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Mardi 12 septembre 2006

Standing committee on justice policy

Comité permanent de la justice

Access to Justice Act, 2006

Loi de 2006 sur l'accès à la justice

Chair: Vic Dhillon
Clerk: Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 12 September 2006

Mardi 12 septembre 2006

The committee met at 0905 in room 151.

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

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

The Chair (Mr. Vic Dhillon): Good morning, folks. Welcome to the standing committee on justice policy. We are meeting this morning on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

TORONTO LAWYERS ASSOCIATION

The Chair: Our first presentation this morning is from the Toronto Lawyers Association, and we have Mr. Nestor Kostyniuk here. Good morning, sir.

Mr. Nestor Kostyniuk: Good morning.

The Chair: You have 30 minutes, and you may begin your presentation.

Mr. Kostyniuk: Thank you, Mr. Chair and members of the committee. I attend on behalf of the Toronto Lawyers Association to speak in favour of Bill 14, in particular in favour of the governance of paralegals by the Law Society of Upper Canada. I should point out at the beginning that the Toronto Lawyers Association has been in existence since 1885—we currently have just over 4,000 members, all lawyers in the city of Toronto—a very active association dealing with various issues involving the administration of justice. At the courthouse at 361 University we have the library and robing rooms. We give various educational experiences to our members, to student lawyers, to anyone who might choose to attend.

We have been involved with the law society and various lawyers' advocacy groups to determine whether paralegals should be governed, and if so, when and by whom. It has certainly been our conclusion that the law society is well equipped to do that job. If I might mention, our various lawyers' groups, whether it's the Canadian Bar Association, the Ontario Bar Association, the County and District Law Presidents' Association or the Advocates' Society—many of our members are members of those too—represent the interests of lawyers and speak on behalf of lawyers. We try to educate the public on the need for lawyers.

I think what Bill 14 does is something quite different, and that's to look at—in the interests of the public, the protection of the public—whether there is a role for paralegals in Ontario, and if so, how the public should be protected from malfeasance, from errors and from negligence by paralegals. Currently, we have a system where lawyers are well governed. Again, I note that the Law Society of Upper Canada, with that name, is typically associated with lawyers. Indeed, as you may be learning through these proceedings, if you didn't know it already, the law society and lawyers don't quite get along all the time. The law society's mandate is to govern lawyers to protect the public first and foremost.

With this government bringing forward Bill 14, the question now is whether the law society is also in a position to, in addition to those onerous duties of looking after lawyers, govern paralegals. After going through the system for several years now, I have personally formed a belief, and the Toronto Lawyers Association is of the belief, that the law society is best positioned to do that.

As we review Bill 14, what we have been impressed with is that the model calls for governance in regard to very important issues such as insurance. Everyone makes mistakes. Currently, other than those regulated through the Financial Services Commission of Ontario to do accident benefits claims at FSCO—if you have questions on that, I'm a former chair of the bar dispute resolution group committee at FSCO. FSCO had a problem dealing with service providers, dealing with unregulated paralegals who seemed to be looking after those brothers or sisters with rehab companies in providing services and who were not looking after innocent accident victims. They seemed to be clogging up the system.

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What we found up at FSCO is that the mere regulation of paralegals required them to register, to be of good standing, to have errors and omissions insurance. We found at FSCO that the clog in the system where the unregulated paralegal seemed to be abusing, using up more of their fair time with the system, seemed to have been brought to an end by that. Other than in accident benefits, we have a system right now where paralegals are out there in an unregulated system where we do not

have those protections, where, when they make an innocent error—negligence—the public is not protected as a result of that. They should have insurance as called for in Bill 14.

The educational requirement is there. Certainly, we've always had it for lawyers, and that will continue to be the case. But the question is, should there be some minimal standards of education for paralegals? In our submission, there should be. In our submission, the model calls for that and is well designed to do that. I note that the next speaker, Linda Pasternak from Seneca, will be outlining for you the various programs that the community colleges are arranging. I know from my work for the Toronto Lawyers Association with the law society that that has been a key focus for the law society: to make sure that those educational programs are there, that they're affordable, that they're accessible, and that the public is protected by way of the services to be provided by paralegals, that they are being provided by people with appropriate education.

I will go on in my submissions to talk about the appropriate licensing and the discipline mechanisms for paralegals. Lawyers' advocacy groups such as the Toronto Lawyers Association will again tell you that we feel the law society does a good job on behalf of the public in protecting the public from malfeasance by lawyers. Are they in the same position to do that type of job for paralegals? We have come to the conclusion that they are, that the law society will be in a position to have a discipline mechanism for paralegals who are acting inappropriately. That's essential to protect the public.

Another key item must be that it's a self-funding system. Unless you choose to put tax dollars to work to allow paralegals to register, to have E and O insurance, they should be paying the costs of that system. Initially, the set-up costs to get this system going are something that should be paid by the government, but at some stage paralegals must pay their own way. Lawyers pay their own way. It's only fair that taxpayers not be called upon to subsidize paralegals. It's certainly clear that lawyers will not subsidize paralegals.

There is a role for paralegals in this system. There is a role, whether it's in Small Claims Court, whether it's in traffic violations—where they have historically done a good job—where the public needs the assistance of some people with some education, with some experience in those various areas. There is a role for them, but it can't be, and it cannot continue to be, in a totally unfettered, unregulated approach with no protection for the public, where the public goes to someone and hopes for the best. Sometimes word of mouth works, sometimes it doesn't. When it doesn't, that's the problem. You need regulation for them. I've talked about the E and O coverage. There's that important issue where there is malfeasance. Fraud, improper acts that are not negligent, not mere accidents, are something again. It has happened over the years. It happens in every profession. It has happened with lawyers. The law society has a compensation fund. It doesn't go through the errors and omissions insurance because it's not an act of negligence, it's not an accident; it's malfeasance, improper acts.

Who should be paying for that? With the law society, we historically have had a compensation fund paid into by lawyers, so that if one of our members acts improperly—not negligently but improperly—the public is protected. That should certainly be there and it is in this mandate, where the law society will be making sure that there is that system for the innocent victim of malfeasance by a paralegal to receive some compensation.

There clearly has to be an itemized role for the paralegal, and that will be governed over time, one hopes on an ongoing reviewed process through regulation, by the law society to determine what is the practice of law and what activities should be done only by the lawyer with the education, with the experience, with the ongoing continuing legal education to do that job on behalf of the public. But after that there will be that role for the paralegal to do some additional work where the public needs it.

We see, as I say in my paper, the damaging consequences to the public now by that unregulated system. I was recently called as a witness in Brampton, where an unregulated paralegal had issued improperly a statement of claim on behalf of an alleged victim of a motor vehicle accident. We did not believe that the unregulated paralegal had any authority to act, had any ability to act, and indeed nothing occurred with the case. The case was dismissed; costs are payable by the plaintiff. At this point the defendant is not pursuing that plaintiff for those costs but that is hanging over the head of that person.

Unfortunately, with the way the system is set up now, the law society failed in its attempt to have a conviction registered against that paralegal. He was smart enough to have on the back of the statement of claim the name of the plaintiff, care of the name of a business, which was not his own and was not in his name. There was no way beyond a reasonable doubt to secure the conviction that the judge could find against that person, and that was a proper finding. That paralegal will still be doing those improper acts. One hopes, and one hopes that you do it speedily, that Bill 14 is brought forward quickly, that Bill 14 is there to protect the public from those types of improper acts.

We have in my paper a discussion about concerns brought by other lawyer interest groups about the difference between provision of some legal services and what lawyers do, which is practise law. That is something that's ever-evolving, something in my submission that is left for regulation and for the law society to deal with over time. Right now the key items that I ask you to focus on are the need for those paralegals to have some type of limited licence; what they can do and with an outline of what they cannot do; that their work should be restricted in improper areas. They need to be properly educated, they need to be properly licensed and they certainly need to be properly regulated.

Right now I point out again the issue of what happens, and I've seen these cases where an unregulated paralegal takes money from a member of the public. They have no

trust account; they put it into their own account. They use the money, unlike lawyers who must keep a trust account that differentiates. Whether you have five clients or 1,000 clients, everyone's money is his or her own, and you cannot use the other clients' money for the person you're working for at the time. You have a commingled trust account but specific to each individual. Currently paralegals do not have trust accounts; they have no governance over that. They take money and lawsuits then ensue over the whereabouts of that money. It's a danger out there. It's something that's hurting the public and that needs to be restricted. It needs to be covered. It is covered by Bill 14. I therefore again urge you to press it forward as quickly as possible.

As I mention in the paper, the Toronto Lawyers Association believes that the most important question before the Legislature now is whether these service providers need to be regulated, and whether they need to be regulated now. The answer in our submission to both of those questions is yes.

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We believe that the law society is in the best position to protect the public. They are doing that now, regulating lawyers. They should continue to do that by regulating paralegals. We support the law society in its attempts to properly supervise and restrict those service providers who are not lawyers and cannot practise law in the province of Ontario.

We believe that time is of the essence, that they have been acting in an unregulated manner for far too long, that the public has been at risk and continues to be at risk for far too long. It is submitted that Bill 14 properly sets out the framework. Regulations must then follow to enable the law society to do its job.

We agree that any legislation can always be improved, but we ask that you not allow the search for the perfect to become the enemy of the good. Bill 14 is good legislation. It's in the protection of the public interest. We encourage you to press forward with it as quickly as possible. Thank you, Mr. Chairman.

The Chair: Thank you. About five minutes for each side. We'll begin this morning with Mr. Runciman from the official opposition.

Mr. Robert W. Runciman (Leeds–Grenville): Thank you, sir, for being here. I appreciate your contribution.

Could you tell me a little bit about the Toronto Lawyers Association? How many members? What specialities do they represent, or is it across the spectrum? Just a little bit about the association.

Mr. Kostyniuk: It is across the spectrum. It was formerly known as the County of York Law Association. It has been in existence since 1885. We currently have 4,036 lawyers registered with us, crossing the spectrum but, most importantly, focused around 361 University, the main courthouse, in Toronto. A lot of the members are therefore from the litigation bar, both civil and criminal. They use the facilities at 361, the most important facility there being the library. We have a terrific research association with librarians on call. They're in the forefront of a new computer program for lead libraries across the province, for research and for that type of technical assistance.

Mr. Runciman: I just have to say, based on that, that I am a little bit disappointed that your sole focus has been on the paralegal component of the legislation, given the broad range of issues and impacts on the justice system in Ontario. So I'm not sure if you have considered submitting your views perhaps in writing with respect to some of the changes to the Courts of Justice Act, the impact on justices of the peace, the Limitations Act. The kitchen sink has been thrown into this bill, which certainly has a significant impact on your profession. So hopefully your membership might reflect and give us your advice on some of the other very important issues contained in the legislation.

You talked about paying your own way with respect to paralegals and the regulatory structure. What do you contemplate the annual impact being? I know they were talking about numbers, with reduction of the scope of practice. We heard yesterday about 1,100 individuals who might be practising paralegals. What are you suggesting would be the annual impact in terms of their absorbing the full cost of this regulatory mechanism?

Mr. Kostyniuk: I don't have access to the budget or what that would be. I couldn't assist you on that; I'm sorry.

Mr. Runciman: I notice that we had an estimate here of $3 million to $5 million to get it up and running, and looking for a partnership with the province with respect to that. You've indicated that your organization feels that perhaps the government should be picking up the full tab related to that.

I was involved with a number of self-regulatory initiatives when I was consumer minister, and with the real estate industry and TSSA. We certainly had the support of the people impacted in terms of moving towards self-regulation. Here we've had, I gather, only one paralegal who's appeared before us, who was a bencher, who has supported the Law Society of Upper Canada being the regulatory authority. I guess there's some level of discomfort. I think they were all saying, "Yes, we believe it should be a regulated profession," that they share your concerns with respect to a number of areas, but they just think it's inappropriate that the law society should be the regulatory authority. There's this innate conflict. I guess that's a concern of mine, that you have the folks who want to be regulated but you have this head-on conflict with respect to who the authority should be. What's your reaction to that?

Mr. Kostyniuk: Again, we must educate the public that the law society is not there to protect lawyers. The law society is there to protect the public. That is its mandate. It's done a good job doing that with lawyers.

Re your question, should they be doing the job to regulate the paralegals? In our submission they're well positioned to do that because they have the experience in regulating people, providing some legal services. To add

the paralegals to that mix might be cost-effective for the paralegals and for the government. It would not create another bureaucracy, another organization, but rather an offshoot of the current mechanism that's there. You'd have the experience, the expertise of those people. I would fear that paralegals who have attended before you are content with the status quo and would certainly hope that if Bill 14 fails in that regard, it will be years and years before there is a new mechanism in place to regulate them.

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

Mr. Peter Kormos (Niagara Centre): Thank you, sir, for joining us this morning. Lawyers who are regulated by the law society are members of the law society. As members, they vote on a region-by-region basis to elect benchers.

Mr. Kostyniuk: True.

Mr. Kormos: Why shouldn't paralegals who are regulated by the law society be members of the law society?

Mr. Kostyniuk: The question will be whether they have the size of a group. At this point you're only talking about 1,100 people. I would suggest that the more important issue will be protecting the public from them. Whether, with our good educational events that Ms. Pasternak will speak of next, their association grows and becomes large enough to support that in the future might be something, again, that the law society and government look at. To start with, to set up a mechanism for those few who affect the many, who affect the public of Ontario, I would suggest is putting the cart before the horse. We first need to regulate them and see where that goes over time. It's a fair question that needs to be reflected upon over the years, but at this point I might suggest that the more important issue is simply regulating them.

Mr. Kormos: My problem is that lawyers get to elect their regulators, to wit, the benchers. Why shouldn't paralegals get to elect their regulators, to wit, benchers, in the same manner that lawyers can elect benchers? That just seems so fair. Is it not a fair proposal?

Mr. Kostyniuk: It might come with time. Again the question is, can you do it immediately? They don't have an association currently that would accept all of them. You have various associations with a few members each. I saw on your list of people speaking earlier, plus people speaking today, if I recognize the names correctly, disbarred lawyers, individuals who are self-interested rather than looking after their group as a whole. If there are 1,100 of them, we first must question whether they will be among those 1,100, whether the 1,100 will have the ability to self-govern at all. Lawyers have because of the history, because of the expertise that's developed at the law society. At this early stage I would have to suggest that the paralegals would not have that ability.

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Mr. Kormos: I suppose the reason why is because the law society determines who can belong to the law society as a lawyer. You have to meet the prerequisites that are determined by the law society. The legislation as drafted—and the government doesn't seem to have much interest in the legislation anymore. Take a look at the sparse numbers of government members here in the committee.

The government has a process whereby people are licensed, which is tantamount to membership, so lawyers are going to be licensed, right, Mr. Runciman? They get to be members. Paralegals are going to be licensed but they don't get to be members. It seems to me that the licensing is the standard and the prerequisite for membership, and membership does have its benefits, as they say on that television ad. But some people are going to benefit more than others because some people aren't going to be allowed to be members.

Why is that fair? Doesn't it seem to you that that would be an interesting way of encouraging paralegals to join in this proposal, if they were going to have some benefits, to wit, membership and the ability to elect benchers just like lawyers do?

Mr. Kostyniuk: The benefits of their membership will be that they're allowed to continue to do business, that they're allowed to provide some legal services to the public. But will they be allowed to provide the full range? Will they be allowed to practise law? The answer should be no. You mention fairness. The paramount question of fairness must be to the people of Ontario, must be whether they are currently protected against lawyers by the law society. I submit that the answer is clearly yes. The law society does an exceptional job of governing lawyers, not necessarily protecting lawyers or on behalf of lawyers but certainly on behalf of the public.

When paralegals enter into that, it would be my suggestion that you need to have them regulated. You need to have them registered. You have to protect the public.

The Chair: Thank you very much. The government side, Ms. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. There's just something Mr. Kormos said earlier. I'm not a lawyer so I hadn't even given it a thought, but he said that regulated lawyers are members of the law society. Are there lawyers who are not members of the law society?

Mr. Kostyniuk: No. You must be a member of the law society, you must have errors and omissions insurance and you must pay into the compensation fund. It's all there to protect the public.

Mrs. Van Bommel: In your presentation you talk about educating the public about the difference between lawyers and paralegals. Has anything been done in the past to make sure the public does understand? I think there's a real perception out there that a lot of this is based on cost of the service. Has the law society done anything in the past to help the public understand the differences in the services that are provided by each of the professions?

Mr. Kostyniuk: Not to any great extent, I would concede. The public over the years certainly knows what lawyers do. They know to see the lawyer if they've had

an injury or if they need a real estate transaction or if they need a will. They've learned over the years, whether that's by the lawyer or the law firm advertising. You'll see on the back of the Yellow Pages various law firms that advertise what their preferred area of practice is, if they have a certified specialty and if they're therefore educated and able to provide those services to the public—and if the public is protected. That's what we have to look at here.

Paralegals have done it to some limited extent, whether it's their vehicle driving by with a sign on the side saying that they provide services for traffic violations—you do have the self-serving ads. Whether the associations themselves have done it: no, not to any great extent.

Mrs. Van Bommel: Thank you.

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

SENECA COLLEGE
SCHOOL OF LEGAL AND PUBLIC ADMINISTRATION

The Chair: The next presentation is from the Seneca College School of Legal and Public Administration. Good morning, ladies. If I can have you identify yourselves for Hansard, and you may begin.

Ms. Linda Pasternak: Good morning, Mr. Chair and honourable members, my name is Linda Pasternak. I'm the legal programs coordinator at Seneca College, a professor and also a member in good standing of the Law Society of Upper Canada.

Ms. Wanda Forsythe: Good morning. My name is Wanda Forsythe. I am chair of the school of legal and public administration, and I as well am a member in good standing of the law society.

We would just like to address you this morning on the topic of education of paralegals. The Seneca College School of Legal and Public Administration is a leader in the provision of skills-based training for independent paralegals. The former chair of the school, Eva Ligeti, was a member of the advisory committee to the Ianni Task Force on Paralegals, and Linda Pasternak, my colleague, has taken part in the reviews of paralegal regulation and education carried out by the provincial Attorney General in 1998, by the law society in 1999-2000, and by the Honourable Mr. Justice Peter deC. Cory in 2000. She is currently representing Seneca College on the law society's college advisory group.

The school of legal and public administration, which is the largest of its kind in Canada, has a wealth of experience in developing and delivering courses in the legal and regulatory compliance areas. The full-time faculty includes 13 lawyers as well as individuals with a great deal of expertise in the legal field. Other lawyers, experts and specialists are hired as part-time faculty. I would also note that this program has counterparts in the continuing education faculty of the college as well as the full time.

The school was the first in the province to offer a court and tribunal agent diploma program in 1994. It is a four-semester program and is delivered over two years. There is also an accelerated three-semester version designed for individuals who already have a university degree or college diploma; therefore they don't need English and general education subjects and they can take all of the professional subjects within 12 months.

In designing the curriculum, the school's faculty used the core competencies model to identify the basic knowledge and skills required of an independent paralegal and to then establish individual subjects that enable students to acquire these competencies. There are two areas of core competencies which independent paralegals need in order to practise proficiently. They must acquire generic skills as well as specific technical skills in their desired areas of practice. Sound generic skills are a crucial base on which specific technical skills can be built. Generic skills include analytical skills, English-language proficiency in both written and oral communications, legal research abilities, practice management expertise and a thorough grounding in appropriate professional conduct and ethics. Specific technical skills cover the prescribed areas of practice.

It should be noted that Seneca has been scrupulous in providing training in the paralegal area only in those areas where paralegals are permitted to practise.

The program also includes an unpaid field placement component. It is approximately four weeks and that gives our students valuable work experience and potential employer contacts.

The program has been in operation for 11 years and is a benchmark in the province. It can be readily modified to fit into a new regulatory framework for paralegals. We have attached fact sheets that describe the regular and accelerated versions of the program.

We have been, as I say, working with various groups over the years, including the law society at the moment, and we are quite prepared to make whatever adjustments are necessary in order to build a curriculum that would fulfill the requirements of any regulations that are put into practice.

The Chair: Thank you. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, Chair. How much time?

The Chair: About eight minutes each.

0940

Mr. Kormos: Thank you kindly. I can hearken back not that long ago to the point in time when social workers wanted the Legislature to enact legislation that created a college of social workers. I recall community college graduates of the social service programs being angry that they were being excluded from a college of social workers because the BSW/MSW types didn't think there was room for these social service graduates. Eventually, the differences were reconciled and social service graduates were pleased to be a part of that college of social work—enthusiastic about it. And while there were different roles for different people, depending upon their educational

background, they were all members of the same college—members, right? Quite frankly, the colleges advocated for them, and that was the attractive thing about it. Yes, they were part of, they were a member of, that college.

You were here when I was talking to the spokesperson for the Toronto Lawyers Association. For the life of me—and maybe I just don't get it—I don't understand why lawyers, who are regulated, are members of the law society and can vote and elect things like benchers, and paralegals, who, if this bill passes, will be regulated by the law society, can't be members of the law society and be able to vote. Do you understand why?

Ms. Pasternak: Sir, I don't understand why, as the scheme gets started and goes along, there could not be an associate level membership or an affiliation so that they could be voting on the issues that were relevant to them.

Mr. Kormos: I agree with you.

Ms. Pasternak: I certainly see no problem in the eventual bylaws with the law society of doing something like that.

Mr. Kormos: Because another area of great interest in the community college community is dental hygienists. You folks do a lot of educating, very good educating. I know that program well and I know its graduates well. Dental hygienists, Chair, of course in the province of Ontario can't work independently of a dentist, can they?

Ms. Forsythe: That's right.

Mr. Kormos: Do you understand what I'm saying, Chair? A dental hygienist has to work with the dentist. While there have been movements and lobbying to allow them to operate on a stand-alone basis, that hasn't changed, yet dental hygienists have their own regulatory body. Dental hygienists can only work with dentists, but they're not regulated by the dentists' regulatory body; they're regulated by the dental hygienists' regulatory body. Is that irrational?

Ms. Forsythe: I'm not an expert in dentistry, and I don't know—

Mr. Kormos: Of course not. Neither am I.

Ms. Forsythe: —where the numbers are, but I would support what my colleague said. There could be such a thing, I would imagine, as an associate membership. For instance, my colleague and I are members of the law society, but we're not practising, so we don't pay the level of insurance premiums that practising members do. But we have a role; we have a specific type of membership. I would imagine that that could be arranged.

Our focus is on—we're ready to do whatever is asked of us by the regulations. We would just like to point out that the colleges are well prepared to educate paralegals. College education is so much less expensive than university, let alone law school. Colleges are very accessible, and there are many of them throughout the province. I would think it would be a good avenue for the education of paralegals to use the well-established college system.

Mr. Kormos: I agree. And I have a soft spot for colleges. Niagara College was the first school that ever let me graduate in the province of Ontario. It's true. It's a true story. So I've always been grateful to them. It's just that the problem here is that all of us—I think everybody in this Legislature—think that paralegals should be regulated. Paralegals think that paralegals should be regulated. The problem is that we haven't had any paralegals come to this committee, other than Mr. Dray, who's a bencher, and say, "Yes, we think we should be regulated by the law society." And there's a legitimacy problem, therefore.

Ms. Pasternak: I think part of the problem, why you haven't had paralegals who support the bill, is that they're quite happy with the bill, so it's the paralegals who do not support the bill who are coming forward. If they're happy with the bill, they think it's just going to go through, and they see no point in coming to oppose the bill. We have many, many graduates who are practising paralegals, and anecdotally, they have been absolutely supportive of the bill.

Mr. Kormos: Then get them here, honestly. The government and Ms. Weir are anxious and eager to have these people come forward. I'm anxious and eager to have them come forward. Get these people out here, for Pete's sake, because we haven't heard from them yet, and unless there's an acceptance of the role of the law society by these paralegals, it's going to be very, very difficult for people to support the proposition. We've got to hear from them.

Good grief, Mr. Zimmer damned near had kittens last week when he thought he had the silver bullets lined up and they didn't deliver. I thought he was going to pass out. The levels of stress in the Attorney General's office have risen over the course of the last week. Please, get these people here. We've got to do something to accommodate these people, Chair. I don't want these people to be excluded from the hearings. We've got to hear from paralegals who support the proposition. Thank you, folks.

The Chair: Thank you. The government side.

Mrs. Van Bommel: Thank you for your presentation. I'm just looking at your course outline and notice that there are quite a few areas of legal issues in it, including small claims, motor vehicle, refugee law, landlord and tenant, consumer and commercial. Is this a standardized course that any student could find at most community colleges that would offer this type or is yours tailored to what you feel is required to provide a certain diploma?

Ms. Pasternak: At the present time, each college has its own curriculum. Part of the college advisory group that the law society has put together are members of all the major colleges, both public and private. They're certainly looking at making sure that all the curriculum that is being offered by the colleges is fairly similar, that we only teach the things that paralegals are allowed, by law, to practise in.

Mrs. Van Bommel: We had one deputation yesterday where they talked about eventually the possibility of even a four-year program.

Ms. Pasternak: Humber College does have an applied degree program, and that's a specific program for people

who may want to go on to other degrees when they're finished. But we've been around for 11 years. We have found that the two-year program, with the combination of both generic and technical skills, has worked very well. Luckily, to this point, most of our grads who have made decisions to go into independent practice have stayed in the areas that are allowed and have been extremely successful, so we do believe that the community college model is an excellent one to follow. The colleges that don't currently offer it, it certainly is something that they have the expertise in doing.

Ms. Forsythe: I would just like to point out that applied degrees in the college system are still fairly rare. They're mostly in the greater Toronto area: Seneca and Humber. We don't have an applied degree in this area, but we have other applied degrees. But they are very costly for the smaller colleges to develop, and I think if we went with an applied degree model, it would really cut back on the accessibility because there aren't that many applied degrees.

Mrs. Van Bommel: Thank you.

Mr. Runciman: Thank you for being here. I am somewhat curious about your submission, and I appreciate your making the time to be here. In your opening comments and in the written material, you mentioned Eva Ligeti, a former chair of your school, being a member of the Ianni task force. You know, the Ianni task force, as well as Justice Peter Cory, both recommended self-regulation of paralegals. I'm wondering why you felt compelled, obligated, to suggest in the last paragraph of your submission that you support regulation by the Law Society of Upper Canada. Why did you feel obligated to say that, and what's your qualification to say that—I guess your experience—based on the fact that your former chair was part of a task force that recommended something completely different?

Ms. Pasternak: Frankly, I've been involved in this for about 11 years and have had the privilege of meeting many fine paralegals, but unfortunately, at this stage of the game, the paralegal groups have not been able to, for lack of better words, get their act together to come to a consensus of who should be regulators. There has been a lot of infighting etc., particularly concerning the areas of the scope of practice. I am still not sure that at this point there is a leading group of paralegals.

0950

Mr. Dray yesterday mentioned to you about the Professional Paralegal Association of Ontario, which, after the Cory report, seemed to be the umbrella organization that could deal with self-regulation. Unfortunately it imploded, and to date there has not been a paralegal organization that speaks for all the different factions. There are some excellent groups and excellent, excellent people, but as of today, I think that the law society certainly is the best opportunity for regulation and is a professional regulator.

Mr. Runciman: That seems to be an opinion widely held by lawyers, I have to say, certainly—as Mr. Kormos pointed out—not by paralegals who have been appearing before us. You've suggested that they're not coming forward because they support it. We heard the suggestion yesterday by a number of witnesses that they feel intimidated, that they'll be discriminated against if they do appear before us. I know that in once instance, we're looking into that allegation.

I share Mr. Kormos's view. If those people are out there, we would encourage them to come forward and make their views known. I'm not sure why they would feel that they shouldn't come forward. Hopefully, you'll do your part in encouraging them to do so.

The Chair: Thank you for appearing before the committee today.

ONTARIO MEDICAL ASSOCIATION

The Chair: The next presentation is from the Ontario Medical Association. I believe we have Dr. David Bach, who is the president, and Jim Simpson, legal counsel. Good morning. You may begin your presentation.

Dr. David Bach: Good morning, Mr. Chair, members of the committee. I am Dr. David Bach. I'm a radiologist at the London Health Sciences Centre, and I'm the president of the Ontario Medical Association, which, as you know, is distinct from the Canadian Medical Association. I am joined today by Mr. Jim Simpson, general counsel of the Ontario Medical Association.

The OMA is the professional association representing Ontario's 27,000 physicians. For over 125 years, the OMA has advocated for measures to improve the health of Ontarians.

We are here today to speak to you about the provisions of the bill that deal with periodic payments, or what are commonly called "structured settlements" in medical liability cases. We understand that decisions of Ontario courts have, to a significant degree, veered away from the original intention of the existing section 116 of the Courts of Justice Act. Accordingly, we are very pleased that Bill 14 has been introduced to reaffirm the original legislative purpose, namely that periodic payments should be the preferred means of compensating those who are harmed as a result of negligent medical care.

The committee staff has received our written submission, which describes the substantive advantages provided by the proposed legislation. In our brief remarks today, we wish to build on three key themes: (1) Ontario's comprehensive health care system funds medical malpractice protection; (2) structured settlements are better than lump sum payments; and (3) Ontario could provide more health care services if it passes these provisions.

I'll start with (1) and speak about the comprehensive health care system that we have. Our system provides physician services, hospital services, laboratory services, independent health facility services, nursing services and the services of many other health care providers, as well as malpractice protection. A crucial component of the system is the malpractice protection system. This compensates the small percentage of Ontarians who unfor-

tunately suffer harm in the health care system. The Ontario health care system could not operate without this protection.

Ontario funds the physician malpractice protection provided by the CMPA, the Canadian Medical Protective Association. Ontario funds malpractice protection coverage for hospitals through the global budget process that the Ministry of Health and Long-Term Care provides. The significant majority of Ontario hospitals receive their malpractice protection from the Healthcare Insurance Reciprocal of Canada.

The second area I want to talk about is structured settlements, which are better than lump sum payments. Others have spoken to you already to explain how structured settlements work and the advantages of them. In particular, both the CMPA and HIROC have emphasized the following points:

Structured settlements protect patients from two risks; namely, the risk of unanticipated long life expectancies and the risk of poor investment choices. Both of these risks would be borne by the insurance company. This guarantees the patient will have the money necessary in the future to buy the health care services that he or she needs.

The second point is that structured settlements are less expensive than lump sum payments. Structured settlements can provide exactly the same future income stream to injured patients as lump sum payments, at less cost. The cost savings result from the savings in the income tax gross-up and investment management fees. The CMPA has estimated its cost savings would be between $2.7 million and $5.1 million a year. Mr. Michael Boyce of HIROC, in his oral submission last Thursday, estimated the cost savings to it would be at least $1 million a year. Hence, the total savings for malpractice protection would be between $2.7 million and $6.1 million annually.

Our third point is that Ontario could provide more health care services with this money. As you know, the OMA negotiates two framework agreements with the Ontario Ministry of Health and Long-Term Care. The first is a physician services agreement, which we call the framework agreement, and the second is the CMPA malpractice protection agreement.

The physician services agreement provides the funding for all physician services in Ontario. In the negotiation of this agreement, the OMA and the ministry agree on not only the price of physician services, but also the anticipated volume of services. The current agreement covers the four-year period from 2004 to 2008.

The CMPA malpractice protection agreement is also a four-year agreement. In it, the government agrees to the funding it will provide for CMPA fee reimbursement for Ontario physicians.

The Ministry of Health and Long-Term Care emphasizes in both these negotiations that it has only so much money for health care. Every extra dollar it spends on one program is one less dollar it has for another program. Every dollar it saves on malpractice protection is a dollar it can spend on providing health care. If the ministry could save $3.7 million to $6.1 million a year on malpractice protection, it could provide significantly more health care to Ontarians. It could provide more hospital services. It could purchase more CT and MRI scanners. It could hire more nurses. It could pay for more medical services.

The OMA and the Ministry of Health and Long-Term Care have many times discussed ways to increase the efficiency of the Ontario health care system. In 1997, we formed the physician services committee to oversee and coordinate the provision of medical services in Ontario. In 2000, we formed, with the CMPA, the medical malpractice coverage committee to oversee the provision of medical malpractice protection.

This committee recommended in September 2001 that structured settlements be the preferred method for compensating future care costs in medical malpractice damage claims. In February 2003, the ministry agreed in a memorandum of understanding with the OMA to recommend to the Ontario government that it "seriously consider introducing legislation" to implement the recommendations of the MMCC.

Let me close by saying that we have worked hard with the Ministry of Health and Long-Term Care and many others for many years to see the introduction of this structured settlements reform. We believe that this reform is good for Ontario patients, good for the medical protection system and good for the health care system in this province. This is sound social policy that makes financial sense. We applaud the government for including the structured settlements reform in Bill 14. We hope you will recommend its swift passage.

Mr. Chair, thank you again for the opportunity to present the OMA's comments on the provisions in Bill 14 to amend section 116 of the Courts of Justice Act. Mr. Simpson and I would be pleased to answer your questions.

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The Vice-Chair (Mrs. Maria Van Bommel): Thank you, Dr. Bach and Mr. Simpson. We have eight minutes on each side, and we start with the government.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Thanks very much for your presentation. I'm pleased to hear that you think we're on the right track. The bill's going to need some improvements; we know that. We're hearing from a lot of parties. The OMA is a very, very important stakeholder. You've had a lot of experience, and we appreciate your sharing it this morning.

Dr. Bach: Thank you.

The Vice-Chair: Mr. Runciman.

Mr. Runciman: I have no questions either. I do appreciate hearing something other than paralegal testimony. It's refreshing. Your submission is helpful as we go forward. I can only indicate that your request for a swift passage is probably going to fall upon not completely deaf ears, but the fact that the government has chosen to throw a whole range of very controversial

issues into this legislation is going to make it difficult for us to rubber-stamp any initiative contained in this bill. They all have to receive appropriate scrutiny and, in some cases, I think, significant debate. This is just part of that process.

Once again, thank you for being here. I appreciate it very much.

Dr. Bach: Thank you.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, gentlemen, very much. I understand your position, and I understand the interests that drive it. I'm appreciative of the fact that people have focused on schedule A, because I was wary that it was going to be lost in the discussion, most of the focus being on the paralegal regulation.

Mr. Runciman, of course, speaks to the problem when you have an omnibus bill of this sort, where you've got some serious legislation in here that will affect the standards of evidence upon which you can base a conviction at the provincial offences level.

You've got JP reform, which is very important and which is getting short shrift in terms of the discussion here, regrettably, although I know that there are some people with legitimate contributions to make who have asked to be on the waiting list with respect to discussion around JP reform. And, of course, there's the Limitations Act amendment, which is an interesting one as well.

I was disappointed, because the CMPA made a presentation here and referenced Judge Coulter Osborne and his recommendations from back in 1987, his discussion of no-fault insurance. It was the paper that the Peterson government used to justify their imposition of no-fault insurance here in Ontario. We know what kind of disaster that has been.

Unfortunately—but with gratitude to Ms. Drent, because Ms. Drent pulled the section—I suppose lawyers would say it was obiter on the part of Judge Osborne, where he talked about structured settlement. He laid out pros and cons. He was quite fair, quite frankly, in terms of how he spoke of his preference for structured settlements, but it wasn't the ringing endorsement that the CMPA gave. We've all got a copy of that.

My question is this: We had a young man here last week, Mr. Kolody, from Ottawa, who spoke very articulately about the need to have structured benefits indexed, based not on inflation but on the CPI; at least that's the manner in which I understood his submission. It seemed like a subtle point, but when he talked about the impact, it was significant. So I appreciate your enthusiasm for schedule A and the new section 116, but you've got to understand that there are plaintiffs' lawyers who have concerns about it. Now, is it self-interest on the part of those lawyers? Because plaintiffs' lawyers—and I've spoken with one so far—suggest that there would be a preference for discretion. Why shouldn't the section read "may" instead of "shall"?

Dr. Bach: We think that the advantages of this are clear to everybody. In the past, the plaintiffs have not taken advantage of it, and it's not specifically clear to us why. We're concerned that if they're allowed the discretion, they again will not take advantage of this. We think the need is overwhelming for the province and for the patients to do what's right. It's better for the patients, it's better for the health care system, and it saves money.

Mr. Kormos: I have no doubt that it saves money.

Mr. Jim Simpson: If I may help on this point, too, sir, the courts, I understand, have developed a body of jurisdiction interpreting section 116, which is to the effect that the court may not order a structured settlement unless the plaintiff consents. So the point of this is to create the presumption in favour of structured settlements, and the courts have clearly stated that that will not be possible without the legislative direction, for example, contained in this bill.

Mr. Kormos: Perhaps Mr. Fenson could help us in terms of getting us some material as to the impact of the word "may," as compared to "shall."

Look, I have no doubt that this will save money, and nobody is opposed to that fundamental premise. My concern, then, is at whose expense?

The section talks about inflation-proofing to the extent that the market makes it readily possible. That's off the top of my head. Why wouldn't there be a specific instruction, then, to a judge, to a court, that a structured settlement "shall" be indexed in accordance with the use of the CPI as a guide? Why would that be unacceptable? That would seem oh, so fair.

Mr. Jim Simpson: The section you refer to states the annuity must include protection from inflation and, as you say, sir, to the degree reasonably available in the market for such annuities. I understood the reason the last half of the section is there is to not tie the hands of the courts if and when the defendant goes out to buy this annuity in the market. The court can't direct, of course, that an annuity be awarded that is not commercially available in the market. I understood those words were just to give some flexibility.

Mr. Kormos: And that's fair enough. Would you have an objection to the section specifically indicating that a structured settlement "shall" be indexed based on the CPI?

Mr. Jim Simpson: No, and in fact I believe the current provisions of the rules of civil procedure make reference to the consumer price index as a measure under one of its rules for inflation in Ontario. I'm not an expert on annuities, but I would think quantifying in the statute the measure of inflation to be used might be of assistance to the courts.

Mr. Kormos: I appreciate that comment on your part. Thank you, gentlemen.

The Chair: Thank you for your presentation.

I believe the next group is not here yet, so we're going to be having a recess until 10:30.

The committee recessed from 1007 to 1035.

The Chair: Welcome back. I'd just like to point out to members that in front of them is a research paper by Ms. Margaret Drent, as a result of a request by Mr. Kormos. That should be in front of you.

CLAIMS NEGOTIATIONS INC.

The Chair: The next presentation is Mr. Ricardo Francis. He's a chief negotiator with Claims Negotiations Inc. Good morning, sir. You may begin.

Mr. Ricardo Francis: Good morning. I thank you for the opportunity. As you already know, I am Ricardo Francis. I am grateful for the opportunity to make my submission on this particular bill, Bill 14.

Bill 14, the Access to Justice Act, is now commonly referred to and reported as the bill to regulate paralegals. Every news release I've seen and heard indicates that that is the purpose of this bill. I am now wondering what the government's real intention is or if there is an ulterior motive to make justice more inaccessible, inefficient and ineffective while consumers' rights are breached and violated.

In my opinion the bill does not, in any given capacity, clearly state its purpose and objective. It is cumbersome, unreasonable, illogical, not user-friendly or rights-friendly. It appears as though this bill's real purpose is to make the justice system more inaccessible and unaffordable, therefore it should be renamed the inaccessibility to justice act. It is not only trampling on the rights and freedoms of consumers but further monopolizing an already existing membership club to determine how and when justice should be accessed, and by whom. Finally, who gets to represent consumers when they require legal services?

It is currently believed that the fees in the courts alone deter consumers from standing up for their rights by pursuing legal action when warranted. Also, just to photocopy a single page in the court is $1, when it can be done at a private establishment for as little as 10 cents. The cost of justice is already too high, and is getting higher. If this bill were to pass, it would further increase cost to the consumer.

It certainly appears that the championing of this particular bill is to serve the purpose of the law society and individual lawyers, in particular those who believe that agents, paralegals, counsel and other legal consultants are taking away their business. The law society has a monopoly on legal services in this province and they want to further monopolize their presence in the marketplace, where justice will be dispensed based upon a client's ability to pay. In essence, there will be only one shop for your legal services. A member of the law society will provide it.

There appear to be many special-interest groups with respect to this bill, namely the Law Society of Upper Canada, the Paralegal Society of Ontario, the Canadian Society of Immigration Consultants and other organizations with similar scope and agendas. Each and every one proposes their reasons for doing so. However, it clearly appears that their interests and agendas are more important than doing what is right and proper for consumers—the consumers of legal services.

The man on the street is interested in affordable and results-oriented services, not necessarily who delivers it. Consumers want real choices, not choices imposed by governments that create monopolies to render these services. I personally do not like monopolies of any kind and firmly believe in individual choices. The consumer is king and should decide what constitutes proper legal services. Each and every one of us wants the freedom to choose where we get our legal services.

I am also very skeptical of self-regulatory organizations, whether they are given legitimacy grounded in statutes and/or are registered under the Income Tax Act, because quite often they are established to meet the agendas and purposes of those in control.

Sixteen years ago a Task Force on Paralegals, which I'm holding up here, commissioned by Dr. Ron Ianni of the University of Windsor, made some recommendations which eventually led to Bill 42, which was never passed. Some of these recommendations were very meaningful, and politically and legally acceptable. Today we are revisiting this issue with a new bill, Bill 14.

It was reported then by the task force that only 13% of the public had complaints against paralegals and/or those offering legal services, while 87% of the complaints came from lawyers. It is very likely that nothing much has changed with respect to this particular fact and reality. So why are we revisiting this issue? It was the political party of this government's stripe that was in office at the time. The public is inclined to believe that they are the only ones interested in and willing to cave to political pressure from a special-interest group to compromise and infringe on the public's right to legal services free of a monopoly arrangement.

1040

This 1990 Task Force on Paralegals discovered and reported that legal services providers fulfilled a need in the marketplace for the consumer. The consumer, for the most part, was very appreciative and accepting of the legal services provided by non-lawyers, who referred to themselves by whatever name they chose to call themselves, be it an agent, a counsel, since there aren't any specific arrangements in the Law Society Act.

The government and this committee need to properly demonstrate to the public and other legal services providers the real facts behind this current bill and why Bill 42 is different than Bill 14. Or is it an Attorney General who is interested in history, as opposed to doing what is right for the public? This bill needs to be shelved and new considerations and arrangements that are more practical and acceptable need to be given purpose and reason.

For instance, my company provides different services to the public, and I have a network of lawyers that I refer clients to and vice versa. They refer business to me; I refer business to them. So I have that component in my arrangement as a person who provides this type of service. I welcome everyone, and those I cannot assist with finding meaningful and sustainable solutions I refer accordingly to someone who can. I also act in the capacity as a facilitator between a client and their lawyer since some clients are very uncomfortable dealing with lawyers, for there is a great distrust, that lawyers in

general are not to be trusted and all they want is your money. I have clients who are very established in their own right: a decent and stable job, home and family. However, when it comes to questions of politics or law, they are simply very naive and can be taken advantage of quite easily.

I should and must remind the committee at this time that there are significant breaches of law committed by lawyers that are often reported in the media. Just yesterday I was reading that. Lawyers are committing more offences, which is the reason why the public at large does not trust lawyers. It would appear reasonable to believe that they are protected by provisions in the Law Society Act.

Before concluding, I must say that I recognize that Ontario has always been a conservative jurisdiction within the law tradition, so we are dealing with a fairly conservative system here that needs to take a good, hard look at the following: Rule 15, representation by solicitor, where a solicitor is required in the Rules of Civil Procedure, and it states—but before I proceed, I must say to you that I do go to court from time to time to represent lawyers as an agent in the Superior Court of Justice, but because of this particular rule, I am not allowed in the Superior Court of Justice unless the judge so grants me that permission. I will enlighten you about my position on this particular issue.

"15.01(1) A party to a proceeding who is under disability or acts in a representative capacity shall be represented by a solicitor.

"(2) A party to a proceeding that is a corporation shall be represented by a solicitor, except with leave of the court.

"(3) Any other party to a proceeding may act in person or be represented by a solicitor."

While I agree in principle with sub-rules (1) and (2), I find sub-rule (3) discriminatory, and I'm going to tell you why. While it gives the litigant the right to be self-represented and while it gives the right to retain a solicitor, two very basic assumptions are made in this section: It assumes that the litigant has the ability—of course, financial ability—to retain counsel; and in the alternative, it assumes that the litigant has the ability to represent himself or herself.

This section, while it gives the litigant the right to represent himself or herself, also takes away from that person the right to be properly represented in that the person might not have the financial ability to retain a lawyer and might not have the legal ability to represent himself or herself, not being sophisticated in terms of the wherewithal in terms of legalities and the politics and so on that govern the court system, so to speak. This in effect takes away the third way, that the litigant can call upon a substitute representative, namely an agent or a paralegal who may, in a lot more ways, represent the litigant and may have the same function as a lawyer in terms of ability. You're not saying that you're a barrister/solicitor—it's against the law under the Law Society Act—but in the sense that you have that innate quality, you have the knowledge base, that you can act to represent them in that capacity. In a sense, this section denies representation and denies the litigant the ability to litigate, and not the third way. No matter how much merit the litigant has, there is no lawyer and/or the ability to represent himself or herself. In other words, you don't understand the issue, you're not disabled, so therefore you have no one to come and rescue you.

There are many clients that have cases that are more than $10,000 and less than $25,000. However, when the matter goes to Small Claims Court, they can only litigate for the maximum of $10,000 and abandon the excess. Often, as a person who represents people, because most of the work I do is litigation work, I have to abandon the excess because a client refuses to take it to Superior Court, the higher court, where they may end up having to pay a lawyer $5,000 to represent them on a $20,000 file. Of course, judgment money is no money, so there is no guarantee that you're going to get your money. So the only solution is to increase it from $10,000 to $25,000. This is an injustice that is institutionalized and violates the rights of the litigant for the full amount. The litigant should be able to litigate for a maximum of up to $25,000 in Small Claims Court, as is legally allowed in other jurisdictions in Canada—in Alberta, Nova Scotia and British Columbia, to my knowledge; if I am incorrect, you can certainly correct me—based upon the information I've been fed.

In concluding, it is true that standards and regulations are necessary and worthwhile to protect the public at large—consumers, that is—in the retaining of legal services. However, this bill is simply going to further monopolize the existing legal system and compromise and infringe on consumers' rights to free choice. This bill has more to do with the protection of special-interest groups that have consumed the political will. After all, politicians make laws. Lobbying goes on. Whose interest is met?

That being said, I wish to make the following recommendations:

Please shelve this bill, for it further monopolizes the legal services in the hands of a membership club. It does not do justice for the consumer but furthers the interest of those special interests.

Review the Task Force on Paralegals of 1990, which I have in my hand here, commissioned by Dr. Ron Ianni, and examine the recommendations reported before proceeding with a new bill. Perhaps the government should not regulate non-lawyers, as some other jurisdictions in the world. I've been advised that in some states in the United States, as well as in Britain, paralegals or law clerks, what have you, are not regulated.

It is more accepting politically and legally to have a standing legislation dealing with non-lawyers offering legal services administered by the government, namely the Ministry of Government Services, as it is known today—the former Ministry of Consumer Relations, as you know—and not an administrative agency or a self-regulatory organization, which I'm very leery of because they have their own political agendas and interests.

If and when legislation is passed, will those non-lawyers or non-barristers/non-solicitors, as defined in the Law Society Act, be able to access legal aid for their clients? So if you are going to regulate legal services providers, they should be able to go to the public trough and access representation. It is only fair to have access to funds to represent these particular parties.

Review and examine rule 15 of the rules of civil procedure and make it non-discriminatory for litigants and those non-lawyers representing them.

Amend the Courts of Justice Act to increase the legal maximum allowed in Small Claims Court from $10,000 to $25,000.

That is my submission. I'm much obliged. I welcome your questions.

The Chair: Thank you very much for your submission. We'll start—about four minutes each—with the official opposition.

1050

Mr. Runciman: Thanks, Mr. Francis, for taking the time to make a submission. We've been hearing a lot of this in the last of couple of days. There was a witness before you from Seneca College who suggested that a lot of paralegals are very supportive of moving ahead with the Law Society of Upper Canada as the regulator. We haven't heard any testimony except from one individual who is also a bencher. I'm wondering if that's the sense you're getting from your colleagues. Is there widespread support, and those people who support it in your profession are simply not coming forward because they agree with it and don't feel they have any need to come forward? That was the testimony we heard this morning, but that hasn't been our experience over the last number of days.

Mr. Francis: First of all, I personally have no problem with regulations and standards. I firmly believe in regulations and standards provided they are adequately, efficiently, effectively implemented for the purpose of the people they serve, the consumers. I believe that if you put a jackal to look after the blood bank, you're going to have a problem.

You certainly don't want to have two monopolies. You don't want to have a paralegal society and you don't want to have the law society—perhaps that will bring about evenness in terms of the scales of justice. I don't know.

I am for regulations, but regulations that are government-controlled, like I indicated in my submission, under the ministry of consumer services, because I'm very leery of non-profit organizations. I can give you examples of organizations such as OREA, the Ontario Real Estate Association, which is a monopoly. You have people in Ontario teaching English as a second language who issue certificates that aren't entrenched or grounded in law. You cannot get a job with the school board, as an example, unless you have a certificate. So you don't want to end up in a situation whereby you have a certain organization—whether it be a paralegal society—that is implementing and instituting rules, because somewhere along the line I think paralegals will be squeezed out the door if it's the law society that is representing them. Personally, I don't like the word "paralegal." That is why I call myself a chief negotiator, because I think a paralegal is, more or less, a half lawyer.

Mr. Runciman: How did you get qualified to perform?

Mr. Francis: Well, myself. I am actually politically trained. I have been political all my life. I'm from an established political family in the Caribbean. I studied law from England for a year. I am pretty much entrenched in politics and I am also a political candidate in this year's municipal elections. So I'm well informed and well read.

The Chair: I just want to point out that there's about five minutes each, so if you're finished, Mr. Runciman?

Mr. Runciman: Well, I really didn't get a response to my initial query and I'm not sure what kind of contact you have with others in your profession.

Mr. Francis: More or less, there are individuals I deal with in this line of work. Most individuals I deal with don't do exactly what I do, because most of the work I do is litigation. Most of the individuals I deal with are lawyers and they respect my capacity and my capability as a person, because we have discussions and we can relate. But I don't know too many individuals who do exactly what I do. Perhaps some do land conveyance and things like that, but that's as far as it goes. But in terms of litigation, no.

Mr. Kormos: Thank you for the written submission, which meant that I could read it, having had to come in and out of here, with my apologies, during the course of your submission. This is being broadcast on the legislative channel—

Mr. Francis: Yes, I'm aware.

Mr. Kormos: —so tout yourself. You're running in Toronto?

Mr. Francis: No, I'm running in ward 5 in the city of Mississauga.

Mr. Kormos: Ward 5, city of Mississauga, for city council?

Mr. Francis: That's correct, yes.

Mr. Kormos: Do you have a phone number where people can contact you?

Mr. Francis: Oh, yes, and I do have a political website.

Mr. Kormos: Go ahead. What's your website?

Mr. Francis: It's ricardofrancis.com.

Mr. Kormos: And your phone number?

Mr. Francis: It's 905-671-9349.

Mr. Kormos: Thank you, sir.

Mr. Francis: I thank you for that.

Interjection.

Mr. Francis: At this stage of the game I'm politically neutral here because I have the public's interests at heart where this matter is concerned.

Mr. McMeekin: Of course. We feel the same way.

Mr. Francis: Yes. It's not political.

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

Mrs. Van Bommel: Thank you for your presentation. In your document, you say it would appear reasonable to believe that the law society protects lawyers who are not acting in the best interest of their clients, to put it in a kind way, I suppose. This morning we also had a deputation from a lawyer who said to us that the purpose of the law society is to act in terms of taking a disciplinary role with lawyers who have committed offences against their practice and against their clients. Is that your understanding? Do you feel that that's the role of the law society? You seem to be of the impression that the law society's role is to protect lawyers from the consumer.

Mr. Francis: Well, I do have a copy of the Law Society Act right here. I came fully prepared. I believe, based upon the reports that I've read in the newspaper—because I'm a consumer of information. I happen to read a couple of newspapers on a daily basis. In section 49.1, I believe it is, if a lawyer is under investigation, the law society gets involved, and when the law society gets involved—and correct me if you have different information than what I'm relating—the police cannot go and get themselves involved in any form of investigation, whether it be a client, whether it be to do with mortgage fraud, money laundering. Currently, as I've read in the press—and I'm only reading this in the press, just like every person on the street—75 lawyers are under investigation by the law society. Recently a lawyer was sent to jail for money laundering.

Mrs. Van Bommel: So the law society is taking this action against the lawyers?

Mr. Francis: Yes. I understand what you're saying, but I'm inclined to believe that just like in a business organization, there is more that goes on at the bottom than the top knows. In other words, there could be a lot of consumers who are being taken advantage of by lawyers, but whether it be for $500, $1,000—because I have had cases that have been brought to me that a lawyer has dealt with and they did not represent the individuals properly. They have just simply taken the retainer and didn't do anything with the case.

Mrs. Van Bommel: But do paralegals then—is that something that doesn't happen in the profession of—

Mr. Francis: I have heard that as well. Personally, because I'm a person of integrity, I would never do that, because I wouldn't want that to happen to me. If someone hires me to do a job, retains my services or contracts me to do a job, I ensure that it is properly done, because at the end of the day I have to go to sleep. I have a conscience.

Mrs. Van Bommel: So who do you think should have the disciplinary role in terms of paralegals?

Mr. Francis: I think that it should be a department within the ministry of consumer services. I'm very leery of non-profit organizations, especially ones that are registered under section 140 of the Income Tax Act.

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

Mr. Francis: I thank you for accommodating me.

The Chair: We'll be taking a five-minute recess as the next presenter is not here, so we'll convene at 11.

Mr. Francis: May I advertise myself one more time?

The Chair: We're recessing for five minutes. Thank you very much.

The committee recessed from 1058 to 1105.

ROBERT STEWART

The Chair: We're going to skip one presenter because she's not here yet. The next presentation is from Robert Stewart. You have 20 minutes. You may begin.

Mr. Robert Stewart: First of all, I want to thank you for permitting me to make a deputation today. It's important, I think, with respect to three points I'd like to make just in regard to my own position. First, the report that you have is not up to what I would call my standards. Unfortunately I just got out of the hospital. I'm a little slow, to be candid, and my responses may not seem as lucid as they usually are. I know that Mr. Balkissoon has seen me in action before, so he may comment at some point.

It's important from my point of view that you understand that I am probably an odd duck when it comes to making submissions in regard to this bill, in particular the paralegal issue. The reason for that is that I am a graduate of a law school. I practised law for almost 17 years and I now carry on business as a paralegal. In 1989-90, I was permitted to resign from the law society under section 35, which is commonly called the mental health section. In a nutshell, I burnt out.

I am one of the few people in Ontario who has carried on practice both as a lawyer and now as a paralegal. I do so with my experience as a lawyer. As a lawyer I appeared in almost every court in the province, including the court of appeal. Unfortunately, I did not make it to the Supreme Court of Canada other than to watch. My experience is based on my practice as a lawyer and acting as a lawyer. My practice as a paralegal is carried on much the same as I would carry on my practice as a lawyer. Irrespective of the way other paralegals carry on in their business and their practice, I have adhered to and I try to adhere to the rules of conduct as set by the law society and the general rules which lawyers follow in the course of conducting their practice. That has made me in some respects sort of a paralegal to the paralegals or an agent for the agents from time to time, because court agents and paralegals, whatever you wish to call them, come to me with their problems and I help resolve those problems.

Since I have been in the paralegal business, I have acted in Small Claims Court and provincial court, I have acted for adjudicative bodies, I've appeared before one other subcommittee of this Legislature and I've appeared before the city of Toronto and its predecessor, the Metro Toronto council and its subcommittees on a regular basis. I am an advocate for a number of organizations and businesses. In that regard, I have a little different view than most paralegals may have with respect to the issues

of licensing and regulation. These are the paralegal businesses.

First of all, I want to make it clear that I believe that paralegals should be licensed in Ontario. I think it's a necessity, because paralegals in Ontario are a quickly growing industry. It is a business that interacts with the justice system and with the public on a daily basis. In that regard, I do not differ from most of the submissions and deputations you've heard to date. I believe that regulation of paralegals in Ontario is a necessity for one very important purpose, and that is to bring up the standards to ensure that they are properly educated and that when they go to court, make representations or fill out documents, they know what they're doing. In that regard, I think I agree with all the others.

1110

I believe that the regulation of paralegals and the provision of legal services is one which requires a strong hand. It's one which requires that all those who are involved in the legal services industry should be a part of, and they should interact on a regular basis and upgrade themselves from time to time as laws change, processes change, courts change. Where I differ is with respect to who should be regulating the paralegal industry. I have read the draft bill, I have read the sections in Bill 14 in regards to the law society, and although I may be swimming upstream on this, my view is that the law society is not the appropriate party at this time to regulate paralegals. I believe that for a number of reasons.

Keep in mind, I have had experience with the law society, and I don't carry this as a shield. I have had a run-up against the law society and I have been disciplined by the law society. In most of those cases, that discipline was appropriate, that discipline was called for and was as a result of my inability to do what I should have done as a lawyer. I have learned. But I also know the way the law society responds and the way they act and where their interests are.

Irrespective of what you may have heard from the treasurer—and I should indicate that I know Mr. MacKenzie. I've dealt with him in the past as a solicitor and I have the highest respect for him. The fact of the matter is that the law society at this time is not the appropriate party.

Paralegals should be a self-regulated industry—not without input from the law society, not without a firm hand from the law society, but they should not be regulated by the law society. The paralegal industry should be permitted to grow, as other industries have in Ontario. They should be permitted to work in the environment that they wish to work in, as other industries have, and they should be permitted to set up their own regulated body to ensure that paralegal services provided, whether they be deemed to be legal services or otherwise, are properly put out so that the customer or the client is properly protected.

I don't say this with any great relish, but I think we've all seen in the papers from time to time these polls about the most respected professions in Ontario. Without fail, one paper or another in Toronto generally comes up with a list of who the most disrespected are. They list lawyers, politicians and used car dealers all together and say, "Boy, these are terrible guys." I don't believe it, I don't accept it, but that's part of the public perception. What's interesting is that used car dealers are self-regulated. They are self-regulated with the assistance of the province.

In that regard, irrespective of the fact is that the AG has gone to the law society and said, "What do we need? How do we regulate?" it is my respectful view that the law society is not the appropriate party for a number of reasons. First of all, having read the material and having read Mr. MacKenzie's submission and I think Mr. Heins's submission, the law society effectively wants to create, as I see it, a subculture or sublicensee within the law society subject to the same rules and conditions that lawyers are. This would include rules of conduct, education, the requirement of keeping trust accounts, the requirement of keeping proper books and records. It would include all of the responsibilities that lawyers have. In that regard, I think paralegals should live up to that.

The problem is that paralegals will not be permitted the benefits of lawyers—and in some respect they shouldn't be, because they're not lawyers. Paralegals provide a service that permits access to justice. In fact, that was the phraseology used in the act. In my respectful view, that is one of the key issues the law society does approach. They don't approach it properly.

You'll find in my report that I have attacked—and I don't like to use that phrase—the submissions of the law society and Mr. MacKenzie. I did so because having read it once, twice and finally a third time, I realized what in fact the law society intends to do.

First of all, even the simplest approach in changing the name from paralegal to some other name—they haven't decided what it is—is to remove the identity about the subject matter. The next thing is to deconstruct what they do, and that's exactly what has happened. The law society has taken the position that paralegals who provide services across the board should be limited to certain areas or practices, if you want to call it that. Then they criminalize certain sections and work that is to be done by looking at the sections. If you look at the definition sections of what legal services are, there is nothing left to the imagination at all—not a thing. Even the ability to advise somebody—and it doesn't say for a fee, simply to advise.

If, for example, a client came to me and said, "Mr. Stewart, I got involved in a car accident and it looks like I'm going to be off work for two years. What do I do?" under the new legislation, the only advice I can give him is, "I can't advise you." I can't even advise him to go to see a lawyer. As silly as it sounds, I can't, because the definition sections are so broad, so encompassing—and I don't mean to create a fearmongering issue.

If that bill were in place today and I wanted to represent an association, I couldn't come here. I would

not be permitted under the act to come here and make representations, because in the course of doing that it would be clear that I would have had to look at the legislation, advise my clients as to the legal nature of the legislation and then advise my clients as to what they should say or what I could say on their behalf and make representations.

Will the law society exempt me in that circumstance? I don't know the answer to that. In fact, I don't think the law society knows the answer to that. But the law society is well prepared to criminalize any person giving any advice of any kind, any sort, with respect to any legal issues or matters. That is so broad and so encompassing, it is frightening. It is frightening to those of us who carry on business as paralegals.

What's also interesting is that lawyers are not required to be certified in specific sections. Pursuant to the Law Society Act and pursuant to the rules under which lawyers work, lawyers do have the ability to become certified as specialists. My understanding is that in Ontario, of the something like 35,000 lawyers who are currently licensed, 1% or 2% are certified as specialists. I have looked at Mr. MacKenzie's report and I note that he uses an anecdote in his report, and I've mentioned it in my report. He talks about the case of a litigant—I can't remember if it was a male or female—who went to a paralegal. The paralegal was going to settle for, I don't know, $8,000. Luckily, and thank God, according to Mr. MacKenzie, the person went to a lawyer and the lawyer got $47,000.

Mr. Runciman: Forty-eight thousand.

Mr. Robert Stewart: Forty-eight thousand. Thank you.

Those cases actually do happen. Let me tell you, though, in my second year of practice, I took over a file from a lawyer who was going to settle a case where a man had fallen off a scaffolding—the scaffolding actually fell about 14 storeys; he was a window-washer—for $8,000. I got him $88,000. It's not something that is inherent with paralegals; it is something that is inherent in the practice of or the carrying on of legal services. Mistakes are made.

The law society says, "Well, we have a law society, we have a discipline committee, we have insurance and we have a way of dealing with issues where lawyers are negligent or there are complaints about lawyers. I agree. They do. Paralegals should have the same opportunity and they should be judged by their peers, as are lawyers. Lawyers acting on behalf of the law society who are involved in a peer resolution where paralegals are concerned, I respectfully submit, would be extremely hard on paralegals, because they have to be hard on themselves. The standards that they know are those standards they have lived with for anywhere from five years to 40 years, and those are the standards of lawyers. Any lawyer who has ever been sued will tell you that the microscope of a judicial inquiry is far greater than anything they would ever expect to undergo. When the law society looks at a file, they look at absolutely everything—and they should. But they look at it through the eyes of a lawyer in practice and the standards in the community. Paralegals know what the standards in the community are. Yes, they should be raised, but by the same token they should be regulated and they should be able to judge their own peers.

1120

It is my respectful submission, though, that a regulatory body for paralegals should include lawyers or representatives of the law society, as it should include members of the government. That is for the purpose of public protection.

Having criminalized much of the action, though, that paralegals undertake in Ontario, the law society then goes on to reconstruct by way of the certification procedure—I give you my example because it's anecdotal and it's the one I know the best. Since I have started doing work as a paralegal, I have appeared in the—and I'll list them for you; I'm not trying to impress anybody, it's just what I do—Small Claims Court, provincial offences court. I've appeared before the Licence Appeal Tribunal, the LAT; the landlord and tenant tribunal; I have appeared before the workers' compensation tribunal. I've appeared before FSCO; I have appeared before the Criminal Injuries Compensation Board; I have appeared before the provincial court criminal division on matters where I'm permitted. Thankfully and luckily, I have prepared for each of those and I've been successful. If the law society has their way in their regime, I will be required to pick up a licence for every single area of law that I wish to undertake.

On the financial side, paralegals don't get paid what lawyers get paid, and that leads me to the issue that is most important in my mind. I will tell you, and I ask you to accept at face value, that as a paralegal I probably do about one third pro bono work and about 10% never-get-paid work. That's work that I do for clients who cannot afford to pay me, who promise to pay me and I don't get paid. That unfortunately was a problem I had in practice, which led to the difficulties I had, but as a paralegal, the dollars are a lot less. But it's interesting, because my clientele, the people who come to me, are people who range from the disenfranchised, those who have no money and no homes, to those in the lower middle class who cannot afford the services of a lawyer. They are people who say, "I have an issue." They are people who look at figures and look at numbers that can break the bank for them.

I'll give you an example in a general way. Small Claims Court has a monetary jurisdiction of $10,000. That's not a lot of money. When you're a lawyer, suing or defending, the first thing you tell your client is, "Hey, $10,000, you can't litigate this. You can't afford to litigate this. It just isn't in the ballpark." That's one reason why the rules with respect to Superior Court changed to a minimum of $25,000, because that's about where it starts to work.

The amount of work that goes into properly acting for a client, either as plaintiff or defendant in Small Claims Court, the amount of work that is required to do an action

for $10,000, is almost the same as Superior Court. You have to prepare your client, prepare your documents, prepare a draft, prepare your claim or your defence, get the filing done. You have to pay the fees, although there is a minor difference in fees. You have to go to a pretrial. You don't get discoveries, mind you, but you do go to trial; in fact, if you do your work properly, you don't go to trial. You try to keep your client out of the courtroom.

But in the end, the average work done on a properly litigated $10,000 claim is somewhere in the neighbourhood of 50 to 60 hours. Who is going to set the fees for law clerks or paralegals? Will the law society decide that?

The Chair: Mr. Stewart, you have about a minute left, so—

Mr. Robert Stewart: Finish it off.

I simply suggest to you that the cost-effectiveness of paralegals is something that has to be looked at, and in that regard, I would ask you to reconsider. I submit that paralegals ought to be regulated, if not directly by the law society, then the same as the IDA is, for example, with the Ontario Securities Commission.

Thank you for the opportunity to make these submissions. I apologize if I've run on a bit too long.

The Chair: No, not at all. We'll have one quick question from each side. Go ahead.

Mr. Runciman: I think your case was very cogently put, although you were somewhat hesitant initially about your ability to do that. I think it has been very helpful. We've heard a lot of repetitive comments with respect to this initiative over the last little while. You brought some new points for all of us to consider. I'm not trying to go after a previous witness—no vendetta here—but I know that in part of your submission you talk about significant contact with other people in the paralegal profession. It was suggested by the Seneca College deputants here earlier that there are a great many paralegals who are very supportive of this legislation and see it being very helpful to them, but as a result, they're not appearing before us. We're not hearing from them. I just wonder, since you have had extensive contact, are you hearing the same, what the deputants from Seneca were suggesting to this committee is the case?

Mr. Robert Stewart: My discussions and my experience have been that—there are two parts to the answer, if I can do it that way. First of all, the representatives who met with the law society and met with the AG represented three paralegal associations with a total membership of about 250, 300 paralegals. There are well over 5,000 paralegals in Ontario. The paralegals I have met with—and I've met with about 600 paralegals over the last six months. These are generally very easy conversations, light conversations. They have all been: "Well, we thought the paralegal associations were representing us and knew what we wanted." And now they've come to the conclusion that they don't know.

Up until my surgery the first week of August, I was on the phone on a regular basis trying to get people involved. My understanding, as of yesterday, was that at least 10 or 15 had made inquiries to come and give a presentation. I will tell you that the ones I have spoken to all agree with three things: (1) There should be regulation; (2) it either should be self-regulated or in conjunction with the law society; and (3) most importantly, they did not want the law society at this time to be the regulator of paralegals until their working relationship has grown to one where they understand each other.

The Chair: Thank you very much. Any questions?

Mr. Bas Balkissoon (Scarborough–Rouge River): Mr. Stewart, thanks for coming and thanks for your input. I notice you didn't stick to you script. In item number 8, you mention an independent commission and giving them five to 10 years. You also made comment as to who should be the representatives on the commission. I just wonder if you could comment on that commission as to who would appoint these representatives and why it would take five to 10 years to actually get the paralegals to self-regulate themselves. What is the major problem?

Mr. Robert Stewart: The first part is the growth of the paralegal industry in Ontario. I don't disagree that there are people who have just simply hung out their shingle and said, "Hey, I'm a paralegal." I've seen them in court, and it's embarrassing and it's frustrating, not only to myself but to the judges. I do speak with some of the judges in Small Claims Court and provincial court.

My view is this: The regulation of paralegals is something that should grow over a period of time. There should be very strong regulations in force that bring all the paralegals into the regulatory scheme, and over a period of five and maybe even 10 years that scheme should then either create a completely self-regulatory body or a regulatory body much the same, as I indicated earlier, as the IDA and the OSC. For those who aren't aware—I'm sure everybody is, though—the OSC effectively is the cover operation for the IDA, and they are self-regulated. I know there is conflict between the IDA and the OSC—I've read the reports in Hansard in that regard—but the fact is, the IDA does do a very competent job in regulating their own. The law society may eventually, and maybe probably should, end up being the covering operation for the regulation of paralegals, because as paralegals become members and as they join in, as they become regulated, there should be a coalescence, because legal services are being provided. But I don't believe that the law society at this point can actually properly regulate in all three functions—being lawmaker, enforcement, discipline—all the things they would do. It's a period of growth.

I think that as paralegals come to understand what the law society is all about, what they want and what they understand legal services to be, and as the courts and the various adjudicative bodies understand, that will grow, hopefully, into an operation in five to 10 years that coalesces with the law society. Eventually, the law society should probably regulate paralegals.

Mr. Balkissoon: Thanks for coming.

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

Mr. Robert Stewart: Thank you, Mr. Chair.

The Chair: We'll be breaking for lunch, and we'll convene back here at 1 o'clock.

The committee recessed from 1130 to 1306.

The Chair: Good afternoon. Welcome back to the standing committee on justice policy. We're resuming our hearings this afternoon.

UNITED STEELWORKERS OF AMERICA

The Chair: Our first presenters are from the United Steelworkers of America. I believe we have Kevon Stewart and Heather Ann McConnell. Is that correct?

Mr. Kevon Stewart: Correct.

The Chair: You may begin your presentation. You have 30 minutes.

Ms. Heather Ann McConnell: Good afternoon. My name is Heather Ann McConnell, and I appear before you on behalf of the United Steelworkers, District 6. Beside me is Kevon Stewart from the District 6 office.

On behalf of the Steelworkers, let me first start out by thanking you for the opportunity to speak with you this afternoon about paralegal regulation and Bill 14. The union commends you on your effort to regulate fee-for-service paralegals and thanks you again for the opportunity to raise the union's concerns regarding the possible effects of Bill 14 on non-fee-for-service trade union representatives.

First of all, let me provide you with some background information on our union and its structure. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union—the Steelworkers, or USW for short—is an international trade union with approximately 200,000 members in Canada. This includes approximately 80,000 members in the province of Ontario. As the bargaining agent for these members, the USW is a party to approximately 900 collective agreements across Ontario. This means that our union, its 51 staff representatives and its 1,000 elected representatives are responsible for the negotiation and enforcement of hundreds of collective agreements each year.

The USW has members in virtually every sector of Ontario's economy. Over the years, our membership has expanded from mining and steel production to include members who also produce electronics, auto parts, tires, rubber, plastics, potato chips and baked goods. Our members also work in banks, credit unions, legal clinics, nursing homes, hotels, restaurants, cafeterias, warehouses, call centres, security companies, offices, universities and trucking companies.

Our union advocates for these members and must therefore be able to represent them in a variety of legal forums. The USW is committed to ensuring that its members enjoy the best possible terms and conditions of employment. We achieve this goal by negotiating and enforcing strong collective agreements. The majority of our collective bargaining and enforcement is prepared and presented by union staff and elected officials, not by legal counsel. Our union, through its staff and elected representatives, also represents its members in a variety of other legal forums, including statutory tribunals such as the Workplace Safety and Insurance Board.

The union has a large and diverse membership. We have a proud history and tradition of representing our members' rights aggressively in a variety of legal venues. Our union is not unique. Trade union representatives across Ontario make important contributions to the advancements of workers' rights and interests in all sorts of legal venues. By making workers' rights enforceable through staff and elected officials, justice becomes accessible to union members. The prohibitive cost and delay associated with the enforcement of legal rights through counsel and the court system is eliminated. The enforcement of workers' rights is an essential feature of a free and democratic society, which must be facilitated and encouraged, not hindered by unnecessary constraints.

The problem is that Bill 14 is broadly drafted and will thus cover union representation. As Bill 14 is currently written, any person providing legal services will be regulated by the law society. This is achieved through amendments to the Law Society Act. The definition of "legal services" is as follows:

"For the purposes of this act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person."

If a person does any of the following, they are said to be providing legal services: "gives a person advice with respect to the legal interests, rights or responsibilities..."; "selects, drafts, completes or revises ... a document for use in a proceeding before an adjudicative body..."; "represents a person in a proceeding before an adjudicative body"; or "negotiates the legal interests, rights or responsibilities of a person."

The definition of "adjudicative body" in this particular case would also include arbitrators. It would therefore appear that the bill applies to trade union representatives giving advice on or appearing before the Ontario Labour Relations Board, the Workplace Safety and Insurance Board, the Ontario Human Rights Commission and the Workplace Safety and Insurance Appeals Tribunal. It would also apply to union representation appearing before labour arbitrators, as well as negotiations during collective bargaining.

It is clear that the legislative intent of this bill is to improve access to justice and to insert transparency and accountability into the system. In addition, and perhaps more importantly, the objective of the bill is to establish minimum qualifications and minimum standards for the protection of consumers of these services. The Steelworkers recognize the statutory objectives of the bill, including the need to regulate paralegals. However, it is neither necessary nor appropriate for the new law to regulate persons and conduct which is already well-regulated.

The committee and the law society both appear to recognize this. As the bill is currently written, the law

society has discretion to exclude trade union representatives by enacting exclusionary bylaws. In a letter dated March 28, 2006, addressed to the president of the Ontario Federation of Labour, the law society said the following:

"I can assure you that the law society has no intention to regulate the activities that trade union representatives engage in.... However, it is also important that unscrupulous individuals not attempt to characterize their services as exempt as a result of a statutory provision."

The USW is pleased that the law society recognizes that duplication of regulation is not necessary. However, the USW submits that the bill must be amended to make this exclusion explicit. The law should be clear that trade unions, their officials, their representatives, officers or agents, when they are acting in these capacities and on behalf of their union and/or its members, are not covered by Bill 14. This exemption ought to appear in the legislation and not be left to the discretion of the law society.

It is appropriate for the Legislature to make this exemption explicit, given that it is the government that has seen fit to enact detailed and comprehensive labour legislation. Union representatives should continue to be regulated through labour law, and not under a different statute, to ensure that the regulation of union representatives is coherent and consistent. Not only is this more efficient because it eliminates duplication of regulation, but it avoids confusion to members when there is a complaint regarding their representation. Moreover, an explicit exclusion is respectful of the long-standing jurisdiction of the Ontario Labour Relations Board.

The USW supports the objectives behind this bill. However, in the unionized context, these objectives are already protected and achieved. We submit that the labour relations system facilitates access to justice. It is also a system that contains provisions for transparency, accountability and consumer protection.

Allow me to speak now about how trade union representatives and elected officials are regulated in the labour relations context. The Ontario Labour Relations Act contains provisions which protect union members. The act contains a detailed duty of fair representation, which protects union members from any representation by their union that falls below the standards set out by the Ontario Labour Relations Board. Under section 74 of the act, a trade union has a duty not to act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of its members. The duty applies to the union as a whole and therefore covers both union employees and democratically elected officials.

The board has extensive expertise in labour relations and related fields as well as decades of jurisprudence. This ensures that the union's obligations to its members and specifically its duties under section 74 are reviewed and applied in a way that is sensitive to the realities of the labour relations process. The union strenuously objects to the duplication of the board's jurisdiction to deal with these matters.

The regulation of union officials and staff does not stop here. Under the act, unions are also subject to the decertification of their bargaining rights through a democratic process which can be initiated by members who are dissatisfied with the representation provided by their union. Union members are also protected through internal structures and the democratic nature of unions themselves. Unions and their members are governed by constitutions, which in the case of the steelworkers includes an internal process of self-regulation. In addition, the union membership in Ontario elects its leadership under a one member, one vote model, which serves to further reinforce and protect the importance of members' rights. The union staff representatives, who are experienced union advocates, are extensively trained and advised by the union and its professional staff. They are also subject to discipline and discharge, as are any employees of the union.

By way of conclusion, in the labour relations scheme there exists a variety of internal and external mechanisms to regulate union representation. As stated previously, the Ontario government has implemented a labour relations system which both drives and governs this scheme. This system has developed and evolved over a number of years and is monitored by a well respected board of labour relations experts. It is neither necessary nor appropriate to duplicate or eliminate the board's jurisdiction to deal with these matters. As stated previously, implementing this legislation as it stands would, in the labour relations context, contradict the stated purpose of ensuring accountability, facilitating access to justice and protecting the public. In fact, it would lead to disruption, duplication and confusion. For these reasons, United Steelworkers request the addition of an exclusionary amendment to this bill.

The USW thanks you again for the opportunity to address the committee today. We hope that you will seriously consider the impact that this legislation could have on our ability as a union to represent our members and to consider the impact that this bill could have on labour relations as a whole. If you have further questions, Kevon Stewart and I will do our best to address them. With respect, these are the submissions that I have prepared today.

The Chair: Thank you very much. We'll begin with about six minutes with Mr. Kormos.

Mr. Kormos: Thank you very much. Yours has been an excellent contribution to this discussion, with points well made. You should know that OPSEU addressed similar issues yesterday. Last week the United Food and Commercial Workers addressed similar issues with the same concerns.

I share your concern about how this legislation, Bill 14, delegates the exclusion by virtue of the bylaw power of the law society. Down where I come from in Niagara we call that ass-backwards. This bill assumes that everybody is a paralegal. As we speak, and as I've had occasion to mention before, right now there are at least 20 people in 20 different coffee shops across Ontario giving legal advice, marital advice, highway traffic advice and property law advice. It's happening and

they're in violation of Bill 14. We're talking about paralegals. Everybody here wants to see a regulatory regime for paralegals in this province; so do paralegals. Mind you, we haven't had one come to the committee yet to support Bill 14, other than Mr. Dray, who is a bencher with the law society. Go figure.

1320

But I really think the whole bill is losing steam. The parliamentary assistant is Mr. Zimmer. This is the second day in a row he hasn't bothered to show up. He's just, "Adios, so long, been good to know you." You don't even have the parliamentary assistant to the Attorney General showing any interest in the bill, you haven't got any support from the paralegal community, and it seems to me that if you're going to regulate a profession, there has to be some buy-in by the profession, doesn't there? Is that a fair observation?

Ms. McConnell: Probably, yes.

Mr. Kormos: So I don't know. I've never seen anything like this in 18 years now. Mr. Runciman has been here twice as long as that. Really, I've never seen anything like this. This is sputtering, it's grinding to a halt, to the point where the parliamentary assistant is so bored and disinterested in the whole matter that he vamooses, he's long gone, out of town, hit the road. Remarkable. Thank you very much for your contribution.

The Chair: Thank you, Mr. Kormos. The government side, any questions?

Mrs. Van Bommel: I just want to say thank you very much. Certainly the same request has come from other unions and we appreciate your taking the time to present it to the committee.

The Chair: Mr. McMeekin?

Mr. McMeekin: One of the most useful courses I took at university was the speed reading course and I've had a chance to—my apologies. I was actually dealing with a labour issue with another one of your union sisters.

Mr. Kormos: It couldn't have been a grievance. You don't allow your staff to unionize.

Mr. McMeekin: You shouldn't go there, Mr. Kormos, because I know some things about the NDP staff.

I just want to thank you. There's a long and very distinguished history of key labour personnel, union personnel, being involved in what is explicitly a labour-related specialty. I don't think we ever want to run the risk of losing that. There's been an emerging consensus around that which I'm certainly hearing here and I just want you to know that. So we're going to have to look at that. We do understand that the law society has already offered their opinion that certain things will be made exempt, including activities of this nature. So that's good to know.

Finally, just for the record, the parliamentary assistant, Mr. Zimmer—you need to understand that there's often more than one committee that you need to relate to. He's not here because he chooses not to be here but because he has some other responsibilities, which is why—

Mr. Kormos: You be careful, Mr. McMeekin. Where is he? How do you spell "junket"?

Mr. McMeekin: It's not a junket. That's why there are four members of the government side here today, to make sure we hear your views, and we really appreciate your taking the time to do it. Thanks very much.

The Chair: Thank you, Mr. McMeekin. Mr. Runciman?

Mr. Runciman: Thank you for being here. I take a different perspective on the parliamentary assistant's absence. I think it's not so much that they've given up on the legislation but that they have made a decision that they're going ahead regardless of the input and contributions we hear over the period of the hearings of this committee. I think that's the regrettable truth of the matter.

I think you have every right to be concerned. Although you haven't been quite as specific in terms of looking for a change that would eliminate the individuals you're representing from the scope of this legislation, there are an awful lot of other folks who are also captured by this who have similar concerns, and we're going to be hearing from them over the next couple of days. I know, looking at some of the Hansard minutes, issues were raised by the Canadian Institute of Mortgage Brokers and Lenders and the Intellectual Property Institute of Canada. We have the real estate association coming before us, banking organizations coming before us, and one of our witnesses this morning, Mr. Stewart, provided us with refreshers with respect to some of the testimony that we heard earlier from the law society. I gather, specifically, Mr. MacKenzie, who I think is or was the treasurer of the law society, which is dealing specifically with the issue you've raised here. This is specifically dispute resolution practitioners. But the question that was raised by Mr. Kormos was: How are we going to be sure these people are not going to get caught up in this broad definition of legal services? The treasurer's response was, "Well, why shouldn't they be?" It's their challenge to say why they shouldn't be caught up in this net, if you will. That's the perspective they have. I think it's a concern that we're going to hear more of in the next couple of days. It's certainly one—you've heard from the official opposition and the NDP that we're going to be doing what we can during the course of these proceedings to ensure that those kinds of concerns are addressed, certainly hopefully through amendment to the bill, but if that doesn't happen, we'll certainly be carrying the case forward during third reading debate in the Legislature.

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

The Chair: The next presentation is from the Ombudsman for Banking Services and Investments. Good afternoon.

Mr. David Agnew: Good afternoon. Let me introduce myself. I'm David Agnew. I'm the Ombudsman for Banking Services and Investments. With me is my col-

league Doug Melville, who is the senior deputy Ombudsman. Doug oversees our banking services investigations at the office.

I should start, obviously, by thanking you for this opportunity to appear before you and to contribute to your deliberations on Bill 14. I think it's probably necessary to first introduce our organization to you. The Ombudsman for Banking Services and Investments, OBSI, is an independent national dispute resolution service for customers of more than 600 financial institutions across Canada. Our mandate is to impartially investigate unresolved complaints against one of our member firms. We are a free service for consumers. Our focus is on getting people's money back if there has been an event of maladministration, of incorrect advice, misleading information in their dealings with one of our member firms. If we uphold a complaint on behalf of a banking or an investment client, we issue a recommendation that the firm pay the client an appropriate amount of compensation for their direct financial loss. Just to be very clear about this, we are not a court, we are not a regulator, we don't have the authority to impose regulatory sanctions or fines. We are a classic kind of Ombudsman model.

We were established 10 years ago as the Canadian Banking Ombudsman, or CBO, and our first mandate was, in fact, to provide services to small business; it very quickly expanded to all retail customers of the major chartered banks across Canada. It was in 2002, or about four years ago, that our mandate greatly expanded to cover the investment industry. That's when all the members of the IDA, the Investment Dealers Association, Mutual Fund Dealers Association, the Investment Funds Institute of Canada, or IFIC, came into membership. Today our 600 members are all of those investment firms plus the major chartered banks, the foreign and domestic; some credit unions across Canada; the low-interest industry regulated at the federal level and a few others.

So we're an alternative to the legal system or the arbitration system and, as such, our services are informal. We are confidential and of course, as I say, we are free to the client. We are funded by a levy on our member firms. It's distributed depending on the industry, either on an asset or assets-under-administration basis across the board. Our system in Canada is built on the principle that the prime responsibility to resolve a complaint starts with the firm. It's when it's unresolved with the firm that it can be escalated to us. Every customer of those financial institutions has a right to escalate the complaint to us.

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We will review the file and, if necessary, undertake a full investigation, and then we can do one of essentially three things: We can uphold the firm's position in the dispute; we can make a recommendation for compensation; or, in some cases, we will facilitate a settlement between the two parties. Whatever our finding—and this really goes to the core of our Ombudsman model—it's a position that neither client nor firm is bound to accept, although I am pleased to say that we have a very high acceptance rate by both firms and clients.

Of course, under our rules, it's a name-and-shame power. So if a firm refuses one of our recommendations, we then have the authority under our rules to publicize that fact. Our clients retain their legal rights and, if they're dissatisfied with the outcome of our investigation, our recommendation, they can then pursue other avenues; of course if they choose legal avenues, subject to limitations periods. It's that very subject that brings me here today. You will know that the reduction in the limitations period that took place a little bit over a year ago was met with some controversy, I think it's fair to say, once it was discovered to have happened, in many quarters, in particular the investor advocate community.

We know very well, because we are a national service, that Ontario is not alone in reducing its limitations period, but of course the result, particularly if you look at it from a national point of view, is a real patchwork across the country—going from six-year limitations in BC to three years in Quebec; it's two here in Ontario, Alberta, Saskatchewan, Newfoundland and Labrador. There are different rules in each province. While those rules, in a sense, whatever the limitation period is, don't affect our ability to take on a case, if the limitations period has expired, it does remove one of the disciplines in the Ombudsman system, which is, as a voluntary system for the client, they then can move on to a legal solution if they're not satisfied with our response.

We believe that over the years that we have been in operation, because of our availability to dissatisfied consumers, we have operated as that alternative to the legal system and thus—and I think this is consistent with several governments' perspectives on trying to move things more quickly through the legal system and to reduce the overall cost—we've saved the legal system—we save individuals and firms substantial individual and systemic legal costs. Of course, in the context of a dispute, I think the fact that we exist also reduces some of the pressure on a client to accept a settlement, knowing that, in fact, there is a third party they can go to for an impartial and neutral look at their case.

So our concern with the reduced limitations period has been that it may cause those clients who still have complaints that have not been resolved to take, in our view, premature and perhaps ultimately unnecessary legal proceedings because they fear they're going to lose their opportunity to commence civil action under the pressure of a ticking limitations clock. Obviously, that's going to harm most those who can least afford the cost, and it's a very high cost, as you well know, of a private legal proceeding. It will also then have the perverse effect of clogging the courts with cases that should not have been there in the first place.

So as a neutral dispute resolution service, it's not our job to advocate for either side in a dispute, but we do see ourselves as advocates for an effective dispute resolution system, and we do know that with the complexity of today's financial services system and its products, it can take considerable time to resolve a dispute.

We also understand, on the other hand, as an investigative body, that over time memories fade, documents

disappear, circumstances change, sometimes employees move on, and so the sooner we can open a file after the events in question, the better. Of course, it also is the case that, particularly for laypersons, they're not always able to understand the immediate impact of a matter of a maladministration or a bad bit of advice, particularly if the consequences of that are not felt immediately.

Therefore, and in conclusion, we were pleased to see the provisions in the bill before you to amend section 11 of the Limitations Act to provide absolute clarity that the limitations clock will stop when a dispute comes to us and for as long as we are engaged in an attempt to resolve the issue. While our view was very strong that the existing and unamended section 11 had already contemplated our service and therefore should be sufficient comfort for affected clients, we welcome this further clarification. We believe this amendment, which we acknowledge with appreciation, was done in consultation with us, has put to rest any doubts. This is an important confirmation of our value to the public.

Thank you for your time. Thank you for your attention. I would be happy to answer any questions.

The Chair: Thank you very much. We'll begin with the government side, about seven minutes each.

Mr. McMeekin: I really appreciate your coming out and sharing, because there were a number of questions that were coming up about various forms of liability that are carried by people, be they in a union context, a banking context or social work context etc. I had asked the researcher to do some background work and she suggested we might even get the answers just from you when you appear this afternoon in terms of the kind of liability insurance—banks are into so many things now, with all kinds of legal implications. What kind of liability insurance do banks carry? Errors and omissions, that kind of thing?

Mr. Agnew: It's a little bit out of my expertise to answer on behalf of the banks.

Mr. McMeekin: You're about as close as we're going to get, I think.

Mr. Agnew: I can certainly give you some phone numbers if you'd like to call directly. Let's take it out of the specific context of banks and speak of financial institutions. Certainly one of the realities of our world is that when we do make a recommendation for compensation, we know the realities. There is often an insurance company that is going to have to foot the bill or part of the bill in payment of that recommendation. So it's fairly standard practice, certainly at the adviser level in financial services, to hold that kind of insurance.

Mr. McMeekin: You use words like "often" and "fairly standard practice." I was hoping to hear "is always there and is standard practice."

Mr. Agnew: As I say, just to be really clear about this, we are not part of the regulatory system, so it's not up to us to enforce rules. If there are rules that say—and there may very well be rules in certain professions—that you must carry certain kinds of insurance, that's absolutely important. What's important to us is that at the end of the day when we make a recommendation for compensation, the client who has been affected is able to get the money they deserve.

The Chair: Any other questions? The opposition?

Mr. Runciman: No questions.

The Chair: Mr. Kormos.

Mr. Kormos: Your comments are very specifically with respect to section 1 of schedule D and its amendment to section 11 of the Limitations Act?

Mr. Agnew: Correct, sir.

Mr. Kormos: Is there anybody who is going to come forward with a contra-view?

Mr. Agnew: I would certainly not expect so. I think what you are likely to hear as a committee, perhaps even this afternoon, let me guess—and it's up to you to decide where the boundaries are—is that the Limitations Act changes have been hurtful to people because of the expiry of their rights to proceed to civil proceedings.

Mr. Kormos: I suspect that will come from the small investors.

Mr. Agnew: I suspect so. Of course, that's speaking of an investor group. That's kind of half of our work, but the other half is people who are affected by banking issues. Of course there are people who are affected by, broadly speaking in financial services, lots of other professions, so it's an issue that's broadly felt. I think one of the—I don't want to say "unique"—things that under our service we can do is stop the clock. That's a good thing, so I don't think you'll hear a lot of advocacy against it. I apologize for the narrowness of my advocacy.

Mr. Kormos: No, no, I appreciate it. You've given me an opportunity to show a positive response to at least one paragraph of this bill. Chair, unless something explosive is presented to us that contradicts what Mr. Agnew puts to us, I want to assure Mr. Agnew that, come clause-by-clause, I will at least be able to support section 1 of schedule D.

Mr. Agnew: One down and 192 pages to go.

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

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CARP

The Chair: We'll be moving on to the 2 o'clock presentation from CARP. We have Mr. Bill Gleberzon, who's the director of government relations for CARP. Good afternoon.

Mr. Bill Gleberzon: Thank you very much for the opportunity to address the committee. For those who don't know us, CARP, Canada's Association for the Fifty-Plus, is the largest national association of mature Canadians in our country, representing over 250,000 members in Ontario and over 400,000 members across the country who are 50 and older, retired or still working. A non-profit organization, CARP does not receive operating funds from any level of government in order to maintain its independence and neutrality.

Our mandate is to promote and protect the rights and quality of life of older Canadians. Our mission is to provide practical recommendations for the issues we raise, rather than just carping about them.

I want to focus on the Limitations Act within Bill 14.

In CARP's view, the original reduction of the period from six to two years during which one can seek redress for loss of investment savings due to malfeasance by financial institutions is an injustice that smacks of financial elder abuse. Our concern is that this revision decreases access to justice for the millions of consumers who are small investors, particularly seniors. If they do not take action immediately, they will lose their right for civil action. Two years is not sufficient time for victims of such life-altering events to find their way through the current complaints-handling process and to initiate civil action at the end, let alone to recover from the trauma of discovering the event.

The proposed new clock for action starts ticking from the date on which the claim is discovered, or ought to have been discovered, by the person entitled to bring the claim. But who can objectively determine when the claim ought to have been discovered, and how can this be done? This is taking the principle of "buyer beware" to extraordinary heights, especially for unsophisticated investors for whom the economic disaster could last a lifetime.

According to a letter dated June 27, 2005, from the Attorney General of Ontario to Mr. Stan Buell, president of the Small Investor Protection Association, from whom you'll be hearing later, this change from six years to two years was "based on principles that recognize and fairly balance the competing interests of both plaintiffs and defendants.... entrepreneurship." This justification, in our view, is extremely one-sided. It obviously benefits financial institutions that may get away with their malfeasance and continue to prey on others. The issue at stake is justice for the victims rather than the so-called entrepreneurship by the alleged wrongdoers.

An agreement called a tolling agreement to let an independent third party mediate or arbitrate the dispute will suspend the limitation period for the duration of the arbitration or mediation process, but if that process fails to resolve the dispute, the limitation period countdown resumes where it left off prior to the arbitration.

The Ombudsman for Banking Services and Investments, from whom you've just heard, can stop the clock. However, investors with a dispute must first proceed through the industry's complaints-handling processes. Historically, these processes often take more than two years, with results that are not satisfactory. Moreover, based on past decisions, OBSI compensations are much lower than the amount of the claimed losses and decisions through civil litigation. And in the end, OBSI may not accept the claim; for example, in regard to segregated funds or non-bank-owned investment companies.

CARP is very concerned about the implication in the OBSI 2005 annual report that the financial industry may not be informing clients about their existence.

A regulator such as a securities commission or the Investment Dealers Association would not be considered to be a mediator or arbitrator for this purpose, so complaints to them will not suspend the limitation period. Once the limitation period expires, it cannot be revived.

Clients may not know the extent of their losses until late in the game; client statements rarely provide personal rates of return; book values obscure rather than illuminate portfolio performance; mutual fund terminology is often based on industry jargon, a foreign language to ordinary investors; suitable investments may temporarily mask the corrosive effects of unsuitable investments; and some mutual fund and hedge fund managers report semi-annually.

For many reasons, a specific fund may be unsuitable for an investor. Advisers may not want to admit to responsibility for the error and therefore encourage ignoring the unsuitability, hoping a fund will recover. Principal-guaranteed investments—many segregated funds and investment trusts—encourage speculation to recover from early losses. Lucrative trailer commissions also encourage advisers to not recommend selling a losing fund. Deferred sales charges: Sold funds result in an early redemption penalty that further discourages selling a losing fund, with advisers rarely counselling no-fee switches within the fund family or no-fee 10% annual withdrawals. These forces combine to encourage the investor to inappropriately hold on to unsuitable mutual funds. One year can easily be lost in this morass.

Behavioural finance scientists who have studied retail investor behaviour have concluded that investors go through a multi-phase internal process before they decide to react to bad news, and here it's spelled out for you graphically what that process is. Basically, they go through processes of embarrassment, the fear of regret, outright psychological depression, anchoring and cognitive dissonance, all factors that may cause investors to delay facing the reality that significant losses have been incurred and to take mitigating action. This cycle of denial can and does extend to years. The stress of a life-altering event such as the loss of a hard-earned retirement nest egg can be so debilitating that it can lead to depression and the inability to make a rational decision. In this mode, it's unlikely an investor will have the emotional strength to file a claim or take civil action in a timely manner.

Once an investor concludes he can and should complain, he must go through a long, extended and stressful process with the fund dealers and brokers. Some have referred to this complaint process as a quagmire, as the investor struggles with how and to whom to address a complaint. Before it's over, an investor must deal with his adviser, a branch supervisor, a vice-president, a compliance officer and the firm's ombudsman. During this complex process, documents are exchanged, there are many phone calls, and meetings are held. Sometimes key documents are missing or the adviser has left the company. The brokerage firm encourages delays with long response times and obtuse replies, begging for explanations that are not forthcoming. This phase alone

can take many months. Meanwhile, the Limitations Act clock keeps ticking away. The investor may be told his claim is not valid, even in cases where the courts later uphold the claim as valid.

Finally, investors who've encountered the firm's convoluted dispute resolution process can bring their case to the industry-funded Ombudsman for Banking Services and Investments. OBSI won't consider a case until all reasonable avenues have been pursued with the dealer/broker. The OBSI process alone can take more than one year. An OBSI investigation is initiated by a request from the investor. Although OBSI makes recommendations for settlement of the complaint, it does not have to be accepted by the firm or the investor. In fact, a number of investors have gone on to win claims after rejecting the OBSI recommendation and engaging a lawyer.

Although the Limitations Act enables the clock to stop ticking when a case is before OBSI, as I mentioned before, according to the 2005 OBSI annual report only a fraction of cases were resolved in favour of investors, and for a fraction of actual losses, leaving civil action the only resort for investors who feel they've been abused, if time still permits them to do so. Moreover, the OBSI 2005 annual report stated that 50% of the respondents to its survey on customer satisfaction indicated that their brokerage firm did not tell them that they had the right to complain to OBSI. So by the end of this vicious cycle of events, three or four years could easily pass, leaving the investor with no recourse. The ability to seek compensation through the courts is lost forever. This hardly seems an act in support of the public interest.

The act also has a tolling provision that bars the parties from mutually agreeing to an extended time by suspending a limitation period in the absence of third party mediation or arbitration. On top of this, the act could encourage some firms to deliberately stall on a settlement, hoping that the investor will run out of time.

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Small investors, especially seniors, depend on the returns from their life savings for their retirement income. They place their trust in the integrity of the investment industry, even believing it is well regulated. However, the regulators are not always vigorous enough in protecting small investors, who must frequently fend for themselves.

New high-risk products are entering the market all the time, which many small investors do not understand. Many of these products, such as business income trusts and principal protected notes, are not always suitable for seniors because of the possibility of significant loss.

Other issues that must be pointed out are:

The current dispute resolution mechanisms operate through either the industry or industry-funded agencies and are very time-consuming processes.

Arbitration is very expensive, ranging anywhere from $3,000 to $4,000 and upward to $15,000 if the investor hires a lawyer, which is recommended because the industry uses lawyers in the arbitration, and currently this is not a popular choice.

The Limitations Act does not provide for financial support for small investors who engage in arbitration, so they will have to pay their own way, which will add to their stress, costs etc.

And, of course, the right to take civil action is eroded.

CARP's recommendations: We urge the committee to recommend the amendment of the Limitations Act to restore the previous six-year limitation period—this will ensure that small investors have the opportunity for a just resolution of their disputes and without having to immediately resort to costly and time-consuming civil litigation; provide support and protection for the small investor that is equitable with what the financial industry enjoys; and, finally, avoid the harm and havoc among small investors, including seniors, that the act will cause.

Thank you very much.

The Vice-Chair: Thank you very much. We have 15 minutes, so five minutes for every side. Mr. Runciman, you have the lead.

Mr. Runciman: Thank you for your presentation here today. It's very informative. When was the act, in terms of the years available, changed previously? It wasn't that long ago that it was increased to six years.

Mr. Gleberzon: No. It was 2004, about a year and a half ago.

Mr. Runciman: A year and a half ago it was increased to six?

Mr. Gleberzon: No, to two; from six to two. It was decreased. It used to be six years.

Mr. Runciman: Yes.

Mr. Gleberzon: And it was decreased to two years. At that time, we spoke out against that. The government passed the bill. For all the reasons that have been enunciated here, we think that it's totally unfair to small investors, particularly to seniors, for all the reasons I've talked about here.

Mr. Runciman: What do you think is driving this?

Mr. Gleberzon: I think the influence of the industry. Obviously it's much more favourably disposed toward the industry than toward the consumer.

Mr. Runciman: This is the investment industry?

Mr. Gleberzon: The investment industry. The ordinary investor is supposed to know when the alleged malfeasance may have started. Now, how do you know that? How do you know when that happens? You've lost some money in your account, you go to your financial adviser, you're told, "Well, it's a bad market, don't worry about it," and you're urged to keep on at it, and then you lose more.

Mr. Runciman: You only see the investment industry as having this kind of influence or having this kind of positive impact in terms of this kind of change? Are there others in the professional ranks or business who would benefit from this?

Mr. Gleberzon: Whoever among that group benefits, I can say the small investor does not.

Mr. Runciman: It seems to me that the retired person or persons you are representing would strike more fear into the government of the day in terms of your ability to

get people—your own constituents—concerned about the impact of this kind of legislation, rather than some investment community, whoever they might be. It's just curious to me that this is happening and you're apparently not being listened to very well.

Mr. Gleberzon: No, we're not, and in fact we did meet with people from the Attorney General's office and I have to say, quite frankly, it was one of the worst experiences we ever had. To be quite honest, we've met with bureaucrats, that's the job that we do, and at least they give us a semblance of listening to us. We felt that we were being totally ignored. We were told at the time that we met when they first were proposing the bill, the change, "Well, we'll have to wait until it's tested in the courts to see if it's going to have the kind of impact that you think it's going to have." Our position is, why wait? All the evidence—the kind of evidence I've demonstrated and other evidence—suggests that going from six to two years is just not a sensible course of action. It's certainly not beneficial.

Mr. Runciman: The previous witness talked about other jurisdictions in Canada. I guess it's a bit of a dog's breakfast. I'm not sure; do you have any data with respect to what's happening in other provinces?

Mr. Gleberzon: Well, a number of provinces have adopted the same course.

Mr. Runciman: The reduced limitation?

Mr. Gleberzon: They reduced it from six to two years, yes. But, having said that, so what? They shouldn't have done it and we shouldn't have done it, and that's the position we adopt, because—well, I don't have to rehash what I've already said.

Mr. Runciman: No. Thanks very much.

Mr. Gleberzon: Thank you.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, sir, for a very important submission. This schedule D hasn't received a whole lot of attention, and I was hoping you folks would be here; if not you, others with similar interests. It was James Daw, Toronto Star business columnist, who rang the alarm bells about this some time ago now in an edition of the Toronto Star.

Mr. Gleberzon: That's right.

Mr. Kormos: People will correct me if I'm wrong, and I'll be more than pleased to correct the record if I misstate any of the history, but as I recall, all members were under significant pressure from, amongst others, the law society to get this Limitations Act enacted. Again, I have no quarrel with that. We were assured that it had been reviewed thoroughly, and again, no quarrel with that.

It seems to me that there is a pragmatic interest for the law society to want some uniformity around limitation periods, because one of the big areas of claims against lawyers is in terms of missing limitation periods. There was a myriad of limitation periods contained in any number of statutes, and for lawyers, especially those who specialized in given areas, it was complex to keep on top of that. But it also seems to me that when as obvious a problem as the one you raise is exposed, we should respond.

Mr. Gleberzon: Yes.

Mr. Kormos: Now, my fear, from when this bill was first presented and I first read it—again, provoked by the James Daw article in the Toronto Star—was concern that an amendment to the Limitations Act with respect to this specific area may well be out of order, because schedule D is very limited in terms of what parts of the Limitations Act it opens up; in other words, you could only amend what's here in the bill itself. So my concern is that—and I have no quarrel with the rules—it would be out of order but for having unanimous consent. Right, Mr. Runciman?

Mr. Runciman: That's right.

Mr. Kormos: You've been here a long time.

If there were unanimous consent, I could table that motion come clause-by-clause, and we could very speedily, effectively and meaningfully address what I will call nothing other than a sincere, honest oversight on the part of all of us who looked at the Limitations Act in its bill form and, our attention having been drawn to the problem, we should rectify it.

So I hope you will encourage your members to immediately sound the alarm bells and persuade all members of all caucuses to provide unanimous consent so that a mere but meaningful technicality in terms of the rules of procedure doesn't bar that amendment. I'd be pleased to make that amendment and I know Mr. Runciman would be pleased to make it. I think it would be a valuable thing. Heck, the law society has people here. They're well aware of your concerns. They're now in a position to comment on it too if they wish, aren't they?

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Mr. Gleberzon: Certainly.

Mr. Kormos: How does that sound to you?

Mr. Gleberzon: It sounds wonderful.

Mr. Kormos: Let's see what happens.

Mr. Gleberzon: Okay.

Mr. Kormos: Interesting, ain't it?

Mr. Gleberzon: It's very good and I'm taking copious notes. Thank you very much.

The Vice-Chair: The government?

Mr. McMeekin: Bill, thanks for your presentation. I know better than to make a commitment without having a lot more chat around the concern that you've raised, but I certainly appreciate your drawing it to our attention. I know a whole lot about CARP and the good work you do. By the way, my regards to all the folks back there. I miss you very much.

All of that aside, as I recall you're not the first group that has mentioned this. The architects/building trades folks came in and mentioned something. They talked about having an absolute deadline period but extending the opening period in which a claim could be seized. That seemed to me at the time to make some sense. They made a good case for that. You're making another similar argument, Bill, and I appreciate it. So we'll certainly take that under advisement and I'll undertake to make sure that the AG and his parliamentary assistant specifically,

along with other colleagues at the committee, do take some time to make sure we review this and try to get it right.

Mr. Gleberzon: Thank you. I appreciate that. I'll follow up. If you don't mind, I'll give you a buzz. Also, I'll be very happy to meet with the Attorney General or people from his office.

Mr. McMeekin: As always.

Mr. Gleberzon: As always.

Mr. McMeekin: Thanks, Bill.

The Vice-Chair: Thank you very much, sir. We appreciate your coming and presenting your case.

PARALEGAL TASK FORCE

The Vice-Chair: We're moving along quite well with our agenda. We haven't been able to contact the next deputant by teleconference, so we're moving on to our 3:30 appointment, which is the Paralegal Task Force, William Simpson, who has kindly agreed to help us keep our process moving along.

Mr. William Simpson: Just a little faster than we thought.

The Vice-Chair: I'll give you the time you need. We certainly want to express our appreciation to you for, first of all, being here early and then picking up the opportunity when it presented itself. I want to inform you that you have 30 minutes to do your presentation. If you do not use the entire 30 minutes, that gives members of the committee the opportunity to comment or ask questions of you. Before you start, I would appreciate it if you would identify yourself and all your colleagues for the record and then we will ask you to start your presentation.

Mr. William Simpson: Thank you, Madam Chair. I appreciate the opportunity of addressing the committee. My name is Bill Simpson. I'm a lawyer in Ottawa. I practise there but I am a bencher. During the course of the Paralegal Task Force I've been its chair and am appearing here in that respect.

On my right is Katherine Corrick. She's the law society's corporate secretary. On my left is somebody I'm sure every one of you in here knows already, Sheena Weir. She's the director of government relations. On my far left is Julia Bass. She's the policy counsel who has been involved with the paralegal issue.

At this point in time, Katherine Corrick is going to be giving you some background on the law society. Then I will present some of the views that the law society has on paralegal regulations in the hope of assisting the committee in its work.

Ms. Katherine Corrick: Thank you. The law society welcomes this opportunity to be back before the committee. We've been here, listening very carefully to the submissions that have been made, and hopefully we'll be able to address some of the points that have been raised.

The Law Society of Upper Canada has been in business for about 200 years. It has 200 years of experience in regulating the providers of legal services in Ontario. The organization was established in 1797 and we currently regulate more than 37,000 lawyers in Ontario.

Our mandate is, and always has been, to govern the providers of legal services in the public interest. This mandate, which finds expression in a role statement adopted by the law society in 1994, will now be enshrined in the Law Society Act by this bill.

We pride ourselves on being a modern and transparent regulator. We recognize that the business of professional regulation is not static, that it must be looked at and re-examined from time to time in terms of the social context in which it's operating, and professional regulators must adjust their processes and systems to meet with and exceed the ever-increasing expectations of the public. I hope an examination of the law society's processes will reveal a regulator that takes this responsibility very seriously and that continues to strive to be modern, transparent and fair.

The last time we appeared before this committee, in 1998, we were seeking amendments to the Law Society Act to provide us with more modern and effective tools to regulate the profession. We have a very well structured system of intake, investigation, prosecution and adjudication to address public complaints about lawyer misconduct, incapacity and incompetence. We operate many other services for the public in terms of regulation. We have a trustee service which is responsible for taking on abandoned law practices to ensure that clients continue to receive the service they need. We run a compensation fund that is paid for exclusively by lawyers to assist clients who have lost money due to lawyer dishonesty. We have established an office of a complaints resolution commissioner: former Ombudsman Clare Lewis. He is an independent officer who reviews the law society's handling of complaints and investigations and can make decisions about the law society's handling and the decision to close a complaint file.

We have a spot and focused audit program designed to ensure the integrity of lawyers' financial records and to promote competent record-keeping.

We have practice management reviews which target practice management issues to ensure that there is competent service delivery to the people of Ontario.

We have a private practice refresher program to ensure that lawyers who have been out of private practice for five years or more do not return to the service of members of the public until they have taken a refresher program.

We have started, in May of this year, a new licensing process designed to ensure that the people who are called to the bar of Ontario meet minimum standards of competence.

We offer continuing legal education programs to support lawyers in their efforts to maintain their competence, and we offer practice management support tools designed to assist lawyers to maintain their competence. That includes things such as online material, practice management guidelines and self-assessment tools.

In brief, we have an infrastructure designed to ensure that the people of Ontario are served by lawyers who meet high standards of competence and honesty.

Mr. Simpson is going to take you through the law society's consideration of paralegal regulation.

1410

Mr. William Simpson: As most of you would know, there have been attempts made since the 1980s to regulate paralegals. Paralegals are a group that was actually created by either this Legislature or the Parliament of Canada when they allowed agents to go into various different tribunals, courts and so on. It has been set up in such a way that agents have been allowed to do these things independently over the years. However, there have been a number of problems, a number of complaints have come in and so on, and everybody has agreed for a long time that there should be regulation. It has never progressed to the point that we're at now.

Back in the 1980s, Terry O'Connor tried to come up with a bill. It didn't go anywhere. There was the Ianni report. The Peter Cory report came out in the early 2000s, and perhaps it has spurred on more attempts to get it. The previous government was dealing with it in much the same way, I think, as this government is dealing with it. You heard from Paul Dray, I understand, who was appointed as a lay bencher by the previous government. Paul Dray is a person who has been involved in consultations.

I understand Margaret Louter and Stephen Parker will be addressing you as well. They were part of the consultation group that met with lawyers and others back in 2000-01-02 and came up with a framework report which has actually been a very good help when we got to the point of being asked by the Attorney General this year to come up with and devise a scheme whereby the law society would be the regulator. This was something that was asked of the law society. It makes a lot of sense for the law society to be the regulator inasmuch as, as Ms. Corrick pointed out, we've been regulating legal services for over 200 years. To have one body regulating legal services makes an awful lot more sense than having a number of bodies, which inevitably ends up with some confusion in the public and everybody else.

In any event, we started with the proposition—we were asked by the minister, the Attorney General, if we would consider it. We had a debate. It wasn't unanimous. I heard last week when I was here a little bit Mr. Kormos asking why the law society should be the regulator and so on. If the law society, having been asked to do it, were to refuse—up till now a lot of lawyers didn't want anything to do with paralegals. They would rather have had them not in existence. There's been an evolution since the 1980s, into the late 1990s and so on. Paralegals are accepted as a body that is there, that there are a number of good paralegals, and the number of good paralegals we've talked to want this legislation to go ahead for the simple reason that it gives them the opportunity to come and have a profession. They're a part of the law society and they want it to happen. They know, however, that some of their people—one party I heard last week was complaining about some of the paralegal competitors he had who were not following rules, regulations or anything. Good paralegals want legislation.

In any event, before this task force report was made and reported to convocation in September 2004, we spent the summer going to various parts of Ontario and meeting with all sorts of groups. I'm not going to go into them; they are all listed in the document that we've given you here. That group of people really assisted our task force in coming up with a report that was adopted in convocation in September 2004 and was presented to the Attorney General at that point in time. The portions of Bill 14 that deal with paralegals are basically those parts that have come out of this document. Probably it's not perfect—I would never claim that anything I've done has ever been perfect—but it is an opportunity. It has been an attempt by a whole group of people to do something that has been a problem for many, many years. What we've done is come up with a number of recommendations. Most of them have been brought in to Bill 14.

I've given you a copy of the report. I don't want to go through it all, but you will see in it a number of key aspects. The overview is that basically we are asking for your going to regulate paralegals in a parallel system to regulators regulating lawyers. You're going to have to be of good character. You're going to have to show a minimum educational background, pass tests, be bound by a code of conduct, carry insurance and pay into a compensation fund. Those are the things that are going to happen.

We know there are going to be people who require exemptions, and the question is whether it goes into the bill or whether it's done by the law society. If it goes into a bill, it's cast in stone, and if you miss somebody, that's a problem or it could be. If we do it by law, it can be amended to ensure that anybody who was left out, who is not exempted, is brought into it at the earliest opportunity. It's always been accepted—and you'll see in the task force report—that unions, for example, are going to be exempted. We have no interest in regulating mediators, and they are going to be exempted, if in fact they come within the definition of "legal services."

Just talking about the definition of "provision of legal services": It's a broad definition but it's very, very similar to the definition of the practice of law in a number of other provinces. BC and Nova Scotia in particular have wording that is almost identical to what you'll find in Bill 14. So it is something that is there, is needed, to define what it is that we're regulating. We can't have it out in a vacuum.

It talks about grandparenting. I don't think I want to get into that, because it's so obvious that we've got to have grandparenting and I don't want to take up all the time. The governance structure of this is something that is designed to be as even-handed as it possibly can be. What we said was that we would have a committee of 13 people, five of whom would be elected by bencher lawyers, three lay benchers and then five paralegals.

Paralegals would be elected by their own people and they would be there. Two of those paralegals would also be benchers off the law society and would be able to vote and talk on any legal topic or any topic involving lawyers or anybody else, because that would be their position.

The other thing we did was say that the chair of that committee must be a paralegal. So that person would be the one presenting to convocation and doing the various things that have to be done. Of course, we know that a lot of things have been left to the law society by Bill 14. All we can do and have been doing at this time is as much educational as we can, we've talked to the colleges and so on. We are as ready as we can be until this legislation is passed. Only at that time, however, can we get to fill out this committee to actually move ahead with doing some of the other things.

1420

It talked about nomenclature, and that's on page 35 in that report. The reasons there why we didn't suggest that the word "paralegal" should be defined: First of all, the proper definition of it is very difficult, and of course—I know it's been pointed out to you before—"lawyer" is not in the Law Society Act either. It's not something that has ever caused any of us any problem, the fact that it's not in the act, but everybody knows what a lawyer is. Undoubtedly, some of the people who have been appearing before you who are agents in court prefer to be called "agents in court." So it is just a situation, it perhaps doesn't matter, but it does matter to a number of people, for instance in-house paralegals. They want to continue to call themselves paralegals. They may not be able to do that if it were defined.

The educational requirements: You've already heard from the private colleges, Mr. Gerencser, and you've heard from Linda Pasternak and Wanda Forsythe, I understand, from the community college. They have been working with the law society and are happy that the scheme is going forward because it gives what they're doing a lot of credence and a lot of credibility.

We have a college advisory group that we have been meeting with over the years since we put this forward and since it was contemplated that we might be the regulator. We would want to have students as well as paralegals involved with that college advisory group in the future, and those, I understand, are helpful suggestions that have been made here.

If the legislation is passed, the implementation of this report will then start, and the law society is going to have to be accountable for it. There's a five-year review period in it. You say, is this putting the fox in the henhouse? But the long and short of it is that lawyers—and I don't know whether to include political lawyers in this or not—have a general basis of being fair, other than perhaps in this type of situation. But seriously, lawyers do have a reputation of being fair. That's where the judges have been coming from for many, many years now. The basic fairness, and people who are elected as benchers are not always—the persons who practise law are not always enamoured of the law society. The law society doesn't represent the lawyers. The Ontario Bar Association does, the County and District Law Presidents' Association does and so on. Hopefully the Ontario paralegal society—I keep getting their names mixed up—that type of organization, will have a role similar to what the OBA has and they will be representing their members and trying to get the best possible thing for their members.

But the long and the short of it is that we've been asked to take on a task. We're prepared to do that. We think we can do it in a fair manner that will in fact be something that will instill more confidence in us and in the future so that in five years, when this has gone through, there will be a few problems, but there won't be very many and that will be that.

One thing I didn't talk about was the scope of practice, and I should do that only because when we looked at trying to do this, we had all sorts of lawyers say that paralegals shouldn't be allowed to do Workplace Safety and Insurance Board work after a certain level or they shouldn't go before the Financial Services Commission of Ontario, FSCO, and so on.

We also had paralegals suggesting that they should be allowed to do virtually everything from mergers and acquisitions down to family law—to everything. What we did was try to take a practical approach and say, "If this is ever going to get done at this point in time, let's start with those services that are recognized as being permitted by law." That's where we are looking at starting with. It doesn't mean it's always going to stay that way, but if there were any other attempts at either reducing or increasing the role of legitimate independent paralegals at this point in time, I don't think we'd be talking about this bill as being almost ready for third reading. We'd be wondering how we're ever going to get it drafted.

Anyway, I thank you for your time. If we have any time left, I'd be glad to answer any questions.

The Vice-Chair: Thank you very much. We have about seven minutes left and I believe, Mr. Kormos, you have the lead.

Mr. Kormos: Thank you kindly. Having said all of that, you along with other lawyers who have appeared here are incredibly skilled persuaders. You convince judges to do things that cause the general public to shake their heads. You convince juries to do things in the interests of your clients. You persuade these people. You talk about lawyers as being inherently fair. I think that's a fair enough observation. Why, then, hasn't there been any effective persuasion of any significant group of that community of paralegals out there that there's a place for them within the Law Society of Upper Canada?

Mr. William Simpson: I've talked to a lot who were quite happy, I've talked to some who are not, and to some who for their own reasons are concerned about the law society. I don't know that a person who has been convicted of crimes is going to be very a happy to come in.

Mr. Kormos: They can get appointed to the Senate. They don't need the law society.

Mr. William Simpson: But we know there are people out there practising as paralegals at this point in time. If we, tomorrow, said anybody could come in as a paralegal, didn't have to show good character, we could win those guys over very quickly.

Mr. Kormos: But I'm not suggesting that. You know I'm not suggesting that. I'm talking about standards.

Mr. William Simpson: You are in part, because there have been in fact people here who have had that type of problem.

Mr. Kormos: Then don't admit them.

Mr. William Simpson: We won't.

Mr. Kormos: Well, good.

Mr. William Simpson: But they have to show good character. That's one of the reasons. The PPAO imploded over this because they had a large group of people who wanted the law society to regulate but another large group who said, "Well, that's not going to help us any. We don't want the law society to regulate," and they backed off. It imploded because of that division between them, as I understand it. So I have talked to a lot. The agents in court who were here last week are quite happy. They talked to me about it both before and after. I had lunch with the three who were here a few months ago. They accepted the law society would be the regulator. They weren't upset about it. Perhaps, if they had their wish, they would have said, "No, I would rather have somebody else," but they've been quite happy. They are quite happy with the law society being the regulator.

1430

Mr. Kormos: They said, "Anybody but the law society."

Mr. William Simpson: That's what they said to begin with, that they had that view. Most lawyers 10 years ago would have said nobody—the law society shouldn't be there. But who else regulates legal services? There's nobody else. If you start to try to put together any new regulatory body, you're going to be mired for the next number of years trying to do it, one way or another.

Mr. Kormos: I'm not quarrelling with you. What I'm asking you is, why haven't some significant members of the paralegal community come here and endorsed this? I'd be pleased. The agents in court who were here—as I tell you, Mr. Zimmer darn near swallowed his bubble gum, because he wouldn't ask them the question. I finally asked them the question. They said, "Anybody but the law society." Look, I wish they had said something different, but they didn't.

Mr. William Simpson: The long and the short of it is a lot of the paralegals are getting ready to come in. Why shouldn't it be the law society when you look at it from a practical point of view? It's a body that has been regulating the delivery of legal services for years, and that's what we're wanting to continue. Besides which, we were asked to do this.

Mr. Kormos: I appreciate that. Thank you kindly.

The Vice-Chair: Thank you. Government?

Mr. McMeekin: Mr. Simpson, I and my colleagues appreciate your presentation and your report. Your reference to good character is interesting. In the United States, there are three requirements to be President: You have to be at least 40 years of age, be born on US territory and be of good character.

Mr. William Simpson: I'm at least 40 years of age.

Mr. McMeekin: I note with some interest that there seems to be an emerging consensus, notwithstanding some of the remarks you've heard, that paralegals need to be regulated. I haven't heard anybody—sorry, there was one gentleman who came in. He didn't like any regulation of any sort. The guy was running for office in Mississauga or whatever. But there seems to be that consensus, and there seems to be some agreement that there needs to be some grandparenting and some exemptions. The alternate suggestion is, if it's anybody but the law society, then who? And if it's a self-regulatory kind of regime, which many people have been suggesting—I don't know what happens in BC. I know BC rejected—

Mr. William Simpson: Paralegals have not been as big an issue in BC as here.

Mr. McMeekin: It's not as mature an industry, is it?

Mr. William Simpson: Yes, and Ontario is the only one that has moved ahead on it.

Mr. McMeekin: Let me come at it out of centre field here, then. If not the law society, if the paralegals were self-regulatory, what would be the advantages and disadvantages of that from your perspective?

Mr. William Simpson: Well, a number of disadvantages: One is, first of all, the who and how and why, and all those little things, to set it up. The cost of it would be—

Mr. McMeekin: All the definitions—

Mr. William Simpson: All of that, but then you've got two bodies who are doing the same thing. They're both regulating the delivery of legal services. You end up with an ongoing situation that you have presently in England. England had a number of associations, a number of things, and those regulatory bodies are now going to have an oversight body, just because, amongst other things, there are too many that are out there, and at this point in time there is no real alternative to doing it.

I wasn't always a fan of having the law society as the regulator. Even when I became a bencher, I didn't think that the law society should be, but as I delved into it more and more, I came to the conclusion that it made more sense than anything else—not because this is going to be a feather in the law society's cap. I can tell you that putting this forward is going to change what the law society looks like to a great extent. But from the point of view of protection of the public, from the point of view of getting something up and running in a reasonable fashion and in a reasonable time period, the law society can do it. I don't think it could be done in a quick fashion anywhere else. I think it has already been indicated that the paralegals themselves are not able to be a self-regulating body at this point in time.

Mr. Runciman: Thanks for the presentation. I personally haven't reached any conclusions with respect to the appropriate regulator here, but I share Mr. Kormos's concern that we're not hearing from people in the

industry who are supportive. The one gentleman, Mr. Dray, who is a bencher, to some degree colours the contribution.

I think that it might have been helpful as well if there had been some sort of olive branch extended to the industry, whether it's membership, associate membership, some sort of effort in that regard. I think that some of concerns we're hearing in some of the testimony have perhaps been generated by the lack of specifics and comments.

There was a good witness here this morning, Mr. Stewart, who's a lawyer and a paralegal. He provided us with a quote from Mr. Malcolm Heins, which said, "We need a wide definition of legal services in order to regulate, so that we are able to capture all of those individuals who may decide not to try to come in within the act. Otherwise, it's very difficult to actually prosecute them."

We've seen those references from other important members of your organization. I think perhaps there hasn't been the effort to try to win these folks over as part of this process and allay some of the concerns, which I think are quite sincere concerns. I don't think they're here just to try to escape regulation. I think that they have, in some respects, valid concerns based on some of the words that they've heard coming from members of the law society.

Mr. William Simpson: Let me just respond by going over two or three points you mentioned.

First of all, Paul Dray was the president of the PPAO, and he was there back in 2002 when the law society—no, it was more lawyers. I happened to be on it. Dick Gates from Windsor was on it, and Paul Dray, Mr. Parker and Ms. Louter were the representatives. We'd come back—and we had bigger groups. Paul Dray and the other two came to the conclusion that the law society should be the regulator at that point in time. It was only after that report came out that Norm Sterling, when he was Attorney General, appointed Mr. Dray, because of the way that I think that your government of the day was trying to move into that.

When you get into prosecuting, the quote that you talked about—when we talked to the paralegals, when we got into the aspect of unauthorized practice or people not being there, the paralegals were most adamant that there had to be a way of prosecuting their other paralegals who don't come into the fold, because why would they come in, why would they go through the hoops of being a regulated person when their competition down the street is not doing any of that? What happened was that they really pushed and pushed and said, "We have to ensure that this is going to be," so that in fairness, if there's going to be regulation of paralegals, those people who are coming in have to have a method of keeping themselves from being side-swiped by somebody who either can't be or won't be coming in and being a member. So I don't see that that's a criticism of it.

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As far as winning over, we have talked to a lot of paralegals. I've talked to a lot of them in all the various meetings. A lot of them were very much concerned about the law society, but I think they were won over. We didn't go out and try to recruit who was going to speak before this committee, so we didn't go and suggest that people should come in. But I do believe that you're obviously going to hear from the naysayers for the most part when you establish something like this; you're going to hear from those people as opposed to the ones who are onside.

The Vice-Chair: Thank you very much, Mr. Simpson. We need to move along. I appreciate your coming in and picking up the gap for us and certainly appreciate your presentation.

CANADIAN UNION OF PUBLIC EMPLOYEES, NATIONAL OFFICE

The Vice-Chair: Our next deputation is by teleconference, and I believe that John Elder, director of the Canadian Union of Public Employees, National Office, in Ottawa is on the line. Mr. Elder?

Mr. John Elder: [*Inaudible.*]

The Vice-Chair: I think I hear something, but—Mr. Elder, just give us a moment. I do believe that you are hearing us, but we're not hearing you. Mr. Elder, are you on the speakerphone?

Mr. Elder: [*Inaudible.*]

The Vice-Chair: I'm sorry, we can't hear you. Would you please go to the regular headset.

I'm afraid we have a bad connection. Mr. Elder, would you hang up, and we will call back. Thank you.

Mr. Elder?

Mr. Elder: [*Inaudible.*]

The Vice-Chair: We're still having the same problem. Bear with us, Mr. Elder. We're trying.

I'm going to ask that we take a recess for five minutes while we try to work out the technical problems that we're having.

The committee recessed from 1445 to 1453.

The Vice-Chair: I'm going to call the public hearings of the standing committee on justice policy back into order. We have on the line by teleconference Mr. John Elder. I want to say first of all, Mr. Elder, thank you very much for your patience. I think we've finally been able to work out our technical difficulties. My name is Maria Van Bommel. I'm the Vice-Chair. You are the director of the legal branch for the Canadian Union of Public Employees in the national office in Ottawa.

Mr. Elder: That's correct.

The Vice-Chair: Thank you. You have 30 minutes to do your presentation. If you do not use up the entire 30 minutes, that gives opportunity to members of the standing committee to ask questions or make comments on your presentation. Please proceed and identify yourself for the record.

Mr. Elder: Thank you, Madam Chair. My name is John Elder. I am director of the legal branch for the Canadian Union of Public Employees, and with me today is Susan Coen, who is a senior officer, also in the legal branch of CUPE.

We appreciate very much the opportunity to address the committee. I thank you for that, and I also thank you for making a convenient way to do so through this teleconference.

We really come before you today to make two points. First of all, in a general way, CUPE supports the notion that paralegals should be regulated, that there should be some supervision and licensing of these individuals. Secondly, our main concern is that this licensing and supervision process should not result in a situation where the officers, officials and employees of trade unions are subject to such regulation.

To begin with, let me just say a bit about the Canadian Union of Public Employees. We are, as you may know, Canada's largest union, representing now over 550,000 employees across Canada. In Ontario, we have well in excess of 200,000 members and they work for more than 1,100 employers.

All of our members in CUPE, in addition to belonging to the national union, belong to a local union, and it is through this local union that they receive most of their assistance, advice and service. The affairs of each local union are democratically controlled by its members. They elect an executive and other officers of the local union. Those elected officers may, from time to time, appoint other persons to act as union officials—perhaps as a union steward or on a particular committee. It's these individuals who do the work of the union in a large part. Also, as a national union, we employ staff to assist our local unions. Those include servicing representatives who, by and large, come from the rank and file membership—they're employed on a full-time basis to assist local unions—and also some specialist staff such as lawyers, communications representatives and researchers.

As I said, CUPE does not object to the general aim of schedule C of Bill 14 to supervise and regulate paralegals. We believe that the public should have some measure of protection in the provision of these services. To make a very obvious point, the contrast between the degree of education, certification and qualification and then supervision required to practise law in the province as a lawyer contrasted with the lack of certification, control or required education to act as a paralegal is very striking. Just as the public deserves some consumer protection with respect to the services provided by lawyers, we believe it is entitled to the same sort of protection with respect to services provided by paralegals.

I'm using the term "paralegal" broadly, as I believe it is defined in the legislation. In the labour relations context, for example, we most often encounter individuals who would meet the criteria of being regulated under this legislation as consultants. They are labour relations consultants. They may be acting for employers or trade unions or individual employees, but that's generally the term they use to describe themselves.

We're not opposed to persons providing these type of legal services being subject to regulation, but we do object to the potential intrusion into a union's administration and affairs if persons providing these services on behalf of the union to our members and potential members were subject to this kind of regulation, and particularly subject to this kind of regulation by the law society.

As I'm sure you know, workers generally organize and join unions so they can enjoy the benefits of collective bargaining, so they can be represented by a union, so that a union will negotiate on their behalf a collective agreement and, in turn, enforce that collective agreement. This is a great majority of the services that a union provides to its members. When it provides those services, particularly when it gives advice to a member as to whether the collective agreement has been violated, whether the member should file a grievance against the employer, whether that grievance should proceed to arbitration, they are unquestionably providing legal services as that term has been defined in Bill 14, considering the broad definition contained in the bill.

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In addition, unions and their officials regularly provide to our members assistance and advice in other employment-related areas. This may relate to claims for long- and short-term disability, Canada pension plan benefits, employment insurance benefits, workers' compensation benefits—areas that are, strictly speaking, outside the narrow ambit of collective bargaining but still within the range of services that unions may choose to provide to their members.

We say there can't be any doubt that when union officials provide those types of assistance, or assistance within the area of collective bargaining, they are providing legal services, as again broadly defined in Bill 14. We are concerned that this not result in these union officials being subject to licensing, supervision and regulation by the law society or by some other body that might be tasked with supervising paralegals. The great bulk of the assistance that is provided by a union to its members is provided by volunteers. It's provided by coworkers who may be union stewards or elected officials, but they are lay people and they provide the assistance. They are, as I have said, generally elected by the membership. It simply wouldn't work to have a situation where these people, before they could run for election, before they could hold office as the union steward, would need to obtain some licence from some regulatory body, perhaps pass some certification requirements and so on. So we think the situation of unions in this regard needs to be recognized and needs to be excepted from this attempt to regulate the work of those who provide legal services but are not lawyers in the province of Ontario.

This does not mean that the employees we represent, our members, are without recourse if they want to complain about the quality of representation they have received. As you probably are aware, the Labour Relations Act now provides an avenue of redress for employees represented by a trade union who are not satisfied with the representation they have received. That

is specifically through the filing of a duty of fair representation complaint to the Ontario Labour Relations Board. The duty of fair representation contained in the Labour Relations Act requires that a union not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of employees in a bargaining unit that it has been certified to represent. Any employee represented by the union can complain about the quality of representation. They have access to a relatively quick, inexpensive and informal complaint procedure and to a remedy where the labour relations board determines that the duty of fair representation has not been fulfilled by the union. So we say in that respect that employees represented by a union do not have the same need for what I will call consumer protection that members of the public may have.

We do want to acknowledge that Bill 14 would allow the law society to exempt from this type of regulation certain groups or individuals, and we further acknowledge that the law society has committed in writing, in a letter to the president of the Ontario Federation of Labour, that it has no intention of regulating trade union officers, officials and employees in the services they provide. While we draw some comfort from that commitment, we have to say to you that this is not a matter that the Legislature should leave to the decision of the law society. It should not be for the law society to decide whether or not it is going to regulate the work and activities of trade union officers, officials and employees; it should be the Legislature that makes that decision. It's a matter of legislative policy, and the Legislature, we submit with respect, would be abdicating its responsibility if it simply turned this whole question over to the law society.

As a result, we request that Bill 14 be amended to provide a blanket exemption for officers, officials and employees of unions who provide legal services to members, potential members and any employee represented by the union. We do not believe that the law society should have any role to play in the regulation or supervision of a union in providing these services. We take it, from the law society's commitment, that it does not seek to do so, that the law society also agrees that it should not play that role. Accordingly, we are requesting that Bill 14 be amended to enshrine this exemption. Those are our submissions.

The Vice-Chair: Thank you very much, Mr. Elder. We still have about 17 minutes remaining, so I will go to the government side to have the lead in terms of comments and questions.

Mr. McMeekin: Brother Elder, it's good to have you on the phone sharing what has emerged as a bit of a pattern here. We've had many other groups, particularly those affiliated with our brothers and sisters in the labour movement, who have made some of the very astute observations that you've made. So I just want to thank you for that.

I really appreciate the affirmation, again, of that particular thrust. I was listening carefully when the law society was here to hear some affirmation of their intention to grant that exemption. Notwithstanding, I note your concern about that, and I really appreciate it.

Mr. Elder: Thank you.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: It's Peter Kormos. I thank you for your submission. You may know that UFCW, OPSEU and steel have made similar comments. I think they're valid. They're very much on point. They address also the problem in the bill of the failure to define "paralegal." I think that's something that people are going to have to pay some attention to before this bill proceeds much further, so I appreciate your comments.

I should mention that we're still waiting to hear from paralegals who are eager to be part of a regulatory scheme that's conducted by the Law Society of Upper Canada. To be fair, there was one, but he also happens to be a bencher of the law society, so his perspective might be somewhat coloured, as Mr. Runciman suggested.

The Vice-Chair: Thank you very much, Mr. Elder. I certainly appreciate your patience while we tried to get our technology working. Have a good afternoon.

SMALL INVESTOR PROTECTION ASSOCIATION

UNITED SENIOR CITIZENS OF ONTARIO

The Vice-Chair: At this point in time, I would like to call forward the Small Investor Protection Association and the United Senior Citizens of Ontario. Thank you very much for coming in this afternoon. You have 30 minutes to do your presentation. If you do not use the entire 30 minutes, there is an opportunity for members of the standing committee to ask questions or make comments about your presentation. Before you start, could you please introduce yourselves for the Hansard record and then just proceed.

1510

Mr. Stan Buell: My name is Stan Buell. I'm president of the Small Investor Protection Association. We were incorporated in January 1999 as a national non-profit organization and we have close to 600 members in nine provinces across Canada. Thank you for inviting us to appear before the standing committee.

Ms. Marie Smith: I'm Marie Smith. I'm with the United Senior Citizens of Ontario. I've just become their president and I'm representing 300,000 senior citizens here today.

The Vice-Chair: Thank you very much. Please proceed.

Mr. Buell: We are concerned that the reduction in limitation periods for civil litigation erodes the rights of Ontarians to seek justice. In particular, we believe that seniors will be negatively impacted.

Since 1998, we have heard from many seniors who have lost their savings due to investment industry wrongdoing. Their experience indicates that it takes time for them to deal with such a life-altering event. This,

coupled with the fact that complaints handling and dispute resolution are largely in the hands of the investment industry or industry-sponsored agencies that seem to delay the process, means that many victims will statutorily be denied their right to seek justice through our legal system.

The investment industry and the regulators have inherent conflicts of interest. Rules and regulations lag behind the industry's creation of new and innovative products to tap the wealth of seniors and other small investors.

The proliferation of mutual funds and segregated funds makes it practically impossible for the average investor to select those that may be suitable. The result is that many funds are sold which are unsuitable for the investor. New products are created that are much different than they appear.

Principal-protected notes are sold as a product having the principal guaranteed and promising a high rate of return. However, the guarantee is based on hedge funds, which the regulations state should be sold only to accredited investors, yet these PPNs are sold to seniors, who are not accredited investors. The hedge fund company Portus Alternative Asset Management was forced into receivership by the OSC, and 26,000 investors are out $800 million.

Business income trusts are being created and sold to an unsuspecting public as secure investments, also promising a high rate of return. However, there is a lack of regulations to properly define "return," which often includes return of capital.

The McLean and Partners red flag report at the end of August 2006 lists 11 business trusts that on average have cut their distribution by 41%, and their unit prices have declined by a staggering 24% in 2006. The report also indicates that nine energy trusts have, on average, cut their distributions by 33%, and their unit prices have declined by 12% in 2006.

These innovative products will cause many investors to lose their savings and by their very nature will lead to delays in victims taking action. They will end up being statute-barred from proceeding if limitation periods remain as they are now.

In addition to industry-accepted practices that breach or circumvent the rules and regulations, the development of innovative products, and strategies that evade the rules, the regulators provide exemptive relief by issuing exemption orders that permit the industry to avoid rules that ostensibly provide investor protection.

There is no authority that provides investor protection. For the last couple of years we have worked with seniors' groups to raise awareness of this issue and we are pleased to join with the United Senior Citizens of Ontario today.

In May of this year, SIPA made a written submission to your committee asking for reinstatement of the previous limitation periods. The following are some of the points raised. We stated, "It is inconceivable that a just society, as we claim to be, could allow regressive legislation to pass that erodes the rights of Ontarians and will result in many victims of life-altering events, such as devastating loss of life savings, being victimized again when they are statute-barred from seeking resolution of their dispute through civil action due to reduced limitation periods."

We are particularly concerned that the incidence of seniors and other small investors losing their savings due to wrongdoing by the investment industry is much greater than perceived by the general public and our government. We estimate the losses at several billion dollars each year.

On June 16, 2005, when Senator Grafstein, chairman of the standing Senate committee on banking, trade and commerce, welcomed Mr. David Brown, then-chair of the Ontario Securities Commission, to report on the OSC town hall event, Senator Grafstein said: "The examination of consumer issues has been a revelation for many committee members who thought that the problems were well in hand in many areas."

Mr. Brown's remarks to the Senate committee on limitation periods were:

"Under the Ontario Limitations Act, 2002, a uniform two-year limitation period applies to all actions except those that are specifically carved out, such as actions by the OSC.

"Unfortunately, this two-year limitation period leaves plaintiffs with a narrow window for bringing an action. Although a number of considerations pause the clock, we have learned that aggrieved investors do not always discover the full consequences of a problem until two years have elapsed. For a life-altering event such as losing a chunk of your life's savings, it takes time to come to terms with the problem. Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action. For all of these reasons, we suggested to the Ontario government that it would be well advised to take another look at this two-year cut-off."

On June 27, 2005, we stated in our letter to the standing Senate committee on banking, trade and commerce:

"Since our appearance before the Senate committee on banking, trade and commerce on April 14, we became aware that the Ontario Limitations Act has surreptitiously reduced the six-year limitation period to two years. We believe this is a serious issue for Ontario investors and may be an important issue for all Canadians.

"Presumably, those who are responsible for consumer protection must know that life-altering experiences, including the loss of one's entire life savings when one is trusting that our investment industry and regulatory system can be trusted to safeguard one's savings, has a severe impact on individuals.

"So severe is this impact that some victims have chosen suicide, rather than to continue life in this wonderful country of ours, after their trust has been betrayed by the financial services industry, and their hopes and dreams destroyed.

"Many of the victims (when they are finally able to deal with this type of issue) routinely take more than two years to find their way and learn how the regulatory system works.

"With a two-year limitation period it is obvious that many victims will be time-barred from the courts from seeking restitution, even when some of the industry's practices may be criminal in nature. Is this justice?"

Recently, SIPA received a telephone call from a single mother of two who lost her life savings of over $300,000 in the year 2000. It has taken her time to deal with the issue, and she confessed that she had been suicidal. Since then, she has dealt with industry and the regulators. If the two-year limitation period had been in effect, she would have been statute-barred from seeking justice.

On June 28, 2005, Diane Francis wrote in the National Post:

"The move by some provinces to reduce the limitation period for lawsuits from six to two years tips the playing field even more against investors and in favour of the bank-owned brokerage industry.

"In Canada, a damaged investor has two remedies: A lawsuit or a complaint to the Ombudsman for Banking Services and Investments. This is not an autonomous government-funded agency but a dispute resolution service offered by the banks and brokers themselves in the hopes of averting expensive litigation.

"This process is not only unacceptable, because ombudsmen should be truly independent, but it's also arduous. Before an investor can benefit from this 'service' he or she must proceed through the accused bank-owned brokerage firm's manager, compliance officer and then the individual ombudsman of the bank involved.

"Once all that's finished, then the investor may take the case to the Ombudsman for Banking Services and Investments. But OBSI won't accept a case if the investor has already sued.

"All of which amounts to a Catch-22 because there is no way an investor could possibly jump through all those bureaucratic hoops within two years. And with the statute of limitations being shortened, investors don't have choices.

"Likewise, Canadian investors will find they have no legal remedy if they go to regulators such as the Ontario Securities Commission. That's because investigations often take more than two years, by which time they will have lost the right to sue."

1520

On July 18, 2005, Steven Lamb wrote for Advisor.ca: "'This change is just another form of financial elder abuse,' said CARP's Gleberzon. 'Like the others on this panel, we urge the government to reconsider the legislation—to at least reinstitute the former time period.'"

I believe Bill spoke to your committee earlier today and recommended that the limitation periods be reinstated.

In the words of Larry Waite, president of the Mutual Fund Dealers Association, in his letter dated August 8, 2005, to the Honourable Michael J. Bryant: "We believe that investor protection would be enhanced in Ontario if the Limitations Act, 2002, were amended to reinstate the former six-year time window for commencing civil actions. We encourage the government of Ontario to restore the prior limitation period."

On September 29, 2005, James Daw wrote in the Toronto Star: "Susan Wolberg-Jenah, acting chair of the OSC, confirmed in an August 30 letter that officials there appreciate that the constraints of the two-year limitation period, combined with existing dispute resolution services, 'may have unintended consequences for small investors.

"'We have shared this information with the Attorney General in a way that we believe is constructive and in the best interest of investors,' she wrote.

"'We have also indicated our willingness to further discuss this matter with the government....'"

Jim Daw also wrote that "David Agnew"—whom you also heard from earlier today—"the new chief executive of the Ombudsman for Banking Services and Investments, confirmed September 12 his office has also written to Bryant to outline some of the implications he sees for investors.

"'We want to see investors treated fairly—not denied their rights because of overly restrictive time limitations, nor stampeded into unnecessary and expensive legal actions.'"

In the autumn of 2005, Joe Tascona, MPP for Barrie–Simcoe–Bradford, submitted a petition to the Legislative Assembly of Ontario that stated:

"Whereas Bill 213, Justice Statute Law Amendment Act, 2002, enacted the Limitations Act, 2002, which provides for a reduction in the legal limitation period from six years to two years;

"Whereas the two-year limitation period in effect from January 1, 2004, is not long enough for investors seeking restitution after suffering serious financial damages due to the wrongdoing of the financial services industry; and

"Whereas the Attorney General's position is that plaintiff investor interests do not need further protection;

"We, the undersigned, petition the Legislative Assembly of Ontario as follows:

"That the province government immediately pass and implement an amendment to the Limitations Act, 2002, to provide an exemption for claims by victims of financial services industry wrongdoing so that no time limitation period applies to such claims."

Many who are concerned about seniors' issues have spoken out against the reduction in limitation periods. The only hope victims have for the recovery of their savings is civil action. To statute-bar them from proceeding is unjust.

We trust that this committee will see the validity of these concerns and take appropriate action to ensure that this injustice is reversed. We ask that the previous limitation periods be reinstated, or victims of investment industry wrongdoing be exempted from the reduced limitation periods. Thank you.

The Vice-Chair: Thank you, Mr. Buell. We only have one minute left for questions and comments. Mr. Runciman, you have the lead.

Mr. Runciman: Thank you very much. This is an interesting issue and very, I think, valid and legitimate concerns that you've brought forward and others today have brought forward as well. I think there's certainly an indication for Mr. Kormos and myself that we will pursue this on your behalf and on behalf of other small investors, if you will, to ensure that the appropriate amendments are put forward and the debate is carried forward on behalf of the people you represent and many others across this province.

The Vice-Chair: Mr. Kormos?

Mr. Kormos: Thank you, folks, both of you. Look, the exploitation and ripping off of seniors who have worked so hard for so long to save modest amounts is just a shameful blot on this province. It's just remarkable. We've seen it in our constituency offices, whether it's stockbrokers—we've seen some of the churning that goes on. There's no reason for 80-year-old people to be trading stock on a weekly basis in the stock market. The only person making money there is the guy holding the poker game, taking the rake. That's the stockbroker; similarly with the mutual fund industry. Again, some of the ill-educated dealers who are ripping off our folks and our grandfolks—it's criminal.

It's remarkable that so much has been said, including by the former chair of the OSC. I think what we might do is ask the Ministry of the AG, if they could, to give us some sort of indication of where the ministry is at. Are they preparing legislation, are they contemplating these various commentaries from a policy perspective or not? Again, I think to be fair, if they let us know that they in fact are contemplating them, we can go from that point forward; but if they're not, I say shame on them. Mr. Runciman and I have already talked to the committee about our plans to introduce an amendment in that regard and to seek unanimous consent to have it found in order.

The Vice-Chair: Thank you. Government: Mr. McMeekin?

Mr. McMeekin: Thank you both for your excellent presentation. It's consistent with some other things we've heard. I'd just say for the record that anybody being exploited or ripped off, be they seniors or younger or whatever, is something that we want to have legislation in place to protect against. I think Mr. Kormos said earlier that sometimes governments and members from all three, four, whatever number of political parties make inadvertent decisions, maybe even inadvertent errors, and it needs to be looked at.

You're not suggesting that there's no personal responsibility for monitoring investments; you just don't want to see investors' hands, particularly senior investors' hands, hamstrung and tied so that there's not some reasonable period by and through which to identify concerns and respond to them. Would that be a fair characterization of your position?

Ms. Smith: Sometimes it takes seniors more than two years to even admit to the public that that has happened. I have neighbours who wouldn't admit it to anyone for over two years, and then finally they came to a neighbour, then their family. So I do think that it takes more than two years for a senior to come to terms with something like that. If they've lost their savings, they are just devastated and they are suicidal. To me, it is one of the worst types of elder abuse. Of course, I sit on the committee for elder abuse for the province, as well, and I feel this is every bit as bad as any of the other elder abuse we have.

Mr. McMeekin: Marie, you've done some exemplary work there. I thank you both for coming out.

Ms. Smith: Thanks, Ted.

The Vice-Chair: Thank you as well from the committee. We appreciate your taking the time to come out this afternoon to bring your perspective to the committee.

HENRIETTE CASIER

The Vice-Chair: I believe we now have our next deputation, by teleconference: Henriette Casier.

Ms. Henriette Casier: Henriette Casier.

The Vice-Chair: Henriette, you have half an hour to make your presentation. If you don't use up the entire half-hour, then there is opportunity for members of the standing committee to ask you questions or make comments about your presentation. If you would identify yourself and anyone else who is on the conference call with you for the Hansard record, and then proceed, please.

Ms. Casier: I'm on the call by myself. I'm a paralegal, and I operate in the municipality of Chatham-Kent. I'm calling with regard to Bill 14 and requesting that schedule C be removed from Bill 14. I'm very concerned as to the affordability of paralegals for John Doe Public, if you will. I try to offer a reasonable service at an affordable cost to most people. I've had input from different people that certainly I'm more affordable than a lawyer would be. I realize I cannot give legal advice, and I do not want to give legal advice, but I assist people in doing that. Now, if Bill 14 passes, especially part C of that, we will be forced to be regulated by the lawyers.

1530

My basic question is this. You wouldn't be asking a chartered accountant to regulate the CGAs, the certified general accountants. I just can't understand why you would be allowing lawyers to regulate paralegals. By definition, I believe that a paralegal can do something for yourself or for anyone that they could do themselves, but they don't know how. They simply don't know the ropes. We have an insight into those ropes, and we help them through it. If we had to be under the authority of the law society, certainly our costs would go up and the affordability would go up accordingly. I would question that we would even be able to continue to operate. At the rates we charge, it doesn't leave a whole lot of margin, because we are giving an affordable service.

I'm trying to read my writing. I apologize.

The Vice-Chair: Take your time.

Ms. Casier: I just don't know how you would regulate it, because, as I said, a paralegal can prepare documents for someone—anybody can do it themselves, but they don't know how. We do it on their behalf, and it assists in the process. I think if you talk to any of the court clerks and they have an uncontested divorce prepared by an individual, she walks in with her grocery bags and says, "Here, I want a divorce," and they have to try and wade through that, or a paralegal comes in with a neat, tidy document that can certainly be processed through the system much more quickly. If this bill passes as such, I think the public would be at a disadvantage.

Now, I have a petition that was signed by clients over the last two weeks that they feel the same thing. I think we would lose a lot of the facilities for affordable preparation of documents for most people.

I don't know what else there is to say. I'm certain that you've heard it all. I just wanted to make it known that as a paralegal, I look out for the best interests of the public. I deal basically in uncontested divorces, and landlord and tenant issue, small claims, but I do other things as well—for a simple will, something that there's not a whole lot of—I don't know, if there's a firm heir attached to it and certainly just a simple will. Somebody who lives in an apartment, they don't have a whole lot of assets, and they can't afford to pay a lawyer a lot to do something like that. I just feel that Bill 14 with schedule C included is going to leave a lot of people without proper representation.

I am a member of the Paralegal Society of Ontario, and I think that, given time, we could form the proper foundations for it without being regulated by the lawyers. Paralegals practise in various areas right now, and they would certainly be limited. I do some highway traffic as well, and we would certainly be limited in what we can perform and again limit our income and limit our viability as a business if the new legislation should happen to pass.

The Vice-Chair: Thank you very much. That gives us about 24 minutes of remaining time. Mr. Kormos, you have the lead.

Mr. Kormos: Thank you kindly for calling in. I understand your position. It's certainly problematic.

I'll mention to you what I've had occasion to reflect on so many times. When the BSW/MSW social workers folks were getting legislation that created a college to regulate them, the community social service graduates fought to get included. The BSW/MSW types didn't want them included. They figured it was beneath them to belong to the same regulatory body.

So if paralegals had membership in the law society and had the ability to elect a more representative number of benchers than merely two, which means that paralegals would be more directly involved in the decisions made about their profession, would that be at all persuasive to you, about the law society becoming a bigger family?

Ms. Casier: I don't know. I don't have a problem in Chatham with lawyers per se. I do understand that in Toronto it's a more competitive market. I can just foresee that the lawyers would not allow paralegals to do—they would very seriously limit their abilities to do that. I guess having more paralegals on the bench may help. I'm just not sure that this bill should be passed that speedily and that there shouldn't be more consideration given to it in its totality. I don't know that having a few more paralegals would still make it more affordable.

As I see it, if as paralegal members we had to become members of the law society of Ontario, we would possibly have to make a deposit of $5,000 or whatever similar; I don't know what the law society fees are or anything like that. But if it came to that and I had to put that kind of money up, I would not be able to do that. I would not be able to function, so I would automatically be out of business. It wouldn't matter that there were some paralegals on the board directing what I can or cannot do. If I have to become a member of the law society, I don't know that I or any small individual paralegals would be able to operate. It just wouldn't be financially viable.

Mr. Kormos: Once again, I hear you, and that's another problem in that nobody has told any of us here—I don't know, Mr. Runciman; did anybody tell you?—what the anticipated fees would be for the paralegals.

Ms. Casier: And I guess that's really what we're concerned about.

Mr. Kormos: So that's of concern, yes.

Ms. Casier: Yes. And as soon as I see that we have to become a member of the law society of Ontario, as a paralegal I'm going, "Okay, what kind of fees are they going to assess us?" I can't afford it. I carry errors and omissions insurance. I do everything that I need to do, and as it is now, it's affordable for me. But if there's a fee assessed in becoming a member of the law society—and I don't know how they can regulate any of this without a fee being attached to it—am I going to be able to operate anymore? I don't know.

Mr. Kormos: I think the information contained in the report to convocation was $3 million start-up and $1.3 million a year, give or take. I don't know how many paralegals that's based on. The other problem is, we've only been given very rough estimates of how many people are so-called "paralegals" in the province. What percentage of them wouldn't meet a minimum standard? Surely some won't, because I know there are some paralegals out there who aren't particularly impressive. You know them too, don't you?

Ms. Casier: Oh, there are those out there, I don't doubt. I will give you that, but generally speaking they weed themselves out, especially in a smaller community. If people use them, they get to know them, or they don't, whichever.

Mr. Kormos: I agree. I come from Niagara, small-town Ontario. Although I don't practise law at the moment, I know the lawyers down there use paralegals a lot. POINTTS, for instance, which has some excellent staff, is used regularly by lawyers who refer clients to POINTTS, because lawyers aren't going to go to high-

way traffic court to fight a $100 or $200 ticket when their hourly fee is $300 and $350 for starters.

Ms. Casier: Exactly, and they're going to continue to allow us to do that. But if you're talking about some sort of a fund that needs $3 million, I'm sure that you're going to ask for input from everybody to do that.

Mr. Kormos: Oh, no. I think the law society indicates they want the taxpayer to pay that. They want the government to pay the upfront—and we haven't heard from the government whether it's going to be paying that.

We haven't heard from the government about whether or not regulated paralegals are going to be part of the legal aid system and what additional expenditures are going to be required from legal aid because of this new community of practitioners. The fact is, of course, that legal aid is grossly underfunded at present. Who's going to make up the shortfall if you've got a community of paralegals? Because one of the attractions for paralegals is that maybe, by virtue of being regulated by the law society, they can then become capable of billing legal aid for certain things. The government hasn't told us where that money's coming from either, have they?

Ms. Casier: No. This may be off track; I don't know. Any time you get the government involved in one of these projects, in my view it's a make-work program, so they're going to employ a whole lot of people to do this $3 million, and what is the purpose of that? We are a functioning, viable society as we are right now, without any changes to the bill. If we become a paralegal society of Ontario and you allow us to eventually regulate ourselves, we can come out with regulations that will save that cost. Even if the government does fund it, that comes from you and me as taxpayers anyway. It's just another one—I'm sorry, this is off topic, but I have a lot of beefs with government make-work programs. Again, this is off topic, but there was a gun registry. They have spent millions of dollars, and now they're going to talk about spending millions of dollars to return the $35 fee to John Doe. That's ridiculous. That is the type of program that I can see this becoming, not benefiting anybody.

1540

We're working, as we are right now, without Bill 14, and I don't see any reason for us not to continue to do so. All of the clients that I have, certainly as far as I'm aware, are satisfied with my service. If they're not satisfied, we have the errors and omissions insurance. As it works right now, it is working. If you, as an individual, want to prepare a document, you can do it. If you don't know how to do it, you hire a paralegal to do it. If you get into this legislation and all of these funded programs because of Bill 14, to me, it's just another make-work program.

The Vice-Chair: The government side.

Mr. Balkissoon: I just wanted to say thank you very much for your input. We've heard similar comments from several of the other deputants. Thank you for taking the time to join us.

Ms. Casier: Again, I don't feel that a change allowing more paralegals on the board is going to do it. I don't think the bill, as it is right now, is going to benefit anyone, and I don't think this is the type of legislation that we need to regulate paralegals. Allow us a few more years, and hopefully we'll be able to come up with something, or let it go as it is. I've been in business for 10 years and it has been working just fine. I don't understand the need for all of this at this point in time.

Mr. Runciman: I'll join with the others in thanking you for taking the time to be involved in the process. You said you've been practising for 10 years. What did you do prior to becoming a paralegal?

Ms. Casier: Actually—and I guess I'm hoping to be grandfathered in anything that's in—prior to that, I worked in a bank for 24 years. My job description was in non-negotiable securities current account authorities. I did sue some small claims actions as well, so I had exposure to all of these things in the bank. Then I started doing this, just as a secretary, but I am the paralegal in the office now. The person who was doing it left for the reasons that were referred to earlier. I have been doing it on my own for 10 years.

Mr. Runciman: So you sort of evolved into other areas in terms of scope of practice?

Ms. Casier: No. Basically, our scope of practice is the same. I have been doing that since we started 10 years ago.

Mr. Runciman: We've heard some conflicting testimony about paralegals generally in terms of where they fall with respect to this legislation. I just wonder what contact you have with others within your profession. You mentioned that you're a member of the paralegal society. Do you have much contact with other practitioners?

Ms. Casier: There are, as far as I know, three or four of us in the city of Chatham, and, yes, I certainly contact them as well. Mr. Frank Sysel is in town, and there's Mr. Bill Marchand. Then there's Gail Baldwin. She's in Ridgetown. We come in contact with each other at Small Claims Court and various other venues, yes.

Mr. Runciman: They have similar feelings about the legislation?

Ms. Casier: Definitely. None of us sees any benefit in the legislation other than I guess we'll retire early, because there's no way we can afford to become a member of the Law Society of Upper Canada. It's not going to work.

Mr. Runciman: Are there any other concerns, though, beyond the affordability issue, in terms of your ability to do your job—perhaps the limitations placed on you—that may be onerous?

Ms. Casier: Certainly. In Chatham, I've had lawyers refer people to me for an uncontested divorce. They say, "Oh, contact them. They'll do a good job for you, because I don't do that." But in Toronto, that would not happen. You would have lawyers who say, "No, they cannot do an uncontested divorce."

This summer, I assisted in the preparation of Family Court documents, which I don't normally do. The individual I did it for had come to me from three other lawyers, simply because she could not afford the fees.

She said, "Here are the forms. Help me type them up, because I don't know how." And that's all I did, just typed up documents for her. If they pass this legislation, I wouldn't even be able to assist her. She's one of the people who fell in the cracks. I believe—and I'm not 100% sure—if your income is over $24,000, you do not qualify for assistance; if it's under, you do. She was just on that break-even point or borderline, unfortunately. Her bookkeeping records were not the greatest. She couldn't prove that she needed assistance so she couldn't qualify for assistance, yet she did not have the funding to obtain assistance from a lawyer. So I was able to help her out at a reasonable cost.

Mr. Runciman: That's interesting. You know, this legislation is titled access to justice.

Interjection.

Mr. Runciman: Yes, that's my concern, that there's going to be less access and perhaps unaffordable.

Ms. Casier: It's less access, because I wouldn't have been able to help that lady. What is she going to do? Let her ex-husband get out of paying her the support that he committed to? It doesn't make sense.

Mr. Runciman: In your Chatham experience—you said four or five other colleagues—have there been any problems, any complaints, any lawsuits?

Ms. Casier: Not that I'm aware of. As I said, there are certain people, but overall, they do their job well. You just have to—I don't know. I'm not going to name names or do whatever. But no, overall, from the public's perspective, I think they all think that paralegals do their job well when they find out what we do, because it's still one of those jobs that people don't really know a whole lot about. I describe what I do, and "Oh, I didn't know you could do that. Okay. I'll be in to see you."

Mr. Runciman: Are you called a paralegal?

Ms. Casier: Mm-hmm.

Mr. Runciman: And part of this legislation, of course—the concern is that we're not using that term. Do you see any advantage or disadvantage—if this legislation passes, and it seems the government is intent on passing it, we'll be forbidden from describing you and your colleagues as paralegals.

Ms. Casier: A paralegal is anybody who can do anything for themselves or that you can do—I don't know. I guess it doesn't matter what you call yourself. To me, as a paralegal—we're not saying we're lawyers. I don't know what other name you would attach to us, because we certainly can't say that we're lawyers in the law society. What are we going to be in the law society? I just don't see that this legislation should be passed.

The Vice-Chair: Thank you very much, Ms. Casier. Have a great afternoon. We certainly appreciate your allowing us to call you early to help expedite the public hearings of this committee.

Ms. Casier: Thank you for hearing me.

The Vice-Chair: Our next deputation hasn't arrived yet, so I'm going to have a recess until 4:15.

The committee recessed from 1550 to 1602.

ADVOCATES' SOCIETY

The Vice-Chair: I'm going to call the standing committee back to order. At this point, I would like to welcome Michael Barrack, who is with the Advocates' Society. You have 30 minutes for your presentation. If you do not use up the entire 30 minutes, there's opportunity for members of the committee to ask you questions or make comments about your presentation. For the record, if you would introduce yourself and then proceed.

Mr. Michael Barrack: Thanks. My name is Michael Barrack. I'm president of the Advocates' Society. As you probably know, the Advocates' Society represents over 3,000 lawyers across the province whose practice is primarily appearing before courts and tribunals.

The board of directors of the society represents advocates from each of the regions around the province, and we're made up of lawyers who practise both civil and criminal litigation, both on the plaintiff side and the defence side, crown and defence. So we represent the full range of lawyers. Unlike some of the other groups that have been before you that have a more sectional or sectoral interest, we have a broad range, and all of those groups have to come together to support our submissions.

So in our submissions today, I'll be speaking to the Advocates' Society's strong support for three aspects of the bill that's before you: the amendments to the Justices of the Peace Act and Public Authorities Protection Act in schedule B; the amendments to the Law Society Act dealing with paralegal representation in schedule C; and the amendments to the Limitations Act in schedule D.

While the society supports the amendments to the Provincial Offences Act in schedule E and the Legislation Act in schedule F, both of which are very useful amendments and of benefit to the profession, I won't be addressing those specifically in my remarks.

Finally, with respect to schedule A, which is the amendments to the Courts of Justice Act dealing with structured settlements, the society takes no position on those amendments.

Just by way of overview, the Advocates' Society supports these amendments to the law because we believe that the men and women of Ontario who rely on our justice system will be better served if these changes are made. These changes will move the markers by ensuring that those who adjudicate matters are consistently well qualified and that those who provide legal services are both qualified and regulated.

If I can address, very briefly, the amendments to the Justices of the Peace Act and the Public Authorities Protection Act in schedule B, the Advocates' Society—and again, we're a mix of lawyers across the board—strongly supports the reforms to the justice of the peace system. The more open and transparent system of appointments that is proposed continues the tradition in Ontario of having one of the most progressive systems of appointing judicial officers. It is something that we should be proud of in Ontario. It differentiates our Ontario Court of Justice from the federal scheme, and it

works well. By vetting the appointments through the advisory committee and restricting the appointments to the recommended and highly recommended candidates, the system will become more open and transparent, and this process will help to remove a perception that is out there of political influence as a significant determinant in the appointments process.

The addition of minimum qualification standards ensures that the men and women who become justices of the peace will instill confidence in those who come before them. It's a common saying amongst advocates, and we're reminded by judges, that the most important person in any hearing room is the person who loses the case. The test of a justice system is whether the person who walks out of a hearing room or a courtroom having lost the case believes that they've been fairly dealt with. Only in a system where that belief is almost universal is there a respect for the rule of law. These changes, while they don't reform everything in the rule of law, go some distance to meeting that challenge.

Another aspect of the bill which assists in ensuring that citizens remain confident in our system of justice is the introduction of a more accountable and responsive discipline process. In this bill, by restructuring and expanding the role of the Justices of the Peace Review Council, there will be a system in place to allow people who believe that they have not been fairly treated to address that concern. By adopting a scheme of review that is similar to that for the judges of the Ontario Court of Justice, Ontario remains at the forefront of addressing complaints against the judiciary.

The strength of a proposal like that which deals with the Ontario justices lies in the ability to balance fairness to both the complainant and the justice against whom the complaint is made. One of the major flexibilities of the bill is the ability to have flexible remedies available to the review council, and these range from warning the justice to a recommendation of removal from office. I would compare and contrast that with when we deal with federally appointed Superior Court judges and someone makes a complaint. The only remedy that you have in those circumstances is removal from office, and there aren't these intermediate levels. That, over time, can build up real resentment if there is not an outlet for complaints. This flexibility allows for legitimate concerns to be addressed in an appropriate manner while preserving fairness to everyone involved.

If I could turn briefly to the amendments to the Law Society Act dealing with paralegal representation in schedule C, the members of the Advocates' Society also very strongly support the proposed amendments to the Law Society Act dealing with paralegal regulation. The Advocates' Society has been among the strongest supporters of this type of legislation for a very long time through many iterations and examinations of this question. Our members have seen up close and personal the dangers of not having this provision of legal services by paralegals regulated. I know when Gavin MacKenzie was here as treasurer of the law society, he recounted an incident where a woman lost a hand, she entered into a settlement for a very low amount and it had to be unwound. It was one of our board members on the Advocates' Society recently who represented that woman as a lawyer and had to go through the steps of getting that settlement unwound. If you were to bring him to the room today, he would speak passionately, and has spoken passionately on numerous occasions, about the need for regulation in this area.

Again, the men and women of Ontario who pay for legal services should have the confidence of knowing that the person providing those services is both properly trained and subject to appropriate regulation. The Advocates' Society supports the proposal that the law society be the body that both licenses and disciplines paralegals. The Advocates' Society is of the view that was expressed by the law society, that the additional duties of regulating paralegals in the public interest can be done most efficiently, most effectively and most economically by the law society rather than by creating a whole new regulatory body. This is new territory for Ontario and it's new territory for Canada. It's important that the body that takes on this task of regulating paralegals and administering the new regulation have not only an understanding but a nuanced understanding of the entire landscape of the provision of legal services.

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The committee has heard representations from various bodies pointing out that the exact boundaries of legal services to be covered by the new regulation will require careful consideration. The proposal in the Advocates' Society's submission in the amendments to create the legal services provision committee as a committee of the law society is a sound proposal for dealing with this issue. The 13 people who will make up this committee will represent paralegals, lawyers and laypersons. In our submission, this strikes a balance that will ensure that the appropriate points of view are taken into account as the structure goes forward.

Ultimately, the point of view that is most important is the point of view of consumer protection. Licensing of paralegals is the cornerstone of consumer protection in this area. The licensing requirements in this legislation ensure that on a go-forward basis the paralegals are appropriately trained and that their practice is limited to their area of training. The law is becoming more complex all the time, and consumers of legal services are best served if they have confidence that the persons providing those services are working in an area in which they are competent. The requirement of a college diploma on a go-forward basis ensures that paralegals will have the skills necessary to represent their clients. That level of training, as opposed to the full complement of training that's required of a lawyer, will ensure that legal services which don't require the full services and training of a lawyer are more readily available to the people of Ontario.

The requirement of licensing, in our submission, reduces the threat of consumers being taken advantage

of. In many instances, when consumers have required legal services, whether they're from a lawyer or whether they're from a paralegal, they are in a place of vulnerability, and they should not be left to an unlicensed group who are not subject to any form of professional regulation or oversight. These amendments will ensure that when consumers are concerned about professional misconduct on the part of those providing legal services, they will have access to a full system of professional discipline. If a complaint is made, it will be investigated and ultimately it may result in a hearing with appropriate sanctions if impropriety or misconduct is established. Members of the public will have the same rights in respect to paralegals that they now have against lawyers.

The benefit of this type of regulation is not only the obvious one of having the ability to deal with the bad apples, but it also acts as a deterrent against potentially bad apples going bad. But a fully regulated profession also has positive benefits. It allows for the majority of competent paralegals to also have the professional support of the law society. As lawyers, we know we benefit from a great range of services that the law society provides to us, including continuing education and the ability to seek personal advice, both on professional issues and on personal issues when the need arises. To extend these benefits as well as the regulatory framework to paralegals will enhance the quality of services that the paralegal profession is able to provide.

There's no doubt about it that this is innovative legislation. It does acknowledge the reality that a profession exists that is providing services to consumers in Ontario, and it has existed for some time. But for the first time, it provides the public with the safeguards it has with respect to other regulated professions. The fact that this is new territory, in our submission, is appropriately reflected in the provisions of the bill, which calls for two separate reports: The first is by the law society's legal services provision, and the second is by a non-lawyer, non-paralegal person appointed by the Attorney General.

As this committee is well aware from the submissions that it has heard over time, the entire area of regulation of paralegals has been talked about for a very long time. It is the very strong submission of the Advocates' Society that there has been sufficient debate on this issue and that the need for regulation is real. The time for legislative action in this area, in our submission, is long past due.

Finally, I'd like to speak very briefly to the amendments to the Limitations Act in schedule D. The Attorney General, when he comes and talks to us as lawyers, is very quick to point out that the legal profession should have picked up the gap in the recent changes to the limitations legislation prior to the introduction of the current Limitations Act. He's right; we didn't pick it up, and we should have made submissions at that point in time.

The inability of parties to agree to extend the limitation period beyond what is provided for in the Limitations Act is a clear oversight. Parties should be free to agree that they will continue to attempt to resolve their issues without being forced to resort to court proceedings if they mutually agree to do so and if they agree to do so without giving up their legal rights. Similarly, if businesses, in structuring transactions, are free to set longer or shorter periods between themselves, then we've avoided the potential for an obstacle to doing transactions in Ontario. The Advocates' Society supports these changes and, as I've said, supports the other changes in the last two schedules of the amendment.

On behalf of the Advocates' Society, we believe that this is important legislation, particularly in the areas that I've addressed. We strongly support those areas that I've spoken to and thank you for the opportunity to address you and put our views on the record. I know it's repetitive of much of what you've heard, but they are our views.

The Vice-Chair: Thank you very much, Mr. Barrack. We have 17 minutes for questions and comments, starting with the government. Mr. McMeekin.

Mr. McMeekin: A very cogent, clear, focused presentation; helpful. Thank you very much.

The Vice-Chair: Mr. Runciman.

Mr. Runciman: Thank you, sir. I appreciated very much your last comments with respect to the Limitations Act. As you suggest, I'm not surprised by the Advocates' Society's support for schedule C and the law society's regulation. Virtually everyone who is a lawyer who has appeared before us has taken the same position, with much the same rationale, and virtually every paralegal who has appeared has had a different view of the world. At some point, we're going to have to struggle through that.

As I was just on my way in, you talked about the justices of the peace appointments process. Just a couple of questions about that: Going back to 1990, in that era, the NDP government did away with part-time JPs and went towards a full-time semi-legally-trained level of court, I guess—at least, it sometimes thinks of itself as a court. I am a supporter of having a cadre of part-time JPs who can provide services that sometimes, today—I think it has been addressed to some degree, but not completely, if you talk to police officers, about trying to get, for example, a JP for a bail hearing at 2 or 3 o'clock on a Sunday morning, or something of that nature. Getting someone who's on salary to work beyond the defined hours of work has been something of a challenge, and that's certainly a complaint heard from the police community. I would like to hear your views on having a corps, if you will, of part-timers to supplement the full-time JP numbers.

Mr. Barrack: Mr. Runciman, let me say to start with that while I used to practise criminal law in my younger days, I don't practise it so much anymore, so I don't have the on-the-ground experience to know what does or doesn't go on. But when I did speak to some of our members before, the real challenge here, from the Advocates' Society perspective, is that the justices of the peace are fulfilling very important roles within the justice system. Whether or not to grant someone bail may be

someone's first encounter with the legal system. To deal with the Provincial Offences Act matters that the justices of the peace have to deal with—while it's easy to minimize them, for the people affected by them, they are significant events. They're not all just parking tickets; these are significant events in people's lives.

Where the Advocates' Society comes from is when you're going to have that kind of impact on people, really the level of qualification and the professionalism of the body that's dealing with it is what we're aimed at. If there aren't enough of them so that police officers can get them over the weekend, that's a problem, but it's not necessarily one that falls within the scope of the legislation. We appreciate that it's an administrative concern. But whether it's the middle of the night on the weekend or whether it's Monday morning in a court, when that person comes before a justice of the peace to have their rights adjudicated or if they're someone who has been charged with an environmental offence or another offence of that kind, it's our very strong submission that they have the right to the most qualified person that we can put in front of them to deal with the issue.

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Mr. Runciman: I'll ask for your opinion. I have a few more minutes.

This is an amendment I may propose to one section of the act dealing with the administration of justice. Having an annual report with respect to the operations within the justice system that would require the inclusion of things like the number of crimes committed while on bail, probation, conditional release, subject to or eligible for a criminal deportation order, or the number of remands per case—and that would be by court location and/or the justice categorized by the Criminal Code or the POA—those kinds of stats which I think would be helpful for a public understanding of what's happening and where it's happening, and perhaps put the focus on some of the decisions being made and the individuals making those decisions: What's your reaction to that kind of initiative?

Mr. Barrack: Let me break it down. Measuring what we do within the justice system in and of itself is not necessarily a bad thing. We all try and do it in various ways. We do owe some element of measurement to the public.

The last bit of your comment—and what the Advocates' Society is very clear about—is that statistics and measurements should not interfere with judicial independence, and that we should not be measuring our judges from the point of view of saying, "Who are our good judges and who are our bad judges? Who are our good justices of the peace and our bad justices of the peace?" by reason of the outcomes in their courts. That's a very dangerous thing, and it starts down a road of political interference in the judicial process that we're against.

Simply measuring the level of activity for the purposes of resource allocation for the determination of where we need resources, of where people are being served and not being served, is a good thing as long as those statistics are accurate. We all spend a lot of time cross-examining people in courts about their statistics and know that there are good ones and there are bad ones; they can be used for a lot of purposes. The simple concept of measuring activity within the justice system is not something we're opposed to.

Mr. Runciman: Another quick question. We don't get the Law Society Act opened up too often. I did raise this and had the wrath of the criminal bar come down on me, but there was obviously the Bernardo case. I think it was Mr. Ken Howard—was that the defence lawyer? I may have the wrong name. But that situation where obstruction of justice charges—

The Vice-Chair: Mr. Runciman, could you move just a bit closer?

Mr. Runciman: —obstruction of justice charges were laid, and there was also a review by the law society in terms of being aware of evidence that could have kept Karla Homolka in prison to this day, as an example.

There was also another case where a body had been moved and the individual representing the person charged was aware of that body being moved but didn't reveal that evidence. I just wonder if you feel that the defence counsel should be under an obligation to make that kind of evidence available to the proper authorities.

Mr. Barrack: The whole area of solicitor and client privilege is something we are staunch defenders of. The most recent pronouncements of the Supreme Court of Canada came out in the Blank case last week. The Advocates' Society was one of the interveners that was referred to in that case. We believe firmly in the preservation of solicitor and client privilege. We also know that it is not absolute and there are circumstances where lawyers have other obligations, but we don't feel that that's an area in need of any law reform at the present time.

Mr. Runciman: Have I any more time?

The Vice-Chair: One minute.

Mr. Runciman: One minute? Okay. We'll keep going. We talked about the JP appointments process, and we could also talk about the Ontario Courts Management Advisory Committee, but I'd like to see the justice committee and the legislators play more of an active role here rather than having the AG make appointments to these committees. Why should not the justice committee of the Legislature play that role so that we have an opportunity to review some of the appointments with respect to these councils? We had the Supreme Court appointee at the federal level who went through a parliamentary review, and I'm just wondering what your feeling is or what the Advocates' Society's view might be of that kind of process perhaps being adopted at the provincial level.

Mr. Barrack: Well, there's a whole lot wrapped up in your question. The parliamentary review of Justice Rothstein's appointment was not an appointment by a legislative committee; we all know that. Again, we believe it's very important that we support the current system. Your question goes beyond the justices of the

peace. In Ontario, we believe that we have probably the best system of appointment of justices the way it works now, with the committee making recommendations that the Attorney General has to choose from, and we don't see any need to change it. We think it's working well, and we have a lot of respect for the rule of law in this province. Our judges are seen to—

Mr. Runciman: Even in Caledonia?

Mr. Barrack: Not everywhere, but as somebody who has spent a lot of time in courtrooms, when the person walks out of the courtroom upset at a judge, the reason they're upset at the judge is because they believe that that judge has real authority to affect their lives. That is, in its own way, respect for the rule of law. As somebody who has practised in Ecuador, I tell you, we've got to work hard to preserve that.

Mr. Runciman: Agreed.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, sir, for coming today. The Limitations Act amendments, schedule D, were intriguing to so many of us. They' were slipped in there. We learned about tolling agreements, which Ms. Drent did some work on at my request. It appears to be a very American term.

Mr. Barrack: The term is an American term. I didn't know what it was the first time an American lawyer said it to me.

Mr. Kormos: But I was the only one at committee who confessed to not knowing what it meant. They all sat here, pretending they knew exactly what they meant, but—

Mr. Barrack: Listen, I can remember the first time I was in a meeting and an American lawyer started talking about a tolling agreement. I had the same reaction. I had been practising for a number of years, and I didn't know what it was, but I figured it out.

Mr. Kormos: Okay. The Advocates' Society is supporting permitting tolling agreements between parties.

Mr. Barrack: Yes.

Mr. Kormos: All right. You can imagine that we've heard contra views. I presume part of it is self-interest, entrepreneurs who want the protection of a statute setting a maximum. But someone suggested that it's in the interest of the courts that there be a prohibition on tolling agreements, because we shouldn't expect our publicly funded courts to be burdened with litigation that may address something that's 50 years old when the motive for entering into that tolling agreement was perhaps to be competitive and to simply outbid a competitor. What do you say to that?

Mr. Barrack: I'd turn it around the other way. I think if we don't have the tolling agreements, then we're going to get kickback from the courts that they're being overburdened with cases that shouldn't be there because people were forced to start their lawsuits when they were still negotiating. On every side of this coin you can point out that there will be an example of a case that will cause harm, where the profession is prepared to throw its hands up in the air and say, "Look, we missed this," because what we didn't appreciate was where we have parties in good faith who want to extend the limitation period. I practise a lot in the commercial area, the commercial list. If I were to go up and the judge says, "What are you doing here?" and I say, "Well, we have to start it because it's under the Limitations Act. We have to start the case, but our clients are still talking, so we want you to just go through the expense of filing these papers, putting your court staff to the expense and doing all of this, because we have to," we all scratch our heads and say, "Well, that doesn't make a lot of sense."

So you're right. There are going to be circumstances where the court is going to say, "What are you doing here?" But, as you know—you're a lawyer—there are concepts within the law that can deal with that as well.

Mr. Kormos: Let's be very clear, because there appear to be two types of tolling agreements: one which is entered into after a purported cause of action arises, and one which is the subject matter of the initial agreement or contract. In other words, you put out a tender and one of your requirements is that the party tendering agrees to extend the limitation period.

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Mr. Barrack: Right.

Mr. Kormos: So are you advocating equally for both types? You seem to be speaking to the first type, which is understandable.

Mr. Barrack: No. I advocate for both of them, and the reason is this: In the reality of the marketplace that you describe, there's going to be somebody who's going to want to have the ability to sue, and there's somebody who's going to want to have the ability not to be sued. Experience has taught me that nobody is going to do the deal at a 50-year level. They're going to come to some commercially reasonable saw off between them against those two tensions that's going to be something that the courts in 999,000—one in 10,000 or one in 100,000 may be something that's offensive, but you know the flexibility of the common law. If somebody has a 50-year period and thinks they're going to be able to assert a cause of action after 50 years, I hope I've got the other side of the case.

Mr. Kormos: Several participants in the hearings have commented on rumours that the limit of the jurisdiction of the Small Claims Court is going to be increased to, some suggested, $20,000; some suggested $25,000. Do you have a view on that?

Mr. Barrack: We do have views. As you know, the Attorney General has appointed Justice Coulter Osborne to look at the whole area of civil justice, and, as you probably know, the Advocates' Society convened a streamlining civil justice conference, which we convened last year. One of the strong areas that we looked at, and we're urging Mr. Osborne to look at, is this whole area of the summary disposition of matters, which—there are a number of jurisdictions we can learn lessons from.

In BC, they've done some creative things that we talked about at our conference. It's an area that we think is not within the scope of this bill, but we think this

whole question of what we call proportionality, trying to find a framework for the resolution of disputes that is proportional to the size of the dispute, is something that is incumbent upon us as a profession to address. Whether it's a specific increase in the amount in the Small Claims Court or devising more flexible mechanisms within the other courts, I'll leave that open till we hear from Justice Osborne.

Mr. Kormos: It's interesting, because the former Attorney General, Mr. Flaherty, often spoke about our judicial system as being process-obsessed. Is that a fair comment? Is that observation in and of itself a fair one?

Mr. Barrack: I don't know whether it's our judicial system or whether it's some of our lawyers who are process-obsessed. I don't know that you've got to fix the rules. Sometimes, maybe the fault lies not in the stars but on this side of the table in ourselves. Maybe we've got to chin up. Good lawyers are not process-obsessed. There are some out there who are process-obsessed, and we at the Advocates' Society, through our education processes, try to shake the process obsession out of them.

If you want to get a dispute resolved quickly within the rules we have now, you can do it. If you want to do it efficiently, you can do it. Are there changes that would help that be more universal? Sure, there are, but that's really for another day, and not the scope of these amendments. But we sure may be back to you on some of those when Mr. Osborne is finished his work.

Mr. Kormos: That's interesting. Perhaps, Chair, just one further question.

The Vice-Chair: Very quickly, Mr. Kormos.

Mr. Kormos: Yes, ma'am. We had a deputy Small Claims Court judge in here. I've got a lot of admiration for them, because as you know, they've got to deal with everything from soup to nuts. They don't have a whole lot of resources. They've got to make fast judgments most of the time.

Mr. Barrack: And some days, there are more nuts than soup.

Mr. Kormos: Fair enough. Well put. It's really demanding. Should the province get back into the business of appointing Small Claims Court judges?

Mr. Barrack: I don't know the answer to that question. I haven't thought it through.

Mr. Kormos: Okay. Thank you kindly.

The Vice-Chair: Thank you very much, Mr. Barrack. The time has expired, but I certainly appreciate your accommodating the committee and arriving early so that we could get through our deputations for the day.

That brings to an end the public hearings of this committee for the day. The committee is now adjourned.

The committee adjourned at 1635.

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