services alone if you're going to keep on top of the

law, especially presumably in your own narrow area. You have the same problem with cleaning up messes that lawyers make: the basket cases, huh?

Mr. Murphy: The difference is, of course, that there's a compensation fund. There is insurance for lawyers. When the paralegal does it, at the present time there's no compensation fund. There is no insurance.

Mr. Kormos: All right, sir, but when a constituent comes into my office with a matrimonial matter and he or she has gone through one, two or three lawyers and shows me accounts for $20,000 and $30,000, and you haven't even got the bare bones of an interim interim order when it comes to things like custody and support, there's no money left, and the last lawyer filed his or her—what's the notice you file with the court to be removed as solicitor of record?

Mr. Murphy: That's right.

Mr. Kormos: You know what I'm talking about. That's what I'm talking about. There's no claim to the law society because the law society is most notably not in the business of protecting people from the lawyer who very scrupulously drains an account, and that's one of the tragedies.

I hear you, but let's not—

Mr. Murphy: Can I respond to that?

Mr. Kormos: Sure.

Mr. Murphy: I'd like to respond to it because what we're talking about here is creating a system for paralegals which already exists for lawyers. To pick up on your point about two or three lawyers who have billed $20,000 or $30,000 and the barest order hasn't been done, it seems to me that there wouldn't have been a lot of value added to that file, that there wouldn't have been a lot of constructive work done on that file. That's the point you're making. That's the legitimate point that your constituent would be making. Having said that, the law society—and I'm not here to defend the law society—does have a bureaucracy, once a complaint is lodged, to deal with those issues. It may be that the assessment of the account is what is required. But at least there's a phone number. At least there's some place they can go and your constituent can get some assistance—

Mr. Kormos: And we all agree with you. Paralegals should be regulated.

Mr. Murphy: Thank you, sir. That's what we're here to say. Can I make one other comment?

Mr. Kormos: Of course.

Mr. Murphy: You talked about why we're not here dealing with all sections or all parts. The County and District Law Presidents' Association, as I mentioned earlier, is dealing with a practising bar. Our association is concerned with things like courthouses and proper facilities, courthouse security and proper minimum standards, matters that you may have seen in the press recently. Yesterday I was interviewed on CBC Newsworld for the failure of the federal government to appoint judges. We are dealing with nuts-and-bolts issues of the practice. So in terms of looking at the more esoteric issues in other aspects of the bill, that's not something this association is dealing with.

Mr. Kormos: And you're bang on. As a lawyer, you'd never recommend to a client to sign a contract that said, "Trust me, the details are going to follow." That's exactly what paralegals are being asked to sign on to: "Trust me, the details will follow," in terms of scope of practice, in terms of standards, in terms of who's eligible, in terms of the cost of belonging. Lord, do you understand the concern that paralegals have? I agree, everybody here agrees, about regulation. I'm not even dismissing out of hand the capacity of the law society to regulate. But it's one of those "Trust me" situations. You'd never tell a client to sign a contract that said, "Trust me. We'll work out the details later," would you?

Mr. Murphy: I'm sure, Mr. Kormos, you're aware that there were extensive negotiations between members from my group and the paralegals in terms of trying to find a cohesive group of paralegals to deal with some of those issues, and that negotiation didn't occur.

Mr. Kormos: That's quite right. We're still dealing with a bill that says, "Trust me." The bill doesn't spell out the scope of practice. The bill doesn't spell out the standards. The bill doesn't spell out what paralegals can expect to pay by way of fees. The bill doesn't even provide for membership of paralegals in the body that's going to be regulating them, like lawyers have. That's one of my very serious concerns. You don't share it.

Mr. Murphy: No, from my end, I don't share it.

Mr. Kormos: Fair enough.

The Chair: Thank you. Mrs. Van Bommel.

Mrs. Van Bommel: Thank you for your presentation. I just want to dwell on the fact that you are the County and District Law Presidents' Association, so I'm going to assume that a large number of your membership practise in rural and northern Ontario.

Mr. Murphy: In fact, all of them.

Mrs. Van Bommel: Okay. My experience in that situation, having a very rural riding, is that very often lawyers do not have a full-time practice in one community. They may do Mondays, Wednesdays and Fridays in one community and Tuesdays, Thursdays somewhere else, or Friday afternoons. The assumption is that there's ample opportunity and need for paralegals to be available in these communities. I'm just trying to get a handle on how many paralegals you would see in the northern and rural communities. Do you have any idea?

Mr. Murphy: No, and I don't think anybody knows, because in fact they're not identified as a profession. There's no way in which anybody keeps statistics on it. When we were originally involved in this—I think the best assumption is that there were something in the neighbourhood of 1,000 advocacy paralegals who are practising in the province. When I say "advocacy," I'm talking about the people you see on television: XCopper and POINTTS and those sorts of people. Then for the non-advocacy ones, the ones who are doing wills, real estate transactions, incorporations, and divorces, family law and so forth, I think the sense is that there are probably another 1,000 or so of those people as well.

Mrs. Van Bommel: This morning we had here the president of the PSO, the Paralegal Society of Ontario. I

asked her about the number of members. Would you be able to identify, in your jurisdictions, the number of paralegals who would belong to the paralegal society?

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Mr. Murphy: I have no idea of the numbers. The problem is that when you're talking about the PSO, there are, as you may know, a number of paralegals who practise who don't belong to any of the associations. So there's that group that are unnumbered. Then there are a number of associations that represent them as well. As a consequence, it's a pretty divergent group. It's not something that we have a handle on.

In my role I travel across the province and speak to the county law associations. Last weekend I was in Fort Frances and Kenora, and issues of incompetent paralegals—if they were doing a good job, no one would complain about them. It's the incompetent ones I hear about. Those are the people the bar wants something done about, and I can tell you that those people are in fact practising law in a fashion in those towns.

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

INTELLECTUAL PROPERTY INSTITUTE OF CANADA

The Chair: The next group is the Intellectual Property Institute of Canada.

Mr. Kormos: Chair, while these people are seating themselves, we've been provided with the report prepared by Philip Kaye, research officer, indicating that lawyers, process servers, private investigators and security guards can access MOT records in terms of using a licence plate number to get the identity and address of the owner of the car. I would appreciate some expansion on that.

The issue is within the context of municipalities looking for this information for, let's say, enforcement of parking tickets, amongst other things. Is there a fee charged? Is the fee variable? How, if at all, is there access to these by border officials? In other words, when Ontarians travel to the United States at Buffalo and Fort Erie, do American authorities have access to our MOT records such that they can input the licence plate number and get information about the owner of the vehicle?

Similarly, and I appreciate that that may well not be provincial jurisdiction, how do they access CPIC-type information, police records? Do they get the full CPIC, which is not just records of convictions but also any amount of highly editorial information? What fees are charged to them for that service?

Ms. Drent: For CPIC?

Mr. Kormos: Yes, for CPIC; just a little add-on to make legislative research's life more interesting. Thank you kindly.

The Chair: Thank you very much.

Good afternoon. You may begin your presentation. You have 30 minutes.

Ms. Cynthia Rowden: I'd like to start by thanking the chairman and members of the committee for giving us the opportunity to appear before you today. I am representing the Intellectual Property Institute of Canada, and I will occasionally use our acronym, IPIC. Just to summarize our submission, we believe that the proposed bill, the Access to Justice Act, ought to be specifically amended to exclude from the protection of the act right now the activities of patent and trademark agents.

I'd like to begin by introducing myself. My name is Cynthia Rowden. I am the president of the Canadian intellectual property institute. I'm a lawyer practising with an intellectual property law firm here in Toronto. To my left is Joan Van Zant, who is a patent agent, not a lawyer, and a senior partner in a national law firm; the national vice-chair of IP, intellectual property, for that firm; and a former president of our organization. To my far left is Michael Erdle, who is currently our vice-president. He is a lawyer practising with a Toronto firm as well. To my right is Michel Gérin, who is our executive director.

IPIC is a national professional association of patent agents, trademark agents, lawyers and others, including IP managers and administrators who work in law firms, agent firms, companies, universities, hospitals and the government. A majority of our members both work and reside in Ontario. Our members protect intellectual property assets. Those assets include patents, trademarks, copyright, trade secrets and industrial designs. By statute, all IP rights are areas of exclusive federal concern.

What do agents do? We work with companies and individuals in Ontario, in Canada and nationally to develop and protect IP rights. Our clients include those involved in manufacturing technology, drugs and medicine, software, entertainment, food and beverage manufacturing of all types, agriculture, hospitals and universities. Some of Ontario's biggest customers are our clients: RIM, Sick Kids, Husky, Magna, all Ontario universities, Ontario hospitals, the Toronto Stock Exchange and Nortel, just to give you a very short example of the list.

Mr. Kormos: Nortel?

Ms. Rowden: Yes. Part of our job is to educate people about intellectual property rights and the importance of filing patents and trademarks in Canada and elsewhere.

Patent and trademark agents prepare and file patent and trademark and copyright and design applications with the appropriate federal IP offices. They liaise with colleagues in other countries to obtain foreign IP rights. We act for our Canadian clients to obtain foreign IP rights. We appear before appropriate federal tribunals in the patent office, the trademarks office, the registrar of designs and specifically the Canadian Intellectual Property Office. We draft documents and evidence relating to matters before the respective IP offices. And we draft and file assignment documents and other transfers.

Unlike others who may have appeared before you today, I am a lawyer who is going to take the position that the bill has gone too far with respect to the applicability or the definition of "providing legal services."

Our comments on Bill 14 are set out in detail in the written submissions which we have already filed and which I believe you have copies of today.

We have seven points, and a couple of those we want to address in a little bit more detail today. To review, our issues with the bill are as follows:

First, there was never any discussion at any level about the need to regulate patent and trademark agents. However, to regulate paralegals, a very broad definition of "providing legal services" was drafted. The definition is clearly broad enough to cover the regular activities of patent agents and trademark agents.

Agents are already fully regulated by the federal government. The Ontario government did not consult in advance with our organization or the federal government regarding the implications of this bill. In fact, it was our organization that informed the federal government of this issue. We understand that the Commissioner of Patents, Registrar of Trade-Marks and CEO of the Canadian Intellectual Property Office has written to the Deputy Attorney General. As of yesterday, I understand that no response had been filed.

It is our submission that the field of regulation of agents is entirely occupied by the federal government, and it is not only unconstitutional for the province to propose additional regulatory requirements for agents, but it is also unnecessary for any additional requirements to be imposed.

To give you some background, agents are now a highly educated and trained group of professionals who, both by practice and law, are fully regulated. In our firms, agents are treated as professionals. They are not treated as paralegals. Most patent agents have educational backgrounds—often at the graduate and postgraduate level—in a specific field of science or engineering.

Both the Patent Act and the Trade-marks Act and regulations set out minimum periods of training, which must take place under the supervision of a registered patent or trademark agent. This training period applies for both lawyers and non-lawyers who seek to become registered patent or trademark agents. In fact, the training program set out in the acts is longer than the articling period currently enforced by the law society for lawyers.

Following that period of supervision, all patent agent trainees, including lawyer agent trainees and all non-lawyer trademark agent trainees, must also write qualifying examinations. All agents will attest to the thoroughness, complexity and difficulty of these examinations. The exams are set jointly by the federal government and our organization, administered by the federal government and jointly marked by employees of the patent and trademark office and our organization.

Once the exams are passed, the names of agents are entered on the register, which is maintained by the federal government. The register can be accessed by the public, who can obtain a list of registered patent and trademark agents and firms with registered agents. Registration must be renewed and appropriate renewal fees paid annually to the federal government. IPIC offers a group insurance program for errors and omissions insurance to agents.

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The federal government has the right to, and does occasionally, remove agents from the register for improper conduct.

Our organization offers multiple continuing education programs, some of which have been accredited by the Law Society of Upper Canada and the New York law society's board of continuing education.

This is a complete scheme for the regulation of agents. It is enacted in the Patent Act and the Trademarks Act. Only the federal government has competency over patent and trademark matters in Canada.

Because of existing federal regulation, any provisions in the bill regarding agents would appear to be ultra vires and thus ineffective. The Ontario government cannot enact a competing regulatory scheme in the face of an existing federal regulatory scheme. However, certainty and clarity require specific exclusionary language for agents. This will not only protect agents by avoiding any doubt as to the intent of the legislation, but it is necessary to protect the validity of the legislation for others.

The government must, of course, be well aware of the Mangat decision that went to the Supreme Court of Canada involving the British Columbia law society's attempt to regulate paralegals. In that decision, the Supreme Court of Canada noted that representation by non-lawyers and specifically patent agents before the federal tribunals was within the federal government's competency, and recognized both the expertise of certain groups other than lawyers and also the legislative intent to permit increased access to these tribunals by non-lawyers.

Currently, the bill, on its face, specifically refers to persons acting as an agent under an act of Parliament. Thus, there is a plain constitutional issue posed by the bill. To reduce the impact of clearly ultra vires legislation, which could easily have an impact on the whole bill and not just its applicability to registered patent and trademark agents, a specific exclusion is required.

Any doubt about the impact of the legislation being harmful to agents, their employees and their clients must be resolved now. Should the bill ever be interpreted to apply to agents, there would obviously be additional educational and exam requirements, additional licensing and insurance fees—requirements not present in any other province—and also an attempt to have a law society regulate patent and trademark agents. No other country has ever tried to do that.

Ontario agents already compete for work with agents in other provinces and very often agents in the United States. Any steps that will make it more difficult or expensive to hire and retain agents will shift work out of Ontario. This will also create a barrier to entry for registered patent and trademark agents in other provinces who may wish to move to Ontario.

The protection of innovation is very important to Ontario's economy. It is our view that this will discour-

age the growth of a professional group whose existence is fundamental to the protection of innovation in Ontario. It will result in increased costs to companies in Ontario and it will in all likelihood result in companies deciding to forgo intellectual property protection in Ontario. In our view, this could very well have a dampening impact on innovation in Ontario.

It is clear, particularly from the last speaker, that there will be additional regulatory requirements and additional costs associated with paralegal regulation. These administrative costs will no doubt be passed on to those seeking intellectual property protection in Canada, if not merely general taxpayers. That is completely unnecessary for registered patent and trademark agents, who already have a full regulatory scheme in place.

We do not want exclusion to be handled in any way that is not clear, readily apparent or subject to change without proper notice or consultation. For that reason, it is our strong recommendation that an exclusion that might be proposed by a bylaw of the law society is not satisfactory.

The law society clearly has experience dealing with paralegals. They've been involved for years with paralegal training and consultation. They have been concerned with the activities of paralegals for decades, and they are also concerned about how the activities of paralegals overlap with those of lawyers. This does not apply to registered patent and trademark agents. The law society has no history of dealing with the consulting, training, supervision or regulation of patent and trademark agents. That role is entirely occupied by the federal government.

Our members are justifiably concerned about the impact of the benchers of the law society making decisions or exemptions in the absence of any history or background with our group. For that reason, we want to ensure that there is a specific statutory exception. We do not want this issue to be dealt with in the convocation of the law society.

I am a lawyer. Michael Erdle is a lawyer. We clearly respect the law society, but we know very well that its activities are not subject to the same level of review, public consultation and scrutiny that an amendment to a bill would be. Our members are justifiably concerned that bylaw exemptions are not guaranteed and may not be permanent. Clarity, certainty and respect for the Constitution require an exemption.

Those are our submissions. Thank you very much.

The Vice-Chair: Thank you very much. We have about 18 minutes left for questions and comments. I will start with Mr. Kormos.

Mr. Kormos: Thank you very much. I agree. Your comments are similar to so many comments made by other people who have been caught in this huge net that's been cast out there. I also agree that it's bad form to have this broad shotgun approach and then say, "But for the people listed in the exemptions," especially when it's not even the Legislature making the exemptions. It's delegated to a body over which there's no direct control. That's the nature of that beast.

Have you thought about a definition of "paralegal" that would inherently exclude parties regulated otherwise within their professions by federal or provincial bodies? We've got social workers coming here this afternoon at some point. I don't know what they're going to say, but I'm anticipating they're going to say, "We shouldn't be covered because we have a college of social workers that regulates our members' conduct and does all the things that this type of regulatory scheme does." Have you thought about what type of amendment would come into the bill, rather than just saying, "And by the way, patent agents are excluded" because that's going to be a long appendix, isn't it?

Ms. Rowden: If you're not prepared to have a specific exclusion for registered patent and trademark agents, it strikes us that it would be easy to exclude professionals who are already regulated by another legislative authority, i.e. the Parliament of Canada. That would specifically avoid the constitutional issues and would also clearly encompass the activities of registered patent and trademark agents.

Mr. Kormos: Ms. Drent is right now working on some research in response to the bankers who were here. We noted that they, of course, are federally regulated. There are loans officers who would be giving legal advice pursuant to Bill 14. Can they be the subject matter of provincial legislation, provincial regulation, since it's a federally regulated industry? Similarly, immigration consultants, where, in a peculiar sort of way, CSIC, created by the federal government, purports to regulate them, but it's a voluntary membership. So that makes it a little more difficult. What do you think?

Ms. Rowden: I think there are a number of federal organizations. The actuaries would apply as well.

Mr. Kormos: The actuaries were here, yes. A very exciting presentation.

Ms. Rowden: I think it may be difficult to do it by way of a definition. I think our preference would be by way of specific language, identifying the groups that you intend to exclude. For our purposes, an exclusion that covers either registered patent and trademark agents specifically or professionals who are already fully regulated by the federal government would apply. That would clearly cover our organization right now.

Mr. Kormos: Ms. Drent, I haven't seen the judgment referred to that came out of BC. We're going to get it?

Ms. Drent: Yes,

Mr. Kormos: Thank you kindly.

The Vice-Chair: The government side?

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Mr. McMeekin: Thanks very much for your presentation. Picking up on a point that my good friend and esteemed colleague Mr. Kormos made about a definition, you should know, if you don't already know, that several groups have come already and made presentations suggesting that professions that are otherwise regulated under a federal or provincial statute or relating directly or even indirectly to either of the two senior levels of government as legislative apparatus be exempted. Your

presentation is entirely in keeping with that evolving generic thrust we're hearing. I think every second presenter is making a similar kind of point, and I think the message is getting through. Several groups have referenced that, out of their concern, they contacted the law society to get a statement about their perceived intention about granting an exemption or not following through. Have you had any contact directly with the law society?

Ms. Rowden: We've met with the law society and we indicated our concerns both with respect to the existing regulatory scheme and the constitutional issues. At that time, they advised us that this was the government's legislation and that it was the government that we had to make our submissions to. We have not received anything from the law society in writing or otherwise indicating that they do not intend to regulate patent and trademark agents

Mr. McMeekin: Given that response, if I were in your shoes, my antenna would be going up, because they've written letters to some groups saying that it's specifically their intention not to regulate. So if you're not getting that kind of response, maybe you should continue to have some dialogue with them, because they have in fact responded in a quite different way with a number of groups.

Ms. Rowden: Actually, we're waiting to hear back from the law society on a number of issues.

The Vice-Chair: Thank you very much. I would like to express my appreciation for your coming.

CANADA COURT WATCH

The Vice-Chair: At this time I want to call forward Canada Court Watch, Vernon Beck, please. Welcome, Mr. Beck. You have 30 minutes for your presentation. If you don't use up the entire 30 minutes, the remaining time will be an opportunity for committee members to ask questions or make comments. Would you identify yourself for Hansard and then just proceed with your presentation.

Mr. Vernon Beck: On behalf of Canada Court Watch, I would like to thank the committee for the opportunity to make a short presentation here today. My name is Vernon Beck. I'm a justice advocate, an investigative reporter with the National Association for Public and Private Accountability and the Canada Court Watch program. We are a Canadian-based citizens' organization which was founded by Archbishop Dorian A. Baxter.

For those who don't know our founder, he was the first Canadian who successfully sued a children's aid agency and won. His case made newspapers worldwide because the Durham Children's Aid Society in that case was found guilty of the grossest negligence, incompetence, perjury and blackmail. Unfortunately, there was a recent CBC investigative report on TV in which the same Durham Children's Aid Society was reported on for a young boy who was being sexually abused and drugged while under the care of the Durham Children's Aid Society. Sadly, it seems that history repeats itself when it comes to children being abused by some of these CAS agencies in Ontario.

One of our organization's major initiatives is the Canada Court Watch program. We are the only citizen-based program that is devoted exclusively to monitoring the courts and reporting on issues relevant to the courts and the justice system. We are the only media organization that collects videotaped interviews of children and adults who have been in the court system for the purposes of research. We strive to make the justice system better by exposing the violations of the rights and freedoms of Canadians in the court system. We strive to make judges and those associated with the court system accountable. More information about our organization can be found on our organization's website at www.canadacourtwatch.com.

Based on our organization's experience over the last 10 years, the justice system as it currently stands here in Ontario has lost the respect of a great many Canadians, especially in our family and child protection courts. Every day our organization receives calls from children and parents in distress with the justice system in the Ontario courts. Many children call us. Many of them complain about Ontario's Office of the Children's Lawyer and how nobody is listening to their wishes and preferences. We have videotaped interviews from some children who are telling us that they are being coerced and coached by lawyers from Ontario's Office of the Children's Lawyer. We have this on videotape. We even get calls from lawyers—

The Vice-Chair: Excuse me, sir. I think at this point I should caution you. While members enjoy parliamentary privileges and a certain protection pursuant to the Legislative Assembly Act, it is unclear whether or not these privileges and protections extend to witnesses who appear before committees. For example, it may very well be that the testimony you have given or are about to give could be used against you in a legal proceeding. So I want to caution you to take this into consideration as you make your comments.

Mr. Beck: I understand, and I will only state that—

Mr. Kormos: On a point of order, Madam Chair: Talk about giving legal advice. Look, he's here, has lawful standing in front of the committee, and quite frankly that sort of admonition—I mean, he comes here at his own risk, but that type of admonition is, in my view, entirely inappropriate for the Chair to give unilaterally. I'm sorry; I find that very bizarre.

The Vice-Chair: I simply want to caution the witness for his own protection.

Mr. Beck: Thank you, Chair. I understand. Let me only state that as far as any statements I make here, we generally do have the videotaped or audio-taped evidence to back up what I probably will say today.

The Vice-Chair: Thank you for that.

Mr. Beck: To continue on, we get calls from lawyers as well with valid complaints about the administration of our courts and about the judges themselves. Many lawyers are telling us that the system is horribly broken. Our

own investigations confirm this. As a volunteer organization, we cannot handle the dozens of calls that come into our organization each week. We are planning to submit a more comprehensive report to the government at some point in the future after a number of our ongoing investigations are complete.

Although the problems with the justice system are just too numerous to deal with today, there are two or three issues that I would like to bring to the attention of this committee because we believe that they can be addressed immediately and they are of utmost urgency.

The first issue I'm going to talk about today is what we feel is the obstruction of justice by judges and court officials regarding the use of recording equipment under section 136 of the Courts of Justice Act. The second issue is the access of the media to the courts.

Court Watch is gravely concerned about what a growing number of citizens see as a blatant obstruction of justice by some judges and court security staff under section 136 of the Courts of Justice Act. Section 136 of the act—and I think there's been some testimony previously—clearly gives citizens, lawyers and parties acting in person the right to take a recording device into the court for the purpose of supplementing their notes in their own court hearing. It's quite clear. The current law makes sense. It's reasonable, it's fair and it complies with the principles of fundamental justice. Yet this simple section of the Courts of Justice Act is being routinely violated by judges and court staff, who have been entrusted to uphold the law and to protect the rights of the citizens of Ontario.

To give you some examples of what I'm describing here right now, last summer at the Collingwood court, Madam Justice Lydia Olah ordered police to padlock the courtroom doors. A lock and key were used to padlock the people inside, and members of the media were told that they had to stay out by the police officers. There was no court order for that decision. Two armed OPP officers stood outside the court doors and said that if any members of the media approached the courtroom door, they would be arrested and taken away.

In that case there, Madam Justice Olah abused her power as a judge because she directly instructed the police to interfere with the law. Police are supposed to be acting on the Criminal Code or under the specific instructions of a court order, not taking instructions from a judge in the backroom of the court. Officers are supposed to get their instructions from the chief of police, not from a judge.

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Prior to that incident, Justice Olah did the same thing again at the Newmarket court. She ordered the media out of the court and threatened them with arrest without giving the media even the opportunity to argue their position in the court. They were threatened with arrest if they didn't get out. This abuse of power is clearly the actions of a tyrant.

Just recently, Justice Waldman, at the court at 47 Sheppard Avenue East, after taking two months to render a decision on the matter of allowing a person to record their own court hearing under section 136 of the Courts of Justice Act, refused it. In her endorsement she said that the practice directive of former Chief Justice Howland, which clearly granted citizens the right to record their hearings, was not applicable in her court and neither was the Courts of Justice Act. Justice Waldman came up with her own decisions as to why court recordings should not be allowed, one of them being that if there were even allegations of violence against the parties, this should have a bearing on the decision to allow recordings in the court. There is no basis in law for her findings. They are clearly flawed. They're frivolous. They're an embarrassment to the administration of justice and a blatant waste of our tax dollars.

Another judge in Hamilton, after a lengthy recess to ponder the issue of allowing someone to tape-record their hearing, came back into the court and said that it would be okay for that person to tape-record their hearing, but the judge said they would have to remove the tape from their recording device and place it into the court file. Of course, they can't hear it. It would remain there at the court. It's absolutely silly. It just defeats the whole process of allowing someone to review their notes for the day. Arguing that took about three hours of court time. The next time that party came back to court, the judge changed his mind and said, "Okay, we're going to allow it this time." But the hours that were spent arguing that in court were almost a joke to members of the public who where sitting in the court that day. It was almost a comedy.

Just a few months ago—and I think it was maybe in March or April of this year—a high school teacher went to the court in Brampton intending to supplement his notes with a tape recording. He was stopped at the entrance to the court and was threatened with arrest if he attempted to bring the tape recorder into the court. He had a copy of the Courts of Justice Act with him. He showed it to the officers there. He said, "This is the law. You people are supposed to be enforcing the law." The officers' response to this teacher was, "That doesn't apply to us, and if you try to bring it in, we're going to arrest you." Needless to say, he had to walk out to his car and leave his tape recorder there. He went into the court and the judge again refused it, with no explanation.

One mother in Kingston reported that when she took her tape recorder into the court, again, to simply record her court hearing, court staff immediately ran into the back to advise the judge that there was a tape recorder in the room. The judge refused to come into the courtroom as long as the recording device was there. Court staff then seized her personal property from her and took it outside the courtroom. She has reported that ever since that time, whenever she goes to the court, she is now being taken to a special room and she is body-searched. She said that hands go down inside her bra to see if she might be carrying a recording device.

Another strange thing is happening in the courts. Misleading signs are being posted—many of these are on

paper; they're laminated—telling the citizens of Ontario that it is illegal to bring tape recorders and to tape-record in the court. They're clearly misleading. They give no consideration to the Courts of Justice Act. They are clearly intended to mislead citizens of Ontario into believing they have no rights under the Courts of Justice Act. Who is putting up these signs? Who has provided the instructions to have these court signs go around in various courts? They seem to have the same wording, so someone is putting them out.

This ongoing comedy in our courts is costing the taxpayers hundreds of thousands, if not millions, of dollars per year and is tying up significant court time. We have high-paid judges who in most cases are earning over a quarter of a million dollars per year. They should be making real decisions, not getting into frivolous arguments over the Courts of Justice Act and whether people can supplement their notes with a tape recorder. What is causing the judges and all those who work in the courts to be so defensive about people simply supplementing their notes with a recording device? What are they afraid of? Something smells, and that's what the average person on the street is saying, too.

Moving on to another issue, the tampering with official court transcripts: We've received disturbing information from citizens which would reasonably suggest that official court transcripts are being unlawfully tampered with in some cases. We have people calling us and saying they have obtained transcripts and that some of the words on the transcripts are missing. In the last year, we had at least three lawyers, members of the bar, who called us and indicated the same thing. They believe that transcripts were being altered at the court. In fact, one of the lawyers, a female lawyer, indicated to us that she felt somewhat afraid if she was to question this. She felt afraid for her safety if she was to question this.

Another citizen reported that when he disputed the transcripts and asked to listen to the court reporter's tape—he was given that opportunity; he was taken to a private room to listen to it—suddenly he uncovered where the tape had been dubbed. What happened is that there was suddenly a blank in the tape. He reported that there was a blank and suddenly a previously-recorded section of the tape was at the end. There was about a 20-second gap. This only comes about when someone has reduced the length of the tape and they forgot to erase the end. As soon as that became evident, he stood up and said, "What is this?" He was immediately ordered out of the room. The tape machine was turned off. He was kicked out of the room.

We have official letters from court staff admitting that they have lost transcripts; not only the transcripts, but they have lost the audio recordings that go with those transcripts. Some of these citizens have reported that these were critical court records needed for their cases.

Many citizens report that transcripts are being reviewed and approved by judges before they're allowed to get them, and that judges are taking months to get around to reviewing these things. We have cases here where people are taking nine months to get their transcripts. They're getting them, and the people are saying there are things missing out of them, that they're not accurate. The public can see there's something wrong with this area of accountability and transparency.

The next issue I'd like to raise, and it will be the final one I raise here, is interference in peaceful protests by police and court officials with the public at the courts.

On August 25, 2006, Court Watch sponsored an event in Barrie. We called it a public awareness event in which citizens, both young and old, men and women, handed out flyers in the community of Barrie, including the geographical area around the court. We had supporters who stood in front of entrances to the court, over to the side, and simply handed out pieces of paper, 8½ by 11, to inform them of problems with the court. In fact, it was Justice OIah who was the topic of the flyers on that particular day. The judge was targeted because one of the ways we use to bring accountability is to embarrass and to bring forth where there have been injustices.

During this peaceful event, the citizens were harassed by police and court security. The people at the doors were clearly standing over to the side, outside the court, between the parking lot and the entrance to the doors, and approaching strictly members of the public, asking them to take a piece of paper and thanking them. Officers came out. They were saying, "You might be violating bylaws here. You might be facing litter charges." There were always officers coming out, standing and towering over these people as if, "You people are bad people." One lady, who happened to be 70 years of age, who was one of the two or three people who were at the park, had to go to the washroom. She's 70 years old; she simply wanted to go to the washroom. She went to the courtroom doors, and what she was wearing—supporters of our organization were wearing these T-shirts, which say "Canada Court Watch," and they give our website. A 70-year-old woman was wearing that T-shirt. She was refused entrance into the court to use the public washroom. The officer told her that the people inside the court had determined that she was a member of a gang because more than three people were wearing these T-shirts, and that under the court security act or something like that they were going to be enforcing that and she would not be allowed in, and if she tried to go in again she would be arrested under "gang." So we have a 70-year-old woman being labelled as a gang—no tattoos, and she's quite a respectable lady.

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One family reported that they were sitting in their car after the event—the event only lasted about three hours—with their kids. Police officers came up and asked them to identify themselves. They had children in the car and they were being asked to identify themselves. They just gave their first names, and they were heading on to a barbecue down at the beach, so they just kept going. They weren't near the court; they were in their car. Needless to say, about a week ago this couple got a call from the OPP at their home. The only thing they could

think of was that the police must have done a licence plate search on their car, found out where they lived, gotten their phone number and contacted them. This is nothing less than harassment, intimidation of citizens of this province who are doing nothing except to exercise their democratic rights to a peaceful protest and try to make the justice system better.

We've got dozens of similar incidents over the years at many courthouses where people were being threatened, intimidated. Another quick example I could give you is that a family may go to Family Court. It's funny: You'll see these court people come out and right away they select who gets to go in the court. We're supposed to have public courtrooms, but you'll see these staffers come out and they'll say, "Is your name on the court documents? If it's not, you can't come in." It could be a mother, a grandmother, uncles, aunts, but they're told they can't come in, only the people in the court, even though it's just a regular Family Court, open to the public. So there are court staff out there knowingly keeping people out.

Again we have to ask, why are judges and court officials creating such resistance to people coming in to see what's going on, to find out, to see what's happening to their friends, their relatives, their children, their mothers, their fathers and their brothers? The answer is very simple: Some of the judges and those in the courts are trying to hide what is going on and what is being said in the courts. They are trying to hide the truth. Members of the public believe that some judges and court officials are knowingly and maliciously obstructing justice. In our opinion and the opinion of many people in Ontario, judges and court officials are breaking the law and getting away with it because nobody has been challenging them up to now. We may be one of the first organizations that are actually doing this. There is growing public distrust of the court system because of the types of actions I described to you today. Those are some of the problems that we've clearly identified.

Our recommendations are: (1) On the Courts of Justice Act we would, as a general principle, like to see the use of recording devices permitted in the courtroom by lawyers, persons representing themselves and members of the media for the purposes of supplementing their notes, and that this be permitted without the approval of the judge. I believe that a similar recommendation was made by the Panel on Justice and the Media to the Attorney General's office. I think it was dated August 25. A committee was struck by the Attorney General and it made the same recommendation. We believe that this measure alone will save the province tens of millions of dollars, because right now perjury is rampant in our courts. We believe that a lot of the shenanigans going on are going to go away if people have another way of verifying what was said in the court, strictly for the purpose of supplementing notes.

The second recommendation is that we would like to see all these misleading signs taken down. They're clearly intended to mislead the citizens of Ontario. If signs have to be placed about recording, then simply tell the truth: Other than what's allowed under law, recording is against the law. That's fine, but at least put a reference sentence in there that says "except where permitted by law." People have requested this of the Attorney General and there's been no response. In fact, one worker with the Attorney General's office wrote a letter back and stated that the independence of the judiciary is the cornerstone of the Canadian justice system. Well, I'm afraid there are a lot of people who would challenge that statement. Judges are supposed to act within the law and protect people's rights under the law, not make their own law under the term "judicial independence."

Even citizens—if someone has one of those new camera phones; I don't have one—are being stopped and told they can't bring camera phones into court. Again, it's almost like paranoia. The people of Ontario are assumed to be guilty and are going to commit a crime before they even walk into court. People should be allowed to take their cellphones and stuff in there. There's a law that says that if you use it, you're going to get fined and you are possibly going to go to jail. Most people aren't that stupid. What are you going to do if you have a recording or if you snap a picture with your camera phone? If anybody finds that, you're going to be in jail. We have to assume that the citizens of Ontario are law-abiding people and are going to go into the courts just like I am. I have a cellphone on me. I have no evil purposes with it today.

The other issue we would like to see: We have a recommendation that the judges' reviewing of transcripts be stopped immediately. We don't need people at a salary of over a quarter-million dollars reading over things that aren't supposed to be changed. What's going on? Why are we paying judges a quarter of a million dollars and more to sit back and read papers which the people of Ontario expect are supposed to come out word for word as said? Something isn't right, and the people of Ontario would certainly think that there's something wrong here. This may be one of the reasons why transcripts are taking—

The Chair: Last minute; one minute.

Mr. Beck: Okay, I've almost run out, eh?

Other than that, I'm going to read from a quote from the late Prime Minister John Diefenbaker: "We must vigilantly stand on guard within our own borders for human rights and fundamental freedoms which are our proud heritage ... we cannot take for granted the continuance and maintenance of those rights and freedoms." Members of the committee, I believe that if Prime Minister Diefenbaker were alive today, he would be deeply disappointed by what he sees going on in some of our courts. It's time for the government to get our justice system back on track and ensure that our justice system holds up to the most rigid tests of transparency and accountability.

I thank the committee for the time here today.

The Chair: Thank you very much.

Mr. Kormos: Chair, if I may, this presenter made reference to, "Most people aren't that stupid in terms of

their cellphones." We should note that at least once a day one of the members of this committee has a cellphone or BlackBerry ring off or buzz off.

The Chair: Thank you, sir.

ONTARIO REAL ESTATE ASSOCIATION

The Chair: The next presentation is from the Ontario Real Estate Association. Good afternoon, gentlemen. You have 30 minutes and you may begin, but first I need to get all your names for Hansard, so if you could just state your names. Thank you very much.

Mr. Brian Walker: Brian Walker.

Mr. Gerry Weir: Gerry Weir.

Mr. Jim Flood: Jim Flood.

The Chair: Thank you. You may begin.

Mr. Walker: Thank you, Mr. Chair. Good afternoon, members of the committee. My name is Brian Walker. I am the president-elect of the Ontario Real Estate Association. With me today are Mr. Gerry Weir, who is the chair of our government relations committee, and Mr. Jim Flood, our association's director of government relations.

The Ontario Real Estate Association is a non-profit trade organization founded in 1922, which represents the interests of property owners and realtors in the province of Ontario. The association seeks to protect private property rights, encourages home ownership and promotes real estate as a safe, secure investment.

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To accomplish these goals the association works with a wide variety of provincial government ministries, related organizations and consumers. This submission is made on behalf of 45,000 realtor brokers and salespeople throughout the province of Ontario and our 43 member boards.

Ontario's real estate market is one of the key sectors of the economy, with both residential and commercial transactions creating significant employment and economic activity. Last year, Ontario realtors sold over $50 billion worth of residential real estate through the multiple listing service. Our commercial members facilitated billions more in investment, commercial, industrial and institutional transactions.

Mr. Weir: OREA is generally supportive of Bill 14 and the intent to regulate the paralegal profession. But, like a number of other groups that have come before you, we are concerned that Bill 14 as presently drafted could result in the Law Society of Upper Canada's regulating the real estate profession

As you know, schedule C of the proposed act is designed to legislate and license the activities of so-called "paralegals" and others who provide legal services. While we support the concept of licensing non-lawyers who provide legal services for a fee, Bill 14 casts its legislative net so broadly that many other professions could be adversely affected.

Subsection 1(5) of schedule C states: "For the purposes of this act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person."

Subparagraph (i) of paragraph 2 of subsection 1(6) states: "Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

"2. Selects, drafts, completes or revises,

"(i) a document that affects a person's interests in or rights to or in real or personal property."

If our analysis of these sections is correct, Ontario realtors, who routinely draft listing agreements and agreements of purchase and sale/lease, would be subject to regulation by the Law Society of Upper Canada, known as LSUC, or, at a minimum, hope to obtain an exemption from a LSUC bylaw.

It is our view that any form of regulation by the Law Society of Upper Canada is unnecessary from both a consumer protection and a regulation standpoint.

The practice of real estate in Ontario is governed by the Real Estate and Business Brokers Act, known as REBBA. It is administered and enforced by the Real Estate Council of Ontario, known as RECO, set up as an administrative authority under the Safety and Consumer Statutes Administration Act, 1996, by the then Ministry of Consumer and Commercial Relations.

Since the profession was given self-management status, a new Real Estate and Business Brokers Act has been proclaimed with regulations, including a code of ethics, a complaints compliance and discipline regime, and vastly improved education standards.

In short, Ontario's realtors are currently well regulated by RECO and the Ministry of Government Services. There is no need for a second layer of regulation. It would only cause confusion in the minds of consumers, increase red tape for real estate businesses and impose a new tax on the profession in the form of LSUC licence fees.

Not only is regulation by the LSUC unwarranted, we have an additional concern with the concept of seeking an exemption from them. Some members of the real estate bar have been very aggressive in interpreting the current limited exemption they enjoy under REBBA to allow themselves an unrestricted right to trade in real estate, whether or not it is related to their legal work. They want a bigger share of the fees associated with a real estate transaction.

By giving lawyers the authority to impose restrictions on what realtors may or may not do, you grant them the authority to reserve for themselves work currently being done by realtors and the opportunity to increase their revenues. That opportunity may be too great to resist and should be removed.

We therefore ask that Bill 14 or its regulations include a specific exemption for all individuals registered under the Real Estate and Business Brokers Act.

Thank you. We would be pleased to try to answer any questions you may have.

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

Mr. Kormos: First of all, I want OREA to know that Mr. Flood has been an incredibly valuable asset to us at Queen's Park and we appreciate his accessibility and his eagerness to participate in discussions around any number of areas here. OREA members, dues-paying, fee-paying members, should know they're getting value for dollar from Jim Flood.

Mr. Flood: May I leave now, please?

Mr. Kormos: That sounds like a set-up, doesn't it? It sounds like "but for," but it isn't. I appreciate the assistance you've given—I'm sure all of us—even when we haven't necessarily agreed, but that makes it all the better.

Mr. Flood: Thank you.

Mr. Kormos: There's agreement with your position. I think it's an unfortunate style of drafting legislation. I understand why it was. There's an effort to close every conceivable loophole that a renegade paralegal might try to employ, but I don't think it's a good way to write legislation. I don't think it's healthy. I don't think it should be the law society, through its bylaws in subsection (5), that exempts piecemeal, group by group, profession by profession.

On page 4, "Some members of the real estate bar have been very aggressive in interpreting the current limited exemption they enjoy": Expand on that. What are they doing? What's going on?

Mr. Weir: I'll give you one small example. There's an individual lawyer in the Owen Sound area who has created his—

Mr. Kormos: You've narrowed it down. Male or female?

Mr. Weir: We will not go there.

He has created his own website, which is advertising properties and FSBO, for-sale-by-owner, properties that have sold and so on and it is directly reflective to our industry, because we deal in real property.

Mr. Kormos: Of course. Many lawyers now have websites. Is this his general law office website?

Mr. Weir: He has a separate website for that particular item.

Mr. Walker: Most lawyers have an exemption under the act which permits them to sell real estate in the course of their normal law-making activity or in the course of a lawyer's normal activity. If it's part of a transaction of dealing with a customer that he—

Mr. Kormos: Give us a "for example."

Mr. Walker: As part of his service, if he was handling, I suppose, an estate and doing everything for that estate, it would probably be acceptable for him to market that property in a local newspaper or something.

Mr. Kormos: But a prudent lawyer would at least get a real estate—

Mr. Flood: Probably, but he is allowed to do that now.

Mr. Kormos: Okay, gotcha.

Mr. Flood: There is that exemption under REBBA, but it's tied to their legal work, i.e. the estate.

Mr. Kormos: Sure.

Mr. Flood: Some lawyers are pushing that envelope, and there are some lawyers who will tell you that they are exempt from the Real Estate and Business Brokers Act completely.

Mr. Kormos: How do they make money, then? Do they charge for the sale-by-owner listing or do they simply expect to pick up the legal fees?

Mr. Walker: No. They would be charging for the posting of the listing. They would be almost running a small MLS service where they're boosting the listings on the website.

Mr. Kormos: So if I went to "lawyer," "real estate," "Owen Sound," I'd find this website?

Mr. Walker: If you googled "Owen Sound real estate," I think you would find the website.

Mr. Kormos: That's interesting. Clearly that's a violation of the spirit of the provision—

Mr. Walker: Of the exemption that they have, yes.

Mr. Kormos: What have you done about it? Where have you taken this? Where does this go? Has it been resolved or has it been addressed?

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Mr. Flood: It's been discussed with the ministry; it's also been discussed with the Real Estate Council of Ontario, but I think both groups are somewhat loath to interfere. My realtor members may not like me saying this, but it's not a huge problem.

Mr. Kormos: Fair enough. Is the law society not interested?

Mr. Flood: Not to my knowledge. We have never addressed the subject with the law society.

Mr. Kormos: That would be interesting. It seems to me that if the law society is going to protect the interests that lawyers have in the status quo in terms of OREA regulation, which seems valid, they'd also be interested in ensuring that there were no abuses of it, because the legislator's response would be to say, "Okay. That's it. Game over." Right?

Mr. Walker: I think it's fair.

Mr. Kormos: You guys should get hold of the law society.

The Chair: Thank you. Mrs. Van Bommel?

Mrs. Van Bommel: Thank you very much. I just want to say thank you for your presentation. The same issue has been brought to us by previous presenters on the same sort of things. It certainly is part of the things that we will take into consideration.

The Chair: Mr. Runciman.

Mr. Runciman: I want to echo Mr. Kormos's sentiments about Mr. Flood. Certainly my working experience with him over the years has been very satisfactory, to say the least. We need more Jim Floods representing organizations around this place.

I am curious about the effort, if there was any effort in terms of consultation. I was, as you know, involved in 1996 in the move to self-regulation and am proud of it. I think it has worked pretty darn well. I'm wondering, in the process and the development of this legislation, was there any effort at consultation with your organization?

Were you blindsided by this? Did this just come right out of the ether? Did you have any knowledge that they were moving in this direction?

Mr. Flood: No. We got blindsided. We found out about it through the Real Estate Council of Ontario.

Mr. Runciman: Have you had an opportunity to have discussions with the Attorney General or his minions with respect to the intent and the fact that they've captured your organization? Is this just one of the unintended consequences?

Mr. Flood: Yes. I think it's an unintended consequence.

Mr. Runciman: Are there any assurances from anyone that there will be amendments to remedy the situation?

Mr. Flood: No. That's why we're here.

Mr. Runciman: I think you can count on amendments coming forward from perhaps both opposition parties, because we share the concern. We don't think this was an inappropriate initiative, a well-thought-out initiative.

I referenced earlier today that there's another piece of legislation before a committee sitting in another room where the government has over 100 amendments that they've brought in. So it speaks to the planning process, but I'll try not to be terribly political.

I simply want to give you assurances that we share your concern. We think this is a wrong road to be going down and we'll certainly be pursuing it on your behalf and on behalf of other regulated industries that have been captured by this legislation.

The Chair: Thank you very much for appearing before us this afternoon.

MICHELLE HAIGH

The Chair: The next presenter is Ms. Michelle Haigh. Good afternoon, Ms. Haigh.

Ms. Michelle Haigh: Good afternoon.

The Chair: You have 20 minutes, and you may begin. If the gentleman beside you wishes to present, he's going to have to state his name for Hansard.

Ms. Haigh: He's not presenting. He's just moral support.

The Chair: All right. You may begin.

Ms. Haigh: Thank you. For those of you who don't know, my name is Michelle Haigh. I am a paralegal practising solely in the Small Claims Court system. I've been in practice for approximately 10 years. I studied at Sheridan College and graduated from the court and tribunal agent program. Accompanying me today is Errol Sue. He's also a practitioner who is a paralegal operating solely in the Small Claims Court system. He's been in practice for approximately 24 years. We are not part of any paralegal association, but we are loosely associated with like-minded paralegals. I'm here presenting for a group of paralegals who think the same way that we do.

I am here to speak briefly about the proposed amendments to the Law Society Act.

Successive governments have talked for years about regulating paralegals. After finally asking the law society to assume responsibility for regulating paralegals and after they accepted the challenge, it was disappointing to see that this was part of an omnibus bill, which obviously makes your job more difficult than it should have been. I trust that appropriate consideration will be given to this issue and other matters contained in this legislation.

My colleagues and myself support the regulation of paralegals by the law society. At this stage, we do not believe that self-regulation is an appropriate option. The industry is simply too immature. I believe that you can look at what is happening to the Canadian Society of Immigration Consultants for some guidance. The limited information that I have is from published articles, but from all accounts it appears to be in disarray. Clearly, my colleagues and I, as well as others, do not want the same problems to occur in the regulation of the paralegal industry.

Within the paralegal industry there are many different views on fundamental issues, and it will be impossible to arrive at a consensus in the near future. Regulation is needed now. Having said that, I do have some concerns about regulation by the law society. My concern is with respect to the downloading of the details. The bylaws will determine the precise regulations of this industry, and until they are written, paralegals have no security about how their future will advance. Until the bylaws are established, we will not know (a) the classes of licences that may be issued to persons who are to be licensed to provide legal services, and (b) the scope of activities permitted under each class of licence and the qualifications and other requirements for each class of licence.

I understand that the bylaws will be determined by the legal services provision committee, which will be comprised of an equal number of lawyers and paralegals, in addition to three laypersons. I support the outline proposed for this committee. However, I would like to suggest that when appointing individuals to sit on this committee, specifically the five paralegals, every effort be made to appoint paralegals from an array of different backgrounds, but more specifically a paralegal to represent each sector of the industry that is currently supported by the law society and precedence, such as a Small Claims Court agent, an Ontario Rental Housing Tribunal agent, a traffic ticket agent etc. I think it's important to have each sector represented by a well-established and respected paralegal due to the fact that, without knowing what bylaws will be established by this committee, you can understand that the individuals in my profession are concerned about their future and livelihood.

The leading concern to my colleagues and myself are the terms "practise law" and "provide legal services," which are outlined in this regulation and used to identify the difference between lawyers and paralegals. We believe that many of the people we come across in the Small Claims Court, including the general public, sometimes making their first and only visit to the court, will be confused by these terms. Lawyers, yourselves and other

legal-minded people will understand the difference, but the average person would simply not know the difference and could be taken advantage of by unscrupulous individuals. These terms are too ambiguous and can be confusing to the general public, which I believe is one of the issues this legislation is trying to correct.

The general public is familiar with the word "paralegal," although in some cases they may not always know what a paralegal is or what we can do. One thing they do know is that we are not lawyers. Their confusion is not in the difference between a lawyer and a paralegal. We have found that their confusion is in what types of services a paralegal is permitted to provide.

We believe that one of the biggest misconceptions of the public is the belief that paralegals are currently regulated. Certainly this legislation, together with public education, could go a long way in protecting the public and informing them of their rights. However, if the terms "practise law" and "provide legal services" remain in this legislation and you do away with the term "paralegal," this could be a major setback for our profession and the intent of this legislation.

If one of the purposes of this legislation was to differentiate between a lawyer and a paralegal, I would submit to you that the proposed terms currently used in this legislation do not clarify the difference between the two professions for the public. If this legislation and the wording used within it remain unchanged, the potential for confusion, misinterpretation and misrepresentation is extensive. As a paralegal, I could simply have a client attend at my office and I can introduce myself as an individual regulated by the law society to provide legal services. From that statement, are they going to be aware of whether I'm a lawyer or a paralegal?

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In an attempt to satisfy these concerns, the law society has suggested that perhaps a person or a paralegal can identify himself or herself, for example, as a "traffic court agent." Although clear, it could be too cumbersome for individuals practising in more than one area of law. Can you imagine the business card or letterhead of an individual who is operating in Small Claims Court and the Ontario Rental Housing Tribunal as well as traffic court? There are many lawyers who currently practise in more than one area of law, yet they continue to be known as lawyers and are not required to identify themselves by the areas of law in which they practise. The word "paralegal" has been around for some time and it should be left alone. Our submission to this committee is that you find a way to include the words "lawyer" and "paralegal" in this legislation.

Our secondary concern, yet no less important, is with respect to the generality of the definitions of "provision of legal services" and "representation in a proceeding." In subsection 8(6), under the heading "Provision of Legal Services," it outlines that "if a person does any of the following," they are considered to provide legal services. In paragraph 3 of this subsection it states, an individual who "represents a person in a proceeding before an adjudicative body." Our concern arises in subsection (7), wherein it states,

"Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

"1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document."

Paragraphs 2 and 3 are not as much of a concern as paragraph 1 under subsection (7).

As you may or may not know, most financial institutions, corporations and even the Ontario government use collection agencies to collect bad debts. Most collection companies have a legal department that is responsible for pursuing legal action when the normal collection process is not helpful. Would these individuals or agencies be covered by this legislation? They draft and serve documents, and on some occasions represent or arrange representation for their clients in the Small Claims Court. This would mean that they are determining what documents to serve or file in relation to a proceeding. They also prepare pleadings and conduct searches to decide the appropriate individuals or entities that need to be named in a proceeding. The way the current legislation is worded, collection agencies would have to apply for licences by the law society. Is this something that you and/or the law society are prepared to undertake or consider?

In addition, under this same paragraph, it could be said that if an independent process server is hired by a self-represented litigant who is unaware of when or how to serve a court document and relies on the expertise of the process server, that process server who knows the rules of service and can competently assist the litigant would be required to be licensed by the law society. Even if a process server is hired by a lawyer or a paralegal to file and serve legal documents, and the process server decides in the field how that document is going to be served and on whom that document will be served, that would require them to be licensed under the provisions of this act the way it's currently worded.

Again, I believe the wording is ambiguous and too broad, and consideration should be given on how this section is worded and how it can be improved to properly define who is required to be licensed as an individual who provides legal services, or, better yet, who is required to be licensed as a paralegal.

In closing, although my colleagues and I have some concerns, as outlined in my presentation today, we would like to take this opportunity to state that we strongly support this legislation. We sincerely believe that paralegals should be regulated without delay, and we support the fact that the law society is the entity that will be regulating us.

Thank you for taking the time to consider the statements which I have made in my presentation. I would be happy to try and answer any questions you may have.

The Chair: Thank you very much. A couple of minutes each. The government side: Mrs. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. We've heard concerns about subsection (7) before. Are you a member of the PSO?

Ms. Haigh: No, I am not a member of the PSO.

Mrs. Van Bommel: Okay, because this morning when the president of the PSO was here, Ms. Barnes, I asked her how many paralegals she thought there were in the province, and she stated that she thought between 2,000 and 2,500 and that, of those, there were only 250 who were members of the PSO. That really constitutes about 10% of what she feels is the number of paralegals in the province. Is there a reason why paralegals do not come together and organize themselves in some kind of umbrella group or organization that would allow them to speak with a unified voice?

Ms. Haigh: I can speak on behalf of myself and colleagues with whom I work very closely. The reason we have been unable to associate ourselves with organizations like the PSO is that we don't have the same views. The paralegals I currently work with, and quite a large number of the very competent, professional paralegals out there, don't agree that paralegals should be operating in every area of law. They shouldn't be operating in family law. They shouldn't be operating in criminal court. They shouldn't be doing wills and estates. That's how the individuals feel whom I represent today.

With the PSO and organizations like that—there were, at one point, several organizations like them—there was no process for regulation that they were trying to impose on their members. Anyone could be a member. You pay the fee and you're a member. There were no standards you needed to uphold. We don't know of any bylaws that may have been written by them that you had to conform to. The only thing that I'm aware of is that you had to have insurance if you were a member. That was the only stipulation. Otherwise, you pay your fee and you're a member. It doesn't matter who you are or what you do. Based on that, I didn't feel that they best represented my views, and I know they don't best represent the views of colleagues that I'm here on behalf of today either.

It's hard to get one group together to represent all paralegals. There's quite a large number of paralegals out there who we believe should not be operating, who aren't ethical, who misrepresent themselves and don't represent the public in the way they should represented.

The Chair: Thank you. Mr. Runciman.

Mr. Runciman: Thanks for being here. It's refreshing to finally discover there is a paralegal out there somewhere who supports regulation by the law society. We've been wondering if there were any.

Ms. Haigh: There's actually a number of them.

Mr. Runciman: Hopefully we'll see more of them as well, because you've just said "individuals I represent." Whom are you representing, besides yourself?

Ms. Haigh: Individuals such as my colleague here, Errol Sue. There are other individuals such as Michelle Vanier, Teresa Medendorp and Leslie Alexander, and I believe Cathy Corsetti has the same views.

Mr. Runciman: These are all Small Claims Court—

Ms. Haigh: Small claims or Ontario Rental Housing Tribunal agents.

Mr. Runciman: So your ox wouldn't be gored in the sense of strictly confining the scope of practice.

Ms. Haigh: We hope not.

Mr. Runciman: But you're prepared to see others' oxen gored. That's what I'm suggesting.

Ms. Haigh: Absolutely. There are areas out there that paralegals are currently operating in that they should not. They don't have the education.

Mr. Runciman: Thanks.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Haigh, thank you very much for a very capable and articulate submission. I find it interesting that you share some of our concerns, and that is, the delegation of determining the scope of practice to the law society when, it's my view, that should be the job of the Legislature. I find your comments—oh, boy, the folks watching this. You're going to raise some hackles.

Ms. Haigh: I know.

Mr. Kormos: One of the suggestions you have is that the criminal courts aren't an area where paralegals should be practising. Right now the law allows agents, non-lawyers, to appear for people on summary conviction offences.

Ms. Haigh: Correct.

Mr. Kormos: What happens there? How do you deal with that? Somebody who is totally uneducated, totally unregulated, can for no fee go represent somebody and either help them or screw them royally in criminal court, but a trained paralegal who's regulated can't. How do you reconcile the fact that the law allows it?

Ms. Haigh: When you say "trained paralegal," what kind of training do they have, though? I think that needs to be strongly looked at. I do believe that if the law society is the only entity right now capable of regulating my profession, I would believe someone who is currently operating in that area of law and who is competent acting in that area of law can be licensed to continue to operate in that area of law. I'm sure that they could have recommendations from judges whom they've been before and so forth, but again, that's something that is not going to be covered by this legislation. It's going to be covered by the bylaws of the law society.

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Mr. Kormos: We've been waiting 20 years-plus for paralegal regulation. If it took two more months, maybe three, to ensure that it was the Legislature that prescribed the scope of practice, would that be a particularly big burden in the total scheme of things?

Ms. Haigh: No. If it would take two or three months and it would still pass in a very timely manner, we would again like to look at those amendments and support—

Mr. Kormos: You raised collection agencies. There has been a suggestion that anybody who is employed in an arena that is already regulated by provincial or federal regulation should not be subject to the paralegal regulation. I presume that in-house staff people for a collection agency are regulated by provincial legislation.

Ms. Haigh: Yes, the Collection Agencies Act.

Mr. Kormos: So would you exclude them, then, if they were in-house—for instance, if you were retained as an agent outside of the firm. If they were in-house, would you exclude them from the paralegal regulation?

Ms. Haigh: I would suggest that should be done. I think it's too cumbersome for the law society and this legislation to undertake that burden. If they're already regulated under another form where there is disciplinary action that can be done for misrepresentation or improperly doing their job, then let that regulation oversee them and don't include them in this new legislation.

The Chair: Thank you.

ONTARIO FEDERATION OF LABOUR

The Chair: The next presentation is from the Ontario Federation of Labour.

Mr. Chris Schenk: My name is Chris Schenk. I'm the research director of the Ontario Federation of Labour. I'm here on behalf of Wayne Samuelson, who is the president. I too want to talk about paralegals today. That's schedule C of Bill 14.

We've had a lot of correspondence on this issue. I took a look in my file and found that the drafting of letters went as far back as 1999, so it has been an interesting number of years here. What concerns us about this is that while we've long favoured some regulatory framework for paralegals, we still are unclear as to precisely what is going on here in terms of specific exemptions and regulations in general. We see the need for fee-for-service people to be regulated, but there are other paralegals or people doing paralegal-type work who concern us. I'm thinking of representatives at boards and commissions and tribunals. I think of the labour relations board, the Grievance Settlement Board, the Workplace Safety and Insurance Board, all these things that trade union representatives represent their members in front of. We think they should be exempt from this regulation.

Why? There are a few reasons: (1) They're a part of major organizations which have some standards; (2) of course they're not fee-for-service people; and (3) there are accountability mechanisms under the Labour Relations Act such as duty of fair representation.

So we would hope that this exemption that has been indicated does come to fruition, but we have yet to see it.

We did present some language to the Attorney General some years back that I hope has been handed out to you on a one-page sheet. We propose that the exemption says, "This act does not apply to trade unions, their representatives, officers or agents, when acting for members and/or employees in a bargaining unit for which the union had bargaining rights, with respect to employment-related proceedings to which the person is or may become a party." That, in our view, is the best way to handle this issue and, in our view, should be in the act.

We know there are other people, like Office of the Worker Adviser and Office of the Employer Adviser, who are also non-fee-for-service people, and I hope their concerns have been taken up. We're primarily here to ensure that trade union representatives are exempt.

Finally, we think that this language, as I stated, should be in the act. We are not in favour of contracting out the regulation of this act to the Law Society of Upper Canada. We are fully aware that the Law Society of Upper Canada is an esteemed institution and that it has a role to play, and we quite support much of its activities, but in our view, legislation and regulation are the purview of democratic government, not the purview of some other institutions.

The way this section of the bill seems to be designed is that the exemption for thousands of trade union staff people who are working on behalf of their membership will be the purview of the Law Society of Upper Canada, and presumably they can change this. I have no idea what mechanisms are in place for changes or amendments to it, nor what we would do to lobby them for changes as we lobby here for changes.

One of the Toronto Star writers, James Daws, of a few years ago wrote an article, the title of which was, "The Law Society Is Like a Fox in a Paralegal Chicken Coop." I'm afraid that's something I have to agree with.

There are certain conflicts of interests between paralegals and lawyers. Some paralegals may be in dire need of regulation, and we support that, but other paralegals are doing some more mundane work of lawyers for much less, and some lawyers don't like it. It seems to me that, if that's the case, then it should be reiterated that it's a government role to control and regulate the enforcement of this act.

That's the long and short of my presentation, and I'm certainly more than willing to answer any questions that I can.

The Chair: Thank you very much. We have a little over eight minutes for each side. We'll begin with Mr. Runciman.

Mr. Runciman: I really don't have any questions. Your position is well said. We've heard this position from others representing trade unions as well. We support the message you're delivering and we'll follow through in terms of future discussions in this forum and in the Legislature as well. You can count on it.

Mr. Schenk: Thank you.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. Give Wayne our best.

Mr. Schenk: I will.

Mr. Kormos: I want to understand very, very clearly: I hear you saying that it's incumbent upon the Legislature to define who's a paralegal and who's going to be regulated, not to delegate that to another body, in this instance the law society.

Mr. Schenk: That's correct. I understand that this has been a long time in coming and it's been difficult, but for us it's very important that legislation and its operation, its enforcement, its regulations are a part of a government's duty. They shouldn't be, in our view, able to contract out of that.

Mr. Kormos: I appreciate that observation. It's something we've been trying to impress upon other committee members from the get-go.

The other issue, then, is that later on today, I think the Ontario Association of Social Workers is going to be here. I remember the struggle community college graduates from the social service program had to get into the college of social workers, the regulatory group. The BSW/MSW types didn't want them; they were considered above them. So the community college graduates and the colleges fought, and finally there was an agreement that they'd all be under this umbrella, because the community college graduates said, "Hey, me too. I want to be perceived as part of this community of social workers."

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I've asked paralegals and others why it wouldn't be in the interests of paralegals to be able to say, "We are"—this is my problem; I use the word "members"—"members of the Law Society of Upper Canada." There seems to me to be—I could be dead wrong on this—some prestige attached to that, some legitimacy attached to that.

I hear you when you say that it's our job, the Legislature's job, to set the standards, to set the guidelines, other than the minutiae which could be done by regulation, or perhaps to a certain degree, as long as there are clear guidelines, by another body. Are you adamant that the law society should not be, in any way, shape or form, regardless of its structure, the regulatory body?

Mr. Schenk: That's certainly our strong view. As I say, the law society is an esteemed institution and it has a definite role to play, but we just don't think this is within their purview.

Mr. Kormos: I've had concern because, for instance, the parliamentary assistant of the Attorney General has been a no-show for three consecutive days now. He hasn't got much interest in the bill. I've been concerned that on the one hand this bill is losing its wheels, but then at the same time maybe the reason the PA isn't here is because this is meaningless and it's a done deal. They've got a majority. They use time allocation. They'll use their guillotine motions to cut off debate, to terminate committee hearings. They'll use their jackboots quick as a boo.

If it's going to be the law society, are there any bare minimums that we in the opposition, along with other interested parties, should be fighting for? For instance, more representation in terms of benchers by paralegals? Because right now there are only two benchers proposed, in all of the law society, to be paralegals. Should we be fighting for more paralegals as benchers? Mr. McMeekin has seized upon the government as sort of the court of last resort. What did you refer to it as, Mr. McMeekin?

Mr. McMeekin: It wasn't my reference.

Mr. Kormos: I know, but you've repeated it.

Mr. McMeekin: Appeal to Caesar.

Mr. Kormos: Appeal to Caesar, yes. Should there be appeals to little Caesar?

Interjection.

Mr. Kormos: Yes, mini-Caesar. Is there any minimal sort of things that we should be calling for, or is this just a no-go as far as you're concerned?

Mr. Schenk: We haven't gone into those kinds of issues in detail because, quite frankly, we're not quite sure whether or not it's a done deal or what kind of state it's at. As I say, we haven't seen the regulations. We've been told, even in written form, "Yes, we will consider favourably an exemption," but we've never seen anything, so it's a little vague for us. At this point in time I think our position, just to lay it out as I have, is that we think it's the government's job to put in the exemptions, to enforce and make the regulations and operate this legislation, and not the purview of the Law Society of Upper Canada. We haven't gone beyond that, to be perfectly frank.

Mr. Kormos: Thank you kindly, brother.

The Chair: Thank you. Mrs. Van Bommel.

Mrs. Van Bommel: Thank you for your presentation. I don't know if it's because of the previous presenter, but I'm starting to get a little worried because I think I'm starting to think the same way as Mr. Kormos.

Mr. Schenk: That could be worrying, yes.

Mrs. Van Bommel: Yes. But on the issue of regulation by the law society, I have to agree with Mr. Kormos when he says there is a certain amount of credibility and prestige that would be bestowed upon the profession of paralegal by being a part of the law society.

Mr. McMeekin: Did you say that?

Mrs. Van Bommel: Yes, this is what I heard from Mr. Kormos. So it worries me. I think the previous presenter certainly brought that to mind.

Would you not agree, though, that that is the case—that being associated with the law society would bestow upon paralegals and their profession those kinds of qualities?

Mr. Schenk: I think the law society operates for lawyers and, as far as I know, does a good job. I don't think that that's the same for paralegals. I think they should be under the legislation and we should have the definitions and regulations and exemptions in the house of government as opposed to the law society.

The Chair: Mr. McMeekin?

Mr. McMeekin: Thank you, Brother, for coming out and sharing your perspective. Do give Brother Samuelson my warmest regards as well, please.

A couple of things quickly: If we'd wanted to time-limit the bill, we wouldn't have done 15 days of public hearings. Our record as a government is very good on the infrequency, I guess, compared to certain other quarters, but that's for another debate.

I just want to say that I agree with your fundamental thrust, but I just want to caution that we don't want excellence to become the enemy of the good. I think the thrust here is to have our union brothers and sisters, who are doing incredibly important work, exempted, and I think that's where we need to go. The law society, as I understand it, has agreed to that in writing. So we're at least halfway there. Who knows where we'll end up? I

can't, obviously, commit on behalf of the government, but I want you to know that I agree with you. I will be advocating the position that you put.

The Chair: Thank you very much.

PAUL HONG

The Chair: The next presentation's from Paul Hong. Good afternoon, sir.

Mr. Paul Hong: Good afternoon, sir.

Mr. McMeekin: How are you, Paul?

Mr. Hong: Great, thank you. How are you?

The Chair: Your presentation will be for 10 minutes, and you may begin.

Mr. Hong: Thank you very much, Mr. Chair. I'd like to thank the committee for allowing me the opportunity to present today.

I want to begin by first of all commending the government for taking this step, certainly with reform to the justice of the peace appointment process. It has been many years and many reports that have asked for the recommendations and approvals, and certainly it is a very courageous and good initiative for the government to reform the process.

Having said that, because it has taken so long, I think it's imperative that we try to get a couple of things improved, and I will limit my remarks to two issues. First is the qualification and training requirement for JPs. Certainly a topic that is a favourite of Mr. Kormos's and Mr. Runciman's is the shortage of JPs, which is not addressed in this bill.

First off, the training and qualifications: Since Confederation, there have been numerous complaints about the lack of training and the qualifications of JPs. As you note, in 1968, the McRuer commission recommended that the process be depoliticized and that the qualification of a person be the sole criterion for appointment and that we should have mandatory training and refresher programs.

Those recommendations weren't implemented, and in 1981, Professor Alan Mewett's report suggested that JPs' training ranged from "virtually non-existent to the barely acceptable." He suggested that there should be a minimum of a grade 12 education for presiding JPs.

So I did a little bit of research in terms of what legislation is in place across Canada, and I found that there is no standard system. There's simply a patchwork within each province. Most are lay benches. For instance, in BC, there are three types of JPs: a judicial JP, a judicial case manager JP, and a court services JP. For a judicial JP, there's a 10 years' minimum experience in the justice system or equivalent that's required, but there's no minimum educational requirement. In BC, only judges hear charter motions, and JPs are not permitted to hear any kind of trial matters that lead someone to jail. Furthermore, for the other two types of JPs in BC, you have to pass a certain course before you could actually be appointed.

Manitoba and Saskatchewan are the two provinces that bar practising lawyers and police officers from becoming JPs. In the Northwest Territories, there's a six-month minimum residency requirement. Interestingly enough, in New Brunswick, there are no JPs; judges do all the work that JPs do here. In Alberta and Nova Scotia, there is not a lay bench. In fact, in Alberta you have to have a law degree, admission to the bar and five years' experience. In Nova Scotia you need a law degree to become a presiding JP.

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Those aren't issues without controversy. For instance, the Alberta JPs took the government to court and it went all the way to the Supreme Court, but the Supreme Court felt that a reasonable and informed person would see the legislation as a means to strengthen the qualifications and independence of the JP. So I have to ask myself: Will Bill 14 radically alter the JP composition? I would suggest to you that the answer is "probably not," the reason being that the vast majority of JPs in Ontario already meet the minimum qualifications that have a caveat that allows for people who don't meet the minimum qualifications to become a JP.

In an internal survey by the JP association in Ontario, 90% of those surveyed who responded already had a post-secondary education. In fact, most of those people had university degrees. Furthermore, in Toronto, 30% of JPs have a post graduate degree. So it's questionable whether the minimum standards that we have now, that we've reached after years and years of calling for change, will actually change the status quo as it stands on the ground.

Second, the issue with training: Because JPs are not lawyers, there's a widespread belief among certain groups that they are not well-trained. Prominent lawyers such as Brian Greenspan and others feel that JPs have too much power for the training that they receive. In fact, the Criminal Lawyers' Association felt in 2002 that there was a lot of dissatisfaction with JPs.

Some people argue that a law degree is not required. A lay bench may be better. They're more representative of the common people, and the traditional view has been that the JP is the buffer between the state and the individual. Some jurisdictions have this minimum residency requirement and others say that if you know the local conditions, it gives you a step up. Others feel that lawyers would get too wrapped up in the legal terms to be able to make good decisions.

I would suggest that if a law degree is not required, then what we do need here is a standardization of the legal training for JPs. This could help avoid challenges to their competence and assure professionals that the subordinate judicial officers are qualified and should handle important judicial matters. In recent times, some people have cited Ontario for having a good training system. It's my understanding that they have, after they're appointed, a six-to-eight-month mentorship program where they sit with a senior JP and they kind of listen in on the cases. In terms of continuing legal education, there are usually two

seminars each year dealing with a variety of topics. However, as recent as 1991, the majority of JPs in Ontario felt that their ongoing training was inadequate. That was a survey done by the U of T.

Bill 14 does not address training and standards. Some jurisdictions, like BC, have tests before an individual can get appointed. I'm not sure why there is this aversion to being tested. For instance, lawyers are tested. Having just recently gone through the bar admissions exams, it's not fun, but it certainly means that once you've passed it, you've got this basic standard that you've reached. The accountants have the UFEs. In the United States, there are certain judges who are elected who have to pass exams before they can sit as a judge. Occasionally, you hear the funny story of someone being elected a judge who can't pass the exam, so they have to resign. I think the problem here is that most lawyers, most people who are in the court system, police officers, do not know what standards are required to be a JP and even what standards are required to serve as a JP.

A bigger problem than just the minimum qualifications is the shortage of JPs that we have in Ontario. A 2002 study by researchers at the University of Lethbridge compared the justices of the peace across the common-law jurisdictions in Canada. Unfortunately, our great province has fared not too great in that survey. We are number 1, but number 1 for having the worst JP-to-population ratio. In fact, in Ontario, there's one JP for every 35,000 residents, whereas in BC it's one for every 10,000 residents and in Alberta it's one for every 6,000 residents. The survey is from 2002, so it is a bit dated, but I don't think too much has changed since then.

Furthermore, the workload has increased in Ontario. Over the past five years, courtroom bail hours have increased by 73%, charges received by 24%, and total hearings by JPs have doubled. This is information from Chief Justice Brian Lennox of the Ontario Court of Justice. So it's not that big of a leap of faith to see why we have a backlog in our court system. Various groups have called for more JPs: elected officials such as Mr. Runciman and Mr. Kormos, who certainly has the most colourful quotes; towns and municipalities—

Mr. Kormos: Thank you, Mr. Hong.

Mr. Hong: Thank you, sir. I understand Mayor Hazel McCallion was here, so I'm sure she shared her opinion.

Mr. McMeekin: She's even more colourful.

Mr. Hong: Waterloo, Hamilton, York region have all passed resolutions expressing their dissatisfaction with the current state and the requirement for more JPs. I'm sure you know that the police associations have also done the same.

This shortage has caused a problem with the Highway Traffic Act, and it's not standard in Ontario. For instance, in Toronto 42% of charges are withdrawn; in Peel it's 30%; in London, Hamilton and Ottawa it's 10%; and in York region it's about 50%. So as a result, municipalities are losing millions of dollars in revenue.

More problematic is the fact that by 2011, 37 JPs will reach mandatory retirement age and 82 will reach voluntary retirement age, representing 40% of the JP complement. The ability to have per diem JPs, as in this legislation, is a very positive step for the long term, but in the meantime what do we do about the shortage, the backlog and the administration of justice that is suffering?

Looking at my time, I guess it's time to conclude. Bill 14 is a step in the right direction for JP reform, and the government should be commended for that initiative. However, training and standards are not addressed and the minimum requirements probably will not change the justice of the peace complement. Furthermore, the bill does not address the shortage of JPs, and perhaps it's time that we looked at the one-to-one replacement that the judges have.

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

Mr. Kormos: I appreciate that Mr. Hong came here on short notice. I just read very quickly his article that is published in Criminal Reports: an impressive bit of work, and I thank him for his interest in this matter; a very good article that I intend to refer to in the course of polemics over the next several months in the Legislature. Thank you, Mr. Hong. Good luck at the Royal Military College.

The Chair: Mr. McMeekin.

Mr. McMeekin: We would echo all those affirmative remarks. I found your presentation to fill a void which I had wondered if somebody would speak to. We've had some people do it in an en-passant sort of way. It's amazing the kind of research you've done to substantiate the points you've made, and I, for one, and, I think my government colleagues, are very appreciative of you taking the time to do that.

Mr. Hong: Thank you very much, sir.

The Chair: Thank you again, Mr. Hong.

TORONTO BOARD OF TRADE

The Chair: It's my understanding that the next presenters are here from the Toronto Board of Trade. Good afternoon. As soon as you're settled in, you have 30 minutes. If I can have you folks identify yourselves for Hansard, please.

Ms. Prema Thiele: Prema Thiele.

Mr. Norm Tulsiani: Norm Tulsiani.

The Chair: Thank you very much, and you may begin.

Ms. Thiele: Good afternoon. Thank you for the opportunity to address this committee. As I said, I'm Prema Thiele. I am the chair of the Toronto Board of Trade's business affairs committee. When I'm not wearing that hat, I'm a partner with the law firm of Borden Ladner Gervais in Toronto. With me here today from the board of trade is Norm Tulsiani. Norm is the in-house legal counsel to the Toronto Board of Trade and the policy adviser to the business affairs committee.

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We're here obviously on Bill 14, and although it's a very detailed piece of legislation, we are here to focus on the proposed amendments to the Limitations Act, 2002.

First off, the board, as we have made known before, supports the proposed changes to the Limitations Act. In fact, the board of trade, together with other stakeholders, law firms, associations, requested the changes that are actually outlined in the bill.

If I may, just some background to the board's participation in this process which led to the changes that are in the bill: The Limitations Act, in its whole, works well and represents an improvement to the previous somewhat patchwork limitations regime that was in place before 2002. When the Limitations Act, 2002, was tabled, the board of trade was generally supportive of the proposed legislation. We noted that the legislation represented the culmination of many years of modernization of Ontario's limitation period legislation. The board stated that the new law was welcome, both from a simplification and a rationalization perspective of what had previously been a complex and somewhat inconsistent array of statutory limitation periods.

However, we also noted that section 22 of the new Limitations Act appeared to have been introduced into the bill at the last moment and with little or no discussion with the legal or business communities as to its implications. There had been a lot of communication on the new Limitations Act itself, but not on section 22. The board stated quite clearly that the freedom of commercial parties to contract freely is not one that should be tampered with lightly. There are legitimate business considerations behind the decision of business parties to set out a specific limitation period in their contracts. Therefore, we recommended that section 22 be repealed or, if the intent of that provision actually going in was to protect consumers, that it be revised to apply only to consumer transactions. However, the province passed the Limitations Act, 2002, into law without amending section 22, as had been recommended by the board of trade.

During the next two years, it became very apparent that the concerns expressed by the board of trade were starting to materialize. Restrictions in the Limitations Act, 2002, began to interfere, we believe, with the ability of businesses to structure deals to best meet their needs. Complaints began pouring in from businesses and their legal advisers outside Ontario dealing with Ontario-based companies. In terms of my practice, I am primarily a corporate securities lawyer who does cross-border work, and I and others on the committee who do a lot of commercial work had seen many complaints coming in.

The board of trade and other organizations contacted the Ministry of the Attorney General during the course of 2004 regarding our concerns about the Limitations Act, 2002. Representatives of the board met with the Attorney General's policy staff, specifically Adam Dodek and John Lee, in December 2004 to outline the practical problems that had been created by section 22 of the act, which essentially restricted the ability of business to contract out of statutory limitation periods. That had been something that had been in Ontario and other jurisdictions across the world—a state of being that is taken as something that would normally be something that commercial parties can do.

A few months following our meeting with the Ministry of the Attorney General, we were advised that amendments would be made to the Limitations Act in light of concerns that were expressed by the board and that were echoed by many other groups besides the board.

Therefore, in October 2005, the Attorney General, Mr. Bryant, introduced Bill 14, which included amendments to the Limitations Act that were designed to address the concerns we had raised with the minister's policy staff.

In the spring of 2006, the board of trade was approached by a group of representatives from the construction sector who had some concerns about the amendments that were proposed in Bill 14. Board representatives met with this group in April 2006 to hear their concerns and see if we could identify areas of common agreement. Essentially, the board of trade's position is very simple and very clear: It believes that business parties should be free to agree by contract to whatever limitation period meets their particular needs. I know that the group of construction industry representatives we met with believed there ought to be certain restrictions that are imposed by statute.

We continue to believe that the rationale of our initial recommendations to the Ministry of the Attorney General, which were made in 2004 and are now reflected in the bill—we think they continue to make good sense. Our reasons for being here today to support the proposed amendments can really be summarized as follows:

First, section 22 of the current legislation, we feel, places unnecessary restrictions on the ability of business parties to manage the legal aspects of their transaction in a manner that best suits their particular needs. At a practical level, this provision has proven to be costly, time-consuming and vexing to businesses, both in Ontario and abroad. It has also resulted, we believe, in Ontario being offside as a major commercial jurisdiction in comparison to other Canadian provinces and in particular to London and New York, where the ability to contract out of limitation periods is there. As a result, jurisdictions other than Ontario have been designated as the applicable law and venue for legal proceedings in a number of instances.

In addition, it has resulted in lawsuits being commenced which might otherwise have been avoided, which unnecessarily clogs the court system because of course there's something that is called, as you may know, a tolling agreement, which simply means that parties to a lawsuit can agree to toll the limitation period and stop it while they try to agree on an out-of-court settlement. So by not allowing the contracting out of a limitation period, we believe it is unnecessarily going to result in lawsuits having to be proceeded with, clogging up the court system.

We believe the restrictions in section 22 are wholly unnecessary when they apply to businesspeople who have access to legal advice. For these reasons, we strongly believe that the existing legislation should be amended to give business parties freedom of contract to set the limitation period that best meets their needs.

The Toronto Board of Trade supports a fair and balanced consumer protection regime. We certainly understand that protecting consumers may have been one of the primary reasons for the last-minute inclusion of section 22 in the current legislation, and I think the amendments proposed in Bill 14 reflect this goal and continue to offer strong protection for consumers.

Accordingly, the Toronto Board of Trade believes that the proposed amendments to the Limitations Act set out in Bill 14 would, if passed without further amendment, go a long way to addressing the legal gap between Ontario and our trading partners with respect to limitations rules. Limitations legislation is an important business statute. It's a legal infrastructure type of statute. Combined with the process that all of you are currently going through in terms of the reform to the Ontario Business Corporations Act, I think, along with that, these changes will help our province build a corporate-commercial law infrastructure and gain a leadership position in this area.

As drafted, the bill would achieve the changes sought by the business community. It would confirm that parties will continue to enjoy freedom of contract and that consumers will continue to be protected. Accordingly, it is our strong recommendation that the proposed amendments to the Limitations Act, 2002, as set out in Bill 14, be passed without amendment and as soon as possible.

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We've attached to our summary of remarks a copy of the letter that we made to the Honourable Mr. Bryant in 2004, which sets out a few more anecdotal and other examples of why we feel so strongly about maintaining what is now contained in Bill 14.

We appreciate this opportunity to speak to what is obviously a very narrow but important point and would be happy to answer any questions that any of you might have.

The Chair: Thank you very much. A little bit over six minutes for each side, and we'll start with Mr. Runciman.

Mr. Runciman: I will defer right now. Sorry, I was in another meeting, so I don't think I can appropriately question you at this point.

The Chair: Mr. Kormos.

Mr. Kormos: This whole schedule has become more and more fascinating because several people now have made contributions to the discussion around it. We have learned about tolling agreements, which allow contracting parties to extend the limitation period and remove themselves effectively from the statute. Right?

Ms. Thiele: Let's just say, we're on the eve of a limitation period coming to an end or we know that there is a limitation period facing us: Instead of having to start a litigation claim, it allows the plaintiff and the defendant to sit down and actually negotiate without having to worry about having to start the action.

Mr. Kormos: Except, we also learned that there were two types of tolling agreements: There were what I call front-end tolling agreements, where, when parties are contracting to do work for each other, for instance, they can agree at that point in time that the Limitations Act will not apply. Right?

Ms. Thiele: Yes, absolutely.

Mr. Kormos: If that's the front end, I suppose the back end is to say, "Whoa, we're at the cusp of a limitation agreement. We don't want to abandon any of our rights against each other because we want to use this process to try to resolve the matter." So that's the back-end tolling agreement. In both instances, people are talking about tolling agreements that extend the limitation period. Would tolling agreements similarly be enforceable that concentrated the limitation period for whatever reason? If, for competitive reasons in bidding on a contract, two parties want to say, "No, it's not going to be a 15-year limitation period; any griever, any plaintiff in this relationship is going to be limited to a five-year limitation period," is that a legitimate thing too in the world of tolling agreements?

Ms. Thiele: It's possible. I don't think it's the likely scenario because you're trying to extend—that is what you are trying to do so that you don't have to bring the claim. Just to be clear, "tolling agreements" is one term batted around. I think what has been equally important to this is in the commercial side of things, where parties to, for example, the sale of a business would enter into an agreement of purchase and sale, and in that agreement of purchase and sale there would be representations and warranties that are given. So that's, in my opinion, where there would be a contracting of the period more than there would be in the litigation context.

Mr. Kormos: That's not really a tolling agreement; it's how a warranty or a term of the contract—we made reference to it earlier today and the Ombudsman did yesterday, about how banks give you a 30-day window to report any discrepancies in your account. They've circumvented the Limitations Act. I suppose that's yet another tolling agreement, right?

Ms. Thiele: It's a term that litigators use for—

Mr. Kormos: I understand why two independent business entities would want to do this, especially on the front end, when you're bidding on a contract. It would give you a competitive edge in maybe one of the terms of the request for proposal. Where's the consumer protection in it? You talk about protecting the consumer. Where's the consumer being protected?

Mr. Tulsiani: Essentially what the amendment is proposing is that there is a blanket prohibition from contracting out of the act. So if there are any limitations imposed by the act anywhere, they apply, except in certain cases. Under the current act, what it says is that those contracts that provided for different limitation periods that were in place before the act came into place continue to be valid. Anything after that must comply with the limitation period set out in this act.

The change that's proposed in Bill 14 is saying that if all the parties to a contract are acting for a business purpose, they may, by contract, provide for a different—so any changes are not valid as against a consumer. So if a consumer goes into a gym and says, "Listen, I want to

take out a membership for two years," and then says, "You know what? Maybe it's not a good idea," as long as any one party to the contract is a consumer, they cannot contract out of the Limitations Act.

Mr. Kormos: Quite right. I suppose that subsection (2) is a good thing, because it puts the limitation period in abeyance while you're using a third party to try to resolve the issue, right?

Mr. Tulsiani: Right. And if there are three or four or five parties to the contract, they must all be acting for a business purpose. Otherwise, you can't get out of the Limitations Act.

Mr. Kormos: Otherwise, it doesn't apply to the—

Mr. Tulsiani: Right. So the consumers are protected in that way.

Mr. Kormos: As you may or may not know, I've got a real bug in me about these time-limit restrictions on the gift cards from Sears and stuff—one year, 18 months, and it's no good anymore. You know what I'm talking about, don't you? They just rot my socks. Honestly, I want to take those people and turn them upside down and knock them silly. The consumer is not being protected there.

Mr. Tulsiani: I think it is. As long as any one party to any contract is a consumer, then you cannot contract out of the Limitations Act.

Mr. Kormos: So you're calling Sears the consumer too.

Mr. Tulsiani: No. I'm just saying that if you're dealing with Sears and you are a consumer, then you are protected.

Ms. Thiele: So Sears cannot impose a lower limitation period upon you.

Mr. Kormos: The banks do, with the 30-day window.

Mr. Tulsiani: No, that's their policy. That doesn't necessarily mean that you're legally precluded from making a claim and acting on that claim. They would like to limit their liability in some fashion and encourage their customers to be diligent and act in a reasonably expedient manner, to check their statements regularly rather than come back six months later and say, "You know what? There was a deposit that was to have been made that never got reflected," or, "A withdrawal has been made that I don't recognize."

Mr. Kormos: That's helpful. That guy should have gone to Small Claims Court instead of the Ombudsman. The Ombudsman only gave him 50 cents on the dollar. Remember—4,900 bucks? Where was legal advice, access to the law, for him?

The Chair: Ms. Van Bommel.

Mrs. Van Bommel: Thank you for your presentation. I noticed in your presentation that you mentioned specifically meeting with the construction sector to discuss the Limitations Act. The representatives of the construction sector have appeared before this committee already. In your discussions with them, were you able to come to any understanding or agreement on their position on the Limitations Act?

Ms. Thiele: The complicating factor is that they are, as I understand it, not just one body. There are different bodies within what was presented to you. We met with representatives of the construction association, like the general contractors, the architects, the surety association, so I don't entirely know if their position gelled. As we understood it, they were more concerned about the 15-year ultimate limitation period than the two-year. I don't know where they ended up coming out in terms of what they have indicated to you. We certainly made it clear that our first and foremost concern has always been the two-year period, because obviously that is something that affects things immediately. The board's position has always been clear that, as we have indicated, we favour flexibility across the board. So I don't think it's a matter of us coming to an agreement, but I think we did come to an understanding of each other's positions and where we were focused, because I think we want to make this work. These amendments are important.

Norm, do you want to add anything to that?

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Mr. Tulsiani: The first benefit we got from that meeting was that we had a clear understanding of where they stood, so it was useful in that sense. In terms of coming to any areas of common agreement or a common position, which I think was the goal for the sector in meeting with the board, I don't think we arrived at anything specific.

What we did agree upon, in a broad sense, was that our first and primary concern is that businesses—and it's important to note that it's only business parties that were asking to be allowed to contract out. As soon as there's a consumer involved, even if it's just one party of a multiple-party agreement, it doesn't apply. Business parties acting for business purposes should be allowed to contract out and have whatever flexibility they need to fashion whatever terms they think are appropriate based on their business interests and based on the legal advice that they get.

We also would like to see flexibility with respect to the 15-year ultimate limitation period as well. It's not as immediate a concern for us. I think the reason that we continue to support flexibility, even on the 15-year period, is that there are certain projects, especially mega projects—if you're looking at offshore drilling for oil, or the pipelines that go across land and take decades to build, much less the useful life they have—when you're dealing with those kinds of mega projects, 15 years, typically, for most people, especially consumers, seems like a very long time.

In better than 90% of the cases, having flexibility from zero days to 15 years is sufficient for many transactions, but there are a handful of transactions that would look for flexibility above and beyond the 15 years. I agree with you that the volume of those transactions might be fairly limited, but if you look at the complexity and the monetary value—

The Chair: Sir, can you just move back from the mike?

Mr. Tulsiani: —sorry; yes—and the number of people who are employed in those projects, they're actually quite significant.

So I think, in a nutshell, what the board is saying is that we believe in the flexibility across the board, both with respect to the two-year period and the 15-year period, but our more immediate concern is the two-year and, secondarily, the 15-year. So I think the construction sector, if I understood them correctly at that meeting, would like both the two-year and the 15-year rule to continue. However, they're more concerned about the 15-year rule. So there may be some sort of small meeting-ground there. I'm not sure if that's clear.

Mrs. Van Bommel: Thank you very much.

The Chair: Mr. Runciman, did you want to ask a question?

Mr. Runciman: No.

The Chair: Thank you very much for your presentation.

We're just waiting for the hook-up for the 5 o'clock video conference. Just a few minutes.

Mr. Kormos: While we're doing that, a question, because I know nothing about this area of law: Does a limitation period make a statement of claim an action, a commencement of an action, a nullity, or does it have to be pleaded?

Ms. Thiele: Sorry?

Mr. Kormos: Does it have to be pleaded, or is the action a nullity?

Ms. Thiele: If you do not bring the action before—

The Chair: Mr. Kormos, we have—

Ms. Thiele: You cannot bring the action. So it's—

Mr. Kormos: So it's a nullity.

Ms. Thiele: Yes.

The Chair: Thank you very much for your presentation.

COUNTY OF CARLETON LAW ASSOCIATION

The Chair: Mr. Conway?

Mr. Thomas Conway: Yes.

The Chair: Good afternoon. It's Vic Dhillon from the committee. Welcome to the committee. You have 30 minutes. You may begin your presentation.

Mr. Conway: Thank you, Mr. Chairman.

Let me first say that I have been watching the proceedings late in the evenings after a long day's work, and I've heard many of the submissions that have been made before you today. So, taking a page out of good advocacy, I intend to be very brief, and I don't expect I will use my full 30 minutes. But I would like to thank you, first of all, for allowing the County of Carleton Law Association to make a presentation to you this afternoon.

As I say, my remarks will be very brief, because I know that, in large measure, I will be repeating many of the able submissions that have been made on behalf of the county and district law associations, particularly those submissions made by CDLPA and the Advocates' Society. So I won't repeat those, but I did want to, on behalf of my association, weigh in in support of Bill 14 and its passage, particularly with respect to those provisions in the bill dealing with the regulation of the paralegal profession.

Just by way of background, the County of Carleton Law Association was established in 1888 and is one of the oldest, largest and most active county and district law associations in Ontario. Our membership numbers nearly 1,300, comprised primarily of practitioners in private practice, but includes as well some in-house counsel, lawyers employed in government at all levels, academics and members of the judiciary in the Ottawa area. Since its foundation, the CCLA has operated the courthouse library in Ottawa. The objective of our association is to advance the interests of our members and promote the administration of justice by providing an excellent-quality library to our members and the members of the public, providing quality and affordable continuing legal education programs to Ottawa and eastern Ontario lawyers and advancing the interests of our members in the practice of law. Also, we promote a liaison among our members, the judiciary and the government of the day and we provide guidance and leadership to members of our association who face challenges in our profession, we of course try to promote collegiality among our bar and we try to promote the administration of justice to the broader community.

We are really a grassroots organization in the sense that we represent a variety of practices in Ottawa. We represent lawyers who practise in large offices, those who practise in small offices and indeed those who practise on their own.

Our members have encountered paralegals and do encounter paralegals almost every day as they practise and provide services to the members of the public, both in the courts and in their offices. We as an association have been following the debate over the regulation of paralegals and indeed have participated in that debate over the years. For as long as I can remember, the paralegal issue has been a perennial issue that up to now has almost appeared to be without resolution. You heard, I'm sure, many stories and anecdotes that support the desire to regulate the paralegal profession. I will not add to those anecdotes. But it is clear, and I think there is consensus, on this point: The paralegal profession does need to be regulated. The public needs to be protected from unethical paralegals who ply their trade, make promises that they can't keep and who end up being really a scourge on Ontarians.

The question that you have been mooting for the last few days is, who is the appropriate regulator? I would submit and argue that the law society is the appropriate regulator, for a number of reasons. First of all, the law society has been regulating the legal profession for hundreds of years and it has an established infrastructure for regulating lawyers and how they practise law, and they have been very effective in doing that over the years. Certainly, in recent times, the law society recognizes that its one and only function is to regulate in the public interest. Indeed you have heard that lawyers often don't see eye to eye with the law society, and that, in my submission, is some indication that the law society is

doing a good job. So the law society seems to us to be the logical choice because there is already an infrastructure there and they have the experience in regulating the profession and regulating, if I can use this term, the legal industry.

That's the first reason, and probably the best reason, but there is another reason why they should regulate paralegals, and that is simply this: The paralegals, as far as we can determine, have not reached a consensus on who should regulate them or how they should be regulated or if they should be regulated. That is simply, in my submission, another reason why the law society should be given the responsibility for doing that.

Our association believes that paralegals, if properly regulated, have an important role to play in the provision of affordable legal services to the citizens of our area. Indeed, many of our members work closely with paralegals now, and we do not see paralegals as being a threat to our livelihood but really as an adjunct or an add-on.

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What we really want to see is a paralegal profession that offers valuable services to the public and allows the public to choose intelligently whether they will choose to have their legal services provided by a lawyer or by a paralegal; and that the public will have the assurance or the confidence that they can make that choice, knowing that if they decide to have services provided by a paralegal, that paralegal will be competent, will be insured against any mistakes they might make, and that the product they will receive from that paralegal is one they can rely on.

I would simply echo, as I said earlier, many of the submissions that you've already heard from, CDLPA and the Advocates' Society. I'm simply here to really add the voice of Ottawa lawyers in urging you to encourage the passage of Bill 14.

Thank you very much. I'd be happy to take any questions you might have at this time.

The Chair: Thank you very much, Mr. Conway. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, sir. You probably know that Mr. Murphy and Mr. Bocock were here earlier today on behalf of CDLPA, and your position is consistent with theirs. I understand it. I appreciate your comments.

Mr. Conway: Thank you.

The Chair: Mrs. Van Bommel, any questions or comments?

Mrs. Van Bommel: No, other than to say thank you very much for coming to the committee through the video conference. It certainly is appreciated, and it's an opportunity for us to have a bit of outreach into the rest of the province.

The Chair: Mr. Runciman.

Mr. Runciman: I'll add my thanks, Mr. Conway. Your testimony is in sync with the others of your profession, and what I said to the folks who appeared earlier: My concern is that you haven't taken the opportunity to comment on other aspects of this legislation. You mentioned in your commentary earlier that you're in a position to advance the interests of your members and advance the administration of justice. One could reach the conclusion that taking the position you're taking is advancing the interests of your members. Whether that's fair or not, that's an assumption some will make, especially since you haven't taken this opportunity to take a look at other elements that deal with the administration of the courts, that deal with the appointments process for JPs, the educational requirements for JPs, the Limitations Act, the Provincial Offences Act—all very significant inclusions in this legislation. None of the law associations to date has seen fit to offer any advice or commentary with respect to those elements of the legislation. I think that's unfortunate, but thank you for your contribution.

Mr. Conway: If I may just respond, Mr. Runciman, I have half an hour. We will be following up with a written submission. We do have positions that we have formulated on some of those issues that you've mentioned; for example, the Limitations Act and so on. However, the point of my submission today is really to narrow in on the issue in Bill 14 that we perceive to be the most important.

I appreciate that you may say that my submission is in support of my members, and indeed it is. Perhaps you will say that you wouldn't expect to hear anything else from me. I suppose I'd say back to you, Mr. Runciman, that perhaps I wouldn't expect that you would support the bill, given your position as a member of the opposition. But I urge you to look closely at what is being proposed in this legislation because it is the first and best opportunity to do the right thing for the public, and that is the main thrust of my submission. Whether you choose to believe I'm doing it on behalf of my members or on behalf of the public is, frankly, beside the point. The point really is that this is good legislation in the interests of Ontarians, and I urge you to see that it passes. Thank you.

Mr. Runciman: I think I should make one comment: that being a member of the opposition doesn't necessarily mean you're going to oppose legislation. Both Mr. Kormos and I urged a stand-alone piece of legislation dealing with the issue of paralegals, but the Attorney General took the opportunity to throw in a whole range of very controversial items which make it a little more challenging for all of us.

Mr. Conway: I'll certainly accept your position, Mr. Runciman, and I'm sure you'll accept mine too. Thank you.

The Chair: Thank you very much, Mr. Conway.

ONTARIO ASSOCIATION OF SOCIAL WORKERS

The Chair: We have the Ontario Association of Social Workers next. They're the last presenters for today. Good afternoon, ladies. If I can have you identify yourselves for Hansard, you may begin. You have 30 minutes.

Ms. Joan MacKenzie Davies: Good afternoon. My name is Joan MacKenzie Davies. I'm the executive director of the Ontario Association of Social Workers. My colleague Beatrice Traub-Werner is a social worker in private practice. She will be speaking directly to quasi-legal services provided by social workers that we have concerns about related to this bill.

The Ontario Association of Social Workers is pleased to have this opportunity to respond to Bill 14. While OASW supports the intent of Bill 14, we believe that the proposed amendments place social workers who provide quasi-legal services under existing pieces of provincial and federal legislation at risk of contravening Bill 14. We value this opportunity to express our concerns about the potential negative impacts of Bill 14 and to highlight the need for revisions to be made prior to passage of this legislation.

OASW's concerns relate to amendments outlined in Bill 14, section 2, subsection (5) under subsection (10), which defines a person who is engaged in the provision of legal services. The definition is extremely broad and encompasses anyone who "engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person." Subsection (6) then proceeds to list a number of activities that are included in this definition without limiting the generality of the basic definition.

While Bill 14 anticipates that certain classes of practitioners, for example paralegals and law clerks, will be allowed, under the bylaws of the Law Society of Upper Canada, to seek licences from the law society to provide legal services, we wish to point out that activities performed by social workers that overlap the definitions in subsections (5) and (6) are not among those classes.

Furthermore, since social workers are currently regulated by the Ontario College of Social Workers and Social Service Workers, it would place an unreasonable financial burden on members of our profession who provide quasi-legal activities to seek licensing and regulation under another regulatory body.

Social workers provide quasi-legal services, as I've pointed out, under various pieces of provincial or federal legislation, and social workers have fiduciary responsibility to clients under regulations in the Divorce Act, the Mental Health Act, the Child and Family Services Act, the Children's Law Reform Act, the Health Care Consent Act and the Substitute Decisions Act.

Social workers are regulated under the Social Work and Social Service Work Act, and the scope of practice of social workers includes "the assessment, diagnosis, treatment and evaluation of individual, interpersonal and societal problems through the use of social work knowledge, skills, interventions and strategies, to assist individuals, families, groups, organizations and communities to achieve optimum psychosocial and social functioning."

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Ms. Beatrice Traub-Werner: My name is Beatrice Traub-Werner. I am a social worker in private practice.

Practising within the above scope of practice, some social workers will provide the following services that appear to fall within the proposed definition of legal services, as outlined in subsections (5) and (6) under subsection 2(10). These services include:

—mediation and alternate dispute resolution, related to assisting opposing parties in disputes; for example, divorcing spouses who need to reconcile differences, find compromises or reach mutually satisfactory agreements. When we do this work, we work within the constraints of the Children's Law Reform Act and the Divorce Act. We need to know both of these pieces of legislation really well in order to be able to counsel our clients. Social workers are sometimes involved with clients who have been ordered by the courts to seek ADR to resolve disputes;

—parenting coordination and planning. Those are functions that are related to the development and coordination of parenting plans. They occur under the Child and Family Services Act, when children are apprehended because of abuse and/or neglect or emotional abuse. Also, in the cases of divorce and custody and access recommendations, clearly our recommendations have an impact on the individual rights of each of the parents and their families;

—custody and access assessments related to the provision of recommendations to the courts regarding issues of custody and access to children by parents, a very contentious issue. Social workers are involved very frequently with this work. Having to dispense quasi-legal advice is par for the course; and

—capacity and competency assessments, possibly one of the most difficult areas in our field. They're related to the client's ability to understand information in order to make financial decisions, consent to treatment, counselling, personal assistance services or admission to a facility, or the release of information. Social workers also appear before the Consent and Capacity Board. In this function, we need to be very, very cautious and understand the Mental Health Act and other pieces of pertinent legislation in order to counsel appropriately the people with whom we're working and their families.

Ms. MacKenzie Davies: In addition to our concern about the impact on social work services, we are concerned also about the potential negative impact on the public of overly restricting the pool of qualified professionals who can provide legal and quasi-legal services and the likely escalation in associated costs with the provision of these services should Bill 14 be passed into law without amendments. Ontarians deserve and require access to a range of affordable quasi-legal and legal services. Moreover, we believe that the public has the right to legal representation in court. We think it's worth noting that paralegal services gained momentum when legal aid funds were frozen.

In closing, our organization recommends the inclusion of social workers in the classes of practitioners exempt from Bill 14. We also believe that in order to ensure access to a range of required legal services, the solution is twofold: Funding needs to be increased to legal aid, and a licensing board needs to be established for paralegals which includes a definition of scope of practice.

We wish to thank you for this opportunity to express our views. Since it's the end of the day, we can appreciate that you probably have listened to a lot of presentations. Thank you for your patience and your attention.

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

Mrs. Van Bommel: Thank you very much for your presentation. For you it's probably the end of a long day as well. You, among others, have come forward about this particular concern, and I do know, as you state in your document, that you are already a regulated profession and that you are governed by a code of ethics and practices. We will take all of these under consideration in terms of our work as a committee. Thank you very much for coming at this time of day.

The Chair: Mr. McMeekin.

Mr. McMeekin: There's no brief more important than yours today. Thank you very much. I'm actually a trained social worker who has never been a member of the association.

Ms. MacKenzie Davies: We'll get your address.

Mr. McMeekin: Although, as an MPP and a former bookstore owner, I probably did more social work in both contexts than I ever did as a paid professional social worker. But I appreciate the points that you've made—

Mr. Kormos: We'll let the college know that.

Mr. McMeekin: Yes, if I could qualify now as a member.

Just by way of a query, have you had any direct contact with the law society about any acknowledgement of a formal exemption? There have been some groups that have been in dialogue with the law society that have been given assurances by the law society that, if the legislation were to pass in its current form, without a clause exempting all those who otherwise might be regulated by some other piece of legislation, they would be exempt. I'm wondering if you've availed yourself of the opportunity to have some dialogue with them.

Ms. MacKenzie Davies: We copied the law society on a letter we wrote to the Attorney General and did receive a response. However, we did not feel it was a response that took our concern particularly seriously.

Mr. McMeekin: If I were a member of your association, I'd probably be on the floor, saying, "Maybe we should follow that up with some direct dialogue." For what it's worth, I just offer that advice to you.

Ms. MacKenzie Davies: Thanks.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you as well for your contribution. I think that last comment by Mr. McMeekin should be concerning to you. It's somewhat surprising and alarming that we're having testimony before us from the significant number of organizations that have been captured, supposedly inadvertently by this legislation—already regulated professions and industries. To rely on the good faith of the law society at some point to perhaps pass a bylaw exempting you I think should be cause for concern.

We have the ability in this committee and in the Legislature to ensure that you're exempted through an amendment to the legislation. I would hope, based on the testimony that we've heard from yourselves and others in similar situations, that government members would be more forthcoming rather than suggesting, "We're hearing what you say and, oh, by the way, you'd better call the law society and see how they feel." I'm bothered by that remark because I was starting to sense that the government members were coming along and listening to the testimony and that they were going to be receptive to the appropriate amendments to address this multitude of concerns that have come before us.

I simply want to thank you. I gather there was no consultation beforehand, before this legislation was tabled. It caught you by surprise; it caught you off guard.

Ms. MacKenzie Davies: Absolutely. I heard about it through one of our members who contacted me back in January or February. We had no idea. By that point, I think it had passed first reading. And our college had not heard as well, because I contacted them; we were caught completely unawares.

Mr. Runciman: It's becoming increasingly clear that this was an ill-thought-out initiative. Hopefully we can fix it as we go through this process. Thank you again for your contribution.

Mr. McMeekin: The difference, of course, is that our government chose to have hearings when previous governments would put legislation through with no hearings.

Mr. Runciman: Do you want to—

The Chair: Mr. Kormos.

Mr. Runciman: We can do it with you.

Mr. McMeekin: You opened it up.

The Chair: Order.

Mr. Runciman: I'll be more than happy to do it if you want to deteriorate into that kind of situation.

The Chair: Order. Mr. Kormos, you have the floor.

Mr. Kormos: Thank you very much. I appreciate the brevity of your submission. I've already mentioned you several times today. I've been waiting for you to come here, for a couple of good reasons. Your point is well made, and nobody, in my view, ever intended to regulate regulated social workers when the focus is on regulating paralegals.

I don't like the way the legislation is drafted. I don't think it's well drafted. I don't think it's a good way to write legislation because it depends upon those subsection (5) exemptions that the law society is going to determine by bylaw, not the Legislature.

Already one of the first issues that arose—because I'd been told about it and it struck me as being bang on—was the role of mediators. Of course, social workers are mediators as regulated social workers, but there are a whole lot of very, very capable mediators—Dr. Barbara Landau was here with Peter Bruer from St. Stephen's—who aren't regulated because they're not social workers.

Ms. MacKenzie Davies: Right.

Mr. Kormos: Just off the top of my head, a paralegal is a person who provides X, Y and Z services, whose

primary purpose is to provide legal services X, Y, Z and who is not otherwise regulated provincially or federally, maybe is a start. I don't know; far be it from me.

If you don't mind, I've been really interested in why there hasn't been more interest by paralegals—we heard from a very competent one today—in being part of the law society. I remember, back in 2000, legislation—the college of social work, right? Social service students in the community colleges were royally ticked off because they weren't part of this family. In the first round, the BSW/MSW social workers didn't want them to be part of the family. It was the exact opposite of what the case is now. You've got the Ontario College of Social Workers and Social Service Workers, right? Are there scopes of practice by the one group as compared to another?

Ms. MacKenzie Davies: Yes.

Mr. Kormos: Tell us, very briefly, can you? We haven't got much time.

Ms. MacKenzie Davies: The difference primarily relates to the ability to diagnose within the social work scope of practice: Social service workers would not have diagnosis within their scope of practice. They would be drawing on social service work knowledge as opposed to social work knowledge and their interventions would be of a social nature as opposed to a psychosocial nature—so, related to housing, a crisis within housing, very important issues, but they would not be going in and dealing with the—

Mr. Kormos: Community-based stuff.

Ms. MacKenzie Davies: Yes, community-based.

Mr. Kormos: Very important stuff. Was there a guarantee that social service workers wouldn't be outvoted on the board by virtue of overloading it with social workers as compared to social service workers?

Ms. MacKenzie Davies: No. In fact, there are 10,000 social workers and less than 1,000 social service workers, and it's equal numbers.

Mr. Kormos: Equal numbers?

Ms. MacKenzie Davies: Of social workers, social service workers and members of the public on the council.

Mr. Kormos: On the board.

Ms. Mackenzie Davies: Yes.

Mr. Kormos: Elected by?

Ms. MacKenzie Davies: They are elected by the memberships of the individual disciplines. So social workers elect seven members; social services, because their numbers are smaller, often their members are acclaimed as opposed to elected; and the public members of course are appointed.

Mr. Kormos: Was there a dispute resolution mechanism—that was raised, remember, by one of the commentators?—built into the structure in the event that the board was at an impasse?

Ms. MacKenzie Davies: I don't know if there is, but I think it is something that in recent years they have been looking at. Beatrice and I are observers. We go and observe their meetings. So my understanding is that they've perhaps considered that, but I don't recall that there was actually one initially.

Mr. Kormos: Thank you kindly. I appreciate your coming.

The Chair: Thank you for your presentation. Thank you, members, staff and everyone else, for your co-operation. That is the end for today. This committee is adjourned until 9 a.m. tomorrow.

The committee adjourned at 1634.

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