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## **Official Report of Debates (Hansard)**

**Wednesday 6 September 2006**

## **Journal des débats (Hansard)**

**Mercredi 6 septembre 2006**

**Standing committee on  
justice policy**

Access to Justice Act, 2006

**Comité permanent  
de la justice**

Loi de 2006  
sur l'accès à la justice

Chair: Vic Dhillon  
Clerk: Anne Stokes

Président : Vic Dhillon  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Wednesday 6 September 2006

Mercredi 6 septembre 2006

*The committee met at 0918 in room 228.*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. We're back for the committee hearings on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006. Our first presenter today—Mr. Zimmer?

**Mr. David Zimmer (Willowdale):** Mr. Chair, if I might speak to a matter on a point of order; indeed, a matter of personal privilege?

**The Chair:** Go ahead, Mr. Zimmer.

**Mr. Zimmer:** I want to say to this committee that yesterday just before the noon recess, Mr. Chudleigh, the member for Halton and a member of this committee, raised the spectre—the suggestion, if not the allegation—that lawyers sitting on this committee had a conflict of interest and, in his view, should not be sitting on this committee dealing with Bill 14, the Access to Justice Act, particularly that portion of the act that deals with the regulation of paralegals. I reviewed Hansard, and he made quite strong statements attacking the integrity of the lawyers sitting on this committee and repeating his view that there was a conflict of interest and that we should step off the committee.

I sought a ruling of the Integrity Commissioner, Mr. Coulter Osborne, yesterday afternoon on this issue. I received his ruling last night at about 10 o'clock, and I have a copy here which I intend to table. The ruling says, in effect:

“Dear Mr. Zimmer:

“You have sought an opinion—“

**The Chair:** Do you have copies of that, Mr. Zimmer?

**Mr. Zimmer:** Yes. I'm not going to get into the entire ruling but just summarize a part of it.

“Dear Mr. Zimmer:

“You have sought an opinion as to the propriety of you continuing to sit as a member of the standing com-

mittee on justice policy which is presently reviewing Bill 14 ... a portion of which relates to the regulation of paralegals...”

Then he quotes various sections from the Members' Integrity Act and he offers this opinion in three short sentences:

“As noted above, matters of ‘general application’ are excluded from the definition of private interest.

“Further to that definition it has been held by this office that teachers on a leave of absence may participate and vote on matters of general application having to do with teachers. The same has been held with respect to farmers who continue to farm.

“Lawyers have frequently been members of the standing committee on justice policy I assume because legal practitioners are generally familiar with justice-related issues, just as farmers are often members of a committee reviewing agricultural issues.

“In my opinion the fact that you are a non-practising member of the Law Society of Upper Canada does not give rise to a conflict of interest based upon any reasonable assessment of private interest and public duty. You should, however, declare at the outset of your next committee hearing, your status as a non-practising member of the Law Society of Upper Canada, if that has not already been done.

“I trust the above is of assistance to you.

“Yours very truly.”

It's signed Coulter Osborne, Integrity Commissioner of Ontario.

Mr. Chair, I have to say that yesterday's unwarranted, frivolous, vexatious attack on the integrity of the lawyer members of this committee is, in my view, personally offensive to me. I think it's offensive to the members of this committee. I think it's offensive to the Legislature.

We all knew, as a matter of common sense, just what the Integrity Commissioner has told us. We already knew that. Mr. Chudleigh, the member for Halton, knows that. I understand Mr. Chudleigh's background to be in the agricultural business. Indeed, the Integrity Commissioner makes use of a comparison to farmer members of the Ontario Legislature sitting on committees dealing in a general way with agricultural matters. We all knew that, as a matter of common sense. Mr. Chudleigh knew that.

I can only assume that his attack was a deliberate attempt to derail and to disrupt the proceedings of this committee, which it did for half a day. The people who

suffered—members sitting on this committee and staff from the legislative offices have been inconvenienced, but that's not the real harm. The real harm is all of those people who were sitting there in the body of this committee room waiting for their opportunity to be heard on some very important issues. Those people prepared thoughtfully. They prepared written documentation. They took time out of their schedule. They rearranged their afternoons. If they do want to come back, they're going to have to rearrange their schedules to come back here. This committee is going to have to structure its hearing schedule such that we can accommodate them. And to what end? To satisfy Mr. Chudleigh's goal or intent to disrupt this committee, to cause a lot of fuss and flurry.

Interestingly, not only did he impugn my integrity as a lawyer member of this committee and that of Mr. Kormos, the NDP representative and a lawyer on this committee, but in my view he attacked the integrity of his own caucus colleague who is a lawyer, Mrs. Elliott, a member of this committee and the member for Whitby–Ajax.

This is just an example of irresponsible conduct of a member who's gone off on a personal toot, for whatever possible reasons. I'm reminded that yesterday was the first day of kids returning to school in Ontario. When the kids go back to school, one of the big lessons they're reminded of by their parents on the weekend before they go back and indeed when they arrive in the classroom is, "Don't be a bully." Well, on the first day of the fall schedule, yesterday, the first day of school, Mr. Chudleigh was bullying this committee; he was bullying the lawyer members of this committee. He should be ashamed of himself.

**The Chair:** Mr. Kormos?

**Mr. Peter Kormos (Niagara Centre):** Further to that, I'm not going to be anywhere near as generous or temperate in my comments as Mr. Zimmer was undoubtedly compelled to be as parliamentary assistant to the Attorney General. That puts him into a role and gives him a status that requires him to perhaps be more cautious in how he responds to these sorts of things.

I appreciate Mr. Zimmer having sought the counsel of the Integrity Commissioner. I had no intention of seeking the counsel of the Integrity Commissioner or inquiring as to whether or not I was in a conflict of interest. After 18 years here, prior to that as a municipal elected member, I'm well aware what "conflict of interest" means—well aware. If I had a conflict of interest, I would have declared it and would have done so in a timely way well in advance of the commencement of any committee hearings or well in advance of the voting on any matter.

Mr. Chudleigh's conduct was, in my respectful view, scurrilous. It was beyond irresponsible. I do not credit Mr. Chudleigh, as Mr. Zimmer does, with having had an agenda of attempting to derail this committee. From time to time over my years here, I've derailed a few legislative processes, and I say that with great pride as a member of the opposition. From time to time, that's our job. I believe that Mr. Chudleigh had no understanding whatsoever

of the impact of his comments, which went, in my view, far beyond mere partisan sparring, because what they did in effect was charge members of this committee, including his own colleague Mrs. Elliott, with a violation of the Members' Integrity Act. That goes far beyond suggesting any inherent bias towards one point of view as compared to another. Of course we have biases. Liberals are Liberals; Conservatives are Conservatives; New Democrats are New Democrats. Our ideological perspectives inherently give us bias, and I say that's a good thing. I happen to believe that ideology has an important role to play in politics.

But I apologize to yesterday's presenters who were prevented from making their presentations in the afternoon. As I indicated to them yesterday, and I'm confident I spoke on behalf of every member of this committee, this committee and subcommittee will meet and ensure that they have access to this committee. But I just find it reprehensible that a person who has been in this Legislature for some time now, Mr. Chudleigh, could make such stupid comments, not being aware or sensitive to the consequences of those comments or the need for the air to be cleared before this committee could continue. As I say, I don't think he made them with the intention of derailing the legislation. I'm not sure he spoke for the Conservative caucus. Mr. Tory will let us know that in due course, I'm sure—Mr. Tory as a lawyer.

**0930**

I further want to say this: I've told many a lawyer joke; I know them all. And quite frankly, if anybody is going to tell lawyer jokes, it'll be me, not Mr. Chudleigh. As I said to Mr. Chudleigh yesterday, when the cops are banging on his door at 3 a.m. wanting to seize his computer, he's going to be calling a lawyer; not, as he suggested, the chief of police. Trust me, if the cops are banging on his door at 3 in the morning, the chief of police authorized it. I thank you, Chair.

**The Chair:** Thank you, Mr. Kormos. Mrs. Elliott?

**Mrs. Christine Elliott (Whitby–Ajax):** Mr. Chair, if I may make a few comments. I'm not able to comment specifically on the remarks that were made by Mr. Chudleigh yesterday because, unfortunately, I was not able to be here and he was substituting for me. It was the first day of school and I was required to be there to register one of my children.

Having said that, I can only say that I doubt very much that Mr. Chudleigh meant to personally insult the members of this committee who are lawyers. I don't think that was his intention at all. However, we are now in a position of having to seek the opinion of the Integrity Commissioner with respect to our ability to carry on as members of this committee.

As Mr. Kormos has indicated, I too am very familiar, and Mr. Zimmer is as well, with the conflict of interest rules and the requirement that we seek the opinion of the Integrity Commissioner in circumstances where we're uncertain whether we have a conflict. In this case, I too was very sure that I did not have a conflict; however, as with the other members who are lawyers, I did submit a

request to the Integrity Commissioner to advise me whether in his opinion he felt there was a conflict.

I've also received a letter from the Integrity Commissioner. My situation is slightly different from Mr. Zimmer's and Mr. Kormos's in that I have continued to practice law part time since the election, and I've done that in order to complete my law practice and to fulfill my obligations to my pre-existing clients. I do not intend to continue to practice law. I'm not taking on any new clients. But I think that is something that makes my situation slightly different. I just feel it's important to disclose that to this committee, and that is commented on by Mr. Justice Osborne in his letter to me. However, he has concluded that in his view he also does not believe that's a conflict. So if I may submit that also, Mr. Chair, for the record. Thank you.

**The Chair:** Thank you.

**Mr. Zimmer:** Mr. Chair, did I give you a copy of my letter?

**The Chair:** Yes.

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Mr. Chair, in view of all the things that have happened, as was stated earlier, our participants of yesterday afternoon have been greatly inconvenienced and I would ask that the Chair and clerk, and anyone who could help us, make sure those people are accommodated in the best way possible. I know that on the agenda there are time slots coming up where things have not been confirmed. If they aren't confirmed, can we make every effort to allow some of these people to come back in those particular time slots and try to recover as much as we can from what happened yesterday?

**The Chair:** Thank you, Mrs. Van Bommel. We'll definitely make sure that the people who had to leave yesterday afternoon—I know some of them came from as far as Burlington and Brampton, so we'll make sure they are accommodated.

**Mrs. Van Bommel:** Thank you.

#### SHAWN TEDDER

**The Chair:** We can now start. Our first presentation is from Shawn Tedder, separation equals equal parenting. Good morning, sir. Sorry about the delay. You have 30 minutes, and you may begin.

**Mr. Shawn Tedder:** Oh, my goodness. Okay. Hi, I'm Shawn Tedder. I'm a self-represented father. Just a very brief history; I won't go into the gory details too much. In March, I came home from a business trip and the house was empty. My wife had basically got an ex parte order to take the children and move about three blocks away, so that started my process in the justice system. I had never been before the justice system for family law and I was a virgin at that.

I immediately found out that an ex parte order has to be served. This relates to the judge that I have. They moved the Ontario family courthouse from Eglinton. Those two judges there moved up to Sheppard Avenue East. There were eight judges there. My luck was, I got

the same judge out of 10 judges. I asked her, "Why do I get the same judge?" She said, "Well, it's just the luck of the draw that you get the same judge on an ex parte order."

In this part of the act, I see reference—I go every Wednesday night to fathers-resources.com. Danny Guspie is a law clerk. He's concerned about the paralegal section of it; also Stacy Robb. He passes on his regrets; he can't make it. He's not a paralegal but he does a lot of work for fathers without resources. About 50% or more are self-represented on both sides.

**The Chair:** Mr. Tedder, can you speak a touch louder? They're having problems picking up your voice.

**Mr. Tedder:** I'm sorry. Do I go right in here? Is that better, right there? Okay.

The documents that I've submitted to Anne Stokes through e-mails in the last three months—I don't see them on the desk photocopied either. But Kevin Dwyer luckily came in early this morning. He said, "Come in early and we'll photocopy some stuff." These are just the basics. With my research over the last five months, I've found out that hopefully my children and my grandchildren won't have to go through what I or anybody else is going through on both sides of the fence. I'm not coming across as an angry father or an angry husband, I hope, in this discussion.

The other thing that I've noticed about the justice system is that it says right on your front page, "An Act to promote access to justice...." There's nothing in there about how you're going to make it easier for people on lower incomes. If I go to the courthouse, the first thing I'm presented with are documents that I have to fill in. I'm not legally trained; I don't have the finances to pay \$400 an hour for the best family law. I go to the duty counsel. The first question he asked me was, "Do you own a house?" Of course I own a house. I've got mortgage payments, too, but that doesn't mean that I can sell the house just to pay a lawyer.

Legal aid says the same thing, so the next step up is a paralegal. A paralegal might be \$65 to \$100 an hour. A law clerk might be \$135 an hour—I'm quoting prices that I know; that could be an average—and a lawyer could be \$200 to \$400, so how is that access to justice?

The first step I made is, with coaching in the background and spending about \$700, I found out how to fill in the documents. You can download them from the website, thank goodness, and you can fill them in, but I got coaching on how to fill in the documents in point form and be concise instead of rambling on.

When I first introduced myself to the judge, I asked right away, "Can I record these proceedings because I am self-represented?" She was shocked. I didn't ask, actually. I was told to say, "I will be recording these proceedings." This is the device I asked to use. Her comment right away was, "No," and I said, "Well, I have to have a reason why and I have to have a direction why." I have directions here that say, if you refer to—I'm sorry these aren't page-numbered, but about 20 pages down. It's this page here; it's a blurry page. It's a direction from W.G.C.

Howland, Chief Justice of Ontario. Your proposed act says here on page 6, the role and functions of the chief administrator—directions by Chief Justice of Ontario: “The Chief Justice of Ontario may give the chief administrator directions, in relation to the Court of Appeal,” and has the authority basically to supervise the work of the court services and the work of its officers and its employees.

**0940**

We have here a direction by W.G.C. Howland, Chief Justice of Ontario. As far as I can tell, it hasn't been knocked over. As a matter of fact, on the next page you'll see Hamilton judge—I can't pronounce his last name—a Canada Court Watch report. By the way, you can go to canadacourtwatch.com and you can download a lot of these things. The previous page is downloadable as well in a much better format. It's been photocopied so many times; I apologize. This judge—after seven years of a man going to court, going through all his financial resources, who hadn't seen his children in seven years, I think it says here—was asked finally, “Can I record?” The justice said no, and then he reversed his decision.

Basically, there's a contradiction in here. You have directions by the Chief Justice of Ontario saying that he has the authority to make rules for his officers and his employees—I imagine the judge is an employee—then we have, preceding this—sorry, these aren't page-numbered. I just got this document last week from the judge. On the third page down, she relates to Justice Howland in item number 6. She says, “I point out that this practice direction relates to the Superior Court and moreover that it is at least 16 years old. I am not satisfied that this court is bound by same.”

In the Saturday Star two weeks ago—I was very pleasantly surprised that there's opinion poll testing in the middle of summer, when everybody wants to go to the Ex and have fun or go to the cottage. We're going to open up the courts to videotaping and audio. When I go into the courtroom, we're always fighting about this, taking down the signs about audio recording. At 47 Sheppard, when you go in, between the doors of the two courtrooms—I mean, the courtroom has two doors to keep the sound out—there's a big sign posted there because of what I asked for back in March, a new sign that has been put up saying no video recording, no audio recording, cameras and so on. We've managed to get the Brampton courthouse to take down those signs.

Sorry, these aren't numbered. There's a page here that says “Ministry of the Attorney General.” It's about 15 pages down. I wrote everybody. This is the one kicker that I was very disgusted with in our justice system. The middle paragraph says, “Judicial independence is the cornerstone of our justice system. Although section 136 of the Courts of Justice Act does permit a party acting in person to unobtrusively make an audio recording of the court proceeding, decisions made by members of the judiciary on the day of court are at the discretion of the judicial officer presiding that day.” In other words, you have a direction from a Chief Justice that doesn't work.

I see that this bill also doesn't want to go into anything too dicey. The Family Law Act needs reforming. I'd like to comment that we should open up access to justice for everybody. The biggest comment I have is that in all my studying, the US is trying to open up access with recordings and videotape, as long as there are no witnesses.

When I download videos of Bob Geldof and what he went through with his three children—he's not only an activist for undeveloped countries; he's an activist for equal parenting. There are states in the US that are allowing equal parenting to happen right after separation as long as there are no criminal charges—New Zealand, Australia, Britain, BC, Alberta. We had a mediation lawyer come to our meeting. She was very shocked that we haven't progressed from the adversary situation to going to separation counselling as soon as you separate. The children are going through hell for this, because basically what's happening is their loyalty is pulled both ways. The children's aid gets involved, the police get involved in a lot of cases, the children are interviewed, they're put through a nightmare, as in my case. I've only been to court twice since March, and unfortunately, my spouse works within the system and she knows everything to do. She works for a shelter for battered women and children, so she knows how to coach, she knows how to counsel, and I'm getting everything thrown at me. Now, I'm not the only one. I thought I was the only one, but there were 30 fathers and some second wives—we want to show equality in that—aunts, uncles, mothers, grandmothers come to our meetings, and the stories are just horrendous about what's going on, especially when only 7% of parents get equal access. I don't want to be an every-other-weekend father, so I want more access to the justice system. I also want to see some more teeth to this act in relation to not disallowing paralegals to serve in family law. I think that we have a hard enough time as it is to access representation.

The other point is that this document here—I was told to buy the transcript if I wanted to. I have the charge here: It was \$111.80. This isn't access to justice; this is a rip-off. This is a small, double-spaced document that the court reporter typed up. With my persistence in asking for a recording, I was granted the leave that my next proceeding, and I have to fight each time, would be transcribed for free. Well, what does that do? That just puts more burden on the taxpayer, because they have to produce three copies, one for the judge, one for me, and then the other side said, “Oh, can I have a copy?” And she said, “No, you can't have a copy. He asked for it; you didn't.” I got a two-hour discourse this thick; God knows what the bill would have been for that. But then I asked the court reporter, “How many do you do a day of these transcripts,” that either the judge orders—because most times the judge orders these. She says, “Three to four transcripts a day.” I said, “Wow, that's a lot,” because they sometimes have up to 30 cases a day.

I think that the justice system right now as I view it is a very highly adversary situation and a conflict situation.

I want to see more acts that are human, that basically allow us to interact as people rather than encumber. I went into the Osgoode law library—as the general public, you can go in there up to 6 o'clock. I went into the stacks. I saw that the Family Law Act was this thin 30 years ago. Now the book is this thick, and God forbid I see the size going to three inches or more, because who can afford to even buy that book? If they want to refer to it in a paralegal office or even a law practice, it's getting outrageous.

**0950**

Self-representing: In the six months I've been going to these meetings, most of them can't afford it or they've gone through thousands of dollars. Some have lost their businesses. Some have had their assets seized or frozen. Sometimes their credit cards are being run up tremendously. This doesn't help the children. It takes away education money. It takes away the assets of the family. Basically, it takes away human dignity, because there are people living out of their cars and their vans or living in shelters. That is not promoting access to justice; that's going the opposite way.

When I download censuses, I find out that one in 10 people are either separated or divorced in most ridings. I think you should listen to your constituents and actively seek out ways to find out what their needs are as well, because they're a growing population. I know the seniors are a growing population, but in most ridings, one in 10 people are divorced or separated, and if you look at the stats from Stats Canada, 2001, you'll see that.

I'm going to leave time for questions if there are any. I've pretty well run out of steam here, but I want to thank you very much for allowing me to come and talk and present that as soon as separation happens, we shouldn't be in an adversarial situation. As long as there are no criminal charges, we should have equal access to our children. We shouldn't be on the other side fighting for access. Forget about the property, forget about all the other stuff; the children should have access to both parents on an equal basis.

**The Chair:** Thank you very much. We'll begin with Mrs. Elliott. There are about four minutes for each side.

**Mrs. Elliott:** Thank you for your presentation. I was very interested in your comments with respect to the services and the help that you received from a paralegal. I wonder if you could just expand a little bit more on exactly what they helped you with and what you think they should be allowed to do that would be helpful.

**Mr. Tedder:** I couldn't afford a paralegal. Let's put it this way: When I searched on the Internet for equal parenting and shared parenting—because that was my goal. My focus is not about property, it's not about fighting about dollars; it's about equal parenting. Right off the bat, I was refused the right to see my children for two months because an ex parte order put restraining orders on until we could go in front of the judge. When I searched on Google and everything, I found two groups. One was Stacy Robb of dadscanada.com, as I mentioned. He has an RV that he pulls in front of University now

and again. Well, he can't afford the plates, so he hasn't pulled in front of University to protest, but he has used that as a shelter. He's not a paralegal. He's not trained. He has been at it for 15 years. He's an ex-truck driver who helps dads fill in the documents and also refers them to lawyers. Another was Danny Guspie. He's a law clerk. He did two years of law clerk. He has been at it for about 15 years as well. He holds meetings. I didn't find a paralegal, so I don't have very good experience with paralegals, but I found the in-between road. I found one who's basically unlicensed. His charges are very reasonable, about \$65 an hour. He helped me with my documents. I spent about \$700, and then I was basically born free. Danny Guspie charged about \$135 an hour. He holds the meetings for free. If people want to see him and make appointments, that's one way to make business as well. He refers them to Joel Miller, I think it is, on Bay Street, who charges about \$400 an hour.

What I was saying is that even the duty counsel—when you go into the courts, you sign your name in, they call you, and their first question is, "Do you own a house?" What has that got to do with me asking a quick question?

**Mrs. Elliott:** What would you like to see in terms of assistance being provided?

**Mr. Tedder:** The biggest thing is that access to justice is fine, but I also think we don't have to get into the conflict as much if we have, basically—some of the other provinces have done this, maybe more than BC and Alberta. Right away, as soon as you separate, you are ordered to go together to talk and mediate, whereas in Ontario it's totally the other way around: You have to wait till the case conference, which I haven't even hit yet. I'm going to the children's lawyer. They're going to give us an hour afterwards, where if we both want to talk, we can talk then. If we don't, we can leave the room. In the other case, in BC and Alberta, it makes more sense. Their conflict level has gone down by up to 40%.

The other issue that I forgot to mention—I'm sorry; I don't want to step on your question—just quickly, is that every time I've mentioned shared parenting or equal parenting with the judge, with the children's lawyer and the social worker there, they throw up the stats at me, saying, "Only 7% of parents get shared parenting, and it raises the conflict level." Well, of course it raises the conflict level, because everybody is in an adversarial situation right from the beginning, instead of mediating.

**Mr. Kormos:** Thank you, Mr. Tedder. Of course, you've corresponded, I think, with everybody. Similarly, others have talked to MPPs around this issue of audio recordings. If you take a look at the judgment, there's one ironic comment with respect to the private recording: "There is no quality control as to equipment. There is only one recording device and it may be some distance away from the parties speaking which could impact on the recording...."

I say to the government members, any number of newspaper reports recently have revealed the notoriously pathetic state of recording in the government's

courtrooms, and the failure of appeals and rulings being overturned because of the completely antiquated equipment and the refusal of the government to ensure that there are an adequate number of court reporters. I just wanted to make that observation in the context of what the judge ruled here.

What you're saying is that separation is very expensive. Separation is incredibly expensive, and people had better understand that, quite frankly. One of the things that just rots my socks is the fact that all parties to these very litigious separations insist that what they're doing is in the best interests of the children. Horse feathers. If parents were really concerned about the best interests of the children, litigation would be their last resort.

So I agree with you that up-front mediation—which is not the practice in Ontario, in the courts—as compared to back-end mediation, would be far more effective. One of the sad realities, though, notwithstanding that our court system incorporates mediation as part of the institutional process, is that they don't pay for it. They make the parties pay for mediation. So impecunious parties, or parties who are already cash-strapped because of high legal fees—that simply adds another burden. And the fact is that back-end mediation is more often than not simply a way of clearing the docket for a crowded court system, where people are more likely to be subtly coerced into settling in a way that isn't to their advantage or isn't to the other party's advantage. So I agree with you. One of the points you make—you may not appreciate it—is the need for front-end mediation and for it to be funded by the government. I say to you that that would be far more effective in resolving some of these very expensive, painful, dangerous—because you've seen some of the consequences of these high-stress, highly emotional, prolonged litigations. It would be far more effective in maintaining the children's interest as paramount. So I appreciate your comments in that respect.

**Mr. Tedder:** Thank you, Peter.

**The Chair:** Any comment from the government side?

**Mr. Zimmer:** No.

**The Chair:** Thank you, Mr. Tedder.

**Mr. Tedder:** Thank you very much for a chance to speak before you. Have a very good day. And tell your children and your grandchildren about this also, because if this doesn't change, your children and grandchildren are going to go through this—one in 10.

1000

#### BUILDING TRADES WORKERS' SERVICES ASSOCIATION

**The Chair:** Next we have Tony Hartt from the Building Trades Workers' Services Association.

Good morning. If I can have the other gentleman introduce himself, and you are free to start any time you'd like.

**Mr. Eric DePoe:** My name is Eric DePoe. I'm a compensation specialist with—

**The Chair:** Your name again?

**Mr. DePoe:** Eric DePoe.

**The Chair:** All right. You may begin.

**Mr. Tony Hartt:** My name is Tony Hartt and I serve as the administrator of the Building Trades Workers' Services Association. My associate here is Eric DePoe, one of our compensation specialists at Building Trades Workers' Services. You can see his CV in the handout that we sent ahead, and if you didn't get it, the clerk is passing around another copy right now.

We operate in a very narrow spectrum of the paralegal sector. We represent injured unionized construction workers before the compensation board. So our main purpose here today is to introduce our unique not-for-profit association and our role in serving Ontario's unionized construction industry with regard to WSIB issues.

We're certainly pleased to appear before your committee in representation of our place in the paralegal environment. The sent-ahead brief handout identifies our stakeholders and our association. If you didn't get a chance to read it ahead of time, our association is owned and operated currently by 49 local unions. These unions represent tens of thousands of construction workers and some other trades.

Our intent today is to ensure that committee members are aware of our organization and our business model as you deliberate over appropriate action to implement Bill 14, ensuring that Ontarians do secure access to justice.

I'd like to turn it over to Eric for a bit to just cover some of the key points in our handout. So take it away, Eric.

**Mr. DePoe:** Good morning. I just want to review some of the most important points we wanted to make here today. Our Building Trades Workers' Services Association was formed in 1994 and subsequently was incorporated in Ontario in 1998. So we've been going for 12 years. The association was founded and is owned, as Tony said, co-operatively by its member local unions. Some provincial labour associations are part of that mix. Those local unions you have in your materials.

Building Trades is a duly enacted corporation. We have a board of governors elected from delegates from our member organizations. According to our corporate bylaws, we have an annual meeting, and that meeting provides oversight of our organization and the services we provide to the members of those local unions and provincial labour associations.

Our home office is in Toronto. We have four full-time specialists who provide representation to the members of those local unions. We also employ expertise from the outside as required, including medical, legal or other support services in our provision of representation to our clients. We also carry insurance—general liability and errors and omissions insurance—just to make sure that there are resources to back us up in providing that representation.

Our staff is highly skilled and has long experience in dealing with the Workplace Safety and Insurance Board

and the Workplace Safety and Insurance Appeals Tribunal. We practise solely in the area of workers' compensation. We also deal with provincial boards in other provinces, representing members who have worked and have been injured in those provinces as well, but our main practice is with Ontario workers and Ontario injuries. We have no interest in, and we don't have a mandate—our bylaws don't give us a mandate—to practise in other areas and to represent anybody in any matters other than workers' compensation matters. So that's our area of expertise and our sole area of interest. We provide services right across the province, mostly in the GTA, but also Thunder Bay, Ottawa—all the major centres where construction unions exist and where workers get injured.

A very important aspect of our service is that we do not bill individual injured workers for our services. Our services are paid for by the local unions. Operating costs are passed on to the locals on a current-usage basis using a fee-for-service type of model, so we share out our costs according to the use that the various locals make of our services.

I'll turn things back to Tony now to sum up.

**Mr. Hartt:** Eric was speaking as one of those skilled workers of our organization; Eric described them as highly skilled, so Eric is one of four. All of the CVs are written there. You can see there's quite a range of length of service.

We'd like you to know that the Building Trades Workers' Services Association does support the intent of the concepts espoused pertaining to the paralegal section under the proposed Bill 14. I confess we are a bit uneasy when you start to talk about it coming under the law society; there's a natural uneasiness out here with the paralegals about that. After reading carefully, we do believe that if the principles as outlined in 4.2 are applied, the resultant accountability will reflect better service to the people of Ontario.

We're really interested in ensuring that you recognize our service model, which is that of a co-operatively owned not-for-profit corporation that currently does employ, and plans to continue to employ, two or more practitioners for the purpose of representation of injured workers in matters before the WSIB. We're quite interested in calling out the scope of our work, because we don't actually see, reading through the material, any intent to provide any type of, say, graduated licence, if there is licensing. If paralegals are going to take some paralegal course, one assumes, then, that they're going to be required to be exposed to immigration, traffic court or other material. We only practise in the one arena, the narrow spectrum of matters that involve workmen's compensation. We know we have graduated driver's licences—we're just throwing out a concept—and when you're looking at this whole thing, if you'll consider our model.

We're quite amenable to educational or experiential requirements for paralegals in the workmen's compensation area. We actually are actively pursuing

professional and personal updates for all of our people on a continuous basis. They do follow an upgrading program as part of their daily work.

We're not presently, nor are we contemplating, providing services involving other areas of the paralegal spectrum. As an organization with 12 years' experience in its field, we request, at the very least, that grandfathering provisions be inclusive of our association and our specialist personnel.

It's possible, depending on how you read the material, I suppose, that we may be considered grandfathered. We have a copy of a letter to Wayne Samuelson, the president of the OFL, from Malcolm Heins of the law society with regard to paralegal regulation. In his letter, dated March 28, 2006, the key paragraph is, "I can assure you that the law society has no intention to regulate the activities that trade union representatives engage in, as described in your letter."

#### 1010

So, as described in Wayne Samuelson's letter, you may not think of us, and that's why we actually asked to come here today. We very much appreciate the opportunity. I said to Eric, "Let's keep it short. Let's respect the folks' time and let's allow them to ask all the questions they want." So we're ready for questions.

**The Vice-Chair (Mrs. Maria Van Bommel):** Thank you, gentlemen. We have about 20 minutes left, so about seven minutes. Mr. Kormos, you have the lead in this rotation.

**Mr. Kormos:** Thank you, brothers. I appreciate you coming. I'm well aware of the work you do. I suspect some of the other members are too, and it's incredibly important that your concerns—and they're basically addressing the section of schedule C of the bill that deals with the definition of "legal services." There's no two ways about it: The work that advocates for injured workers do is well within the scope of that definition. I appreciate Mr. Heins's letter to Brother Samuelson, but that's all it is, a letter from Mr. Heins, because, at the end of the day, it's not Mr. Heins's call, is it?

**Mr. Hartt:** That's correct.

**Mr. Kormos:** The role that unions perform with respect to advocacy for injured workers is incredibly important, inevitably work that lawyers are neither equipped nor inclined to do and certainly don't have the skill, the background and the history. So, fair enough, the advocacy that trade unions provide of course, as the Office of the Worker Adviser is seriously underfunded and understaffed because it has been allowed to be gutted, and the waiting lists at the Office of the Worker Adviser—which is what causes me concern about this government's wacky proposal for eliminating the Human Rights Commission—are not just months but years. What about organizations like injured workers' organizations who similarly provide some of the most skilled advocacy for injured workers that this province ever sees? They're not staff of trade unions. More often than not, they're volunteers. They are funded on the basis of fundraising

or the occasional grant. We don't have that kind of letter from Mr. Heins about them, do we?

Grandfathering is one thing—I should say “grandparenting.” Far be it from me to lapse into political incorrectness.

**Mr. Hartt:** I stand corrected, sir.

**Mr. Kormos:** I was concerned about myself, not about you. But what about future persons who will be pursuing these roles, because they come out of the trade union movement more often than not, don't they? They're either injured workers themselves or people who had roles as stewards and leadership roles in their respective unions, where they acquired these advocacy skills. We don't have those assurances either.

I think it's incredibly irresponsible for the Legislature to delegate to the law society who's going to be exempted and who's not. That should be done here, now, publicly in the open, so that everybody knows what's going on. Hell, why even bother sitting? We could do that with each and every bit of legislation: simply pass it off so it can be done behind closed doors. Your point is going to be a recurrent theme. The government could deal with it here and now.

I said this yesterday, Mr. Zimmer: Come forward with an amendment to the bill which will clarify these concerns. We know what the intention is. The intention is to legislate paralegals, not skilled people doing advocacy in any other number of areas where they're incredibly proficient. Come forward with amendments now so we don't waste these people's time. They've got injured workers, and there are a whole lot of them out there who need advocacy. These people could be in their offices taking care of them instead of being here waiting in a line-up to make submissions.

Will the government please address this issue now? There's nothing wrong with that. Come forward, put the amendment on the table. These people can rest assured that they're not going to be victims of some oversight on the part of the law society at the end of the day. The law society will claim it doesn't make mistakes. I'd suggest that everybody makes mistakes from time to time.

This could be cleared up here and now with the government putting forward an amendment, don't you think?

**Mr. DePoe:** We would like to see it cleared up. Certainly, what we would like most is to be left to continue providing the services that we provide now without any impediments.

**Mr. Kormos:** Exactly. Like the guy on that cooking show says, it's not rocket science. Thank you, gentlemen.

**Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot):** Brothers, I also want to thank you for coming in today. My uncle, Charlie Hewitt, was head of the plumbers and pipefitters union for a long time and a second father to me as I was growing up. He used to tell me about the four things in life that were important: You had to be able to play chess, appreciate education, be a good ballroom dancer, but he said the fourth and most important was always to stand in solidarity with my

brothers and sisters in the labour movement. So I want to just thank you. I know about your good work—

**Mr. Kormos:** Could he play the pipes?

**Mr. McMeekin:** He could play the bagpipes and he was good.

I know about your good work. You're a very responsible, friendly model. It's a good model. It's a model that we applaud. I note with some considerable interest and appreciation the law society's comments that they too consider you a responsible, friendly, good model. I think that's where we're coming from as a government. We're certainly going to consider some of the suggestions that are made about perhaps clearing things up, but we're not sure just where that's going to go. That's why we have public hearings. So I just want to thank you on behalf of the government for coming in. I applaud the good work you're doing. I know a lot about workers' compensation issues. It's an issue where we truly need advocates who understand the needs of working men and women. So we just want to say we really appreciate your coming out and sharing that. We think the law society has been helpful in terms of its clarification to you, for the record.

**Mr. Hartt:** If I may, for the record, I just would certainly want to make sure that it's clear that although I'm in possession of the letter to Wayne Samuelson—we are linked, as the unions are linked, but we're a separate organization. Somehow, in the communication and the fact that I haven't been with that organization that long, I guess, I didn't talk to Wayne ahead of time about making sure we were included in this organization. So in his presentation, he was mostly referring to direct union representatives.

What doesn't appear in the handout—and I would certainly clarify for you—is that back in 1994 when this model was conceived, a number of the founding business managers of construction unions were at a central council in Toronto lamenting the fact that just representing injured workers before the compensation board was taking more and more time, but because it was just something they did, as opposed to their main role in life as business managers, they weren't able to keep up with changes to the regulations. So they were coming back, losing cases, as we say in the vernacular, or not succeeding in getting rights for those injured workers. I certainly credit that group. I wasn't around at the time, but I credit that group because they realized that what they needed to do was to come up with some way of keeping up with this and still be able to do their job. There were four initial main groups—the painters, the asbestos workers, the millwrights and the plumbers, I believe—that got together and said, “We've got to do something here, so what will we do?” They began this organization that's become what it is today. As I said, that's all we do. We have four people, morning to night, and that's all they do. I got it easy; I administer the group. So I don't actually do the representation, but Eric is one representative. Why I brought him is he's a representative of the four, which you can see. It's not somebody talking who doesn't actually represent.

We're interested in making sure that you know we exist, as a committee. We're a little uncomfortable leaving it out there as union representatives, maybe grandfathered, or certain things may be grandfathered. Heck, to be honest with you, I'm not 100% sure grandparented is what we look at. We think our people are very highly skilled. I did allude to the fact that, if you look at the CVs, they've taken the labour courses that are available in representation and they've gone beyond that. As a matter of fact, we're testing this fall with Tracey Lowe, one of our 12-year veterans. We're sending her back to university to take a case study course that will require her, in a university graduate setting, to analyze cases, put forth a case study, say what's going on there and make recommendations, because that's what they do, all day long, every day.

**1020**

We think we have a program internally that helps our own people—we can't speak for others—to become more highly tuned. We have the fundamentals in the workers' compensation in place, but we want to make sure these workers—and a lot of them are immigrants, English isn't their first language. They don't know their rights. So we have a lot of responsibility and the onus is on us to make sure it's professional.

Indeed, to your point, many lawyers do not know the compensation act, and we do get a number of calls from lawyers asking us for advice.

**Mr. McMeekin:** Thanks for your good work. Uncle Charlie would be proud of you. I'm proud of you. By the way, I'm still working on the ballroom dancing.

**The Vice-Chair:** Mrs. Elliott

**Mrs. Elliott:** Gentlemen, many years ago I worked for the Office of the Ombudsman, and one of my primary areas of responsibility was dealing with workers' compensation issues. I totally agree with what you're saying. By the time those issues got to the Ombudsman's office it was already pretty much too late to do anything, because in many instances the injured workers had not had professional representation during the course of the proceedings. I understand the sheer numbers and the depth of frustration people felt. I applaud what you're doing and think it's really important.

You're quite right: There are many lawyers who don't understand it, have not specialized in that area, and there are lots of reasons for that. You fulfill a particular niche that's really important. I too would like to see it clarified to make sure that you don't have any hesitation in continuing to do the great work you do. Thank you very much.

**The Vice-Chair:** Thank you very much, gentleman.

**Mr. Hartt:** Thank you for the opportunity to speak to you today.

#### TRIOS COLLEGE BUSINESS TECHNOLOGY HEALTHCARE

**The Vice-Chair:** Could triOS College Business Technology Healthcare come forward, please. Good morning. We have 30 minutes for your presentation. You are en-

titled to use the entire 30 minutes for your presentation. If there is any time available of that 30 minutes afterwards, there is an opportunity for members of the committee to comment or ask questions. Would you please, for the record, state your names.

**Mr. Frank Gerencser:** My name is Frank Gerencser. I'm the CEO with triOS College. My colleague here is Cheryl Findley. She is faculty head for legal services within our college.

First of all, I'm going to give a brief introduction and then I'll turn it over to Cheryl, as the legal expert, to make more comments on our presentation.

What you see here in front of you is a package. On the left-hand side you have a little bit of background information, at the front, on our college. There's a handout of the four slides, and if you could pull those out, because we'll refer to them in the presentation. There's a bit of a background on the two of us and there's some information on our association, the Ontario Association of Career Colleges, of which I am now the past president.

I think I may have met several of you right here in this exact same room, because we've had open houses here and then downstairs in the members' cafeteria. There's a brochure of myself actually handing a new banner about the value of education that works over to the current minister. I look forward to meeting several of you next Monday, September 18, when the proclamation finally happens for the new Private Career Colleges Act. It's going to be a great step forward.

The rest of this is just some background for later on the actual content of the curriculum and what we do. I'm not going to be referring to it in the presentation.

A quick bit of background: As I said earlier, I'm the CEO of triOS College. I'm also the past president of the Ontario Association of Career Colleges. As a college ourselves, we have six locations. We've had about 3,000 individuals apply for paralegal training in the past three and a half years. There are about 500 students who have actually gone through or are currently in our six colleges.

As the Ontario Association of Career Colleges, we have approximately 500 member colleges specializing, as lawyers do, in various areas of training. As Ted pointed out, we're in a fair number of them, as you'll see.

Cheryl is our faculty head. She is a lawyer; she also has a bachelor of social work, and is the chief instructor that we have in our Hamilton campus. She'll be doing the majority of what's here under the presentation. She has an extensive litigation background. I have also been involved as one of the members of the Law Society of Upper Canada's college advisory committee. They've reached out to both public and private colleges, as well as the Ministry of Training, Colleges and Universities, to pull in feedback and information so that they can design the education part of this quite correctly.

I will turn over the presentation now to Cheryl, but I would like to just comment in a quick point on the summary of what we have here. The essence that you're going to see in our presentation today is that we are in support, in principle, of the government's act, Bill 14, for

the law society to regulate paralegals. We'll talk about the details in the presentation. On the right-hand side, you actually have the content of what we're going to be talking about in our presentation.

**Ms. Cheryl Findley:** I wanted to speak today about Bill 14, in specific schedule C, the amendments to the Law Society Act, and how it impacts or how the interaction would work between community colleges and private career colleges that provide the educational services to paralegals and the law society, as set out in the provisions.

First, regarding the licensing of paralegals, we're in support of the proposed legislation and the licensing by the Law Society of Upper Canada of persons who are authorized to provide legal services in Canada. However, we are not concurring with part B of section 4, which is that some groups would be excluded under the bylaws, allowing or permitting unlicensed legal practitioners. Our position is that all persons who are providing legal services should be licensed.

Since all persons authorized to practise law and all persons authorized to provide legal services who practise in a specific legal environment are to be treated equally in that environment, licensing will ensure the protection of the public interest by maintaining a minimum standard of certain, what I'm going to call core competencies. Those core competencies would include knowledge through a testing process, under the licensing exam, of the rules of professional conduct, accounting practices, and substantive and procedural law in the specific areas that are permitted.

If you look at the handout that shows our slides, and look at the application of licensing provisions, the difference between allowing the bylaws to exempt certain groups or not is the difference between the diagrams on the right and on the left. On the right, we're advocating that there are certain core competencies for which all persons who provide legal services would be required to be licensed. Then, the bylaws could permit specific specialities where the certain core competencies and substantive law and procedural law for those specific areas could be dealt with separately. But we're stating that there should be a certain basic provision of core competencies for all persons providing legal services. The same standards in education regarding those minimum knowledge requirements or core competencies would be imposed by the law society in their role as licensors, and through the accreditation of educational programs.

Our second primary point regarding the amendments and schedule C is that the amendments to the Law Society Act should apply to all persons authorized to provide legal services in all courts and administrative tribunals, whether they are self-regulated or not, and that the minimum licensing requirements should apply to all tribunals in Ontario. It's our position that whether you are practising in a specialized area as a paralegal, for example, immigration, financial services board or Ontario

Human Rights Commission, you should still have a basic licence that provides for core competencies.

If you look specifically, I've put in a box for you the part of your legislation that I'm referring to, subsection 2(1): that the act is going to apply to all provincial and federal courts; all tribunals established by an act of Parliament or under an act of the Legislature of Ontario; any commissions or boards etc. Therefore, we are stating that our position is that there should be a certain licensing that applies to all.

#### 1030

Our most important concern through this process, as educators or the providers of legal education, is our role vis-à-vis the law society as set out in the legislation. Sections 4.1 and 4.2 clearly indicate what the function of the law society will be and how it is to work with educators.

I just wanted to highlight—and you'll see that I've done that on your handout—specific parts of those provisions. Clause 4.1(a) states that all persons, both those who practise law and those who provide legal services, must meet standards of learning, professional competence and professional conduct appropriate for the legal area they are to provide; that those standards are going to apply equally whether those individuals who are providing the services practise law or are providing legal services. So they'll apply equally to lawyers and paralegals within a setting. The primary goal of the society is to protect the public interest. Therefore, if you look at your handout, it's our submission that section 4.1 sets out three cornerstones of the function of the law society.

Those cornerstones are to provide standards of learning, professional conduct and professional competence. Those cornerstones are going to be circumscribed by bylaws that dictate the areas of practice in which persons who practise law can be qualified. It's our submission that the standards of learning would be established by the law society, with input from the college advisory committee. So there would be a marriage or interaction between the law society and the colleges in developing the standards of learning. Those standards of learning are going to have to be very concise and measurable and applicable equally to all providers of legal education, whether they be public colleges or, as our group is, private career colleges.

The standards of learning need to address both substantive law and procedural law in equal portions. One of the difficulties in protecting the public is that, as educators, we have to ensure that the providers of legal services have the competencies in procedure or the provision of the service itself, not just the substantive law. Therefore, the educational programs are going to have to equally address procedure and substance.

The delivery of the standards of learning would be the role of the colleges. The curriculum should address those cornerstones of professional conduct and professional competence, and the development of that curriculum would be, in part, by working with the Law Society of

Upper Canada. The measurement of the success of the educational programs would be the licensing program and exams themselves, and the discipline would be through the law society.

I wanted to address what I perceived on behalf of our college as the curriculum requirements or core competencies. Subsections (5) and (6) of Bill 14, schedule C, set out a fairly concise list of the provision of legal services. It's our submission that it includes all advocacy, drafting skills, advice—which includes legal research—preparation of documents and negotiations.

It's our position that those standards of education that are prepared by the law society and the accreditation of the educational institutions will include a review of the procedure on substantive law for all of the areas of law that are permitted by bylaws. The curriculum must address core competencies of advocacy, drafting skills and legal research.

I've included for you to review afterwards just a brief overview of the program provided by triOS College to the paralegal students. You'll note that it includes both procedure and substance in equal portions. In fact, we have computers in the classroom. The provision of the courses includes the development of skills in the direct provision of legal services, not just the substance in the areas of law.

I have given you a course guide for roles and legal office procedures, which is one of approximately 30 courses we provide. It's the substance and the procedure that's included in roles which we perceive to be a necessity in terms of core competencies for all practitioners who provide legal services in the community.

When you review it, you'll see that it reviews professional conduct, the Law Society Act, Solicitors Act, the rules regarding non-authorized practice, the rules regarding trust accounts and accounting practices, the rules regarding confidentiality, and how to maintain your practice on a day-to-day basis. It's the provision of that level of education that we feel is required to protect the public in terms of the provision of legal services.

We have tried to leave sufficient time for you to ask questions regarding our role in the community, our role as a educational provider and our review of your proposed legislation.

**The Chair:** Thank you very much. About four minutes each, and we'll start with the government side.

**Mr. Zimmer:** I just want to clear something up here to the question for the CEO and officer. I understand your submission on the face of it, and that is that the regulation of people doing paralegal work should be a broad one and include everyone, without any exceptions. That's the thrust of it?

**Mr. Gerencser:** Correct.

**Mr. Zimmer:** I note that you have described yourself as a member of the law society advisory council paralegals. Of course, that's not the position of the law society, and I just want to make it clear that in your submission today you're speaking personally and not on behalf of the law society.

**Mr. Gerencser:** That is correct. This submission is the point of view of triOS College. triOS College is a member of the Ontario association. I'm actively involved, but this is our presentation, our point of view. We support the act in principle, with these cornerstones. We feel that there's a core set of skills that everybody who's a paralegal, no matter what, needs to understand, and then, after that, it would be split-off as in the previous presentation where there would be knowledge of injured worker rights etc. and other areas of specialty covered in the diagram that we have.

**Mr. Zimmer:** Again, I just want to be clear. Your submission today is a personal submission on behalf of the college, not on behalf of the law society?

**Mr. Gerencser:** That is correct.

**Mr. Zimmer:** Thank you.

**Mr. Gerencser:** It's on behalf of the college, in support of the act in principle, with minor deviations.

**The Chair:** Mrs. Elliott

**Mrs. Elliott:** I just had a question regarding the provision of legal services and the definition that you have set out on page 4 of your presentation. How would you see the practice of law to be differentiated from the provision of legal services? The definition that you have is quite broad.

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**Ms. Findley:** That's correct. This definition is taken from Bill 14 itself. The difficulty in reviewing the bill is that it indicates that in the areas of practice which are going to be permitted by the bylaws, the standards for anyone providing legal services in that setting would be equal. So it would apply equally to those who practise law or those who are providing legal services within that specific area of practice. If that is to be the case, therefore, to protect the public, the standards of education need to be the same in those basic core competencies.

**Mrs. Elliott:** But you would support that definition as stated?

**Ms. Findley:** Yes, we support it. I think one of the difficulties is that our current rules of professional conduct do not allow non-lawyers to provide, for example, legal opinions—correct?—in rule 5, I believe, sub 1.03. If that's the case, I think that the rules of professional conduct may have to be amended as this act is amended, so that if this is the definition of legal services that is to apply equally to all those who practise law or provide legal services, they can then do what they need to do in that setting.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** I confess that I'm far more familiar with similar programs in the public community college system than I am in the private system. I look at the curriculum here, the diploma program, and we're really putting the cart before the horse. We don't know—and I'm going to be asking this committee to ensure that we have the law society here for a lengthy enough period of time to hear from them—exactly what they have in mind as to the scope of practice. Let me explain why.

You've got a list of programs here where you're effectively creating a jack of all trades, master of none. I understand. What can you do in one year? What can you do in two years? Quite frankly, we've all witnessed people with three years of law school and a year of articling who can still manage to screw up a whole lot of stuff when it comes time to doing real-world work. It's true. That's why we have errors and omissions insurance that's being paid out at untold levels.

Just very quickly, a person is a damned fool to purport to prepare a will for somebody, even what they think is a simple will, unless they have a clear and extensive understanding of a growing field of the law around estates, real estate law, family law, income tax law etc. People come into our constituency offices, and I urge them to go to the more expensive lawyer, quite frankly, who specializes in wills and estates, because it's money saved at the end of the day. With all due respect, I can't anticipate—just like I wouldn't expect a general practice lawyer to undertake a will any more than I would a paralegal. Real estate: How many more revelations do we need? There's going to be some major discussion in the next few months around the law of title and the role of advocates, lawyers.

What I'm interested in is exactly what it is that people have in mind in terms of the scope of practice of paralegals. Summary conviction offences? I'm sorry, the defence of a common assault can be as complex as the defence to an armed robbery, a second-degree murder. It involves all the same principles, all the same issues. Why are we suggesting that somehow a summary conviction offence like common assault requires a lesser level of expertise than the defence of a break and enter? That's my problem. I support paralegals in principle; I support their regulation in principle. My problem is the scope of practice and how we can justify that a less trained person can handle summary conviction offences, when in fact all of the same training and principles apply for a common assault as they do for an armed robbery.

**Ms. Findley:** It's going to be up to the law society to define the scope of the areas in which paralegals may practise. It's going to be circumscribed and defined, but at two levels. Right now, our rules of professional conduct allow law clerks—law clerks are simply trained legal professionals who work under the supervision of a lawyer—to do certain activities in these different substantive areas of law. Most paralegals who graduate our course—I believe about 96%—choose to work for someone else when they graduate. Just like most lawyers, I worked for a large firm for five years before I struck out on my own. It is an acquired skill level. There are layers and layers of knowledge that are required in each of these substantive areas of law, and it may be that in certain of these substantive areas of law, there should always be supervision by lawyers.

Our course is designed given the reality of the marketplace. The reality of the marketplace is that most of these graduates of the paralegal course work as law clerks or are employed by a paralegal firm for some

period of time until they acquire further skills. We are the beginning stepping stone of their education. It's the same way for lawyers in law school. We take a vast array of substantive areas of law and certain core competencies, and through articling and our bar admissions course, the core competencies are tested and we are licensed. That does not mean that we are an expert in all areas of substantive law for which we have taken a course. It is a learning curve and it is something which, once you have the basic core competencies, you learn over the years. It's layers of knowledge. It's no different.

I think it's going to be very clear that the scope of the areas of law that are permitted by the bylaws will be a difficult journey to determine what is going to be in the public's interest. I'm not prepared to comment on specific areas at this point in time, but I think it's up to the Law Society of Upper Canada to determine those areas of practice for which those who provide legal services, as opposed to those who practise law, would be competent.

**The Chair:** Thank you very much.

#### CANADIAN ASSOCIATION OF PROFESSIONAL IMMIGRATION CONSULTANTS

**The Chair:** Next, we have the Canadian Association of Professional Immigration Consultants. Good morning, gentlemen. If I can have you identify yourselves for Hansard, you can start.

**Mr. Berto Volpentesta:** My name is Berto Volpentesta. I'm the executive director of the Canadian Association of Professional Immigration Consultants.

**Mr. Phil Mooney:** My name is Phil Mooney. I'm the national director of policy and lobbying for the Canadian Association of Professional Immigration Consultants.

**Mr. Volpentesta:** The approach we wanted to take today as we reread our submission was that there's a lot of information in there that really depends on an understanding of what immigration consultants do and what the struggle has been over the years to become regulated as immigration consultants. So I will begin by giving a brief history and then Mr. Mooney will continue by specifically addressing some of the recommendations that we tried to prepare on this quest to regulate paralegals.

**1050**

CAPIC is really a combination of two professional associations that were created to push towards regulation of consultants, one being the Organization of Professional Immigration Consultants and the other the Association of Immigration Counsel of Canada. Those two associations worked for about 10 to 15 years pushing the federal government to regulate immigration consultants, because we realized it's important work that's being done and the consumer needs protection from people who just think they can enter a field because they've done their own case or perhaps they've helped a family member or a friend in part of an immigration process, which could

be anything from appearing before the Immigration and Refugee Board of Canada or other tribunals to helping a skilled worker make an application to come as a permanent resident to Canada. There are very different skills that are involved in that.

Realizing that, these associations pushed the federal government over a number of years until finally, in 2003, they began a process where immigration consultants would be self-regulated. In 2004, it resulted in a body called the Canadian Society of Immigration Consultants, and that has become the regulator for immigration consultants.

The Canadian Society of Immigration Consultants is, as I said, our regulator. The Canadian Association of Professional Immigration Consultants is the professional association. So, if you will, we are striving to be the bar association to the law society. We try to provide services to our members that would be founded on our pillars, which are information, education, lobbying and recognition. Those are the benefits we try to bring to our members.

Our members consist of regulated, or what they now call certified, Canadian immigration consultants who are full members of the Canadian society, as well as members who have an interest in immigration. These might be the financial institutions that provide immigrant investor funds, non-governmental organizations that provide services to immigrants, students who are learning to become immigration consultants. So we provide different levels of membership as well.

One of the things we do is to inform people about the Canadian Association of Professional Immigration Consultants, and that's why we're here today. We've been through this process of regulation and perhaps we can bring some insight. That will hand you over to Mr. Mooney.

**Mr. Mooney:** Thanks for the opportunity to provide input to your committee.

Why should the input of immigration consultants be considered on this issue? We would like to give you four principal reasons. First, we have recently gone through the experience of being regulated and can share some valuable lessons learned, not of being regulated but of going through the process of being regulated. Many of our members perform or have performed duties very similar to paralegals. Many of them start at that level and then eventually become immigration consultants. Many of our members employ individuals who act in a very similar capacity to paralegals. And in a very real way, our daily activities help us understand the gap between paralegals and the legal profession, so our perspective on this issue can help identify and address the many issues which must be considered when establishing the boundaries between these professions.

We would like to address the issue of moving from an unregulated to a regulated environment. We know that you recently received a submission from Mr. Ben Trister, the former chairman of CSIC, about his experiences with this issue. We would like to say that we're not interested

in turning this committee into a platform on which the problems that some CSIC board members had with other CSIC board members should be debated. You may be surprised to know that, for the most part, that dispute happened behind closed doors and that the consulting community—us—was largely in the dark about what was happening with our own money. Our own organization was advised as late as September of last year that CSIC was not interested in discussing issues with us as an organization and would only respond to individual members.

When the issue spilled over into the public domain, we were both very vocal and very concerned, and pushed all parties to deal with the issues quickly and professionally. We pushed for an independent audit of all CSIC finances, which has been done, and made submission after submission to CSIC and others to protect our members' interests.

Again, we will not comment on the specifics of the dispute between three directors, including a lawyer, a consultant and a public interest director, and the other six directors, including two consultants, two lawyers and two public interest directors. This dispute has been portrayed as a dispute between consultants and "others," but nothing could be further from the truth.

We would like to correct one error in Mr. Trister's statement as read. He stated that "immigration consultants are not ready to be regulated." The fact of the matter is that immigration consultants are already regulated, officially as of April 13, 2006, but practically from April 2004. The fact is that somewhere between 800 and 1,200 previously unlicensed consultants now operate with a stringent code of ethics, maintain trust accounts and have met very rigorous membership standards, including passing language, ethics and competency tests. This should be a clear demonstration that fact should win out over fiction, even when the fiction is put forward by an eminent attorney.

So what have we learned from the process? What is the purpose of us being here? Here are some of the lessons.

(1) It takes time. CSIC was faced with very tight timelines imposed by the government of Canada, which, in hindsight, could have been more understanding. Because of these timelines, CSIC was forced to focus most of their resources on the basic structure, such as websites, administration, initial testing, and professional standards, and it had very little time to spend on effective communication or even governance. You may know—and this could be a guide in terms of how this regulatory body would be set up—there are seed funds provided by the federal government. Those funds came with strings attached that said you had to do this by this, this and this, so in order to meet those deadlines, they had to focus on areas of administration and structure. This put an enormous burden on the board, many of whom had to put in huge amounts of time—which led to problems about compensation—since there was no administration team in place. So, recommendation number 1: Ensure that a

professional administration team is put in place first to properly manage the initial business of the regulator. This should be the case whether you decide on a separate regulator for paralegals or if the work will be done by the LSUC. Put the money into the project to build a strong foundation of professional administrative services.

(2) Setting the ethical and educational standards high and making them all-inclusive improves the level of professionalism. The initial DACUM, which was the road map for how to regulate consultants and what skills were required, and which laid out the scope of consultants' professional responsibilities, was developed in a very comprehensive manner, with extensive input from very experienced consultants. Similarly, the development of the professional skills exam was supervised by independent experts who had done similar work for nurses, accountants and other self-regulating organizations. The process of qualification was a challenge to all immigration consultants, primarily because it required all of us to expand our knowledge of the immigration system to areas of practice which were outside of our normal day-to-day activities. The rationale was that if we were to be licensed to provide services in all of these areas, then we should, therefore, be competent in all of these areas.

This has led to a substantial improvement in the competency of all immigration consultants. It is reasonable to say that an immigration consultant who has met the standards of CSIC is in a better position to serve the interests of the consumer on immigration matters than a new lawyer who has just passed the bar. Both are allowed to provide immigration services. So, recommendation number 2: Set high standards, but with extensive input from those who will be regulated.

(3) Be sure to define the initial focus of the effort carefully so as not to raise expectations, with a practical timeline for implementing the whole package. It was stated as a criticism of the process that CSIC only regulates its members and does nothing about non-members who may be abusing the public. Certainly, we hear this theme repeatedly from our members. Effectively, we are paying to police ourselves from ourselves, while others can operate with impunity. In reality, CSIC can no more regulate non-members outside of Canada than the law society or any other group can. The basic premise behind self-regulation is that you agree to be regulated. This does not mean that unregulated practitioners get off scot-free; it only means that the tools to deal with unregulated practitioners are different and include government sanctions, public awareness, and civil and criminal complaints. In the rush to get established, CSIC has not had time to clearly define or communicate a plan for dealing with unregulated consultants, which is a principal concern of the people being regulated, but rather has given the impression that they either can't do anything or don't want to. This is one of the effects of not having a good communication strategy. So, recommendation number 3: Be sure to communicate the whole vision for the future, giving practical deadlines so as not to raise false expectations.

#### 1100

(4) Clearly define the limits of professional duties and the extent of responsibilities. Immigration consultants now know that they cannot practise in certain areas of immigration, that they must refuse to handle files for which they are not competent and that they are fully responsible for all of their agents and employees, without exception. We believe that any system of regulation for paralegals is in addition to the overriding responsibilities of the lawyers or other professionals whom they support. This puts the onus for consumer protection on the most senior of the professionals who are involved in the work. If we, as an immigration consultant, send clients to a paralegal for certain services, we must still be held accountable for consumer protection; the same for lawyers or accountants. The paralegal would also be fully responsible for the services they perform which are allowed and which are directly solicited from the public. Recommendation number 4: Be sure that responsibility and accountability for consumer protection cannot be delegated by other professionals who recommend or use paralegal services.

(5) Be compassionate; be gentle. At CAPIC we have a significant concern that the process of regulation, while professional, thorough and extensive, can never be perfect. We are witnessing the extreme stress caused to individuals who, having provided good, honest and ethical service to the public for many years, are nevertheless failing to perfectly meet the standards and are therefore facing the ruin of their businesses, with all the attendant consequences. Yet the response to this problem from CSIC has been, "We always knew there would be consultants who would not meet the standards." They probably call it collateral damage. If the standard is one of competence, we agree. If the standard is one that is not entirely germane to the practice of the profession like, in our example, language capability, we have pressed for a more realistic approach other than pass/fail. It can be noted that the standard of English or French required by CSIC exceeds the standard for university entrance, and even born English-speaking persons like myself have had trouble passing.

In many cases, we've maintained that the ability to communicate effectively in the language of the client is more important to consumer protection than the ability to write long essays spontaneously, which is what is tested. Creative and compassionate persons should be able to construct an alternative mechanism, if all else fails. Some would call it grandparenting. Recommendation number 5: Be sure that the regulator's desire to regulate does not cause harm to the consumer through being too zealous.

(6) Finally, on the issue of who should regulate paralegals, we recommend that the method of regulation should meet the need. Because immigration consultants work with a federal program and work with many clients outside not only their home province but outside their country, it makes sense that the regulation of immigration consultants should be a federal responsibility. A similar rationale would guide the choice of a regulator for

paralegals. If the community served by any paralegal is entirely local, then the regulator, which could be provincial, federal or even municipal, should be structured to meet the local needs and realities. Recommendation 6: Make the solution fit the need.

Thank you for the opportunity to present our views.

*Interruption.*

**Mr. Mooney:** This is a faux pas. We disbar members for bringing these into meetings.

**The Chair:** Thank you very much. About five minutes each. We'll begin with Mrs. Elliott.

**Mrs. Elliott:** I would just like to thank you for your—  
*Interjection.*

**Mr. Mooney:** Yes. Thank you very much for your kind attention. Sorry for the distraction.

**Mrs. Elliott:** I'd just like to thank you for your presentation and your very practical suggestions.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** How much time, Chair?

**The Chair:** At least seven minutes

**Mr. Kormos:** Thank you kindly, gentlemen. I was more interested in hearing about the cat fight within the board, but I guess we'll discover the details of that in a different forum.

This was the presentation, as I recall, on the first day that the committee sat. We weren't really clear about what was going on after we heard it, because several of us discussed the comments. The impression that some of us got was that if an immigration consultant joined the self-regulatory body, he or she then was immunized from any other regulatory process, but that if a person didn't join the body, they weren't regulated, and you seemed to confirm that because, as you point out, it's voluntary. I suppose the difference here is that the law society is empowered to regulate people who practise law, whether they're members of the law society or not, which is what they do when they prosecute people who practise law without being members of the law society.

**Mr. Mooney:** The only difference is, the law society has provincial sanction to go after individuals who pretend to be lawyers. CSIC does not have that provincial sanction as yet.

**Mr. Kormos:** Okay. Exactly. Now, CSIC doesn't exist as a constitutional entity in terms of its federal jurisdiction. It just happens to be Canada-wide because your members, people in the profession, decided to create a Canada-wide body?

**Mr. Volpentesta:** If I could, CSIC is authorized by the federal government under a statute of immigration, so Citizenship and Immigration Canada amended its act and regulations to say that consultants have to be a part of this body, CSIC.

**Mr. Kormos:** Have to be.

**Mr. Volpentesta:** Have to be.

**Mr. Kormos:** So if you're not a part of the body, you are committing an offence?

**Mr. Volpentesta:** It is an offence in the Immigration Act, yes.

**Mr. Kormos:** Okay. Can we get a copy of that, please, Mr. Fenson?

**Mr. Volpentesta:** Now, the problem is that trying to get Citizenship and Immigration Canada to go after people who are not practising is different.

**Mr. Kormos:** There you go. The other problem is, what about guys like Jimmy K., the Liberal member of Parliament whose reported practices, immigration consultancy work, we've all heard about, when he's not sniffing out marijuana grow houses or screwing up people's federal leadership campaigns? There are going to be any number of paralegals in the province of Ontario who are going to take on immigration work, who are going to assist people in immigration matters. Are they in a grey area, or would they fall, in your view—this is obviously your perspective—under this legislation?

**Mr. Mooney:** It's not even our view. There's a practical regulation and there's a policy and operations manual that define the line, and what that line says is that once an application is filed with Immigration Canada, if you want to deal with Immigration Canada on that application, you must either be the applicant—sorry; and for a fee—or an attorney and a member of the bar association or law society, or a notary public of Quebec or a member of CSIC. Only those individuals are entitled to deal with CIC on those issues. Up until the point of application, as it currently stands, anyone can provide advice, help fill in forms, etc. We are opposed to that part of it, but the rule right now stands.

**Mr. Kormos:** Because I am familiar with certain MPPs who have—and I can't remember the form number—people sign the "Use of a Representative" form—

**Mr. Mooney:** There are two forms. One is for paid representatives. The other is just for individuals to be given information from a file. That's called an authorized-information form.

**Mr. Kormos:** Use-of-representative.

**Mr. Mooney:** Well, there are two use-of-representatives: 5476 is what you sign if you pay—

**Mr. Kormos:** Yes, 5476.

**Mr. Mooney:** —but you only do it for a fee. On the form itself, it says, "I am being paid a fee to represent this person."

**Mr. Kormos:** Or, "I am not and I am a family friend."

**Mr. Mooney:** Yes. That's if you're not paid a fee.

**Mr. Kormos:** Yes, exactly. So those people are covered, then? Because your regulatory regime only applies to people charging fees. Is that what you're saying?

**Mr. Mooney:** Yes.

**Mr. Kormos:** All right. Because this legislation would appear to apply to people whether they were charging fees or not. I'm talking about Bill 14. Correct me, in terms of the PA, if I'm misreading it. So yours only applies to fee-paying. What about the church organization? What about—were you here when the building trades advocates were here?

**Mr. Mooney:** Yes.

**Mr. Kormos:** What about operations like that? There are any number of non-profits, for instance, that don't charge fees and that assist in immigration. Where do they fall into your scheme?

And please, Mr. Fenson, if we can get the regulations and the—

**Mr. Mooney:** They're not covered by CSIC.

**Mr. Kormos:** They're not covered, because they're not fee-charging.

**Mr. Mooney:** That's right.

**Mr. Kormos:** Even though that could be their main area of practice or advocacy.

**Mr. Volpentesta:** That's right. If I were advocating, I would say that they should be covered by someone, because there's still a lot of continuing professional development that goes on. These fields are changing constantly, especially immigration. I'm not familiar with other pieces of legislation, but I'm sure they change as well. You need to be up to date because you're dealing with people's lives here.

**Mr. Kormos:** So when I get, coming into my constituency office, reports from constituents who have been ripped off by so-called immigration consultants, who have been ethnically exploited—and you know what I mean by that: ethnic exploitation within that community—who have had application-for-refugee-status affidavits consisting of one page, with the sort of stuff that a high school kid could improve on by accessing the Internet, never mind the huge area of expertise there is in the academic world, I should be reporting them to you?

1110

**Mr. Volpentesta:** To CSIC. You're going to hear from CSIC later on in your hearings, but CSIC is the regulator. You should tell CSIC.

**Mr. Mooney:** If the person who prepared that application is a member of CSIC, then the individual consumer has a right to complain, and that individual will be called up to answer any sort of questions and complaints. Just like the law society, we have errors and omissions insurance. If that person is not a member of CSIC, then your recourse is the criminal courts.

**Mr. Kormos:** Because that's one of the large areas of rip-offs, scams and outright shameful misrepresentation. Obviously, if people get deported, many times the consequences are fatal, or close to it.

**Mr. Mooney:** In the past, we had to act and operate in an environment where no one could tell the difference between, let's face it, the 80% or 90% of all the people that operate ethically and honestly and have the best interests of the client in their hearts, and the others who operate differently. Now, if you are a CSIC member, that means you have met standards, you have passed examinations, you are of good character, and there are police checks and many other checks like that. For anyone who has not met those standards, our job, and what CSIC's job also should be, is to educate the public to say, "Just check. Is this person a member?"

**Mr. Kormos:** Mind you, I've seen more than a few of those files from law offices too.

**Mr. Mooney:** As have we all.

**The Chair:** Thank you very much. Mr. Zimmer?

**Mr. Zimmer:** I should tell you, I was an assistant deputy chairman of the Immigration and Refugee Board of Canada, so I had some involvement in setting this up.

Just to clarify for my colleagues, the regulation of the immigration consultants by the federal government is a very narrow exercise. I think you will recall that the federal government, particularly at the Immigration and Refugee Board, where they dealt with all of these things, felt there was a clear problem with so-called consultants all over the place and varying standards and all sorts of problems that you've read about in the paper. The federal government did not so much regulate the consultants as it said that anybody who wants to appear in front of the Immigration and Refugee Board, or in fact have formal dealings and informal dealings with the federal government, has to be a member of the immigration society. The federal government then charged a fee for someone to become a member, reviewed their resumé and so forth and so on and vetted the membership; they looked to minimum qualifications and experience and so forth. That's the extent of the regulation in the world of immigration consultants.

**Mr. Mooney:** No. In the initial stages, because there already were some thousands of people practising immigration, when the first rules came in they said, "You all have to apply to become provisional members." To be a provisional member, you had to pass a competency test, you had to get a police check.

**Mr. Zimmer:** But only if you wanted to appear in front of the Immigration and Refugee Board. I could operate a little immigration consulting practice in the backroom of a plaza somewhere just giving general advice.

**Mr. Mooney:** No, that's not the start of it. The start of CSIC was that everyone who wanted to deal with immigration and file applications on behalf of people for a fee with CIC—not just the refugee board; with all immigration applications, whether it's visitors, workers, permanent residents, IAB refugees—and anyone who was going to act on behalf of an individual for a fee had to join CSIC. CSIC initially grandfathered in people after a basic competency test, but there was a two-year window where they set standards. Then all immigration consultants had to pass—in fact, the window closes October 31.

**Mr. Zimmer:** But there was no regulation of anybody who just wanted to offer someone general advice about what they could do as an immigrant or not do. If you wanted to have formal rules—

**Mr. Mooney:** The current rules state that if you offer someone advice or charge them \$50 to fill in a form, you don't have to be a member, as long as once that application is submitted, you know you have no access to the file.

**Mr. Zimmer:** That's right.

**Mr. Mooney:** We don't agree with that, and we're making depositions in different venues for that, because

we think consumer protection starts the minute a consumer parts with his money. We think that the process involved should be that if you're going to charge money for any service related to immigration, you should be in a regulated profession.

**The Chair:** Thank you, gentlemen.

**Mr. Kormos:** On a point of order, Mr. Chair, very quickly: The comments by Mr. Zimmer make this less and less clear, because they've been validated. Can we get some hard data referring to the limited scope of the supervision of CSIC, the remnant which Mr. Zimmer speaks of, which is unregulated and unsupervised by any federal legislation? If we could somehow get a sense of whether that means those people fall under the provincial jurisdiction of the law society, or is there somehow some federal jurisdiction, which is the impression that's been created. I don't believe that's necessarily the case.

**Mr. Mooney:** We'd be happy to forward a copy of the act and regulations and the operations manual.

**Mr. Kormos:** Yes. If you could work with Mr. Fenson in that regard, we'd appreciate it. This is a huge area. Thank you.

#### NORTHWEST TITLE VERIFICATION SERVICE INC.

**The Chair:** Next will be a teleconference with Northwest Title Verification Service Inc.

Mr. Tindall, are you on the line?

**Mr. Robert Tindall:** I am.

**The Chair:** Good morning.

**Mr. Tindall:** Did we just catch up?

**The Chair:** Yes. Welcome. You have 30 minutes, and you may begin any time you'd like.

**Mr. Tindall:** Very good. As you know, my name is Robert Tindall. I run a business called Northwest Title Verification. I'm a law clerk, I'm a paralegal, I'm a legal assistant, a court agent, process server, planning consultant, estate planning consultant, title searcher, conveyancer and a whole ream of other names that people have given me over the years, depending on the type of job I was doing.

I've been doing this work since 1975, and I started working inside the law firms. I worked for three—for Thunder Bay—fairly large law firms. About 15 years ago, I was approached to set up my own practice in contract to one of the law firms and go out and seek other people who might also contract to me. So I became at that time, a law clerk, a paralegal, and I use that term freely, both ways. Everybody has this thing about the word "paralegal," and one of the things they keep forgetting is that there is no difference between what a paralegal does and a law clerk. The law clerks work within the offices, and at one point in time I was a member of the Institute of Law Clerks of Ontario. As soon as I left the firm I was with, my membership was gone; they wouldn't accept me. I was told at that time, "There might be other groups out there for you, but you can't be a member of this group because you're not

working in the law firms." So somewhere along the line we picked up the name "paralegals." A spade is a spade is a spade—it's still a shovel.

My background is that I have been doing, over the past 15 years, predominantly real estate type of paralegal work, along with a smattering of rent review and assessment review and some small claims court and quasi-judicial things in front of planning boards, the OMB, that kind of thing. I have been on the board of directors of numerous volunteer organizations, most of the time in some executive position. I have been on the board of three financial institutions, two of which I became president of. I was also the lay counsellor appointee by the province of Ontario to the association of Ontario Land Surveyors, which is the self-governing body for surveyors. While I was on that board, I was part of the discipline panel and was the complaints review officer.

So I bring a variety of experiences with me when I'm speaking here. What I'd like to talk to you about today is how Bill 14 is going to affect my profession, that of being law clerks and paralegals.

#### 1120

The first thing I'd like to say, though, is that I'd like to express my disappointment that the committee was not able to meet in northern Ontario. I'm 1,000 miles away from Toronto, the centre of the world as far as most Toronto people feel. For me, there's another 300 miles of province to the west of me and there's perhaps 1,000 miles to the north of me. The committee has no presence in northwestern Ontario as far as I can see. There's very little discussion about what's happening with this bill, not just with the public but also my colleagues and most of the lawyers located in the north. Very little has been said about the effects of what this is going to do and who is going to be affected. It's not like talking about the favourite TV show of the week. You very seldom hear it even mentioned.

The only reason I'm actually here is because my cousin, who's a paralegal in Hamilton, tuned me into the fact that there were going to be hearings back in the spring and said, "Jeez, you should be involved with this because you've been doing this for so long." I said, "Well, I've never even heard of it." Up until that time, I was in the dark. If you want to ensure that the public and the people who are going to be affected are going to speak to you about this, you have to make sure they know that you even exist. I don't think that's happened here. To my knowledge, there was no information passed on through public channels, through advertising. I don't believe there was ever any advertising of the committee's meetings.

Because there's been such a limited discussion, you will not get a lot of people who are going to have a burning desire to speak to you or even have the knowledge that they should be speaking to you. I was advised when I originally talked to the clerk of the committee that if there were enough people who would submit, there might have been the chance of having the committee come up to the north, but it's a Catch-22. If

you don't come to the north, people feel there's little they can do. "Nobody cares what we think, so why should we even talk?" That was my first concern. I got that off my chest, so I feel a little better now.

First, I wish to state that I'm fully in favour of regulating paralegals and law clerks. It's been a long time coming. I always felt I was like a cork in the ocean, floating around, I had no place I could call home. I often thought—and I've even discussed it a couple of times with some of the people at the surveyors' association—"Jeez, maybe you guys could take the paralegals under your wing," because there's a section of them that fit naturally with land dealings. That's what they tend to deal with—land. They're the only people who can give a legal opinion about boundaries based on the Surveyors Act, and I thought, well, if most of the conveyancers and title searchers are dealing with that, maybe they should be under the auspices of the Association of Ontario Land Surveyors. I have to say there were a few people who were kind of receptive to that thought. Did it go anywhere? No, because they really didn't have any knowledge as to who to talk to.

But I do believe, as I said, that all paralegals, law clerks and legal assistants, conveyancers, title searchers, whatever you want to call them, both in-house and private independents, should be under the regulation. Any person, whether they're employed by a law firm, any lawyer, any legal department in some large corporation, an independent lawyer or a law clerk contracting with the public or some other law firm, they should all be subject to the same regulations.

But my problem is, who should govern? I believe they should be governing themselves. They have a society. They have tried through that society to govern. There have been other groups that have set up and also tried to organize. Unfortunately, neither group has any teeth. It does not have the backing of legislation like they do in the association of surveyors, the law society, the engineers or the medical profession. Without the backing of legislation they have no power, and it would be very difficult to protect the public if you don't have the power.

I believe that the people who are in those organizations fully believe that they would like to protect the public and their profession, and if you gave them the power they would probably use it adequately. I would go on to guess that if the law society or the association of land surveyors or the engineering society had no legislation backing them, they would be in the same position, with no power.

All of these discussions kind of reminded me of about 20 or 25 years ago, if you think back to when the doctors were in a big hard-fought battle with the nurses as to who would govern. I'm sure the doctors were saying that it all had to be done by the medical college. Then we heard that same voice again—the doctors—in regard to chiropractors: "The chiropractors have to be governed, and it has to be under the medical doctors." We heard them insisting that they were the only ones who would know how to govern.

Now we have the lawyers insisting that they're the only ones who can govern the paralegals in a way that will protect the public, and it's just the same stupid argument. There are boundaries. There are thought processes that the lawyers go through, just like the doctors went through, and there are thought processes that happen with the nurses and paralegals. I hate to use the comparison, but there is a strong boundary as to what they can do. Lawyers expect and think like lawyers, doctors expect and think like doctors, and the nurses know what they have to be governed by and where their boundary lines are. It shouldn't be up to the people who are dictating as to what their boundaries should be.

I don't know if I've clearly explained my thought there. The lawyers give the instruction to paralegals and law clerks. The law clerks—there's only so much that they can do. After that, it does become legal opinion. It does become lawyers' work. And quite often, that lawyers' work gets done in-house by the clerks. That shouldn't be happening but it happens, because the clerks in-house, if they like their job—they have to do their work, because the lawyer is in control. If the clerk doesn't do the work, then the lawyer just says, "I need somebody who can do this. If you're not going to do this, I'll find somebody else." That's a problem. If the lawyers are controlling the clerks and the paralegals, then they have no protection. You have to also protect them, because they are part of the public.

The lawyers would have us believe that all of the paralegals are corrupt. If you follow their thinking, they can't find enough honest people to govern. Is that really what the Ontario Bar Association and the Law Society of Upper Canada believe? If they do, then the government made a mistake when they put me in as a lay counsellor. They made a mistake when they appointed many of the others as members of other boards throughout the province. I just can't believe that they would think there aren't well-meaning people within the paralegal society. They're just dead wrong with that. Most of the paralegals I've ever met are very knowledgeable, they're very capable and they seem to be honest.

The person I share space with is a paralegal. She's been around for about 12 years. She was originally a judge in Poland. Before that, she was a crown attorney there. She could be called to the bar in many other countries around the world, including the U.S. and perhaps even in Quebec, but she's had numerous obstacles put in her path by the Ontario law society. There are many others like her. I know through my association with her—I've had a number of times to contact and talk to a number of paralegals and law clerks from southern Ontario who were in the same boat. They came from some other foreign country and were called to the bar in those countries. Unfortunately, there are stumbling blocks put in front of them, and they end up working as, at least, a paralegal, as opposed to driving cabs—not that there's anything wrong with driving cabs for a living.

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When I read through some of the material that the OBA and the law society have put on their websites and by many of the other lawyers who have taken time to write something, they don't actually talk about wanting to govern the paralegals and the law clerks, but they do want control. If it's all about control, then I think there's something flawed in what they're doing. It makes me believe that there is an obvious conflict there, because it's not about public protection but it's more about control. And when you talk about public protection, I want to point out a couple of things.

The law society says it's all about public protection. Well, I've sat here and I've watched the legal aid fund get bankrupted by the lawyers. I'm not saying that the law society did it, but it was allowed. They knew it was happening, and where's the public protection in that?

I have seen a wholesale shift of the onus in land conveyancing. The major shift that has happened is that up until a few years ago, the purchaser was not at risk when he bought a piece of property. The vendor had to clean up the problems prior to the closing. At some point in time, when we started down the road with title insurance, there was a drastic shift, in that now the owner is no longer responsible for those problems; the onus has now shifted to the purchaser. Where was the law society in crying out about the foul in that? The public doesn't even realize that that's where the problem is. They haven't been advised as to where that's going and what that means to them. That's a huge problem and I see that time and time again, and I hear nothing but frustration when problems come up.

Where was the law society in protecting the public when Teranet was given a monopoly—I hate to say this one—by the provincial government in order to change our whole system of how we do registrations? Yes, it might be a little more efficient electronically, but the problem is in the methodology of the change. There are huge numbers of errors that have come up. The system will tell you no; I'm here working in the system, and I'll tell you yes. These problems are constant. There is not a week that goes by that we don't find some kind of a problem. The problem was brought forward at the Association of Ontario Land Surveyors, who did a task force on it. The task force presented to the land registry staff. At least the surveyors looked at it; the law society did nothing. The problem with this is that we've got flawed titles, we have flawed descriptions, and where's the public protection? You have to earn my confidence here, and I don't think they've earned the right to be that confident.

There are some very good people out there who would govern. I'm sure that, given the teeth in legislation, they would be just as effective, if not more effective. There have to be minimum standards for how you operate. I saw that in the surveyors' association. I see that in the engineering association. I'm not so sure I see that in the law society. I don't see a minimum requirement of what

you have to do on a file in order to be able to complete that file.

I was talking to a colleague the other day when I was telling him about a trial I was doing in small claims court, and he said, "Oh, I didn't know you did trials." I said, "Yes, I do." This colleague was a lawyer who's 40-plus. He's been out for a good number of years—a senior partner. He proceeded to brag to me that he was doing his first criminal trial—at 40-plus years of age, and he'd never done a criminal trial. If the law society wants to protect the public, should they not be protecting the public from lawyers who, through many years of change, have not kept up with certain areas of law? I think that's imperative. I don't think you should have people who aren't qualified doing it.

I do not do criminal work. Why? Because I just don't know enough about it. I used to. In the first law firm I ever worked for, I was in criminal court quite often on anything from a small traffic ticket to appearing, on one occasion, on an arson charge. That was back when the judges would actually hear you. I was there under explicit instructions from the lawyer. I was asking for the woman to be remanded and the crown and the judge wouldn't hear me. They listened, but they just didn't hear the argument. Two days later, she burnt the place down and she was on the same charges. We finally got her looked after for psychiatric observation.

Having said that, I wouldn't do that now because too much has changed, and I think that's the problem. You have to have some teeth in legislation. I do that because I believe that's the right thing to do. Sure, there are going to be some paralegals out there who would overstep their boundaries and maybe take on work they're not familiar with, but as I've just commented, there are lawyers out there as well who do the same thing.

In closing—I don't want to go on too long—I believe it's probably going down the right path. With the correct legislation, with the right kind of abilities given to the paralegal society, they could govern themselves quite well. I have to tell you that I'm not a member of that society. Unfortunately, I joined up with one of the groups that is no longer here and, for that, all I can tell you is, if I'm going to bet on a pony, don't follow me because you'll lose your money.

But I'm here to tell you, they're doing a pretty good job. They need some teeth in the legislation, but I really think the legislation has to be strongly looked at. We've got lots of examples out there of how various self-governing organizations can work. We've got them in place for surveyors, engineers, the medical profession, nurses and lawyers. Do it for the paralegals. Give them the right to be able to self-govern and determine how they should be operating. If it doesn't work, there are procedures in place to correct that. There are judicial reviews. The minister can order a full review of the operation. Have they looked after their problems? Have they dealt with complaints properly? The bottom line is, eventually if somebody really is upset or hasn't gotten what they feel is a fair addressing of the problem, there is

always the last resort: Take it to the courts. That's who could end up deciding, those few times that it ever gets beyond not being addressed. I do not believe it would not be addressed. I believe that people who are empowered to govern do so because they are empowered to govern and they will do it. I thank you for your time.

**The Chair:** Thank you, Mr. Tindall. We'll start with the NDP, Mr. Kormos. Monsieur Kormos has no questions. The government side? No questions, comments from them either, or from the official opposition as well.

Thank you very much. There are no comments from either of the parties, Mr. Tindall. Thank you for taking the time.

**Mr. Tindall:** Thank you.

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#### ABATIS PARALEGAL SERVICES INC.

**The Chair:** Next we have Dahn Batchelor, president of Abatis Paralegal Services.

**Mr. Dahn Batchelor:** Thank you, Mr. Chairman. I'll just give you a very brief background of my history. I started practising law as a paralegal in 1964. I think I was the first, because I never saw anybody else in a court but myself, other than lawyers. I have done thousands of trials over the years in family court, in small claims court, criminal court, traffic court and provincial offences courts, and also in landlord and tenant matters.

In 1969, the late Morton Shulman asked me to head a task force to study the problem of compensating innocent people and the Attorney General asked the task force to report to the Attorney General our findings. Members of the Legislature of all parties and lawyers, judges and professors attended the meetings and we recommended compensation for innocent people sent to prison, and that's now the law. In 1971, I was invited to speak at a national law conference in Ottawa and I recommended 24-hour duty counsel at police stations, and three months later that became the law. In 1975, I was invited by the United Nations to become an adviser to the UN on justice, and I've addressed the United Nations 23 times since 1975 and conferenced around the world. I had a conference in Bangkok a year ago April; a conference in Lima, Peru, last November; I was the keynote speaker at the second world congress on the rights of children; and next month I'm the keynote speaker for the second international conference on the rights of children in Europe. Next year, I'll be speaking in Barcelona.

I have studied criminal law at universities and I have a bachelor's degree in criminal justice, a master's degree in criminology and I will be receiving my doctorate in criminology in about three weeks. I was the person who brought the paralegal program to Sheridan College. I was one of the founders of the Paralegal Society of Canada and the Paralegal Society of Ontario.

So I have quite an extensive background in this field. I'm not going to read my entire report, which is 47 pages long, because I, like you, want to get home tonight, but I do want to bring up a number of factors.

For many years, there has been animosity between lawyers and paralegals in Ontario with respect to which areas of law paralegals can practise in. Charges were filed against paralegals by the law society, sometimes with success and other times without success. As a result, there has been confusion among the general public as to what paralegals can legally do, especially as it relates to the preparation of documents pertaining to wills, real estate, incorporations and divorces.

The law society, the general public and paralegals alike had reason to be concerned. There still wasn't any form of legislation that could govern paralegals and assure the public that it would be protected from dishonest and/or incompetent lay counsel. It is trite to say that this concern is shared by the majority of the paralegals in Ontario. They too cringe when they hear or read about paralegals who have brought shame and disrespect to their profession. They too demand that legislation be implemented so that those practitioners in their profession who have shown themselves to be unworthy of the trust given to them by the public can be turfed out of the profession.

Certain paralegals have tricked their clients into believing that they were lawyers when they were not. Others promised services after being paid but never provided the services. Some even were convicted of defrauding their clients of thousands of dollars through their scams. Many persons hung out their shingles, so to speak, without having been trained in law or even bothering to purchase legal textbooks dealing with the areas of law they claimed to be versed in.

On the website of the Attorney General of Ontario, there is an observation of what Mr. Justice Cory said in his report about paralegals. He said, in part:

"There are incompetent and irresponsible individuals claiming to be paralegals. Their misconduct is disgraceful, their actions mislead the public and disrupt the proceedings of courts, boards and tribunals.

"However, it is also clear that there are able, conscientious and efficient paralegals who provide a needed service to the public in a number of areas."

In support of the second sentence by Mr. Justice Cory, it should be said that a great number of paralegals have been trained in law by attending community colleges which offer courses in law and they and others subscribe to Quicklaw, the Law Times and the Lawyers Weekly and have purchased annual digests and other books published annually, such as the annotated Criminal Code, the Ontario Annual Practice, the annotated landlord and tenant laws of Ontario and the annotated Ontario Family Law Practice, just to name a few. Many subscribe to Quicklaw, which gives them access to millions of court decisions. Those who haven't studied law in community colleges have successfully practised law after having spent years learning how to do so the hard way, by virtually hands-on experience. Further, the vast majority of paralegals in this province have never been accused of any wrongdoings such as cheating their clients or anyone else for that matter.

No one disputes that there is a place in our system of justice for competent and honest paralegals. They fill that void that is left by lawyers, whose fees are often more than their potential clients in need can pay or, alternatively, whom Ontario legal aid has turned down for one reason or another. It is disheartening to watch accused persons or parties to criminal, civil, family court and landlord and tenant matters, to name a few, represent themselves and bungle their way through their court and tribunal trials and hearings. They are oblivious to the old saw that a person who represents himself has a fool for a client.

When the law society charged Maureen Boldt in North Bay for preparing simple wills, simple incorporations and uncontested divorces, the law society's own experts testified at her trial that those tasks are so simple, their own clerks do them. The independent paralegals of Ontario are not trying to steal business from lawyers. They realize that a great many citizens in Ontario simply don't have the money to pay the fees of lawyers, and for this reason, paralegals are filling in for the lawyers. It is far better to have paralegals assisting those persons than having untrained citizens trying to solve their problems on their own.

The question that comes to the fore is, why does the law society really want to embrace the paralegals, whom many lawyers have described in the past as rabble who are untrained, unsupervised, uninsured and irresponsible? After all, isn't the law society the bastion for members of a nobler profession? As far as many lawyers are concerned, opening the doors of the law society and inviting the paralegals into their hallowed halls is akin to Queen Marie Antoinette opening the doors of Versailles and inviting the unwashed Parisian rabble into her boudoir.

Obviously, if the independent paralegals are governed by the law society, this will solve the lawyers' problem of the paralegals infringing on what they claim as the sole territory of lawyers: the preparation of simple wills, real estate documents, uncontested divorces and simple incorporations. The law society will simply order them not to do it, and if they refuse to obey the dictates of the law society, they'll boot them out of their profession. Didn't something like this happen in Austria just before the Second World War? Is this not annexation without bloodshed?

Charging \$500 to prepare a simple Small Claims Court claim and \$1,000 to represent the client in that court is not going to entice potential clients into retaining a lawyer when the paralegal down the hall charges only \$200 to prepare the pleadings and \$500, at most, to attend the trial. If the lawyers wish to charge Cadillac fees to people who can only pay Chevy fees, they shouldn't be surprised at all that the next phone they hear ringing is that of the paralegal whose office is down the hall.

People who suggest that there isn't any antipathy between lawyers and paralegals per se are the kind of people who subscribe to the Flat Earth News. This author would be less than honest, however, if he didn't admit

that there are a great many lawyers in Ontario who recognize the worth of paralegals, and they often send potential clients who initially come to see them on minor matters to paralegals that they know, trust and respect in order to save their potential clients unnecessary expenses. These are the actions of lawyers who care about members of the public who need assistance but who can't pay the higher fees of a lawyer for assistance in dealing with minor legal problems.

What better way to deal with the paralegal question can there be for lawyers in Ontario than to incorporate the independent paralegals under the control of the law society? If that happens, the paralegals will be within the grasp of their old adversary, with no space in which the paralegals can wiggle to improve their lot.

The working group of the law society suggested in its report that a standing committee comprised of eight benchers, of whom three are lay benchers and the other five members of the standing committee are paralegals, should govern the paralegals. Would not the lay benchers who sit in on convocation meetings dealing with the affairs of the law society and its lawyer membership not find themselves in some form of conflict of interest as it relates to governing paralegals, who will always be in competition with lawyers, who are the ones who constitute the membership of the law society? What would happen, for example, if the issue of whether or not paralegals should be permitted to do uncontested divorces comes up for debate within the standing committee, and the five regular benchers remind the three lay benchers that when they were given their appointments as lay benchers to the law society, it was so that they could look after the interests of the lawyers who are members of the law society?

#### 1150

Although this writer still doesn't like the idea of the governing body being under the auspices of the law society, the idea of having laypersons appointed to serve on the governing body of paralegals is a sound idea. If eight of the members of the standing committee were paralegals and three were laypersons specifically appointed to sit on the governing body of paralegals by the government of Ontario, the idea would have considerable merit and probably be acceptable to independent paralegals in Ontario.

The issue of whether or not paralegals are capable of governing themselves is no different than those issues that have been raised in the past for quasi-professionals. The College of Chiropractors of Ontario is the governing body established by the provincial government to regulate chiropractors in Ontario. Every chiropractor practising in Ontario must be a registered member of the college. They are not answerable to doctors. Midwives in Ontario are also recognized and certified by their own people. They are regulated by the College of Midwives of Ontario, and they too are not answerable to doctors.

Architectural technicians and technologists may work independently or provide technical assistance to professional architects and civil design engineers in conducting

research, preparing drawings, architectural models, specifications and contracts, and in supervising construction projects. Architectural technicians and technologists are employed in architectural and construction firms, in government and in other industries. They have their own regulations in Ontario and they govern themselves. Graduation from a two- or three-year community college program in architectural technology is usually required for architectural technologists. The Association of Architectural Technologists of Ontario is both a professional regulatory body and an advocate for the profession.

Engineering technicians and technologists use the principles and theories of science, engineering and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection and maintenance. Their work is more limited in scope and more practically oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control, inspecting products and processes, conducting tests or collecting data. In manufacturing, they may assist in product design, development or production. They are recognized as being separate from engineers.

There are paralegals who were former bank managers, senior police officers, criminologists, business men and women, and former lawyers who are quite capable of governing themselves. They don't need lawyers governing them, any more than chiropractors, midwives and nurses need to be governed by doctors. It's an insult to paralegals for anyone to suggest that independent paralegals are incapable of regulating themselves. Once the legislation is in, it's simply a matter of using the legislation as its guide. Initially, those who are chosen as directors, governors, benchers, whatever they may be called, can seek guidance from other regulatory bodies on how to operate their regulatory body. Many of the directors of the paralegal organizations are quite capable of running their organizations, and although there's a vast difference between running an organization and a regulatory body, paralegals can do it.

The real problem will be to find an appropriate way to choose who will govern the regulatory body. The first thing that would have to be done is to determine how many directors would be ideal. It seems that, working on the premise that there may be, as a minimum, 1,000 independent paralegals in Ontario, 11 would be an appropriate number to sit on a board of governors.

Would it be appropriate to have someone who only writes wills serve on the board of governors? Would this person understand the complexities of conducting trials? Should this person make a determination on whether or not a paralegal was incompetent with respect to trial procedures? Should an applicant who has only two years' experience in court be put on the short list? Should a litigator who knows nothing about writing a simple will be placed on the list? The law society doesn't have a problem with this because there are many benchers

running the society, but when only eight paralegals are on the board of governors, this can be a real problem. It seems to this author that there would have to be a standard set for the qualifications required to be a board member. The standard would include a minimum of five years' experience and a minimum of three areas of law that the person consistently practises in, including experience in trial practice.

The working group asked, "Should the proposed regulatory framework provide for the accreditation, grandparenting and licensing requirements in order to ensure that the Ontario public is served by properly educated and trained paralegals?" The answer to that question is moot since it's obvious that there should be accreditation requirements in the regulation or legislation pertaining to paralegals. The question that comes to the fore however is, what forms of accreditation are needed in order that the public isn't subjected to incompetent paralegals representing them? For example, should there be only one form of accreditation or should there be more than one?

Probably the most difficult issue facing us in respect to accreditation is the matter of what to do about those independent paralegals who have been practising both as court advocates and legal document preparers for several years. The issue is subdivided into smaller issues, all of which must be addressed. For example, how long must an experienced paralegal be in practice in the field before he or she can be considered for grandfathering? It seems at first blush that five years would be an acceptable time.

It is this author's respectful opinion that an independent paralegal who at least has three years of practice of law in the field and two years of study of law in a community college or university in which that paralegal was taught law, or four years in the field and one year of study in a community college, or an independent paralegal who has a minimum of five years of practice in the field without any formal schooling, should qualify as an independent paralegal who is eligible for grandfathering. The governing body can determine the method of how the standard for each applicant is to be applied and what evidence would be required to be submitted to the governing body with the application of independent paralegal for grandfathering, or alternatively, it can be embodied in the legislation itself.

Mr. Justice Cory in his report said on page 12:

"It is also very clear from the submissions that merely working as a paralegal does not necessarily demonstrate competence.

"However, it is my opinion that those who have practised as independent or supervised paralegals for at least two years prior to January 1, 2000, should qualify as 'grandfathers.'"

Unfortunately, the honourable justice naively believed that legislation was forthcoming shortly after he submitted his report.

This author respectfully disagrees with Mr. Justice Cory's submission that two years of practice is sufficient. Some independent paralegals are in court two or more

times a week; others, two times a month. It seems that if an independent paralegal is going to be grandfathered, especially as a litigator, he or she should have more than a mere two years of experience in the field. Allowing for two years of college, the independent paralegal should have at least three years in the field.

A great many paralegals who have practised law for many years and who have become quite competent in specific areas of law they practise in are against any proposal that should have them write exams in order to qualify as a licensed independent paralegal. Is it really necessary for an applicant for licensing to write an exam on Small Claims Court procedures when he or she has been practising in that particular area of law for five or more years? Some have practised regularly in the small claims courts for over 20 years. Some independent paralegals in the greater Toronto area serve as members of the Toronto small claims client advisory committee and are well versed in small claims court forms and court procedures. In some instances, they helped design the curriculum of the law programs for several of the colleges and teach law in those colleges. Must they take exams also? They are competent to create such programs and then teach law, and now they must take exams to prove their competency? That's bordering on the ludicrous.

Do independent paralegals who are disbarred lawyers and who now practise law as independent paralegals have to take examinations on law? This author knows of one such paralegal who has his master's degree in law and practised as a lawyer for many years and now teaches law at a community college. Should he really have to take exams to prove that he is competent in law?

What about retired police officers who have practised for years as court agents in traffic courts? Do they have to take an examination on traffic law? What about those paralegals who are paid \$70 an hour to act as prosecutors in traffic courts? Do they too have to take exams on traffic law to prove that they are competent in traffic law?

What about the paralegal who has prepared the documentation for more than 1,000 uncontested divorces without one complaint lodged against her? Does she have to take an exam on the preparation of court documents for uncontested divorces to prove that she can prepare these documents? What about the paralegals who studied family law at college and graduated in those law courses? Do they have to take another exam to prove that they understand family law?

The only reason that grandfathering of experienced paralegals is acceptable at this particular time is because many independent paralegals began practising law as paralegals long before college courses were available to them. However, as time moves on, there will be less grandfathering of paralegals and all paralegals will eventually be required to study law in community colleges or universities and pass their exams in those institutions of learning before they can apply for a licence to practise law as independent paralegals, and that being

as it will be, grandfathering of paralegals will eventually become unnecessary.

#### 1200

The answer of who will prepare the exams is so obvious, it almost becomes unnecessary to ask the question in the first place. The exams should be prepared by the colleges that teach law to paralegals. There should be at least 10 sets of exams prepared for each aspect of law, and each examinee will be randomly given a number which will determine which of the 10 exams he or she will be required to take on each subject. That way, no one will know the questions of each exam in advance, unless he or she peeked at each examination paper prior to being given the exam. The numbering can be switched every few months in order to ensure that there's no cheating; in other words, the chances of two people sitting next to each other during an exam taking the same exam are 10 to one.

Summary: There's more to deal with, but time doesn't make that possible with respect to the preparation of this brief. There can be no doubt in anyone's mind that there is a need for paralegals in our system of justice in Ontario. That doesn't appear to be an issue any more. As this writer sees it, there are three issues that must be resolved, however. They are regulation, governance and areas of practice. There isn't any need for further comment on these three issues from this writer since those issues have been dealt with in my brief.

What this all boils down to is not what is in the best interests of the government, the lawyers and the paralegals but what is in the best interests of those in need of legal assistance. There is enough need for legal assistance out there to keep all of us in the profession of law very busy without having to appear to the public as children fighting over scraps.

It will be in the best interests of the government, the lawyers, the paralegals and the general public if these issues can be dealt with expeditiously. All of the parties to this problem have waited far too long trying to get this problem solved. By us all working together, by contributing our ideas collectively, we can solve this problem, hopefully sometime in our own lifetimes.

I'm suggesting that if we must be governed by the law society, let them govern us for about five years and slowly wean us off the society and into our own governing body. I think that might be the way to solve this problem.

I'm sorry that Mr. Kormos didn't get a chance to hear me talk about some cat fights—

**Mr. Kormos:** I read your submission.

**Mr. Batchelor:** And you liked the cat fights, eh?

**Mr. Kormos:** I got all the way through to the end, all the way through to the CV, Mr. Batchelor.

**Mr. Batchelor:** Okay, thank you. Those are my comments.

**The Chair:** Thank you very much. Any questions? Government side?

**Interjection:** None.

**The Chair:** None. Questions from the opposition? Mr. Kormos.

**Mr. Kormos:** On page 31 is your reference to “disbarred lawyers.” Whether or not they should have to pass new examinations, do you think people who aren’t deemed ethically, morally, legally capable of practising law as a lawyer should be allowed to practise as a regulated paralegal?

**Mr. Batchelor:** I’ve been asked that question many times. I know three paralegals who are disbarred lawyers.

**Mr. Kormos:** I know several of them too. That’s why I’m eager to see regulation of paralegals.

**Mr. Batchelor:** Yes, but of the three I know who were disbarred many years ago, one of them has been offered the opportunity to come back into the law society. He’s decided to remain a paralegal. He’s got quite a big practice. The other two, I’ve met and I’ve not heard of anything they’ve done that’s wrong. I don’t like lawyers who cheat any more than I like ordinary citizens who cheat and steal, but we have to give them an opportunity, if they have reformed themselves, to start again.

I was released from prison 42 years ago after spending 15 months in prison for giving shelter to a friend being looked for by the police. When I came out, I had nothing, no family, no job, no money, no home—nothing. I had to start all over again, but the public accepted me. I was a reformed individual, and I’ve achieved a hell of a lot. I’m the father of the UN bill of rights for young offenders, which is affecting the lives of millions of people. My work in Canada has affected the lives of a great many people. If we don’t give people a second chance, we miss out on some of these people.

**Mr. Kormos:** I think lawyers who have done their time deserve a second chance to go into retail sales, to go into the building trades, to do any number of things, because some of the disbarred lawyers that I know were brilliant lawyers. I had occasion to work with them as a lawyer, but they’re also thieves and liars and cheats.

**Mr. Batchelor:** I guess that raises an interesting question: What about the politicians who were also convicted? Do they get a chance to come back into politics?

**Mr. Kormos:** Mr. Zimmer?

**Mr. Zimmer:** The voters in British Columbia spoke conclusively to that issue.

**Mr. Kormos:** Yes, they did.

**Mr. Batchelor:** What, about the politicians or about lawyers?

*Interjection.*

**Mr. Kormos:** And the Senate isn’t elected, but so many have ended their careers in prisons of various sorts.

**Mr. Batchelor:** I quite agree. I’ve been a member of both the Ontario and the Canada organizations. We studied this problem very carefully, and we realized that if a disbarred lawyer, for whatever reason he was disbarred, gets back on his feet and starts again and he’s acting properly and honestly, I don’t think we should tell him, “You can’t do this.”

**Mr. Kormos:** I think they should be encouraged to run for politics.

**Mr. Zimmer:** What would you say to the issue of a suspended medical doctor practising as a vet?

**Mr. Batchelor:** If that’s approvable, then doesn’t a suspended lawyer have the right to practise as a paralegal?

**The Chair:** Thank you very much.

**Mr. Batchelor:** Thank you, ladies and gentlemen.

**The Chair:** This committee is recessed until 1:10 this afternoon.

*The committee recessed from 1206 to 1314.*

## MARSHALL YARMUS

**The Chair:** Good afternoon, folks. We’re resuming our hearing this afternoon and our first presenter is Marshall Yarmus. This will be a 20-minute presentation, Mr. Yarmus, and you may start any time.

**Mr. Marshall Yarmus:** Thank you for letting me speak. My name is Marshall Yarmus. I just wanted to give you a bit of my background. I’m a paralegal. I’ve been practising for 10 years. My main specialties are Small Claims Court and the rental housing tribunal. I am the vice-president and director of communications for the Paralegal Society of Canada, and am also a board member of the Paralegal Society of Ontario.

Schedule C of Bill 14 deals with regulation of paralegals and that’s the area I’m going to touch on today. Currently, paralegals provide a number of different services to the public and small businesses at a cost less than lawyers charge. Those services include representation in courts and tribunals, and preparation of documents for people where no specific act prohibits the preparation of these documents.

The public is well served by paralegals, who are able to offer services which lawyers either do not want to do or where specialization in a particular service allows paralegals to offer the service more efficiently, of better quality and at better prices than lawyers who offer similar services.

As a board member of the Paralegal Society of Canada and the Paralegal Society of Ontario, I have had the opportunity to study schedule C of Bill 14. I have spoken to paralegals and media across the province about the wording of this schedule. I’ve had the opportunity to meet to meet with Mr. Zimmer, who is my MPP, and I’ve met with staff at the Law Society of Upper Canada.

I have found numerous problems with the way in which schedule C was drafted. I will go into detail about how the legal services provision committee cannot make unbiased decisions about how paralegals will be regulated by the law society.

It is my submission to this committee that schedule C of Bill 14, as it is written now, cannot work. The cost to the public, who have chosen paralegals for over 30 years, will be dramatic. Unless schedule C of the bill is removed and completely rewritten or unless paralegals

are given are the right to self-regulate, the people of Ontario will suffer.

There are better ways to regulate paralegals, ways that do not include handing them over to the law society. I submit to this committee that schedule C of Bill 14 is so flawed that it cannot proceed to third reading unless or until a complete rewording of the bill is performed.

The flaws in schedule C dealing with law society benchers: Section 10 of schedule C states, “The benchers shall govern the affairs of the society.” Sections 15 and 16 discuss the composition of benchers to be 40 lawyers and two paralegals. If paralegals are to be regulated by the law society, they need to have equal standing at the table where the affairs of the law society are decided. There is no provision in Bill 14 that the composition of the proportionate number of benchers will ever be revised. With 40 lawyers and only two paralegals as the permanent composition of the law society benchers, it sends a clear message that both the government and the law society do not think of paralegals as equals. Paralegals are being told that they will always be token players at the table of the benchers who run the law society. Whatever the lawyers decide is in their best interest goes, because paralegals will never have equal numbers at the table.

If we were talking about token representation given to an ethnic minority or women or people with disabilities or any visible minority, that would never be acceptable today, in 2006. I state that it is unacceptable here.

Regarding the legal services provision committee: Section 25 of schedule C states that the legal services provision committee is responsible for the regulation of persons providing legal services in Ontario. The committee consists of five paralegals, five lawyers and three lay benchers.

Where do these 13 people come from? Section 25.1(6) states that the five lawyers and three lay benchers are appointed by Convocation on the recommendation of the treasurer. The majority of members of the committee will probably decide all the bylaws on how paralegals will be regulated, and what areas of practice they will be allowed to continue to perform is decided by Convocation, upon the recommendation of the treasurer of the society. The treasurer of the society is Gavin MacKenzie. I say the majority may decide, as there is no provision in the bill on what quorum will be. Will paralegals be required to be present to make quorum? How many paralegals? These questions are not answered.

**1320**

It would be nice if Convocation and Treasurer Gavin MacKenzie had an open mind about how paralegals were to be regulated. They do not.

The Toronto Star article dated April 18, 2006 stated:

“Paralegals will be limited to working in small claims court and on things like traffic cases and workers’ compensation cases. Once training standards are better established, services could be expanded, MacKenzie said.

“For now, they won’t be allowed to do things like simple land transfers or divorces—services paralegals

openly advertise but which the law society says they can be prosecuted for performing.”

The law society task force prepared a report to Convocation on September 23, 2004. They’re basically saying the same thing, that the status quo will stay, and this is what Convocation adopted. The initial five paralegal members will be selected by the Attorney General in accordance with clause 25.2(2)(a). Again, it would be nice if the Attorney General, Mr. Bryant, had an open mind about the areas of practice that paralegals will be allowed to perform if Bill 14 is passed. The Attorney General has spoken on the subject. He has provided speaking points regarding areas of practice and other areas:

**Issue:** What are the services that paralegals currently offer and would they continue to be permitted areas of practice under a new regime?

**Response:** Paralegals currently operate unregulated in Ontario. The services that paralegals are currently legally permitted to offer include advice and representation in small claims court matters, traffic infractions and other provincial offences and tribunals. Paralegals would continue to provide those services that they are currently authorized to provide.

So again, both the treasurer of the law society and the Attorney General have spoken, limiting the areas of practice rather than expanding them, and they are the people who are actually going to put the 13 people on this board.

Who is the Attorney General going to select to be the five initial members of the legal services provision committee? One would hope it would be either board members of respected paralegal organizations—or based on their recommendations—such groups as the Paralegal Society of Ontario, the Paralegal Society of Canada, ALDA, the Institute of Agents at Court. However, section 25 allows the Attorney General to select whoever he chooses, without a requirement that the selections be based on information from these groups. Do you think the Attorney General might select five paralegals who go along with statements made in the Attorney General’s speaking points?

**Injunction:** Subsection 26.3(1) allows the law society to apply to the Superior Court of Justice to obtain an injunction to stop a person from doing what the law society views as unauthorized practice. Above subsection (2), in bold, it states, “No prosecution or conviction required.” The government is giving the law society, not the crown or the Attorney General’s office, the power to put somebody out of business based on suspicion of an offence, without ever laying charges or obtaining a conviction. I thought this was Canada. I thought this was 2006. We do not take away a person’s livelihood based on suspicion or innuendo without the person being charged, let alone convicted of an offence. We certainly don’t give that power to the law society, which, if the bill is passed, would be our regulator. As regulator, they owe a duty to everyone to protect them from unjust treatment. For years the law society has ruled with an iron fist,

prosecuting anyone they deem to have violated section 50 of the Law Society Act. Now the government is giving the law society the power to avoid the time-consuming and costly procedure of proving facts in a court of law. That is unacceptable to me and it should be unacceptable to all the members of this committee.

**Compensation fund:** Schedule C clause 51(5.2)(b) limits money paid out of the compensation fund to an injured party due to a dishonest paralegal to funds paid in by paralegals only. The money is paid out based on decisions of Convocation, where again there is an overwhelming imbalance of lawyers to paralegals. If the law society were to be the regulator of paralegals, one would think that there would not be a segregation of compensation funds paid in by paralegals versus lawyers. There will be additional administrative costs that would be wasted, and it will do nothing to alleviate paralegals' concerns of having the law society be their regulator. I can see paralegals' contribution to the compensation fund being much higher than lawyers' at the beginning, if Bill 14 were passed, to compensate for there being no surplus in the fund.

**Review and report by the society:** Subsection 63.1(1) allows for a review of paralegal regulation after five years. An unspecified portion of the report will be authorized by the legal services provision committee. There is no provision for a paralegal to report to the Attorney General. There's no provision for a sunset clause allowing for self-regulation, which virtually all paralegals want. There is no provision that the Attorney General of the day will be required to act upon the report.

**The Courts of Justice Act:** Subsection 104(1) proposes an amendment to section 26 of the Courts of Justice Act, dealing with representation in small claims court. Currently, section 26 allows anyone to represent a party in small claims court. The representative is assumed to be competent, unless during a hearing the judge finds that they are incompetent. The judge can disqualify them. The proposed amendment allows a person authorized under the Law Society Act to represent a party, but also allows the court to exclude a person not licensed under the Law Society Act, if the court finds that the person is not competent to represent the party. So if I were to choose not to go under the regulation by the law society, under this definition I would still be allowed to represent a party in small claims court. Since I am familiar with the small claims court rules and procedures, I would still be deemed to be competent to represent people in the small claims court.

What is missing? The areas of practice that paralegals are allowed to offer must be in the bill itself, and not to be decided by the legal services provision committee, subject to approval by Convocation. As members of provincial Parliament, you are accountable to the public at election time. The law society is not accountable to the single mother applying to family court for child support or the injured worker who has been denied WSIB benefits.

Once the law society is given the ability to set its own by-laws, they can just as easily change them tomorrow. A regulation is easy to change without much public input or knowledge. When areas of practice are enshrined in the bill, it will be much more difficult to change.

In summary, schedule C, as it's currently written, has too many problems with it: with what is included, what is not in there and the wording to allow it to be brought to third reading. It must be removed from the legislation. Either start over from the beginning, or the government should adopt our self-regulation model that the Paralegal Society of Ontario has provided, as each expert that governments over the years have recommended.

Paralegals are not opposed to regulation; they are opposed to regulation by the law society as set out in this bill. There is a conflict of interest in the law society regulating paralegals. There is a problem when a regulator is forced upon a group who has specifically said over and over, "We do not want the law society as our regulator."

Thank you.

**The Chair:** Thank you very much. We've got a couple of minutes for each side, beginning with the official opposition.

**Mrs. Elliott:** Mr. Yarmus, you have indicated that you believe that areas of practice should be enshrined in the legislation. Do you just have any general comments that you'd like to make concerning what you think should be included and what, perhaps, should not?

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**Mr. Yarmus:** I would state, in a general sense, that anything that paralegals currently advertise that they do, anything that they've been doing for at least five years, should be allowed unless the law society can prove it's not in the public interest. That would include family law, uncontested divorces, wills, estates, any of these things that the law society and the Attorney General have stated should not be part of this bill.

**Mr. Kormos:** Yours is a coherent and articulate presentation, with points well made.

I don't know if there's anybody here—perhaps Mr. McMeekin—who was a member when the Legislature regulated the social work profession. Those were BSWs, MSWs. The community college social service graduates—and if you don't mind, I'll say they are to social workers what paralegals are to lawyers—were angry, frustrated, disappointed, and had their noses out of joint that they weren't going to be allowed to be members of the college of social workers. I understand your point, although I'm not sure that the articulation of lawyers as being competitors of paralegals is necessarily an accurate one. It has been a long time since I practised law, but I remember referring a whole lot of clients to some very competent paralegals, POINTTS among them, when I was a lawyer, because there was certain stuff—again, it has been noted already in these hearings that the lawyers are going to have to charge far more than what the client can bear etc. Why would community college social service graduates be eager to be part of a broader college of

social workers and regulated by them, yet paralegals would not want to be considered a part of the legitimate, regulated, broader legal community? Isn't there some real potential there to acquire some status and credibility, when some of your colleagues—and I've watched some of them in any number of arenas—have gone out of their way to embarrass your profession? Do you understand what I'm saying? Lawyers have done the same to the legal profession, right?

**The Chair:** A very quick response, please, so we can get to the government side.

**Mr. Yarmus:** I think it's because the law society isn't viewed by the public as a great regulator. They have so many disbarred lawyers, so many disciplinary hearings. They can't deal with their own people, so I don't think they can deal with the paralegals.

**The Chair:** Any comments or questions from the government side?

**Mr. Zimmer:** Thank you very much for your very careful and articulate presentation. As you've said, we've met, I think, both at the Attorney General's office, in your capacity with the society, and privately, as a constituent. Thank you very much for your presentation.

**The Chair:** Thank you very much.

We're having some problems connecting with our next presenter, so we're going to skip to Mr. Arthur Jefford. Mr. Jefford is not here.

#### MUNAWAR MERCHANT

**The Chair:** Next, we have Mr. Munawar Merchant. Good afternoon.

**Mr. Munawar Merchant:** My name is Munawar Merchant. I'm a CGA and a member of the Paralegal Society of Ontario. I am basically a tax practitioner, because I'm a CGA. I've had 30 years of experience as an auditor, manager, section manager and division manager for Revenue Canada. In the last three years, I've basically been working in tax. I've done very little paralegal work. I've done some kind of paralegal work ever since I joined the social committee in 1974 and helped people in the community solve problems.

Today my presentation is going to be more philosophical and not based on the strict legislative things about paralegal regulations. I'm trying to present philosophically why paralegals should be allowed to practise.

I'll start by saying that Canada is a country known around the world for its fair play. It presents itself with honesty, magnanimity and conducts its business with professionalism.

What is professionalism? To answer that question one should ask: What is a profession? A profession is a calling or line of work wherein the practitioner of the profession provides relief to the population in areas of health, law and finance, just to give you examples. Thus, a doctor aids the sick, a lawyer the person who may be in breach of law or seeking justice, and the accountant is the person who can advise you on your financial affairs.

Doctors come in many categories but there are two main categories, namely physicians and surgeons. It was not always so. There were only physicians. Surgeons were regarded as un-professionals, because their trade evolved from hairdressers or barbers who did manicures and pedicures and ultimately attended to corns and calluses on people's feet. In fact, surgeons were held in such low esteem in the UK that surgeons were addressed as "Mister So-and-so" and not as "Doctor." Yet today, 50% of medical treatment is surgical.

There are many branches of medical practice. We have physiotherapists and chiropractors, chiropodists and reflexologists. They all practise a form of medical care that a physician could or would. All support medical services and are helpful and useful in their own way, and very beneficial to the population.

I suffered from migraines for 25 years and attended every physician. Ultimately, four meetings with a reflexologist did the thing. That was in 1992. I have not suffered from migraines since then—not even a headache—until I heard of Bill 14.

Take the case of paramedics who attend to people who are involved in accidents or challenges that require 911 help. Who would really like the College of Physicians and Surgeons to curb the paramedics? Paramedics supplement and support medical work just as paralegals supplement and support the work of lawyers.

Chartered accountants' work is supplemented by bookkeepers. Then we have other branches of accounting, like CGA and CMA, that were bitterly opposed by the CAs. After all these years, CAs have recently even tried to merge with the CMAs. CGAs still cannot approve all corporate financial statements, except in British Columbia, in spite of uniform training. So what it boils down to is experience.

I am a CGA who served the Canada Revenue Agency for over 30 years and have run my consultancy in Ontario for the last 30 months. Working with Revenue Canada, I learned a lot about all kinds of legislation other than tax law. As a member of the Paralegal Society of Ontario, I had great success at Ontario disability claims and affordable housing claims.

Paralegals have worked in the field of family law, housing, immigration and traffic law cases with great success. They have served the community by providing services that are affordable, and in areas where legal help is hard to get at affordable prices.

As a member of PSO, I am here to voice my opinion on Bill 14 with the following comments: Paralegals serve a very important role in the law of the province. Paralegals provide services in very many areas where lawyers' services may not be available. Consequently, the work of paralegals is for the most part not in conflict with lawyers.

Paralegals have their own regulations for their members. This includes disciplinary procedures.

The government should realize that most paralegals do not support Bill 14.

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The paralegals' parent body has been insisting on insurance and is in favour of the creation of trust accounts in a paralegal practice wherever the type of practice demands

The law society, as far as I'm concerned, has not demonstrated that there are any compulsive reasons why paralegals should come under the aegis of the lawyers of the law society.

Members of the paralegal society have practical experience and expertise in many areas of law, such as taxation, family law and traffic laws.

I'm sure there are paralegals doing wrong things, but so are there lawyers who are disbarred.

For the above reasons, I would like you to know that Bill 14 will do nothing to help society and/or its ordinary citizens.

As a paralegal, I would not venture into an area where I lack expertise. I would get help from a member of the Law Society of Upper Canada, just as I would resort to a tax lawyer where one is needed in my cases with Revenue Canada. Most paralegals I know would do the same.

I'm not opposed to any paralegal taking law courses at a recognized college. As a matter of fact, those who have not, should. But those who are in practice should not be restricted just because they have not yet taken the course. My suggestion is that they should be allowed to qualify through the approved paralegal courses available at community colleges and given, say, three to five years to so qualify while allowing them to continue with their practice.

Not allowing paralegals to function, through the introduction of Bill 14, would be grossly unfair and akin to the College of Physicians and Surgeons of Ontario banning physiotherapists and paramedics or the CICA putting such a curb on bookkeepers that qualified accountants themselves would be at a disadvantage.

Those are all the reasons I have.

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

**Mr. Kormos:** I appreciate very much your participation. I understand your position. Thank you kindly.

**The Chair:** The government side, questions or comments? None. Opposition?

**Mrs. Elliott:** No, no further questions. Thank you.

**The Chair:** Thank you very much.

Is Mr. Arthur Jefford here? Not here.

ANGELA BROWNE

**The Chair:** Angela Browne. Good afternoon.

**Ms. Angela Browne:** Hi. Hi, Peter. How are you doing?

I'm sure all of you have seen one of these. This was a submission that I made. Good. It's a good read. I'm just going to summarize some of the key points that are in it.

Good afternoon, ladies and gentlemen of the committee. My name is Angela Browne. I'm a practising paralegal from the Niagara region. I specialize in areas

like Small Claims Court, disability, human rights and employment claims. I do a lot of tribunals; I do a lot of travelling throughout the province. I've been doing this for 15 years, and I feel that Bill 14 is putting my career on the line, if something already hasn't done so.

Basically, I hope you have an opportunity to review the brief that I've written, because it goes into more detail than what I'm going to be saying today. I'm trying to be a little bit more academic in the brief than what I'm going to be presenting here as to why I think it's important that any notion of the Law Society of Upper Canada governing the province's paralegals should be put to a stop now.

First, I want to tell on a few companies. I think maybe some people from the law society might be here and maybe some of the companies could start being prosecuted for the unauthorized practice of law.

My bank, TD Canada Trust—I hope the law society representative or anybody here can write it down—has a new department that advises people on estates, trusteeships and even will planning. This is carried out by specialized financial advisers who have the training to do this. I have yet to see the law society haul my bank into court for unauthorized practice of law.

Many large accounting firms, even a few smaller ones, offer business consulting services, which may include incorporation, shareholders' agreements and maintenance of minute books, among other things. It will be a slim-to-nothing chance that we will see the law society haul any of these firms into court for unauthorized practice of law.

Social workers—I've seen many of them serve as "advocates" working at agencies—have no idea or concept of law. I've seen them at the tribunal attempting to represent people. They have no idea, yet they're not going to be hauled in for unauthorized practice of law.

Real estate brokers and consultants: Many arrange purchases of property; some even help with mortgages and sell title insurance. It will be a cold day in hell before we see these people put under attack in the same way paralegals are. Other financial consultants—the same.

How about a publishing company, Self-Counsel Press? write it down. They publish many self-help guides for people, ranging from do-it-yourself divorce, incorporating your own business and selling your own home, things that many uneducated laypeople are told they can do for themselves, and will do for themselves, many of them quite competently, thank you very much, and they will not speak to a lawyer about it, while trained paralegals, even if we help to fill out some of the forms that these books provide, are guilty of unauthorized practice of law.

Go ahead. I said it. I referred to a number of companies and professions that are practising law without a licence. Maybe the law society can regulate us all and we can all be one big, happy family. But that's not going to happen—you know it and I know it—because there are acceptable forms of competition in the legal industry and unacceptable forms of competition. Paralegals, unfortunately, are the only form of unacceptable competition.

Why? Some people will not go to lawyers. In the law society's own environmental scan, it paid strategic counsel a handsome sum of money a few years ago to position itself for the Cory hearings.

People go to paralegals for all sorts of reasons: The same service is more expensive for lawyers to provide than for paralegals; the service is considered a minor matter by the consumer, feeling it's too small for a lawyer to deal with; many paralegals are experts in their own areas, i.e., people will come to me for disability, human rights and employment law because they couldn't find a lawyer who could do what I do. I have a very high success rate, even higher than the clinics in many areas of my disability representation.

Many areas of law are also not profitable for lawyers and therefore not provided by lawyers, like WSIB, ODSP representation and CPP representation. They don't do it; it's not good enough for them.

Buried and ignored by the legal profession but inside this same expensive, environmental scan, again paid for by the law society, it was reported that only 16% of the 200 paralegals they interviewed claimed only a high school education or less; 84% had at least college; in fact, 60% had university degrees, with a third having graduate school. At the same time, 58% carried some form of liability insurance. These numbers are much greater today as people graduate college and join the PSO, because we require people to carry liability insurance or else they just don't get in. At the same time, 71% said they felt regulation of paralegals was necessary. However, nearly a quarter interviewed at the time felt that regulation by the law society was a bad idea; even more feel that way today. I know only a small handful of paralegals across the whole province who would even say law society regulation is a good idea, yet the law society, along with their legal organizations that continue to lobby to them, still continue to refer to most paralegals as being "uneducated, uninsured and incompetent."

This province had the opportunity to hear from three very highly respected scholars and jurists on the issue of paralegal regulation. In 1988, the former Liberal government appointed Professor Ron Ianni. In his report, Professor Ianni stated that when the law society was consulted at the time, he relied on the law society's own submission that it would be an inappropriate body for the regulation of paralegals because of the potential for conflict of interest. The task force went on to recommend the law society acting in an advisory capacity only.

In 2000, the Progressive Conservative government appointed the Honourable Peter Cory, a former justice of the Supreme Court of Canada, to review the regulation of paralegals. In response to the Cory consultation, the law society's own paralegal task force stated that if the law society were to regulate paralegals, it should not have any say about areas of practice or any other contentious areas, because that would put it right back into the conflict-of-interest position it rejected back with Ianni.

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In the end, Cory said, "The degree of antipathy displayed by the members of legal organizations toward the work of paralegals is such that the law society should not be in a position to direct the affairs of paralegals." Cory then recommended against any government ministry regulating paralegals because sometimes we have to oppose the government in a legal action.

Professor Emeritus Frederick Zemans, a consultant whom the paralegals hired from Osgoode Hall, not only rejected law society governance but recommended an independent, self-governing legal services corporation, similar to Legal Aid Ontario. While it would require start-up funding by the province, its operations would eventually be funded wholly through the fees of paralegals.

The law society that felt that governance of paralegals was a conflict of interest in 1988 with Ianni and again in 2000 with Cory, if the society were to direct the areas of business for paralegals, suddenly, in 2004, agreed to take on this responsibility. From a political sense, what changed? Paralegals want to know what was offered in exchange for their sudden change of heart. If it was a conflict of interest then, why is it not a conflict of interest now?

There is no evidence that the law society will govern paralegals in the public interest. The law society is comprised of lawyers who represent lawyers in the governance, regulation and support of other lawyers. If the law society took over the regulation of paralegals and contentious issues arose such as the areas of practice, whose interests do you think the law society will protect?

More on this so-called public interest role in the governance of paralegals: Do you remember that back in 2002 there was a discussion paper circulated between the law society and the paralegal association determining practice areas and how we work with lawyers? Certainly not the first bullet hole in any paralegal advancement in this province, but the bencher Gary Lloyd Gottlieb, a sole practitioner in the city of Toronto, wrote in response to this paper in the Law Times. He said, "Instead of authorizing paralegals to engage in certain real estate deals, 'simple' wills, incorporations and divorces, the principled approach would be to deny them such privileges. It would be more cost-effective for the government to do something it hasn't done thus far, namely, vigorously prosecute paralegals for practising in these fields.... Instead of bestowing legitimacy on legal terrorists, the government should say to them, 'If you want to practise law ... go to law school, qualify for law society membership, and submit yourself to the regulatory scheme established for bona fide lawyers.'"

While Mr. Gottlieb's opinion may be passed off as his own, virtually all legal organizations, such as the Ontario Bar Association and the County and District Law Presidents' Association, among others, have been pushing the law society and the Attorney General to vastly restrict the areas of practice paralegals should be allowed to practise in, namely, the least profitable areas.

Dylan McGuinty, the brother of our honourable Premier, also a lawyer, has been urging his Ottawa colleagues to pressure their MPPs and the Attorney General, among others, to include a definition for the practice of law for paralegals in Bill 14 which would severely restrict what paralegals can do, such as only allowing small claims, provincial offences, traffic court and tribunals. Will the Premier listen to his brother or will he listen to common sense? I think you know the answer.

Further, the Ontario Bar Association has responded to the law society's report on sole practice and small firms by saying the following: "Paralegals have long had an unfair advantage over the target group in the areas of family law, real estate, wills and estates, corporate/commercial transactions and criminal law." I'd like to know where. "Criminal law clients usually have simple ... files and not murder trials. HTA work is now the virtual domain of paralegals. Paralegals are encroaching further into the areas of small claims courts"—do you hear that?—"will drafting and family law dispute resolution.... The loss of this work to paralegals represents a significant barrier to entry into smaller firms for prospective employees/associates who will receive their training in these files." The OBA further stated that "the regulation of paralegals would go a long way towards alleviating the competitive pressure for certain types of legal work which help to sustain small firm practices."

This isn't the first time we heard this. The law society itself, as they were supposedly consulting with the legal community, paralegals and others as to the framework for regulation and what it would look like under the law society, wrote, right in their 2004 consultation document, the following: "The task force recommends that paralegals not be authorized to conduct solicitors' work, primarily because there is no evidence that there is a scarcity of solicitors to provide services such as wills and real estate transactions.... Non-lawyers currently providing solicitor-type services are engaging in the unauthorized practice of law in violation of the Law Society Act." Keep in mind that the law society was asked by paralegal associations at the time to put a moratorium on prosecuting paralegals while this consultation was taking place, but it refused; hence, the lack of responses from individual paralegals, who only reported to their own associations that they were fearful in providing direct input on this matter. This manipulated silence of the many of us does not and will not constitute our agreement.

Even today, after the second reading hearings began for this bill back in April, before the act was passed, before the standing committee on legal services was formed and before convocation even met to consider the standing committee on legal services, Gavin MacKenzie, then the newly elected treasurer of the law society, opens his mouth and tells the Toronto Star that paralegals will be limited to working in small claims court and on things like traffic cases and workers' compensation claims, that

they will not be allowed to do things like simple land transfers or divorces—services paralegals openly advertise, but which the law society says they can prosecute for performing. Didn't the law society there sound so inviting of us paralegals, where we all just want to hop in the fray and work with them?

Since the Cory report, I've come to know over a dozen paralegals who have been prosecuted out of business by the law society. None of this had anything to do with protection of the public; the quality of the paralegal's work or their intent had nothing to do with any of these prosecutions. It was because the paralegal in question was advertising for divorces, wills or the like. It would have been different had the complaint come from a client; then I could understand the connection with the public interest. But virtually all of these complaints originated from lawyers.

This bill has absolutely nothing to do with protecting the public, or the Attorney General would have found another way to regulate us or empower us to do it ourselves. It has every intention to protect the legal profession, as too many of them are complaining that paralegals can do much of the same work they do for less.

But doesn't the law society also prosecute lawyers for misconduct, you ask? We read the papers—the Toronto Star, the Toronto Sun, the Globe and Mail. The Toronto Star recently did an exposé on the ineffectiveness of the law society to protect the public from bad lawyers. Apparently, they can't even tell the police that a lawyer is under investigation for robbing, cheating and stealing from people. Something in their own legislation protects this information from getting out. This particular story focused on a lawyer who stole \$3 million from clients, charities and estates, and who did not even get charged. Others who do get charge, even convicted, rarely go to jail.

Recently, another high-profile lawyer pleaded guilty to money laundering, to the tune of \$750,000, through a phony bank account set up by the police. According to the Toronto Sun, he told the undercover investigator that he was virtually untouchable, that he was friends with many judges, prosecutors and chiefs of police. Other lawyers are also being investigated as a result of the same sting.

You say the law society can disbar them? Maybe. But so what? They can always become paralegals. In fact, the one that scammed the \$3 million offers a wills and estates service. Another individual recently got admitted to the bar anyway, even though a complaint had been laid against her that years ago, in a high-profile inquest involving the death of her daughter, she willingly and knowingly destroyed key evidence. She told the admissions committee that she was sorry, and that she realizes now she shouldn't have done that. She is now admitted to practise law. The public is protected. Will this change under Bill 14? Probably not.

Through my 15 years or so of paralegal practice, I've come across a lot of pretty horrific stories involving

lawyers. Unfortunately, there's not a lot paralegals can do for them, at least right now, except write letters of complaint to the law society or, if it's a case within their jurisdiction, take over small claims or workers' compensation cases. In the last six months, I counted at least 23 separate cases of clients coming to me complaining about things that lawyers had done: missing timelines, therefore screwing up their workers' compensation case, where I've had to spend months and months trying to have it re-evaluated under their NEL just so that I'd have some decision that I could appeal. I've had cases where a lawyer signed on a contingency agreement and then insisted on getting his accounts assessed before the case was even over. Now he's after the client's house. I've had cases where a lawyer, who was starting with Small Claims Court for the client, hardly did any work, charged her \$3,000, and won't even give the file back to her so that she can give it to me to continue. She was told by the courts that she'd have to hire a lawyer to go to the Superior Court of Justice and put a motion forward to get her file. This is not access to justice, folks. This is pure bullying and cronyism.

1400

According to the Toronto Star, which apparently got this information from the law society itself, 8,000 complaints are filed every year against various lawyers in the province. Less than 900 are ever referred to investigations and only a handful reach a disciplinary panel. On the topic of paralegal regulation, the Attorney General keeps repeating we've had 20 years to do this and nothing was done. Sure, this is when we were never given the legal tools to do it for ourselves.

The social workers formed their voluntary college prior to regulation and they acted in many ways that the current Paralegal Society of Ontario does. We even go after non-members, take them to court for recourse for paid fees and so forth when there's a legitimate complaint. But the government eventually passed a social work act and allowed the social workers to have their own governing body. Now, the same government is even working on a self-governing college for Chinese medical practitioners. No profession has been forced to be governed by its competitors other than paralegals. Why? On January 22, 2004, the Attorney General approached the law society and said so. If this was such a great idea, why don't we send George Smitherman to the next meeting of the Ontario College of Physicians and Surgeons to ask them if they'll regulate nurses, naturopaths, midwives, chiropractors and many others because they are offering medical services. Put all medical services under one umbrella. Let's see how the nurses, chiropractors and naturopaths etc. feel about that. That's why I oppose Bill 14.

I have many different recommendations and one of the things is—we can probably try to feed some of the recommendations into your questions. I don't know how much time I've got.

**The Chair:** You have one minute.

**Ms. Browne:** Okay. Maybe you can ask some questions. I've got a number of recommendations in here.

**The Chair:** Very quickly, if there are any quick questions or comments.

**Mr. Kormos:** One minute doesn't present a whole lot of time. Look, you've been an effective advocate for a whole lot of people for a long period of time. I have huge respect for that. You articulate the position very, very clearly. The interesting thing is, the government has yet to come up with a significant community of paralegals who do support the legislation. I know your point of view, I understand it.

I'm waiting, Mr. Zimmer. Are there paralegals who support the bill or not? If there are, we'd better hear from them pretty soon, because these people are acquiring some momentum.

**Ms. Browne:** Only a small number of them do. I'd say maybe 5% of our profession.

**The Chair:** Any questions, comments, quickly, from the government side?

**Mr. McMeekin:** Great presentation. Thank you.

**Mrs. Elliott:** Thank you very much. Understandable. That's great.

**Ms. Browne:** Okay. I'm just hoping that you guys would think about this very seriously, because this is something that would seriously impact on my career. Right now I'm living on my husband's ODSP and that is not a very good thing to do. I just want to be working. I'm sure this government wants people to be working too.

**Mr. Kormos:** In view of the fact that it's been over the course of—what?—three years now, it's the best the government can do? Shameful.

**The Chair:** Thank you very much

**Ms. Browne:** Thank you very much. You'll be hearing more from me.

**The Chair:** Mr. Arthur Jefford? No.

#### JOSEPHINE COLE

**The Chair:** We're going to skip to Ms. Josephine Cole. Good afternoon, ma'am. You have half an hour.

**Ms. Josephine Cole:** Thank you. Good afternoon to all members of the justice committee. It's a pleasure to be standing here before you today bringing my many concerns and views with regard to Bill 14, the Access to Justice Act. Please listen as to how I came to oppose the bill and my many reasons why.

My name is Josephine Cole. I am neither a lawyer nor a paralegal. In fact, I am a mother of three who was severely injured in a motor vehicle accident thirteen and a half years ago. At the time of the accident, I was seven months pregnant with what ended up being my third and final child. This very serious accident that I was involved in occurred on March 9, 1993. Although I was injured under Bill 168 at the time, the horrid accident has cost my health and well-being, my family, and now ultimately my home. This was all for being injured in a no-fault accident.

I shall brief you on my horrid experience and I shall explain to you why I'm opposing Bill 14, the Access to Justice Act.

On the afternoon of March 9, suddenly and without warning, we were struck violently by the defendant, who was alone in a car. She proceeded through a stop sign at a very high rate of speed and struck my vehicle at the driver's side door. This impact sent me, my brother and sister, who were the passengers in my vehicle, 29 feet across the road and into the ditch against a snow bank. This serious accident that we were involved in caused each and every one of us serious and permanent physical and psychological impairments, including the defendant, from what I've learned years later.

A gentleman at the scene also witnessed this entire accident and came to our demolished cars. He immediately ran for help after learning that we were all injured and, especially, that I was seven months pregnant.

Nevertheless, to make a very long story short, the defendant was charged and convicted. As I was injured under Bill 168 at the time, I sued the defendants under the tort at the time due to the extent of my injuries. A counterclaim was served upon me in July 1995. The issue that has presented the most problems was that the defendants' policy limits were in the amount of \$500,000.

After 13 years of dealing with four different lawyers I have learned just how unjust the legal system truly is, and how lawyers' misconduct or alleged misconduct is lightly dealt with. Although I would love to, I cannot provide names of any of my lawyers due to the fact that my matters are still before the courts and that complaints have been filed against some of the lawyers with the Law Society of Upper Canada.

What I can tell you today is that the accident injured me severely the first time, and that over the past 13 plus years I have been injured again and again by the legal system that is supposed to keep us safe through the so-called administration of justice we have here in Ontario.

As I have continued to investigate these matters with the help of family, friends and a paralegal, I have been forced to defend myself against these issues since February 2005. I have fallen into a Kafkaesque labyrinth that only lawyers appear to know how to conquer, and because of this, I can only see that the system of justice which is supposed to protect my interests has totally failed to do so.

I have been particularly shocked at the apparent complicity that my own lawyers have had with the lawyers representing my insurance company in their tenacious battle to prevent me from getting what I am entitled to. Words cannot even begin to explain to you all the major physical and mental anguish I have endured in the past several years. To say that we have been through a nightmare is an understatement of it all.

Here is my story in brief: The first legal attorney consumed the first four years post-accident by being most complicit with my insurance company and by consenting to various unnecessary appointments and examinations

without my acknowledgement or my awareness. He further allowed this insurance company to access my medical file without my written consent or my awareness. Further, this lawyer represented all plaintiffs in this matter without acknowledging the possibilities of a conflict. Moreover, this lawyer assured us over and over again that he had issued statements of claim in the amount of \$1 million on each of our behalf. Therefore, I was shocked to learn more than 12 years later when my fourth and final lawyer withdrew that he actually only filed the claim in the amount of \$100,000, to keep us all within the defendant's policy limits of \$500,000.

What he did and what he said was deceitful and dishonest, which is a major reason we ended up having these major complications with our claims over the next 13 years. He also failed to protect me by not issuing a statement of claim against my insurance company for the SEF 44 endorsement underinsurance, given that he knew the defendants' policy was insufficient to meet the needs of all of us plaintiffs.

Despite the fact that virtually all of the medical reports that were conducted on my behalf or on behalf of the defendants, for that matter, cited that I was indeed permanently disabled, my own lawyer failed in providing me with proper representation. The insurer's own lawyer, in fact, stated at a discovery in February 1997 that he was in agreement that I met the threshold and was entitled to further benefits. However, my own lawyer intervened and after numerous discussions concluded that he was only able to propose to me \$1,200 to settle my entire claim.

After four and a half years of continuous battling with this lawyer for my rights, he realized that all had failed. A conference was arranged at his request for all of us plaintiffs to meet with his superior, who was one of the partners of this prestigious law firm in Toronto. During this meeting I felt severely manipulated and threatened. I was told that if I did not accept the settlement that they'd worked for achieving that they would let me go, because I was not accepting their good legal advice. Here I was also told that I could not pass the threshold, because I was neither a paraplegic nor a quadriplegic.

Why was I battling my very own lawyers to obtain access to my own rights? For all of this, his account was over \$28,000.

The second lawyer carried himself as being very reputable. I felt assured by his recommendations that I indeed was in better hands. He also presented himself as being knowledgeable and competent. I must say that he demonstrated the strongest stance of fairness and morality amongst all of the lawyers. He acknowledged the bad faith the prior lawyer had administered to us and was extremely sympathetic to our plight. This legal attorney promised us justice, and that it would be served and our faith would be restored with his trust. In short, he did not materialize what he promised to us. He continued to represent all plaintiffs once again.

**1410**

Despite the many potential areas of conflict of interest, he also failed to serve my insurance company with a statement of claim for the SEF 44 endorsement underinsurance. He failed to govern us in accordance to the law. We were told that the prior lawyer's bill would be assessed at the completion of this litigation. Years later, we learned that he did not agree to assess the account, rather to protect. This lawyer also went before the courts and had these matters transferred to St. Catharines from Toronto, all without my knowledge or consent. He further requested to consolidate these matters. How could the two matters be consolidated when one has myself, with other plaintiffs, against two named defendants while the other is only between my insurance company and me?

Following more years of emotional, consuming litigation, undergoing rigorous courses of rehabilitation and being treated and assessed by numerous physicians and treatment providers, only to conclude that I was indeed permanently and seriously disabled, I was placed on a Canada disability pension in October 2001 for suffering a severe and prolonged disability solely as a result of this accident. I was deemed disabled in April 1997, the date of my application.

While I continue to live with these debilitating injuries, from September 1999 onwards I have learned that there have been as many as nine adjournments and three pre-trials with regard to this matter. These matters continue to be adjourned over and over and over again on consent, but not from me. On a couple of occasions, this lawyer told us that the court was suffering severe backlogs and these adjournments were inevitable.

The second lawyer consumed another five years of our lives, which made the civil litigation more complex and disastrous. It is also important to know, but I am saddened to tell, that the bottom line is that this lawyer continues to suffer from severe addictions. These addictions not only cost him, but also cost us a great number of years. Years later, we have learned that it is he who was asking for these adjournments. It was he who failed in protecting us as his clients. He failed in providing us with our legal rights, and it also showed by entering our 10th year into this litigation. This retainer was also on a contingency fee basis, and ultimately this lawyer's firm served me with a statement of account, which is in excess of \$33,000, for his so-called services.

We retained a third attorney. Immediately, this third lawyer expressed how strongly he felt about these cases. Although there was much work to be done due to the negligence of the prior attorneys, ultimately he promised that he would be the one to take us to trial. He discussed our individual cases and how strong he felt they were. He expressed how each and every one of us should be compensated for our losses. Without hesitation, he stated that we definitely crossed the threshold.

This solicitor clearly explained the conflict of interest that we were in. He continued telling us how the first two lawyers were negligent for not suing our insurance com-

panies for the SEF 44 endorsement underinsurance and that that was the main reason for the delay in these matters. He also continued telling us that if the three of us plaintiffs did not stay together and retain him to defend all of these matters, then he would not be interested in any of the cases.

What baffled me was the fact that he explained this conflict that we had been in for many years and, on the other hand, he wanted all three of these cases all over again. For the sake of my brother and sister, and although I felt extremely weary of the situation, we did retain this attorney. Upon retaining this lawyer, I made it very clear that I did not want any more appointments, medical appointments, discoveries or mediations. At this point, I told him about qualifying for the Canada disability pension, so it was conclusive that I was deemed to be severely disabled.

In January 2003, this lawyer did serve my insurance company with a statement of claim for the SEF 44 endorsement underinsurance. A combined mediation was also conducted in June 2003. A settlement was reached, but within 24 hours after this approval in principle, it was declined by all plaintiffs, as allowed by the law. Although there was a combined mediation conducted on this day, this proceeding was solely between Josephine Cole and my insurance company. Although this third lawyer, his associate, my insurance company and the lawyer for the defendant in the tort claim proceeded in making us believe that this was a combined mediation and conducted it accordingly, I must tell you, to my grand surprise, the court files, court documents and mediator's report that I located within my court files confirm that this proceeding was solely between myself and my insurance company for the SEF 44 endorsement underinsurance. To say the very least, the mediator's report states that a complete settlement was reached at this mediation.

Correspondence in my possession that followed this mediation indicates that the defendant in the tort claim was not prepared to make any settlement offers until closer to trial. If all our cases were being settled on this day and at this mediation, then what trial would there have been? Since the defendant in the tort was going to put money down closer to trial, where did this money come from? No one else in this litigation had claims open with insurance companies or with my insurance, for that matter. Do we not have the right to know who put the money down and how much money was put on each of our interests? Do we not have the legal right to know what we are awarded for our losses as far as a settlement offer?

On many occasions, we requested to know what actual proposals or settlements were made. According to the court documents, this third lawyer definitely settled the action for the SEF endorsement underinsurance, but I did not receive a penny from the settlement.

This mediation was carried out primarily in secret, in another room, outside of our presence. At the very end of this day, this third lawyer narrated that after a very long

day of negotiating, it was his professional opinion that he finalize an appropriate amount of money on all of our behalves. This was supposed to be good, sound legal advice. Suddenly, he told all of us that our cases were not as strong as he'd told us all along. He further requested a \$100,000 retainer fee if we anticipated bringing these matters to court. Although we totally disagreed and told him to take these matters to trial just like he had promised us, he requested a retainer of \$100,000. At this point, this lawyer and my husband continued in a heated exchange. Ultimately, this lawyer told us that if we did not accept the settlement offer, we would have to find ourselves another solicitor because he would be removing himself from the record. The silence that broke the room once he made this announcement was unexplainable. The fear that overtook each and every one of us was overwhelming. I was experiencing once again the mental suffering that I had experienced for years.

We signed those documents. I requested copies of everything we signed, including the minutes of settlement. With substantial hesitation, this lawyer finally agreed to photocopy these documents, only with the assurance that we would not be reconsidering this offer. He persistently arranged with his assistant to have us meet at his office immediately the following day for the finalizing of these documents.

Nevertheless, on the following day, this law firm was notified that we had withdrawn the acceptance of this offer and that mediation had failed. We had not seen in one and a half years the communication that occurred within the following two weeks with this law firm. To make the story short, this lawyer not only suggested that he would reduce his legal bill substantially, from \$135,000 to \$30,000, only if we agreed to this offer, but he also contacted the mediator, who himself phoned us at home to try to convince us to work something out with the solicitor.

When all failed once again with this attorney, he began to threaten me and my husband about our future and our home. He promised me failure. He promised to make it very difficult for me to find another solicitor, all because this legal account was in excess of \$70,000. The promises that this attorney made me did, in fact, come true. These promises show that after three more years into this consuming litigation, he was able to access his account and execute a warrant on my property in excess of \$85,000. This, of course, is very contrary to the law—and after failing to comply with court orders.

The fourth and final solicitor that I consented to retain immediately consented to take my case. She also assured and promised me trial. It was made very clear that I would not be attending any more appointments, discoveries or mediations for this matter. Although she consented to take the case in July 2003, we did not sign retainers until September 2003. She wanted to familiarize herself with my case.

In summary, it took this woman one full year to obtain the files from the previous law firm. That third lawyer had hired himself an attorney and pushed motion after

motion in the courts to force my new solicitor to protect and prioritize his accounts, over and above all other accounts, including the solicitor that I had retained last. On July 6, this file was finally handed over by the courts.

I was also able to see how much control my third solicitor had over this woman. I also noted that she was doing the opposite of what she had promised me.

In July 2004, upon retaining my legal file, I requested to know who put the money from the mediation down in June 2003. After reviewing this file, she told me that this information did not exist in my file and that she had been refused this information on several occasions.

This woman refused to communicate with me following this meeting in July. The days turned to weeks and weeks turned to months. In October, after several telephone calls I had made to this office, this attorney called me back. During this conversation, she stated that there was an order through the courts that I attend another IME—independent medical examination—and another discovery, for that matter. I had attended several independent medicals, I had over 20 medical opinions on file, and I have also had three discoveries in total for this civil litigation. This motion was heard in Toronto in September 2004. The motion proceeded without any acknowledgement or awareness that she consented to this motion. I did not receive the quality of service a lawyer owes a client. She failed to inform me about this motion prior to deciding not to attend, nor did she discuss with me why and how she was going to consent to this particular motion. Does this lawyer not owe me at least the right to inform me and to allow me as her client to give her instructions as to how my case should be handled?

#### 1420

During the time I was supposed to attend these unnecessary appointments, I experienced major setbacks. The medical documentation regarding my disabilities is in abundance. The hospital records confirm the findings. Doctors and specialists made my diagnosis and prescribed me the deadliest of medications to put me out of my misery.

This lawyer eventually deemed me uncooperative and removed herself as solicitor of record. She did not serve me pursuant to the rules of civil procedure. My documents were received through regular mail nine days following the hearing of this motion in Toronto.

Since I've been unrepresented since February 2005, I have learned that this fourth solicitor assisted the defendant's solicitors along with my insurance company to proceed and transfer our cases from Toronto to St. Catharines on a permanent basis for the many reasons known: Firstly, for the purpose of being in the defendant's own territory. Let me tell you that another master also granted this in a Toronto courthouse upon my very last solicitor removing herself as solicitor. Why would any judge or master grant this as an order, as she's removing herself off-record? She contributed greatly to this disaster herself, making all matters more difficult for me, just like she had promised. With great fear, she

proceeded to follow the orders from the third solicitor, and after resigning as my solicitor, she implied that the legal file that had been sent to her by the third solicitor was sent back to him as cited in a court order.

Nevertheless, since the removal of this fourth and last lawyer, I continued defending these matters as self-represented. From my experience, I can tell you that what I have learned in the past 19 months has been disconcerting at best, and I shall explain to you what I have experienced.

We have exhausted several lawyers who have only created this very complex legal disaster we are living in today. These several lawyers not only criticized and emphasized the bad faith of prior solicitors, they continued to contribute further to this disaster, ultimately leaving each and every one of us hopeless with outrageous legal accounts. Substantial damage has been created, and I must tell you that one is worse than the other.

Each of these lawyers has not always complied with court orders. The courts have proceeded to grant these lawyers' assessments of their accounts even though the retainers that we signed state that they were all to be paid only on a contingency-fee basis and a court order that the accounts be assessed after the litigation has been completed or the claim has been settled. Instead, the assessments were permitted to go ahead, and as a result of the one completed by my third legal attorney, the very same one who hired himself a lawyer, he was able to proceed through the courts and obtain a lien on my property in an amount in excess of \$85,000. I am no longer able to sustain my life-sustaining treatments through borrowing on my line of credit, as this lawyer has placed himself on the title of my home. The second assessment is in progress with the courts regarding the second legal attorney.

Despite the fact that these matters have apparently been consolidated and transferred permanently to St. Catharines, they have once again been moved to the Hamilton courthouse. When searching for my various court files, I found them in a completely muddled condition. Regardless of which courthouse I searched, whether it be Toronto, Welland or St. Catharines, many documents are missing from each of the files. I managed to copy one stamped and sealed order from the Welland courthouse to bring it with me to this assessment with regard to the third solicitor in Toronto only to find that the same document went missing the very next day out of Welland. Court officials are telling me that this is not supposed to happen, that these files are not supposed to be tampered with.

I wrote a letter to the Honourable Michael Bryant, making him fully aware of my experiences of 13½ years. In part, I must tell you, as I told the Honourable Michael Bryant—and pardon my expression—we surely do have one pathetic legal system. You should also be fully aware, just like I've already made the Honourable Michael Bryant aware, that this system has contributed greatly in assisting these lawyers by granting them all of their orders—each and every one of them that they've

demanded throughout all of these years, many without reviewing the legal documentation.

Please be aware that it is also with great disappointment that the Honourable Michael Bryant intentionally disregarded the facts and proceeded in letting an assistant deputy attorney general in the court division handle my complaints. Her response was totally insulting, because she advised me of what I told in my letters for her not to make mention of, which was the Law Society of Upper Canada and also the lawyer referral line. This was information that I received on February 11, 2005, during a meeting with our local MP, Rob Nicholson.

I decided to take it one step further and contacted our Premier, the Honourable Dalton McGuinty. At the end of March 2005, a correspondence of seven pages was sent to Honourable McGuinty. I went into further depth with the Premier. I anticipated a strong response, and my letter demonstrated that I was also extremely desperate for his assistance. Honourable McGuinty wrote me back. It was not only with grand disappointment, but I was in total disbelief at his response. It was unimaginable that he also referred me to the lawyer referral line with the Law Society of Upper Canada. Of course he wouldn't want to admit that there are some very serious judicial and legal problems.

I responded to the Honourable Dalton McGuinty's correspondence, and I asked him earnestly and humbly for some desperate decision. As an elected official, he would not be permitted to interfere in legal matters and wishes me success in resolving the situation.

In the second letter that was sent to the Attorney General, I also expressed my great concerns. The assistant deputy attorney general wrote me back with regard to her concerns, and she directed me to the Chief Justice of the Superior Court of Justice for my matters relating to the scheduling and assignment judicial duties and she further advised me of the Canadian Judicial Council, since they have a mandate to investigate complaints about the conduct of federally appointed judges. Nevertheless, this information that was provided from the office of the Attorney General to greatly assist with these matters was indeed appreciated. A correspondence of 39 pages was delivered by means of facsimile and Xpresspost, requesting a signature upon arrival. A copy of this very same letter, dated February 21, 2006, was sent to the Chief Justice of the Superior Court of Justice, the Canadian Judicial Council and the Law Society of Upper Canada, which regulates Ontario lawyers, just like I had been advised by the office of the Attorney General.

On February 28, 2006, a brief letter was received from the executive legal officer defending the Chief Justice, telling me that it was inappropriate to write directly to a judge with matters that are before the court. This legal officer also advised me to hire yet another lawyer to bring the appropriate court procedure and legal remedies, if any may exist in law to assist me, and he returned my letter of 39 pages.

Until this very day, I have not received a response from the Canadian Judicial Council with regard to this

very same 39-page letter that I sent; nor have I received an investigation that I had requested with regard to the government officials that I had based my many complaints upon.

Since I was especially directed to the law society, today it is loathsome to just say that after six days following my initial complaint letter of 39 pages to the law society, it intended on closing this entire investigation. It was no great surprise as to why I had been continuously directed to the law society.

From the first solicitor who began this disastrous path we continued to walk on and until the fourth and very last solicitor that I retained—I just cannot imagine that your officials would be directing me to yet another lawyer to attribute further to this already serious and very complicated matter.

It is also my understanding that to be considered honourable, one must earn his title, indicating eminence or distinction. Could you please explain to me how it is that not one of these three elected officials possessing these honourable positions was able to assist me or direct me to some form of justice other than the law society, if you want to consider this a form of justice?

Today, I can truly state that from my past and present experiences, I am most certainly opposing Bill 14, the Access to Justice Act. I feel the Attorney General should make some serious amendments in not only reviewing but also imminently revising this regulated system already governing lawyers. This regulated system that proposes now to govern paralegals does not deliver any justice with regard to whom they are already set up to govern. No matter how we try to seek justice through the law society, it seems to be more defending of its own. This is not justice, nor does this system offer any more access to justice.

These many lawyers take an oath to uphold the law. Paralegals are not governed; nor do I feel that they should be governed, especially by the law society, which has proven to me not to properly govern its own. Yet, if a criminal act is detected through the work that a paralegal provides, the paralegal gets reprimanded according to the injustice of the offence.

**1430**

There is also a blackened reputation that sequels the “professional misconduct” or “conduct unbecoming” that a minute number of paralegals demonstrate, yet the hundreds of complaints and hundreds of criminal offences that are performed every day by hundreds of lawyers on a yearly basis are kept hidden because of the protection that these lawyers enjoy under the Law Society Act, the very same law society to which these lawyers pay thousands of dollars on a yearly basis.

What is the purpose of regulating paralegals? Could it be perhaps that paralegals are most definitely capable of performing the duties of a lawyer but for a nominal amount of money in comparison to a lawyer? Are these paralegals destroying the image or denting the reputation that these lawyers have since they can perform the duties of a lawyer accordingly, or does the Attorney General

want to regulate paralegals so they may also be governed if the intent is there for professional misconduct? Perhaps it is very shameful for these lawyers, since many paralegals are gaining more respect and trust from the public for the duties that they’re able to administer.

Interestingly, Bill 14, the Access to Justice Act, will not be providing us any justice. In fact, it will be providing us injustice. The Attorney General should be intelligent enough to understand that there are single parents, students, low-income families, etc., who cannot afford to pay for the services that are provided by these lawyers. And although many of these lawyers should be following the tariff that is according to the years of experience they hold, most of them overcharge their clients without them knowing it.

The fees for the services that a paralegal provides are fees that are very compatible with the law clerks’ fees in tariff A of the solicitors’ fees and disbursements allowed under rule 58.05, part I, costs grid, that is demonstrated in the Courts of Justice Act. The fees range from \$80 to \$125 per hour. Let us not fail to consider that although these fees seem within an affordable range, for a single parent or a low-income family these fees are adequate. Let us take into consideration the fees of a lawyer for the services they provide. In accordance with the Courts of Justice Act, an attorney with less than 10 years of experience ranks from \$225 an hour on a partial indemnity scale to \$300 an hour on a substantial indemnity scale. An attorney with 10 to 20 years of experience ranks in at \$300 to \$400 an hour, and over 20 years’ experience it’s \$350 to \$450. These were the exact fees that I incurred from the various lawyers I have retained. Take a very good look at the services they have all provided for me. This must also be the reason that the law society does not assess the legal bills of lawyers. That is left to an assessment officer.

Now, what I would like to know from the Attorney General is, where would there be access to justice under these circumstances if Bill 14 is passed? How can any low-income individual pay for such legal services that are rendered at this cost? I am indeed in opposition to Bill 14.

It’s unfortunate that I must feel the way I do today, but I would like to credit the legal profession for that matter and I would also like to provide additional credit to the various judges and government officials who assisted in this very serious matter.

I would also like to sincerely apologize from the bottom of my heart to the minority of lawyers who truly do not deserve to be labelled as a “bad apples.” The very next time that you’re aware of one of your colleagues or associates working contrary to the law, thank them for tarnishing your reputation. Thank you.

**The Chair:** The time was right on. There’s no time remaining for questions and comments. Thank you very much.

**Ms. Cole:** Thank you very much.

**The Chair:** We will be having a short recess.

**Mr. Kormos:** Chair, if we're having a short recess, why don't we have Ms. Cole come back for five minutes? I'm seeking unanimous consent in that regard?

**The Chair:** Is there unanimous consent?

**Mr. Kormos:** Agreed.

**The Chair:** We don't have unanimous consent. We'll be recessing till 3 o'clock. Thank you very much.

*The committee recessed from 1433 to 1503.*

#### CANADIAN INSTITUTE OF MORTGAGE BROKERS AND LENDERS

**The Chair:** Welcome back. We're down to our 3 o'clock presentation, from the Canadian Institute of Mortgage Brokers and Lenders, and we have this afternoon Mr. Jim Murphy.

Good afternoon, Mr. Murphy. You may begin any time.

**Mr. Jim Murphy:** Thank you, Chairman. Good afternoon. My name is Jim Murphy and I'm senior director of government relations and communications for the Canadian Institute of Mortgage Brokers and Lenders, or CIMBL.

CIMBL has over 9,400 members across Canada, with approximately 60% of that total here in Ontario. CIMBL represents all facets of the mortgage industry including lenders, such as the banks and credit unions; mortgage insurers—Genworth and CMHC; and title insurers as well as mortgage brokers and agents across the province.

Research we've undertaken shows that at the end of 2005 there was over \$660 billion in outstanding mortgage credit in Canada, with roughly half of that amount here in Ontario. This total is expected to grow by a further 10% this year, 2006. Our industry helps Canadians and Ontarians meet their dream of home ownership.

CIMBL also has established an accredited mortgage professional, or AMP, designation as part of our ongoing commitment to increase the level of professionalism in Canada's mortgage industry through the development of educational and mortgage standards. Over 3,000 CIMBL members currently have their AMP designation.

The tremendous growth of our industry is also reflected in the fact that the government has tabled new legislation to govern and regulate our industry, at least the broker and agent side of the industry. Bill 65, the new Mortgage Brokers Act, has received first reading, and second reading commenced on June 14. It is a piece of legislation that was introduced by the Minister of Finance in February and is one that we support and would like to see passed to update the rules and regulations governing our industry. There hasn't been change for some 30 years. We expect the legislation to complete second and third reading during the upcoming legislative session this fall.

The main intent of the legislation is to increase professionalism in our industry by raising the bar on several important standards such as disclosure to borrowers and education standards. Both of these measures, along with others, will directly benefit consumers across the pro-

vince, who are the beneficiaries of the products provided by our members.

CIMBL has concerns with Bill 14, which is before you today. I have included in our package, which I hope you've all received, copies of correspondence we've had with the government on the legislation, both public servants and the Attorney General.

Earlier this year, on January 19, we wrote to the Attorney General expressing our concern with the provision of legal services as defined in the paralegal section of the legislation under subsection 2(10) on subsections 1(5) and (6) of the act. Specifically, our concern rests with the definition of legal services, subsection (6), which states the following:

"Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following: ...

"2. Selects, drafts, completes or revises,

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

I have provided emphasis in italics for that particular part of the legislation.

As we stated in our letter, we believe this definition to be very broad—in fact, we have a legal opinion to that effect—and would capture regulation of mortgage services provided by our members on a daily basis across the province. Lawyers or paralegals would have to complete mortgage documents and applications.

Further, as a separate but related issue, the Law Society of Upper Canada would have the ability to regulate our profession. Our members are already regulated in Ontario—and the new legislation, Bill 65, expands on this—by the Financial Services Commission of Ontario, FSCO. Such a scenario or proposal is unacceptable to CIMBL and we believe, from our discussions with the government, that this was not the intent of the legislation.

CIMBL's concerns were and are shared by other groups, many of which you will hear from during these hearings, some of which you have already heard from. Earlier this year, CIMBL joined a coalition of like-minded associations and professional organizations that include the Ontario Real Estate Association, the Canadian Bankers Association, the Insurance Bureau of Canada, the Canadian Institute of Actuaries, the Federation of Rental Housing Providers of Ontario and others, including the land title insurance industry. A copy of the letter that we sent as a group to the Premier, dated February 13, is also attached in the package that has been distributed. All of these associations, all of these professions, share the same concern: the definition of "real property legal services," certainly for ourselves and for the real estate association, but also the ability of the law society to regulate different professions.

For CIMBL and other organizations, the definition is a real problem. For all of our organizations, most of whom are already regulated by other independent bodies—for example, the real estate association is regulated by RECO, and as I mentioned earlier, we're regulated by

FSCO—the thought of having the law society govern our profession is unacceptable.

There are, essentially, as we've presented to the government and to the Attorney General, three solutions to the concerns that CIMBL and others have raised.

The first is, amend the legislation to change the definition of “real property” so that it is narrower and does not cover mortgage services provided by our members who are already regulated by FSCO.

The second option would be to amend the legislation to include a government regulation-making power that would exempt professions already governed by professional bodies in the province or regulators such as mortgage brokers and agents, who are already governed by FSCO. Just on this point, the current legislation reads that the law society would have that power. That's unacceptable to ourselves and to others. The government should have that regulation-making power. You have it for other bills and legislation, and this is very consistent.

The third option would be to amend the legislation to explicitly exempt certain professions that are already regulated by a professional body or regulated like mortgage brokers and agents. Some of the members of our coalition would like all three options presented. I should note that we have been in discussions with the government, with the Ministry of the Attorney General, with the Attorney General's office, as well as with the Law Society of Upper Canada on these two related issues. I do not believe it was the intent of the legislation to cover professional services already governed by separate legislation and regulators.

**1510**

We look forward to the amendments—hopefully there will be some—that will be tabled to clarify the intent of the legislation and these two aspects.

Thank you, Mr. Chairman, for your time. We'd be pleased to answer any questions that you or the committee might have.

**The Chair:** Thank you very much. The government side.

**Mr. Zimmer:** Thank you very much for your submission and your usual clearness with which you make the arguments. As you've said, you've met with the folks at the Attorney General's office a number of times, both at the political level and at the bureaucratic level. We've had a number of discussions and we are very mindful of the issues you've raised. Thank you for the presentation.

**Mr. Murphy:** I would acknowledge the openness of the ministry, both staff and the political offices, Mr. Zimmer, including your office, to our concerns. We haven't been told exactly what'll happen. Certainly the indication we've been left with is that this is an issue that people understand and want to see a resolution to.

**The Chair:** Mr. McMeekin?

**Mr. McMeekin:** Enough of this nice talk. But I appreciate it too.

You present three solutions to the problem. Let me just preamble by saying that I've been reading a lot lately about mortgage fraud and some of the issues around that.

I know that's a concern to you. I don't necessarily want you to touch on that, but feel free to if you want. But I want to know which of these three solutions to the problem is your preferred option.

**Mr. Murphy:** Probably 1 or 3. The ministry is looking at all three options, is the impression we've been left with. We probably wouldn't want a regulatory-making power; we'd rather just the government made the decision, to say, “These professions are exempted.” Don't leave that in abeyance for another 60, 90 or 120 days. If the intent is to exempt ourselves and the real estate and other professions, then just do it.

On the other issue you've raised, we have been in discussions with the Minister of Government Services, Mr. Phillips, who had a meeting in early August on the issue of real estate fraud. Lenders, title insurers, mortgage insurers and a representative of the law society were all there, including ourselves. We presented a two-page paper that I can forward to you, and should to other MPPs. The government is looking, it seems, at some legislative changes to the land title system in the province that it may be bringing forward. Those are all in discussions currently. We're very supportive of ensuring a system that is fair to everyone—including borrowers, homeowners—that they are treated fairly. We're not opposed at all to looking at the land title system and the insurance fund and a first resort as opposed to a last resort. There are issues around legislative changes and what the implications of the registry system might be in terms of mortgages that are attained by fraudulent means that need to be clarified. We're not opposed to notification issues. There are lots of things, and what I'll do is forward a copy of that two-page document that we presented to the minister.

**Mr. McMeekin:** Thanks very much.

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** Thank you, Mr. Murphy. I would appreciate getting a copy of that as well, if I may.

**Mr. Murphy:** Absolutely.

**Mrs. Elliott:** My comment is really in the same vein, I guess, as Mr. McMeekin's. If the amendments are made to exempt those professions that are governed by your organization, I'm just wondering, do you have internal criteria for the people who are qualified to be dealing with real property in this manner within your organization?

**Mr. Murphy:** Yes. We do that two ways: first of all through FSCO, the Financial Services Commission of Ontario, which regulates our industry. Education requirements have to be met, education standards have to be met. There are a number of rules around that. FSCO has a registry system so that all mortgage brokers and agents in the province will be regulated. Under the new legislation, Bill 65, which has not completed second reading but has begun second reading, that will be expanded, so there'll be a number of new rules, a number of new powers that the superintendent of FSCO will have. And that's our point, similar to others that already have a regulatory body.

Above and beyond that, we have created our own designation, the accredited mortgage professional, AMP, designation for our members, in which there are three things they have to meet: One is two years of experience in the industry; secondly, a proficiency understanding of the industry, so an exam has to be written, including ethics; and three, continuing education. The province has just released this week some new education standards to go with Bill 65. We are supporting mandating continuing education. Currently in Canada, Alberta is the only province that has mandated CE for our industry, and we think that should be expanded. So we're very supportive of measures to increase the bar and enhance consumer protection.

**Mrs. Elliott:** If I could just ask a follow-up question: That applies to independent mortgage brokers as well as employees of mortgage departments in banks and title insurance companies as well?

**Mr. Murphy:** You've gotten into a very interesting area because banks, as you well know, are governed in Canada by the Bank Act, so if you go in to get a mortgage at a branch of any of the major banks, the legislation, Bill 65, would not necessarily cover them. About a third of all the mortgages in Ontario are done through the broker and agent channel. It's an increasing percentage; it's a growing industry. This is a real issue in terms of what are the rules around disclosure that one has to meet, versus what are under the federal regulations; what are the issues around education standards? All of these sort of things are very involved issues.

There is a separate issue which deals with the banks, the federally regulated institutions who have what are called road reps, people who don't work in the branches but sell a mortgage product, who may or may not place that mortgage product with the people who employ them. Again, Alberta, interestingly, will be the first province to require those people to be regulated under their provincial legislation for brokers and agents. Under the new legislation in Ontario, the provincial government is looking at that. Under the regulations, no decisions have been made.

**Mrs. Elliott:** Thank you very much.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you, sir. It's interesting that you've allied yourself with the paralegal community, at least to the extent that it has presented itself to date, because they find it unacceptable that they be regulated and supervised by the Law Society of Upper Canada as well, so it's interesting bed partners that you have.

Why do you expect Bill 65 to complete second and third reading this fall? Are you hoping, or—

**Mr. Murphy:** We're hoping. Second reading has begun, so I wouldn't have put that in there if second reading hadn't begun. Second reading began on June 14. It hasn't been completed yet, but I would expect—I would hope it would be. Yes, I'll use your word. I would hope it would be.

**Mr. Kormos:** I was just trying to be helpful, because hope springs eternal.

**Mr. Murphy:** The Minister of Finance has let us know that it is a priority.

**Mr. Kormos:** He has?

**The Chair:** Thank you.

**Mr. Kormos:** I'm not finished.

**The Chair:** Go ahead.

**Mr. Kormos:** I was just pondering on the fact that the Minister of Finance considers it a priority. Let's see if the Premier's office considers it a priority, which is the real test, because it's competing. You've got Michael Bryant, the Attorney General, standing there at the Premier's door with his list of bills. Here we are, the year before the election, you've got potential leadership candidates who want to get profile, and they're all scrambling, climbing all over each other's backs at the Premier's office door trying to get their bill on the order paper to be called to get passed.

Mr. McMeekin raises an important issue: Do you believe that mortgage lenders should be able to act on a forged, otherwise fraudulent mortgage when they're the first-instance lender?

**Mr. Murphy:** It's a very, very complicated matter. It's a crime that is very developed, just the manner that it's undertaken. I think there are a lot of preconditions that are done and a lot of checking that is done, but when somebody presents documents that could be made out to be real documents, it's very difficult, and it's a very complicated issue in that sense. I don't think anybody in our industry countenances the activity, and those who undertake it should be punished. One of the things we've told the government in the two-page document that I'll share is that the penalties for mortgage fraud or real estate fraud should be increased dramatically, so that those who perpetrate—

**Mr. Kormos:** Read some of the language in the Land Titles Act—what's the maximum penalty, including hard labour, if necessary? Is that the language?

**Mr. Murphy:** We've suggested to the Minister of Government Services that those issues be looked at, along with some of the other issues that we've raised.

**Mr. Kormos:** And I want a copy of that.

**Mr. Murphy:** Absolutely. We'll send it to all MPPs. 1520

**Mr. Kormos:** You make a valid point. If people who participate in these consultations—unless they are committed to an in-camera private one, and I understand that as well—would share their submissions to other caucuses, it really would make it a lot more valuable. We wouldn't waste time saying, "You never consulted the mortgage brokers," because you'd have told us that the mortgage brokers were consulted and we'd know what you had to say.

Thank you for giving that to us. It's incredibly valuable for the other parties to have copies of those submissions, unless of course you've been sworn to some sort of secrecy.

**Mr. Murphy:** No. On the Mortgage Brokers Act, we met with Mr. Prue, who is your finance critic, and he has been very supportive. We've met with Mr. Hudak on a

number of occasions on both issues of real estate provenance.

**Mr. Kormos:** That's Bill 65.

**Mr. Murphy:** Yes. We'll continue to do that and to meet—

**Mr. Kormos:** But I'm talking about the inevitable discussion around the whole issue of the Land Titles Act and reform in that regard.

**Mr. Murphy:** As I said, the meeting was just held in the middle of August or the first week of September.

**Mr. Kormos:** I'm not being critical; I'm just saying it would be so helpful.

**Mr. Murphy:** Absolutely.

**Mr. Kormos:** Thank you.

**The Chair:** Thank you very much.

#### ROGER RICKWOOD

**The Chair:** I believe we have our 1:30 presenter on the line now, Dr. Roger Rickwood.

**Dr. Roger Rickwood:** Yes, I am here.

**The Chair:** Hi, Dr. Rickwood. Welcome to the committee. You may begin your presentation at any time you like.

**Dr. Rickwood:** Thank you. I apologize for the technical problem that occurred at 1:30 but I'm glad that I have an opportunity to go ahead with my presentation now.

Last year I taught a course called Access to Justice. One of our concerns at York University was increasing access to justice. We had a number of students from various backgrounds at the fourth year and graduate level enrolled. Out of our discussions it occurred to me that I should try to convey to this committee that is studying this issue some of the issues and concerns that we had.

Many of the students who were in this class had been trained as paralegals in the community colleges and had not actually practised very much but had come to university. Others were not going the paralegal route but would go to law school. Others were just interested in the public-interest nature of the situation.

My participation is that of a teacher of political science, a teacher of public law. I was teaching as a visiting professor at York University last year. This year I'm an adjunct professor in political science at Carleton University and [inaudible] at the Carleton University department of law as a sessional lecturer. So I've had to look at these issues both from the legal side and the political side. My training is in political science, public administration, business management and law.

The concern, first of all, is about the governance of any structure that's put in place to regulate paralegals. The concern that my students had—and they were very clear about it—was about access to justice, access to legal bodies making legal decisions. They wanted the cost to be kept as low as possible so that all people would have an economical opportunity to get these services. They were concerned also about the quality of the service

being provided by paralegals. They recognized that some were excellent but others were not quite so good.

They were concerned about time limits. One of the concerns that my students raised in their papers was that often paralegals would do the wrong thing or they would take a more cumbersome route to tackle the problem, which delayed the whole process and, because of time limits, sometimes prejudiced the claimant. This, of course, was not done by all of the paralegals but by some.

There was also a concern by some of the minority students that attempts to over-regulate paralegals would have the effect of squeezing out members of minority communities. They saw paralegals as a means of enhancing citizenship, integrating minorities into the community, because often people who are a little bit more educated and have a little bit better knowledge of the English language take a role in assisting some of their more recently-arrived confreres from other countries in dealing with the legal system. The fear was that the system that might be brought in, if the law society had a great deal of control over it, would lead to a lot of over-credentialization, turning people into what we would call mini-lawyers. They thought there should be a need for less-qualified people to continue.

We considered in our discussions the fact that there had to be regulation of abuse, but they didn't want there to be a conflict of interest between the people who were going to be the regulators and the people who were providing somewhat-similar services. There was an overriding concern that there had to be some kind of insurance scheme, some kind of mechanism to compensate people when there was abuse, such as the law society does now and a number of paralegals do provide through private insurance. The exact amount, however, when it's done by self-regulation by paralegals, is not always certain to cover the cost.

Briefly, I'm going to canvass the type of regulatory structures we were concerned with and which ones they felt a preference for. I may be treading into something here where the legislation has gone so far now that it's a done deal, and the outcome is preordained because they're at third reading. Even if this is so, I think some of the competitive regulatory schemes should be at least put on the record, because I would like to see some further review, perhaps in five years—perhaps a sunset clause put into legislation to bring us back in five years to see just what happens, because I'm not sure that we've got all of the facts.

We have to do something. This has gone on now for about 16 years in development, so something has to be done, but we don't want to put it into stone that won't allow some changes in the future.

The first model is where the law society has a priority role in the regulation of paralegals. This is one that some elements of the law society prefer, though I'm not sure all lawyers are committed to it.

Another form of governance or regulation is done by administrative tribunals where paralegals appear in front of them and they set certain standards for who appears,

how they have to file documents, and they exclude people if people go too far. This can be the case, in the past, at the Immigration and Refugee Board, which is under federal jurisdiction, and also the workers' comp. board and Workers' Compensation Appeal Tribunal.

A third model would be an independent commission. This is a kind of model that would share the power regulation between various paralegal stakeholders, lawyers and some people from the public interest. Originally this model was developed by Dr. Ron Ianni at the University of Windsor, and it was picked up but somewhat diluted by Mr. Justice Cory. This model appears to be a bit cumbersome to the policy-makers, and it appears to be being put on the back burner.

The other model, which is the fourth one, is basically self-regulation by the paralegals, where they set up their own bodies to regulate themselves. We've seen a little bit of this with respect to mortgage brokers through their associations and some attempts to get some government legislative assistance to back it up.

#### 1530

The fifth model is simply *laissez-faire*: Do whatever you want; if there are problems, let the market sort it out. This was something that was prevalent in Ontario prior to the 1990s and is clearly what Mr. Justice Cory and Professor Ianni were trying to correct.

The concern that my students had—and I'll just share it with you—was that whatever structure is adopted, there has to be rigorous training of paralegals. It can't be a hit or miss type of process. There has to be some proficiency.

Many paralegals are now going through programs in the community colleges. This is a low-cost approach. It provides high access for minority groups. We have some private educational institutions putting out paralegals. These tend to be higher-cost types of programs. We also have the universities getting into the business as well by putting out certain types of justice certificates. Brock University and York University have been doing this. This is a general type of background for people who will go out and do some paralegal type of work. Then you have people who go to law school, graduate from law school, but don't ever bother to be called to the bar, partly because of the high cost of being called to the bar, and they function as paralegals.

One of the things that we were concerned about in our discussions was that a lot of the paralegals didn't always appear to have good language proficiency and that it was often difficult to understand them when they were in front of you. I must say that I can speak from the fact that I was a member of the immigration and refugee board for seven years and I had to hear agents, paralegals, coming in front of me and handling cases. Often, it was very difficult to understand what they had to say. They could talk to the claimant, but they really had a communication problem. There are also some problems with ensuring that there are enough people competent to speak French and also in the area of providing services to people who are deaf.

One of the areas that I found most refreshing in my work—and I was involved with the Workers' Compensation Appeals Tribunal and in Small Claims Court and in a number of other bodies—was that former civil servants who retired or took early retirement had mature experience and they knew their way around. They do very good work in front of the WCB, in front of the immigration boards. Some of these are former CIC officers, WCB officers, court clerks and police officers. Some of these officers should have some kind of general refresher training before they take part, but I found most of them very satisfactory in the work that they did. They certainly didn't waste a lot of time.

I think that the students who came out of the community colleges and had gone into the universities were seeking more than just narrow technical skills. They thought they were getting the narrow technical skills in the community college programs, but they were looking for a broader liberal education in philosophy, social sciences and law so they could put their training into a better perspective. Some of them were looking for a way just to train themselves as oral advocates, to be able to speak and write in a consistent and clear manner.

I would also say there's a role for the various courts and tribunals to play in training paralegals by allowing them to come and sit at their hearings and having judges or tribunal members speak with these students after. Maybe some clerkships, internships, could even be set up. George Brown College had a WCB officer training program for a while; Brock University had one for a while that was working. When I was at the immigration and refugee board, I often had students from various schools come and sit and watch and then we'd discuss the issues afterwards.

I'm also concerned about the need for research in this area. This is why I think that even if the committee agrees to the current Bill 14 plan, there should be mechanisms whereby ongoing research can be carried on as to what is being done, how well it's being done and what the costs are. Some of this could be done by academics. Of course, maybe I have a conflict of interest in that situation, but academics are at least somewhat independent. There needs to be public opinion polling as to what the public feels it wants, what kind of satisfaction they're getting and some types of in-depth focus groups should be used and also some consultation with ethnic and community groups to see whether their communities are being serviced properly. Finally, there's a role for the political parties. I think this is an issue where the topic could be brought up in policy discussions among the Ontario political parties to see just what kind of views the memberships of those parties have.

I'll wrap it up here. I just wanted to say I'm not really sure, nor are my students, as to what exactly a paralegal is, what exactly constitutes a paralegal professional and how it can be defined. It seems to me that however the definition is defined, there's always going to be some who are going slip outside of that definition and be exempt.

I'm concerned about what Mr. Murphy was saying about some of the problems in mortgage fraud that have gone in the province of Ontario where some people were engaging in the brokerage of a mortgage and not doing it perhaps in the best way and some fraudulent things happening

That is the gist of my presentation. I think the legislation needs to go ahead. I am a little concerned about the strong role the law society will play in this regulation. I think a more shared structure might have been better. There is some concern in the community among paralegals, and they've spoken to me, that they fear the law society really isn't concerned about the quality of the paralegals but more in preventing competition. This appears to be in the family law area and where there are uncontested divorces. Paralegals can now do it for \$300 or \$400, whereas a lawyer, at least according to the Toronto Sun, would charge \$800 to \$1,000. I don't know how true this is, but it's certainly a concern that some of the people in the paralegal community have brought to me. Some of my students tended to be skeptical of lawyers and, I guess, even skeptical of me because of my legal background. They wanted to make sure, whatever regulation was done involving the law society, that it be very clear and transparent, very predictable and that there be a regular review to ensure that everything was being done right.

Thank you for allowing me to give my overview. If there are any questions, I would be willing to try and answer some or at least get back to you if I can't answer them today.

**The Chair:** Thank you, Dr. Rickwood. I believe we have one comment, question.

**Mr. Zimmer:** Roger, it's David Zimmer sitting here at the committee.

**Dr. Rickwood:** Yes, David Zimmer.

1540

**Mr. Zimmer:** I thought this was the same Roger. It's nice to hear your submission and your thoughtful concerns here.

**Dr. Rickwood:** You will remember very well some of the problems that took place at the IRB, with some particularly [*inaudible*] that were often difficult to deal with just on a personality basis, regardless of their technical skill. I don't think that claimants should ever be compromised by that kind of a situation.

**Mr. Zimmer:** Yes I do, and you're quite right. Thanks. It's nice to hear from you.

**Dr. Rickwood:** It's good to see you're doing well there.

**The Chair:** I believe there are no further questions or comments. Thank you, Dr. Rickwood.

**Dr. Rickwood:** Thank you, Mr. Dhillon, and thanks to all members of the committee. I think you're doing a great job at the last part of summer, trying to get this thing through. We look forward to seeing your final report.

**The Chair:** We appreciate that. Thank you.

## HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO

**The Chair:** The next and final presentation for today is from the Human Resources Professionals Association of Ontario. I believe they're all here. You may come up. Good afternoon. We're going to need you to identify yourselves for Hansard. You may start your presentation.

**Mr. Bill Greenhalgh:** My name is Bill Greenhalgh and I'm the chief executive officer of the Human Resources Professionals Association of Ontario, HRP AO. With me on the right is Stephen Rotstein, our director of government and external relations, and to my immediate right is Antoinette Blunt, who is a member of our board of directors and is the chair of our association's government relations committee.

**Mr. Zimmer:** Any relation to the famous spy?

*Interjections.*

**Mr. Greenhalgh:** Sir Anthony Blunt, yes, keeper of the Queen's pictures.

Thank you very much for seeing us this afternoon. As the premier human resources association in Canada, HRP AO is internationally recognized and sought out for its knowledge, innovation and leadership. It was formed by an act of the Ontario Legislature in 1990, and with over 16,000 members in Ontario and other locations internationally, HRP AO is the third-largest human resources association in the world. We are also the proud host of the second-largest annual human resources conference and trade show in North America.

HRP AO is also known for its stewardship of the Certified Human Resources Professional designation, or CHRP for short. A high level of rigour, competence and professionalism is required to achieve the CHRP designation, which is the national standard for professional excellence in HR management. Holders of the designation are those with high levels of expertise and competency in areas such as strategic thinking, business insight and an ability to contribute as a business partner with senior management. Along with the rigour associated with earning this designation, holders of the CHRP designation must be recertified on a regular basis to ensure that they maintain their high skill level and competency.

As is the case with a number of other professional associations, human resource professionals are held accountable to the public. A formal process provides the means whereby professional misconduct, incapacity or incompetence can result in disciplinary action, including suspension, loss of certification, expulsion from the association or other penalty.

The act that established HRP AO provides that our members must adhere to a code of ethics and rules of professional conduct. I am pleased to provide you with a copy of our code of ethics.

As representatives of HRP AO and stewards of the CHRP designation, we appreciate the opportunity to provide our comments on Bill 14. We understand that part of the intent of this bill is to ensure that paralegals

fall within the jurisdiction of the Law Society of Upper Canada, and we have no issue at all with that intent. However, as it is currently worded, the definition of “provision of legal services” in schedule C to Bill 14 is so broad as to encompass many professions beyond paralegals.

Bill 14 states that “a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.” The bill goes on to say that “a person provides legal services if the person does any of the following,” including, but not limited to, representing “a person in a proceeding before an adjudicative body,” or negotiating “the legal interests, rights or responsibilities of a person.”

This wording would result in the possibility of several professional associations falling within the jurisdiction of the Law Society of Upper Canada. Using human resources as an example, there are a large number of tribunals that hear matters that arise out of employment relationships.

For instance, the Ontario Labour Relations Board deals with a number of employment-related statutes, including the Ontario Labour Relations Act and the Employment Standards Act. It is an “adjudicative body” under the definition proposed in the bill. The same holds for the Human Rights Tribunal. In addition, arbitration boards or arbitrators under collective agreements fall within the definition of “adjudicative body.”

None of these adjudicative bodies requires persons to be lawyers in order to represent persons, corporations or trade unions. Indeed, many representatives are members of the Human Resources Professionals Association of Ontario, holding various positions in the field of human resources management or functioning as consultants.

In addition, non-lawyers on both sides of the union-management table provide advice on legal interests, rights and responsibilities. As well, they engage in negotiating those rights in the process of collective bargaining. Under the current wording of Bill 14, these persons would be considered to be providing legal services. While we’re not here to speak on behalf of other professions and professional designations, we are sure that many other professions would be captured within this proposed wording of providing legal services.

We trust that this is an unintended consequence of the bill, as we believe that the intent was to capture the work conducted by paralegals. As such, we request that Bill 14 be amended to exclude those classes of professionals that are not intended to be regulated by the law society, and specifically members of the Human Resources Professionals Association of Ontario.

We understand Bill 14 provides the Law Society of Upper Canada with the power to provide exemptions using its bylaw-making powers. However, we support the position put forward by the Ontario College of Social Workers and the coalition on Bill 14 that recommends exemptions be addressed in the act by the Legislature due

to the fact that the Legislature is a publicly appointed body.

However, if our understanding of the intent of Bill 14 is not accurate, then based on our own code of ethics, our rules of professional conduct, our ability to regulate the conduct of our members, our stewardship of the certification designation and the mandatory recertification of CHRP designation holders, we strongly believe that it is unnecessary for members of the Human Resources Professionals Association of Ontario to fall within the jurisdiction of the Law Society of Upper Canada. We strongly urge you to amend Bill 14 so as to exclude members of our association.

I thank you for your time, and we’d be very pleased to entertain any questions that you might have.

**The Chair:** Thank you very much. We’ll start with the official opposition.

**Mrs. Elliott:** Actually, I don’t have any questions. Thank you very much for a very thorough, great presentation.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Your comments are consistent with submissions of so many others, ranging from mediators to mortgage brokers who were here. I presume, because nobody’s come clean on this yet, that it’s subsection (5) of proposed section 26.1: “A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the bylaws.” I presume that’s what the government, with this legislation, intends to use to exempt, if you will, folks like you. I mean, just for the life of me, it would be silly. The whole goal here is to regulate paralegals, right? We know what paralegals are. Unfortunately, there isn’t a strong, clear definition of “paralegals,” certainly not in the bill.

The problem with that is that inevitably somebody’s going to be left out by virtue of that bylaw, simply because it’s human nature, and as mediators who were here yesterday pointed out, in their area of expertise, it’s constantly growing, evolving, changing. There are new resolution techniques being developed and we don’t even know the titles yet, so how can they be included?

So I say to Mr. Zimmer, the parliamentary assistant—he’s got the ear of the Attorney General on a daily basis, first thing in the morning and the last thing at night—we’re going to have more of these submissions. We’ve got days and days of hearings. We don’t have time, at least not yet, to hear all the people who want to make comments. You’ve got a brain trust that’s incredibly capable, that wants to do this. Why doesn’t the government sit down, put something together to be in the legislation so we can put this particular issue to rest? I think everybody agrees we’ve got to regulate paralegals. People don’t agree as to whether or not it’s the law society that should be doing it. We haven’t heard from any paralegals yet who want the law society to regulate them. I’m waiting. Let’s put this one to rest.

I say to the government, these people want to see it in the bill. They don’t want to wait for a bylaw from the law society; they want to see it in the bill. They want it

articulated clearly. They want to be protected from what will be duplication of regulation.

Thank you very much for your comments. I hope everybody agrees with you.

**The Chair:** Any question or comment from the government side?

**Mr. Zimmer:** Thank you for your presentation. I've been looking over your materials and I am aware of the strengths of your organization. When I was practising law on the labour side, I had dealings with your organization. You do good work.

I understand the submission you've just made. We've heard it from some other persons also. This committee will, as it does with all submissions, give it careful consideration and the legislation will unfold. Thank you.

**The Chair:** Thank you very much. That concludes our hearing for today. I just want to advise the committee that the people who were missed yesterday afternoon have been rescheduled, except for one, for tomorrow. We'll be meeting tomorrow morning at 9 a.m. in room 151.

**Mr. Kormos:** Just one minute, Chair, please. They've been rescheduled, I presume, in the slots that had not yet been filled.

**The Chair:** Yes, Mr. Kormos.

**Mr. Kormos:** No, no. We made a commitment that those slots that had not yet been filled were going to be made available to people on waiting lists. I made it very clear, I hope, here in committee that we would co-operate

and participate in making sure the committee sits to accommodate those people effectively one half day.

I think by virtue of merely slotting them into the vacancies—look, we lost half a day. We dealt with that this morning; it's done and over with now. We're then giving short shrift to the people who had every legitimate right to count on those vacancies—do you understand what I'm saying?—when we're prepared to accommodate the folks who were displaced yesterday by another half day. I'm not worried with them being scheduled in, all right? Fair enough. The clerk was trying to work expediently, because these people were probably a little antsy, a little nervous about whether or not they were going to get heard. But I'm making it very clear, on behalf of this caucus, that we expect this committee to sit one more half day and we can then pick up some of the people who were counting—because folks knew there were empty slots, right? Those folks on the waiting list were counting on those empty slots. We owe it to them.

I'm not being bellicose about this. Far be it for me to adopt that sort of demeanour, but surely we've got to sit another half day. We can deal with this in subcommittee.

**The Chair:** Yes, I think that would be a good idea. Thank you, Mr. Kormos. Thank you, everybody.

This committee is adjourned until 9 a.m. tomorrow in room 151.

*The committee adjourned at 1554.*

*Continued from overleaf*

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