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Thursday 21 September 2006

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Jeudi 21 septembre 2006

Standing committee on justice policy

Comité permanent de la justice

Access to Justice Act, 2006

Loi de 2006 sur l'accès à la justice

Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 21 September 2006

Jeudi 21 septembre 2006

The committee met at 1005 in room 1.

ACCESS TO JUSTICE ACT, 2006
LOI DE 2006 SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006/ Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Welcome back. We're resuming our hearings on Bill 14. We're at schedule B, section 2: a government motion, number 17.

Mr. David Zimmer (Willowdale): Just before I start, Mr. Chair, this morning I distributed copies of my briefing notes to the members of the opposition, in response to Mr. Kormos's comment yesterday that that might make it easier for everybody to follow along. So you now have everything that I have, absent my personal handwritten notes on the material. You can follow section by section with the commentary that I would offer up on any section. You have them from B through to the end of the act.

Mr. Peter Kormos (Niagara Centre): I want to thank the parliamentary assistant for providing us with these. Obviously, I would have preferred the copies of the compendia that had Mr. Zimmer's handwritten notes, but I suppose we'll have to wait for his memoirs.

At the end of the day, when the parliamentary assistant, for instance, is asked in committee, "What does this amendment do," this is the sort of stuff that the PA is not going to inappropriately refer to. Frankly, it seems to me that, in general, when we're doing this sort of stuff, especially major bills—we've got a few more coming up in short order—it's not telling stories out of school. There's no state secret here. These are prepared by policy people, not by political people. They're prepared by civil servants who analyze the amendments objectively. So it seems to me entirely appropriate and, quite frankly, productive to share these things, and I think Mr. Zimmer should be commended for his vanguard position in this regard. Other parliamentary assistants who want to aspire to the competence level set by Mr. Zimmer would be wise to emulate him. Of course, it saves a lot of grief, because sometimes there can be grief in these committees.

The Chair: Thank you, Mr. Kormos.

Government motion number 17.

Mr. Zimmer: I move that subsection 2(2) of the Justices of the Peace Act, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

"Part-time justices

"(2) A person appointed as a part-time justice of the peace before subsection (1) came into force continues in office as a part-time justice of the peace.

"Change to full-time

"(3) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may change a person's appointment as a part-time justice of the peace to an appointment as a full-time justice of the peace.

"Consultation

"(4) Before making a recommendation under subsection (3), the Attorney General must obtain the recommendation of the Chief Justice of the Ontario Court of Justice on the matter."

The Chair: Any debate?

Mr. Kormos: This is interesting because, of course, one perspective is that part-time JPs as well as non-presiding JPs, especially the non-presiding—it was simply a safe place to put political hacks who were enjoying political appointments. And, since they weren't presiding, they weren't adjudicating, they weren't having to deal with legal arguments to any great extent. Of course, they still perform a very important function, and that is everything from signing informations for members of the public to the colloquial peace bond applications, search warrants, arrest warrants and similar sorts of things. So the historic role of the non-presiding JP was a very important one. Unfortunately—not always—it tended to be used as a dumping ground for people whom the government wanted to reward with JP appointments but couldn't trust to sit on the bench as presiding JPs.

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I appreciate that we're going to get to the retired JP per diems but this then raises the concerns that have been expressed by Mr. Runciman in particular about availability of JPs, in that all JPs are going to be full-time and all JPs are going to be presiding. Now, that doesn't mean that a presiding and full-time JP can't be assigned to be available for the purpose of swearing informations, but how—and if now is not the appropriate time to address this, we've got to deal with it at some point during the discussion of schedule B—does the government, with

this scheme, respond to the report by the Ontario Association of Chiefs of Police of at least two years ago now, which, although scientific, was very fulsome in terms of its anecdotal content about the unavailability of JPs?

There are times when you need a search warrant, yes; you need it at 3 in the morning or at 6 in the morning or on a Saturday or Sunday, as compared to regular 9-to-5 working hours. How is this going to address, if at all, that concern, that dilemma on the part of police who have to access these JPs? It's in the interest of public safety.

For instance, if the police have information—it's on people's minds that somebody's got a cache of explosives or firearms in their house and they're about to use them; I know this isn't the best legal example because perhaps there is other recourse, but the imagery is appropriate—and if they've got to be there at 3 a.m. because a person is planning on using them at 4 a.m., they need a JP at 3 a.m. to sign the search warrant, right?

That's what I put to the government in this regard. As I say, I commend Mr. Runciman's observations in this regard.

The Chair: Any further debate? Shall government motion, number 17, carry? Carried.

Shall schedule B, section 2, as amended, carry? Carried.

We're on to schedule B, section 3: a government motion, number 18.

Mr. Zimmer: I move that subsection 2.1(3) of the Justices of the Peace Act, as set out in section—

Mr. Kormos: Excuse me, my apologies. We've got 18 and 18.1. Replacement government motion or government motion? Is this like a multiple choice?

Mr. Zimmer: Actually, I didn't hear you.

Mr. Kormos: I don't know which motion the government is proceeding with.

Mr. Zimmer: It's 18.1.

The Chair: Government motion, 18.1

Mr. Kormos: Because I had 18, which of course came next.

Mr. Zimmer: I gave you all my material, but it's 18.1.

I move that subsection 2.1(3) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"Composition

"(3) The advisory committee is composed of seven core members as follows:

"1. A judge of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice.

"2. A justice of the peace appointed by the Chief Justice of the Ontario Court of Justice.

"3. A justice of the peace appointed by the Chief Justice of the Ontario Court of Justice who is either the senior justice of the peace responsible for the Ontario native justice of the peace program or another justice of the peace familiar with aboriginal issues or, when the justice of the peace so appointed is not available to act as a member of the advisory committee, another justice of the peace familiar with aboriginal issues who is designated by the Chief Justice of the Ontario Court of Justice.

"4. Four persons appointed by the Attorney General."

The Chair: Debate?

Mr. Kormos: Once again, this is interesting. The government yesterday made references to the need to avoid political interference in the management of judges of the bench, yet what do we have here? We've got political appointments by the Attorney General. Again, that's exactly what they are. When the appointment comes through the government, it's called a political appointment. I just find it interesting.

And I find it interesting that there are no criteria. If we take a look at paragraph 3 of the proposed subsection (3), you've got justices of the peace familiar with aboriginal issues—fair enough. But then you've got "Four persons appointed by the Attorney General"—no criteria whatsoever. Shall those four persons be equal numbers of women and men? Shall those four persons represent, let's say, if you were to divide the province into four huge regions, the northwest, the northeast, the southwest, the central or southeast?

I find it very disappointing that there aren't guidelines. There could be efforts here to ensure regional representation. There could be efforts here to ensure gender representation. There could be efforts here to ensure representation by a member of the community with disabilities, for instance, which, it seems to me, has a strong interest in considering these things, because we're going to get to that later on in this discussion.

This government, in this bill, in schedule B, specifically overlooks an opportunity—you talk about access to justice—to ensure access to the bench and to the judiciary by persons with disabilities. I'm going to speak to that when we get to the section that talks about the accommodation of JPs after they've been appointed, should they become disabled after appointment but not before.

I think it's shameful that the government maintains the old political patronage standard, a pork-barrel standard—"Four persons appointed by the Attorney General"—and does not take advantage of an opportunity to ensure that the AG appointments serve a function beyond mere pork-barrelling. I'm going to oppose this amendment for that very specific reason.

This is a lost opportunity. For a government that talks a big game to the community of Ontarians with disabilities, that talks a big game to linguistic minorities, that talks a big game to ethnic Ontarians—and I know I don't use the word entirely accurately, but people know what I mean; we're all ethnic one way or another—what an opportunity to say here that one of these appointments shall be a person from the—again, I use the term very generically—multicultural community, so that those interests can be represented. What about seniors? What about women? What about persons with disabilities? The list could go on and on. No, I won't support this amendment for that very reason. Shame on the government.

The Chair: Thank you, Mr. Kormos.

Mr. Runciman?

Mr. Robert W. Runciman (Leeds–Grenville): I'll be brief. Another big game, Mr. Kormos, that this government plays is democratic renewal.

I think there's an important opportunity in this legislation. I've already spoken to this issue, but I think this is an opportunity, once again, to have the Legislature involved in this process—the elected officials, the assembly. The parliamentary assistant talked about politicizing this by involving the elected representatives of the people of this province. That's his criticism with respect to having these appointments reviewed by the justice committee, but he doesn't see any political downside to the Attorney General, a political person, retaining that authority. I think that's pretty difficult to justify in terms of the public, who are hopefully watching these proceedings. This is an opportunity. I think we have to get this Legislature more involved in these kinds of decisions, this kind of review. In terms of transparency, this is an ideal opportunity to ensure transparency in terms of the role of this group.

I once again encourage my colleagues across the floor to consider that position and consider the role that this committee can play in this process.

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The Chair: Any further debate? No debate. Shall government motion—

Mr. Kormos: Recorded vote.

Ayes

Fonseca, Lalonde, Van Bommel, Wong, Zimmer.

Nays

Kormos, Runciman.

The Chair: That's carried.

Next is government motion 19.

Mr. Zimmer If I haven't already said it, I'm not moving motion 18.

I move that paragraph 2 of subsection 2.1(4) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"2. The regional senior justice of the peace for the region or, when he or she is not available to act as a member of the advisory committee, another justice of the peace from the same region who is designated by the regional senior judge."

The Chair: Debate? No debate. Shall government motion 19 carry? Carried

Next is government motion 20.

Mr. Zimmer I move that paragraph 3 of subsection 2.1(4) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "two" and substituting "five".

The Chair: Any debate? Shall government motion 20 carry? Carried.

Government motion 21.

Mr. Zimmer I move that subsection 2.1(5) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "In the appointment of members under paragraph 2 of subsection (3)" and substituting "In the appointment of members under paragraph 4 of subsection (3)".

The Chair: Any debate? If none, shall government motion 21 carry? Carried.

Government motion 22.

Mr. Zimmer I move that subsection 2.1(6) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "The members appointed under paragraph 2 of subsection (3)" and substituting "The members appointed under paragraph 4 of subsection (3)".

The Chair: Any debate? Shall government motion 22 carry? Carried.

Government motion 23.

Mr. Zimmer I move that subsection 2.1(7) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"Staggered terms

"(7) Despite subsection (6), the following applies to the first appointments to the advisory committee:

"1. Two of the members appointed under paragraph 4 of subsection (3) hold office for a two-year term.

"2. Two of the regional members for each region appointed under paragraph 3 of subsection (4) hold office for a one-year term."

The Chair: Any debate? Shall government motion 23 carry? Carried.

Government motion 24.

Mr. Zimmer I move that subsection 2.1(8) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "paragraph 2 of subsection (3)" and substituting "paragraph 4 of subsection (3)".

The Chair: Any debate? Shall government motion number 24 carry? Carried.

Government motion number 25.

Mr. Zimmer: I move that paragraph 2 of subsection 2.1(12) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"2. It shall develop the application procedure and the general selection criteria and make information about them available to the public."

The Chair: Any debate?

Mr. Kormos: I'm curious, appreciating that there's a requirement to advertise annually—and I appreciate we're not speaking to the whole of subsection (12), but this is the only chance I have to speak to subsection (12) independent of the other subsections—and I also find interesting the respective reports by the advisory committee. "Not qualified," I understand that. I presume that means you don't meet the criteria. I don't know. Because we don't know whether only people who meet the criteria will even be considered. I'd like some help in this regard,

if there is help. Do you understand what I'm saying? It's one thing to meet the bar and then to say "not qualified," because that then is a subjective evaluation. So what I would like to know—and I'm going to try to be brief—is, does "not qualified" here mean does not meet the bar, or meets the bar because there wouldn't be any report or any response but is otherwise not qualified?

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

Ms. Laura Metrick: Laura Metrick, counsel with the Ministry of the Attorney General. Meets the bar, but is otherwise not qualified.

Mr. Kormos: So that makes it more interesting. There are basically three categories that people can fall into who are otherwise qualified, although we don't want to say qualified because we use the word "qualified" in terms of the report.

I just find it interesting. Will there be and is there in the bill an opportunity for the public to determine what "not qualified" would mean as compared to qualified or highly qualified? In other words, how do people assess their initial eligibility? Not the bar; the bar, I think, is reasonably clear—not really clear, because there's some stuff subject to regulation, but reasonably clear. So one meets the bar, passes the bar. Where, if anywhere, are those three categories going to be ranged? It's sort of like A, B and C in grading in high school or something. Quite frankly, in As, Bs and Cs, there's a little blurb beside it saying, "C means substantial knowledge of course material, B means a very good knowledge of course material, A means an exemplary knowledge of course material." Where are we going to see that gradation?

Ms. Metrick: It's left to the committee to determine the skills, abilities and personal characteristics in terms of what is desired in a justice of the peace. How the committee will work is that there will be the core that will develop the application form and that sort of thing in terms of general practices and procedures, and then there'll be the regional committees that will be aware of and sensitive to regional needs. So there will be the general skills, abilities and personal characteristics but, at the same time, because the committees are regional in nature—though in considering and classifying there'll be some core members for consistency, as well as regional members to take into account regional variation across the province. So it'll be left to the committee to determine the skills, abilities and personal characteristics that are required.

Mr. Kormos: I find this troubling, because if the goal is to professionalize the justice of the peace bench—I hope that's not an inappropriate way of describing it—and to upgrade it and to make it transparent, it seems to me that there should be some setting, in a very general way, of what constitutes "not qualified," "qualified" and "highly qualified" so that applicants know and so that the public knows.

I am also troubled by qualified versus highly qualified, because I know that both qualified and highly qualified are eligible to be on the short list to be presented to the Lieutenant Governor in Council. How does the public know whether or not they're appearing before a JP who is highly qualified, as compared to one who is merely qualified? I would like to know that the dentist doing my crown or whatever was highly qualified, as compared to merely scraping by in his or her dental exams and practical work experience.

1030

Ms. Metrick: In response to your earlier question, the committee will be required to make all of the information publicly available. In terms of the personal characteristics, the skills and abilities and so on, that will be required to be made publicly available, as well as the application procedure. That information will be available to the public, so they will have a sense of the skills and abilities and personal characteristics that are required of a justice of the peace.

Mr. Kormos: That's good, in and of itself, and interesting, but we still have a problem. I'm in front of a JP. Did he or she just barely make it, or was he or she considered at the top of the pack?

One of the problems, in my view is—and it may not have been the intention of the drafters—this is where the government is buying wiggle room in terms of patronage, in terms of pork-barrelling. As long as somebody passes the bar, is at least qualified, they are eligible, then—not necessarily will they be placed on the short list, but they're eligible to be placed on the short list. Am I correct? Not every person who is deemed qualified or highly qualified is going to be submitted to the LG in Council.

Ms. Metrick: Right. They would be submitted to the Attorney General for consideration, and then he could recommend to the Lieutenant Governor in Council.

Mr. Kormos: So help us. Is everybody who applies, who is assessed and who is deemed at least qualified going to be submitted to the AG?

Ms. Metrick: Yes, if they're classified as qualified or highly qualified, which, again, doesn't mean they meet the minimum bar; it means they're assessed to be qualified or highly qualified, and then those are provided to the Attorney General, who then makes a recommendation.

Mr. Kormos: So depending upon the vacancy, its location and how many people apply, there could be a list of two presented to the Attorney General or a list of 20.

Ms. Metrick: Yes. It could vary.

Mr. Kormos: Wow. Think about that, Chair. What wiggle room. In other words, the committee isn't being told at any given point in time, "Give us your three best," because I presume there are ways of doing it. You've got managerial MBA types who can create scales where you rate people and score them and where you can quantify these things, and that's fair enough.

It isn't a matter of the AG being given a list of the three best for one vacancy, but it's a matter of the AG being given a list of as many 20, maybe 30, maybe 40 so that you can then find out who's been making their annual contribution to the Liberal Party of Ontario or who's the friend of the Premier's brother-in-law or sister-

in-law. That's not very transparent; that's not much of a reform, is it? The JPs have been sort of the last bastion of the coarsest of political patronage. Hmm. That's interesting stuff.

I'm not going to support this section when we get around to voting this section. Well, I'm obviously not going to support it, because I have concerns because of the two AG appointments and the lack of specificity in ensuring that they come from respective communities, the very general sort of diversity of the population, overall gender balance.

Hmm. This schedule becomes less impressive every minute and demonstrates itself to be more of a little bit of a—Mr. Runciman talks about democratic reform as being a sham. It looks like the JP reform may be a little bit of a sham here too. Interesting stuff. Smoke and mirrors, yeah. You wonder what they're smoking.

The Chair: Any further debate? Seeing none, shall government motion number 25 carry? Carried.

Government motion number 26: Mr. Zimmer.

Mr. Zimmer: I move that paragraph 5 of subsection 2.1(12) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"5. It shall review all applications and evaluate them at least once each year or on the request of the Attorney General and may interview any of the candidates."

The Chair: Any debate?

Mr. Kormos: I appreciate the stated purpose of the amendment, but what is absent in the existing section that suggests that the committee wouldn't have the authority to interview candidates? What are we amending here?

Ms. Metrick: There wasn't anything absent. In the original drafting, the understanding was that it was implicit in terms of interviewing, but in further discussions with legislative counsel, it was thought that it may be preferable to make it explicit, and so the decision was made to make it explicit.

Mr. Kormos: Fair enough.

The Chair: Any other debate? Shall government motion number 26 carry? Carried.

Motion 27 is a PC motion.

Mr. Kormos: On a point of order, Mr. Chair: Gosh. I'm wondering, Mr. Zimmer, if one of your staff could help get me a clearer copy of the compendium, because the references to the Tory motion are all darkened here. I can't read them.

Mr. Zimmer: They're just darkened so I don't miss them.

Mr. Kormos: It's not highlighted on my version. They're just darkened, as if to obliterate them. We've got a clear copy? Is yours darkened, Mr. Runciman?

Mr. Runciman: Yes, it's darkened too.

Mr. Kormos: I can't read the darn thing.

Look, folks. You see, they've darkened them. Chair, see?

Mr. Zimmer: Let me see yours and I'll see if it's any darker than mine. I can read mine.

Mr. Kormos: Well, you're wearing your reading glasses.

Mr. Zimmer: Mine's darkened and I can read it quite clearly.

Mr. Kormos: It's very dark.

Chair, to be fair, this could just have been a little printer gremlin thing, because I'm sure it won't happen again throughout the compendium.

The Chair: Thank you. Mr. Runciman—

Mr. Kormos: Because, Chair, I know that the government has an open mind—the government members here—notwithstanding that we have yet two new government members who have never sat before on this committee during its consideration of Bill 14. Mr. Lalonde was here for a little while yesterday, but three of them who haven't heard a single word of submissions to the committee—how does that show any respect for the people who worked incredibly hard, either advocating for or against the bill, and who came before this committee to make presentations, expecting their presentations not only to be heard but to be considered during these deliberations? Shame.

The Chair: Mr. Runciman?

1040

Mr. Runciman: I move that paragraph 6 of subsection 2.1(12) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"6. It shall conduct the advertising and review process in accordance with general selection criteria, including the assessment of candidates' skills and abilities, their familiarity with the criminal justice system, law enforcement and issues relating to victims of crime, their community awareness, their personal characteristics and the recognition of the desirability of reflecting the diversity of Ontario's population in appointments of justices of the peace."

We have mandatory considerations incorporated into the bill regarding linguistic duality, diversity, gender. There are no considerations here in terms of qualifications with respect to familiarity with and understanding of the justice system—no recognition of the importance and desirability in terms of either a law enforcement or criminal justice procedure dealing with the victims of crime, expertise in that area. I think this is a serious weakness.

Many people have been very critical, including legislators, in the past few years with respect to some of the decisions taken by justices. I think all three governments can bear some responsibility in terms of the background, training and readiness for taking on some of these very important responsibilities that JPs face. I think it's critically important that we recognize in the appointments process background in these areas, and not just be politically correct when we're talking about linguistic duality, diversity and gender as the only mandatory considerations. That is the politically correct route, but I don't think it helps us in terms of ensuring that we're appointing the right people to these very important positions.

The Chair: Any debate?

Mr. Zimmer: The difficulty with the amendment is that this is going to add to qualification of the candidate for justice of the peace a pre-existing knowledge of criminal law and law enforcement. Essentially, that's contrary to the spirit of a lay bench, so we want to encourage people with criminal law backgrounds and appreciation of justice issues, but also those many talented people who don't have any technical or specific background in that. The point is that the new justices will be trained extensively in criminal law, criminal procedure and criminal issues once they're appointed and before they take up their duties.

The Chair: Any other debate?

Mr. Runciman: It doesn't exclude anyone. I'm talking about mandatory considerations. We could also, I suppose, suggest that they have the capacity and inclination to say no to frivolous or procedurally abusive adjournment requests. There's a whole range of things here that we could look at, but I think having experience in this field is critically important. And certainly no one is being critical of additional training in this area, but if you have someone who's spent 20 or 25 years working in the criminal justice system, working with victims of crime, working in law enforcement, all of those things, from my perspective, have to be enormously helpful to one assuming those onerous responsibilities.

The Chair: Mr. Kormos.

Mr. Kormos: I have some sympathy for the motion. I think one of the interesting observations is that the general view is that a person's prior legal experience in terms of, let's say, the provincial court bench is a very minimal predictor of what their trend or tendency is going to be when they're on the bench. Crown attorneys who have been some of the toughest prosecutors you've ever found, real law-and-order types, have ended up being some defence lawyers' dreams when they're sitting as judges. Similarly, very, very skilled defence lawyers who have wrestled not-guilty verdicts out of some of the most astounding of fact situations have ended up being some of the most conservative, if I can put it that way, judges. I think that's a fair observation. In my view, there's no predictability based on a person's background. It really rests on the training.

But having said that, I don't currently—and I find interesting Mr. Zimmer's commitment to a lay bench. The government's never talked about the reason for that commitment, other than that it—I just don't know. The government has never talked about the reason for that commitment. It advocates a lay bench, but it seems to not advocate lay advocacy. Think about that. Here the government is saying it's fine that we can appoint people with no prior legal experience or criminal experience as justices of the peace, but whoops, when it comes to paralegals, it's going to set standards, which is fair enough, but then it's going to exclude paralegals, even if they have training in certain areas of law like family law, from acting for litigants in Family Court even at the most fundamental level. That's a little bit of a contradiction here that I find interesting—not the first contradiction I've encountered at Queen's Park or with this government.

So I have some sympathy. I'm not going to be supporting this section. I don't think it's ready to go yet. I think there should be some further debate about whether or not the Legislature in the act should be dealing with the whole issue of criteria and eligibility. Part of my problem is the qualified/highly qualified, the two levels of qualification, because that's dealt with very specifically later on in schedule B.

I don't know why the government is dismissing Mr. Runciman so readily when what he does is raise the need for some more thorough consideration of exactly what it is we want those people who are appointed as JPs to have as—we want them to have something in their background, or else we wouldn't be examining their backgrounds, would we, Mr. Zimmer? We wouldn't be looking at their qualifications. It leads me to express concern about whether or not the predominant qualification is still going to be where your political allegiances lie. That's where it takes me. I'm sorry to be so cynical; I'm not usually like this. But it causes me concern.

The Chair: Thank you, Mr. Kormos. Any other debate? Shall PC motion—

Mr. Runciman: Recorded vote.

Ayes

Runciman.

Nays

Fonseca, Lalonde, Van Bommel, Wong, Zimmer.

The Chair: That's defeated.

Government motion number 28.

Mr. Kormos: Chair, I've turned the page on the compendium that Mr. Zimmer was so generous to provide, and the text is clear. It's not obscure. Thank you very much. It must have been just that old printer's gremlin in there.

Mr. Zimmer: I move that subsection 2.1(13) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"Quorum

"(13) The quorum for decisions under paragraph 8 of subsection (12) is two core members and seven regional members from the region for which an appointment is considered."

The Chair: Any debate? No debate. Shall government motion number 28 carry? Carried.

Government motion number 29.

Mr. Zimmer: I move that subsection 2.1(14) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "If a vacancy occurs among the members appointed under paragraph 2 of subsection (3)" and substituting "If a

vacancy occurs among the members appointed under paragraph 4 of subsection (3)."

The Chair: Any debate? Mr. Kormos.

1050

Mr. Kormos: This is the only chance we have to talk to the vacancy subsection, because you know there's a problem out there—police services boards, amongst others—when this government's been dragging its heels on appointments: "A new member may be appointed under the applicable provision for the remainder of the term." Is that as simple as what it appears to be, that appointments can be made for the balance of a term, as compared to appointments for a full term, if there's an interrupted term?

Ms. Metrick: Yes, a further balance of the term for members on the committee.

Mr. Kormos: Fair enough. Thank you.

The Chair: Shall government motion 29 carry? Carried.

Government motion 30. Mr. Zimmer.

Mr. Zimmer: I move that the French version of clause 2.1(15)(a) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"(a) il est titulaire d'un grade universitaire;"

The Chair: Any debate?

Mr. Kormos: I don't have the French version of the act in my material here. Can we get a Queen's Printer copy? Is there a Queen's Printer anymore? I'm using the one the government thoughtfully provided us.

Mr. Zimmer: I'm wondering, Mr. Chair, just while you're doing that, if we could have a two- or three-minute health break.

Mr. Kormos: I quit smoking years ago now, Mr. Zimmer. I don't need any break.

Mr. Zimmer: No, I don't smoke.

The Chair: A five-minute recess.

The committee recessed from 1052 to 1058.

The Chair: We're continuing our clause-by-clause consideration of Bill 14. We're now at government motion 30. Mr. Zimmer.

Interjection.

The Chair: I apologize. The motion has been moved. Is there any debate? Mr. Kormos.

Mr. Kormos: I'm not being adversarial here, I just find it interesting. The current language refers to "un diplôme universitaire," a university diploma; I brought the Larousse here, the French-English dictionary—not the biggest one, but not the smallest one either. Then I looked up "titulaire d'un grade universitaire." Again, far be it from me to suggest I'm an expert in the French language in terms of the application of the words. What's the difference? I looked up "titulaire" and "universitaire," and when you take the words in isolation, there's nothing there that makes a profound distinction to me. Is the distinction "diploma" as it applies to community colleges versus universities?

Ms. Metrick: Legislative counsel is the one who suggested this change, so Joanne—

Ms. Joanne Gottheil: I believe it's just a question that originally the word was "diplôme," and now it's changed to "grade." "Grade" is a better translation of "degree," rather than "diploma."

Mr. Kormos: Really?

Ms. Gottheil: Again, I'm not the expert in the French language, but this is what our translators have told us.

Mr. Kormos: And I'm not either, again, by any stretch. "Grade," in a university context, qualification—

Mr. Zimmer: I'm not bilingual, but I have confidence in the opinion just expressed by the legislative counsel that the translation used here is a better word to use.

Mr. Kormos: Okay, but—

The Chair: Mr. Lalonde.

Mr. Kormos: Ah, here we are.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): The way it is printed in there is, "Il possède un diplôme universitaire." Now we're saying, "Il est titulaire d'un grade universitaire." So it's just the wording, really. It means "Il détient"—il possède, il détient—"un grade universitaire." Il détient un certificat universitaire. Donc, it's just housecleaning.

Mr. Kormos: But help us to understand the difference between the two phrases.

Mr. Lalonde: The two really mean about the same thing. "Il est titulaire" ou "Il détient," au lieu de dire "Il possède," is just a house—

Mr. Zimmer: What might an analogy be in English?

Mr. Kormos: What might an analogy be in English?

Mr. Lalonde: "Il possède" means "He has." The other one, "Il est titulaire," "il détient"—he has a graduation certificate.

Mr. Kormos: Okay. Look, at the end of the day, here we are—

Mr. Lalonde: It means about the same thing. "Il détient," he has a certificate, but this one means—you could have a certificate, really, that wasn't awarded to you. Today we're saying, "Il est titulaire": il est la personne qui a obtenu le certificat, le grade universitaire. I could come to you and say, "I have a certificate." It doesn't mean that it is my certificate. Today we say, "You are the one who was graduated. We have the certificate that shows that you are the graduate of the university." It's just wording.

Mr. Kormos: Thank you very much. Where's the English-language version here?

Mr. Lalonde: In English, "has a university degree." Exactly. He has a university degree. And in French, he's got his university certificate, but it doesn't mean it's his own.

Mr. Kormos: Yes, but if I have Mr. Zimmer's university degree, his master's in philosophy, and I'm holding it in my hand, the argument seems to be—I hear your argument. He wants to avoid me saying, "Yes, I've got a degree here. It just doesn't happen to be mine, but what the heck, let's go with it." It's Mr. Zimmer's.

Let's go with it, folks. These are always interesting.

The Chair: Shall government motion number 30 carry? Carried.

Government motion number 31.

Mr. Zimmer: I move that clause 2.1(15)(b) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"(b) has a diploma or advanced diploma granted by a college of applied arts and technology or a community college following completion of a program that is the equivalent in class hours of a full-time program of at least four academic semesters;

"(b.1) has a degree from an institution, other than a university, that is authorized to grant the degree,

"(i) under the Post-secondary Education Choice and Excellence Act, 2000,

"(ii) under a special act of the assembly that establishes or governs the institution, or

"(iii) under legislation of another province or territory of Canada."

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: This is part of the problem—and I appreciate the effort—in having a lay bench and then trying to articulate the standards, because then, of course, we've got clause (b): a community college diploma from "a program that is the equivalent in class hours of a full-time" two-year program. That seems to be four academic semesters, right?

"Has a degree from an institution, other than a university"—this is the interesting part, because this is the new stuff, right? The first part is not new stuff. Colleges of applied arts and community colleges are covered, but then "a degree from an institution, other than a university...." We have community colleges and we've got universities, so give us a "for example," please.

Mr. Zimmer: Perhaps I can help here. There's a difficulty out there generally with assessing any kinds of qualifications, so the Ministry of Training, Colleges and Universities maintains an office that defines and clarifies equivalency among certificates and degrees—not only the degree itself but also the various institutions and so on. What clause (b.1) does is recognize the updated definitions of the Ministry of Training, Colleges and Universities respecting community colleges and degree-granting institutions other than universities. The fact of the matter is, unlike lawyers applying, many of the folks applying for JP positions have educational certificates from a variety of institutions. This is a way of just sorting out what that certificate or graduation diploma means.

Mr. Kormos: Thank you, and I hear you. But with respect, I know what community colleges are and I know what universities are. What's left?

Mr. Zimmer: Just to give you an example, in the riding of Willowdale there's a college called Tyndale College. It's a faith-based college, and it grants certain degrees and certificates and so on. If you wanted to know just what their diplomas and degrees meant in terms of equivalency, you could check with the ministry, and they have an equivalency. For instance, I know from personal experience that the University of Toronto gets applications from people all around the world. The challenge for the university is what those diploma or certificate criteria mean, and the university has an office that assesses equivalency. It's the same sort of exercise here, so that people aren't frozen out of the application process because they don't meet the technical qualifications. You may have an immigrant who's now a Canadian citizen but whose training is in another country, and that's got to be assessed in terms of equivalency. That's what this is all about.

Mr. Kormos: You're not talking about those correspondence courses on the backs of matchbooks.

Mr. Zimmer: That would be something that would be sorted out in the equivalency analysis.

Mr. Kormos: You'd consider those? That's interesting. Fine. But I hope when we get to schedule C that the same sort of latitude and flexibility is being considered for people who propose to be licensed as paralegals.

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Mr. Zimmer Do you have anything to add to my comment?

Ms. Metrick: There are degree-granting institutions other than universities. They're private institutions, and they are listed under Post-secondary Education Choice and Excellence Act; for example, Knox College and Iona College. They're listed in legislation, reviewed by the Ministry of Training, Colleges and Universities and felt to be qualified to grant degrees, yet they are not universities and they're not community colleges. So that's what we're talking about here.

Mr. Kormos: Thank you, that's very helpful. Mr. Zimmer, you should have let her go first.

The Chair: Shall government motion 31 carry? Carried.

Government motion 32.

Mr. Zimmer I move that subsection 2.1(17) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "clause (15)(a), (b) or (c)" at the end and substituting "clauses (15)(a) to (c)."

This is just housekeeping.

The Chair: Any debate?

Mr. Zimmer: Carried.

The Chair: Shall government motion 32—

Mr. Kormos: One moment. Was there a vote? There wasn't a vote yet.

The Chair: Any debate?

Mr. Kormos: Yes.

The Chair: Mr. Kormos.

Mr. Kormos: No. Any debate?

The Chair: Any debate? Shall government motion 32 carry? Carried.

PC motion 33.

Mr. Kormos: Chair, I can't read it again.

The Chair: Well, you may want to flip the page again.

Mr. Kormos: No, no. Look, it's all been darkened.

The Chair: You may want to flip the page and the same thing might happen.

Mr. Kormos: If I flip the page, it's a Liberal motion, and that's not the one we're dealing with now. This is frustrating.

The Chair: Mr. Runciman.

Mr. Runciman: I've lost my place in all this paper. What number is it, 33?

I move that section 2.1 of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by adding the following subsection:

"Approval by standing committee on justice policy

"(18.1) The Attorney General shall consult with the assembly's standing committee on justice policy before recommending a candidate described in subsection (18) to the Lieutenant Governor in Council, and shall recommend the candidate to the Lieutenant Governor in Council only with the approval of the standing committee."

I've spoken to this on a number of occasions in terms of involving the members of the standing committee and the Legislative Assembly in this review process. I think it fits in very much with the view that the governing party expressed in terms of democratic renewal and democratic reform. In reality, we have yet to see the rhetoric have any meaningful impact in terms of changes in the way government operates. I think this is an opportunity for us as legislators and as members of the committee reviewing this legislation to put forward an initiative that would be sending all of the right messages to the people of this province, who have many concerns surrounding the justice system, that their legislators are going to play an active and meaningful role in the future.

The Vice-Chair (Mrs. Maria Van Bommel): Any further debate?

Mr. Kormos: I want to make it clear that I very specifically disagree with this proposition. This is precisely what I've expressed concern about in terms of the ongoing AG direct appointment role—for instance, the political appointment process and the risk of political patronage. I don't believe that the Legislature has any business whatsoever vetting or screening judges or justices of the peace. I think and believe strongly that we have to develop an integrous and strong and truly transparent system of ensuring that very qualified people are appointed to these very, very important positions. We have to ensure that the appellate courts are equipped to deal with errors made by lower courts in the event that they're made, but the proposition of vetting in any way—this bill would actually require the approval of the committee, but the Americanization of the appointments process to the extent of even interviewing these people, with an effort, obviously, in a partisan context—especially in a partisan context—is entirely inappropriate, and quite frankly it is an attack on the independence of the judiciary, which is something that is, oh, so important. Just ask folks in those countries that don't have an independent judiciary.

The Vice-Chair: Further debate?

Mr. Runciman: Recorded vote.

The Vice-Chair: Hearing none, I'm going to call the vote. Shall motion 33 carry?

Ayes

Runciman.

Nays

Fonseca, Kormos, Lalonde, Wong, Zimmer.

The Vice-Chair: That's lost.

Shall schedule B, section 3, as amended, carry? Any debate?

Mr. Kormos: Yes, ma'am. I have serious concerns about components of section 3. I've expressed those during the course of consideration of any number of amendments. I won't repeat those concerns. We will have an opportunity as we move on to address those further.

I want to very specifically talk about subsection 3(18). That's where the issue about "qualified" versus "highly qualified" is put into a nutshell:

"(18) The Attorney General shall recommend to the Lieutenant Governor in Council for appointment as a justice of the peace only a candidate whom the advisory committee has classified as 'qualified' or 'highly qualified.'"

We still don't know what the distinction is between the two. Is it like the difference between getting a bare pass out of a high school grade as compared to being on the honour roll? Is it as simple as that, or are there other considerations? It seems to me that only highly qualified people should be being presented for consideration for appointment to these benches. Why would we accept anything less than highly qualified people? You're a little bit qualified, you just barely made it, but you happen to be a political friend of the government of the day? Because that's what this speaks to.

I reject absolutely the gradation of "qualified" and "highly qualified." This is the barn door being opened for pork-barrelling, for political patronage, because if you've managed to squeak through and you're competing against highly qualified people but you're a Liberal hack, in the context of 2006, you get the appointment. That's not JP reform, Mr. Zimmer. That's not transparency, that's not democratic renewal, and that's not depoliticizing the appointments process. It seems to me that only people who are highly qualified should be considered, and then it seems to me that the residual discretion on the part of the AG and the Lieutenant Governor in Council should be exercised in a very clear way. In other words, there should be some clear understanding of why an Attorney General would pick one highly qualified applicant versus another highly qualified applicant, and that's where considerations around cultural diversity, gender balance and the presence of persons with disabilities on the bench may well come into play. But we don't articulate that here either.

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The fact is that at the end of the day, appointments of JPs are going to be a dirty little political cabinet activity

and people are going to be lobbying for their political buddies. There will be from time to time a prominent partisan from a non-governmental party appointed so the government can defend itself against finger-pointing and accusations of pork-barrelling, of patronage.

This is just bizarre. For the life of me, why would the government want to even know the names of people who are merely qualified when there are others who are highly qualified? We should be looking for the very best. This is a serious problem that all of us—not all of us, because of course three members here on the committee have only just shown up today—at one point or another have expressed some interest in, if not concern about.

No. I'm not going to support a section that gives the Attorney General the opportunity to appoint a merely qualified person when there are highly qualified people, because that opens the door to that appointment being based on considerations other than qualifications, and then what's left?

This is what it does: When you have qualified as well as highly qualified people being presented, that means there are going to be considerations other than qualifications. And don't tell me there aren't enough highly qualified people for the Lieutenant Governor in Council. That's the cabinet. Let's not sanitize this. That's the Premier's office. It's not Mr. Bartleman sitting there saying, "Oh, well, which appointment should I make today?"

Yes, I should stop using that language. The back room—the very, very back room—of the Premier's offices is where these decisions are made, because there's a lineup a mile long of people vying for these positions, many of them for all the wrong reasons. There are some dogs out there sitting on the JP bench, and they got there because of political patronage. If people want to challenge me on that, I can start naming names. There are some real barkers, and again, it's not hard to connect the dots. The ones who should be leashed and muzzled are the ones, inevitably, who are there because of their political connections rather than because of any competence, skill, interest or desire to work within their community and within the justice system.

This isn't good policy, and we've had a paucity of discussion in the committee about justices of the peace and about this schedule. The government would not allow this committee the opportunity to defer clause-by-clause so we could consider inviting some expertise to the committee. Remember my motion yesterday? The government rejected it. I think we have to hear from some of the JP bench, from some of the bar, from some of the people who are out there seeing what's happening when you've got political appointments.

This bill will not stop the political hacks from being hand-picked, and some of the political appointments will be highly qualified; some will be merely qualified. Some will have just made it. Right?

What was a passing grade in high school, 60%? I can't remember. If you got 59, you failed by one percentage point, but if you got 60, you made it.

There are going to be people being appointed by Premiers' offices, because that's where the decisions are made. They're made in the most sordid way because they're made by the gatekeepers, the proverbial and sometimes oxymoronic brain trust in the Premier's office. What did Bill Murdoch refer to them as, back in government days? I can't remember. I think it's just as well. But it's these sorts of people who are going to be making these sorts of decisions, who are going to be doing the lobbying, who are going to be doing the leaning on the political staff—wrong, wrong, wrong. That's not how you upgrade that bench. That's not how you improve public confidence. In this regard, I share Mr. Runciman's concerns about the JP bench in terms of bail hearings and so on, because there is a serious erosion of public confidence in it. As you know, Madam Chair, as a politician, perception is reality, and when there isn't public confidence in that bench we have a serious problem, socially, when there isn't confidence in the justice system.

I, of course, am going to be recommending that schedule B not be passed so that it can remain available to be reintroduced on its own. You'll recall at the very introduction of Bill 14, at least at the time or shortly thereafter, both opposition parties expressed concern that we had this omnibus bill and we very much wanted to deal with the paralegal regulation as a stand-alone. The JP so-called reform has gotten very short shrift.

I'm not impressed. I don't think the public will be particularly impressed either. This is phony stuff. It's fake reform. This is so nasty because what it does is, it's going to allow the perpetrators of crude political patronage to hide behind a JP appointments advisory committee that will be allowed to present the names of merely qualified people, people who just barely make it. Those aren't the sort of people we want on our benches, and that's wrong.

Thank you kindly, Chair. I will certainly not be supporting this section.

The Chair: Mr. Lalonde?

Mr. Lalonde: I don't think Mr. Kormos really meant what he just said, that there are dogs sitting on the justice bench.

Mr. Kormos: Okay, now I name them.

Mr. Lalonde: Really, any previous government was serious when they appointed justices of the peace. There are qualifications to meet, but when you refer only higher qualified people—subsection 2.1(18) is really clear: "a candidate whom the advisory committee has classified as 'qualified'". When we say "qualified," this is according to section 15. There are some qualifications written into the bill, so really, anybody who is appointed, it's because he has some qualifications to become a justice of the peace. And after the appointment, they have training to follow before they become a justice of the peace. So I don't think you were serious when you said that there are some dogs sitting on the justice bench.

Mr. Kormos: I've already had occasion to name some of the outstanding members of that bench that I've had the pleasure and opportunity to know and to work with, people like Tony Argentino, people like Gabe Tisi,

people like Morley Kitchen. I've also had the displeasure of observing and witnessing justices of the peace who had no knowledge of the law whatsoever, whose motivation was purely the prestige and status of the job, who saw the job as an early retirement because they were failed in other aspects of their lives, who wouldn't know a criminal code if it fell on them and hit them on the head, whose political partisanship continued after their appointment to the bench in such a way that the community would be hard-pressed to have any real confidence in their ability.

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I've had occasion to witness JPs who, as political appointments, were mere servants of the police, who would sign anything that the police put in front of them, especially back in the old days of piecework, where you got paid—what is it?—a buck an information. I watched one JP sign a remand order for an accused before any arguments had even been made regarding the accused's eligibility for release and bail. I've heard justices of the peace—well, one in particular—convict a person and then suspend sentence, saying, "And if I had not had a reasonable doubt, I would have fined you." These are the sort of things—training sessions? What, like the drunk-up—was it down in Windsor?—where the one JP sexually harasses a female counterpart? Training sessions, my foot. You want to read about that? Read about that in the disciplinary report that was made.

Mr. Lalonde: That's the old days.

Mr. Kormos: Read about the justices of the peace who have made some of the most bizarre and wacko comments. One of the problems and concerns expressed by good JPs is the lack of ongoing and adequate training.

I tell you, Mr. Lalonde, I'm dead serious. There are some incredibly incompetent people sitting on that bench. Inevitably, they're the ones who are political appointments. It's not a retirement for people who have left their former jobs. Quite frankly, observations like yours are what drive me increasingly to believe that a lay bench may not be the most appropriate way to be addressing it. If we require specific legal training for paralegals, why don't we require specific legal training in terms of background for justices of the peace? Why is it okay for anybody, regardless of what their college diploma is, to become a JP, but it's not okay for anybody, regardless of what their diploma is, to become a paralegal? We expect, and rightly so—of course, you're darn right, I expect paralegals to be trained in their respective area of law. But any Liberal hack can get appointed a JP? Please, I've witnessed enough of the incredible shenanigans on that bench personally, and I've read enough of the disciplinary reports to know that, I'm sorry, political patronage has no role when it comes to appointing members of the judiciary, whether it's provincial judges, whether it's federal judges, whether it's justices of the peace.

The Chair: Any other debate? Shall schedule B, section 3, as amended, carry?

Mr. Kormos: Recorded vote.

Ayes

Fonseca, Lalonde, Van Bommel, Wong, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: That's carried.

Schedule B, section 4, government motion number 34.

Mr. Zimmer: I move that subsection 4(3) of the Justices of the Peace Act, as set out in section 4 of schedule B to the bill, be struck out and the following substituted:

"Change to presiding

"(3) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may change a person's appointment as a non-presiding justice of the peace to an appointment as a presiding justice of the peace."

The Chair: Any debate?

Mr. Kormos: I understand what's being done here by virtue of the motion, but this raises the interesting question: The government in this legislation is creating some minimum educational standards for justices of the peace. It's obvious that there's no intent to revoke the appointments of existing JPs who don't meet those standards. If there is, I think it'd be a bombshell and I'd be more than pleased to watch it drop.

In terms of converting part-time JPs to full-time JPs, what is going to be done with respect to part-time JPs who—again, I'm not arguing that they shouldn't—no, I shouldn't say that. I'm not for the moment arguing that they shouldn't be allowed to continue to sit as JPs even though they don't meet the new standards. But will the government be requiring them to meet the standards before they become full-time JPs?

The Chair: Further debate?

Mr. Kormos: Well, I'm asking the question: Is there anything in the legislation that will require people who are being, in effect, upgraded to full-time JPs to meet the new standards?

The Chair: Ministry staff?

Ms. Metrick: There are in the legislation—some may meet them—equivalency provisions as well, so existing justices of the peace, by virtue of their experience, would likely qualify under the equivalency provisions under the legislation if they don't have the educational requirements.

Mr. Kormos: This is wrong. This is unacceptable. We're talking about upgrading the bench, and it's being done in a most modest way. The government is maintaining a lay bench. It's requiring some minimal educational standards.

And again, we all know, or ought to know, that the promotion, if you will, from part-time to full-time JP is a little political plum that's handed out there. Part-time JPs—it was like the classification, they tell me, that used to be As and Bs, amongst other things: presiding and non-presiding and the type of stuff you could do.

I'm not suggesting at this point that anybody lose their job or lose their appointment because they don't meet the new standards, but I don't think we should be promoting people without them meeting the new standards. What's sauce for the goose is sauce for the gander. Why not then simply tell paralegals who have been practising for x number of years, "Never mind being grandparented, subject to a two-year limit"? If we're going to promote part-time JPs who don't meet the new standards to full-time JPs, then hell's bells, let's promote de facto paralegals to full-time paralegals under the new regime, even if they don't meet the standards. Is the parallel not that obvious?

I find some double standards here, and what's the reason? The political patronage component of promoting part-time JPs to full-time JPs is oh, so obvious. This is a bad, bad proposal. Part-time JPs should be maintained as part-time JPs and should not be promoted to full-time JPs unless they meet the criteria, including the educational requirements, because there are part-time JPs out there who are excellent and there are part-time JPs out there who are nothing more than political lapdogs of the government of the day.

The Chair: Further debate? Shall the government motion carry?

Mr. Kormos: No.

The Chair: All those in favour? Opposed? It's carried, PC motion.

Shall schedule B, section 4, as amended, carry?

Mr. Kormos: One moment.

The Chair: Any debate on schedule B, section 4?

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Mr. Kormos: No. My comments were all made during the course of discussing—

The Chair: Shall schedule B—

Mr. Kormos: One moment. My comments were all made during the course of discussing various amendments. Thank you, Chair.

The Chair: Thank you, Mr. Kormos. Further debate?

Shall schedule B, section 4, as amended, carry?

Mr. Kormos: No.

The Chair: All those in favour? Opposed? That's carried.

Schedule B, section 5. PC motion number 35, Ms. Elliott.

Mrs. Christine Elliott (Whitby–Ajax): I move that section 5.1 of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by adding the following subsection:

"Per diem justices

"(0.1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint per diem justices of the peace."

The purpose for this amendment is to allow for more flexibility in the system and to allow for per diem justices of the peace other than those who have been retired to work outside of some of the normal court hours and therefore allow for greater flexibility and efficiency in the system.

The Chair: Further debate? Seeing none, shall PC motion number 35 carry?

Mr. Kormos: Carried.

Interjections.

Mr. Kormos: You can't have it both ways, folks. Carried.

The Chair: That's carried.

Interjections.

Mr. Kormos: Goddammit, you vote when it's time to vote. You don't vote after the vote's been called.

The Chair: That is carried.

PC motion number 36.

Mrs. Elliott: I move that paragraph 3 of subsection 5.1(1) of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by striking out "70 years" at the end and substituting "75 years".

This has been requested by the Association of Justices of the Peace in order to bring JPs in line with justices who are retiring.

The Chair: Any further debate? Seeing none, shall PC motion number 36 carry? All those in favour? Opposed? That is defeated.

Next, we have PC motion number 37.

Mrs. Elliott: I move that subsection 5.1(2) of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by striking out "70 years" at the end and substituting "75 years".

For the same reason as noted in the previous motion.

The Chair: Any debate? Shall PC motion 37 carry? All those in favour? Opposed? That's lost.

PC motion number 38.

Mrs. Elliott: I move that subsection 5.1(3) of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by striking out "70 years" at the end and substituting"75 years".

Again for the reasons as previously noted.

The Chair: Any debate?

Mr. Kormos: I find it interesting the government is opposing these motions. This is the government that said that seniors who want to work beyond the traditional retirement age deserve the dignity of being able to work. This is the government that said that the cleaning lady down at the Sheraton Centre from the Philippines, who doesn't speak very good English and who makes barely over minimum wage, who does backbreaking work flipping mattresses and cleaning bathtubs and toilets, should be able to work until she's 70, 75 or 80. This is the government that said mandatory retirement is discriminatory, that it's a violation of human rights. This is a government that said, in response to the criticisms put to it, that, no, this had nothing to do with people having to work because the government wouldn't raise the minimum wage to, let's say, the $10 an hour that even the Toronto Star now suggests it should be raised to, or that there were inadequate pensions. This government said, "No. Work for work's sake," because we shouldn't deny people that opportunity. As the government pointed out, politicians don't have retirement ages. We can run until the electorate decides they no longer want us here. This is

the government that insisted it was on the side of human dignity, human rights when it changed the Ontario Human Rights Code so that working folks in this province could no longer expect to be able to retire at the age of 65.

Here we have a job, justice of the peace, that doesn't involve any heavy lifting, that doesn't involve working on a blast furnace, that doesn't involve laying concrete block on cold, cold February days. It involves a great deal of work on the part of the person performing it, intellectually and in terms of their ability to analyze. What's the government suggesting, that people, once they reach 70, no longer have the mental faculty to permit them to be analytical and logical and fair? What's the government suggesting, that the wisdom acquired over the course of perhaps 10, 15 or 20 years of sitting on the bench is of no value just because that person reaches the age of 70? What's this government, in effect, saying, that these are simply old people who should be shoved aside and dismissed because they have nothing more of value to contribute?

For the life of me, I can't understand why the government is opposing these motions before the government. It seems to me like the height of hypocrisy.

The Chair: Any further debate?

Mr. Kormos: I guess not.

The Chair: Seeing none, shall PC motion 38 carry? All those in favour? Opposed? It's defeated.

Government motion 39.

Mr. Zimmer I move that section 5 of schedule B to the bill be struck out and the following substituted:

"5. The act is amended by adding the following section:

"Per diem justices

"5.1(1) The Attorney General, on the request of a justice of the peace, may change his or her designation from that of a full-time or part-time justice of the peace to that of a per diem justice of the peace if the following conditions are met:

"1. The Chief Justice of the Ontario Court of Justice recommends that the justice of the peace be designated as a per diem justice of the peace.

"2. The justice of the peace provided services on or after April 1, 2000 as a full- time or part-time justice of the peace.

"3. The justice of the peace has retired or will retire as a full or part-time justice of the peace before reaching the age of 70 years.

"Previously retired justices of the peace

"(2) A justice of the peace who retired before the day this section comes into force may be designated as a per diem justice of the peace if he or she has not attained the age of 70 years."

1150

The Chair: Any debate?

Mr. Kormos: Once again, these are per diem justices of the peace. These are justices of the peace, as I understand it—and please correct me if I'm not right about this—who sit at the request of the regional justice who allocates where JPs sit and takes care of vacancies and so on. It seems to me—and I've got to tell you, I think the JP bench should be fully staffed, such that if per diems are used, they're used to help fill in for gaps that aren't anticipated. I really think that we cannot develop a strong bench based on per diems. This is different from the piecework JPs; these are per diems. Again, it won't be a matter of the police saying, "Well, we'll go to Justice of the Peace A, B or C, because A, B or C is the one who signs informations without the more rigorous questioning."

Why would you not want a 71-year-old JP to do this? If in fact, as you imply, people over 70 are simply too old to be of any use or value, if they haven't got their faculties about them—because that's what the government's implying when it rejects the motions of Ms. Elliott.

Mr. Zimmer: On a point of order just to help, Mr. Chair: When I was reading in motion 39, I stopped at the section "Previously retired justices of the peace." I'm sorry. On the following page, there was a further section:

"Term of appointment

"(3) A per diem justice of the peace may serve until he or she attains the age of 70 years."

Mr. Kormos: No problem. That's the full motion. No quarrel with that. But you underscore my point. You're sending these people out to the scrapyard once they've reached 70. I've got to tell you that it seems to me that a JP who, by the time they've reached the age of 70, may have sat on the bench for 15 or 20 years may well have acquired some pretty significant knowledge and skill and talent. As I say, getting around to the 70-year-old and the government's concern that once they reach—because that's what the government is expressing here. Once JPs reach 70, what are you suggesting? They're senile? Is the government suggesting that they've lost their faculties? Is the government suggesting that they couldn't find their way to and from the courtroom? Or is the government simply suggesting that once you're grey—oh, Mr. Lalonde, you and I are in a special club here—once you're grey of hair, you are no longer capable of providing legitimate input?

Mr. Lalonde: I don't qualify any more.

Mr. Kormos: Mind you, some of your colleagues have done something. You know what's fascinating? I know people who came to this Legislature, men who had grey hair when they came, and over the course of being here acquired colour in their hair. I don't know what kind of gene pool they come from, but I'd sure like to swim in it.

Mr. Lalonde: You qualify, and we'll make sure the Attorney General gets hold of you pretty soon.

Mr. Kormos: But there's a real problem here and a real contradiction. This government heralded the elimination of so-called mandatory retirement when in fact it wasn't mandatory retirement. You see, prior to the amendments to the Human Rights Code, it wasn't suggested that nobody could work after they were 65, was it? This goes further. This literally says that you

can't work, you're prohibited from working, once you reach the age of 70.

Before this government's amendments to the Human Rights Code, people could retire at 65, but nothing in the Human Rights Code or in the law in Ontario said they couldn't work once they reached 65. A whole lot of people did. You're saying that a justice of the peace can't work. You won't permit them to work. You can't raise the argument about being saddled with people who, perhaps as a result of age, may not, regrettably, possess all of the skills they once had, because these are per diems. You pick and choose which ones you hire and which days you hire them for. Right? So you can't use that argument.

This is repugnant stuff. It's repugnant. I think that organizations like CARP and United Senior Citizens of Ontario should be made aware, and will be, of your perspective.

You know, Judge Gregory Evans served us as an Integrity Commissioner.

Mr. Lalonde: Good man.

Mr. Kormos: He was an outstanding member of the bench while he sat as a member of the bench. Mr. Lalonde, he was over 70 when he served as the Integrity Commissioner. I tell you, I'd seek his counsel as a person over 70 in a New York minute without any hesitation or concern. So you had no qualms in that regard.

Just what is your motive here? These are per diems. There could perhaps be some argument made for a mandatory retirement age because you want to see new blood. Quite frankly, these are the arguments New Democrats made about the workforce, about the fact that if you force people to work until they're 70 and 75, there's no room for new workers. Right? But these are per diems. They aren't part of the regular daily workforce on the POA or the bail court bench. They will be handpicked by the regional or senior administrative judge or JP and told when and where to sit. This is neither fair nor is it good policy, nor does it take advantage—because, as I say, we're not talking about working on the blast furnace. You won't hear me advocating this for women and men in the steel mills, because we should be looking at earlier and earlier retirement ages.

Let me get this straight. A lawyer appearing in one of these courts can be 71 or 72 years old. How old was J. J. Robinette when he was still arguing cases, Mr. Zimmer? He was over 55, wasn't he? You bet your boots he was. You know Robinette, one of Canada's most skilled litigators? I'm pretty sure he was over 55, and I suspect—yeah, I'm pretty sure—he was over 70 too. So a lawyer can be over 70, but as a per diem JP—there could be a good policy argument for having a retirement age for justices of the peace, if only to allow turnover. Right?

The Chair: Mr. Kormos, we're considering breaking for lunch, if you would—

Mr. Kormos: We can break for lunch, then. Thank you, Chair.

The Chair: We'll take a one-hour recess and we'll be back here at 1 o'clock.

The committee recessed from 1159 to 1315.

The Vice-Chair: The clause-by-clause process for Bill 14 is now reconvened. We were in the midst of debate on motion 39. Mr. Kormos, you had the floor.

Mr. Kormos: I was speaking to the hypocrisy of the government in forcing—not forcing, because it wasn't forcing; it's clear that the government wants JPs to retire at the age of 70—in denying the right of JPs over the age of 70 the ability to act as per diems. The government now, all of a sudden, is with the New Democrats when it talks about retirement ages. Of course, they're typical Liberals. The nice thing about being a Liberal is that you don't always have to be a Liberal. So here the government takes the NDP position in terms of retirement age, but the arguments around the per diem are entirely different, because there you can't argue that a person of a certain age is no longer capable of doing the job or no longer interested, because these are people who are handpicked by whoever is going to be administering the placement of JPs. I just find it sad and alarming.

Again, it makes me very sceptical about this whole bill in the context of what we're talking about right now. This bill is not going to be the great victory for Mr. Bryant that he and those people around him planning his Liberal leadership campaign are hoping it will be. This bill will probably do more to advance Ms. Pupatello's campaign as leader, or perhaps Mr. Smitherman's, than it will Mr. Bryant's.

Having said that, it may well create a window of opportunity for Mr. Zimmer, because if and when the bill passes, the fact is that nobody knows as much about that ministry as Mr. Zimmer as PA. I quite frankly think that if Mr. Zimmer had been at the helm, we wouldn't have seen incredibly incompetent legislation like the pit bull legislation, like Bill 14 as it's turning out to be in its totality or, for instance, Bill 107, the abolition of the Ontario Human Rights Commission. Can you imagine that, Chair, shutting down that very group, the commission that fights for the human rights of little people, of victims of discrimination, of victims of sexual harassment? This government is shutting down the very body that is the only body that people, unless they're very wealthy, of course, can go to, that workers can go to, that women can go to when they're sexually harassed in their workplace. We know how dangerous that can be because we know what it can lead to.

I'm confident that if Mr. Zimmer had been at the helm, we wouldn't have seen that stuff. I'm confident that if Mr. Zimmer were at the helm, the debate around paralegals wouldn't be as divisive and as contentious; that Mr. Zimmer, who's met with many of the paralegals, for instance, would have been able to address and reconcile the differences and address the concerns that so many of them have had and continue to have. I'm also confident that there would have been real and meaningful JP appointment reform in part B.

Thank you kindly, Chair. I'm not sure if it's clear or not, but I won't be supporting the government's motion.

The Vice-Chair: Further discussion?

Mrs. Elliott: If I may, I would just like to echo the comments made by Mr. Kormos. I see no reason to distinguish between the age of retirement for justices of the peace at age 70 and judges at age 75. This was an attempt to bring them into line and to align the positions with that respect. The Association of Justices of the Peace has requested this amendment. They have members who are ready, willing and able to serve, so I truly don't understand why it should be stopped at age 70 instead of age 75.

The other thing I'd like to say is if this motion passes, and I suppose it will, I would submit that this should be in addition to section 5.1, which was added pursuant to motion 35.

1320

The Vice-Chair: Further discussion? Not hearing any further discussion, I'm going to ask, shall motion 39 carry?

All those in favour? Opposed? It's carried. Thank you very much.

Mr. Kormos: Jeez, Chair, do you know that if Mr. Runciman hadn't had an important appointment after lunch, that again would have been a tied vote and the government whip's office would have been having kittens—not literally, but figuratively.

The Vice-Chair: Thank you, Mr. Kormos.

We will now go to PC motion 39.1.

Mrs. Elliott: I move that section 5.1 of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, as remade by government motion 39, be amended by adding the following subsection:

"Appointment of per diem justices

"(2.1) In addition to per diem justices of the peace designated under subsection (1) or (2), the Lieutenant Governor in Council may appoint per diem justices of the peace on the recommendation of the Attorney General."

Mr. Kormos: On a point of order, Mr. Chair: I am asking you to find this motion out of order. Let me explain why, because I seek a ruling in this regard. It is my submission to you that this motion, being identical in terms of the pith and substance to the motion originally moved by Mrs. Elliott and supported to the final person by the Liberal caucus, is out of order. It's my submission that her previous motion, supported by this committee unanimously, in fact, by virtue of the success of government motion 39, survives 39.

This is the situation: Motion 39—the motion number of the government, the one that was just voted on—addresses Bill 14, and addresses section 5 as it is in the bill. It would become an incredibly complex and difficult thing for members and caucuses to anticipate each others' motions, never mind speculate on the likelihood of success of that motion. Do you understand what I'm saying? The motion that Mrs. Elliott formerly made that was supported by the government precedes the moving of this motion. The government neither anticipated hers when they drafted theirs, nor did she anticipate theirs when she drafted hers. The government knew—this is the interesting kicker—that they had this motion number 39. They could have voted against Mrs. Elliott's motion. They chose not to. Think about it. The government implicitly—

Interruption.

Mr. Kormos: That's a BlackBerry transmitting. It could be in another room; what the heck.

The government implicitly, by accepting Mrs. Elliott's motion, knew that it was going to impact and add to their motion 39. Again, I appreciate that's a very fine point, but I'm suggesting that there's no need for Mrs. Elliott to move this motion, that the position of the government should have been to defeat her first motion, and they didn't. They supported it unanimously, to the final person, and it becomes part of the bill. What was repealed by motion 39 was not section 5 as amended, but it was section 5 as it appears in the bill. The bill, for instance, hasn't been reprinted. We're in the process.

So I'm suggesting to you—again, it's not an easy call to make. I am suggesting to you that since we're in the process, since the government motion that was just passed, number 39, amends section 5 as in the bill, not section 5 as it might subsequently be amended, and in view of the fact that the government unanimously supported Mrs. Elliott's motion—and furthermore, if I recall correctly—correct me if I'm wrong—they didn't even speak against it. They didn't even put on the record their opposition to it. I call that double acquiescence. I don't know what you call it where you come from. Down where I come from, we call that double acquiescence. I just made that up, "double acquiescence." I thought it might be appropriate in the circumstance.

But I want you to consider that. This is an interesting little scenario here. Otherwise, you create the potential for the government to suck and blow at the same time. One moment they can support a motion to the effect of the ability to appoint per diems, and now they're given an opportunity—I don't know whether they would or not—to vote against Mrs. Elliott's motion to give the Attorney General the power to appoint per diems. Lord knows, Chair, you don't want to facilitate the government sucking and blowing simultaneously—a most unattractive image.

The Chair: Further comments?

With respect to what you said, Mr. Kormos, each amendment deals with the bill at the time and the form when that motion is moved. Mrs. Elliott's motion is in order. I feel it is substantially different.

I'm going to ask if there's any further debate on this.

Mr. Kormos: You've made your ruling. It's over.

The Chair: Mrs. Elliott?

Mrs. Elliott: In that case, speaking to the motion, then, I would submit that the previous motion that has just been carried only deals with the appointment of retired justices or those who have already acted as per diem justices. This one is different in that it allows for the appointment of per diem justices generally and there's no reason, logically speaking, why it can't be done if the principle has been accepted to begin with.

Mr. Kormos: I want to speak to this, and I think it warrants some serious consideration. Let me tell you why. It gives the government yet an additional power, a power in addition to the power in your motion number 39, which talks about appointing, as per diems, judges who have retired but who aren't over 70. I can't for the life of me at the moment try to concoct, nor do I want to concoct, a scenario. But it gives you the ability in a situation of emergency, let's say—as a matter of fact, let's talk about emergency management, emergency preparedness. Let's go one further and talk about parts of Ontario, huge chunks of Ontario, that aren't urban centres. I'll go back to the north, to the ridings of Kenora–Rainy River, Timmins–James Bay, which some of you are familiar with. What about the need for a judicial authority to do a very single act in a scenario that's unanticipated? Shouldn't there be a way or a means of ensuring that that judicial act, which should be performed by a justice of the peace, can be accomplished in the event that there is no sitting JP? In most of the north, there ain't going to be a full-time presiding JP, not in those communities, is there? And where there are no per diems under your amendment—in other words, per diems to be appointed by virtue of retired JPs—wouldn't it be, in the public interest and in the interest of administration of justice, appropriate to have this power, obviously to be used very, very rarely? It's like the old movies, where Wyatt Earp appointed some deputies to go catch the bad guys, and he just stood there—maybe it wasn't Wyatt Earp, it was Gene Autry or whoever—and made them deputies for a day, deputized them so they could perform that function.

1330

I think this is an interesting opportunity. I'm not suggesting that the government has to make a practice of it. I'm not suggesting that the government is going to use, as its primary framework, the proposal in your amendment 39, where you use retired JPs—although when we speak to schedule B as a whole, I've got some problems. Are you going to appoint retired JPs who haven't met the qualifications as per diems? Think about that. You talk about these standards, but you don't say here, "We'll appoint retired JPs"—because you could have a whole lot of those grandparented, full-time presiding JPs, if and when this bill passes, who will not meet the standards, right? I'm not about to argue that you should displace a whole bunch of people who are sitting as JPs right now because they don't meet the standards, but you don't appear to have ensured that the retired JP that you're going to appoint as a per diem meets your minimum standards either. I think that's a flaw. I think the public wants to know that if we're creating new standards for JPs, those standards should be implemented as fully as possible. So I just point that out in the context, and I'm going to speak to that when we talk to schedule B in its entirety.

I think Ms. Elliott's motion creates opportunities. It doesn't create problems; it doesn't create hurdles. It doesn't say the government has to appoint per diems outside of its scheme; it doesn't say even that it will. But it gives the government the power to do that.

What do you do, and I'm just hurriedly trying to think of an example, in the event of—well, Budapest, where the people are as mad as all get-out. Can you believe it, that a Prime Minister lied about the state of the books in the course of an election? Now, of course, there the people seized—I shouldn't be endorsing that—the state radio station, God bless them. Those Hungarians have been through a lot over the course of the last 50, 60 years. But what do you do in a case where you need a whole lot of JPs really fast—either a whole lot or just one? What if there's a scenario where there has to be a whole lot of JP action right now, it can't wait, and you simply don't have any presiding JPs, or you don't have any presiding JPs who are free to do it, or you don't have any of your per diems available in your, let's say, more formal per diem scheme? Wouldn't it be desirable for the Attorney General, through the cabinet, to be able to really quickly say, "Okay, let's see if Mr. Zimmer is available"—it's 20 years down the road; he's been the Attorney General, he's failed at a leadership bid and has finally retired from politics—"We'll make him a per diem, even though he's not a retired justice of the peace"? Wouldn't that be a convenient thing for the government to have available to it, for the police to have available to them, for the crown attorneys to have available to them, even for defence counsel to have available to them for an accused? You see, it's awfully hard for an accused to argue for his or her release from custody if there isn't anybody to argue in front of, isn't it?

It's not unknown. You as a government, you Liberals, tolerate, accept and condone deputy judges who aren't retired former judges—are they?—in small claims court. They aren't retired anything. They're per diems. They don't have to be retired judges; they're per diems. So you're using per diems in small claims court in the style that Ms. Elliott speaks of. You're not just using retired judges as per diems, you're using per diems in the small claims court. Unfortunately, it's become the norm rather than the exception, and I think that's a problem that hopefully we can address at some other point in relatively short order. I think this warrants consideration.

The Chair: Further debate? Seeing none, shall the PC motion 39.1 carry? All those in favour? Opposed? It's lost.

Shall schedule B, section 5, as amended, carry?

The Chair: Any debate on schedule B, section 5, as amended?

Mr. Kormos: No, thank you.

The Chair: Shall schedule B, section 5, as amended, carry? That's carried.

A new section: government motion, number 40.

Mr. Zimmer: I move that schedule B to the bill be amended by adding the following section:

"5.1 The act is amended by adding the following section:

"Accommodation of needs

"5.2(1) A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the review council for an order under subsection (2).

"Duty of review council

"(2) If the review council finds that the justice of the peace is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the needs of the justice of the peace be accommodated to the extent necessary to enable him or her to perform those duties.

"Undue hardship

"(3) Subsection (2) does not apply if the review council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the needs of the justice of the peace, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

"Opportunity to participate

"(4) The review council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

"Crown bound

"(5) The order binds the crown."

The Chair: Any debate? Mr. Kormos?

Mr. Kormos: I want, please, some help in understanding how this alters the structure of the existing bill.

Mr. Zimmer: I'll ask Ms. Metrick or Ms. Middlebrook to please come forward.

Mr. Kormos: Please.

Ms. Metrick: The substantive section hasn't changed at all. It's exactly the same as in the original bill. The only difference is that rather than it being 5.1 and 5.2 and part of the same section, it's been separated into two different sections to allow for more flexibility in terms of proclamation of the various sections of the legislation. In other words, one could proclaim 5.1 before 5.2. When the two are together in one section they have to be proclaimed at the same time. That's the only difference. Substantively, they're the same.

1340

Mr. Kormos: Gotcha, yes—or the proclamation section could be tinkered with. Let me speak to this, because this is something that I've raised before in a number of arena, and I raise again. I find it laudable that the government proposes to accommodate justices of the peace who become disabled. Then we go a little further and look at the weasel words: "Subsection (2)"—the accommodation—"does not apply"—that's always the kicker, isn't it, friends?—"if the review council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the needs...." I don't know what that means, "the person responsible." It seems to me that it's the Ministry of the Attorney General that's responsible. What's this "person"?

There are persons out there who are skilled, trained, experienced professionals in terms of working with persons with disabilities to assist and enable them to perform on a daily basis, including performing their jobs. I can't for the life of me think how it would impose undue hardship on a person. Some of these jobs are very challenging. Some of the workers are called personal support workers. Some of the jobs are very challenging; these people know they are. Mind you, they're not particularly well paid, either. But then, aha, "considering the cost, outside sources of funding, if any"; that's the kicker.

So what this section says and what this bill says, because the section reinforces and repeats what's in the bill, is that this government is only interested in accessibility for persons with disability if it doesn't cost too much, and it's on a very subjective level because there are no criteria; it doesn't say "if the costs are more than $1,000 a year, more than $10,000 a year" etc. I don't find that acceptable. We either believe in accessibility for persons with disability or we don't. This comes down to fundamental human rights, doesn't it? It's like saying, "Oh, you can have your rights guaranteed and enforced as long as they don't inconvenience too many people." That doesn't cut it. That's not the standard. We either believe in accessibility or we don't.

Look, quite frankly, nobody's saying that there will be infinite, undeterminable costs, because there's a point, everybody agrees, at which a disability could become so overwhelming and profound that one can't work any more. I understand that. Persons with disabilities and advocates for persons with disabilities understand that as well. So I'm very troubled by the qualifier in here: "considering the cost."

I go then one further, and this is the shocking part of schedule B. The government, to the credit of people drafting this bill and the policy developers, contemplate and consider the prospect of a person employed as a JP acquiring a disability in the course of the performance of their job and, although I would argue inadequately, nonetheless address the need or the prospect of them being accommodated. Where in this bill is there accommodation for people with disabilities who might be highly qualified to serve as justices of the peace, to be accommodated during the course of making that application? Where is the guarantee that in fact all of the environment around recruiting, screening and accommodating newly appointed JPs will be designed so that persons with disabilities can be justices of the peace as well? I couldn't find it in the bill. As I say, I was provoked and prompted to look for it because of the commendable consideration in the section that's being amended and basically confirmed by the motion. It really should concern all of us.

I referred to this earlier when we talked about the AG appointments, the political appointments to the screening committee, to the advisory committee that's going to consider applications, and the failure of the legislation—I know there's vague talk about gender and regionalism, but it seems to me that especially in this climate, after some hard, hard struggles, the community of persons

with disabilities and advocates for persons with disabilities has started to win, albeit even if they're symbolic victories. Things have changed a whole long way since you and I were children, Mr. Zimmer. They have, because when you and I were children, people with disabilities were locked away in attics and basements; they were. We didn't see people using aids travelling about the street, not because there weren't people who weren't mobile the way some others were but because they were locked away, either in basements and attics or in institutions. How many great minds, how many great contributions were denied our society because of that attitude? I have very strong feelings about this. There is nothing in the bill that talks about ensuring that we get those persons with disabilities who are qualified—in my view, the requirement should be "highly qualified," and I'm convinced that they're out there or amongst us—on the bench.

Really think about it. Some of you folks may not have spent as much time in courtrooms as others, but think about the bench, the judiciary. That's not to say that there aren't persons with disabilities serving in the judiciary, but I would put to you that there's a pretty conspicuous absence. It wasn't until too long ago that the bench was conspicuously white and male. That, thank goodness, has changed and, quite frankly, not particularly quickly. But in terms of disabilities, not all disabilities are—can I say it?—visible disabilities; I think many are unseen.

I want government members, please, when we get to the end of schedule B, to entertain deferring voting on schedule B until the Ministry of the Attorney General, and perhaps with the assistance of other ministers responsible in the appropriate areas—we can talk about beefing up this section that you're amending by virtue of blending it—because that's what you're doing, blending it—with some clear language about accommodating persons with disabilities in the course of their application for and search for and introduction to the justice of the peace bench.

As you well know, accommodation ranges from little things to big things. It also involves a whole lot of shift in attitude, doesn't it? Even shifts in attitude can eliminate barriers, can change accommodation. We don't see it in the bill. I'm not castigating any of the government members in this regard. I'm just saying that, again, obviously some attention was being paid to it, but we missed the opportunity to demonstrate to the rest of the world that Ontario is a far different kind of place and a little bit of a special place in ensuring that all of its residents have access to every facet of the province.

That's it, Chair.

1350

The Chair: Mrs. Elliott?

Mrs. Elliott: I think that the general intent, as expressed in this section, is laudable in wanting to make some kind of accommodation for people with disabilities or special needs, but when you come to section 3, you kind of come to a full stop. There is the duty to accommodate, under subsection (2), but then you do take it away and replace it with cost considerations. It's very reminiscent of a lot of the things that many of us heard when we were on the hearings, the travelling hearings for Bill 107. How many people did we hear from who were disabled who said that they can't get, in some cases, their municipalities to make accommodation for their needs because it would cost too much? Well, cost too much to whom? If it costs too much to allow somebody to get around, to be able to go to a place of work, to be able to go and socialize with their friends, to have a life like all the rest of us have, how much is too much to allow them to be able to do that?

I think we are missing the boat with this. I think we really do need to take another look at it, because we're all, as some people have described it to me, TABs; we're all temporarily able-bodied. But at some point in all of our lives, all of us are going to have one disability or another. I think we need to start looking at it through those eyes and seeing that money shouldn't be the consideration here. Everybody has value. Everybody should be able to participate—should be able to participate as a justice of the peace, should be able to participate as members of the Legislature. We don't have any members currently who have special-needs accommodations, that I'm aware of anyway, but we do have a member of Parliament who brings his personal support worker in with him. He makes a very valuable contribution. We can't overlook the contributions that all of these people have to make. For this reason, I really think that we should take another look at this. I would urge the government members to consider redrafting this section to really reflect what I think is the true intent of this section.

The Chair: Any further debate? Seeing none, shall government motion number 40 carry? It's carried.

PC motion number 41.

Mrs. Elliott: I move that schedule B to the bill be amended by adding the following section:

"5.1 Section 6 of the act is repealed and the following substituted:

"Retirement

"6. Every justice of the peace shall retire upon attaining the age of 75 years."

The Chair: Mrs. Elliott, I've been advised that this motion is out of order, as it attempts to amend a section of the Justices of the Peace Act that is not opened in the amending legislation—section 6.

Mrs. Elliott: I would ask for unanimous consent to bring the matter forward.

Mr. Kormos: One moment. Without anybody making a point of order—the Chair purports to rule this out of order—I would ask that the Chair entertain some modest submissions before so ruling. Would the Chair indulge me with just a minute here, please?

If I may, we have a 5.1, right? With respect, really, isn't the answer, Mr. Chair, for this motion to merely read that "subsection (3) of 5.1 is repealed and the following substituted"? Rather, the general retirement section—that's the per diem section.

The Chair: Mrs. Elliott, if you'd like to move a different motion, you are more than welcome to.

Mr. Kormos: Could we have a two-minute recess, please, to accommodate our colleague?

The Chair: Is there consent for a two-minute recess?

Mr. Zimmer Yes.

The committee recessed from 1356 to 1403.

The Chair: The committee is called back to order. We're now on schedule B, section 6. Is there any debate on this? No debate? Shall schedule B, section 6, carry? Carried.

We're on to section 7: page 41.1, a government motion.

Mr. Zimmer: I move that subsection 10(2) of the Justices of the Peace Act, as set out in section 7 of schedule B to the bill, be struck out and the following substituted:

"Regulations Act

"(2) The Regulations Act does not apply to rules established by the review council."

The Chair: Debate? No debate. Does government motion 41.1 carry? It's carried.

Shall schedule B, section 7, as amended, carry? Carried.

We go on to section 7.1: government motion 41.2.

Mr. Zimmer: I move that schedule B to the bill be amended by adding the following:

"7.1 On the later of the day section 7 of schedule B to the Access to Justice Act, 2005 comes into force and section 130 of schedule F to that act comes into force, subsection 10(2) of the Justices of the Peace Act is repealed and the following substituted:

"Legislation Act, 2005

"(2) Part III (Regulations) of the Legislation Act, 2005 does not apply to rules established by the review council."

The Chair: Debate?

Mr. Kormos: Could I just have a brief explanation of the impact of this?

Mr. Zimmer: I'll ask Ms. Metrick or Ms. Middlebrook to reply.

Ms. Metrick: I think leg counsel is going to speak to it.

Ms. Gottheil: The bill originally did have this provision in it in section 7 of the bill, which is section 10 of the act. And 10(2) had said that part III of the Legislation Act does not apply to rules, which means they're not like regulations and they don't have to be published. The reason that we changed that back to "The Regulations Act does not apply" is that schedule F of this very bill will be repealing the Regulations Act and replacing it with part III of the Legislation Act, but that may come into force later. So in case this comes into force first, we should use the old wording of "regulations" and only change it when that schedule F comes into force.

Mr. Kormos: Thank you kindly.

The Chair: Further debate? Shall government motion 41.2 carry? Carried.

Section 8: Government motion 42.

Mr. Zimmer: I move that subsection 11(15) of the Justices of the Peace Act, as set out in section 8 of schedule B to the bill, be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding the following clause:

"(d) refer the complaint to the Chief Justice of the Ontario Court of Justice."

The Chair: Any debate? Seeing none, shall government motion 42 carry? Carried.

Any debate on section 8? Mr. Kormos.

Mr. Kormos: This addresses the whole business of complaints, or begins to deal with those sections that deal with complaints about justices of the peace. I have one concern, and that is, how do people in this very multilingual, multicultural province get assurance that their concerns—here it's in the context, obviously, of the behaviour of a justice of the peace—that their complaint will be dealt with, not only in a way that's fair, but in a way that they comprehend? Again, the bill makes frequent references to English and French, the two official languages, and I appreciate that the state can't even—I mean, are there over 100 languages spoken in Ontario? There are people from 100 different countries at least, and I suppose when you think of very regional languages and so on, there's a huge number. We all know, if not in our own experience in the experience of our neighbours, how frustrating it is, how isolating it is, how alienating it is for people for whom English is not the first language.

Is there a general section here—a broad, very general section—that talks about accommodating, in this case linguistically, a complainant? Do you understand what I'm saying? Nobody is going to begin to list all the conceivable languages, but is there a provision in here—just help me find it; I'll be happy if we get it pointed out to us—that talks about some sort of assurance that barriers will be eliminated for complaints? Nothing could be more important. You see, a complainant who walks away from the complaints process, who doesn't understand clearly what happened is never going to be happy about the complaints process. They're going to be convinced that somebody pulled some strings, that the fix was in, it was a done deal, all those sorts of things. Again, that's not healthy.

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If we're trying to upgrade the bench at the JP level, it seems to me that we're acknowledging the complaints process. You heard some of the popular—and I'm not going to endorse any of the comments in particular—mythology out there around complaints about the judiciary. There's a sense that there's no sense doing it, that it's a small, tightly knit, incestuous community, that they protect each other. I'm not stating that myself; I'm just saying that's the popular mythology around it.

Mr. Zimmer: I'm going to ask Ms. Metrick.

Ms. Metrick: There's a general provision with respect to assistance to the public in 9(3) that reads, "Where necessary, the review council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints." Then

there's provision for telephone access and provision for persons with disabilities as well.

Mr. Kormos: Yes. I have a big circle around that and a star beside that one. I was pleased.

Ms. Metrick: Right. But a general provision with respect to 9(3), "Assistance to public," and there are provisions with respect to French and English as well. So I would say in terms of the general provision for assistance, 9(3).

Mr. Kormos: In the preparation of documents, making complaints, I'm hoping—and again, I'd appreciate it—is the parliamentary assistant in a position to state on the record that it is the intention of the Ministry of the Attorney General to ensure that language barriers are accommodated?

Mr. Zimmer: Mr. Kormos, if I can have a three- or four-minute adjournment, I will reflect on that and get back to you.

Mr. Kormos: I appreciate that.

The Chair: Will the committee be okay for a five-minute recess?

Mr. Kormos: Please.

The committee recessed from 1413 to 1419.

The Chair: Order. Any further debate?

Mr. Zimmer: Mr. Kormos had asked me a question. Just a clarification. Ms. Metrick?

Ms. Metrick: Ultimately, it would be up to the review council, but the legislation does provide, in 9(2), that "In providing information, the review council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities," as well as the general provision with respect to arranging for assistance to members of the public. Subsection 10(1) provides that "The review council may establish rules of procedure for complaints committees and for hearing panels and the review council shall make the rules available to the public."

Certainly there is an intent to take into account cultural and linguistic barriers. There are specific provisions with respect to bilingual French and English hearings. So there is an intent to take into account cultural and linguistic barriers, but it would ultimately be up to the review council how it sets up its procedures.

Mr. Kormos: Thank you kindly.

The Chair: Any further debate? Shall government motion 42—no. Shall schedule B—

Mr. Zimmer Sorry, Mr. Chair, I'm just having trouble hearing you.

The Chair: Shall schedule B, section 8, as amended, carry? Carried.

Any debate on section 9? Seeing none, shall schedule B, section 9, carry? Carried.

Schedule B, section 10, government motion 43.

Mr. Zimmer I move that section 10 of schedule B to the bill be amended by adding the following section to the Justices of the Peace Act:

"Justice's retirement, etc., inability or failure to give decision

"Decision after retirement, etc.

"13.1(1) A justice of the peace may, within 90 days after reaching retirement age, resigning or being appointed to a court, give a decision, or participate in the giving of a decision, in any matter previously tried or heard before the justice of the peace.

"Inability to give decision

"(2) If a justice of the peace has commenced hearing a matter and,

"(a) dies without giving a decision;

"(b) is for any reason unable to make a decision; or

"(c) does not give a decision under subsection (1),

"a party may make a motion to the Chief Justice of the Ontario Court of Justice for an order that the matter be reheard, and the Chief Justice may order that the matter be reheard by another justice of the peace or by a judge.

Mr. Kormos: On a point of order—

Mr. Zimmer Sorry, I'm not finished. Do you have a point of order now?

Mr. Kormos: I'm sorry, you have page 2. Go ahead.

Mr. Zimmer Thank you.

"Failure to give decision

"(3) If a justice of the peace has heard a matter and fails to give a decision,

"(a) in the case of a judgment, within six months; or

"(b) in any other case, within three months,

"the Chief Justice of the Ontario Court of Justice may extend the time in which the decision may be given and, if necessary, relieve the justice of the peace of his or her other duties until the decision is given.

"Continued failure

"(4) If time has been extended under subsection (3) but the justice of the peace fails to give the decision within that time, unless the Chief Justice of the Ontario Court of Justice grants a further extension,

"(a) the Chief Justice shall report the failure and the surrounding circumstances to the review council as a complaint in accordance with section 10.2; and

"(b) a party may make a motion to the Chief Justice for an order that the matter be reheard, and the Chief Justice may order that the matter be reheard by another justice of the peace or by a judge.

"Rehearing

"(5) If the Chief Justice of the Ontario Court of Justice makes an order under subsection (2) or clause (4)(b) for the rehearing of a matter, he or she,

"(a) may direct that the rehearing be conducted on the transcript of evidence taken at the original hearing, subject to the discretion of the justice of the peace or judge presiding at the rehearing to recall a witness or require further evidence; and

"(b) may give such other directions as are considered just."

The Chair: Debate?

Mr. Kormos: On a point of order, please: The motion purports to amend section 10 of the act. Section 10 of the act creates a new section 13, which addresses standards of conduct.

Mr. Zimmer: Sorry, I didn't hear that.

Mr. Kormos: My apologies. See, do you remember we were talking about accessibility?

Mr. Zimmer: I'm paying attention.

Mr. Kormos: I know you are, but all of us are—there you go.

Section 10 of the bill, which creates a new section 13 of the act, deals with standards of conduct. Fine. That's the extent of section 10 in the bill. Section 10 has only one section in it, if you will, and that's section 13. So now we've got 13.1, an amendment that has nothing to do with standards of conduct. It has to do with dead, dying, disabled or otherwise reluctant JPs.

Now, what I need from you, Chair, is a ruling as to whether or not this is an appropriate amendment to section 10, because it doesn't amend any of the content of section 10. It doesn't expand on it. It doesn't say, for instance, under "goals," subsection (3) of the new section 13, "maintaining the high quality of the justice system and ensuring the efficient administration of justice" by, amongst other things, permitting cameras in the courtroom, although I'm not suggesting I'm necessarily a fan of it. That would be an amendment, by permitting cameras in the courtroom. So I ask you, how is this motion an amendment to section 10 in the bill, which creates section 13, which has nothing to do with inability or failure to give decisions?

Furthermore, I have to know this. Should this motion be in order, and should, perchance, it pass, we have this brand new part of the bill now, this 13.1. If I wanted to move a motion—for instance, referring to the inability to give a decision—I trust that motion would be in order, wouldn't it? If I wanted to move a motion, should this amendment pass, to things referenced in subsection (1), would that be in order? Is that what you're suggesting, Chair? I really request a ruling in that regard.

The Chair: Anyone else who'd like to speak to Mr. Kormos's point of order?

Mr. Zimmer: I'm going to ask Ms. Metrick to speak to this.

Ms. Metrick: Just in terms of—

Mr. Kormos: Sorry, with respect—thank you very much; I'm almost regretting doing this, because I'd love to hear what you have to say—you're not part of a debate around points of order.

Mr. Zimmer: No, but with respect, she will offer comment on how this amendment relates to the section. That's a technical question.

Mr. Kormos: Chair, it's not a technical question; it's a procedural question. It's a matter of—

The Chair: It's a point of order, and it's for the members to address.

Mr. Kormos: It's a matter of parliamentary procedure.

Mr. Zimmer: I'm sorry, I didn't—

The Chair: It's a point of order, and only members can respond or comment.

Mr. Zimmer: In my view, the amendment does speak to the section. It's a proper amendment, and I await the Chair's ruling.

The Chair: Anyone else? We're going to take a five-minute recess, and we'll be back.

The committee recessed from 1429 to 1440.

The Chair: The committee is called back to order.

The ruling is as follows: This amendment is in order, as it adds a section to the Justices of the Peace Act which, on face value, appears to be within the scope of the bill. Although it is out of order to amend a section of an act that is not opened in the bill, it is permissible to add sections to the act as long as they're within the scope of the bill.

Any further debate on motion 43?

Mr. Kormos: I appreciate the interest that is being addressed in this—"does not" make "a decision." What conceivable circumstances would give rise to that?

Mr. Zimmer: When someone does not make a decision?

Mr. Kormos: Yes.

Mr. Zimmer: I can tell you that I sat as the vice-chair of a federal tribunal responsible for some 89 members. From time to time, members of my tribunal would just not bring themselves to the point of decision, for a variety of reasons—just an inherent ability to decide; a whole host of reasons. So there you go.

Mr. Kormos: What kinds of reasons?

Mr. Zimmer: As myriad as the human personality.

Mr. Kormos: Assuming, and agreeing with you, that they could well be myriad, give us three. Myriad is a whole lot, so out of the whole lot—

Mr. Zimmer: I'm enjoying this because it's on the record for my former colleagues at the IRB. It might range from sheer laziness—

Mr. Kormos: I'm sorry?

Mr. Zimmer: Just laziness, a late-developing phobia in life about decision-making, or extreme sensitivity to the issue to be decided.

Mr. Kormos: Okay, that's fair enough.

Mr. Zimmer: Literally; those really happen.

Mr. Kormos: No, that's fair enough.

The Chair: Any further debate? Seeing none, shall government motion 43 carry? Carried.

Ms. Elliott has proposed an amendment, 43.1. Does everyone have a copy?

Mrs. Elliott: I move that section 10 of schedule B to the bill be amended as follows:

"Justice's retirement, etc., inability or failure to give decision

"Decision after retirement, etc.

"13.1(1) A justice of the peace may, within 90 days after reaching retirement age, which, notwithstanding anything else in this act, shall be age 75, resigning or being appointed to a court, give a decision in any matter previously tried or heard before the justice of the peace."

Then it carries on, but that's the essential part of the amendment.

The Chair: Any debate?

Mr. Zimmer: Sorry, what do you mean, "It carries on"?

Mrs. Elliott: It carries on with the rest of 13.1, as written. That's the only amendment to the section.

Mr. Kormos: If I may, I understand the amendment to be that section 13.1, as contained in section 10, is amended by adding after the words "retirement age," the following words: "which, notwithstanding anything else in this act, shall be age 75." As I understand, that's the extent of the amendment, the government having, of course, introduced retirement age in this particular section as an amendment to the bill.

The Chair: Any further debate?

Mrs. Elliott: Only to add that the purpose is, of course, to introduce the concept of the retirement age, which hasn't been addressed, generally speaking.

The Chair: Any further debate?

Mr. Kormos: If I may, Chair, once again I find it difficult to understand how the government could, on the one hand, as I understand it, permit provincial judges to sit till 75 and then tell justices of the peace that they can only sit till 70. While I am a strong advocate of retirement ages at a sufficiently early time in one's life with a sufficiently adequate pension, which, of course, members of this Legislature, in their wisdom, in 1996, addressed by virtue of creating a defined contribution pension plan, members of the Conservative, Liberal and New Democratic parties were leading edge when they dismantled their defined benefit pension plan and became part of that very modern trend, one which is now embracing the world, whereby pensioners have control over their own pension funds. So MPPs, of course, have this relatively gold-plated, defined contribution pension plan that they're free to invest as they wish. They're not the victim of some board of directors, hidden away, making investments that draw only 5%, 6% and 7%. Members of the Legislature, with their defined contribution pension plans and their control over those plans, are free to invest in investments that return 20%, 25% and 30% annual returns—well, they are.

So, as an advocate of early retirement with adequate pensions, but knowing full well that this government not only extolled the virtue of working till you die but encouraged it and indeed passed legislation that will require more and more people to do it—because one of the things they said was that getting old doesn't bar you from making a contribution. The arguments that were used by the government to attack the opponents of their ill-conceived bill were that the opponents of work-till-you-die-in-the-workplace legislation were somehow anti-senior, were ageist, that they didn't believe seniors had a contribution to make. Well, all Ms. Elliott is doing is saying that seniors have a contribution to make. It is an interesting proposition, and I find it difficult to understand how government members could not support this amendment, which is, of course, in order.

The Chair: Any further debate? Seeing none, shall PC motion 43.1 carry? All those in favour? Opposed? It's lost.

Shall schedule B, section 10, as amended, carry? Carried.

We're on section 11: a government motion, number 45. We're switching the order.

Mr. Zimmer: I move that section 11 of schedule B to the bill be struck out and the following substituted:

"11. The act is amended by adding the following section:

"Role of regional senior judges

"15(1) The regional senior judge, under the direction of the Chief Justice of the Ontario Court of Justice, shall direct and supervise the sittings of the justices of the peace in his or her region and the assignment of their judicial duties, and the authority of the regional senior judge shall include,

"(a) the approval of duty rosters;

"(b) the determination of the sittings for justices of the peace and the assignment of justices of the peace to those sittings;

"(c) the assignment of cases and other judicial duties to individual justices of the peace;

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"(d) the determination of sitting schedules and places of sittings for individual justices of the peace; and

"(e) the preparation of trial lists and the assignment of court rooms, to the extent necessary to control the determination of who is assigned to hear particular cases.

"Dedicated justices

"(2) In exercising his or her functions under subsection (1), the regional senior judge may temporarily assign a per diem justice of the peace to do exclusively one of the following:

"1. Hear matters under the Provincial Offences Act.

"2. Hear matters under one or more other Ontario acts specified by the regional senior judge.

"3. Hear matters under an act of the Parliament of Canada.

"4. Carry out other judicial duties specified by the regional senior judge.

"Delegation

"(3) A regional senior judge of the Ontario Court of Justice may delegate the authority to exercise specified functions under subsections (1) and (2) to the regional senior justice of the peace and to one or more other justices of the peace from the same region.

"Transfer to a judge

"(4) In the case of a trial that would otherwise be held before a justice of the peace, any party may submit a request to the regional senior judge of the Ontario Court of Justice for the region to have the trial held before a judge, and the regional senior judge shall determine whether the matter shall be heard by a judge.

"Delegation

"(5) A regional senior judge of the Ontario Court of Justice may delegate the authority to exercise his or her functions under subsection (4) to a judge of the Ontario Court of Justice.

"Final decision

"(6) A decision made by a regional senior judge or his or her delegate under subsection (4) is final.

"Crown rights under other acts

"(7) Nothing in this section affects the rights of the crown, the Attorney General or a counsel or agent of either of them, under any other act, to require that a provincial judge preside over a proceeding in respect of an offence under that act.

"Duties outside courthouse

"(8) A justice of the peace shall not act as a justice of the peace outside a courthouse except under the direction of the regional senior judge.

"Duty rosters public

"(9) The duty rosters shall be made available to the public."

Mr. Kormos: "The regional senior judge, under the direction of the Chief Justice ... shall direct and supervise...." I'm looking for the—

Ms. Metrick: The differences?

Mr. Kormos: Yes, from the amendment here, with the assistance of the little compendium we got.

Ms. Metrick: That first section is the same. Where the section differs is under delegation, subsection (3), where it says, "And to one or more ... justices of the peace." The purpose is to give the regional senior judge the authority to delegate to the regional senior justice of the peace and to one or more justices of the peace from the same region, because delegation is to the regional senior justice of the peace, and operationally there's also delegation sometimes to local administrative justices of the peace as well. So it allows the regional senior judge to delegate to both the regional senior justice of the peace and local administrative justices of the peace. That's consistent with existing practice.

Mr. Kormos: So it's just subsection (3) that's—

Ms. Metrick: Subsection (3), as well as (4). Subsection (4) was just tightening up wording. Subsection (7)—

Interjection.

Ms. Metrick: Okay. It's rewording it. It now says, "In the case of a trial that would otherwise be"—

Mr. Kormos: Heard or held, okay.

Ms. Metrick: Yes. That's the wording in (4).

Next is subsection (7), "Crown rights under other acts." That's just to be clear that this section could not be interpreted as limiting or affecting crown election rights conferred by other statutes. For example, the Occupational Health and Safety Act and the Environmental Protection Act provide for the right of the crown to elect that a matter be held before a judge, so that carries on.

Finally, the only other change is in subsection (8): "A justice of the peace shall not act as a justice of the peace outside a courthouse except under the direction of the regional senior judge." That's to be responsive to emergent problems that sometimes occur, for example, where there has to be an evacuation and a justice of the peace isn't in a courthouse. It could be argued that a justice of the peace is acting without authority if he or she is not acting in a courthouse and if there hasn't been a opportunity to update the duty roster. It's also consistent with the earlier provisions with respect to things being under the direction of the regional senior judge.

Mr. Kormos: Thank you very much. That's valuable input.

There are two very interesting subsections here: Subsections (4) and (7). What they do is cause me to reflect back on this government's failure to address the issue of standards and qualifications when it comes to changing part-time JPs, who are JPs by virtue of appointment prior to this legislation, to full-time and presiding JPs, amongst other things.

Look what this says—and help me, Counsel, on this one. If the crown says, "I don't want a JP to hear this prosecution, I want a judge," the crown may require a provincial judge?

Ms. Metrick: Yes. Those are crown election provisions under other statutes.

Mr. Kormos: See what it's saying? The crown can judge-shop. The crown could say, "No, no. I don't want the JP hearing this prosecution, I want a judge," and it's as of right. But when it comes to an accused who says, "No, no. I don't want a JP to hear it, I want a judge," then the application has to go to the regional senior judge, and it's discretionary.

Ms. Metrick: Yes. Either party may submit a request to the regional senior judge to have—

Mr. Kormos: So what does this say? Let me hearken back. You elect up to a Superior Court judge if you want a jury or a preliminary hearing—right, Mr. Zimmer?—or if you're doing some judge-shopping if you end up in a provincial courtroom where you've got a judge who's notorious for not being particularly partial to the type of defence argument you're going to make. Does this imply that somehow justices of the peace are less capable than provincial judges? Why else would we give a party the power to request that it be moved from a trial in front a JP to a provincial judge?

The very existence of these sections betrays and demonstrates a lack of commitment on the part of this government to genuinely upgrade the quality across the board of justices of the peace, or else the crown wouldn't as of right maintain the power to say, "No way am I going to let a JP hear this prosecution. I want a real judge." That's the word that's not said here, isn't it, Mr. Zimmer? "I don't want a JP hearing this trial. I want a real judge." Similarly, the very proposition in subsection (4) by either party, accused or prosecutor: "I want a real judge, not a justice of the peace." This causes me great concern. I'm not suggesting these sections shouldn't be here. I'm suggesting they wouldn't have to be here if there were a bona fide commitment to developing a strong, well-trained JP bench here in the province of Ontario.

Again, I personally find it insulting to those whom I know as very capable justices of the peace. Oh, where is Mr. Lalonde when we need him? It's obviously of some comfort to the poor accused or defence counsel who finds himself ending up in front of the latest political hack who has been appointed more importantly because of his or her political contributions to the Liberal Party than because of any skill, expertise, training or interest in their

role as a justice of the peace. It's just a very, very peculiar thing.

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This institutionalizes judge shopping, doesn't it, Mr. Zimmer? If only we let the kid who steals the car make the same election, saying, "I don't want that provincial judge to hear me; I want to go in front of a justice of the peace because I think I'm going to get a much more generous response to perhaps a rather weak defense argument." What else can this mean? It means that you, sir, Mr. Zimmer, and the Attorney General are still maintaining a lesser-qualified and a better-qualified bench in this province. It can't mean anything else.

This illustrates the contradictions in this bill. You say you're going to professionalize, upgrade the JP bench, and yet you're still persisting in saying that JPs aren't going to be real judges, and that's why we allow crown attorneys to say, "No, I don't want a JP to hear this trial; I want a judge." That's why you even entertain the prospect of a defence lawyer doing the same thing. I think you will recall the concerns expressed by some counsel here in the city of Toronto suggesting that more serious bail hearings be heard by provincial judges rather than justices of the peace. Do you recall those comments, Mr. Zimmer? I'm sure you do. That was telling in terms of what's happening on the JP bench.

One of the other obvious observations is that JP courts are oftentimes literally treated as second-class courtrooms in terms of the facilities that are made available to them, in terms of the very ambiance, the very environment that they're expected to sit in. And I've been in small-town Ontario, where you've got courtrooms set up—and not just JP courts; provincial courts—in everything from Legion halls to church basements. It's fascinating to be conducting a cross-examination and to hear the taps of beer being poured upstairs as the Legion opens for lunch.

Mr. Runciman: They're above that.

Mr. Kormos: Mr. Runciman, I'm referring to the government maintaining the right of a crown attorney to move his or her trial away from a JP up to a judge. What does that say? It says that this government is insistent on not building a strong, trained JP bench, even though it says that's what this bill is all about. You've been caught.

"The duty rosters shall be made available to the public." More importantly, in view of the concerns expressed by the report of at least two years ago now, the Ontario Association of Chiefs of Police—you know the report I'm talking about—couldn't get a hold of JPs, couldn't find them. It was a damning report. You shook your head, and some of the stories made your hair curl. What's going on? If the regional senior judge can direct and supervise the sittings of the JPs, the assignment of judicial duties, the assignment of cases, the determination of sitting schedules, the places of sitting, the approval of duty rosters—and I assume duty rosters mean you've got to be available, you've got to be on call either at your house, which means being sober, of course, or at an office, either at the Ministry of the AG offices or at the police station, if you're going to do bail hearings there. Where is the structure, where is the guideline for these duty rosters? Are folks across Ontario going to be guaranteed that there will be a JP available? The system has to be such that a JP has to be available 24 hours a day, seven days a week. It's absolutely imperative. Could we get an assurance that these duty rosters are going to ensure availability of JPs 24/7? That's a question to the parliamentary assistant.

The Chair: Mr. Zimmer?

Mr. Zimmer: Yes, if I can just respond, the fact of the matter is that there are a very small number of cases that might come before a JP that have had very complex, technical statutes that involve complex and technical legal interpretations that perhaps a fully trained lawyer, now a judge, would be able to handle more expeditiously. That usually happens, again, on these complex, technical questions rather than on the cases that the JP would be seized of, no matter how complex, where they revolved around questions of fact or credibility which don't require that extra technical skill. We have that kind of system in the Superior Court. For instance, there are judges who are known to specialize in commercial cases, complex bankruptcy cases, and when they're assigning the cases, there are judges even at the Superior Court who will tend to do more complex criminal cases. They'll send a complex commercial case to the bankruptcy—it's that sort of expertise and skill set. We want to make sure that the appropriate case gets in front of the best-trained person to do it.

The Chair: Mr. Kormos?

Mr. Kormos: Mr. Zimmer, I don't buy that. Take a look at your very own subsection (2) of this section. It very specifically talks about how a regional senior judge can assign JPs to hear provincial offences matters, to hear matters under one or more other acts of Ontario, to hear matters of acts of the Parliament of Canada. The legislation already contemplates that different JPs may develop different areas of expertise. We understand that.

One of the problems right now in the family court has been the abolition of the distinction between family court and criminal court judges. Criminal court judges are being pushed into family courts because they're picking up the slack, and with all due respect to them, they simply don't have the background in family law or the sensitivities that allow them to do their job as effectively as they could were they specialized.

Your very own language is an indictment of the JP system that you're proposing here. You say there are certain complex technical and legal interpretations that a judge can handle more expeditiously—and then I'll add my own words—than a justice of the peace. Well, you're either a judicial authority or you're not. I'm not quarrelling with the proposition in subsection (2) that says a regional senior judge can maybe tell a certain JP, "You're going to be doing highway traffic court, and you're going to be doing environmental cases or labour law cases, or workplace safety." Fair enough, but either a JP is adequately trained or they're not.

1510

JPs don't hear Criminal Code trials. They hear provincial offences matters, for the largest part. And for the life of me, for you to say that there are going to be cases where the complex, technical legal interpretations that a judge can handle more expeditiously—and I'll add my words: than a JP—suggests that your government has no commitment whatsoever to upgrading the JP bench, to ensuring that people with the highest possible standards are appointed and that they receive adequate levels of training. Maybe your obsession with a lay bench—and I know I've got colleagues here who will disagree with me on this—is preventing you from developing that expertise, because you and I both know that one of the most significant functions of maintaining a lay bench is to maintain the pork barrel.

It's true. Maintaining a lay bench ensures that you've got a slush fund to piece off deposed ambassadors who may need work when they come back to Ontario—

Interjection.

Mr. Kormos: Well, it's true—or defeated candidates in a provincial election. We've seen it; we've observed it. It's been part of our experience for any number of us who have been around here for a while—complex, technical legal interpretations that a JP is incapable of making. What does that say about justices of the peace in the province of Ontario? I don't buy it. What I do buy is this: There are JPs out there who are capable of handling complex technical and legal work—you bet your boots there are—but there's also a whole pile that aren't, and you're not doing anything about them with this bill, nor are you doing anything about them by upgrading your standard so that they need a community college diploma.

Mr. Runciman proposed a motion that talked about specifying some specific experience in, as he put it, criminal law. But it could have been environmental law, it could have been workplace health and safety, any number of those sorts of things. The government wasn't interested. Your persistence in making sure that not just the best-qualified but the sort-of-qualified people—right?—qualified and highly qualified, are going to be referred to the Attorney General again reinforces that your government has every intention of using JP appointments as political patronage as much if not more than any prior government ever has and did. And oh, they did; I tell you, they did. That's been one of the sources of grief on the JP bench. We've got people there because of their political connections and not because of their expertise or, more importantly, their interest or their passion to learn.

The Chair: Any further debate? Seeing none, shall government motion number 45 carry? Carried.

We're going to move back to PC motion number 44.

Mrs. Elliott: I move that section 15 of the Justices of the Peace Act, as set out in section 11 of schedule B to the bill, be amended by adding the following subsection:

"Duty roster

"(1.1) A duty roster referred to in clause (1)(a) may require a justice of the peace to act as a justice of the peace outside a courthouse at any hour."

The purpose of this amendment is to increase the efficiency of the system to allow JPs to act in the course of their duties in circumstances that might not fit into regular courtroom hours.

The Chair: Further comment?

Mr. Runciman: We heard Mr. Kormos talking about JPs going to a police station, for example, to conduct a bail hearing. I'm not aware of that happening anymore. It may be happening, but I'm not aware of it. Certainly, if you talk to front-line police officers, talk to the chiefs' association and others, this is a real problem. We've talked about JPs over the past number of years sort of echoing the approach of the judges with respect to suggesting or, more than that, declaring that their judicial independence is being compromised if they appear in locations outside of the courthouse.

It's gotten to the point, in my view, of ridiculousness, which has a real impact on achieving good management efficiencies within the court and corrections system in this province. I know that many of the older jails in the province—and one in my community, in Brockville, where we have the county court and we have the county jail. When I was in government, we talked about building a new courthouse and building a new lock-up that would have a connection to the courts, and the judges said, "No, we can't do that. We can't have that kind of direct linkage between the court and the provincial lock-up, because that is, in some way, shape or form," which is just beyond me and beyond the comprehension of the average soul in this province, "interfering with judicial independence."

The same approach has grown within the JP ranks over the past 10 years or so, where they will not go into the jails. They used to go into the jails and do bail hearings. They certainly, in my understanding, won't go into a police station. It's the same sort of argument that they put forward, and of course there are costs associated with that.

One of the reasons that I've been suggesting this corps of part-time per diem JPs is because of the frustrations that police have encountered over the past number of years with, again, this sort of view that, "We cannot perform the kinds of roles that have historically been performed by JPs. Now that we're on salary, if you have a problem at 2 or 3 o'clock in the morning on a Saturday, sorry, we're not getting out of bed to attend to it."

That's the sort of thing that didn't happen 15 or 20 years ago when we had a large contingent of part-time JPs and per diem JPs who got up, got out of bed, went into the police station and did what had to be done and received some remuneration for their efforts and mileage etc. Now we're on a pure salary system, and you don't get the reaction or the response or the attentiveness to the police needs that was the case in the past.

I think that this restrictive component which has been incorporated into this legislation, again, is going down this path. We're talking about a duty roster, but, to me, what happens if you're frustrated with the duty roster? What happens if you are unable to get hold of a JP for a

critically important decision? Every JP should be available. I have no problem with a duty roster, but for whatever reasons someone on that duty roster is not available, every JP should be able to attend to the duties assigned to him by being sworn in as a justice of the peace. They should not be legislatively restricted, and that's what you're doing here. I have no problem with a duty roster, but to legislatively restrict them from performing their duties outside of a court unless they are part of that roster just doesn't make any sense to me.

The Chair: Any further debate?

Mr. Zimmer: The difficulty with the proposed amendment is that this would provide for a duty roster that requires a justice of the peace to work outside the courthouse. The content of the duty roster really is a matter best left to the regional senior judge, not to be covered in statute. From a practical point of view, in any event, the regional senior judge already has the power to do what's set out in the amendment. So I would urge my colleagues to vote against this amendment.

1520

The Chair: Mr. Kormos?

Mr. Kormos: This is an interesting issue. To the parliamentary assistant: Are JPs currently operating outside of either courthouses or their offices at the direction of regional administrative authorities? I don't know, and I hearken back to a time perhaps long gone. You say that this is happening now in terms of the duty roster, and the amendment says that the duty roster can, among other things, require JPs to function outside of their usual workplaces.

Let's take a look at a circumstance of a JP going to a police station to deal with the first appearance by an accused person. Again, what historically has happened is that your B-list JPs were the ones who tended to go out there, and all they did was automatically grant the request for a three-day remand if, in fact, the police wanted it. That's three days of somebody being in the local lock-up at expense.

Maybe the remand was appropriate, maybe bail was never going to be granted, but it seems to me a JP who can and will show up and save everybody a whole lot of time, energy, effort and money, if they're prepared—and I'm not suggesting that they should be prepared, because the police aren't going to be prepared, defence isn't going to be prepared to mount a full-blown bail hearing, but if it's a matter that can be dealt with summarily enough, you can save a whole lot of grief for everybody when there isn't a release order from the sergeant in charge by creating a release order as a judicial order then and there. So it seems to me not inappropriate that a duty roster could put JPs on a weekend call list to do that sort of thing.

I suppose what I'm asking is—and if people don't know, fine; that's okay—is that happening now?

Ms. Metrick: I can speak to that. Now justices of the peace are available on a 24/7 basis. First of all, as Mr. Zimmer pointed out, the judiciary is responsible for the scheduling of justices of the peace, but with respect to the scheduling in terms of warrants after hours, there's the telewarrant centre. With respect to weekends, there are WASH courts on weekends. Justices of the peace are no longer, as far as I'm aware, going into jails and so on, but they are available on a 24/7 basis. There are on-call justices of the peace and so on. If there are concerns, the regional senior judge is responsible for the scheduling of justices of the peace, and this makes the accountability clear here in this provision.

Mr. Kormos: One of the problems down where I come from—I don't know if it's been addressed yet, because Mr. Bryant dragged his heels on this one—was the problem of bail hearings not being conducted in Niagara south in Welland, as the county seat courthouses, and all of them being concentrated in St. Catharines because it was more efficient for the Attorney General—not for families, not for defence counsel, not for the police who had to transport these people. Do you understand? Welland cops pick somebody up, and they've got to drive them all the way up to St. Catharines. They're in the police station till the morning. They've got to drive them all the way up to St. Catharines instead of taking them to the Welland courthouse. That was out of convenience for the Attorney General.

So here you go. Not very impressive in terms of meeting the needs of a whole pile of people, including the crown attorney's office. The crowns weren't happy about that either. The crowns weren't happy, defence counsel weren't happy, the cops weren't happy, the families of accused who perhaps were going to be potential witnesses at a bail hearing—because again, notwithstanding the concern about people being released inappropriately, we should also have some concern about people arrested for whom, for Pete's sake, there's no reason to be holding them in jail, least of all when you know they're going to be released at some point anyway. Get the thing done and over with and out of the arms of the authorities and off the tab of the taxpayer.

Okay.

The Chair: Mr. Runciman.

Mr. Runciman: I want to take this opportunity to once again point out—and I'm going to use language that I haven't used—the shameful absence of the Ontario chiefs of police, their not appearing here, given the concerns I've heard over the years related to this issue. I appreciate the observation that the staff from the ministry have given, which is, as far as I'm aware—and I'm paraphrasing you—that this is not a problem. Well, I know there have been problems with the telewarrant system, and I know there are problems with respect to the requirements that the judiciary is placing on the corrections side of the system, for example. I again point to my own location in Brockville. There is a door that connects the jail and the courthouse, but they can't use that. They have to take prisoners outside and come around, because the judiciary cannot have them having that direct linkage, that somehow this is interfering with judicial independence. Try and explain that one to me. Again, I've said that when I was minister of corrections we were

trying to look at building a new facility in the northern part of the city, which would connect with the courthouse through a tunnel. But again, they had problems with this.

If you look at what's happening in terms of prisoner transportation to courts—we have videoconferencing to some degree now, and hopefully we'll be expanding it. Prisoner transportation is still a big challenge in many regions—the costs associated with it; the dangers associated with it; the contraband that comes back into corrections facilities; weapons, the other potential there. This is all because of this holier-than-thou judiciary, which tells us that we cannot do common-sense things because somehow it interferes with the independence of the judiciary. It doesn't make sense to me, and at some point we should be giving these folks a direct kick in the rear end. This is one effort here in terms of ensuring that JPs have more flexibility than is currently the case.

You talk about the regional judge making sure this happens. Well, the regional judges are part of the problem here, in my humble view. Of course, I'm not a lawyer and I'm not part of that elite in the province who seem to think that this is a really serious and ever-present danger to the independence of the judiciary. I'm one person who's been involved in judicial issues for about 15 years, and I get my dander up about a lot of these things, because common sense just doesn't seem to prevail in so many of these kinds of decisions.

The Chair: Any other debate? Seeing none, shall PC motion 44 carry?

Mr. Runciman: Recorded vote.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Fonseca, Jeffrey, Van Bommel, Zimmer.

The Chair: That's lost.

Shall schedule B, section 11, as amended, carry? Carried.

Mr. Kormos: Chair, if it's agreeable, I don't think there are any further amendments to schedule B—

The Chair: There's a government amendment.

Mr. Zimmer: Yes, 46. There's one more.

Mr. Kormos: Where is that?

Mr. Zimmer: It's 46.

The Chair: Government amendment 46: Mr. Zimmer.

Mr. Kormos: My apologies.

Mr. Zimmer: I move that schedule B to the bill be amended by adding the following section:

"11.1 The act is amended by adding the following section:

"Regional senior justices of the peace

"16. (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a regional senior justice of the peace for each region.

"Consultation

"(2) Before recommending an appointment under subsection (1), the Attorney General shall consult with the Chief Justice of the Ontario Court of Justice.

"Functions

"(3) A regional senior justice of the peace shall advise and assist the associate chief justice co-ordinator of justices of the peace and the regional senior judge in all matters pertaining to justices of the peace.

"Terms of office

"(4) Regional senior justices of the peace each hold office for three years.

"Further appointment

"(5) A regional senior justice of the peace may be reappointed once, for a further term of three years, on the recommendation of the Chief Justice of the Ontario Court of Justice and, if the Chief Justice so recommends, the Lieutenant Governor in Council shall reappoint the regional senior justice of the peace.

"Salary at end of term

"(6) A regional senior justice of the peace whose term expires continues to be a justice of the peace and is entitled to receive the greater of the current annual salary of a justice of the peace and the annual salary he or she received immediately before the expiry.

"Transition

"(7) Regional senior justices of the peace in office immediately before the coming into force of this section are continued in office and,

"(a) if a regional senior justice of the peace is serving a first three-year term, he or she may be appointed to a second three-year term; and

"(b) if a regional senior justice of the peace is serving a second three-year term, is ineligible for reappointment."

1530

The Chair: Debate?

Mr. Kormos: No quarrel with the amendment, but question: Why the term limits?

Mr. Zimmer: I didn't get your question.

Mr. Kormos: The bill creates term limits for a regional senior justice of the peace. Are you advocating them for Liberal members of the Legislature?

Mr. Zimmer: That's what we've decided to do.

Mr. Kormos: Please.

Ms. Metrick: The three-year terms are consistent with current practice and it's done on a rotating basis, so regional senior justices of the peace serve for terms and then they go back and serve as justices of the peace, and then others—so it's consistent with the current practice and the practice of rotating people through those positions.

Mr. Zimmer: Good management practice.

Mr. Kormos: Think about it, Chair: If that were applied to the Legislature—

Mr. Zimmer: You would have been rotated out some years ago.

Mr. Kormos: —that many more people would have a chance to serve in the provincial Parliament. There are all

sorts of people out there who insist that they could do it better than any one of us.

Mr. Zimmer: Are you advocating term limits for MPPs?

Mr. Kormos: At this point in my career it would be easy for me, wouldn't it? Let the first-termer advocate it; that would be political courage. You know full well there's a strong debate around term limits, and it's an interesting one.

This makes sense.

The Chair: Any further debate?

Seeing none, shall government motion 46 carry? Carried.

There are no amendments in sections 12 to 18. Would it be okay if we grouped them together?

Shall sections 12 to 18 carry? Carried.

Any debate on schedule B, as amended?

Mr. Kormos: We're on the cusp of addressing schedule C. I know there are folks who've been waiting patiently in the room for that.

Mr. Runciman: Freezing patiently.

Mr. Kormos: I think it's comfortable.

Mr. Zimmer: Because you're generating all the heat, Peter.

Mr. Kormos: Well, yes. Look, I think everybody advocates an improved JP appointment process that is more modelled—I've got to tell you, at the federal level the federal judicial appointments continue to seem to be rife with political patronage. It's pretty obvious. The transformation of the judicial appointments process in this province I'm sure goes back to the era of Ian Scott, for whom I have regard; I was fortunate enough to be here when he was Attorney General in that government of 1987 to 1990. There's been an incredible enhancement of the quality of appointments and the appointment process provincially.

I think and believe strongly that there are serious flaws in the legislation, not intended to retain the pork-barrel quality to JP appointments but nonetheless having the effect. The "qualified," "highly qualified," in my view, has the effect. That may not have been the intent of the people who developed that as a policy or who then drafted it in terms of the legislation, but I put to you that's going to be its effect, the lack of clarity around educational standards.

Do you know what's interesting? Once again, think about this: We're telling paralegals, not inappropriately, that they've got to pass a specified, standardized training program—I presume it's going to be a two- or three-year community college program—that teaches them some fundamentals around law and legal procedure and evidence and ethics, yet we don't tell potential JPs to take even one seminar in legal training. That's contradictory, isn't it? There's something bizarre about that. There's something very peculiar about that. I put to you that the current standard of education, post-appointment, for JPs—again, the Hong article in Criminal Reports points out and credible research points out that more experienced JPs consider the training programs silly and a waste of time. That speaks for itself. Clearly, the training programs appear to be catering to the lowest common denominator.

The government's going to expect, not inappropriately, paralegals to take specific college programs that are designed to prepare paralegals to act as paralegals, but the government isn't prepared to tell people that they need specific college or other educational programs to prepare them to serve as justices of the peace. The lay JP argument is there. Then, what's wrong with lay paralegals? Heck, if JPs can learn on the job, why can't paralegals? Think about it. That's what the government is saying: JPs can learn on the job. We expect a level of literacy; I presume that's the reason for wanting at least a college diploma. We expect them to be able to read and write, but the rest they can learn on the job. So if that's our standard for JPs, who make decisions about people's liberty—when the police drag you before a JP at 9 in the morning after you were picked up at 2 a.m. doing Lord knows what, that JP is the one who decides whether you go to Metro West. Let me tell you, I don't know if you've been inside Metro West or not, but it ain't a country club. It isn't. Your liberty is in the hands of that justice of the peace, and it should be. That's his or her job. That's his or her function. We rely upon them, in the interests of enforcing the Criminal Code, in the interests of public safety and in the broader public interest.

So here I go. I'm being asked to vote for—unless Mr. Zimmer wants to ask me not to vote for schedule B. Mr. Zimmer, by inference, is asking me to vote for a schedule, in contrast to schedule C, where there's no regulatory body that's going to sit down and decide what the educational background should be for justices of the peace.

There's no regulatory body that's going to sit down—do you know what? There isn't even a good character requirement, yet that's very specifically referred to, and not that that shouldn't be referred to. You're darned right, paralegals should have the same good character test of lawyers. Some would argue that's not a very high bar to climb; I would say differently. There's not even a good character test for justices of the peace. Why, they could even have been Liberals. Think about it.

1540

I know the intent, but I say it's incredibly flawed. I also express concern that we, as a committee, are being asked to vote on it—we're going to be compelled to vote on it in a few minutes' time—when we have had so little input to this committee. I don't want to sound like a broken record, but the only thing we received of any substance, that had some research background to it and some analytical content, was the Hong article. A student came forward with the piece that he had written that was published in the CRs. That's all we had. We had no hard data about JP availability. We had no data, be it anecdotal or otherwise, about the performance of JPs out there. I've got my own war stories to tell, but that's not how it's done.

We didn't hear from any of the supervisory JPs talking about what their needs are in terms of training or in terms

of background for new appointments. We didn't hear from court administrators about what's going on in terms of the courtrooms available to JPs. We didn't hear anything about what the Attorney General provides by way of annual training. I learned more about the annual training for JPs in that case of reprimand where the JP was grabbing the breasts of a fellow JP out Windsor-way, after they got all drunked-up at a retraining seminar. Well, it's true. I learned more about the JP training programs from reading that reprimand report than I ever have from any other source. We should have had that presented to us here in the committee.

There should have been a debate over lay versus non-lay JPs, in view of what other provinces have done. I know there are mixed views on it but we should have had the debate. We should have talked about it.

We should have talked about JP remuneration and whether or not the remuneration level is sufficient to attract the sort of people we should be wanting to attract. There should have been an analysis of the appointments—I don't care, over the last five years, over the last 10 years, over the last 15 years—just to test how many were former politicos and whether that was the entry point.

So I'm not pleased and it's just so regrettable. We made it very clear from the get-go that it was not good form to have the paralegal legislation involved in a bill with all this other stuff. As it was, everybody got short shrift. The paralegal issue dominated the public hearings, but even they got short-changed because at the end of the day their issue, in my view, the issue of paralegal regulation in schedule C of the bill, wasn't adequately reviewed, discussed and analyzed. So no, I'm not going to be voting for the schedule.

Yes, I look forward to the day when Mr. Bryant, in response to me during question period, says, "Well, you didn't support our JP reform." Then, perhaps, I can reference how Mr. Harnick told so many people while Bill 14 was pending that he couldn't appoint any JPs until Bill 14 passed, and suggest to Mr. Bryant that he has far more in common with Mr. Harnick than with any other Attorney General in this province's history. Do you understand what I'm saying, Chair? Far more in common with Mr. Harnick. We know what he, under oath, admitted to doing, don't we? Mr. Harnick admitted to lying in the Legislature. I, then, will be able to explain to Mr. Bryant that he has far more in common with Mr. Harnick than he does with any other Attorney General in this province's history. So if that's the game that people want to play, we'll play it, but I just issue a caveat emptor to those who want to engage.

It's regrettable, just so unfortunate, because once again this is the final kick at the can for this one. The next government's not going to be reviewing justices of the peace. They'll be complaining about the fiscal mess that this government left, just like this government complained about the fiscal mess that the last government left.

Thank you kindly. By the way, I'm going to be voting against schedule B.

The Chair: Any further debate?

Mr. Zimmer: Briefly, I just want to touch on the highlights of this piece of legislation—that is, schedule B—as it relates to justices of the peace. I'll put it on the record that what the amendments to the Justices of the Peace Act are going to do is modernize the JP bench by creating minimum qualifications for JPs, updating the complaints and discipline process, and creating a justices of the peace appointments advisory committee that will advertise, interview and recommend justices of the peace. There are going to be sophisticated training programs for justices of the peace. Also, one of the highlights of it is that it's going to allow for the appointment of per diem justices of the peace and retired justices of the peace who can be assigned to specific proceedings, particularly backlog lists that have built up in the various municipalities. It's something that the municipalities have asked for and it's something that the court system has asked for.

I'd invite my friend opposite to join us and vote for this piece of modernizing legislation. I understand your role here: It's opposition for the sake of opposition, and that's the way the system works. So it's not unexpected to have heard your colourful comments over the last two days, particularly today. Although from time to time you've put forward substantive points, for the most part they're colourful and over the top. So I urge you to support and vote for this.

The Chair: Thank you, Mr. Zimmer. Any further debate? Seeing none, shall schedule—

Mr. Kormos: Recorded vote.

Ayes

Duguid, Fonseca, Jeffrey, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: That's carried.

Seeing that we are at the beginning of schedule C, I'm proposing that we adjourn for today, considering there are only a few minutes.

Mr. Kormos: Chair, we've got 10 more minutes till 4 o'clock. Is it possible? I think it's possible to get the committee's—

The Chair: Is the committee willing? Yes.

Schedule C, section 1: Any debate?

Mr. Zimmer: Just a second. I'm going to get my—just hold on a moment. I've got another group to join me today.

Mr. Kormos: While we're waiting, Chair, I know she's not here today, but I didn't have a chance yesterday to thank Cornelia Schuh, who was legislative counsel and who assisted me in the one amendment that I put forward. She was very patient with me, very understanding and very helpful. So I thank her for doing that—of course, like she did for all us—on very short notice.

The Chair: Thank you, Mr. Kormos.

Any debate on schedule C, section 1?

Mr. Kormos: First, specifically dealing with what is proposed to be section 2 and the inclusion of an arbitrator: While I don't quarrel with the fact that an arbitrator is an adjudicative body for an arbitration, let's understand that the reason that's there is because it is necessary in terms of the definition of "legal services." Everybody knows what we're talking about here: We're talking about what "legal services" includes, and one of the inclusions is appearing at an arbitration. This could mean several things. It could mean appearing at a labour arbitration or some other governmental or statutorily constructed arbitration.

1550

The part where I've got concern is in private arbitrations, because an arbitrator is an arbitrator under the Arbitration Act. Some of us here dealt with the Arbitration Act when we dealt with it a year ago now in terms of the amendments to the Arbitration Act. My understanding—and, quite frankly, I support this view—is that private arbitration is a very private matter. People choose it because it's private. For instance, people can establish their own rules of practice. They are entitled as parties to an arbitration to design it any way—

Interjection.

Mr. Kormos: Go ahead.

Mr. Zimmer: Sorry, just to help me out: You're speaking to section 1?

Mr. Kormos: Yes.

Mr. Zimmer: Thank you.

Mr. Kormos: I know it's confusing, the way the bill is written. It's section 1 of the bill. It's part 0.I, which is section 1.

Mr. Zimmer: Just a second.

Mr. Kormos: Yes, it's difficult; it's confusing.

Mr. John Twohig: You're speaking about section 2?

Mr. Kormos: No, section 1: "The Law Society Act is amended by striking out the heading immediately ... and substituting the following:

"Part 0.I

"2."

Is "part 0.I" the sole part of section 1, or does it include subsequently—I'd be more than pleased to help, yes. Do you understand what I'm saying here?

Mr. Zimmer: Just hold on a second, just so we're on the same sequence here.

Interjection.

Mr. Kormos: Thank you. Yes, we're going to have to repeat all of that, because section 1 just consists of the words "Part 0.I."

The Chair: Further debate?

Mr. Kormos: I'd love to be able to debate that, but I have no interest whatsoever in debating "Part 0.I."

The Chair: Shall schedule C, section 1, carry? Carried.

Schedule C, section 2: government motion 47.

Mr. Kormos: That's where I had the problem, because it said "the following:" and these definitions were the following. Anyway, that's why—

Interjection.

Mr. Kormos: What now, Mr. Zimmer?

Mr. Zimmer: It's three minutes to 4. This is going to be a substantive discussion. Do you want to start this one tomorrow morning?

Mr. Kormos: No. Let me lay it out, because I really hope that there's a response and there may well be a good explanation. You have "arbitrator" in here, and we understand there are any number of arbitrations; there are arbitrations under Ontario labour relations law. But then there are arbitrators who are private arbitrators, and they can be anybody. If you want to pick an arbitrator under the Arbitration Act, it can be the five-year-old neighbourhood kid, for all intents and purposes. Well, it can in theory, right? Parties to an arbitration can design the arbitration any which way they want. That's the whole beauty about private arbitrations. They can also have anybody they want acting for them; they can hire monkeys, if they wanted to, to act for them. It's private. It's not government-supervised, there's no oversight and it's behind closed doors.

My concern is, why is an arbitrator—even though I agree that it's an adjudicative body, but in the context of the rationale for these definitions, why is "arbitrator" there when it's going to be used to define what constitutes providing legal services, to wit, appearing before an arbitrator? It seems to me that there's no interest whatsoever in telling anybody, paralegals or otherwise, that they have to be licensed to appear in front of private arbitrators in a private arbitration, where the parties design the structure and where the state has no interference or no intervention or no involvement whatsoever, other than down the road enforcing the arbitration order should the parties call upon it to do it. I'm not aware of any other reason for the word "arbitrator" being there other than in reference to the definition of the scope of what constitutes legal practice or providing legal services.

That's my question. If there's a 30-second response, please, but—

Mr. Twohig: We can attempt a 30-second response, but I'm afraid it may lead to a five-minute discussion. I guess the simple answer is that you're quite right: There are private arbitrations that may or may not arise by virtue of statute. The private arbitrations may involve anything from a neighbourhood dispute up to very large international commercial arbitrations. The act later, as you'll see, makes provisions for the law society to exempt certain activities, and it may well be that certain of those activities that you would refer to as purely private, where the government has no business, would be exempted.

Mr. Kormos: I hear you, and I suppose my response is this: It's one thing for the exemptions in subsection (5), "A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the bylaws." So are we contemplating the law society passing yet another bylaw saying that non-licensees may represent people in arbitrations under the Arbitration Act, or was it—you see, because that's the activity. My sense, when we were talking about exemptions, was talking about the class of persons, right? Union

negotiators are not prohibited from being union negotiators. What you're saying defines the activity rather than the body performing it, and I hear you and I appreciate it. Again, I agree with you: I don't think the law society would be interested in doing that. But it seems to me that the bylaws are going to be more inclined to list people or groups of people.

Mr. Zimmer: On a point of order, Mr. Chair: It's 4 o'clock.

The Chair: That's not a point of order. It is 4 o'clock, and we will resume with government motion 47, which has not been moved yet, at 10 a.m. tomorrow morning. This committee is adjourned.

The committee adjourned at 1559.

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