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Mercredi 20 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

Wednesday 20 September 2006

Mercredi 20 septembre 2006

The committee met at 1009 in committee 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): Good morning, everybody. Welcome to the standing committee on justice policy. Today, we're here to consider Bill 14, clause-by-clause.

Mr. Peter Kormos (Niagara Centre): Chair, if I may, I have a matter to raise before we do that. I propose to make a motion. I have copies for the clerk in sufficient numbers to distribute to members of the committee.

Chair, I move that this committee defer clause-by-clause consideration of Bill 14 so that the committee can hear further submissions from members of the public.

The Chair: Any debate?

Mr. Kormos: Yes, there is. The opposition parties were accommodating of the government in terms of agreeing to these hearings taking place during these pre-legislative sitting dates. I for one, on behalf of the New Democrats, sincerely hoped that the committee hearings and the comments made in the course of these hearings would address the numerous concerns about the proposal that are held by many across the province: the Ianni report, of course, which dates back to the last Liberal government; and the Cory report, which of course was initiated by the last government, the one previous to this one, the Conservative government.

While there may be genuine disagreement with any number of recommendations in those reports about the scope of practice, the structure of the regulatory body itself, both of those authors premised their reports on this observation: that there is a conflict of interest between lawyers and their law society and paralegals. As you know, Chair, a conflict of interest is a conflict of interest whether it is real or merely perceived. It was my sincere hope that during the course of these hearings, those concerns would be addressed.

Of course, Professor Ianni is no longer with us. Judge Cory is alive and well, chancellor at York University. I found it strange that the government would not have, for instance, solicited the participation of Judge Cory in these hearings to respond to the dismissal of his very clear and unambiguous declaration that there is an inherent conflict of interest. I found it even stranger that there was nothing put before us that in a meaningful way addressed that, nor were there any efforts on the part of the law society to address that by permitting paralegals in the proposed regulatory regime to play a more active role in the law society, which would have gone some way to addressing the conflict of interest concerned, wouldn't it have?

It was interesting because, notwithstanding that we heard from Paul Dray, a lay bencher who is also a paralegal, Mr. Dray didn't tell us what he told the Law Times. It was only recently that, doing the Googling that one does in this Internet world, I encountered the Law Times article authored by Patricia Chisholm, in which Mr. Dray stated that he supports most of the recommendations in the subcommittee report to the law society "but noted that the new plan is almost impossible to sell because, while paralegals will be regulated by the law society and pay dues to it, they will not be able to join." Mr. Dray said this.

"'So we're going to pay dues to a body to regulate us, license us, and if we go through the recommendations, we're going to have the same standards as lawyers for trust accounts, the same standards of lawyers for conduct, the same standards when it comes to ethics. But when it comes to being a member of this society, we're not going to be members,' said Dray."

The article goes further and says:

"He also suggested that there appears to be a contradiction between some of the matters that paralegals perform now, such as giving legal opinions and drafting and filing documents, and matters that the report"—of course, that's the report that is now part of this record, and that is the Task Force on Paralegal Regulation report to convocation, prepared by the Policy Secretariat—"seems to conclude" that those areas "should not be performed by paralegals, because they constitute the practice of law."

Indeed the report—referring to page 45, "Summary of Recommendations," which is all we've gotten so far from the law society in terms of what they anticipate or contemplate for scope of practice—talks about Small Claims Court, provincial offences matters, tribunals, provincial

boards, agencies and tribunals that allow for appearances by agents, appeals under the Provincial Offences Act, because section 109 of the Provincial Offences Act authorizes agents to appear on appeals.

One of the most dramatic areas out there in terms of access to justice is in the family courts. I've got to tell you that I, for one, have serious concerns about paralegals in family courts without a clear standard expressed for what the standard is for training, because family law is so complex and, at the end of the day, it involves in so many cases the interests of children. But the reality is that the legal aid system in this province, this government's legal aid program, has not been sufficient to ensure legal representation for low-income litigants in family courts, most often women. We've got some anecdotal evidence, but I would put to you that it's common sense that Family Court has one of the largest groups of unrepresented parties before it. Our failure to more concretely discuss the needs of litigants in Family Court and whether or not a paralegal regime is going to help meet those needs is a serious omission. We had one deputy Small Claims Court judge appear before us. We heard from nobody in the Family Court bench who would be in a good position to talk to us about whether or not paralegals have been effective and what that bench would expect in terms of training for paralegals if they were to be permitted to represent litigants in Family Court—nobody from the criminal court bench, the provincial courts, talking to us about their experience with paralegals in their courts, whether or not they should be permitted, and if they were to be permitted, what type of educational standard there should be.

I've got to tell you, I'm very concerned. We heard from one private college that presented a one-year program with a 60% pass rate; in other words, you had to get 60% on your exams to pass. To give credit to Humber College, their CSIC program—it's easy to Google—requires a 70% average to pass. So at least you have to know 70% of the stuff before you're deemed capable of appearing before the IRB, assuming you meet the other standards of the CSIC—which again brings us to the CSIC, a real problem. I wasn't very gratified by how the CSIC responded to—I remember, the first day we were here, there were some strong criticisms of the capacity of the CSIC to adequately regulate its members. And it may well have that capacity. I wasn't very gratified by how CSIC responded to it, but it still leaves the question remaining and outstanding, and that is, does this regulatory regime include immigration agents? CSIC says they cover anybody who even prepares a document. Well, that's not what the regulation appears to say and that's not what the federal government appears to say. We haven't got the answer to that question. I would dearly like to know: Is a regulatory regime for paralegals going to regulate those people doing immigration consulting scams out there, whether they're federal members of Parliament or not? We don't have those answers.

1020

There has been a failure to produce even a single community from amongst those people conducting themselves as paralegals out there that approves of the law society as a regulatory body in the context of the bill as it exists now. I've got to tell you, I went through the proposed amendments from the government, and while incorporating the title "paralegal" into the legislation is not an unsound proposition, there doesn't appear to be anything else—I will go through them one at a time—that indicates a response to the submissions made to this committee.

I note even today that we're going to be voting on clause-by-clause. When you're in government, people come to a committee as directed by the whip, and with all due respect, there are only two members sitting on the government side who have heard any of the evidence put before this committee over the course of several very exhaustive days. Mrs. Van Bommel was here listening very, very—she really was. She was an active participant in those hearings and performed an admirable role in terms of how she questioned participants, engaged them and, quite frankly, approached the matter very fairly. The parliamentary assistant, of course, disappeared for three days; he was missing in action. He didn't even bother showing up. So no, I don't think we're ready to deal with clause-by-clause.

This is another Bryant bomb that has just blown up in his face. Can you imagine anything more shabbily developed, with a complete failure to address some very long-standing, fundamental concerns? Quite frankly, it's not for the opposition to deal with that. It's not our job to steward government legislation through the process; it's the government's job. I submit to you that there's been a total failure.

This is the last kick at the can. Don't for a minute think that, oh, there's going to be some tinkering with this a year down the road, two years down the road or three years down the road. Even if you're not interested in the paralegals per se, then demonstrate some interest in folks out there who can't afford what everybody acknowledges are increasingly unaffordable legal fees. I don't begrudge lawyers those hourly rates, because operating a competent, capable law office is a very expensive process in and of itself. Access to justice, my foot.

Here we are, engaged in what I sadly perceive and suspect is but a charade of clause-by-clause. How many amendments from the government? There are well over 100. I can tell you, there's one from the New Democrats, because it's not our job to fix the bill. I say that it's not a matter of fixing the bill as much as it is a matter of resolving that fundamental concern raised by Judge Cory. If you want to dismiss Judge Cory as some sort of flake or as somebody who is so unlearned in the law that his fundamental observation about conflict of interest should just be dismissed, feel free to do so. I won't be so bold. Come on. The man is one of this country's most distinguished jurists, and continues to hold a responsible position and to be held in the highest of regard. There hasn't been a single legal refutation, not a single argument presented to refute the observation by Ianni and Judge Cory that there's a conflict of interest. Certainly

nobody's persuaded any significant number of paralegals, if any, because even those who appeared as individuals to adopt the proposition, subject to a whole laundry list of concerns, didn't dispute the conflict-of-interest observation. This causes me great concern.

The other observation is this: Because of some very stupid comments by Mr. Chudleigh, we were compelled to recess for half a day. Mr. Chudleigh, I don't think, was motivated by malice; he simply didn't know any better. He attacked the integrity of not only Mr. Zimmer and myself—and that's fair enough, I suppose—but he attacked the integrity of Mrs. Elliott and her ability to deal in a responsible way with legislation before this committee. We were compelled to recess for half a day, and of course the matter was resolved. That's between Mrs. Elliott and Mr. Chudleigh, and there you go, but we lost half a day. There's a long waiting list of people who wanted to participate in these hearings. Because we had to use empty spots—vacancies—and some so-called no-shows to accommodate the people who had to be adjourned or put over from that afternoon, that waiting list was denied the opportunity to occupy those empty slots. Do you understand what I'm saying? People were denied the opportunity to participate in this hearing through no fault of theirs, and there was some suggestion at the time about an effort to extend the hearings at least by half a day to provide some slots for those people who were displaced by the people who had to be called back because of Mr. Chudleigh's stupid comments. We haven't even done that.

As a member of the opposition, perhaps I'm offering far too much assistance to the government by moving this motion. Maybe I should just let the government go ahead, ram this bill through and then wallow in the mess that it creates, in the mistrust that the legislation nurtures and in the chaos that it will foster, if we're to understand the Task Force on Paralegal Regulation, by virtue of barring paralegals, for instance, from some areas like family law and solicitors' work. Again, I'm not going to suggest, for instance, that wills aren't a complex legal matter. I'm not venturing so far as to say, without thorough consideration, that paralegals should or shouldn't be able to prepare wills. My suggestion is that most lawyers shouldn't be preparing wills, because they don't have the very specialized expertise.

Again, I want to be perfectly fair. We've all heard the horror stories about bad paralegals, and there are bad paralegals out there. We've also heard some horror stories, more than a few, about bad lawyers. I'm not talking about the crooked ones—the people who steal, the lawyers who rip off their clients in an overt and criminal way. They seem to be dealt with quite well. I'm just talking about incompetent lawyers, or, more importantly, to be more fair, lawyers taking on work that they have no business taking on. I want to be fair here.

This is a regrettable situation, and I urge support for this. I can commit to participating in a subcommittee meeting at the earliest opportunity, and I can also commit to ensuring that this bill, by virtue of my role and voting power on the subcommittee, is prioritized in terms of this committee's business.

1030

Mr. David Zimmer (Willowdale): As usual, there's a clear distinction between the NDP rhetoric on this topic and the actual facts, so here are the facts. The clerk of the committee can do the calculation, and we'll know what happened.

Initially, the government decided to set aside four days for these hearings. At the behest of the opposition parties, we extended those hearings for a further seven days, for a total of 11 days. The committee sat on those 11 days from 9 a.m. to 5 p.m., with an hour off for lunch at noon. That's six hours. There were 20-minute or 30-minute slots for presenters. By my calculation, with six hours a day, even at 30-minute slots that's 132 slots. It's more when you take into account that many of those slots were 20-minute slots. We lost half a day for the Chudleigh motion, but we more than made up for that because of cancellations that we were able to fit in.

The government has set aside more than reasonable time for public hearings. I'm advised that virtually everyone who made a request to be reasonably accommodated has in fact been reasonably accommodated.

So the facts of the matter are: 11 days of hearings, six hours a day, an hour off for lunch, at least 132 slots. Everybody has been accommodated. Those are the facts. It's time to get on with clause-by-clause on this.

Mr. Kormos: I have the highest regard for Mr. Zimmer. I understand that he's the parliamentary assistant; it's his job to respond to the types of things I just said. But those comments betray the arrogance of this government.

The government had decided there were going to be four days of public hearings. Oh, they obliged the opposition by extending them three days. We don't have public hearings—well, maybe we do. Are these Soviet-style show trials where you have a token hearing and say, "Oh, well, that's the hearing"?

I don't care what the numbers are. This isn't a basketball game; it's about addressing the issues and addressing the concerns that were raised—legitimate, bona fide concerns. You'll remember Mr. Colangelo, the litigation lawyer—a very competent presentation. He talked about how, when you're talking to a judge about a quantum for a settlement for a personal injury case, you've got to prevail upon the judge to understand that this is the only kick at the can that we get to make it right. Well, these committee hearings are very much like that. This is the only kick at the can.

For Mr. Zimmer to somehow suggest that I said anything other than things that were accurate is not particularly impressive. I made it very clear that the opposition parties, in subcommittee and through the House leaders, agreed to make every effort to accommodate this bill prior to the House resuming sitting—I made that very clear. I also made it very clear, at least inferentially, that there were a large number of participants in these hearings. But notwithstanding the volume of participants,

some fundamental questions remain unanswered and some fundamental flaws remain in this bill and around this bill.

The law society was here twice. On day one, I gave the law society the opportunity and I very much wanted them to address the concerns, for instance, of mediators, as an illustration, as an example, because of the failure of this committee, and more importantly of the legislation, to talk about scope of practice. The response was, and I'm paraphrasing now, "Well, if mediators are doing things that constitute legal work, then maybe they should be regulated by the law society."

There was a second presentation by people speaking to the Task Force on Paralegal Regulation, and with all due respect to the very competent spokesperson on that day, it wasn't very gratifying, as I said earlier. It was an opportunity for the law society, through its spokesperson, to address the issues that had been raised over the course of the week before. They weren't addressed.

Quite frankly, this isn't just about paralegals. The issue around the Limitations Act: the conflict between the hard-core entrepreneurs who want to be able to contract out of the Limitations Act and those professionals, amongst others, and people in the construction industry, and in particular architects. You all read the letter from the architects that we just received. Remember, the Limitations Act was very important to architects, wasn't it, Mr. Runciman?

Mr. Robert W. Runciman (Leeds–Grenville): That's right.

Mr. Kormos: Critical. There's a real conflict there in interest which hasn't been resolved by this committee process.

When it comes to that oh, so modest proposal that mandates structured settlements—the CMPA. That's the insurance group of doctors. I hope I have the acronym right. They came here telling us how it was out of their concern for the injured party, because they were just so broken up that innocent victims, in this case of medical malpractice, might not be fairly treated by the court.

There was also some reference to the economy that we heard from at least one litigator.

Then we heard from Mr. Kolody. Remember him: a young man, father of an innocent victim? He couldn't talk about the litigation because it's literally before the courts. He was very, very discreet and fair, I put to you, in how he addressed that issue.

I'm not sure that there's a single member of this committee who is yet satisfied that they've had all the answers to all the potential questions about the rationale for that amendment. I'm not sure of that. This has been "Trust me" from the get-go. I'm sure that's what Henry VIII told Anne Boleyn, and it just doesn't cut it. It's not a matter of "Trust me"; it's a matter of being able to demonstrate that these are legitimate amendments that address real concerns and that help more than they hurt.

The Limitations Act amendment: I'm not sure it helps more than it hurts. The amendment regarding structured settlements—oh, and the misrepresentation, the outright misrepresentation; the suggestion that Judge Osborne was clear in his call for mandatory structured settlements, when legislative research pulled that notorious Osborne report from 1987, and I remember it oh, so well, because of course that was one of the tools during the insurance wars. Remember those, Mr. Runciman, when the Liberals introduced no-fault insurance? That was a real winner.

That's the very same Osborne report they used at length. The fact is that I read that section where Osborne talks about structured settlements, and he didn't say what the CMPA said he said, nor did the other judicial sources say what they said they said. The justices of the peace: one kick at the can. Other than young Paul Hong, with a very capable piece of published material, we had precious little debate around it.

Paul Hong raised the issued of lay bench versus non-lay bench. We know where Mr. Runciman stands and that's okay; that's good. Now, mind you, he's never had to appear in front of those lay magistrates as an accused. He might have a different perspective.

1040

Notwithstanding that, there's a legitimate debate there. It was never engaged in. We're talking there specifically about, for instance, the minimum standards to be appointed a justice of the peace—the fundamental dilemma of adequacy of numbers of JPs. Mr. Runciman, we have part-time JPs who are being grandparented—I read the amendments; if the amendment passes, of course—Mr. Runciman, again, advocates per diem JPs, or "piecework JPs" is perhaps more accurate. One of the reasons, of course, they were abolished by that government was that there was a sense that police would go shopping for JPs and they would find a JP who would sign anything that you put in front of him or her. Whether that was fair or not is not the point; that was the rationale. There's a debate about that. There's an argument to be made. I accept that. But we never heard from people who would help us address that particular issue—nothing at all about the sections that will, for instance, allow for the destruction of evidence that has been tendered at a trial, rather than ensuring its preservation.

I know that the committee for the wrongly convicted spoke to that in a letter, a piece of correspondence, many months ago now. How many more cases do we have to see of people being freed from unjust prison sentences as a result of capable lawyers being able to access evidence that has been kept in storage before we realize that that sort of provision is totally inappropriate? Mr. Zimmer, I hear you: Your numbers are bang-on.

I hope there isn't a similar arrogance that permeates if my motion is unsuccessful. We should call the question quickly, before Mr. Duguid gets back, but I won't. If my motion is unsuccessful, I think we've made a serious error.

I'm as eager as anybody to see legislation pass. I was the one who was pulling on Mr. Bryant's coat sleeves last spring, and so was Bob Runciman, saying, "Introduce the bill, introduce the bill, introduce the bill." That was over a year and a half ago now. You remember that, Mr.

Runciman? On almost a daily basis: "Bring the bill forward. Let's get going." And he waits and waits and waits, and not only waits to introduce the bill, but then waits to call it—lingers. It's like a vagrant on the legislative calendar. Now, all of a sudden, seven days—is that the number, Mr. Zimmer? Seven days?

Mr. Zimmer: Eleven; 132 slots.

Mr. Kormos: Eleven; 132 submitters. I don't care if we need 200 submitters, I don't care if we need 300 submitters to be able to address the issue, but we've got to have enough submitters so that we have information that allows us to deal with this in an appropriate way. We haven't had those submissions. We haven't heard from members of the Family Court bench, the provincial offences bench. We haven't heard from justices of the peace. We haven't heard from anybody from the justice of the peace regulatory regime, the one that oversees JPs' work now. We just haven't heard from so many sources.

So there we go. I don't want to belabour the issue. I hope I've made my point. If I've not been clear enough in my argument, I apologize.

Mrs. Christine Elliott (Whitby–Ajax): I support Mr. Kormos's motion for deferral of the clause-by-clause consideration of this bill to allow for further submissions. Though he has set it out very ably and very completely, I'd like to indicate my reasons for agreeing with it.

First of all, although we have heard from 132 presenters, there are several major areas in which I think we do need further information before we can make a final determination with respect to this bill. One is in the area of justices of the peace. I would completely agree that we simply don't have enough information before us yet with respect to the appointments process, how they should be appointed and so on. We are in great need of more justices of the peace in this province, but we need to make sure that we make the right kinds of appointments so that they're going to be able to do the work that they need to be doing in the justice system.

Secondly, with respect to the issue of structured settlements for medical malpractice cases, I would agree that we've heard some information from the CMPA with respect to the need for structured settlements in these types of cases, but in my view, we don't have enough information to determine whether that's the case or not. We did hear from Mr. Colangelo and from Mr. Kolody, who made very significant arguments about why it was not a good idea, but I think we need more information in order to be able to make that determination.

Finally, and perhaps most significantly, with respect to the issue of paralegal regulation, both Dr. Ianni's report and Mr. Justice Cory's report have made some significant observations with respect to several areas. First of all, who should be regulating paralegals? Particularly Mr. Justice Cory indicated that, in his view, the law society was not the appropriate body to be regulating paralegals.

With respect to the issue of paralegal work, again, Mr. Justice Cory felt that it was important to be able to set out what types of work paralegals should be doing, and he did so very ably in his report, yet this legislation, when it comes before us, doesn't seem to have taken that into account. In fact, it flies in the face of Mr. Justice Cory's recommendations, and I think it would be important to have his input in this area, since he studied it so exhaustively and so eminently.

For those reasons, I support Mr. Kormos's motion.

Mr. Runciman: I guess this is another fine mess that Mr. Bryant has gotten the government into. I think that's a fair conclusion to reach. I'm going to be supporting the motion as well. I share the concerns of my colleague and Mr. Kormos about the lack of representation to the committee, but I'm not optimistic that delaying or deferring clause-by-clause consideration is going to remedy that, because I have serious questions about why organizations and individuals did not appear. You could say, "Well, why wasn't Justice Ebbs asked to be here?" as the justice who's responsible for JPs in the province, because this is a very serious issue, as we know.

I raised this issue last week, Mr. Chair, you'll remember. We had a gentleman who was a former chief of police and an honorary member of the Canadian chiefs of police. I raised the issue of the failure of the Ontario Association of Chiefs of Police to appear before us to talk about some elements of this legislation that clearly they have concerns about and issues surrounding why they were not appearing. He took the opportunity to respond. I didn't expect him to. He took the opportunity to also express his alarm, I think it's fair to say, with the fact that they didn't take this opportunity.

One has to wonder—and I raised the issue of intimidation, Mr. Speaker—Mr. Chair. I think it's fair to raise that because of an incident where I know that a very non-political organization in this city was sponsoring a meeting where Premier McGuinty was the guest speaker, and the chief of staff in the Premier's office phoned up and attempted to intimidate the MC in saying that Mr. McGuinty had to be—there were no ands, ifs or buts—introduced as "Mr. Ontario." Fortunately, the MC of that meeting was a strong enough individual to say, "Okay. I'll introduce him that way, and I'll say 'on the orders and instructions of the chief of staff of the Premier of the province of Ontario.'"

So how much of that sort of thing goes on should be a concern to all of us. We've certainly seen, on a regular basis, the Minister of Health attempting to intimidate people in the medical profession, either calling them "terrorists" or "threats to the health care system in this country," that sort of thing, Mr. Speaker—Mr. Chair.

1050

I'm not optimistic, for whatever reasons, that even if we defer to hear these folks—because of the approach of this government in terms of so many areas—they're going to volunteer to come forward. But there is another reason I think we should talk about in terms of deferral, and I'm prepared to look at simply deferring this until the House comes back next week and then begin our clause-by-clause. It may take some time, but it's quite realistic to expect reporting back to the House in time to at least begin third reading.

My concern is the fact that we entered into, as Mr. Zimmer indicated, an understanding as the House leaders—and both Mr. Kormos and I represent our parties as House leaders—that we would make every effort to report this bill back to the House when we resume sitting next week or shortly thereafter. The problem arises—and certainly, those understandings, from our perspective anyway, are never going to be reached in the future based on this legislation.

We saw it last week with the water bill—I forget the number of the bill—where the government comes in with over 100 amendments. We have over 100 amendments dropped on our doorsteps. Most of us were on caucus retreats, in opposition we have limited research capability, and we're expected, the day we return from the plowing match and the caucus retreats, to realistically deal with some substantive amendments and others that are more technical in nature, but not having a realistic opportunity to really review those amendments and to have an understanding of potential impacts.

We can say, "Well, the government's approach to this is they have three members sitting here who did not attend any of the hearings." That's pretty clearly an indication that this is a pro forma process, that we're simply going to put our hands up when the government amendments come forward—end of story. From our side of this meeting room, we can't approach it on that basis; we have to have the opportunity to understand the implications of these amendments. I think that if we move ahead today, it's going to be very difficult to get through this in the allotted time, because, as I said, we haven't had the opportunity to take a look at all the implications of these over 100 amendments. To try to deal with them in a meaningful way in the allotted time is an insult to all of the good people who took time out of their lives to appear before us, express their concerns and put their views on the record.

So, Mr. Speaker—Mr. Chair—I'm going to have you elevated to that lofty office before the day is out—we on this side of the room obviously are going to vote for this. I would perhaps propose a friendly amendment that we defer sittings until the resumption of the House next week. Essentially, as I explained, my view on that is to give the opposition more opportunity to review the amendments and to prepare for extensive discussion of same.

At the same time, I don't rule out what Mr. Kormos is saying. If there are other witnesses whom we can encourage to appear, perhaps on the paralegal side—but we did hear a substantive number of individuals testify with respect to that element of the legislation. I'm concerned that we did not hear from very many people. You mentioned the one law student, who was the only individual who appeared before us with respect to these very substantive changes being suggested to the JP side of things and to the courts' administration.

I said at the outset that this is another fine mess that the Attorney General has gotten the government into. Perhaps they may not consider it fair, but I think it's fair in the sense that both Mr. Kormos and I have indicated that our parties support regulation of paralegals. We've indicated that for some time, and we did encourage the Attorney General to bring forth a piece of legislation without getting specific about the regulatory body or other specifics in terms of what we felt was appropriate. I guess there was an assumption based on Justice Cory's report, the Ianni report, that that's the direction the government would be moving towards in terms of self-regulation.

Setting that aside, for whatever reasons—and I guess only Mr. Bryant can respond to this—he felt that he should throw all these other critically important issues into this bill. It certainly upset us at the time, and it has continued to cause serious concern. It's regrettable that we couldn't have dealt with both these issues on a separate basis; perhaps both would have received more serious and timely consideration if he'd undertaken that path rather than the one he has undertaken. Thank you.

The Chair: Mr. Runciman, can I get you to clarify the amendment?

Mr. Runciman: The original motion is in front of me, isn't it? I have a copy of it here somewhere. I don't think I'd be in conflict. Mr. Kormos's motion is deferring it until the committee can hear further submissions from members of the public. To amend it, "continue clause-by-clause consideration no earlier than the first committee day of sitting following the resumption of the legislative session."

The Chair: Are we ready to vote on the amendment?

Mr. Kormos: A recorded vote, please. I request a two-minute recess pursuant to the standing order.

The Chair: The committee is recessed for two minutes.

The committee recessed from 1058 to 1101.

The Chair: Mr. Kormos has asked for a recorded vote on Mr. Runciman's amendment to Mr. Kormos's motion.

Ayes

Elliott, Kormos, Runciman.

Nays

McNeely, Van Bommel, Zimmer.

The Chair: It's a tied vote.

Mr. Brad Duguid (Scarborough Centre): We can't hear you, Vic. Sorry.

The Chair: Maybe if you weren't talking, you'd be able to hear.

I vote against the amendment to the motion. The amendment to the motion is defeated.

Now we're going to consider Mr. Kormos's motion.

Mr. Kormos: A recorded vote, please. I request a three-minute recess pursuant to the standing orders—three minutes, this time.

The Chair: This committee is recessed for three minutes.

The committee recessed from 1103 to 1106.

The Chair: We're voting on Mr. Kormos's motion. Mr. Kormos has asked for a recorded vote.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Jeffrey, McNeely, Van Bommel, Zimmer.

The Chair: That motion is defeated.

We're going to move on to section 1. The first motion is a government motion. Do we have unanimous consent to stand down the bill and move to the schedule?

Mr. Kormos: Agreed.

The Chair: All agreed?

Mr. Zimmer: Hold it. I want a five-minute adjournment.

Mr. Kormos: Wait a minute: pursuant to what standing order? If there's no agreement, then let's start with section 1. What's going on? I give agreement to unanimous consent to help expedite the government's business and the parliamentary assistant wants to block it? Give your head a shake.

Clerk Pro Tem (Mr. Trevor Day): The Chair was looking to stand down—the bill itself, I believe, contains approximately three—

Mr. Kormos: Chair, on a point of order: Please, the clerk is here to give counsel to the Chair and other members of the committee; the clerk is not here as a participant in this committee hearing. The Chair sought unanimous consent. You didn't get unanimous consent, so that then takes us to section 1. Are we going to do this or aren't we?

The Chair: We have no amendments to section 1. Shall section—

Mr. Kormos: No. "Is there debate?"

The Chair: Is there any debate?

Mr. Kormos: Well, now there is.

Mr. Duguid: On a point of order, Mr. Chair: Can we get clarification on the motion from the clerk as to what the motion means?

Mr. Kormos: There is no motion.

Mr. Duguid: There is a motion by the Chair.

The Chair: We're on section 1 of the bill.

Mr. Kormos: The Chair can't make motions, for Pete's sake.

The Chair: Is there any debate on section 1 of the bill?

Mr. Kormos: Yes, there is.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Chair. Thank you very much. It is unfortunate that the government would not join the opposition parties in agreeing to hold down sections 1, 2 and 3 until we've dealt with the respective schedules—A etc., etc. In view of that, I am indicating that I will not be supporting section 1 of the bill. We do not feel that this bill is ready to be dealt with by committee. I suggest to you that there will be a recorded vote on this matter.

1110

The Chair: Further debate on section 1? Mr. Kormos has requested a recorded vote.

Ayes

Duguid, Jeffrey, McNeely, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: Section 1 carries.

Any debate on section 2? Shall section 2 carry? Carried.

Any debate on section 3?

Mr. Kormos: Section 3, of course, is what entitles this act the Access to Justice Act. I was here, of course, through the two governments that held power in Ontario from 1995 to 2003. I remember our outrage—New Democrats' outrage—at the oxymoronic and fraudulent titles given to bills during that era—they were. It was embarrassing, and it quickly became pretty transparent that the spin efforts on the part of that government were pretty futile.

What do we have here? We have a bill called the Access to Justice Act when it is anything but. Is it justice for paralegals? They would say no. Is it justice for poor, low-income and even middle-income Ontarians who simply cannot afford the inevitable legal fees when it comes to litigation in civil courts and family court and, yes, even in provincial offences and criminal courts?

Is it fair, does it assist in access to justice, for a single mom who has fled an abusive household, inevitably after if not the first beating then the fourth, fifth, sixth or seventh, who, even if she gets a legal aid certificate, can't find a competent or experienced family law lawyer to act for her because the cap on the number of hours allowed under a family law legal aid certificate is so low that no competent lawyer will take the case? The ones I'm aware of will say, "Well, it's going to be pro bono," or "I simply can't fit you in." I understand that. Lawyers have overhead. Unless they're independently wealthy in their own right—I practised law many years ago and always used to fantasize, and I still do, about winning a 6/49 or something because then I wouldn't have to worry about clients being able to pay. I still haven't won a 6/49.

We have a real crisis around our family courts and representation in them. Not only as we heard, but as common sense dictates to us, unrepresented litigants in Family Court or virtually any other forum slow down the judicial process, create grief for judges and court clerks and other court staff who are called upon to provide assistance, and lead to pressure on appellate courts, because judges sometimes are not given all of the facts because an unrepresented litigant appears before them

who simply isn't aware of the process and can't muster up all of the facts.

Is this bill about access to justice for single moms who are getting beaten on a regular basis, who are at risk of losing their lives—because we know what the course of events is—and flee violent households? Does it provide access to justice for them? I say not. Does it provide access to justice for people involved in provincial offences matters? Once again, I say not.

The amendments to the provisions which refine or alter the process whereby JPs would be appointed have nothing to say about the number of JPs that will be appointed once the bill is passed. Mr. Bryant has been downright negligent in addressing the issue of shortages of justices of the peace. He actually has told forums in this province that he can't appoint justices of the peace until Bill 14 passes—what horse spit, unadulterated. Talk about an inappropriate and inaccurate representation of the facts. We know it's not true because he appointed six JPs just a month ago.

There is nothing about Bill 14 not having been passed that prevents the Attorney General from unilaterally raising the bar for the sorts of people who are being appointed justices of the peace. While I have known many good justices of the peace and watched many very, very skilled lay JPs work—people like Gabe Tisi, people like Tony Argentino, people like Morley Kitchen—I've also seen some of the most incredibly incompetent and incapable people performing or attempting or purporting to perform the role of justice of the peace—inevitably political hacks.

I'm not even convinced that the bill will protect us from political patronage when it comes to appointments of justices of the peace, because we know the process: A short list is created during the screening process, and at the end of the day, it's still the political bosses who determine who gets the appointment. I very, very specifically reject the proposition that this should be called the Access to Justice Act.

Mr. Kolody, in speaking to us, while not speaking directly about his son, an innocent victim—again, we can't predict the outcome of the litigation that I'm told is imminent—certainly doesn't think the bill provides justice for innocent victims. Neither did at least one of the advocates and litigators for personal injury victims of medical malpractice, because it's only applicable to medical malpractice—nor did they.

1120

Do the Limitations Act amendments, as they stand now, provide access to justice for victims of unscrupulous, unethical and incompetent financial advisers and brokerage houses? You know the issue, Chair. We had two very capable presentations in that regard. James Daw, the columnist for the Toronto Star, was referenced. I'll be speaking more specifically about the comments of Mr. Daw and those submitters when we get to that schedule in the bill, if we get that far. Does this bill provide access to justice? Those are inevitably senior citizens, those are our folks and, if we're lucky enough to still have them with us, our grandfolks, who are getting ripped off. They are losing lifetime savings through the failure of financial advisers, either through incompetence or greed on their part, to assist them in a competent way to invest their savings or, for that matter, by stockbrokers who are churning the investment accounts.

I mentioned this during the hearings, and I'm going to say it again: Every time I get a senior coming into my constituency office and she or he shows me their annual statement from a broker, when they're 80 years old, showing a half a dozen trades on a monthly basis, that's a scam. Parade an 80-year-old around, other than very wealthy people, who should be playing the market—for brokers who are doing that, that's the red flag for a broker who's churning. It's like the guy taking the rake at the poker game. At the end of the day, the guy who runs the game in the basement is going to have everybody's money because he takes a rake out of every pot. Eventually, no player's going to win anything, because there's no money left. So does this bill provide access to justice for them? I say not.

Does this bill provide access to justice for the wrongly convicted who, 15 or 20 years after the fact, if they're lucky enough to have the skilled counsel of people like Jim Lockyer—he's been a brilliant leader in the struggle for justice for the unjustly convicted. If court records and evidence aren't available to them, is there going to be access to justice for the wrongly convicted? No way.

The proposed amendments to the Provincial Offences Act and the potential for giving telephone evidence: The illustration was given—it was rather folksy—of the police officer in an evening POA court who's sitting at home, watching the hockey game. He was very generously put with a coffee at his side. I don't know; I suppose it's the rare teetotaller who's going to be drinking coffee watching a hockey game. The phone rings and he's allowed to give his prosecutorial evidence by telephone before a JP, because it's only a provincial offences matter. Is that justice for the accused in that instance, the innocent accused? I think not.

I suppose I could go on, but I do not want to belabour the point. I will be opposing section 3 and I will be asking for a recorded vote. This is a mockery, to call this bill "access to justice." Call it anything you want, but don't call it "access to justice," by any stretch of the imagination.

Mr. Runciman: I share many of the concerns that Mr. Kormos has expressed in terms of the title of this legislation, but I guess we're getting comfortable—not comfortable, but certainly used to the fact that the current government tends to mislabel legislation, if you will. I know Mr. Kormos talked about arrogance, but I think it's more a reflection of their view of the public and the folks who observe, not on a regular basis, the goings-on of the provincial government and the fact that they can very easily, in their view, pull the wool over the eyes of the great unwashed, the public at large. We certainly saw that in the last provincial election: 231 election promises to get a vote, and how many have been broken to date? I

think at least 50. I think this is another reflection of that approach to the public of Ontario.

I have very serious concerns about this whole access issue, much of it around the limitations, the scope of practice concerns with respect to paralegals. I know one or more of the witnesses talked about Family Court. Mr. Kormos has talked about Family Court at length, that the number of individuals appearing unrepresented in Family Court today should be a concern to all of us. I don't see where this legislation, or the regulation of paralegals, is going to in any way, shape or form effectively address access to justice for so many people who are facing those situations and simply cannot afford to retain counsel but don't qualify for legal aid assistance, for example, who are unable to meet those requirements. I think that's one element of it.

The Limitations Act: We heard from seniors. I think an argument can be made here in terms of access to justice for them in terms of the changes to the Limitations Act and the inability of both parties in a situation like that to agree on stopping the clock, if you will. The only way under the legislation now—as I said, we haven't had enough time to peruse all the amendments. Hopefully, the government is addressing this so that if both parties agree to stopping the clock, that will happen. But in the legislation that's before us, that wasn't the case, and that's a significant concern especially of seniors, who are going to be impacted by this. So access to justice, from their perspective, is not being improved. In fact, it's being impeded.

The JP appointment process: When you look at the backlogs in the courts and the number of POA charges being dropped—we do not see any initiative being undertaken in this legislation that's going to improve that situation or improve access to justice for so many Ontarians.

Victims of crime: We did not hear from many victims' organizations during this process, but we frequently read or hear or see, through various media outlets, very strong concern about bail decisions being made by justices of the peace, especially in terms of individuals who've been charged with very serious crimes, gun crimes, and the frustration of policing organizations when they conduct an investigation, arrest someone for a violent crime, and then two days later they see that individual out on the streets, back in the community, engaged in activities that are not beneficial to the community at large. In terms of access to justice, we have to look at the bigger picture here. I think it's very much a misnomer. This is not in any way, shape or form improving access to justice.

The accountability of the courts: If you take a look at this legislation in terms of accountability of the courts, this is really not going to improve the situation. In fact, it tends to increase bureaucracies, in my view, in some of the initiatives that are being undertaken here, making it more of a red tape process, less of a process that builds accountability into the system where the judges, the JPs and the court administrators have to account for what is happening in those jurisdictions that they have responsibility for.

I will be joining with Mr. Kormos and my colleague Ms. Elliott to vote against this section of the act.

1130

Mr. Kormos: Is there access to justice for the parties who appeared before this committee when three of the people voting on the government side on these amendments weren't present for a single minute of any of the committee proceedings? The House leader's staff can report back that I am ticked off royally that the government would treat this bill so cavalierly and, more importantly, treat the committee process so cavalierly that we can't even have a majority of the government ranks being people who sat through the hearings.

Ms. Van Bommel worked incredibly hard during the committee hearings. If she was absent, it was only for a few minutes, like some of us are from time to time, to attend to a phone call or a phone message. Ms. Van Bommel engaged participants in dialogue, whether they supported the government or not, fairly, intelligently and certainly thoughtfully. I'm grateful that she's here. I'm not sure she's necessarily going to vote with her conscience or with her heart or with her intellect, but I understand. I understand that she's a member of a government caucus.

But three people here were not here for one minute of the submissions. The parliamentary assistant was absent for three days. The government House leader should know that this committee member—me—is not a happy camper right now. This is an insult to the people who appeared in front of this committee and it's an insult to the thousands and thousands of others across the province who expect this committee—look, they may not agree with the end result; they knew that coming here. But they expect for there at least to be a thoughtful, fair and thorough consideration of the comments on the bill.

If I haven't already indicated, I'll be asking for a recorded vote when you call a vote on this section 3, Chair. Thank you.

The Chair: Shall section 3 carry?

Ayes

Duguid, Jeffrey, McNeely, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: Section 3 carries.

We're going to move to schedule A.

Mr. Kormos: We were waiting for that, Chair. Thank you.

The Chair: Schedule A, section 1. Government motion.

Mr. Zimmer: I move that subsection 1(1) of schedule A to the bill be struck out.

The Chair: Any debate?

Mr. Kormos: We can speed this up. I presume that there is a cheat sheet, a Coles Notes, if you will, accom-

panying the amendments. If there isn't, then there isn't, but there usually is for at least the parliamentary assistant in the event that he or she is called upon to respond to questions about the amendments.

Some of these amendments, one can infer, are simply cleanup of what I will generously call typographical errors. I'll refer to them probably more harshly as the day proceeds.

If we could have a copy of the cheat sheet, of the Coles Notes, of the script that PAs get, it would certainly speed things up.

Having said that, I'm in a position now to have to ask why. Not about the cheat sheets; we know why the ministry prepares the cheat sheets. Why this amendment?

Mr. Zimmer: I was just about to offer—

Mr. Kormos: No, I didn't jump in; I simply wasn't finished.

Mr. Zimmer: It's a housekeeping matter. We don't need a definition of "chief administrator"—that's what this section deals with—because the creation of the position is deleted from the bill itself.

Mr. Kormos: Okay, so this is—

Mr. Zimmer: I'll tell you what I will do in the interests of speeding up. As I come to my amendments, if, in my view—and I'll make the decision fairly and objectively—it's a housekeeping matter, I'll flag it as that, and we can go from there. If you think it's not, I'll give you more detail.

Mr. Kormos: Chair, I appreciate the generous offer on the part of Mr. Zimmer, but Mr. Zimmer, I've been around here 18 years. Please.

Mr. Zimmer: It's similar to some of your fancy skating, okay? I can skate as fancy as you can.

Mr. Kormos: Mr. Zimmer, please. That's not going to save you any time. All it will do is cause suspicion. It would be far better—if you shared the cheat sheet, we could simply move ahead. But I hear you.

Are you suggesting that section 74, then, is going to be addressed such that there won't be any need for the definition of "chief administrator" because there won't be a chief administrator of the court service appointed under section 74?

Mr. Zimmer: Yes.

Mr. Kormos: Thank you.

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

Government motion number 2. Mr. Zimmer.

Mr. Zimmer: This is a housekeeping motion.

I move that subsection 1(2) of schedule A to the bill be amended by striking out "79.3" and substituting "79.1."

The amendment merely reflects a renumbering as a result of the proposed revisions to the court administration amendment. It's just renumbering the sections.

The Chair: Any debate?

Mr. Kormos: I'm going to ask again, as in the previous one: If the government has decided now to not have a chief administrator of the court service appointed under section 74, what changed its mind similarly such that the amendments that are being made require the renumbering of this? What happened?

Mr. Zimmer: Well, it's an enumeration issue. It's a renumbering.

The Chair: Any further debate? All those in favour? Opposed? It's carried.

Shall section A, as—Mr. Kormos?

Mr. Kormos: I trust you're going to ask for debate.

The Chair: Is there any debate on section A? No debate. Shall schedule A, as amended, carry?

Mr. Kormos: No, no, no, no, no, no.

The Chair: Shall schedule A, section 1, as amended, carry? All those in favour? Opposed? That's carried.

Schedule A, section 2: any debate?

Mr. Kormos: I understand this one. This one is self-evident, isn't it? And I'm going to be supporting it.

The Chair: Shall schedule A, section 2, carry? All those in favour? Opposed? That's carried.

Schedule A, section 3: Is there any debate? Mr. Kormos?

Mr. Kormos: No, thank you.

The Chair: Shall schedule A, section 3, carry? All those in favour? Opposed? That's carried.

Motion number 3 is a PC motion.

1140

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

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

"'Paralegals

"'16.1 Section 21.8.1 applies, with necessary modifications, when the Superior Court of Justice is dealing with a proceeding referred to in the schedule to section 21.8.'

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

"'Paralegals

"'21.8.1 A person who is authorized to provide legal services in Ontario is entitled to appear in the Family Court.'

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

"'Paralegals

"'39.1 Section 21.8.1 applies, with necessary modifications, when the Ontario Court of Justice is dealing with a proceeding referred to in the schedule to section 21.8.'"

The Chair: Any debate?

Mr. Runciman: I can speak to, certainly, the family court issue. I don't think anyone disagrees that any individual appearing in Family Court will have to meet certain requirements. I think that's the intent, to ensure that that ability is there if someone meets the educational requirements and other requirements, that this is an important element in terms of access to justice.

As I mentioned earlier in the discussion, we were advised during the hearings process that the number of people appearing unrepresented is growing and is fairly significant. I think we have to ensure that when we're talking about improving access, this is an option that is

available to individuals in our society who may not be able to afford the costs associated with the retention of legal counsel.

Mr. Kormos: I should perhaps request of Mr. Runciman for clarity. I'm assuming that his intent—when he says, "authorized to provide legal services ... is entitled to appear in the Family Court," it would implicitly mean, "authorized to provide legal services in Family Court in the event that there is a multi-tiered licensing process where different paralegals have different areas where they're entitled to work."

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

Schedule A, section 4. Any debate? Shall schedule A, section 4, carry? All those in favour? Opposed? It's carried.

Schedule A, section 5. Government motion number 4.

Mr. Zimmer: I move that section 5 of schedule A to the bill be amended by adding the following subsection:

"'(0.1) Subsection 42(2) of the act is repealed and the following substituted:

"'Qualification

"'(2) No person shall be appointed as a provincial judge unless he or she,

"'(a) has been a member of the bar of one of the provinces or territories of Canada for at least 10 years; or

"'(b) has, for an aggregate of at least 10 years,

"'(i) been a member of a bar mentioned in clause (a), and

"'(ii) after becoming a member of such a bar, exercised powers and performed duties of a judicial nature on a full-time basis in respect to a position held under a law of Canada or of one of its provinces or territories.'"

Mr. Kormos: On a point of order, Chair: I'm looking very carefully at Bill 14. This may be an overly fine point, but Bill 14 in section 5 amends 42(3); it basically amends 42(4); it amends 42(6). Where does it amend 42(2)? As I say, I appreciate that this might be an overly fine point. By virtue of amending specific subsections of a section, is the section opened up? If the bill said, "Section 42 of the act is repealed"—all of it, subsections (1), (2), (3), (4), (5)—"and the following substituted," then you've opened up section 42 in its entirety such that it can be amended, and this motion would be very much in order. Quite frankly, if we're going to have some discussion about it, I think it's a fine motion, but I'm concerned about its orderliness.

Obviously, the ruling you make will either open doors for me in the future or it will close doors when I try to get in the back door where I normally wouldn't be able to get in the front door. So I'm asking you to rule on whether this is in order, in view of the fact that subsection 42(2) is not addressed in Bill 14, nor is section 42 addressed in its entirety. The bill is very careful to speak only about respective subsections of 42. I leave it in your hands. You may want to consult precedent.

The Chair: Mr. Kormos, I believe that is in order because all of section 42 is open and subsection 42(2) is affected.

Mr. Kormos: Okay, thank you kindly.

The Chair: Okay. Any further debate?

Mr. Kormos: Yes, of course. One of the problems with amendments like this is that, as compared to the bill, well, we could check them against the original act, because of the short time frame—can you help us, parliamentary assistant, in terms of, you're repealing subsection 42(2), you're replacing it with this? Sub (a) is consistent with the existing regime. Where do we get the changes here?

Interjection.

Mr. Kormos: I'm finished with my question. I said I liked your amendment.

Mr. Zimmer: Well, when you've finished your remarks, then I'll make my remarks.

Mr. Kormos: Yes, that's my question. Go ahead.

Mr. Zimmer: Look, the effect of the change is that the amendment is going to permit the appointment of candidates who have performed duties of a judicial nature following their call to the bar. For instance, somebody might have worked as a justice of the peace, not as a lawyer, or he or she might have worked as a member of an administrative tribunal and not necessarily maintained their membership in the bar association while they were sitting on that tribunal. All that we're saying is that if they've got that kind of experience, they're qualified.

Mr. Kormos: But it remains a prerequisite because, in paragraph (b) subparagraph (i), there has to have been a call to the bar at some point, somewhere. Is that accurate?

Mr. Zimmer: Let me put it this way: Section 42(2) refers to the use of the word "judge." That's just expanded now to work of a judicial nature.

Mr. Kormos: I appreciate that, but I want to make it very clear. For instance, a hypothetical: Somebody is not called to the bar, but then has strong enough political/Liberal ties to this government that they get appointed to a tribunal. Without ever having been called to the bar, they are performing for 10 years in a judicial/quasi-judicial nature. Would that person fit the criteria here, in view of the word "and"?

1150

Mr. Zimmer: That's what I said in my earlier comments.

Mr. Kormos: Chair, I've got a problem. I appreciate that I come from small-town Ontario, and maybe we speak differently there. Is that an unfair question I put to you? I'd like some clarification. We're voting on this. I'd like the record to be clear in that regard. I'm not getting a response. Is that fair?

Mr. Zimmer, please. We can start utilizing some standing orders here very, very effectively—not from your perspective, but from mine. I'm trying to engage in some reasonable questions. You're the one who presented the amendment. You address a section of the act that wasn't addressed prior in the bill. It's not an unfair question. You won't share the background material. I'm trying to get clarity and you're coming back with these snide sorts of responses.

Whatever you may think of me is certainly irrelevant. Whatever you think of me, you can express to the press, you can express in the chamber, you can express wherever you happen to hang your hat after you leave here, but I'm trying to ask a legitimate question, and snide answers are not particularly helpful and will only serve—the House leader's staff should know that this is not being particularly helpful.

Mr. Zimmer: I'm going to ask Mr. Gregory from the Attorney General's office to answer your very technical question. Mr. Gregory?

Mr. John Gregory: Thank you. Mr. Chairman—

The Chair: Sir, can you state your full name for the record?

Mr. Gregory: Yes. My name is John Gregory, general counsel with the policy division of the Ministry of the Attorney General.

The act now in subsection 42(2) and the act under the proposed amendment requires someone to be appointed a judge to be a member of the bar at some point in his career; he has to be called to the bar. In proposed 42(2)(b), they can be a member of the bar and that membership can then be suspended when they're appointed to a tribunal. So they may not be an active member of the bar for the full 10 years, but at some point, yes, they have to be a member of the bar.

Mr. Kormos: Bless you. Thank you very much. I appreciate that confirmation of what I suspected was—

The Chair: Thank you very much. Any further debate? Mr. Runciman.

Mr. Runciman: Just to put my views on the record again—I did this during the hearing process, and I won't take a long time—I think that there is room for restoration of a lay bench, perhaps in a limited capacity. If you go back to the days of the lay bench—and I know there were some problems with certain individuals, but they're not confined to lay representatives—I think it could be helpful. Obviously, the government is not receptive to this, and neither were past governments, for that matter, but it's my own view that it's worthy of consideration in the future if someone has an extensive background in the justice system and a range of experiences working with victims of crime, working in the criminal justice system—senior managers in the policing profession, as an example. A number of former chiefs, deputy chiefs, lead investigators were appointed to the bench in years gone by and served this province and the people of this province extremely well.

I simply want to put it on the record. I always find that the—and I don't want to tar everyone with the same brush, Mr. Chairman, but we saw it in this legislation, and I think the people can infer from some of the testimony we heard during the proceedings that the legal profession could be accused of feathering their own nest, protecting their own interests in so many elements. I think this is a case of folks perhaps perceived as looking down their nose at people who can perform in an admirable fashion and perhaps in some respects in a more effective way than some folks who are currently occupying those lofty perches.

Hopefully, at some point, some government of the future will seriously consider reviewing this as an option that could really, I think, improve delivery of justice and access to justice in this province.

The Chair: Any further debate? All those in favour? That's carried.

Shall schedule A, section 5, as amended, carry? Carried.

Mr. Kormos: Chair, if I may propose, sections 6, 7 and 8 can be dealt with as a block, subject to any objections from the government.

The Chair: No objections? Shall sections 6, 7 and 8 carry? Carried.

Next is a government motion.

Mr. Zimmer: This is a housekeeping motion. I move that subsection 9(2) of schedule A to the bill be struck out.

The chief administrator deleted, the amendment to clause 65(2)(g) is no longer necessary.

The Chair: Any debate? All those in favour? Opposed? Carried.

Shall schedule A, section 9, as amended, carry? Carried.

Schedule A, section 10: any debate?

Mr. Kormos: I want to, as you know, speak very specifically to those provisions that deal with the preservation of records and evidence, a concern expressed by those advocates for the wrongly or unjustly convicted. I would like some assurance that the amendment in section 10 does not permit rule changes—because I think it does; if there is no assurance, then simply say so—that address the preservation or the lack of preservation of records or evidence. I don't know. And if it does, just say so.

Mr. Zimmer: I'm going to ask Mr. Gregory to respond to that very technical question.

Mr. Gregory: Section 10 allows the Attorney General to approve rules of the civil rules committee, which doesn't deal with evidence in criminal cases at all. In fact, the rules of civil procedure don't deal with preservation-of-evidence questions. Section 10 applies only to the civil rules committee, so evidence in criminal cases would not be covered by the civil rules.

Mr. Kormos: I read "civil rules committee," and once again I'm asking whether it is within the scope of the civil rules committee to make rules—I'm presuming it is—around the maintenance of records within the court system. If it isn't, again, just say so. I reference the advocacy for the unjustly convicted, because that's my starting point. I just want to know whether that would entail similar powers by this committee.

Mr. Gregory: Mr. Chairman, I'll consult with my colleague on what the content of the civil rules is. The question of Mr. Kormos is, essentially, is there anything in the rules of civil procedure at present dealing with the preservation of evidence? Frankly, I don't know that. I know that it deals with civil cases and not criminal cases, so the wrongfully convicted are not usually convicted in civil

court. Whether there's anything in the 600 rules that deals with it, frankly, I don't have at my fingertips, but I'll let you know in a moment.

Mr. Kormos: Chair, do I have to make myself any clearer? I referenced my concern about the preservation of records in criminal courts. I made that clear. I'm now asking whether it's within the scope of the civil rules committee to address the preservation of evidence and documents in the courts. I know it's within the civil context. I don't need snotty references to the fact that people aren't convicted in civil courts. And, damn it, if we're going to carry on like this, we're going to have some serious, serious problems before the day is over, never mind the week.

The Chair: Would it be okay with the committee if we adjourn for lunch at this point in time? All agreed?

Mr. Kormos: Thank you, Chair.

The Chair: We will be adjourning until 1 o'clock. Thank you very much.

The committee recessed from 1201 to 1306.

The Chair: Order. Before we recessed for lunch, we were debating schedule A, section 10. Any further debate?

Mr. Kormos: Schedule A, section 10. Yes, we were going to get some sense, hopefully—

The Chair: Mr. Kormos.

Mr. Kormos: Yes, thank you, Chair. You see, section 76—that's the various chief justices making rules dealing with documents and material. What I'm asking is, is there anything in the civil rules that deals with storing, maintaining, archiving court records, or is that just practise? To simplify the question.

Mr. Gregory: Mr. Chairman, I've had a chance to look at this question a little more over the lunch break. I think the answer is that the civil rules committee does not deal with this. There is a provision in the Courts of Justice Act that does deal with the disposal of documents, and that I think is the one that caught the attention of Mr. Kormos and some of the people who submitted to the committee. The amendment to that section is now part of a government motion under section 15, which we'll come to. The language of that particular section is being restored to what it is in the current Courts of Justice Act, so the concern that was raised by some people saying, "You're changing the records section" should disappear, because the result of the government amendments is that the record retention and destruction section of the Courts of Justice Act will not be changed from what it is today.

Mr. Kormos: Okay, that's helpful. Thank you.

The Chair: Thank you, Mr. Kormos. Any further debate?

Shall schedule A, section 10 carry? Carried.

Now we're on to—

Mr. Kormos: Just one moment, Chair. Let's take a look here. I propose that you might want to deal with sections 11 and 12 together.

The Chair: There's a government amendment to section 11, number 6.

Mr. Kormos: I'm sorry.

The Chair: Mr. Zimmer?

Mr. Zimmer: I just didn't understand the point, but let's continue in the order in which we were going. So the next one in my notes should be 11(1).

The Chair: That's fine, Mr. Zimmer.

Mr. Kormos: Subsection 11(2), your motion.

Mr. Zimmer: What happened to 11(1)?

Mr. Kormos: Well, we'll deal with that after we deal with your amendment. We're dealing with section 11 now. You want to amend section 11, right?

Mr. Zimmer: All right.

The Chair: Mr. Zimmer, government motion 6.

Mr. Zimmer: I move that subsection 11(2) of schedule A to the bill be struck out.

It's a housekeeping matter. "Chief administrator" is deleted; the amendment to clause 67(2)(j) is no longer necessary. Mr. Gregory can answer any technical questions.

The Chair: Any further debate? All those in favour? All those opposed? Carried.

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

Schedule A, section 12: Any debate?

Mr. Kormos: What's here that's not currently law?

Mr. Zimmer: Sorry, Mr. Kormos. I didn't hear you.

Mr. Kormos: What is here that isn't currently law? What substantial change does this make?

Mr. Zimmer: Mr. Gregory?

Mr. Gregory: Mr. Chairman, the substantial change being made to the sections by section 12 is that the rules being made by the Family Rules Committee are subject to the approval of the Attorney General and not to the Lieutenant Governor in Council. That basically is what section 12 does, as did section 10 with respect to the civil rules.

Mr. Kormos: Thank you.

The Chair: Any further debate?

Shall schedule A, section 12, carry? Carried.

Schedule A, section 13: government notice.

Mr. Kormos: Well, I don't know if there's going to be any debate on section 13 or not.

The Chair: Any debate?

Mr. Kormos: I trust the government's going to speak against it.

Mr. Zimmer: Call the vote.

The Chair: Shall—

Mr. Kormos: One moment. I think section 13 is a sound part of this bill and warrants careful consideration by this committee. I for one want to applaud the government in the instance of section 13 for its draftsmanship. Not that I should have to encourage government members to support their own amendment, but I encourage government members to vote for section 13.

The Chair: Further debate?

Shall—

Mr. Kormos: Recorded vote.

The Chair: Shall schedule A, section 13, carry?

Ayes

Kormos.

Nays

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

The Chair: That's lost.

Next, we have schedule A, section 14. Any debate?

Shall schedule A, section 14, carry? Carried.

Schedule A, section 15: PC motion 8.

Mrs. Elliott: I move that section 74 of the Courts of Justice Act, as set out in section 15 of schedule A to the bill, be amended by adding the following subsection:

"Same

"(10.1) Without limiting the generality of subsections (9) and (10), the annual report shall provide information, with respect to the fiscal year, about,

"(a) the number of bail violations;

"(b) sureties collected and outstanding with respect to bail violations;

"(c) the number of adjournments ordered in matters under the Criminal Code (Canada) and the Provincial Offences Act, indicating in each case,

"(i) the court location,

"(ii) the name of the justice,

"(iii) whether the adjournment was ordered before or after trial, and

"(iv) whether the adjournment was requested by the crown or by the defence or ordered on the justice's own initiative;

"(d) the number of court date cancellations;

"(e) the number of crimes committed by persons who are on bail, on probation or on conditional release, or who are or could be made subject to a criminal deportation order;

"(f) the number of gun offence charges dropped as a result of plea-bargaining; and

"(g) the amount of pre-trial sentencing credits provided."

The reason behind this amendment, Mr. Chair, is that the Attorney General and courts do not track and monitor this information, making it impossible to assess how well the justice system is working. If the government believes the system hasn't become a catch-and-release system, they should provide the statistics, and this allows for real progress reports to be made and assures accountability.

The Chair: Any other debate?

Mr. Runciman: I certainly hope the government members are going to participate and at least, if they're voting this down, provide us with some rationale, because we know that many in the public are very concerned with respect to what's happening in the courts in this province. We've seen significant attention paid to bail release decisions in the last number of months where individuals who have been charged with very serious crimes have been granted bail release and are back out on the streets. Police talk about it in terms of trying to combat drugs in our communities. This is a very serious issue where people are charged with serious crimes in terms of drug trafficking and, again, the frustration of front-line police officers to see these people immediately back out on the streets and engaging in activities that are harmful to society.

So I think that the tracking—this is one element of the motion or the amendment, to keep track of the number of bail violations. We see this, again, reading the paper, where someone engaged in a shooting or a serious crime was out on bail. I think the public has the right to know how many of these are occurring.

Sureties collected and outstanding with respect to bail violations: We hear that this is a very, very significant number. I'm not sure if a serious effort to pursue this is undertaken or not, but I think this is something that we have to take a serious look at as legislators. We don't have a handle on the number at the moment, but we're certainly pursuing this from an opposition perspective. We're talking about a significant amount of money. It makes a bail situation a joke in some respects when you put up a surety and you know that you've failed to meet the conditions of bail and there's nothing done in terms of collecting on that commitment.

The number of adjournments, and we hear this on a regular basis: One of the significant causes of the backlog in courts right across this province, some better than others, is the number of adjournments that are being allowed in these situations. Again, I think we have a right as legislators, and the public at large has a right, to know what's happening within the justice system: Who's performing? Who's not performing? Where are the problem areas? I think that this, in terms of defining the court location, the name of the justice and some more specifics with respect to the adjournment decision itself, would be very helpful.

Again, when we talk about the number of crimes committed by persons who are on bail, on probation, on conditional release or subject to a criminal deportation order, these are individuals who are charged with committing crimes or have been convicted of committing crimes and they are out in our communities based on decisions made by the courts. Those decisions have allowed them to go back out amidst our neighbourhoods and once again engage in criminal activity. This is the sort of information that the public and legislators should have and, in my view, have the right to know.

1320

We talk about plea bargaining, and the Attorney General says, "We're not plea bargaining gun offences." Well, that's not what we're getting back; that's not the kind of information we're hearing. There still are efforts that are undertaken by crowns with respect to gun offences where those charges are lowered to something less than what they should be. I think we have the right to know what's happening in the system.

Pre-trial sentencing credits provided: That's helpful. This has become sort of a given in so many instances where judges are giving two-for-one or three-for-one

credits, in some instances, for awaiting trial in one of the provincial lock-ups. I think this has contributed to the number of adjournments that occur, because defence bar will argue, "It's not a pretty case to be spending additional time in a provincial lock-up," but if you're getting a two-for-one or a three-for-one credit, that, in some respects, is an attraction and an incentive to try to pursue further adjournments to delay the case coming to trial.

I think this is the kind of information that certainly we, as legislators, should want, especially those of us who are members of the justice committee of this Legislature. I think it would be helpful to the public at large to have a greater appreciation of what's happening in our courts and the decisions being taken by officers of the court.

Mr. Zimmer: The difficulty with the amendment is that it would amend section 74 of the Courts of Justice Act to require the ministry's annual report to give stats about judicial behaviour. Really, what we have here is an attempt to reintroduce the Judicial Accountability Act, which was defeated in an earlier Legislature because it was considered a threat to judicial independence. The ministry does not keep many of the statistics for that very reason: It's a matter of judicial independence.

Mr. Kormos: I beg to differ with the parliamentary assistant. I think it's incredibly important that this hard data, first of all, be collected—because I'm not convinced it's even collected. I'm talking about number of adjournments; I'm talking about bail.

One of the concerns I've had, and others have had, is the fact that while, on the one hand, the public might be concerned about people being released on bail, on the other hand, the public should be concerned about people being held in local lock-ups like Metro West, Metro East, who are inevitably going to be released on bail because the circumstances around their charge couldn't, in anybody's mind, justify a detention order, yet it's taking two, three, four and five days to get in front of a justice of the peace, and that's costing money as well.

Why should any of us be offended by the collection of data? I suspect that Mr. Runciman and I, while we may share some common ground on this, at some point part ways. I certainly do not advocate political supervision of the judiciary in the interests of maintaining an independent judiciary, but I think it is important to know if there are court locations that are having a greater difficulty dealing with their caseload than others, and one of the indicators of that would be the number of adjournments.

One of the reasons why adjournments are granted is because you don't have court space available for a trial. You've got to adjourn it. It's the crown requesting adjournments, too. It's a double-edged sword. The courts are booked up, you don't have enough judges and you don't have enough court staff. The original judges are dealing with incredible dockets in Family Court and in criminal court across the province—just incredible loads. What's happening, amongst other things, especially in bail courts, is that people are sitting there all day—the provincial prosecutor or the crown, the police who are going to be testifying on the bail hearing, the defence counsel—and it's 6 o'clock. At some point the JP has got to shut the court down, if not in his interest then in the interest of the staff who work there, who have been working there since 8 that morning.

With this type of data, the name of the justice is where, if you had a quarrel with it, you might want to draw the line because of the inappropriate inferences that could be drawn.

One of the problems I've had is in asking the Attorney General—for instance, at some point, our caucus research, at my request, asked the Attorney General about the number of people currently in the witness protection program, and all we got was mumbling and fumbling; no hard response. We've asked the Attorney General about the number of applications for variations on dangerous offender and how many applications are being made. Again, it appeared to be "no hard data." This stuff is incredibly important. It's important in terms of how you plan ahead; it's important in terms of how you make for a more efficient court system. So I am a little amazed that the government, through you, Mr. Parliamentary Assistant, would have this response.

Plea bargaining is a real problem, and the reality is that there are still quotas out there in criminal courtrooms where crown attorneys are being called upon to clear X number of cases a month. If they can't clear them by trial—and they can't—they've got to plea bargain. They're under instructions. They're expected to meet quotas, and in the course of doing that, serious charges get pled down.

There's nothing wrong with plea bargaining if it's done for the purpose of making sure that the right charge is the one to which somebody pleads guilty and that the appropriate sentence is the sentence that that person gets, and expediting things in that way, but when it's driven by the quest for mere efficiencies, you've got some serious problems with it, don't you, Mr. Parliamentary Assistant? That's when you've got real problems.

I know why the government is loath to do this sort of stuff: because the government would be exposed in terms of its underresourcing of crown's offices, of Ministry of the Attorney General staff in those court offices across the province, of the people working behind the desk and serving as court clerks. These people are running ragged; they really are. They have huge responsibilities, they're not particularly well-paid—the people working in those court offices—and they're taking on huge, huge workloads. Crowns, the support for police—because it's not all just about the police officer, him or herself; it's the support for those police officers who are doing, for instance, the provincial prosecutor work, if they still do that from time to time.

I'm curious. I think it's in the public interest to know how many gun offence charges are dropped in the course of plea bargaining. That should ring alarm bells, and not the sort of knee-jerk, "Oh, lock 'em up and don't worry about reasonable doubt," but just in terms of how well the system's working. I don't think the system's working

particularly well, nor do a whole lot of people out there, Mr. Zimmer.

Mr. Runciman: I do have a great deal of difficulty—and perhaps this is from the perspective of a non-lawyer—but this whole issue of judicial independence and the bogeyman comes up any time anyone in the public talks about accountability in the justice system in this country, let alone the province of Ontario.

I recall a number of years ago when legislators in Alberta tried to constrain the salaries of provincial judges and they appealed to a higher court, so you had judges making these decisions about whether judges should get raises. Guess what happened? They got their raises, because the Legislature apparently was interfering in judicial independence with respect to trying to constrain the income levels of members of the judiciary.

1330

We're not talking about sanctions here in terms of looking at a specific court and a justice; there may be, as Mr. Kormos points out, some very legitimate reasons why delays are occurring in a significant fashion versus another court, and we should be able to address that in an appropriate way. I don't see this in any way as interfering with the independence of the judiciary in terms of the role they play. When we as legislators and we as members of the justice committee are dealing with legislative initiatives by a government of whatever political stripe, this is the kind of information that could be very helpful to us in terms of doing the right things to make the system better for all of us as residents of this province.

The Vice-Chair (Mrs. Maria Van Bommel): Further debate? Seeing none—

Mr. Runciman: I'm going to ask for a recorded vote on this.

The Vice-Chair: Shall PC motion number 8 carry?

Ayes

Elliott, Runciman.

Nays

Duguid, Jeffrey, Peterson, Zimmer.

The Vice-Chair: The motion is lost. We'll move forward to PC motion number 9. Mrs. Elliott.

Mrs. Elliott: I move that subsection 79.2(2) of the Courts of Justice Act, as set out in section 15 of schedule A to the bill, be amended by adding the following clause:

"(b.1) six persons appointed by the standing committee on justice policy of the Legislative Assembly."

The purpose for this amendment, Madam Chair, is to introduce a role for the legislative branch and to increase transparency.

The Vice-Chair: Further debate? Mr. Zimmer and then Mr. Kormos.

Mr. Zimmer: The difficulty with this one is that this would let the standing committee on justice policy appoint six members of the court management advisory committee. Generally, the Legislature does not appoint members of the executive branch, even when the courts are concerned. The real difficulty is that this runs the risk of politicizing the work of the courts, so I would urge my colleagues of this committee to vote against this.

Mr. Kormos: It's the management advisory committee. I'm of a mixed view around this one because I do not subscribe to the principle or the desire of some for political oversight of judges. That's what our courts of appeal do, in my view.

I find it interesting, though, when obviously the operation of the courts, the function of the courts, is very much a matter of resources and it's very much, at the end of the day, the result of some pretty significant political decision-making—I think it's an interesting proposition to have some elected presence on that committee. How else does the Legislature get direct feedback about the problems the courts are encountering? The management advisory committee, as I understand it, and I could stand corrected—look, you've got appointees by the Attorney General. What could be more political than that? He's not going to appoint his political enemies. He's not going to appoint people who don't—well, I shouldn't say that. He's not going to appoint people who contribute to his opponent in an election campaign. You've got appointees of the Attorney General.

It's an interesting proposition: six people, five people—I don't know; and whether or not they should be voting. To the extent the advisory committee can do anything more than simply monitor and make recommendations, maybe voting isn't the worst thing. They clearly would be in a minority in terms of the AG's appointments versus legal community participation.

By the way, where's the paralegal representation on this? Three lawyers appointed by the law society. Interesting, ain't it? The paralegals got stiffed again. The government pays mere lip service to them, yet the paralegals are being told that they're going to be participating in some of these forums, these judicially supervised forums.

Look, I don't think it's a particularly offensive proposition, and in the interests of the principle of it—because it doesn't even say, "members of the standing committee on justice." It says, "six persons appointed by the standing committee on justice." I, quite frankly, was hopeful that it would have said, for instance, perhaps, "one person from each caucus who participates in the standing committee on justice." That would be a far more interesting proposal. But I think the Conservatives here have been very modest in their approach to this, and I will support this proposition.

Mr. Runciman: Really, the number was based on the current legislation and the fact that, as Mr. Kormos has pointed out, the Attorney General appoints six people to this advisory committee. So it is curious that the parliamentary assistant says that engaging the justice committee in this role rather than the Attorney General on his or her own is somehow politicizing the process.

One of the reasons behind this initiative, of course, is that in so many respects we were led down the path by

the Liberal government in terms of democratic renewal and trying to find a more meaningful role for backbenchers to play in this place in terms of decisions made by the government. You know, this is not a radical suggestion. The Attorney General makes these appointments. He's a political person, as far as I know. Why not engage this committee in this capacity? Give the elected members a greater role, and we may be able to assist in ensuring that some real ringer who's going to create some difficulties should not be an appointment to this august body. I would hope that the members would be supportive of this. I think it's an initiative that certainly falls well within what most of us would construe as democratic renewal around this place, giving us all a greater role to play in the processes of government.

The Chair: Any further debate?

Mr. Kormos: Yes. When the AG appoints somebody, that's called a political appointment. I'm not disparaging it; it's a political appointment. I was perhaps going to express some concern about the division of the judiciary and the executive, but the fact that the AG makes political appointments has already blurred that distinction. So again, whether the number is bang on is moot. I think, in principle, it's an interesting thing that should be considered, that should be spoken about. For that reason, again, I'll support this because I support it in principle.

The Chair: Further debate? Seeing none, all those in favour? Opposed? It's lost.

Number 10: a government motion.

Mr. Zimmer: Before I begin, this is seven detailed pages of very technical amendments. I propose to have Mr. Gregory address these matters, along with his staff. Given the length of the motion—seven detailed pages—would the committee consent to dispense with my reading of the seven detailed pages?

Mr. Kormos: Point of order, Mr. Chair: You can't. My submission is that we can't.

Secondly, this is such a massive rewrite that this warrants committee hearings in its own right. Is the parliamentary assistant going to sit down with the subcommittee and schedule some hearings on—this is a new bill. My goodness, Mr. Zimmer.

1340

The Chair: Mr. Zimmer, the motion has to be read into the record.

Mr. Zimmer: I move that section 15 of schedule A of the bill be struck out and the following substituted:

"'15 Part V of the act is repealed and the following substituted:

"'Part V

"'Administration of the courts

"'Goals

"'71 The administration of the courts shall be carried on so as to,

"'a) maintain the independence of the judiciary as a separate branch of government;

"'b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice;

"'c) encourage public access to the courts and public confidence in the administration of justice;

"'d) further the provision of high-quality services to the public; and

"'e) promote the efficient use of public resources.

"'Role of the Attorney General

"'72 The Attorney General shall superintend all matters connected with the administration of the courts, other than the following:

"'1. Matters that are assigned by law to the judiciary, including authority to direct and supervise the sittings and the assignment of the judicial duties of the court.

"'2. Matters related to the education, conduct and discipline of judges and justices of the peace, which are governed by other provisions of this act, the Justices of the Peace Act and acts of the Parliament of Canada.

"'3. Matters assigned to the judiciary by a memorandum of understanding under section 77.

"'Court officers and staff

"'Appointment

"'73(1) Registrars, sheriffs, court clerks, assessment officers and any other administrative officers and employees that are considered necessary for the administration of the courts in Ontario may be appointed under the Public Service Act.

"'Exercise of powers

"'2) A power or duty given to a registrar, sheriff, court clerk, bailiff, assessment officer, Small Claims Court referee or official examiner under an act, regulation or rule of court may be exercised or performed by a person or class of persons to whom the power or duty has been assigned by the Deputy Attorney General or a person designated by the Deputy Attorney General.

"'Same

"'3) Subsection (2) applies in respect of an act, regulation or rule of court made under the authority of the Legislature or of the Parliament of Canada.

"'Destruction of documents

"'74 Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the Deputy Attorney General, subject to the approval of,

"'a) in the Court of Appeal, the Chief Justice of Ontario;

"'(b) in the Superior Court of Justice, the Chief Justice of the Superior Court of Justice;

"'c) in the Ontario Court of Justice, the Chief Justice of the Ontario Court of Justice.

"'Powers of chief or regional senior judge

"'75(1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:

"'1. Determining the sittings of the court.

"'2. Assigning judges to the sittings.

"'3. Assigning cases and other judicial duties to individual judges.

"'4 Determining the sitting schedules and places of sittings for individual judges.

"'5. Determining the total annual, monthly and weekly workload of individual judges.

"'6. Preparing trial lists and assigning courtrooms, to the extent necessary to control the determination of who is assigned to hear particular cases.

"'Powers re masters, case management masters

"'2) Subsection (1) applies, with necessary modifications, in respect of directing and supervising the sittings and assigning the judicial duties of masters and case management masters.

"'Direction of court staff

"'76(1) In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court.

"'Same

"'2) Court personnel referred to in subsection (1) who are assigned to and present in a courtroom shall act at the direction of the presiding judge, master or case management master while the court is in session.

"'Memoranda of understanding between Attorney General and Chief Justices Court of Appeal

"'77(1) The Attorney General and the Chief Justice of Ontario may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal.

"'Superior Court of Justice

"'2) The Attorney General and the Chief Justice of the Superior Court of Justice may enter into a memorandum of understanding governing any matter relating to the administration of that court.

"'Ontario Court of Justice

"'3) The Attorney General and the Chief Justice of the Ontario Court of Justice may enter into a memorandum of understanding governing any matter relating to the administration of that court.

"'Scope

"'4) A memorandum of understanding under this section may deal with the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice, but shall not deal with any matter assigned by law to the judiciary.

"'Publication

"'5) The Attorney General shall ensure that each memorandum of understanding entered into under this section is made available to the public, in English and French.

"'Ontario Courts Advisory Council

"'78(1) The council known as the Ontario Courts Advisory Council is continued under the name Ontario Courts Advisory Council in English and Conseil consultatif des tribunaux de l'Ontario in French.

"'Same

"'2) The Ontario Courts Advisory Council is composed of,

"'a) the Chief Justice of Ontario, who shall preside, and the Associate Chief Justice of Ontario;

"'b) the Chief Justice and the Associate Chief Justice of the Superior Court of Justice and the senior judge of the Family Court;

"'c) the Chief Justice and the Associate Chief Justices of the Ontario Court of Justice; and

"'(d) the regional senior judges of the Superior Court of Justice and of the Ontario Court of Justice.

"'Mandate

"'(3) The Ontario Courts Advisory Council shall meet to consider any matter relating to the administration of the courts that is referred to it by the Attorney General or that it considers appropriate on its own initiative, and shall make recommendations on the matter to the Attorney General and to its members.

"'Ontario Courts Management Advisory Committee

"'79(1) The committee known as the Ontario Courts Management Advisory Committee is continued under the name Ontario Courts Management Advisory Committee in English and Comité consultatif de gestion des tribunaux de l'Ontario in French.

"'Same

"'(2) The Ontario Courts Management Advisory Committee is composed of,

"'(a) the Chief Justice and Associate Chief Justice of Ontario, the Chief Justice and Associate Chief Justice of the Superior Court of Justice, the senior judge of the Family Court and the Chief Justice and Associate Chief Justices of the Ontario Court of Justice;

"'(b) the Attorney General, the Deputy Attorney General, the assistant Deputy Attorney General responsible for courts administration, the assistant Deputy Attorney General responsible for criminal law and two other public servants chosen by the Attorney General;

"'(c) three lawyers appointed by the Law Society of Upper Canada and three lawyers appointed by the County and District Law Presidents' Association; and

"'(d) not more than six other persons, appointed by the Attorney General with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c).

"'Who presides

"'(3) The following persons shall preside over meetings of the committee, by rotation at intervals fixed by the committee:

"'1. A judge mentioned in clause (2)(a), selected by the judges mentioned in that clause.

"'2. The Attorney General, or a person mentioned in clause (2)(b) and designated by the Attorney General.

"'3. A lawyer appointed under clause (2)(c), selected by the lawyers appointed under that clause.

"'4. A person appointed under clause (2)(d), selected by the persons appointed under that clause.

"'Function of committee

"'(4) The function of the committee is to consider and recommend to the relevant bodies or authorities policies and procedures to promote the better administration of

justice and the effective use of human and other resources in the public interest.

"'Regions

"'79.1(1) For administrative purposes related to the administration of justice in the province, Ontario is divided into the regions prescribed under subsection (2).

"'Regulations

"'(2) The Lieutenant Governor in Council may make regulations prescribing regions for the purposes of this act.

"'Regional Courts Management Advisory Committee

"'79.2(1) The committee in each region known as the Regional Courts Management Advisory Committee is continued under the name Regional Courts Management Advisory Committee in English and Comité consultatif régional de gestion des tribunaux in French, and is composed of,

"'(a) the regional senior judge of the Superior Court of Justice, the regional senior judge of the Ontario Court of Justice and, in a region where the Family Court has jurisdiction, a judge chosen by the Chief Justice of the Superior Court of Justice;

"'(b) the regional director of courts administration for the Ministry of the Attorney General and the regional director of crown attorneys;

"'(c) two lawyers appointed jointly by the presidents of the county and district law associations in the region; and

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"'(d) not more than two other persons, appointed by the Attorney General with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c).

"'Who presides

"'(2) The following persons shall preside over meetings of the committee, by rotation at intervals fixed by the committee:

"'1. A judge mentioned in clause (1)(a), selected by the judges mentioned in that clause.

"'2. An official mentioned in clause (1)(b), selected by the officials mentioned in that clause.

"'3. A lawyer appointed under clause (1)(c), selected by the lawyers appointed under that clause.

"'4. A person appointed under clause (1)(d), selected by the persons appointed under that clause.

"'Function of committee

"'(3) The function of the committee is to consider and recommend to the relevant bodies or authorities policies and procedures for the region to promote the better administration of justice and the effective use of human and other resources in the public interest.

"'Frequency of meetings

"'(4) The committee shall meet at least once each year.

"'Annual report on administration of courts

"'79.3(1) Within six months after the end of every fiscal year, the Attorney General shall cause a report to be prepared on the administration of the courts during that fiscal year, in consultation with the Chief Justice of Ontario, the Chief Justice of the Superior Court of Justice and the Chief Justice of the Ontario Court of Justice.

"'Same

"'(2) The annual report shall provide information about progress in meeting the goals set out in section 71 and shall be made available to the public in English and French.

"'Inclusion in ministry's annual report

"'(3) The Attorney General may cause all or part of the annual report on the administration of the courts to be incorporated into the corresponding annual report referred to in the Ministry of the Attorney General Act.'"

The Chair: Thank you, Mr. Zimmer. Any debate? Any debate, Mr. Kormos?

Mr. Kormos: I need a nap, not a debate.

This is, as Mr. Runciman has coined it, an omnibus amendment. Just a comment: I will venture to say that this amendment was not drafted in that period of time between the last public participant in the committee hearings and Monday, which is when it was distributed to us. This amendment, I suspect, was being drafted over the course of at least the early part of September, if not August.

I say to the government, there are a lot of amendments here. It would have been so nice had the government given us—look, no story's being told out of school; there's nothing here that's the subject matter of press conferences—a little advance notice, number one, and a little accompaniment that undoubtedly the staff have prepared at least for themselves in anticipation of questions that puts this beside the existing part V so we can understand what it changes and what it doesn't, because there are certain sections in part V that it appears not to change at all.

The problem is, we're going to have to go through this line by line, because I'll be darned—look, it's tough enough as it is with an omnibus bill like 14. It's easy enough to miss stuff, right? We've got to do our best to make sure that stuff doesn't sneak through here, even from the government's perspective, that wasn't intended, at the very least, from the government's point of view, but that from our point of view is bad policy.

So, Chair, again with the assistance of table staff, can we start with section 71 in the amendment? That's the same section—it addresses the same issues as 71. There appears to be an additional paragraph. Can we go through these and understand what it does or doesn't do to the existing bill? Because, for the life of me, I don't think there's a single change in this omnibus amendment that reflects input from the public. If there is, Mr. Zimmer will be quick to point it out to me.

The Chair: Is there staff who can summarize this for us?

Mr. Zimmer: Mr. Gregory, you and your staff, as you see fit.

Mr. Gregory: All right. To start, I'll frame it a bit with general terms, and then, if it is helpful to committee to go through section by section, that's certainly possible.

The bill itself—and section 15 of the bill runs over several pages—basically replaced part V of the Courts of Justice Act and the Administration of Justice Act. It did, perhaps, three things, largely speaking.

It set out goals for the administration of justice: What's the court system for? What's the goal? That's section 71. It set up the office of the chief administrator of the courts as running a court service agency—I'm not sure it's called an agency, but a court service branch, anyway. And it had that chief administrator reporting to the Chief Justices for some purposes and the Attorney General for other purposes, in what they called a "dual reporting relationship."

It became apparent during the course of debate in the House and in public feedback that some of these weren't going to be proceeded with, so the office of the chief administrator and the court service structure itself has been removed. We've talked about that in a couple of the other motions which were leading to this one, which is the guts of it. As a consequence, the dual reporting structure where there's a person in the middle between the Chief Justices and the Attorney General has been removed. So when you take out the chief administrator and you take out the dual reporting, then part V gets reconfigured into what is in the amendment.

Much of what is in part V in the amendment is the same as what part V is today in the Courts of Justice Act. In other words, a lot of the changes that had to be made because of the proposals in the bill have now resumed their original form.

The places where the amendment proposed by Mr. Zimmer still change the current act are, to start with, in the goals, section 71—it's still there; it's still new. As I believe Mr. Kormos pointed out, there is a new paragraph in it: (b) is new. It has been added by the motion to recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice.

The other new element in part V is essentially a formalization of that new clause (b) respecting the respective roles and responsibilities, and it expressly authorizes the Attorney General to enter into a memorandum of understanding with the Chief Justices—this is the new section 77 on pages 3 and 4 of the proposed amendment: "The Attorney General and the Chief Justice of Ontario may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal," and then with the other Chief Justices through their courts. Obviously, there have been informal arrangements between the ministry and the courts up to now; this is not a new idea, that these people should talk to each other. The new idea is having a formal, public memorandum of understanding so that people from the outside will be able to see it and see what is going on and who is doing what.

So the new elements of part V, as amended by the motion, are essentially goals, including the roles and responsibilities, and then the memorandum of understanding that formalizes the current understanding of those roles and responsibilities.

There is very little else in part V under the motion that is not in part V today. There is one little thing about regulations of the Lieutenant Governor for regional subsections or support offices or something that's really not a matter for the Lieutenant Governor in Council. But really, most of the change is reverting to what was in V.

I can go through section by section of the bill and say what has become of it in the motion if you'd like, but that's basically what's going on in the whole part.

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Mr. Kormos: Thank you, sir. We might as well start with the amendment, because that's what we are dealing with. I don't know, but if I were a betting person, I'd bet money that the amendment is going to pass, assuming that Mr. Duguid or Mrs. Jeffrey are engaged—not with each other but with the work of the committee.

Mr. Duguid: We're good friends.

Mr. Kormos: Okay. Let's deal with administration—and I'm not being silly here—because we're talking about administration of the courts by the Ministry of the Attorney General, but also, to a large extent, by the respective Chief Justices. Is there not an administrative role when you talk about the power of the Chief Justice to direct judges to sit and—

Mr. Gregory: Oh, for sure. The Chief Justices have an interest in and a role in the administration. One of the purposes of this is to help sort it out and, frankly, through the memorandum of understanding, to publicize it a bit better than it is now, rather than just having backroom talks.

Mr. Kormos: Where was the problem? Other than paragraph (b), which we'll talk about, why was there a need to write this amendment to the act, be it in the old part V in the bill or in the current one? Or is this sort of a statement of principle that doesn't really have to be codified in law? Is this going to help anybody? Is this going to eliminate any litigation over the administration of the courts?

Mr. Gregory: I think the answer to that is not so much litigation as simply setting out some principles so that the courts and the ministry don't have to argue about it and say, "That's a matter of this principle or that principle." It also helps the public understand what the court administration is, that there are separate roles out there.

As well, at the time the bill was conceived, you were setting up a dual reporting court service administration; that is, if you're doing that, you should say what its job function is, what its mandate is. Part of that is in section 71, and, having stated that, it's still a good idea. Even if you take out the administration, the principles remain valid. It's really a public declaration. It is one that gives both sides of the discussion—that is to say, the ministry and the courts—principles to rely on in their discussions.

Mr. Kormos: You're aware that we had at least two presentations that made reference to this whole conflict between litigants, members of the public, and judges around the use of tape recorders in the courtroom.

Mr. Gregory: I heard one of them.

Mr. Kormos: That's right. Is paragraph (c), for instance, capable of being used by one of these parties who wants to insist upon what he or she perceives as their right—I don't know whether it's a right or not—to bring a tape recorder into the courtroom? Is paragraph (c) capable of overriding the traditional—what is the reference there?—the court's capacity to govern or rule or manage its own process? Do you understand what I'm saying?

Mr. Gregory: I understand that. I would be skeptical of it. I can't give a legal opinion that this will not be used by somebody. There is a provision in the Courts of Justice Act now that deals with taping, saying, "You may tape with the consent of the judge." You heard from someone—

Mr. Kormos: I'm using that as an example. Let's talk about paragraph (c), though.

Mr. Gregory: The issue is that once you're starting to state the goals, then it makes sense to say this. How usable is it? I can't give you an opinion on how usable it is or for what purposes it would be used. "This is not sufficiently high quality, therefore you have violated my legal rights," or, "My high quality has a certain content." I can't speculate on what the content might be.

Mr. Kormos: Let's take the Runciman perspective. Should Mr. Runciman take comfort in this paragraph because it says, "Administration of the courts shall be carried on so as to ... encourage ... public confidence in the administration of justice"? He's very articulately talked, from time to time, about the lack of public confidence in the administration of justice. So is this of comfort to those out there who want to have more? I'm specifically asking you about the extent to which this paragraph (c) starts to permit people to encroach—and whether it's a good thing or a bad thing, there can be debate about—upon that historic independence of the judiciary. Am I correct in the language? The power or capacity of the court to manage its own affairs, process—you know what I mean. What's the right legal phrase?

Mr. Gregory: I'm not sure, but I know what you're—the court has its own power to do these things.

Mr. Kormos: Yes.

Mr. Gregory: It's certainly a standard that will be used in discussions. It would be fair for someone to say, "All right, the statutory goal in the Courts of Justice Act is to do this. You have done that. This does or does not meet that standard," depending on the view of the person using it. Again, it's a goal. What is the legal effect of a goal? It's one that you aspire to and it's one that you are held to or that your performance is compared to.

Mr. Kormos: Thank you, sir. The other one, of course, is paragraph (e). Let's take a look at that. That's not different from what's in the existing bill, but "promote the efficient use of public resources." We know what that can be code language for. It could be code language for saying, "Let's have tape recorders in courtrooms instead of real, live court reporters because that's the efficient use of public resources." It's cheaper, yet we know what has happened in courtrooms where the tape recording equipment has fouled up and not delivered, and then we've got all sorts of appeals that are being granted because the court of appeal doesn't have a record upon which to rely, etc.

I appreciate your comments, but I find this a very peculiar section in part V, because I wonder what its motive is. Is it just feel-good stuff, or is there stuff in there, like "promote the efficient use of public resources"? What is the impact of "encourage public access to the courts"? Will this open the door for judges? Because you've seen the courtrooms where judges have ordered, for instance, legal aid to provide counsel for litigants. Will this open the door for judges—I would be grateful if it did—to order that litigants have counsel? What was the name of the Ontario Court of Appeal decision? It was the fellow who's on CBC now, the hashish dealer who—

Mr. Gregory: Courts have occasionally ordered that people be provided counsel; there's no question.

Mr. Kormos: Yes, but the application is called a—

Mr. Gregory: I don't know—

Mr. Kormos: The case, again, is the hashish smuggler, remember, who had all these wonderful precedents. He's a CBC correspondent now.

Mr. Gregory: Rowbotham?

Mr. Kormos: Rowbotham, yes. A delightful guy—well, obviously a pothead. But it created some tremendous case law. I think that's what they're called, Rowbotham applications, and I may be wrong.

Are courts going to be able to rely on this thing? Look, the Courts of Justice Act says that the administration of the court—here I am a judge and I have an administrative role, I presume, even in the course of sitting on the bench in my courtroom. Is this going to permit judges to grant applications? Or could it give clever defence counsel like friends of mine, like Mark Evans or Charlie Ryall, or people like that, Frank Addario—are they going to be able to use this to persuade judges to say, "Well, it's encouraging public access to the courts"? Does that mean litigants or does it mean, for instance, the public? I've heard a tale of a deputy Small Claims Court judge up at the Sheppard courts who literally won't allow the public into his courtroom. He throws them out. Now, nobody has taken him on, although somebody should. I may go up there and get myself found in contempt of something, just to challenge the proposition. But what does that mean? What does "encourage public access to the courts" mean?

I'm serious when I say that to you, Chair. Is this feel-good language or does it have a purpose? The government hasn't come up with any explanation in that regard. "Promote the efficient use of public resources": well, of course. Or is it code language for allowing the government to justify not having real, live court reporters, or to justify, for instance—you know the argument. The province doesn't pay for courtroom security anymore, right? It has become an increasing problem for municipalities, and the argument is, "Oh, we've got police officers in court on a daily basis anyway who, just by

virtue of being there, waiting and waiting and waiting to testify, constitute courtroom security." Is this going to permit the government or justify the government using that sort of tack or that sort of approach?

Chair, I seek unanimous consent to have a four-minute adjournment, please.

The Chair: Is there unanimous consent? We'll be having a four-minute recess.

The committee recessed from 1411 to 1416.

The Vice-Chair: We'll reconvene the standing committee clause-by-clause hearings. We will continue with the debate on government motion number 10. Further debate?

Mr. Kormos: Okay, I'm going to leave section 71 at that. I'm still not sure the government knows what it's doing—seriously—when it's incorporating it into the bill, nor am I sure that they've thought about the repercussions one way or another. If it is just fluff, if it's not binding—in other words, if, for instance, a lawyer or a member of the public can't utilize "encourage public access to the courts" or "public confidence in the administration of justice," then why is it in the law? It's silly.

Section 72, if I may: What, if anything, is new about this?

Mr. Gregory: Section 72 has not changed from the bill, in fact. Section 72 is the same as in the bill.

Mr. Kormos: Okay, but what, if anything, is new about it?

Mr. Gregory: As between it and the current Courts of Justice Act?

Mr. Kormos: Yes.

Mr. Gregory: It clarifies the joint responsibility of the judiciary and the Attorney General. In 72, the Attorney General shall superintend all matters other than matters assigned by law to the judiciary, matters relating to education etc. of judges or matters in the memorandum of understanding that are assigned to the judiciary. So it basically clarifies that there are two sources of authority for the courts, which hasn't been spelled out before in the law.

Mr. Kormos: And if I may, maybe judges thought it was inappropriate to speak to the bill, but nobody from the judiciary has complained about this. I'm concerned that they might have concerns, but nobody has complained about it, so what can we do?

Yes, 73—not so much subsection (1), because that's pretty straightforward, isn't it—appointment of court officers and staff? You've got "Deputy Attorney General" here, as compared to the Attorney General. Is this something that's new or is this simply status quo?

The Vice-Chair: Can ministry staff respond, please?

Mr. Gregory: I was just trying to track it, because what was 73 and 74 in the bill have fallen out. What Mr. Kormos is talking about is 73 in the motion, which corresponds to 75. Essentially, the language of 73 is what is now in 77 of the Courts of Justice Act. Having taken out the amendments about court administrator and things, it has fallen back to the current act. So there is not a difference in the reference to the deputy.

Mr. Kormos: Okay, and it includes "or a person designated by the Deputy Attorney General"?

Mr. Gregory: Yes.

Mr. Kormos: Okay, thank you. The destruction of documents: I don't know—

Mr. Gregory: That is, word for word, the current—

Mr. Kormos: Yes, 76.

Mr. Gregory: Section 74 in the motion is the same as 79 in the current Courts of Justice Act. The amendment that was proposed to the language in 76 has been removed, so 74 is the same as the current 79 in the act.

Mr. Kormos: Hold on. We've got "Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the chief administrator"—oh, the change is "Deputy Attorney General."

Mr. Gregory: "Chief administrator" is out from the bill because there is no—

Mr. Kormos: Because there is no chief administrator.

Mr. Gregory: We're removing that person; right.

Mr. Kormos: So you're saying that 74 in your amendment that Mr. Zimmer just moved is identical to the existing Courts of Justice Act.

Mr. Gregory: Yes, section 79 of the current Courts of Justice Act is the same, word for word.

Mr. Kormos: "Powers of chief or regional senior judge" appears to be the same as in Bill 14.

Mr. Gregory: It is. Section 77 of the bill has become 75 in the motion.

Mr. Kormos: Is that the same as the existing Courts of Justice Act?

Mr. Gregory: Yes. In fact, it's one that satisfies our colleagues the drafters, I guess. There is one phrase that is reversed from the current act, where it now says in the opening line, "a judge who has authority to direct and supervise." In the current act it says "the authority to supervise and direct." That is, believe it or not, the only change in this from the current Courts of Justice Act.

Mr. Kormos: Somebody on a team sat and argued for that.

Mr. Gregory: Well, I gather that it's "direct and supervise" in most of the other equivalent provisions and someone thought, "Let's have it the same." No doubt the French is suitably revised.

Mr. Kormos: What's the reason for the memorandum of understanding in 77, in the Zimmer amendment?

Mr. Gregory: There are two needs that are reflected in it. One of them is just to make sure that you have the power to make formal arrangements rather than simply, "Well, if you don't do this, I'll do this. How about it?" It's not a backroom deal or a hallway conversation. It's actually something spelled out, which is useful for both sides because then, six months later, you'd remember what the deal was, so to ensure that there's that authority. But where the bill goes further than that is to say, "And it is to be made public." Subsection (5), "The Attorney General shall ensure that each memorandum of understanding entered into under this section is made available to the public," meaning that litigants and counsel and the

public generally, if they're interested in the administration of justice, can know what's going on. "Why is the judge doing that, I wonder?" Or, "Minister, you're supposed to be doing this because it says in the memorandum of understanding that you're supposed to be doing this." So it's (a) formalizing and making sure there's the authority for the formalization and (b) making it public, which it never has been before. The informal arrangements were never accessible. So if you knew the system really well, you knew what was going on, but if you didn't, you didn't have much hope. This makes it clear.

Mr. Kormos: Thank you kindly. I think we dealt with the various 79s during the course of discussing Mr. Runciman's amendment, so I think we have—at least I do—a fairly good understanding of what those mean. Thank you, sir.

Chair, very briefly, there is concern about discretionary destruction of materials. We have in section 76 of part V of Bill 14 the provision for discretionary destruction of documents and other materials, which I presume means evidence. We have that section repeated in Mr. Zimmer's amendment, and that phenomenon has been a source of great concern by lawyers and others who have to pick up on a matter that could be 10 or 15 years old. How old is the Truscott case? It's as old as I am, darn near. For the life of me, I don't know why the Attorney General of Ontario is putting Mr. Truscott through the ordeal that they have.

It seems to me that in this day and age, when we recognize the value of evidence, even to the extent, obviously, where it contains DNA—a piece of paper—and I don't purport to be a scientist or an expert in that regard—but a document that might have been filed, a cheque in a trial, a bank cheque that somebody is alleged to have handled, and the availability that it provides—in the old days just for fingerprints, but now for things in addition to fingerprints—it seems to me, notwithstanding the inevitable cost—we've got a provincial archives that's falling down around them. Mr. Phillips still hasn't addressed that, but I digress. Notwithstanding the cost, it seems to me that we have to develop a far more secure and predictable system to ensure the protection of these documents.

I will not support Mr. Zimmer's motion for that reason. I don't believe it's adequate, notwithstanding what the status quo is. The status quo is part of the problem. I think it's important that there be something far more concrete in terms of saying what is and what isn't to be preserved, to be archived, and I cannot support this motion for that reason.

The Chair: Any further debate?

Mr. Runciman: It's a brief comment, Mr. Chair. We can't support the motion either. If you look at several elements of this amendment, it's an omnibus amendment to an omnibus bill.

Encouraging public access: I think there are very serious questions surrounding this legislation. Public confidence: When we moved an amendment earlier to try and really address the issue of public confidence, it was rejected by government members. Efficient use of public resources: I think it will probably, as Mr. Kormos said, not have a real impact, in terms of improving the operations of the courts, but we'll be looking at things like removing court reporters and those kinds of people on the lower end of the totem pole who will be negatively impacted by those kinds of initiatives, rather than addressing some of the real problems within the system.

The questions and the concerns Mr. Kormos said really highlight that this process is something of a mockery of democracy. We've pointed out that we have members of the government here today who have not participated in these hearings at all and are not familiar with the subject matter to any significant degree, and that's not their fault; they've been assigned to this.

Then we have this huge package of amendments—in this case, six consecutive pages of the original bill being pulled—and we haven't, from the opposition's perspective, been given the rationale so that we can effectively look at these and hopefully do it in a timely way. We have to go through this process of questioning the ministry staff to try to have some understanding of just exactly what is being changed here again, why is it being changed, and what is the end result. That's a truly unfortunate lack of co-operation, and I think it sends out all the wrong messages about this Legislature, about its standing committees and about our ability to do an effective job.

Mr. Kormos: A recorded vote.

The Chair: A recorded vote. All those in favour?

Ayes

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: It's carried.

Shall schedule A, section 15, as amended, carry?

Mr. Kormos: A recorded vote, please.

Ayes

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: It's carried.

Any debate on section 16?

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Mr. Kormos: Mr. Chair, you may want to, let's see, deal with 16 and 17 together.

The Chair: Any debate on sections 16 and 17?

Shall sections 16 and 17 carry? Carried.

PC motion number 11. Mrs. Elliott.

Mrs. Elliott: I move that subsection 116.1(1) of the Courts of Justice Act, as set out in section 18 of schedule A to the bill, be struck out and the following substituted:

"Periodic payment, medical malpractice actions

"116.1(1) Despite section 116, in a medical malpractice action where the court determines that the award for the future care costs of the plaintiff exceeds the prescribed amount, the court shall, on a motion by the plaintiff, order that the damages for the future care costs of the plaintiff be satisfied by way of periodic payments."

The Chair: Any debate?

Mrs. Elliott: Mr. Chair, if I may indicate that the purpose of this amendment, together with our subsequent amendment, which will be dealt with shortly, for section 116.1(8) of the Courts of Justice Act, is, in our view, probably one of the most important amendments to the entire section A that we will be suggesting because, in our view, the amendment to section 116, as it now stands, denies a fundamental justice to plaintiffs in court actions involving medical malpractice awards. It's our submission that this amendment to the Courts of Justice Act, buried as it is in this omnibus bill, has significant repercussions. I would urge all the members of the government side to consider the significant, powerful and very poignant testimony that we heard from some of the witnesses who appeared before this committee with respect to this subject.

The amendment, as proposed, would give the plaintiff the right to choose, in a medical malpractice action, whether to accept a structured settlement or a lump sum payment. The amendment to 116, as drafted, would allow a defendant against whom an award has been made in a medical malpractice action to ask for a structured settlement, which can only be turned if a judge sees that it's not just to the plaintiff and it's such a circumstance. This fundamentally alters the way that these sorts of awards are dealt with by the courts and reverses the onus of proof to require the plaintiff to prove that it's unjust. This sets aside, as some witnesses have suggested, 200 years of common law court precedents. It's curious that it's only in medical negligence cases—medical malpractice cases—that this amendment is proposed and not to all personal injury cases. One would have to wonder why that's the case.

We've heard from several witnesses, including Mr. Kolody, who, as the parent of an injured child and who has a medical malpractice action before the courts, did indicate to us that all that these amendments would do, as proposed by the government bill, would not bring justice to the victims in these situations; it would only increase the money available to the lawyers in the cases, because what would happen is that it would bring a whole level of argument back to the courts about whether or not there should be a structured settlement at all. So rather than increase justice for injured victims, what this legislation would do, if not amended by our suggested amendment, would simply be to make the lawyers richer. For that reason, we've suggested the amendment. I would urge the members of this committee to take a very serious look at this.

Mr. Kormos: I am extremely troubled by section 18. I'm troubled by its inclusion in this bill, by the effort to sneak it through, by the less-than-straightforward representations made to the committee on behalf of advocates of the amendment contained in section 18.

Ms. Elliott's motion recognizes that, inevitably, if it's the defendant in a civil action, a personal injury action, who seeks the annuitized payment, the structured payment, you can bet dollars to doughnuts that it's not out of a sense of generosity to the plaintiff. If there was any generosity to the plaintiff in a successful personal injury action for malpractice, the defendant would have settled it literally years earlier, because that's how long these matters can take to go to trial.

I don't think we're in a position, quite frankly, to deal with section 18 at all. But I certainly do support the amendment, because it's a way of highlighting and addressing the gross injustice to innocent victims that's contained in the current section 18.

Mr. Zimmer: What this amendment effectively does is amend the opening words of the new section to give the option of receiving periodic payments entirely to the plaintiff. What the amendment does is reverse the policy of the bill, which is to require periodic payments unless it would be unjust to the plaintiff. The amendment would lose most of the economic and social advantages of the bill, which is the whole point of it. So I urge my colleagues to vote against this.

Mr. Kormos: Social advantages, my foot. The fact is that, over in section 8, it's the plaintiff that has to satisfy the court that a periodic payment award is unjust. You take a look at this, and what's sauce for the goose seems to me to be sauce for the gander. Who are the powerful parties in these litigations? It's almost inevitably not the plaintiff. The plaintiff's already had to beg, borrow and steal from friends, family and neighbours to sustain even a legal action that's operated on a contingency fee, because there are still going to be disbursements and out-of-pockets that have to be paid; or they've mortgaged a house if they're the parents of an innocent victim. They're the ones who can be so readily and easily pressured into settling. You know the syndrome. Granted, the CMPA—is it the CMPA? Is that the correct acronym?—is not an insurance company, like, "You're in good hands with Allstate," so to speak, but they are the insurer. No, there's no parity between the two parties. I'm sure you've witnessed, if not first-hand at least in a detached way, what medical malpractice litigation consists of. It is defended to the final, with no expense spared in terms of defending it.

I'm going to speak further to this, because this whole naive and dishonest proposition about how insurers are being crippled by huge awards is bunk. That's an American phenomenon that the Canadian courts have not travelled down. You know that. We don't have the multi-million-dollar awards and another $50 million thrown on top of it for punitive damages in this country. As a matter of fact, litigators like Mrs. Elliott could explain to you what I believe is called the trilogy of cases, where the

courts have been instructed to cap non-monetary damages, quite frankly, at an alarmingly low level.

I resent it when insurers, whether they're of the types that doctors have by joining together or whether they're the Allstates of the world, blame the innocent accident victim and want to deny him or her full payment to try to make their—think about this. Look, when you've got somebody who's a quadriplegic or a paraplegic, quite frankly, no amount of money is going to change anything. What do you think—they're going to go buy a motorcycle with it? Life ain't like that. What the courts do their best to do, in the context of the law, is ensure that there's some modest level of care for that person.

1440

The tragedy of a child or a young teenager or a young adult who's left with a brain injury or with paraplegia or quadriplegia is just profound. I don't know if lawyers do it in Canada, but in the States, part of the presentation to juries is what they call day-in-the-life documentaries, where they want to portray in a very vivid way the daily life of an innocent victim—a head injury victim, a paraplegic, a quadriplegic. It starts with not being able to get out of bed. It starts with having to be rolled over and needing special mattresses so you don't get bedsores. It starts with manual evacuation of the bowels, because, you see, depending on the nature of the injury, you literally can't move your bowels. Then to somehow suggest that we should be saving money at the expense of these people? I don't buy it. Don't forget, in the case of medical malpractice, you're talking about a finding of negligence.

I'm going to speak a little bit further to this when we deal with section 18 after the proposed amendments. But I support the amendment.

The Chair: Any further debate?

Mr. Kormos: A recorded vote, please.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

The Chair: That's lost.

Next is PC motion 12. Mrs. Elliott.

Mrs. Elliott: I move that subsection 116.1(8) of the Courts of Justice Act, as set out in section 18 of schedule A to the bill, be struck out and the following substituted:

"Application for lump sum

"(8) Despite subsection (1), the court may order that the future care costs be paid in whole or in part by way of a lump sum payment on motion of the plaintiff at any time before final judgement at trial."

Again, if I may indicate, the reason for this amendment is based on the reasons as previously stated. But if I may add in this case, the right of a plaintiff to choose whether to have a lump sum payment or a structured settlement has always been the case: The plaintiff traditionally has always had the right to make that choice. In some cases, a structured settlement will be appropriate, but in some cases, it won't be. What they're going to be faced with in this situation is that they're going to be stuck with a structured settlement unless they're able to prove that it would be unjust. In legal terms, this is a huge change, because it reverses the onus and puts the plaintiff at an extreme disadvantage. They have an uphill battle here to prove that it's unjust, because the court is starting with the proposition that that's the way it should be. No size fits all in these circumstances.

To suggest that this is more just for the plaintiff is ludicrous, because, as Mr. Kormos has indicated, in medical malpractice cases, the defence is vigorously defended to the very end, in the face of almost ludicrous results. What happens is, it gets defended until the final moment if an order is made and a structured settlement is awarded. The plaintiff, who has limited resources compared to the defence side in this situation, then has to go court and probably argue for days, perhaps even weeks, with probably one lawyer up against 18 or 20 lawyers, that this onus should be reversed. In a situation where you have a catastrophically injured child and you have to sell your house or mortgage your house in order to do this, it can't be seen to be even remotely fair.

In this situation, the only people who are going to be making money are the lawyers, as I indicated before. The lawyers, in acting for the defence in these medical malpractice situations, have almost unlimited funds; they don't necessarily have to be accountable. They can argue till the cows come home because to a certain extent, and this is what fuels the fire for a lot of the plaintiffs, they are being denied justice by the lawyers whom they're in part subsidizing because of the payments that are made by the Ontario taxpayers to the OMPA to subsidize the medical negligence premiums they pay. So, in other words, they're being held up in court by their own money in a system that is absolutely not accountable. That's the reason why we're proposing this amendment: because this puts plaintiffs up against a huge wall that they are never going to be able to overcome.

Mr. Zimmer: As I've said before in my remarks, the same thing follows in this section. What this would do is allow the court to order a lump sum for the payment at any time. What it does is it reverses the policy. As I've said before, the policy is to require periodic payments unless it is unjust to the plaintiff.

Mr. Kormos: Mr. Zimmer, with respect, I don't think that's what this amendment says. This amendment permits what I colloquially call blended awards, lump sum plus structured settlement plus periodic payments. It's unclear as to whether your amendment will permit that, whether it has to be all or nothing. I think this is a very thoughtful amendment. You don't have to exhaust the imagination to think of cases where—because we're talking about future care costs, right? Appreciating that, you don't have to exhaust the imagination to think about cases where a substantial lump sum, for instance to deal

with some immediate needs—mention was made of having to buy equipment, renovate a house, buy a new house, buy a house when you don't have a house because you're on the 15th floor of a high-rise apartment building and it doesn't work too good if you've got some of the serious disabilities that medical malpractice can impose.

Again, I shake my head. This seems to me to ensure that there is sufficient flexibility to provide for fairness. Let's be cynical and even pragmatic. I'm loath to employ this argument, but if somebody tragically injured—in any scenario, not just medical malpractice—isn't adequately compensated during the course of litigating with the wrong-doer, at the end of the day, everybody picks up the tab, or a person whose life has been knocked to its knees is struck prone. That's not what we believe in in this country, is it? I don't think so. Your whole section 18 is very troubling. This amendment tries to help you out. If you don't want to take the advice, God bless.

The Chair: Any further debate?

Mr. Kormos: A recorded vote, please.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

The Chair: It's lost.

Any debate on section 18?

Mr. Kormos: This section, snuck into this omnibus bill, is really a critical piece of legislation. I want to remind people of the outstanding presentation made by David Kolody on his own behalf and on behalf of his wife, Deirdre McIsaac, who, as he explained, had to be home in Ottawa taking care of the kids. He spoke to us about various ways of inflation proofing. You can use real inflation, I suppose you can use projected inflation, or you can require indexing based on the CPI, the consumer price index. I thought his was a very thoughtful presentation.

1450

We also heard some interesting commentary about how lump sums are inherently inflation-proofed because, when they're invested in conservative investments, that income—bonds and so on—reflects, amongst other things, and accommodates for real inflation, as I understood it.

Why we are rushing into this—and I don't want to pretend I know what goes on your caucus room, you government members, although I've got a pretty good idea, having been in one in a number of contexts. But I'll bet you once again that there hasn't been a whole lot of discussion around section 18 of this bill simply because there have been a whole lot of other things that have been on the burner.

I understand the government's urgency to get a paralegal regulation regime going. I understand the government's urgency and interest in getting an enhanced JP appointment structure into play. But what's going on here? Who spoke to whom? This amendment in section 18 didn't come from the plaintiffs' bar, did it? As a matter of fact, in view of their seeming surprise about it, I doubt if they were even consulted. We didn't get a chance to ask the OBA if it was consulted, but they didn't use their opportunity in front of this committee to indicate that they were. We had an actuary here, but his focus was not quite on this point, although some actuarial input around the issues that have been raised here, the conflicting interests, might well have been valuable. Striking "it's only medical malpractice"—but just watch. Do you think that greedy, avaricious, short-armed, deep-pocketed insurance industry out there ain't gonna pick up on this one in short order? Ms. Elliott has been quick but not inappropriate to say that it's the defence lawyers in these personal injury actions who are going to be making the big bucks. They already do.

Just as the physicians and their various lobby groups say that every penny you take away from direct health care means less money to direct health care, every penny that you take away from a judgment means less money for the victim. Lawyers make money. Hell, the insurance companies who sell annuities are the big winners here. Do you think they're gambling? Do you think this is like—what's that TV series with James Caan about Las Vegas? Do you think the insurance companies are sitting at a blackjack table? There is every certainty when they sell an annuity, and there's a big chunk of profit built into it, isn't there? Every penny that goes to the insurance company's profit is less money in the health care system and is less money that helps an innocent victim sustain some modest lifestyle with some modest level of dignity.

There's also another interesting issue here because, with the introduction of contingency fees in the province of Ontario, plaintiffs can access counsel, lawyers, in a way that they couldn't before. I don't know the answer to this one. Does the prospect of a contingency fee, 20% of the award, to the lawyer shock some people? I suppose it does, but we had a debate here in the Legislature and those issues were raised. The Legislature decided that contingency fees were going to be allowed, and I had to concede, as someone who had concerns about it and mixed views, that, yeah, there would be cases where a lawyer/firm might be willing to undertake a plaintiff's case, even though it wasn't a slam dunk, as they say, on the basis of the prospect of contingency fees.

So tell me: When there is a structured settlement, where does a lawyer or a law firm draw its contingency fee from, and will this phenomenon, the right of a defendant to insist upon a structured settlement, be a disincentive for lawyers/law firms undertaking the less-than-100%-sure cases on contingency fees? Think about it. I don't know the answer. I don't know if I'm out in left field.

The problem is, we haven't had a chance to ask that question. We haven't had a very thorough consideration of section 18 at all, at all, at all. I'm not at all surprised

where the doctors are coming from, and again, God bless them. They had and have interest in this matter, and they're advancing their interests. I understand that, and good for them. They're entitled to do that. Where did this thing sneak up on? I don't know. I don't think it was a part of the Liberal election campaign. I suppose I wish it was, because then they could have broken that promise and we wouldn't have section 18 in the bill.

This is very sad stuff. This is, effectively, in some respects, tort reform that could have significant repercussions without even any—never mind real; never mind meaningful—superficial consideration. It is very troubling. I just find this the very worst of law-making. This isn't an ideological thing; this is a matter of trying to get it right, because you know it ain't going to be revisited in the next 12 months, will it? If anything, if it's ever revisited, it will be the insurance industry, the auto insurance industry first and foremost, lining up.

We don't know what it means in subsection (8), "to the extent that the plaintiff satisfies the court."

What is this—musical chairs? You can't even keep a member here for a day? Tag team?

Mr. Duguid: Not at this rate.

Mr. Kormos: It's like the Kalmikoff Brothers from old wrestling days, for Pete's sake.

Mr. Duguid: They'll fill me in on this.

Mr. Kormos: They've got attention deficit disorder over there on the Liberal ranks. The Kalmikoff Brothers. Remember the Kalmikoff Brothers?

The Chair: Mr. Kormos, if you can—

Mr. Kormos: Yes, Chair. We don't know what the standard is for "plaintiff satisfies the court that a periodic payment award is unjust." The advocates for the amendment suggested that that was a pretty high standard, didn't they? I found that very interesting, because it seems to me that it should be a pretty low standard. But we don't have any comfort level around that. This is bad; this is a bad way to approach things.

1500

I would invite government members—you're not going to scuttle the bill, although I'll get to that when we get to the end of clause-by-clause—to take section 18 and join and trust all of the opposition members in defeating it. It can be revisited—it can be; there's no problem with that—but it surely should be discussed and debated and analyzed at a far broader level and a far more sophisticated level than we've had a chance to deal with here.

Mr. Runciman was here. These are the sorts of issues that came up during what I call the "insurance wars" back in the 1920s and through the 1990s—heck, and beyond 1995 and into the mid- and late 1990s as well. There were, whether I liked the result or not—and I didn't—lengthy debates. And not just the debate, the nattering back and forth, but there were lengthy, lengthy public hearings where there was a thorough canvassing. As I said, did I agree with the result? No, I didn't, but I'll say this: There was a thorough canvass.

David Peterson had the very, in my view, ill-conceived no-fault auto insurance, and history has proven its critics right. Murray Elston was the minister; I've got time for Murray Elston. They accommodated a thorough, lengthy committee process; as you know, the lengthiest debate the Legislature has ever heard.

This is far too important; it's heartbreaking, because right now there's a kid out there, or a teenager, or—you know what?—a mom giving birth, because just anecdotally, that's one of the areas where you get into some problems from time to time with medical malpractice, right? A mom giving birth—whose life is going to be changed forever because of section 18. We owe it to that kid or that teenager or that mom giving birth.

You see, the problem is, the industry says, "The extraordinary settlements are forcing"—that's what the auto industry was saying, and the property liability insurance. Remember the mythical case of the kid on the scooter driving on the municipal road and there was the multi-million-dollar judgment? That judgment was overturned on appeal. The insurance industry never told anybody that, did they? It was overturned because our courts don't allow those very high, American-style judgments. But they flogged that one to death; they beat that horse until its knees buckled.

That's a bogus argument. There's not a whole lot of medical malpractice that does take place. That's a good thing; that speaks well of our doctors, of our health care system. If you want to reduce the costs of medical malpractice suits, then you do what you've been told by at least one witness: You not only encourage but you muscle people into sitting down and having meaningful settlement discussions at the front end.

You've got a mandatory mediation program in your superior courts, in your civil courts, but it's at the back end. It's after everybody has already spent all of their money, and it's treated as part of the checklist: "Oh, nuts; we've got to visit the mediator before we can proceed to trial."

Get speedier settlements. That will reduce a whole lot of costs. Leave some of those defence lawyers with their big, fat Montblanc pens and Gucci shoes moaning and groaning. They're doing just fine, thank you.

I'm voting against this. I'm asking for a recorded vote. This is just very sad.

Mrs. Elliott: I just find it strange, as Mr. Kormos has indicated, that this amendment to the Courts of Justice Act has been included in this omnibus bill. It's just a little snippet of tort reform totally out of context, without looking at the entire system. If we want to do that, we should do that separately. We shouldn't throw this piece into this Bill 14. But there you have it. We've made some suggestions about how we would suggest that we deal with this, but it's been rejected.

I'm assuming that this motion is going to pass, that this section be included. I would just like to make some comments based on what Mr. Kolody has indicated in his excellent representation to us with respect to the issue of inflation. I would submit, if structured settlements are going to be required, that there be some meaningful degree of indexation applied to it, or else families that are

in this situation are going to suffer even more. I would urge the government members to take that into consideration.

The Chair: Any further debate?

Mr. Kormos: Recorded vote, please.

The Chair: Shall schedule A, section 18, carry?

Ayes

Jeffrey, Peterson, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: It's carried.

Mr. Kormos: Chair, if I may, we've got sections 19 and 20 left. We've got amendments—my apologies. The government is amending it.

The Chair: Mr. Zimmer, a government motion.

Mr. Zimmer: We're on 19, and I see there's an opposition motion also, on 19.1.

The Chair: That's after.

Mr. Zimmer: I move that subsection 127(2) of the Courts of Justice Act, as set out in section 19 of schedule A to the bill, be amended by striking out "chief administrator" and substituting "Deputy Attorney General."

This is a technical amendment. If you have any questions, Mr. Gregory can answer them.

The Chair: Debate?

Mr. Kormos: This is consistent with a whole lot of the other amendments, so I trust there isn't going to be a chief administrator anymore. This isn't a policy question as much as a political one. Why did the government abandon the creation of this office of chief administrator?

Mr. Zimmer: Sorry. I didn't hear you.

Mr. Kormos: My apologies. Why did the government abandon the creation of this office of chief administrator?

Mr. Zimmer: We feel the Deputy AG is the best person to do it.

Mr. Kormos: You didn't feel that when you wrote Bill 14. What changed your mind?

Mr. Zimmer stands mute. I'll ask if perhaps the bureaucrats could help us. Was there an articulable policy reason for abandoning chief administrator?

Mr. Gregory: Frankly, I think that it was a political decision based on the amount of opposition there was. Certainly in second reading debate they heard a great deal, compared to the advantages of doing it. I can't say any more than that.

Mr. Kormos: I'm sorry, Chair. We don't have legislative research. The opposition to the chief administrator—

Mr. Gregory: In the debates in the House, there was opposition to the creation of that position. I don't know anything further about the discussions.

Mr. Kormos: I never mentioned the chief administrator. Did you mention the chief administrator?

Mr. Runciman: In terms of his or her responsibilities, yes, but not criticism of the appointment.

Mr. Kormos: Interesting, huh?

1510

Mr. Zimmer: Perhaps, Mr. Kormos, I could add that the bill currently provides for the appointment of the chief administrator, who reports to both the judiciary and the AG. When we introduced the bill, input from the Deputy Attorney General and the Ministry of Government Services indicated that the position, with its dual reporting function, would be problematic. So we've eliminated it, and we think that's the best way to go.

Mr. Kormos: Now, that is a somewhat more fulsome explanation that I think I understand.

Mr. Zimmer: You trusted me when I gave you the short version.

Mr. Kormos: Well, the short version was the Simon and Garfunkel version, the Sound of Silence.

The Chair: Any further debate?

Seeing none, all those in favour? Carried.

Shall schedule A, schedule 19, as amended, carry?

Mr. Kormos: Whoa, whoa. What we talking about? Section 19?

The Chair: Is there any debate on section 19, as amended?

Interjections.

Mr. Zimmer: Is it 19.1?

The Clerk Pro Tem: That comes after.

The Chair: Shall schedule A, section 19, as amended, carry? Carried.

PC motion number 14.

Mrs. Elliott: I move that schedule A of the bill be amended by adding the following sections:

"19.1 The act is amended by adding the following sections:

"'Early case resolution facilitation fund

"'148.1 A fund known as the early case resolution facilitation fund, financed by the province, is established to cover the systemic expenses of pre-plea disclosure as a means of facilitating the early resolution of cases.

"'Ontario court services prisoner escort and court security detail

"'148.2 A program known as prisoner escort and court security detail, financed by the province, is established to provide escort and security services, by funding for local police services or by provincial provision of operations.

"'Duty of lawyer

"'148.3 A lawyer who receives a communication from his or her client about the commission of a crime and afterwards comes into possession of further information about the matter is required to disclose the further information to the authorities.

"'Mandatory inquest

"'148.4 If it appears that a person may have been killed or injured by a person who is on bail, on probation or on conditional release,

"'(a) an inquest shall be held under the Coroners Act;

"'(b) the judge or justice of the peace who ordered the release may be compelled to give evidence at the inquest; and

"'(c) any crime victim with standing at the inquest is entitled to be represented by a lawyer at the expense of the province.'"

Mr. Runciman: I'll speak to these amendments, Mr. Chair.

The resolution facilitation fund: Much of this is prompted by police concerns and the efforts to increase or actually require the police service to cover the expenses of pre-plea disclosure, which is a means of facilitating early resolution of cases. Certainly from the policing community we've heard great concern about this additional burden being placed on them. So we believe that there should be, at the very least, some sharing of costs to assist them in this responsibility.

Prisoner escort and court security detail: Again, it's regrettable that the chiefs decided to sit on their hands in terms of this hearing process, but this has certainly been, from the chiefs' perspective, one of the major concerns that they've relayed to governments over the past number of years. Local police services are incurring significant expenses in providing court security, and again I think that a very solid argument can be made that this is an expense, a responsibility, that should be at least shared in by the government.

The duty of lawyers: I've certainly had the wrath of the defence bar fall upon me for suggesting this, but this really arises from, as I mentioned, the Bernardo case and the failure of the lawyer representing Mr. Bernardo to make authorities aware of the infamous videotape that would have, if it had been revealed, ensured that Karla Homolka would still be incarcerated to this date. There was also another rather infamous case that I gather didn't get quite the public exposure, of a defence lawyer being aware that his client had moved a body, and that information was not made available to the appropriate authorities. There was a charge laid in the Bernardo situation and a review by the Law Society of Upper Canada, but at the end of the day nothing came from this. We believe that in the future there should be a requirement placed upon lawyers in situations such as this to disclose that kind of information to the appropriate authorities.

Mandatory inquests: Again, this is an attempt to try and place some responsibility with respect to someone being killed or injured by a person who is on bail, on probation or on conditional release. We may hear the parliamentary assistant say this is a threat to judicial independence. You know, it seems to me that there should be some accountability in situations like this. What this is doing is calling for a mandatory inquest in circumstances such as that and that the judge or the JP be compelled to give evidence at the inquest. Again, any crime victim with standing at the inquest should be entitled to be represented by a lawyer; it could be done through the victims' justice fund.

So what we're talking about here is accountability, transparency of justice, support for victims, and investigations of failures of the justice system, which hopefully would provide recommendations to prevent future incidents. That, I think, covers all of those, but certainly if anyone has questions, we'll make our best efforts to answer them.

Mr. Kormos: Here we have an amendment that has some omnibus qualities in its own right, which causes the problem for me that the government's omnibus bills do.

I find the argument for an early case resolution facilitation fund compelling.

The court services prisoner escort and court security detail is imperative. Policing is the largest single municipal expense; right? That's the big-ticket item. Police forces across Ontario are hard-pressed to deliver core services because of their stressed resources. Politicians set the budgets, and politicians are loath to increase especially property taxes, because property taxes have just escalated. The province has got to pick up the cost of court security and prisoner escort. I find those two arguments compelling.

Now, duty of a lawyer: I reject that. I understand Mr. Runciman's concerns, and the case that he spoke of where a lawyer literally entered an already defined, as they say in the movies, crime scene and removed strong inculpatory evidence is one thing. The issue of privilege, though, is critical, in my view, to the legal profession, just as it's critical to the performance of our roles as MPPs. We enjoy very strong privilege here at Queen's Park. So I do not agree with Mr. Runciman and Mrs. Elliott on 148.3, talking about communications from clients. There are already exceptions to the privilege that put a lawyer into a position where he or she cannot claim privilege in the broader public interest. Mr. Runciman and Mrs. Elliott appear to be addressing that historic, fundamental issue of privilege.

1520

The other one, and that is compelling judges or justices of the peace to testify—look, legislators make the laws, judicial authorities work very hard applying the law. The oversight of judges is appeals court. I think this is very, very dangerous and it's also a double-edged sword because it can work both ways. It can cover both sides of the street. Obviously, I very much want to be clearly on record on these two issues. Mr. Runciman could say I'm a lawyer, and yes, I am and so I'm going to defend lawyers, but I'm not only not a judge or justice of the peace; trust me, Mr. Runciman, when I tell you I have no reason to defend them unnecessarily or in an unwarranted way. This is slippery-slope kind of stuff; it's very dangerous kind of stuff, in my view. I reiterate: Legislators make the law; judges, judicial authorities apply it. When they're wrong, they get appealed. When they behave outrageously, to the point of misconduct, they get yanked.

Mr. Runciman: Pretty rare.

Mr. Kormos: Well, they get yanked. I can't support this amendment for that reason.

The Chair: Thank you, Mr. Kormos. Any further debate?

Mr. Zimmer: With respect to Mr. Kormos's comments on the duty of a lawyer and when to disclose evidence and so forth and so on, he speaks eloquently, and I identify myself with him in that regard.

With respect to the other elements of the amendment, the difficulty here is that this opens up very complex questions of funding of court security. It opens up very difficult questions of the duties of lawyers, whether judges are compellable on all those issues. Those issues are best left to the law society and the courts to sort out.

With respect to the mandatory inquest comment or idea, the problem is that you're going to have inquests regardless of the need for the information that any inquest might produce. Those issues of whether there's an inquest are best left to the authorities that now make those decisions.

The Chair: Any further debate? Seeing none, shall schedule A, section 19.1 carry? All those in favour? Opposed? Lost.

Any debate on section 20? Next we have government motion 15. Mr. Zimmer?

Mr. Zimmer: Just a second; I'm missing a page here.

I move that subsection 20(2) of schedule A to the bill be struck out and the following substituted:

"Same

"(2) Sections 1, 3, 4, 8, 15, 16 and 19 come into force on a day to be named by proclamation of the Lieutenant Governor."

Those are technical amendments. The deleted provisions are removed from the list of provisions coming into force. If you have any questions, Mr. Gregory can help.

The Chair: Any debate? Seeing none, shall government motion 15 carry? All in favour? Opposed? Carried.

Any debate on section 20, as amended? Shall section 20, as amended, carry?

Mr. Kormos: Recorded vote.

The Chair: All those in favour?

Mr. Kormos: One moment. Can I request a five-minute recess pursuant to the standing orders, please?

The Chair: There will be a five-minute recess.

The committee recessed from 1525 to 1534.

The Chair: The committee is called back to order. All those in favour of section 20, as amended?

Ayes

Jeffrey, Lalonde, Van Bommel, Zimmer.

Nays

Runciman.

The Chair: Carried.

Mr. Zimmer?

Mr. Zimmer: Just before we start the next section, can somebody refresh my mind? Did we decide to sit till 4 or 5?

Mr. Kormos: Mr. Chair, if I may, Mr. Zimmer, the parliamentary assistant, agreed to sit from 10 a.m. to 4 p.m., with a one-hour break for lunch—as if there's very many of us who really needed lunch.

Mr. Zimmer: Some of us do.

Mr. Kormos: Give it a few more years, Mr. Zimmer.

The Chair: Is there any debate on schedule A, as amended? Shall schedule A, as amended, carry? All those in favour? It's carried.

Schedule B: The first one is government motion 16.

Mr. Zimmer: I move that section 1 of schedule B to the bill be amended by adding the following subsection:

"(2) The definition of 'review council' in section 1 of the act is amended by striking out 'section 9' at the end and substituting 'section 8.'"

Section 1 of the schedule would amend section 1 of the act by repealing the definitions of the terms "presiding justices of the peace" and "non-presiding justices of the peace," which are no longer necessary. All future justice of the peace appointments would be presiding appointments, i.e., could preside over Provincial Offences Act trials.

The Chair: Any debate?

Mr. Kormos: I find this interesting because, in a moment of reflection, I was going to suggest that we deal with schedule B in its entirety, but then I saw that the government had some 25 amendments—maybe 26 or 27. Since we had no submissions made to us with respect to justices of the peace other than by Her Worship Ms. McCallion, whose issue was the number of JPs—of course, this bill does nothing about guaranteeing adequate numbers of JPs—and Mr. Hong, who addressed a number of issues, including standards for JPs, not one of these government amendments is in response to anything put to the committee. So if they're not responsive to matters put to the committee, they're demonstrative of what happens when you call upon your drafting people and put them into impossible positions of having to cobble stuff together without the political masters having given the matter sufficient attention. But these are clean-up amendments.

Mr. Zimmer read this bill, Bill 14, over and over and over again before it was presented for first reading. Lord knows, once again, the Attorney General has sent him out. He's the rabbit car in this convoy. You see, if the bill, through some aberration, is successful—and I'm not talking about passing; I'm talking about having any positive impact out there—Michael Bryant, trust me, is going to take the credit. During his leadership campaign, when he's taking on Ms. Pupatello and probably half a dozen others, he's going to be touting—it sure as heck won't be the pit bull legislation, and it's unlikely to be 107, the Human Rights Commission abolition. It's even unlikely to be this, but he's desperately looking for something to put on his leadership resumé.

1540

The problem is, Mr. Zimmer's doing all the heavy lifting, and when the bill fails, as I predict it will—not that it won't necessarily pass the Legislature, but it's

going to create a horror show out there—do you think Bryant's going to be around to accept responsibility? His receptionist is going to be instructed to forward all media calls around the chaos out there to Mr. Zimmer. When it comes time to address public groups who say, "But wait a minute, the bill said access to justice. We thought that meant we were going to get some lower-priced help presenting our cases in Family Court, and we can't," it's going to be Mr. Zimmer. They're going to be wanting Michael Bryant there, right? Bryant's going to be schmoozing and wooing delegates, and it'll be Mr. Zimmer who gets sent out to take the heat. So I wish you well, Mr. Zimmer. You know now as a member of caucus that Kevlar is not inappropriate fabric for your suit jackets. Asbestos might become part of your attire as well.

Here we've got a bill where it wasn't even the first time around. Lord knows the government sat on it long enough—a year, a year and a half? The law society was all over Mr. Bryant. They wanted him to present legislation; they wanted to see what they had to work with. Don't forget, the law society didn't go to Mr. Bryant; Mr. Bryant went to the law society. Opposition members were all over him, proverbially, urging him to introduce the legislation so we could deal with it, so we could get it out there, so we could debate it, so we could discuss it and so we could get input. No, it's going to be crammed into a brief few days of public hearings. Notwithstanding there have been 100-plus submissions, there are 100-plus who still want to submit having the door slammed in their face by this Liberal government, which talks a big game about changing the nature of government or, as Mr. Runciman referred to earlier today, about democratic reform. Instead, committee members on the government side played musical chairs. They're in and out of this committee without any opportunity—three out of the five who are here today didn't hear a minute, a single word of submissions to the committee. Mrs. Van Bommel was the only one who sat through the whole hearings, and she, regrettably, isn't the parliamentary assistant to the Attorney General. She doesn't have his ear. She doesn't have the persuasive influence in the Premier's office that Mr. Zimmer does, for instance.

I just find it remarkable that we're here doing cleanup, sweeping up the mess. We're putting Humpty Dumpty back together when what we should be doing is developing a good paralegal regulation regime, one that has legitimacy with the public and with paralegals. Here in the context of schedule B, what we should be doing is hearing this government make a commitment to ensure that the shortage of justices of the peace is addressed promptly, because Lord knows there's no shortage of Liberal hangers-on who want the appointments and people who have been attending Michael Bryant fundraisers so as to get themselves on the short list. Those are my comments with respect to this amendment.

Mr. Runciman: I just want to say that one of the things that I—and I know Mr. Kormos has mentioned this before, and I think I have as well. We just received a missive this morning from one of the municipal organizations urging us to expedite this legislation so that they can—they've been told that this is critical in terms of getting additional JPs into the field. It's just such a false notion, as we've indicated. I think you pointed out, Mr. Kormos, a few weeks ago that the Attorney General appointed six justices of the peace. We still have fewer justices of the peace working today than we had four or five years ago, and the reality is that this could be addressed now. To suggest to the municipalities that are being impacted by this that our hands are tied until the opposition caves on this legislation is truly offensive. I want to put that out there, that that's not the case, and hopefully the stakeholders who have an interest in this issue are paying some attention and realize that it could have been and should have been addressed some time ago by this current Attorney General.

We'll get into this later, so I won't spend a lot of time on it, but I think we have this element here about the part-time JPs—this doesn't deal with it, so I'll wait until we get into that particular element—as retired justices of the peace. We have never been given any indication of what that means, other than the fact that they would have that latitude. What does that mean in terms of the impact with respect to the shortage of justices of the peace? Hopefully we can have some kind of indication of that as we go forward in this discussion as well, but I doubt that we're going to have it. Of course, the suggestion that I made some time ago and that I've made for years is that we look at a core of part-time JPs who can provide services across the province in times of the night, day and week when certainly police services are having difficulty having their needs addressed at the moment.

Mr. Kormos: Further to Mr. Runciman's comments, and consistent with what I spoke to earlier today, please, I say this very carefully, anybody who has been told that Bill 14 is necessary to appoint justices of the peace has been lied to. Anybody who has been told that unless and until this bill is expedited there can't be any JPs to address the JP shortage has been lied to. Anybody who has said any of these things to anybody in the province, anybody who has said that Bill 14 has to be passed before more JPs can be appointed, is a liar. I say this very carefully: Anybody who says that unless the opposition parties expedite the passage of Bill 14, the government can't address the JP shortage, is a liar.

1550

The Chair: Any further debate? Seeing none, shall government motion 16 carry? All those in favour? Opposed? It's carried.

Shall schedule B, section 1, carry? It's carried.

Motion 17 is a government motion.

Mr. Zimmer: I ask for your indulgence. Your indulgence is—

Mr. Kormos: There are a lot of amendments and we understand—

Mr. Zimmer: What did we do with 1(1)?

Mr. Kormos: I think we just passed it. If I may, Chair, there appears to be perhaps a typo in the amend-

ment, but it will be dealt with at the end of the day when the bill is reprinted. What the government moved as 1(2) is really 1(1), unless it wants to change—Mr. Zimmer, a nice ordering would be to have the existing section 1 be 1(1), and then (2) be your amendment. That would make it neater, wouldn't it? Where are the legislative counsel folks?

Mr. Zimmer: It's—

Mr. Kormos: Wait a minute. How am I doing so far?

Ms. Joanne Gottheil: Yes, you're right.

Mr. Kormos: Thank you, ma'am.

Mr. Zimmer: Sorry, I had three voices I was trying to listen to, and I didn't hear any of them.

Ms. Gottheil: The way it works is that the existing section 1 in the bill will become subsection 1(1) because it's non-presiding, and "presiding" alphabetically comes before "review," and then the motion to amend the definition of "review counsel" will be 1(2), as indicated in the motion.

Mr. Zimmer: So we've done that one, then. Which one are we starting now—2(1)?

Mr. Kormos: Number 17, 2(2).

Mr. Zimmer: We're at 2(1), right? That's carried?

Mr. Kormos: No, 2(2).

Mr. Zimmer: Right, 2(2).

Mr. Kormos: Chair, if I may add, William Burroughs, the Beat writer, used to do what he called cutups. He would take a page and cut it in half vertically, and take another page and cut it in half vertically, and then mate the two, and that would become literary art: Burroughs's cutups: It seems to me that that's the approach that this government has to its amendments.

The Chair: I'm going to suggest that, it being close to 4 o'clock, we adjourn till tomorrow morning. This committee is adjourned till 10 a.m.

The committee adjourned at 1555.

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Ms. Margaret Drent, research officer,
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Ms. Joanne Gottheil,
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