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Thursday 14 September 2006

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des débats
(Hansard)**

Jeudi 14 septembre 2006

**Standing committee on
justice policy**

Access to Justice Act, 2006

**Comité permanent
de la justice**

Loi de 2006 sur l'accès à la justice

Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 14 September 2006

Jeudi 14 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. Welcome to the standing committee on justice policy. This morning, we are continuing our hearings on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

PARALEGAL SOCIETY OF ONTARIO

The Chair: The first presentation is from the Paralegal Society of Ontario. Good morning. If you could state your names for Hansard. You may begin.

Ms. Susan Koprish: Thank you. My name is Susan Koprish.

Mr. Johnny Powers: My name is Johnny Powers.

Ms. Nikole Bélanger: I'm Nikole Bélanger.

Ms. Koprish: Thank you very much, Mr. Chairman and the honourable members of the justice committee, for giving me this opportunity to wrap up the Paralegal Society of Ontario's position and to bring you the position of the public.

We are here very battle-weary. We have been told since the beginning to give up on this fight because the only person the government is likely to listen to is the Law Society of Upper Canada. My sister begged me numerous times to support this legislation because this legislation is not going to hurt me, and she does not understand why I have given so much to oppose the law society as our regulatory body. She has only seen what I have given financially, emotionally and physically to stand for what is right.

The paralegals and the PSO mirror my belief. Yesterday, one of my colleagues, whom I respect incredibly, was representing five paralegals out of 2,500. I have worked with these five closely in the past number of

years. She spoke about why she has not joined the PSO and why she is in favour of the law society. She stated that the only prerequisite for joining the PSO is errors and omissions insurance, and that we have no bylaws. It is unfortunate she did not research this. I am well aware we have bylaws. We also have a code of conduct that our members must adhere to, which we have researched based on the law society's code of conduct to make sure it was up to what is expected in the legal community. As far as having E and O insurance, there isn't a better way to keep the bad apples out of this organization. Good luck at getting E and O if you have had claims filed against you.

Yes, I am what you may consider a paralegal who will be safe with the legislation. Not only do I have an honours legal assistant degree, a B.A. from university and quite a few other years of post-secondary education, but I also already have my E and O and I practise strictly in the Small Claims Court, often representing lawyers and the big corporations. I have also been lucky to have a call-in radio show about the Small Claims Court. With the law society being the regulatory body, I still do not feel safe. I feel as safe as Avis would feel with Hertz regulating them.

I have been a member of the PSO for the past 10 years, and I have never been more proud to be a paralegal. I have known the members of the PSO very well—sorry if I'm a little emotional—over the years, and I have gotten to know them by being in reception at these meetings. I'm also very proud of all our members and often refer them to my own clients, to my family and to my friends. I even felt more affirmed in my belief and in our membership's belief when I sat in an MPP's office this week and heard a woman who I admire, who has practised in uncontested divorces for over 20 years without complaint, talk about how she will lose her career when this legislation is passed. I was also close to tears seeing a very close and dear friend of mine close to tears on the parliamentary steps speaking to one of the MPPs here, talking about how she's already lost 75% of her business because of a letter that she has received from the law society. This is what we've already come to see, and we know what to expect.

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Almost every practising independent paralegal with many years' experience who has come before you who is not a bencher of the law society has pointed out the conflict of interest by having the law society regulate

paralegals. As official spokesperson and director for the PSO, I want there to be no misunderstanding of our position. The honourable Mr. Kormos wanted to know exactly which side of the ledger to check for Mr. Parsons on the issue of self-regulation. I want you to know there is no equivocation.

As the largest organization, the PSO, working along with the PSC and having the longest history, can unequivocally state that we are for self-regulation and adamantly opposed to the law society. I will not waste time reiterating that our societies have covered the areas the government feels are necessary to protect the public. As far as the analogy of trying to herd cats, the better analogy is that there was a cat among the pigeons.

As a former member of the PPAO, I have a clear recollection of the dissolution of this organization, as I had the privilege of meeting the honourable Mr. Zimmer the next day. The PPAO was dissolved because the board members began advocating for the law society as the regulatory body. As a result, there was widespread dissent, and a motion was passed to dissolve the PPAO, as we felt those members who were on the side of the law society would compromise our position. We must remember that the PPAO is an umbrella group of all paralegal organizations, such as the PSO, PSC, ALDA and OAPSOR. We were all of one mind towards self-regulation until the law society intervened, and upon intervention, the PPAO was derailed.

If this legislative body gives us the teeth and the tools to demand membership, there would be no question that we could and that we should regulate paralegals. I've heard these members say that we've had over 20 years to do that, but without the authority from the government and the tools from the government, we were set up to fail.

We have been told by the Law Society of Upper Canada that they have consulted with over 80 stakeholders, but not once did they consult with the real public of consumers. It is my respectful submission that paralegals more closely reflect the needs and positions of the consuming public. As a result, I am here taking the liberty of rectifying that oversight by presenting two members of the public, a petition signed by over 1,500 members of the public, and 371 letters from the public. Believe it or not, these petitions and letters were all from one paralegal.

First, the members of the public: I have to my right Nikole Bélanger, a woman who has used paralegals and who represents many women out in the public. I also have Johnny Powers, whom many of you may recognize either from the business community or as a former professional wrestler. I'd like to start with Ms. Bélanger.

Ms. Bélanger: Good morning, Mr. Chair and everybody on the committee. My name is Nikole Bélanger. I'm the founder of the Women's International Network. It's a not-for-profit organization that consists of a collective and online network dedicated to the advancement and success of women in their professional, personal and spiritual lives. It serves as a provider of diversified services and information by fostering com-

munication between women of all races, backgrounds and spiritual beliefs.

Our networks are women who wish to take responsibility for their own personal and professional welfare. In addition, they are willing to give back what they gain from being a part of the group. It is for women seeking to leave a legacy, to mentor a younger generation of women, and to gain the fellowship of other women within an environment of mutual support and growth. This organization fosters communication and friendship with all women.

This is why I'm here today, because some of these amazing women paralegals are just exercising their knowledge and services with all of the women who come our way every day at WIN for advice, help, and to take their case that otherwise no one would. Basically, that's what it is, because, you see, we talk about equality yet we are still far from it, meaning that most of the women who come our way are in no shape or form to pay for the services of lawyers, but God bless the competitors who will take their cases and won't make them feel like a second-class citizen and helpless.

In all fairness, it's not because all lawyers would do that, but they have such a huge amount of overhead and fancy cars that they couldn't take three quarters of the cases that we have at WIN. That's the reality, because women who stay home can't pay the fee, but can maybe scratch a loan from a family member for the budget needed for a competitor. It's as simple as this: It comes down to numbers, leaving them with the feeling that yes, indeed, it can be possible to receive help and services without jeopardizing their sense of pride and knowing that they can take action to better their lives, because some of them are going out of a marriage, divorce, separation, child custody, you name it. We have multiple cases and we need to help them to go through their endeavour and come out of it proud.

I can tell you that is why I do what I do. I've had my own set of personal challenges. I'm originally coming from Montreal; I'm sure some of you already figured this one out. When, nine years ago I went through my own high-profile divorce case, because I didn't know anyone who could direct me, I had to look and find lawyers in the Yellow Pages. Two years later, when I finalized with the lawyers, I had to pay close to \$85,000 of bills. When I asked one of the women lawyers where I should go from there—because on top of that, because I didn't know anybody in the city yet, I didn't even gain a fair settlement from all that for my children with what I know now—she answered me, “Well, Nikole, there's always the women's shelter,” which I went to.

Four years later, I was back on my feet and had a house built for my children and I. Just to complicate things a bit, I was hit by a van—I mean, go figure this one; this is unbelievable—and left with quite extensive injuries. The contractor heard about the delay of my moving to the new house and he left; he disappeared. So when I arrived there, it had no kitchen and no bathroom. I had to hire a lawyer. This lawyer took the case, but in the

end he couldn't take any recourses to win the case, yet I had nowhere to go. I had to sell the house because the money was not there anymore to carry the mortgage and everything and the fee of everybody.

The night before the closing of the sale of the house, I was confronted with such a high bill from the same lawyers who took my case and referred me to the notary that altogether, with the real estate agents, it was not enough money to close the deed of the house. So the agents, who were two women, were good-hearted and good-souled and removed their commission, and we were able to close the selling of the house.

In the meantime, the landlord from where I was living before, because I had to overstay a bit due to my injury, was suing me for overtime following my car accident due to lots of tests and physiotherapy, okay? We're going there. But then I met a woman who was a paralegal. I didn't know anything about it and inquired and searched and found out that she was ready to take my case. I retained her services to help me to create a win-win situation with the payment. She was able to reasonably work a settlement that was, at the time, achievable, and I thank her for it with all my heart—all this on a reasonable budget that I was able to sustain.

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On top of this hard time, one of the women who did some writing on a volunteer basis for WIN changed her mind about adding dollars to her volunteer work when she heard about the sale of my house. She thought she was going to make a killing with me. There was nothing left. So I had to hire a competitor again.

The lawyer firm said in an interview I watched on TV last Wednesday, I think, that he was serving small business and the individual. Still, I couldn't even afford one of these legal firms. Again, I called a competitor who indeed won my case, and in two or three payments, I was able to pay her bills. How thankful do you think I was?

I am here today because these women were there when I needed them personally, and they continue to be there for all the women of WIN—close to 2,500. They're all amazing. Every day, I receive emails with case after case who need their help, their guidance, and if you're thinking of adding restrictions and reducing the power and knowledge of the competitor, which they would be exercising for the love of their profession, with conscience, I plead all of you not to. We need those paralegals.

Bill 14 has some ground but needs lots of amendments to rebalance the fairness of their practice, some of them with more than five years of dedication and having the trust of all of us. It would be a crime to the women of WIN and all the public, because this is my direct input. I'm just one of them at this time. I preach for my constituency and what I stand for—women—that they have and should be able to continue to retain the service of the competitors, which in any other circumstance would be able to pay the fee of a lawyer.

Trust me. I went there, been there. That should be my right to do so. Regardless of what lawyers are saying and

claim, it's no comparison on their fee basis, on their overhead and fancy staff that they can help me in my bracket of income. Please, I beg today that you take this plea in consideration. I'm a member of the society to have the possibility to have a voice and to be able to retain the service of a competitor with no strings attached.

Thank you for listening to me and all the women I represent today.

Ms. Koprach: This is Mr. Johnny Powers.

Mr. Powers: Thank you for allowing me to come and speak about some of my friends.

My background: For 25 years, I was a professional prizefighter. I fought in 27 countries. In the last 20 years, I've been a television producer and small-business person, and I've had many occasions to use paralegals to effect transactions, contracts, paperwork and the like, and found them unbelievably competent, serious-minded people. Most of them I work with are females. That having been said, I actually like females more than males. Males I fight with, compete with, and I never allow myself to win with a female, because it has dire consequences.

That having been said, I've come to plead a case. I plead with you not to pass this bill, Bill 14, as it exists. I'm sitting here partially because I have a friend of 10 years—I happen to be in the same office—and she is not here today out of fear. It's not nice in Canada to have fear. She's not here speaking on her own behalf because she's afraid of the consequences. She received a letter from the law society to cease and desist. She was picked out for whatever reason, and she has concern, and I have concern for her, too. She's at an age and stage where she'd like to go back and forth across the border, which gets tougher all the time. Nobody wants some kind of mark on their record that gives somebody at the border an excuse not to allow you to go across. She has been a paralegal for over 10 years. She has helped me, personally, as a small-business person, many times. I've seen her clients. They're not the well-heeled. They're not folks who can take care of themselves. There are many times I can financially and in other ways take care of myself; a lot of people can't.

Unless I'm confused—and I'm not trying to just do little polemics here—government is of the people, by the people, for the people. Most people are working-class people and most people who are disadvantaged are the ladies or the female side. They're economically disadvantaged. They're professionally disadvantaged. The paralegals that I know—and I know maybe five or six or seven close at hand and a number through various meetings—are ladies helping ladies, women helping women. You males—and there are more males here than there are females—I would respectfully request that you pay attention to this. This affects the livelihoods of not just the paralegals but the economic livelihood of your constituency, the ones who don't have the means to fight for themselves, to defend themselves with lawyers. I have lawyers as friends, and I have lawyers as people I hire at various times. I have lots of respect for intelligent, well-thought-out legal presentation. That's not the issue here.

The issue here is freedom: freedom to choose, freedom for the folks who don't have the means to have an opportunity to get it done.

Now I'm going to read from something that a friend of mine prepared, because he's much more articulate than I am and it presents the case well, as I see it.

"Paralegal concerns with Bill 14: In its ongoing opposition to Bill 14, the Paralegal Society of Ontario (POS) emphasized the numerous concerns expressed by both paralegals and non-paralegals to the standing committee on justice policy.

"Most notably, the POS noted that paralegals have been in favour of self-regulation for a number of years"—and I know this for a fact; I've been around some of their meetings—"and has been working toward that goal. Using the example of the currently self-regulated real estate industry as a guideline, one of the objectives under review is a requirement to have members take courses on an ongoing basis to upgrade and update their skills on a regular basis.

"Existing paralegals with considerable expertise in specific fields based on years of work for the public, hone their skills as conditions and regulations change. Additional course work would enhance their abilities and usefulness to the public"—the public, ladies and gentlemen—"even more, and would be welcomed by the membership.

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"As proposed, the legislation raises more questions than it attempts to answer. Most notably, the legislation raises the issues of:

"—Where is the defining line between what the paralegal profession does and can do?

"—Why are there no guidelines for grandfathering established paralegals laid out in the legislation?

"—Why have the recommendations of the Cory report been ignored completely, especially the finding that paralegals should not"—I emphasize not—"be regulated by the law society?

"—Wouldn't it make sense to use the self-regulation model implemented for the real estate industry as a template for the paralegal industry?

"Paralegals have been, and are, providing a valuable and needed service to the public and, for the most part, they are doing it competently ... and the POS," the Paralegal Society of Ontario, "is working to improve the standards on an ongoing basis.

"The Canadian Bankers Association, actuaries, OPSEU and the used car dealers all have expressed dismay that their activities will be caught up in Bill 14 and they will potentially be subject to regulation by the law society. While the law society and the Attorney General have insisted that all of these people will be exempt and are not intended to be caught up in the definition, they legitimately ask why the Attorney General is giving the power to the law society to potentially regulate them instead of establishing the guidelines in the Legislature.

"The members of the public who most use paralegals are single parents, women, ethnic groups, the disabled,

minorities, immigrants, fixed-income seniors and struggling businesses ... the ones who cannot afford a lawyer's services" in the main.

"Bill 14, the Access to Justice Act, is actually just the opposite, because it will prohibit all non-advocacy paralegals, leaving the working poor without an opportunity to choose the level of legal services they require for simple paperwork matters.

"Bill 14 should not be passed by the Ontario Legislature because it is an obvious conflict of interest to have lawyers regulating paralegals. What other profession is allowed to regulate its competitors?

"It is untrue that paralegals are uninsured, unregulated and undisciplined, as all members of the Paralegal Society of Ontario are required to carry errors and omissions insurance, are subject to a code of ethics and can be reported to a discipline committee, meaning that they are held accountable and the public is protected.

"It is unfair that the law society, which will regulate paralegals under Bill 14, will not even suspend prosecution of non-advocacy paralegals for the unauthorized practise of law while these hearings are taking place, yet expect paralegals to negotiate with them in good faith.

"It would be a great disservice to the public if Bill 14 is passed and the paralegals who are currently doing simple incorporations, wills and powers of attorney, simple real estate matters and uncontested divorces are forced out of business in accordance with schedule C of this bill.

"Paralegals have a self-regulation plan in place and could be self-regulating within a couple of years, if given the chance to do so.

"The paralegal profession has been providing the public with timely, useful, cost-effective services for a number of years. As structured, Bill 14 will eliminate or criminalize a number of those services, leaving many of the public without service.

The Chair: One minute left.

Mr. Powers: In conclusion, "[I]nstead of seeking to eliminate services to the public, the eventual legislation should work to encompass and enhance the new realities of life in the 21st century in a world where paralegals regulate themselves alongside, not underneath, lawyers."

Thank you very much for your attention.

The Chair: Thank you for your presentation. Your time has been completely used up.

POINTTS ADVISORY LTD.

The Chair: The next presenter is Mr. Brian Lawrie of POINTTS Advisory Ltd. Good morning, Mr. Lawrie.

Mr. Brian Lawrie: Good morning, ladies and gentlemen. For the record, my name is Brian Lawrie. I'm founder and president of POINTTS, the traffic ticket specialists.

I can't help having a feeling of déjà vu, because almost 20 years ago I sat in this very room in front of this very committee, with different members of course, supporting Bill 42, which was an act to regulate paralegals.

Strangely enough, the law society would have been the governing body at that time, had it passed.

I come here today to speak in favour of the proposed legislation with the following provisos: I feel that the act itself has to be more specific. I would like to see more in the act, such as the definition of a paralegal; the permissible areas of practice of a paralegal; the penalties for non-compliance for a paralegal. This would assist by providing a clear and ready reference for both paralegals and the public, rather than them having to track down law society bylaws to find out if there have been infractions.

I would like it see the bill use the word “paralegal.” Nowhere in the bill does the word “paralegal” appear. I feel it is imperative that we continue to use the word to describe these individuals who will be practising. The word has been used for decades and is well known and understood by the public at large. For example, everyone knows a paramedic can provide some medical services but is clearly not a doctor. They can understand from that that a paralegal can provide legal services but is certainly not a lawyer.

In support of this, a recent Google search on the words “paralegal,” and “paralegals,” returned an amazing 30 million hits. These numbers speak for themselves. People are well aware of what a paralegal is. I think that to impose phrases such as “licensed to practise law” and “licensed to provide legal services” to describe lawyers and paralegals can only cause confusion, especially with those citizens whose first language is not English and who are arguably the most vulnerable to being misled.

I fail to see any reason or advantage in not using the word “paralegal.” It has been used by governments, judges, lawyers, journalists and citizens for many years, and I’m sure that it will continue to be used even after the act comes into force, causing further confusion.

The law society’s report to convocation dated September 23, 2004, contained a consultation paper entitled *Regulating Paralegals—A Proposed Approach*. This addresses, among other things, the governance structure and, in particular, the paralegals standing committee of convocation. It states that convocation may not veto a decision of the standing committee the first time it is presented. The convocation may veto the decision when it’s presented a second time.

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I would like to see the act address this proposal because, if it is adopted, paralegals will have grave concerns that in cases where the decision of the committee disadvantages or impinges on lawyers, the veto may be used to the detriment of the paralegal. I would suggest that the act should set out and contain an arbitration process to deal with such circumstances.

It is also proposed by the law society that a person may be grandfathered and licensed if they have worked as a paralegal for three of the previous five years. I would like to see that changed in the act to allow for someone who does not meet that criterion to challenge the exam without having to take the two-year college course. This would allow people such as police officers and provincial

prosecutors to act as agents for the Attorney General, to cross over, so to speak, much as crown attorneys have been allowed to do when they move to the defence site.

Subsection 63(1) of the bill requires a review period of five years. Because the act is novel and is going to be contentious among some paralegals who are concerned that the law society will not administer it fairly, I would ask that there be a preliminary review no more than two years from the implementation date and a full review at four years.

Dealing with trust accounts, I would ask that the act include a provision for the establishment of trust accounts and, when it does so, that they are permitted to be phased in over a period of approximately three years. This is because many paralegals use client fees as operating capital and, without a phase-in period for trust funds, irreparable harm will be caused to them and their business.

Moving on to schedule E of the act, which will allow witnesses to give evidence by electronic means, when I first heard about this proposal, it immediately conjured up a mental image which I trust you will allow me to share: A man in Scarborough gets a 17-kilometres-over ticket and has to appear in night court at Old City Hall in January. He drives through a blizzard, pays for parking, trudges through the snow to the courthouse and waits for hours for his name to be called. The court clerk makes a phone call to the police officer at home. He puts down his coffee, puts the hockey game on mute and then gives evidence. That’s the picture I have of this electronic evidence.

It goes further, because I feel that it flies in the face of the fair and impartial administration of justice and everyone being equal before and under the law. All cases are decided on credibility and one of the most important indicators of credibility is demeanour. This cannot be considered if evidence is given over the phone or when the person is talking to a camera. This is a dangerous departure from the system of justice which has served us so well for hundreds of years. A person’s right to trial cannot be infringed or impaired on the basis of convenience, expediency or revenue-gathering.

These are my respectful submissions, and I thank you for allowing me the time. I’ll be pleased to answer any questions.

The Chair: Thank you, sir. About seven minutes for each side, and we’ll begin with Mr. Runciman.

Mr. Robert W. Runciman (Leeds–Grenville): Thank you, Mr. Lawrie, for your presentation. You were here for the preceding presentation from the paralegal society. Are you a member of that organization?

Mr. Lawrie: No, sir. I’m not a member of any organization.

Mr. Runciman: And never have been?

Mr. Lawrie: That’s right.

Mr. Runciman: And your area of practice is confined to dealing with—

Mr. Lawrie: Strictly provincial offences matters, traffic tickets.

Mr. Runciman: I think you had some excellent suggestions that you've brought forward for refinement and improvement of the legislation. You talked about a preliminary review after two years, followed by a full review. How would you define a preliminary review versus a full review? I'm not quite sure what you mean by that.

Mr. Lawrie: A preliminary review could be done by merely canvassing the paralegals who are involved in it and perhaps the law society itself to see if the thing is actually on the rails at that particular time and that it's actually moving forward. The full review later on could be a full audit and everything else that would go with a full review.

Mr. Runciman: If a preliminary review discovered significant problems, it could blossom into a full review at that point in time. I guess that's what you're suggesting.

Mr. Lawrie: Yes, and if they're minor problems which could become bigger problems, then the preliminary review would be there to actually sort them out, hopefully.

Mr. Runciman: You talked about using the term "paralegal" in the act. Yesterday we heard from one of the law society's county law associations. Both of them have referenced this, that they feel it's important to not use that term, that it causes confusion among the public and they don't understand. You're giving us a different view of that. What do you think it is? Is this just simply a difference of opinion or are there other things at the bottom of this?

Mr. Lawrie: It surprised me when I first saw it because I just assumed that since judges and everybody else has been calling them "paralegals," and all the reports—the Justice Cory report was on paralegals and the task force on paralegals report was on paralegals, and all of a sudden out of nowhere comes this other way of describing it. I don't understand. It can't just be for the ease of the public; it's got to be for something else, and I'm still wondering what it could be.

Mr. Runciman: If one were a suspicious soul—and we've heard lots of testimony here over the past couple of weeks about regulated professions who are being captured by this legislation. Some are suggesting there are unintended consequences, but maybe that's not the case. I could suggest to you that by doing away with the term "paralegal," it may expedite or make it that much easier to capture people who currently aren't looked upon as paralegals and are self-regulated in most instances.

Perhaps you don't have a view on this. We heard from someone yesterday who's focused in Small Claims Court who supports the legislation, with some changes. You're focused on POA. We've heard from folks who are concerned about family law, as an example, where a lot of men are going into family law courts now—divorce, whatever it is—can't afford a lawyer, unrepresented in many situations. Do you think there's a role for paralegals in some of these other areas that are going to be perhaps shoved off to the side now?

Mr. Lawrie: I don't know exactly what they do, but personally I think that the test for what a paralegal should be doing is that if the service is delivered in front of an independent third party—when we defend a traffic ticket, there's a justice of the peace there to basically monitor the competence and capability of the individual. If the person appears in front of a tribunal where there's somebody there who listens to it, then I think there is a place for paralegals in those sorts of arenas. Where the paralegal business takes place in an office, say, like where papers are completed and there is no supervision or direct supervision, then I would have difficulty with that.

Mr. Runciman: Have I got a few more minutes?

The Chair: Yes.

Mr. Runciman: I wanted to touch on another element of this legislation. Since you're here and you deal with the POA, there are some changes here reflecting JP appointments and qualifications and so on. Perhaps you could give us a bit of an insight from your experience with respect to what problems you're running into in terms of the shortages of JPs.

I've long been an advocate of re-establishing a corps of per diem JPs who meet the necessary qualifications because I know from policing feedback that I've had over the years—I think it's been improved somewhat with this videoconferencing telewarrant system, but there are a lot of challenges in getting a warrant or a bail hearing at 2 or 3 o'clock in the morning on a Saturday evening or a Sunday evening now that we have a salaried JP staff. Having a corps of per diems—I know they're talking about using retired JPs for this per diem, but I'd like to see it expanded beyond that. Maybe you can talk a bit about the situation you and others are facing dealing with the POA and the shortage of JPs and how we could address that.

0950

Mr. Lawrie: Well, the shortage of JPs delays trials, of course, for a considerable amount of time. In the main, a person doesn't really care because the longer it takes the better. They don't want to pay the fine or whatever, so they're quite happy with it. But in some cases, particularly accident cases, where a person was, say, charged with careless driving, the insurance companies have been known—and I believe most do—to levy a premium just on the charge; they don't wait for the conviction. So the premium increase can be substantial. In fact, it almost amounts to a licence suspension, because people can't afford to pay it. So the citizen has to wait that length of time to be able to recover the money. But I find—

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

Mr. Peter Kormos (Niagara Centre): Finish your response.

Mr. Lawrie: So that's one of the difficulties. The other one is the length of the list. A citizen will turn up there and they will be 34th on a list in some jurisdictions in Ontario. Well, you know that your case isn't going to be heard, so you've got to come back again, and it would have been nice to have been told in the first place—all of that sort of thing. It's just a lot of irritation, and I think

the solution is to have—whether it's per diem JPs or just more full-time JPs, but certainly they're required.

Mr. Kormos: Thank you very much, sir, for coming here. You are indeed the patron saint of the paralegal profession—

Mr. Lawrie: For my sins.

Mr. Kormos: Notwithstanding perhaps any sins, but your litigation paved the way for the paralegal profession to develop here in the province. I'm a fan of POINTTS. Down where I come from, Bruce Scott has been an outstanding—

Mr. Lawrie: That's correct.

Mr. Kormos:—just a tremendous litigator in provincial offences court. Mickey Parker, who started independently, is working with him now. I referred stuff to these folks many years ago when I practised law and, believe it or not, people still come into our constituency offices with provincial offences tickets and I refer these folks to POINTTS down in Niagara today.

Mr. Lawrie: I must confess to you, sir, that several times I took lessons from you when you had a case ahead of mine down in Welland, back in 1988, 1987.

Mr. Kormos: I was counsel, I presume.

Mr. Lawrie: You were counsel, yes.

Mr. Kormos: Okay, thank you. I wanted to make that very clear.

I'm pleased that you're here. You support the law society's proposed role as regulator of paralegals.

Mr. Lawrie: I feel that they are the only agency presently able to do it, and it has to be done, because the regulation is long overdue.

Mr. Kormos: But you also express concern about permissible areas of practice, as you put it—I think "scope of practice" is the language we've been using here—because it's not articulated in the legislation. That's what seems to be causing concern among people, for instance, who are advocates in the Family Court, a forum which—and I appreciate your interesting and very capable definition about how, when paralegals are working in a forum where there is supervision by a tribunal, an arbitrator, a judge, a JP, it's a different climate than doing solicitor work in the office.

If we don't have, in the context of the bill, the authority as legislators to define the scope of practice, how, then, can paralegals like those who advocate for appearing on behalf of Family Court litigants have any security about being permitted to do that in a regulated environment? That's one of the problems, isn't it?

Mr. Lawrie: That's the problem, because it should be set out clearly. The private investigators act is pretty comprehensive as to what a private investigator can and can't do. If the bill becomes an act, it should be more in line with the makeup of that private investigators bill, because it's all set out. A member of the public can go on the Internet and see the thing from A to Z without seeing some parts here and then having to go look at bylaws some place else to find out what applies and what doesn't apply. It just would make it simpler for everybody and it

would make it safer for everybody too, because people would know.

Mr. Kormos: One of the interesting things, of course, is that barrister-and-solicitor type of licensees are going to be permitted to be members of the law society; legal service provider licensees—I think that's the language; paralegals—are not going to be permitted to be members of the law society. Is that an issue as far as you're concerned?

Mr. Lawrie: No. It hasn't been an issue of mine, and I don't see that it would become one. As long as we are actually in a position where the paralegals have some say in what goes on with the paralegal committee, then I'm willing to trust the law society that they'll conduct this thing properly.

Mr. Kormos: With respect to any number of paralegals, I suspect that most people on the committee are not convinced that the paralegal community is sufficiently united to immediately embark on self-regulation—immediately embark. The difference with real estate people, for instance, is that they had been regulated by the government before they became self-regulated.

I appreciate your views about the law society. Would you similarly consider as an option the prospect of government regulation as a way of developing a regulated body with paralegals which could then move on to self regulation? Because, as I say, real estate people were regulated, car dealers were regulated, before they became self-regulated. Is that an option that would be viable for you?

Mr. Lawrie: One of the proposals that I did make to Justice Cory at the time was that the Ministry of Consumer and Commercial Relations, I believe it was then, had the set-up there to be able to administer a paralegal organization. They have the investigative arm and they have the enforcement arm, with the OPP attached to them. That would be direct government supervision of legislation. I would see that that would work. Here, of course, with Bill 14, we're presented with the law society, and also the urgent need for regulation.

Mr. Kormos: I think we all agree that there's some urgency. Thank you very much.

Chair, you should know that Mr. Lawrie has saved me many a speeding ticket because, as often as not, it's usually Sunday afternoons—you're on CFRB from time to time—

Mr. Lawrie: That's right.

Mr. Kormos:—and I'm on the highway, right? I actually reduce my speed to a manageable level so I can listen more carefully to the traffic ticket specialist on CFRB.

The Chair: The government side. Mr. Zimmer.

Mr. David Zimmer (Willowdale): Thank you for attending, Mr. Lawrie. I share Mr. Kormos' views that you're a pillar of the paralegal professional community and one of the founders of the paralegal movement.

Mr. Lawrie: Thank you, sir.

Mr. Zimmer: I noted your comment on the question of the law society as the regulator and I made a note of

your comment. You said that the law society is the only present agency capable of doing it—that is, regulation—and it is necessary. My questions are two: (1) Why do you feel that the law society is the only present agency capable of doing the regulation, and (2) Why do you feel the regulation is necessary?

Mr. Lawrie: I feel it's the only present agency because that's what we're being presented with here in Bill 14 that's before us.

As far as the need for regulation, at the very back of that piece of material I gave you there's an ad which could give an example of why we need regulation, where a delivery driver fights two of his own tickets and is successful and now has offered himself to the public, for money, to defend them.

The regulation aspect of it has to define, as I say, the paralegal who cannot be a paralegal—for instance, disbarred lawyers and people with criminal records. There is no prohibition on those people becoming paralegals right now. Being able to run a stable business, to have funds in the business, to be properly incorporated, that sort of thing; to have the errors and omissions insurance, which most have but some don't; to be able to protect the public and ensure that—supposing a member of the public goes to one of these paralegals who says, "Your money back if we don't win." As has happened, they've gone there, and the money's spent already and you end up in Small Claims Court trying to get the money back. So the regulations would stop all of this.

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Mr. Zimmer: Let me just follow up on the agency question, then. Your comment was that the law society is the only present agency capable of doing it. Another agency we've heard from is the PSO. Why have you made the comment that the law society is the only present agency, as opposed to the PSO or indeed any other agency that might be out there?

Mr. Lawrie: Paralegal agency, you mean?

Mr. Zimmer: Yes.

Mr. Lawrie: I feel that the paralegal community is too fractured actually to bring it together overnight and put it together as a self-regulating bunch. I think it's not mature enough as a profession yet. Up until now, nobody's even defined "paralegal." This is what we're hoping the bill will do. When somebody went for errors and omissions insurance—and we were the first to get errors and omissions insurance, personally, at Encon—

Mr. Zimmer: If I may, can you elaborate on your comment that the paralegal community is a fractured community?

Mr. Lawrie: Well, yes. There are a number of associations out there, four or five, but they come and go. It was 22 years ago that I started POINTTS. It was about two years after that when I got involved with the law society. So 1987 was when it was legal for me to do what I'm doing. So you're looking at that amount of time, 19 years, for a homogeneous body to be formed, and it hasn't happened.

I feel that if there is a regulating agency—if it's the law society, then it's the law society—there is time spent

with them so they can learn how to be a self-regulating body, as opposed to doing it on the fly.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for a very succinct presentation. One of the things that kind of caught my attention was your image of the electronic evidence. I come from a very rural riding, and officers in my area are very efficient in covering a lot of kilometres, but whenever they have to go to court, they have to leave the jurisdiction. In the north, it's even worse.

One of the things I saw this doing is a solution to that whole problem of officers being gone for a day or more at a time from their jobs, when they could be serving the public in a much more effective and efficient way. So when you say sitting in his home, drinking his coffee or whatever, it just seems a little different from what I envisioned when I saw the whole concept, because I hear from police officers who complain to me about the fact that they have to leave and are gone for so long to give evidence at courts, and sometimes they get there and have to go home again and come back another day. It's a real frustration for them.

Mr. Lawrie: I used to have that frustration when I was on the police force myself, many times, but that was one of the things that came with the job, actually.

Whether or not they're going to do electronic, if there's a necessity for it, like bail hearings, you don't want to be dragging these guys over from jail for two minutes to stand and get told they're not getting bail; so to do it that way. If it's a rural community which doesn't carry a heavy caseload and the communication is between the police station and a courthouse and it's not going to inconvenience everybody else, I could see that it may work there, but I can't see it working in a place like city hall or any city court or any court which carries a heavy caseload.

The Chair: Thank you very much.

POLICE ASSOCIATION OF ONTARIO

The Chair: The next presenter is Mr. Bruce Miller from the Police Association of Ontario. Welcome, sir. You have 30 minutes and you may begin.

Mr. Bruce Miller: Thank you. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario is a professional organization representing over 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police. The PAO is committed to promoting the interests of front-line police personnel, to upholding the honour of the police profession and to elevating the standards of Ontario's police services. We've included further information on our organization in our brief.

The need for legislative change in the areas covered by Bill 14 has been a matter of discussion for a number

of years by many interested groups. We appreciate the opportunity to provide input into this important process.

As you know, the proposed legislation covers many areas, some of which are outside of our area of expertise. We will be commenting on two specific sections: (1) reforming the justice of the peace system and (2) the proposed amendment to the Provincial Offences Act that would permit witnesses to give evidence by video, audio or telephone conference or other electronic means.

We would like to congratulate the government for moving forward with reforms to the justice of the peace system. As you know the proposed legislation would:

(1) Establish minimum qualifications for justices of the peace, requiring a university degree or community college diploma or an equivalency, including life experience and at least 10 years' work experience. The PAO believes that adequate qualifications are critical to ensure the public's confidence in the system.

(2) Establish a new justices of the peace appointments advisory committee, making the appointment process more open and transparent and incorporating community and regional input into the appointments process. We believe this will help to ensure that Ontarians continue to have confidence in the administration of justice.

(3) Expand the powers of the Justices of the Peace Review Council to allow it to conduct hearings and make dispositions, including recommending removal to the Attorney General. We believe that this would improve the justice of the peace complaints and discipline process, making it more effective. We believe that justices of the peace are an important part of Ontario's judicial system and as such should be subject to greater oversight than currently exists.

As a parallel, our association is on record as supporting civilian oversight of policing. Police personnel are currently subject to rigorous public oversight. We have been and continue to be actively involved with government and other stakeholders in discussions on how to improve Ontario's police complaint system. As an association committed to excellence in policing, we are always willing to participate in a process that ensures that all Ontarians have faith in their police service and the system of civilian oversight. The PAO believes that an effective and transparent public complaints system must satisfy reasonable members of both the public and the police communities. We believe that these same principles should apply to justices of the peace and that the proposed changes should be implemented.

(4) Finally, allowing retired justices of the peace to continue to serve on a per diem basis. There is a serious ongoing shortage of justices of the peace in the province. This shortage has the potential to compromise community safety. Police officers often face unnecessary and lengthy delays in obtaining such things as search warrants. We believe that this provision would offer much greater flexibility in scheduling, particularly in those areas where there is very high volume and demand. A per diem justice of the peace would also be able to fill in to cover vacations, illnesses, parental and maternity leave,

where the local courts are not in a position to cover those vacancies.

We would also like to take the opportunity to comment on the proposed amendment to the Provincial Offences Act that would allow witnesses to give evidence by video, audio or telephone conference or other electronic means. This would allow police officers to provide evidence from locations outside of court, allowing for a more efficient use of their time.

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I think everyone around this table understands the increasing demands that are being placed on police resources. Last November, we released a public opinion poll that we commissioned across Ontario from Innovative Research Group. The complete poll is available on our website. Some of the highlights from the poll are the following: Over half of Ontarians expect that they or a family member will have property stolen as a result of a break-in within the next five years; more Ontario residents than a year and a half ago feel that they or a family member will be physically attacked in the next five years—that was up six points to 32% from a poll we did a year earlier; an overwhelming majority—80%—say that gun violence has worsened in the past five years; and finally, almost three in five Ontarians believe that community crime has increased over the past five years.

The PAO will be appearing before the federal standing committee on finance in the next few weeks to urge the federal government to move forward with their commitment to put at least 2,500 more police officers on the beat in our cities and communities and that sufficient funds should be budgeted for that purpose. We also believe that Ontario should be given its fair share of the funding for new officers based on its population base and that those officers must be distributed to the Ontario Provincial Police and to Ontario's municipal police services.

Certainly we feel the use of videoconferencing for officers testifying is a step in the right direction and will help to free up valuable resources. We note that the complexities of these issues will be covered off by regulation, and we would offer our assistance in developing these with other concerned stakeholders.

In closing, we'd like to reiterate our support for the legislative changes that we've highlighted and would ask for your support in moving this forward. We would like to thank the members of the standing committee for the opportunity to appear before you once again and for your continued support for safer communities. We would be pleased to answer any questions that you may have.

The Vice-Chair (Mrs. Maria Van Bommel): Thank you, Mr Miller. We have 23 minutes for questions. I believe the government side has the lead on this rotation.

Mr. Zimmer: Thank you for your thoughtful submission, as usual—careful, helpful, all of those good things. One of the things you've commented on is the use of videoconferencing for officers. You say that's a step in the right direction. I think you were sitting here when the previous witness commented on that issue of police officers giving their evidence on video. He painted this

picture of a night court, a traffic court, and somebody calling the police officer at home, who puts the hockey game on mute and is enjoying a cup of coffee with his feet up, giving his evidence. I'm assuming that officers receive training on how to present evidence on video and are drilled on the special requirements for giving that kind of evidence. Can you comment on that?

Mr. Miller: Certainly, in regards to specific video testifying, there is training on how to testify in court, because for new officers it's a new procedure. Just commenting on some of the remarks I heard previously, many times when police officers testify on provincial offences matters, credibility isn't an issue. Many times officers are just there to give factual information: They may have investigated a traffic accident, they may have taken measurements. The defence has no questions of the officer.

I note that the complexities of this issue are going to be covered off in regulation. I'm sure that's one of the issues that will come up and that needs further discussion. It's certainly a step in the right direction. We have officers sitting routinely in court for three, four hours waiting to testify in a very minor matter, where they aren't questioned by the defence. Credibility isn't an issue. They just give some factual information. It may have been a measurement, it may have been an observation. Certainly in those cases it makes nothing but sense. I believe Mrs. Van Bommel commented that many officers are travelling great distances to go to court as well.

Mr. Zimmer Presumably you could have a police officer who is required to give some evidence on measurements or some technical evidence and, rather than having him sitting in the body of the court for three or four hours, he could be out in the patrol car doing police work and get a call from the dispatcher to come into the station to stand in front of a video camera, give his evidence for a few minutes, and get back in the cruiser and continue on with his policing duties.

Mr. Miller: That's right. The reality is too that many times matters aren't contested. The defence is just waiting to see if the witnesses show up and then a guilty plea is quickly arranged. It would certainly reduce a lot of the wasted time, where resources could be put where they should be: out ensuring that our communities remain safe.

Mr. Runciman: I think it might help, but it's a pretty big reach to say this is going to solve the problem. The reality is, it's a scheduling problem, and the fact that the courts don't work with the police authorities on a regular basis, as they should, in terms of ensuring police availability, so much of that time is wasted. I happen to have some family members who are very directly involved and I know their experience on a fairly regular basis in the court. Someone sitting around a police station versus sitting around a court may help in some respects, but unless we get greater communication between the court and the police service, it's not going to be the panacea that you're suggesting it might be.

I want to compliment you, Bruce, for being here and assisting the committee with its deliberations. I guess the chiefs' association has not requested to appear. That disappoints me, because they certainly have a long laundry list of concerns, and we're dealing with some very significant issues here in terms of the justice system of Ontario. It's regrettable that they haven't taken this opportunity. I don't know whether it's the intimidation tactics of this government, which they are so well-known for, or what the reasons are, but hopefully they will at least provide us with some kind of written contribution.

I want to talk a bit about the justice of the peace situation. You're endorsing the per diem initiative in here, which is using retired justices. We don't have any idea how many retired justices there could be or how many might be interested in doing this rather than kicking up their feet in Florida. The idea is nice, but I think the basic concept here that you're endorsing is per diem JPs. I'm a big fan of having a core of per diem JPs across the province. I guess you're still having problems getting people on weekends. The telewarrant system is helping in some respects in that regard, but a bail hearing or those kinds of issues—is it still a challenge for you to locate a JP in off hours? Would you describe it that way?

Mr. Miller: First of all, just to comment on the chiefs' organization, I'd be pleased to be their spokesperson when I'm here. I'm sure they'd be endorsing our position.

Mr. Runciman: I have no doubt about that.

Mr. Miller: The other comment too in regard to the ability to testify electronically being a panacea, we're not saying that it's going to solve all problems. We're just saying it's a step in the right direction and it makes sense.

It's the same with the JP, the justice of the peace, issue. With per diem justices, it makes sense to bring some people back. I met with a number of front-line officers last week dealing with some of the issues we have on marijuana grow-ops and they advised me that the justice of the peace shortage is still a problem. It's improved over the past five years, but it's still a problem out there and it's something we need to address. Once again, will per diem justices of the peace be a panacea? We're not suggesting that. We're just saying it's a step in the right direction and it makes sense.

Mr. Runciman: Another possible amendment to the POA and the Courts of Justice Act would be to require that in order to oblige persons who are setting trial dates, to give consideration to police witness scheduling information and availability so as to maximize the productivity of police resources required for evidentiary purposes. We can put that right in the legislation. That will be one of the amendments my party will be putting forward.

I don't know if you've looked at the act. One of the elements of this act is saying that these JPs are confined to the court. They can't go outside the court unless they're on a specific roster. I have a lot of problems with that as well. One of the reasons we've seen significant cost increases, we've seen problems in the jails with

prisoner transportation is that JPs, before they became *prima donnas*, some of them—JPs or whoever is making these decisions can't go into the jails anymore to do a bail hearing. So what we have to do is this expensive prisoner transportation, which is risky, which is costly and which is one of the sources of contraband—drugs, weapons—coming into the system, because we're transporting people back and forth.

1020

This independence of the judiciary I think has gone overboard and I see nothing wrong with having a room within these provincial jails where a JP can go in and conduct these kinds of bail hearings right on the site. The savings would be significant. I wonder if you have any views on that.

Mr. Miller: Certainly. One of the movements that was a step in the right direction was the use of video-conferencing for bail hearings. I believe that's an initiative that, as I recall, went forward when you were minister. That's proven to be very effective. I mean, the reality is that accused people, or a lot of the people who are going before the courts, don't want to sit around the court and wait either, so it seems to have worked for all sides.

Mr. Runciman: I've got a quick one, the qualifications for JPs. They're talking of mandatory considerations: linguistic duality, gender balance, diversity. There's no reference to things like law enforcement, criminal expertise or familiarity with victims of crime. Would you describe that as a weakness in this legislation? Suggesting sort of the politically correct mandatory considerations, but not the sort of front-line, realistic kinds of things that should be considered in the selection of JPs as well. We see all kinds of problems with respect to bail release decisions where people have been arrested on gun crimes—serious gun crimes—and they're back out in the street a few hours later. Having people who have some exposure to law enforcement, to the criminal justice field, or familiarity with the fallout for the crime victims—shouldn't those be considerations as well when we're making these kinds of decisions?

Mr. Miller: I think all of the qualifications that are in there are rightfully in there to start. I think those other qualifications, in terms of experience and knowledge and expertise, can be covered off by the committee. It's going to be important to have quality people on the appointment committee to ensure that the types of things that you're speaking about, other areas of expertise are, covered off.

Mr. Runciman: In terms of the committee that you're talking about, again, rather than the Attorney General being involved in it, my view is, why shouldn't this justice committee play that role so that we involve the elected officials who, in my view, are left out in the cold in virtually all of these choices? There should be a role for—

The Chair: Thank you, Mr. Kormos.

Mr. Kormos: Thank you, Mr. Miller. I appreciate you being here. Yesterday, Paul Hong, who's a master's

student at the Royal Military College and a graduate of Osgoode law school, came here to comment on the provisions of the bill that deal with justices of the peace. He also provided us with a copy of his recently published paper in the *Criminal Reports*, *A Second Look at Justice of the Peace Reform in Ontario*. It is a very, very competent commentary, Mr. Zimmer. I encourage you to read it because Mr. Hong raises the issue, of course, of lay bench versus what some jurisdictions in Canada have adopted, a JP bench that requires a law degree. He doesn't come down strongly or clearly on one side or the other. He simply raises that in terms of the standards.

But he also, I suppose most interestingly and importantly notes, as we all should, that JPs play a critical role in the administration of justice. Mr. Runciman's recent comments about bail hearings are indicative of that, illustrative of that. But he makes note that, notwithstanding this legislation—because, of course, JPs have been being appointed, notwithstanding that this bill has not yet passed. The Attorney General appointed six JPs just a few weeks ago. So the absence of the legislation doesn't impede or impair the ability of the Attorney General to appoint justices of the peace. The question put by Mr. Hong is, where is the commitment—and I'm paraphrasing very much here—in terms of the number of JPs who are going to be appointed even should this bill pass?

You spoke briefly, and Mr. Runciman more so, about some of the problems in terms of JP shortages—marijuana grow-ops. Please give us an example of what JP shortages, the inadequate number of JPs, mean out there in the real policing world.

Mr. Miller: I was pleased last week when I heard that the situation is getting better. Obviously, when officers are tied up waiting for justices of the peace or delays in a telewarrant system, time is sacrificed for an investigation. Sometimes these matters have to be timely and need to be done as soon as possible, so any delay is problematic. We also have officers standing by waiting for the warrant process to go through, and if that takes two, three, four hours, it's not just tying up the one officer, it may be tying up a team of officers.

Mr. Kormos: But what happens out there in the real world if a police officer needs a search warrant on a Sunday at 7 a.m.? It's a good example, isn't it? What does that police officer do, in any number of parts of Ontario? You've got to go to a JP or a judge to get a search warrant.

Mr. Miller: Or do it through a telewarrant process.

Mr. Kormos: So what do you do? Is there a JP assigned for that weekend for the telewarrant, are there JPs on call or do you have to simply go through the Rolodex?

Mr. Miller: It's really a combination of both. There's a telewarrant procedure. There may be JPs on call. It really depends what jurisdiction you're in. In some areas, there may be no JPs available or it's a lengthy process and things may be put off till the next day.

Mr. Kormos: That's kind of nuts, isn't it?

Mr. Miller: It is a problem, but I think it goes back to—and I spoke to it earlier—is the bill a panacea for

everything? No, it's not. But is it a step in the right direction? Are per diem JPs a step in the right direction? Are qualifications a step in the right direction? Is electronic testifying a step in the right direction? Yes, they are, and certainly we're urging that these parts of the legislation go forward.

I watched with interest when the Association of Municipalities of Ontario testified before this committee. That was their presentation as well, that these two specific schedules of the bill need to go forward as soon as possible. It's going to be a positive step forward.

Mr. Kormos: Mayor Hazel McCallion from Mississauga was here. I suspect that she's over 65, but you don't want to mess with her. And the same thing is going on down where I come from: not enough JPs. That means JP courts aren't being staffed. The doors are locked. It means that the delays are resulting in charges being stayed. Her Worship was very careful to say that this had nothing to do with revenue, with the downloading of a big chunk of the provincial offences. You see, the city still has to pay its prosecutors. The city, the municipality, still has to pay its police officers. The anticipated revenues from fines were part of the trade-off, right? That was part of the deal. So who picks up the tab when the government won't appoint adequate numbers of JPs at the end of the day? The taxpayer pays and pays and pays. That's a fair observation too, isn't it? Because the fixed costs remain steady. So I appreciate your efforts to be cautious in how you're addressing this.

You say things vary across the province. Is Toronto better serviced than remote parts of Ontario, or even parts like Niagara, Sarnia or eastern Ontario?

1030

Mr. Miller: I don't think you can make that broad a brushstroke. When you talk about northern Ontario or eastern Ontario, there are different problem areas.

Mr. Kormos: What are some of the problem areas?

Mr. Miller: The warrant issue is certainly improving with JPs. Provincial offences court, bail hearings—the shortages are certainly seen there. It's a problem; I'm not underestimating it. It's been a problem for many, many years, and you spoke of the issues: lengthy delays; charges being withdrawn. I mean, that's an issue, but the same time, we're saying that this is a step forward. We're just urging the members of the committee and the Legislature to move forward on these two areas.

Is it going to solve all the problems? No, not overnight. Do we need more justices of the peace? Yes, we do. Do we need more police officers? Yes, we do.

Mr. Kormos: Sure. Is there anything in this bill—help me, because if you can, I'd really appreciate it—that's going to ensure that we get more justices of the peace, that you have been able to find?

Mr. Miller: It opens up the ability to use per diem justices of the peace. Are they going to be used? I can't answer that question. The government says they're moving forward on this issue, they're going to use per diem justices of the peace, and we support that.

Mr. Kormos: Do you trust them when they say it?

Mr. Miller: We do. If they're not used, we'll be coming back before committee asking them why not.

Mr. Kormos: You trusted them when they said there were going to be a thousand new police officers, over and over again.

Mr. Miller: I think the number right now is at about 952.

Mr. Kormos: Three years later?

Mr. Miller: The commitment was for 1,000 new police officers prior to—

Mr. Kormos: The next election,

Mr. Miller: —October, and with the graduation coming up in December, I think the numbers are going to be around 950, 960. We'll be 40 short by the end of the year.

Mr. Kormos: Dollar-for-dollar police officers?

Interjection.

Mr. Kormos: Mr. Zimmer, did you bring us any lobster rolls?

Dollar-for-dollar police officers?

Mr. Miller: It was a cost-sharing program. We heard the same questions under the previous government with a thousand new officers, and certainly the government met their commitment. There were questions of whether or not—

Mr. Kormos: Maybe we'll have a clambake, Mr. Zimmer.

Mr. Miller: —a thousand new officers were put forward but certainly—

The Chair: Mr. Kormos.

Mr. Kormos: Yes?

The Chair: Could you please direct your questions to Mr. Miller?

Mr. Miller: Mr. Runciman was minister then with the thousand new officers program. The goal was reached, and we're pleased to see that the goal is being reached with this government. We'd urge you to speak to your federal colleagues to ensure that the government's commitment for 2,500 new officers federally is met, and that Ontario gets its fair share.

Mr. Kormos: Jack Layton's been doing his best.

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

Mr. Miller: Thank you, Mr. Chair.

X-COPPER LEGAL SERVICES

The Chair: The next presentation is from X-Copper Legal Services. Mr. Gary Parker. I've also been asked to advise the people here that there's an overflow room.

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

The Chair: An overflow room. If people wish to go sit in that room, it's available. It's committee room 1, I've been told.

Mr. Parker, you may begin your presentation.

Mr. Gary Parker: Good morning, and thank you, members of the committee, for having me here today. I'm from the firm of X-Copper Legal Services.

A bit of my background: I was a police officer for seven years for the Peel Regional Police Force. Since

1988, I have been a practising paralegal, predominantly—90% of the time—in traffic tickets.

I'm going to read from a prepared presentation. It will be brief, I promise you.

Principle players from X-Copper have been involved in the traffic ticket defence field since 1988. We have seen attempts to regulate the paralegal industry come and go, together with government-sponsored commissions and reports, the results of which we lauded and supported. This is the first time we feel close to reaching the goal of ensuring that the public are served by paralegals who meet high standards of learning, competence and professional conduct.

We have some concerns:

(1) The use of the word “paralegal” is absent from the legislation. The current status of the wording can lead to confusion. The public cannot distinguish between “a person licensed to practise law in Ontario” and “a person licensed to provide legal services.” Inclusion of the terminology in the language of the legislation should help prevent confusion.

(2) Will licensing be general or specific? We support specific streams or classes of licensing as proposed in the Ianni and Cory reports; for example, immigration licence and Provincial Offences Act licence. Careers have been carved out over many years specializing in Highway Traffic Act representation. Those paralegals have developed specific skills in their area of practice and have no plans to expand into other areas. The reason the public turns to paralegals is for that very specialization. We propose that the act be amended to account for this specific specialized knowledge and to allow those who wish to, to restrict their licence to their chosen area of practice.

(3) Grandparenting: We are concerned that the much-discussed issue of grandparenting is absent from the proposed legislation. Many paralegals feel uncomfortable and unprotected with this issue missing in print. We understand the details ought to be worked out by the law society standing committee. We propose that this issue be included in the legislation. Those of us with over 18 years invested into this field would appreciate the existence of a grandparenting consideration in writing rather than a verbal assurance.

(4) Interim licensing: We suggest a system offering an interim licence wherein, upon acceptance of affidavits indicating the required work experience, the law society can, for a fee, issue interim licences, good for the transition period. The licence holder would be subject to the code of conduct and to the full complaint and review provisions of the law society. The licence holder can then apply to write the licensing exam within the transition period.

(5) Joint accounts and trust accounts: Companies such as ours have carried on business for years on deferred revenue, and there exists ongoing financial commitments. We suggest a minimum amount of consideration. We suggest \$2,000 per file before the need of a trust account, and we do not support the creation of joint accounts with clients.

(6) Education/qualifying requirements: We propose that it is incumbent upon the government to provide enough spaces in the colleges to accommodate all applicants within the transition period. For many paralegals, it would be impossible to attend a full-time college program. We suggest that night school be made available. If not, then we propose that the government make grants accessible to those who require money to cover everyday living expenses and commitments, especially those with families to provide for.

(7) Member of the law society: The current legislation does not account for paralegals to be members. I understand also that lawyers are no longer to be members. This would be akin, however, to taxation without representation. Paralegals would be required to pay dues to the society but be powerless, or at least under-represented. Some consideration is required here to level the playing field. We suggest the paralegals become associate members of the law society and that associate members be appointed as benchers of the law society in sufficient numbers as to make it meaningful.

(8) Scope of practice: Relegating the scope of practice shall be determined by the legislator and not by the law society. Let the law society administer but not design the areas of practice. This is something that rightfully lies in the lap of government.

Conclusion: I believe that a great majority of paralegals welcome regulation. Many are concerned with the current status—no accountability, no standards of competence or conduct—yet many have an understandable fear of being governed and policed by a body who may wish to regulate the paralegal field out of existence.

If Bill 14 can provide access to justice for the public and at the same time promote and protect the existence of the alternative legal services, then all will benefit.

Thank you.

The Chair: Thank you. We begin with the official opposition, about eight minutes each.

Mr. Runciman: Thank you, Mr. Parker. I appreciate your contribution. It was one of the most cogent, concise and helpful contributions that we've had: not a lot of rhetoric, getting to the point, and making it well. After listening to testimony over this past week, I guess I tend to agree with virtually all of the recommendations you are making here. You talk about a couple of things here that I would like to pursue with you briefly. The scope of practice issue: Could you elaborate a little bit on why you are concerned about the law society having the authority to regulate scope of practice?

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Mr. Gary Parker: I understand that the standing committee, although it will have some paralegals on the board, on the committee, is essentially unfettered. The government will not have control over what happens once it goes to committee. Because there has been an existence of animosity between the law society and paralegals over the history of the last 20 years, the fear is palpable that the law society will regulate us out of business. They'll welcome us at first, and through their

own bylaws will somehow manipulate the paralegal field out of business. If the government's intent is to regulate paralegals, then at least we hope that the government will take initial steps to keep us alive.

Mr. Runciman: Do you have any views on scope of practice? I know we've had some talk about family law, real estate law. Do you have any views on that?

Mr. Gary Parker: My knowledge is limited about the consequences of paralegals involved in other areas of law, so I don't think I can comment.

Mr. Runciman: Would your concerns about the scope of practice regulation lying with the law society be allayed if your recommendation 7, where you're now not permitted to be members, let alone associate members—if that request was met and you were allowed to have associate members appointed as benchers in sufficient numbers, as you say, to make it meaningful, would that that allay that other concern?

Mr. Gary Parker: It would help.

Mr. Runciman: It would help.

Mr. Gary Parker: Absolutely.

Mr. Runciman: Okay. The use of the word "paralegal": I was asking Mr. Lawrie about this. I think virtually everyone, when this legislation was tabled, found it passing strange that that term was missing. What's the rationale for this? We've heard from some law associations, "Well, people are confused, and they think that this is a lawyer they're dealing with." Of course, we've heard others say that's not the case, people like Mr. Lawrie, who's been in business for 22 years; you've been in business for a significant period of time. Do you see that there's confusion amongst the public with the terms "lawyer" and "paralegal"?

Mr. Gary Parker: No, not right now, but when this bill passes I think there could be if it remains the way it is, particularly if we are constrained in letting the public know what our business is. If we're restricted to "licensed to provide legal services in Ontario," I don't think that has any meaning to the general public. The word "paralegal" instantly comes to mind, whereas—

Mr. Runciman: I raise the spectre of the rationale behind this, perhaps the fact that this legislation is now capturing a lot of people in regulated professions who are shocked. Some are being told this is an unintended consequence, but they're sort of left twisting in the wind if this is not dealt with by this committee or through the Legislature.

Mr. Gary Parker: That's what we hope, that it will be dealt with.

Mr. Runciman: Yes, and I think it should be as well. It raises questions about the rationale for the term "paralegal" being omitted from this legislation.

Once again, thank you for a very helpful contribution.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. I think you raise concerns about flaws in this bill that are very, very critical ones. Let's follow up on what Mr. Runciman was just talking about in terms of asking, what are these people who are not lawyers but who are licensed going to

be calling themselves? Because, you see, the problem is that the bill as it reads now says they can call themselves anything they want. They're licensed to provide legal services. You want to call yourself a court agent? Call yourself a court agent. You want to call yourself a legal assistant? Call yourself a legal assistant. You want to call yourself a document processor? I don't think that's what a regulatory regime should be permitting.

I agree with you that it's the job of this Legislature to determine what it is that these non-lawyer licensed people will be called, and I've got a strong inclination towards "paralegal" myself because it has become part of the everyday language. You know what it means—most people know what it means. Darn near everybody knows it. That's number 1.

Member of the law society: Barristers and solicitors will still be members of the law society, yet the others, paying dues—and that's not fair, is it?—paying dues, being governed, being regulated, won't be members.

Barristers and solicitors, lawyers, will be able to elect benchers region to region. Down where I come from in Niagara, Hamilton—I think that's the area that is the region—we know who the people are who present themselves. There are usually competitions; there are elections. That's the advantage of having region-by-region. But two paralegal—see, I've used the word already—benchers? No. The bylaw of the law society will determine how they're to be elected and even, I suppose, who they will be elected by. Think about that, Mr. Runciman. If you've got two benchers, one for northern Ontario and one for southern Ontario, they haven't got a snowball's chance in hell of knowing who these people are, like you do when you've got region-to-region election by lawyers of lawyers to serve as benchers.

Scope of practice: Nothing in the bill about scope of practice. There are two issues that have reared their heads. One is specialized expertise. Mr. Lawrie is an example; you're an example. You guys probably know more about the Highway Traffic Act and potential defences and the Provincial Offences Act than most lawyers ever will—end of story.

People doing specialized tribunal work: We went through this. You know, the guy or the gal from the trade union representing a worker in front of WSIB probably will know more about that than most lawyers ever would even try to learn. So that's the one issue: expertise. The other issue is cost. The two overlap, but in many respects they're not the same.

There are concerns about Family Court. Look, I've got some concerns, because family law is a very complex matter with huge consequences, primarily in terms of children, where the public has a strong interest in making sure that the children's interests are well served. But there's no suggestion that paralegals—see, I've used the word again—will be able to assist people in Family Court, no debate around it, because, you see, it's not in the bill, so we can't debate it here; we can't hear expert evidence. I don't know whether there are strong reasons to say "nobody other than a lawyer." Quite frankly, I've

seen lawyers screw up matrimonial files, particularly those who have no business taking them on because they don't have enough background and expertise in matrimonial law. But we're not here—it should be the Legislature. I hope I understand you clearly, that that's what you're saying: It should be the Legislature that deals with this.

Mr. Gary Parker: Yes. Absolutely right.

Mr. Kormos: I have great sympathy for the paralegal profession because, yes, it does appear to be fragmented. The analogy to the real estate profession is not fair, because the real estate profession, before it became self-regulated, was already regulated by the government.

Mr. Gary Parker: I understand there is a sunset clause in the legislation right now, which we welcome.

Mr. Kormos: Well, a review clause.

Mr. Gary Parker: A review clause.

Mr. Kormos: Income taxes, huh? It's interesting, because the recent legislation around security guards—again, a regime that raises the bar significantly for security guards and investigators—didn't, as I recall it, create self-regulation, nor did it delegate the regulation to the law society or some other body; the government retained the regulatory role. And I hope that some day, for that security guard/private investigator profession with the higher bar and higher standards, there may be some consideration of whether or not they should be self-regulated.

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I'll tell you what all of these hearings have made me inclined to think: The government is running from this issue. The government is abdicating its responsibility, and in the course of doing that isn't being fair to consumers of paralegal services, isn't being fair to paralegals, and quite frankly, probably isn't being fair to the law society. If there is difficulty in the paralegal profession becoming self-regulatory right now, doesn't it make some sense for the government to say, "Well, fine, the government will regulate it until such a point in time that it becomes sufficiently homogeneous such that it can regulate itself"? Does that make any sense, or am I just out in left field? And I don't say "left field" disparagingly, trust me.

Mr. Gary Parker: No, it makes a lot of sense.

The Chair: The government side?

Mr. Zimmer: Just following up on this, you heard the previous witness, Mr. Lawrie. He's been in the paralegal world for 20 years, in many ways was the founder of the movement. He spoke of paralegal organizations having come and gone over the years. Most recently, there was an organization, PPAO, the Professional Paralegal Association of Ontario. I understand it's disbanded and the dominant organization now is PSO, the Paralegal Society of Ontario. Even my colleague opposite, Mr. Kormos, acknowledged that the paralegal profession is fragmented. They have difficulties organizing themselves, policing themselves and so on. That all led Mr. Lawrie to the conclusion, and I'm quoting him, "The only present agency available to regulate the paralegals is the law society."

I assume you support that concept, subject to the refinements, the adjustments and the other things that you'd like to see massaged in the legislation.

Mr. Gary Parker: "Massaged" is a good word. Yes, I concur with Mr. Lawrie's position and what you just said, but with provisos and cautions.

Mr. Zimmer: Thank you very much for your very careful and thoughtful presentation.

The Chair: Thank you, Mr. Parker.

STEPHEN PARKER
MARGARET LOUTER

The Chair: The next presenters are Margaret Louter and Stephen Parker. This will be a 20-minute presentation. Good morning.

Mr. Stephen Parker: Good morning, everyone. My name is Stephen Parker. With me, to my right, is Margaret Louter. We are founding directors of a paralegal association that was known as the Professional Paralegal Association of Ontario. We have served as directors since the PPAO's inception in the year 2000. PPAO has consistently been the key participant in discussions surrounding the regulation of paralegals. Margaret and I have a strong history with the stakeholders, the government of Ontario and the Law Society of Upper Canada, and are pleased to have this opportunity to speak at these committee hearings.

I took over as president of the PPAO from Paul Dray and was also president of the Institute of Agents at Court for six years until stepping down earlier this year. I reside in Brampton and have practised as a paralegal for over 20 years, after serving five years as a police officer in England and 10 years with the region of Peel. Margaret resides in Niagara-on-the-Lake and has practised as a law clerk for 27 years.

Ms. Margaret Louter: Good morning. The PPAO was established as an umbrella organization for a number of paralegal service providers in Ontario in September 2000 in the belief that the recommendations made by the Cory report would serve at that time as the basis for the legislation relating to the regulation of paralegals. The legislation was apparently drafted but never reached the floor of the Legislative Assembly. As founding directors, we participated in the incorporation of the PPAO and the establishment of its bylaws and membership criteria.

Between February and April 2002, Stephen and I participated in meetings with the working group of lawyer associations formed by the law society designed to find some consensus respecting the regulation of paralegal activities in Ontario. Participation in those meetings was helpful in opening lines of communication between the various lawyer organizations and the paralegal community. To this day, these lines of communication remain open. We achieved consensus on many principles underlying a proposed framework for the regulation of paralegals. A consultation document was prepared by the government relations committee of the law society and was released to the public for consideration. A number of

town hall meetings were organized by the PPAO in which we participated, with a view to correlating the paralegal community's concerns and questions about the consultation document. It was hoped that this consultation document would lead to action, but this did not occur.

Many aspects of the 2002 consultation document formed the basis for the law society's 2004 consultation document entitled *Regulating Paralegals: A Proposed Approach*. The 2004 consultation document became part of the Law Society Task Force on Paralegal Regulation report, known as the task force report. This report was approved by the law society and delivered to the Attorney General in response to his request that the law society be the regulator of paralegals.

At the same time, the PPAO commissioned Professor Frederick Zemans, a noted scholar and professor at Osgoode Hall Law School, to prepare a report for the purposes of investigating the services that would be appropriate for independent paralegals to provide to the Ontario public as a regulated profession. He also evaluated the merits of the proposals of the law society. The PPAO recruited sound and experienced members of the paralegal community at large to make written contributions to Professor Zemans' research detailing practice-specific contributions made to the provision of legal services by paralegals in various areas of practice. These contributors, including myself and Stephen, spent countless hours with Professor Zemans fine-tuning the contents of the report and preparing for its presentation to government and other interested stakeholders.

His report indicated that "A successful regulatory scheme must balance the interests of protection of the public against incompetent and fraudulent legal practice and access of the public to convenient, affordable legal services." He concluded, after careful review of the regulatory options, various studies of paralegal regulation and contemporary developments, that the goals of access to justice and the protection of the public are best served by the creation of a legal services corporation for the regulation of Ontario paralegals.

His findings were never implemented by the PPAO. However, the PPAO continued its process towards self-regulation. We developed a code of conduct and established a mandatory errors and omissions insurance program. Many members refused to participate in the mandatory insurance program and therefore did not comply with the membership requirements. Membership dwindled to the point that it was no longer viable to continue the operations of the PPAO. Stephen and I have always believed that the PPAO would be one of the founders of the first paralegal licensing regime in North America. However, due to the lack of support by the paralegal community, it was with great regret that the PPAO has had to take steps to wind up its affairs.

Notwithstanding the present situation of the PPAO, Stephen and I remain committed to the original mission statement and vision of the PPAO "to advance and promote the interests of professional paralegals in the province of Ontario."

The present situation is unfortunate. In my role as vice-president of the PPAO, I have received countless telephone calls from citizens of Ontario who have been wronged by a paralegal in some manner. Many complainants were referred to me by the law society or by the consumer protection branch of the Ministry of Government Services. Without legislative authority, in most cases the PPAO was unable to remedy their situation.

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Stephen and I support the leadership of this government in introducing Bill 14 as an important stepping stone toward protecting consumers in Ontario who use the services of paralegals and ensuring access to legal services to all.

Mr. Stephen Parker: We have a number of comments and recommendations regarding Bill 14 and respectfully submit them to you for consideration. Some of these you've heard before from more than one speaker.

Grandparenting: The foremost concern of paralegals since the introduction of the bill is the lack of any reference in the bill to any grandparenting provisions. Many believe that because the bill contains no such reference, there will be no provisions for grandparenting in the regulatory scheme.

In my capacity as head of the Institute of Agents at Court, I was approached by many. Paranoia has become rampant, particularly within the court agent community, to the point that many experienced court agents believe they will be forced to close their businesses in order to obtain a college diploma to qualify to become licensed legal service providers, which will leave many of the public unrepresented.

It has been suggested that the responsibility for such provisions is within the purview of the law society, as the proposed regulator, and will be dealt with by way of the law society bylaws. It is also acknowledged that the task force report includes recommendations on grandparenting, yet court agents clamour for some more concrete evidence that grandparenting will occur, and it would appear the only acceptable proof of its existence is a specific reference in the bill.

Commissioners of oaths: The 2004 consultation document provides as follows: "Accredited paralegals would become commissioners of oaths within their designated areas." Being commissioners of oaths is of paramount importance to paralegals. It will make their practices more efficient if they are commissioners, able to take their clients' affidavits instead of having to take their client to a lawyer or a justice of the peace solely for this purpose.

Confidentiality: Paralegals are being subpoenaed by prosecutors with the intention of having that paralegal testify as to conversations between the paralegal and the client in relation to the charge before the court. Paralegals have no protection from prosecutors and others regarding confidential information provided to them by their clients.

The task force report recommends that the model for the professional regulation of paralegals should follow

that currently in place for lawyers, which includes paralegals being subject to the same confidentiality rules as lawyers. This would require paralegals to hold in strict confidence all information concerning the business and affairs of clients acquired in the course of the professional relationship, subject to some very limited exceptions.

Title protection and nomenclature—“paralegal”: This you’ve heard before. The term “paralegal” was eliminated from the bill and replaced by the definition “a person who is licensed to provide legal services in Ontario.” This definition is cumbersome and fails to title these professionals, but only serves to describe what they do rather than who they are.

Paragraph 168 of the task force report states, “The task force considered other names for paralegals, such as ‘agent’ and ‘court and tribunal agent,’ but rejected them for a number of reasons. Firstly, the public has come to recognize the name ‘paralegal,’ and to change it may lead to further confusion in the legal services marketplace. Secondly, paralegals have chosen to call themselves by the name ‘paralegal,’ and the right to self-name should not be interfered with, absent a compelling reason to do so in the public interest.” That’s quoted from paragraph 168.

We concur with this section of the task force report. The report continues however, and at paragraph 169 seems to contradict itself by then recommending the terminology “persons licensed to provide legal services.”

The term “paralegal” has become entrenched in the language that is commonly familiar and to eliminate it now would indeed confuse the very public this bill is designed to protect.

Ms. Louter: In conclusion or summary, I’ll just read through the five recommendations:

(1) That the bill provide that grandparenting is intended to be dealt with by the legal services provision committee in the bylaws;

(2) That those persons licensed to provide legal services in Ontario be commissioners of oaths within their designated areas of practice;

(3) That the bill provide that persons licensed to provide legal services be required to hold all information concerning the business and affairs of clients acquired in the course of the professional relationship in strict confidence, except when required by law or by order of a tribunal of competent jurisdiction;

(4) That the term “paralegal” be included in the definition of a licensee, e.g., “A licensee means a person that is licensed to provide legal services in Ontario and may also be known as a paralegal. A licensee may be referred to as a paralegal for the purposes of advertising their services to the public”; and

(5) That the name of the standing committee be changed to “paralegal standing committee,” thereby recognizing the term “paralegal.”

Thank you.

The Chair: Thank you. You have about six minutes each, beginning with Mr. Kormos.

Mr. Kormos: Thank you kindly. I’ve read your submission. Okay. We’ve got all these acronyms and I presume at some point that legislative research, when it provides a summary of the submissions, is going to help us out on this a little bit, because we heard earlier today from the Paralegal Society of Ontario that PPAO was an umbrella group.

Ms. Louter: That’s right.

Mr. Kormos: So belonging to this was the PSO, the Paralegal Society of Ontario. Who else?

Ms. Louter: The Institute of Agents at Court.

Mr. Kormos: We’ve had people here from them the last day Mr. Zimmer was with the committee.

Ms. Louter: There were members of the POINTTS organization, the Ontario Association of Professional Searchers of Records, the Institute of Law Clerks of Ontario, the Paralegal Society of Canada. There were a few members from that organization as well.

Mr. Kormos: The Institute of Law Clerks. Back up a little bit; help us.

Ms. Louter: You want the names?

Mr. Kormos: Yes.

Ms. Louter: Ontario Association of Professional Searchers of Record, which is OAPSOR; Paralegal Society of Ontario; Institute of Agents of Court; POINTTS, not officially but we had POINTTS members; as well as the Institute of Law Clerks, not officially, but we had law clerks as members.

Mr. Kormos: So the Institute of Law Clerks was not—

Ms. Louter: We had members from that association.

Mr. Kormos: So who were the organizations, then, for which PPAO was the umbrella organization?

Mr. Stephen Parker: All of them.

Ms. Louter: The membership of the organization were individuals of those groups, and there were representatives of each of those groups on the board of the PPAO, elected by the entire membership.

Mr. Kormos: The PPAO, because of a schism over regulation, disbanded?

Ms. Louter: No. I think you were out of the room when we said that. That is perceived by some to be the case, but we were on the road to self-regulation. We introduced a mandatory insurance program; we introduced a code of conduct which required members to have trust accounts and sign a membership application that said they would adhere to that code. There were some who said to me personally, “I will not sign that, I will not have a trust account and I do not need insurance.”

Mr. Kormos: Due to a lack of support by the paralegal community, it was with great regret that the PPAO has had to take steps to wind up its affairs.

Ms. Louter: Yes. Our membership was over 500 at a certain point, and when we introduced those regulatory rules, I think our membership was down to probably about 75 members.

Mr. Kormos: Look, nobody here is anything but sympathetic. It’s been a difficult, difficult, difficult road that people have travelled. Clearly, bona fide, legitimate

and professional paralegals support a regulatory regime; that's clear as well.

Ms. Louter: I would agree with that.

Mr. Kormos: We've heard from a whole lot of paralegals for whom the regulatory regime, in their view, should not be the law society. We've heard from others who it appears could live with the law society if there were some adjustments made to the legislation.

In my view, one of the problems is the emphasis on self-regulation. That's a relatively new phenomenon in the province by and large, other than the lawyers, because they got on that band wagon, as they'll point out, 200 years ago and avoided governmental regulation. How then do we address the concerns that folks have about real or perceived conflict of interest with lawyers, when clearly the vast majority of convocation's members, the benchers, are lawyers, and when there's been a long-time tension between the lawyering community and the paralegal community, although I have to concede that that's changing. It's shifting all the time. You know the issues that have been raised. I'm not going to waste our time by listing them here. How do we address those within the context of this bill? Or do we simply say, "Just do it"?

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Mr. Stephen Parker: As far as some of those issues are concerned, there are paralegals who, I suppose, in a nutshell, don't trust the law society. That's what it comes down to. I have expressed those feelings when the PPAO was in existence at meetings with the law society, and I have been assured by the law society that we can trust them. And, yes, while on paper theoretically a stroke of the pen could wipe us all out, the answer was that the government wouldn't stand for it.

Mr. Kormos: Many years ago, I bought a membership at Vic Tanny's, the exercise club, and they said, "Don't worry. You can trust us." I think I was in the last week of people who bought six-year memberships.

The Chair: Thank you, Mr. Kormos. The government side—

Mr. Kormos: Do you remember Vic Tanny's? My cheque was cashed.

Ms. Louter: Can I comment on that question? I believe that the model for governance proposed by the bill gives paralegals a prominent role in the regulatory regime. That's it.

The Chair: Thank you. Mr. Zimmer?

Mr. Zimmer: Obviously, the PPAO has spent a lot of time over the years on this. I mean, you've met many times with me at the Attorney General's office, the law society. You engaged a law professor at Osgoode to help you work up submissions and analysis of the governing model, and you took your own steps in the association, setting up a code of ethics and a mandatory insurance program. Then, of course, the thing fell apart, as I understand it, over the issue of mandatory insurance.

When you went to those members of the PSO and discussed this issue of the mandatory insurance and they were reluctant to do that, what was the response that you

got back from them as to why they would be reluctant to participate, for instance, in a mandatory insurance program? I mean, there are protections there for the paralegal. There are protections there for society. So something as fundamental to a professional body, whether it's doctors, architects, paralegals, engineers, as an errors and omissions plan—what was your sense of the reluctance to go along with that?

Ms. Louter: The associations all gave undertakings to the PPAO to commit to the insurance program, and they were not honoured. We tried, we communicated with them, but it did not happen.

Mr. Zimmer: But my question is, do you have any sense of why they wouldn't participate? Either to you or to Mr. Parker.

Mr. Stephen Parker: A lot of people simply felt they didn't need it. Nobody's ever sued them. So why do I need insurance? Surprisingly enough, Mr. Mitchell, who was here yesterday with Eileen Barnes, organized an errors and omissions program for the PSO. How many of their members are actually participating in that? I really cannot answer that. Surprisingly, though, the insurance plan that he organized was somewhat more expensive than the one that we organized. So again, I don't know. As far as I understand it, the PSO membership is required to have errors and omissions insurance. I can only assume that that is the case. They objected to our plan on the basis that they didn't feel they needed it, and yet the PSO organized one for themselves.

Mr. Zimmer: Are all PSO members—is it mandatory to participate in the plan, or is it optional?

Mr. Stephen Parker: It's mandatory. It was mandatory with us too, but it didn't necessarily—

Mr. Zimmer: Do you know if it's enforced?

Mr. Stephen Parker: I have no idea.

Mr. Zimmer: Thank you.

The Chair: Mr. McMeekin?

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Just quickly, Mr. Chairman, I remember Bobby Kennedy once said that good judgment is based on experience and experience, invariably, on bad judgment. When I asked my mom what that meant, she said, "Make mistakes, but never make the same mistake twice."

So I want to ask, given that necessity is, we've been told, the mother of invention, a hypothetical question: If the government were to back off this bill and say to the paralegal community, "You've got six months to get your act together," do you think they could pull that off?

Mr. Stephen Parker: I'm sorry, are you saying—

Mr. McMeekin: Portions of the bill would go forward, but the section dealing with paralegals being regulated by the law society would be held in abeyance, with an invitation, some tools, maybe even the law society invited to help out, I don't know. You've got six months, sort of a shotgun clause—not my phrase, somebody else's phrase—or a shotgun approach. You've got six months to get it together. If you can do it, great. If not—I'm asking you to speculate, but nobody's in a better

position to do that than you because you've been part of the effort to build consensus.

Ms. Louter: I would have to say that I do not believe there's enough maturity in the profession for that to happen. One of the things that's very important is education, and I don't believe we can even agree on what the standard of education would be.

Mr. McMeekin: Okay. I appreciate that.

The Chair: Mr. Runciman.

Mr. Runciman: I don't think anyone has realistically suggested that as an option. I think the option that's been presented by a number of witnesses is government, through the Ministry of Government Services, regulating the profession until such time as they're capable of taking over the responsibilities of self-governance and self-regulation. I'm not sure why that was raised.

In any event, a lot of what you've said here today we've certainly heard from others, but giving us some insights into what happened with the PPAO is helpful.

I am curious with respect to your recommendations that you haven't touched on, a couple of things that have been referenced: The scope of practice issue being essentially left in the hands of the Law Society of Upper Canada, which may not concern you in terms of your individual responsibilities; and the other element, which I guess ties in with this, which is membership in the law society. That was raised by the previous speaker, and you were present for that. Do you not have any concerns about those two issues at all?

Mr. Stephen Parker: Yes, I do. We wanted to restrict it to these issues for the brief period of time we have, but I'm prepared to answer that. In discussions with Mr. Zimmer's office and the law society, we did make it known, when we were part of the PPAO, that to be regulated and to pay dues to an organization to which we're not allowed to belong flies in the face of reason. It was brought to our attention that only lawyers can be members of the law society. I suggested that we have a classification of "paralegal member" or "associate member" or words to that effect, to make it very clear and separate. But that is an issue that we would like to see clarified, yes.

Mr. Runciman: And you'd feel more comfortable if that was the case in terms of scope of practice being defined, if you will, by the law society?

Mr. Stephen Parker: Yes.

The Chair: Thank you very much for your presentation.

ALLISON GOWLING

The Chair: The next presenter is Allison Gowling.

Interjection.

Mr. Allison Gowling: Mr. Kormos, I've never played left field, centre field or right field. I don't have the depth perception. If I could catch the ball, I couldn't even hit the cut-off man.

Mr. Zimmer: How's your throwing arm?

Mr. Kormos: It's tremendous.

Mr. Gowling: That's why I umpire.

Just to one member's question about the hypothesis of the six months, my answer to that is, give us the legislative authority and six months and watch what we can do.

The Chair: You have 20 minutes.

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Mr. Gowling: Good morning, members of committee. My name is Allison Gowling. I don't think you have to ask where the name Gowling comes from: just down Bay Street a little bit.

Anyway, I've been a paralegal for about 10 years. I got into the profession after suffering a disabling spinal injury at work, and through the auspices of the Workers' Compensation Board. At the time, I was one of the first graduates of the first court and tribunal agent class at Sheridan College. I have a general and eclectic practice in Cayuga. If you don't know where Cayuga is, think Caledonia, 10 miles south-southeast.

I have a prepared text that I previously sent in to the committees branch, and I added copies of my resumé today for you. I also added some newspaper articles and law society gazette articles that were given to me just days ago.

The background: The proposed regulation of the paralegal profession in Ontario has long been a topic of intense debate since the 1990 Ianni report and through the Cory hearings and subsequent report of 2000.

The expected aims of the proposed legislation: It is presumed that the expected aims of the proposed regulation of paralegals are the protection of the general public, to increase the efficiency of the courts, to regulate, to set parameters for education and certification and to provide the necessary supervision and control of the paralegal profession by the Law Society of Upper Canada.

The likely result: It is strongly suggested that the likely result of this proposed legislation will be an instant narrowing of the areas of practice that paralegals now operate in; that the Law Society of Upper Canada will continue over the next five to 10 years to narrow the areas of practice for paralegals until paralegals no longer appear in any court or tribunal; and that members of the general public who have to avail themselves of the justice system in Ontario, whether it be for criminal, quasi-criminal, civil, family, administrative or whatever area of law, will do so through a barrister or solicitor or represent themselves. As a result, access to justice for members of the general public, especially those citizens who cannot afford a barrister or solicitor, will be severely curtailed, leading to miscarriages of justice and bringing the administration of justice into disrepute.

In recent months, both the chief justice for Ontario, His Lordship the Honourable Mr. Justice Roy McMurtry, and the chief justice of the Supreme Court, Her Ladyship the Honourable Beverley McLachlin, have stated in addresses that the legal system is rapidly being priced out of reach for the average citizen and as a result they are being denied what is or may be due them in a court of law. There are some articles that should be attached with my package.

As well, one of the alleged aims of this legislation is protection of the general public. What it will do is provide the Law Society of Upper Canada an opportunity to rid the province of all paralegals whom the law society deems corrupt, which to the law society, in my opinion, in all likelihood, will be all paralegals.

For years, the law society has opined, whined, bled and basically cried wolf about all the paralegals being corrupt, undisciplined, preying upon unsuspecting members of the public, passing themselves off as lawyers etc. While it can be said that there are unscrupulous, criminal, unethical, unprincipled and incompetent paralegals at work anywhere in the province, it can also be said with great certainty that unscrupulous, criminal, unethical, unprincipled and incompetent doctors, nurses, accountants, veterinarians, social workers, real estate agents, financial advisers, clergymen etc. are at work anywhere in the province as well. And there are unscrupulous, criminal, unethical, unprincipled and incompetent lawyers. We read about them all the time. See the article about Mr. Shoniker.

However, the law society finds it convenient and seems content to attempt to ignore or gloss over any particular problems, activities or difficulties with lawyers, ones who pillage clients' trust money or launder money of a suspicious origin or even destroy evidence that has been subpoenaed. The Law Society of Upper Canada cannot continue to have it both ways despite their best efforts and insistence.

Areas of practice that I feel a paralegal can be of most use in: civil, specifically small claims and first-level appeals to Divisional Court. This area of civil court, namely the Small Claims Court, has usually been the bailiwick of paralegals as, until the past five years, the monetary limit of the Small Claims Court has never been high enough to be cost-efficient for barristers and solicitor to appear on a constant basis. Even with the recent rise of the monetary level of the Small Claims Court to \$10,000, barristers and solicitors seldom appear, either through a lack of familiarity with the rules of the Small Claims Court, a preference for not appearing in this venue or for a myriad of reasons. Paralegals provide a much more cost-efficient method of serving the needs of the general public in respect to the Small Claims Court, either through an hourly rate, a flat rate or a straight commission on what is collected.

An appeal of a Small Claims Court judgment to a single judge of the Divisional Court is another area that paralegals can undertake for clients in the same efficient manner as the original claim.

Currently, since paralegals are generally not allowed in the Divisional Court, and since a layperson would have an incredibly difficult time in knowing how to properly prepare an appeal to the Divisional Court, and since the cost of retaining the services of a barrister and solicitor in relation to the amount of the judgment in question in all likelihood would be extremely prohibitive, allowing paralegals to represent clients at the first level of appeal to the Divisional Court would most certainly

improve access to justice for members of the general public. However, any paralegal wishing to appear in this venue must be able to know how to order, and where from, transcripts of the original hearing; how to prepare and assemble a factum, appeal book, compendium; what rules apply, etc. This was recommended in the Cory report, but totally ignored in the proposed legislation.

Criminal: The area of criminal law has long been an area for barristers and solicitors only; however, it can also be an area for paralegals, so long as those paralegals can demonstrate the requisite knowledge, skill and abilities necessary to adequately represent clients in criminal court, as per the Romanowicz decision of 1997.

It is an established fact that the legal aid system in Ontario is woefully inadequate and much too narrow to be of use to anyone in Ontario except for those members of the general public who are in extreme poverty. Paralegals would not only, again, provide a cost-effective alternative for members of the general public who require representation in criminal court, but could be of assistance to legal aid, especially in those outlying and rural areas where legal aid has difficulty in obtaining the services of members of the local bar. However, it is worth repeating that education and certification are the keys to ensure that members of the general public are properly represented.

Quasi-criminal or provincial offences court and subsequent appeals to the criminal court: As with Small Claims Court, provincial offences court has usually been the bailiwick of paralegals. It not cost-efficient for barristers and solicitors, as well as members of the general public, to appear on a constant basis. As with criminal law, education and certification are still the keys to proper and efficient representation for members of the general public. As well, appeals of provincial offences convictions to the Ontario court, criminal division, can also be undertaken by paralegals, provided the paralegals possess the proper education, knowledge and experience to satisfy the court. However, as with an appeal of a small claims judgment, any paralegal wishing to appear in this venue must be able to know, again, how to order transcripts, prepare factums, etc.

Legal aid: I mentioned this before, but I'll say it again. It can be safely argued that the legal aid system in Ontario has degenerated into a state akin to a festering sore. As the wealthy do not need legal aid, and the middle class do not qualify for legal aid because of ridiculously low minimums and property rules, only those in poverty can properly utilize legal aid. The end result is that more and more members of the general public do not qualify for legal aid and cannot afford a barrister and solicitor, therefore representing themselves, all of which slows the judicial process down to a crawl, as the presiding judge must, while attempting to remain neutral, ensure that the accused is afforded every opportunity to properly defend himself or herself. This crawl continues to overburden a justice system that is already sinking under the weight of the demands of our growing society. This is a denial of natural justice and a denial of

access to justice, as Mr. Kormos pointed out earlier about Family Court. I'm going to dwell on support, custody and access.

If there's any one section of the judicial system in Ontario that is ready to collapse at any moment, it is the family divisions of the Ontario court and the Superior Court. It is estimated that as much as 75% of the litigants in both family divisions are unrepresented; most are single parents, usually female. As in the criminal court, this lack of representation places judges in the difficult and untenable position of ensuring that the rights of the unrepresented litigants are properly protected while maintaining their neutrality. And, as in criminal court, where their liberty may be at stake, even more may be at stake. In Family Court, a litigant's ability to have custody of or to visit or be involved with the lives and activities of their children is seriously jeopardized by self-representation. Nowhere is equal access to justice more necessary than in the family courts, and nowhere is access to justice more almost invisible than in the family courts.

Under the proposed legislation, paralegals will not be allowed to represent clients in the Ontario court, family division. Will this denial force these litigants to use a barrister and solicitor to represent their interests? No, these litigants will be unrepresented.

I personally have been afforded the right and standing by presiding judges on many occasions to represent clients in the Ontario court, family division, in Cayuga, Brantford and Simcoe, as I have taken the time and care to properly acquaint myself with all of the rules and procedures of the Family Court.

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As stated previously, the key to proper representation is education and knowledge. Paralegals can be an invaluable resource for members of the general public who find themselves in a Family Court quandary, and be cost-efficient as well.

Administrative: The area of administrative law is another area that paralegals excel in. Paralegals provide, as they do in Small Claims Court and provincial offences court, a cost-efficient method of serving the legal needs of the general public in the areas of WSIB—meaning compensation—Canada pension, employment insurance, Ontario Works, Ontario Rental Housing Tribunal, and so on. However, it can be argued that there may be a need to curtail the practice of the contingency fees in respect to administrative law judgments such as WSIB and Ontario Works.

Currently, as with Small Claims Court appeals, paralegals are generally not allowed in the Divisional Court. A layperson would have an incredibly difficult time in knowing how to properly prepare an application for judicial review to the Divisional Court, and the cost of retaining the services of a barrister and solicitor, in likely relation to the amount of the judgment in question, would also be prohibitive. Allowing paralegals to represent clients before the Divisional Court in applications for judicial review such as compensation, the rental housing

tribunal, Ontario Human Rights Commission, etc.—and, in Canada pension matters, before the Federal Court of Appeal—broadens significantly the general public's access to justice. And isn't access to justice and the public interest what Bill 14 and paralegal regulation is all about?

Labour: In respect to labour law, paralegals can be a very cost-efficient method for businesses with collective agreements to be assisted in various matters related to those agreements, such as grievances and arbitrations and applications for judicial review.

Estates and real estate: With the proper training and monitoring in place, there is no reason paralegals cannot assist members of the general public with basic wills and estate work and straightforward real estate transactions.

I'll touch on this again. The likely result of the legislation: If passed, it will eventually place all paralegals where the law society wants them, out of the courtroom and into a dark corner pushing papers; in short, to be a law clerk. Members of the general public who need legal assistance for whatever reason or matter will have to retain the services of a lawyer. If they cannot afford a lawyer, then members of the public will make one of four choices:

- abandon their action and walk away empty-handed, no matter how strong their case might be;
- surrender to the other side, accept whatever table scraps are thrown their way, and lose everything;
- surrender to the crown and accept whatever penalty is imposed, whether it be right or not, whether they be guilty or not; or
- defend themselves, and the resulting bottleneck of cases and the incredibly slow speed at which these self-represented matters will proceed will slowly strangle our judicial system and cause it to collapse in on itself.

In closing, I'd like to suggest to the learned committee that they make a recommendation to scrap this proposed legislation insofar as it deals with paralegal regulation, as it does not even remotely come close to serving the interests of the public or improving access to justice; or amend the proposed legislation to bring it more in line with Justice Cory's report. The proposed legislation is extremely harmful to residents of Ontario and will cause harm and damage.

Paralegals are not out to circumvent, to take cases away from barristers and solicitors or to try to replace them. Paralegals can complement, augment, assist and generally be a great reinforcement not only for lawyers but for the legal profession, the court system and the judiciary as well. Paralegals can very easily and competently complement barristers and solicitors, in the manner that CAs, CMAs and CGAs work together, and as chiropractors and midwives assist the medical profession.

Without sounding pompous or egotistical, I am walking proof of what a sound education, good research, uncompromising integrity and principles, and an incredible work ethic can accomplish. In these past 10 years that I've practised, I have continually reached out to touch, to climb, to attain and to speak at the next level,

not for my benefit but for my clients' benefit. As a result, as mentioned earlier, I've been granted standing in the Ontario court, family division, in Cayuga, Simcoe and Brantford; for small claims appeals in the Divisional Court of Ontario; and at the Federal Court of Appeal for an application for judicial review on a CPP pension decision. I did not receive standing because of my spartan good looks. I have acquitted myself admirably, and I have received compliments from various judges on my deportment, my pleadings etc. So it can be done, but the key is education, certification, professional development and regulation.

As well, social workers regulate themselves, as do real estate agents, accountants, doctors, nurses, chiropractors, massage therapists, financial advisers, etc. Why not paralegals? We should be allowed the opportunity to govern and regulate ourselves and be allowed the opportunity to succeed and, conversely, the opportunity to fail.

However, the Attorney General does not wish that opportunity to be given to paralegals. Why? Because the Law Society of Upper Canada wants to eliminate paralegals as a source of competition to ensure the law society's fiefdom, and access for the general public be damned. The Attorney General is fearful to row upstream against a very powerful and shrill opponent.

The proposed legislation is supposed to ensure access to justice. The proposed legislation does not ensure access to justice but instead will ensure the death of the paralegal profession, as well as the ongoing despotism and tyranny of the Law Society of Upper Canada. The members of the general public, residents of Ontario and all users of the judicial system in Ontario will be hurt, will be damaged and will be incredibly poorly served by this proposed legislation.

I would strongly suggest to the learned committee that there is an alternative. There is Justice Cory's report, which is currently sitting in the Attorney General's office. Perhaps it is time to pull Justice Cory's report off that shelf, dust it off and draft just, fair and useful legislation that benefits the general public and their needs—not the proposed legislation, which insofar as the Law Society of Upper Canada is concerned is a self-serving document meant to preserve the world for the law society and chase the barbarians from the gates of Rome.

You can tell my mother was a schoolteacher.

The Attorney General should propose legislation that benefits the needs and interests of members of the general public and residents of Ontario, and not propose legislation that kowtows and panders to a select group.

If my words, thoughts and inferences have annoyed and perturbed the committee, I do apologize. However, I come from a geographical area and an era where you stand up and tilt at windmills for what you believe in and what you believe is right, and proceed full speed ahead and damn the torpedoes. Thank you for your time and your consideration.

The Chair: Thank you. Just a quick question from each side. Mr. Kormos.

Mr. Kormos: Thank you, Mr. Gowling. The problem is, and you heard from the PPAO—because their work was contemporaneous with Cory, right?

Mr. Gowling: Not so much. That was more fragmented. I should have—

Mr. Kormos: No, I'm talking about the time frames.

Mr. Gowling: Somewhat.

Mr. Kormos: Yes. See, the problem is, I appreciate the difficulty in bringing the paralegal community together for self-regulation, but I also despair at the fact that the Legislature is not going to be discussing and voting on or determining things like scope of practice, standards, structure, governance of the regulatory body, etc. That's what causes me grave concern. It was you who gave us some copies of these monthly—is it monthly?

Mr. Gowling: I think it's quarterly.

Mr. Kormos: The law society has the wall of shame for bad lawyers. To be fair, are you pointing out that the law society is too harsh? Because other people will say that the law society goes overboard in terms of protecting lawyers. It would seem to me that they've handled a few here, more than a few. What are you saying with this particular document?

Mr. Gowling: I should have said this at the start, and I do apologize. I sat on the PSO board for six years—one term as secretary, one as vice-president and two as president. I also sat on the inaugural board of the PPAO for two years, so I was in the middle of this war, for lack of a better phrase.

The thing is, you're going to find bad people, criminal people, in any profession, but we have rarely ever seen the law society, from what my dealings have been—

Mr. Kormos: A disproportionate number in the Canadian Senate, but that's a different discussion.

Mr. Gowling: The fact is, we just don't hear too much. The law society seems to gloss it over. They worry too much about us. The PSO set up our own disciplinary process—

The Chair: Very quickly, Mr. Gowling, if you could just finish off.

Mr. Gowling: Okay. We set up our own code of ethics, our own insurance program and disciplinary process long before the PPAO was even around, and we still have it in place. Our insurance is mandatory. That's one of the reasons I joined the PSO. Actually, the only reason was to get the insurance.

The Chair: Thank you. Government side?

Mr. McMeekin: Mr. Gowling, words, thoughts and opinions and tilting at windmills have never bothered me, so let me just put that up front. While I'm an idealist, I'm not naive.

We've heard a lot of testimony back and forth about what's happening. Mr. Runciman suggested that no one has seriously suggested that self-regulation is an option. I've heard a lot of people seriously suggest self-regulation as an option. You preambled your presentation by saying, "Give us six months and the tools." I want to ask you, what tools do you need?

Mr. Gowling: I would say we would need legislation that we could enforce. At the PSO, we have a minimum of either two years' practice or a minimum two-year community college diploma, such as Sheridan, Seneca, Humber or something like that. If we are given the legislative authority to enforce the minimum standards to set education standards, regulatory standards, areas of practice—

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Mr. McMeekin: You wrote a paper on that, or the PPAO wrote a paper on some of the prerequisites of self-regulation.

Mr. Gowling: Yes. I made a submission to that; I don't think it made it into the report. However, the fact is, if you just say go out and organize yourselves, we've been doing that since 1996. Everybody wants to get from point A to point B, but nobody can agree on which taxi, bus, plane, train or automobile to take. A lot of the time it's egos. It's silly little things that prevent it. It frustrated me all to Hades in my years on the PSO board because that was one of the things I strived for.

Mr. McMeekin: So you're talking self-regulation. What's the answer? How do we get there?

Mr. Gowling: Self-regulation is the best way to go. As I said, give us the opportunity to succeed and to fail. If the law society is the regulatory body, I will work with it because I have no choice. It's either that or I go pump gas or stock shelves.

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

Mr. Gowling: Thank you for listening to me, Mr. Chairman. I certainly appreciate it.

The Chair: I'm compelled to say that if I were a judge and you cracked your knuckles like that, I'd give you standing too—and with the last name Gowling.

Mr. Gowling: I usually wait for cross-examination to start.

Now I'll go see if I can find my ancestor's portrait in here. Is it worth mentioning? I'm descended from Sir Oliver Mowat and the Black Donnellys.

Interjection.

Mr. Gowling: Mother always said there's no room in the Mowats for white sheep.

ROSALIE MURACA

The Chair: We have Rosalie Muraca, who's up next. Welcome to the committee, Ms. Muraca. You may start, and you have 20 minutes.

Ms. Rosalie Muraca: Thank you, Chair and committee. My name is Rosalie Muraca, and I'm here to speak to you with regard to my concerns with Bill 14.

I recently graduated, in 2005. I have some experience as a legal assistant and working as a paralegal under the supervision of a lawyer, but my concern with this bill is that the proposed amendments fail to provide substantive information on the powers to be given to paralegals or the manner in which regulating paralegals will be implemented, financed and enforced.

There's no framework concerning eligibility, standards of conduct, complaints procedure and disciplinary guidelines.

We all have a responsibility to look for ways by which more Canadians can gain meaningful access to their justice system. Meaningful access depends in part on having access to legal services in a cost-effective and responsive manner.

Affordability cannot become a barrier to justice. People's financial means should not deny them access to the law. Consideration should be given to the fact that a small percentage of people can afford lawyers.

I think when an individual comes in contact with the justice system they should have a choice whether they want a lawyer or a paralegal. I, or you, should have the authority to choose, as per the Charter of Human Rights and Freedoms. I do not think a lawyer who has a conflict of interest in this matter should decide our fate. Morally, I think this is wrong because it's like you're playing God.

If we were governed by the paralegal association of Ontario, we'd be treated the same as lawyers because we'd be governed and the public could have confidence in retaining paralegals in the sense that they could complain if they had a problem, and they would know it's a legitimate profession and business. I would hope that the government would allow paralegals to have a self-regulating body, such as the paralegal association of Ontario, rather than the law society, which has a conflict of interest in the outcome of how paralegals are regulated.

We should carry errors and emissions insurance, but this insurance should be at a lesser rate than that of lawyers because we do charge a lesser rate for our services to the public.

In response to some comments that I heard in the media regarding paralegal programs at a community college, they're usually a minimum of two years, sometimes three or four years. We are very well educated and prepared to practise in several areas of law. Secondly, to address the issue that we are in school less than a lawyer, because some lawyers are saying that we're in school less so we're not as prepared or educated, lawyers take a three-year undergraduate program in any discipline—this can be in chemical engineering or whatever they want and has nothing to do with the law—and then an additional one to three years, depending on whether the lawyer has taken a master of law, a doctorate of judicial science or a master of studies in law. In comparison to that, our education is about the same length, if not more.

If a paralegal chooses to work in a firm under the supervision of a lawyer, I think the legislation should contain a minimum amount that paralegals should make. I myself have worked under the supervision of a lawyer, and they do take advantage of us and give us a low pay rate and have us do all the work. Also, they're saying that we're not capable of this work, yet they make us do all this work, under their supervision, with no help. I've worked under their supervision and done everything all by myself up until the banking; they handle that. So I

don't see how they can say we're not competent if they allow us to do that.

Lawyers should not be involved in the regulation of paralegals either. Also, they should not be involved in handling our money in a trust account. We should be able to hold our own trust account and therefore be in full control and 100% accountable.

I also think paralegals should be allowed to appear in all courts. I don't think it's fair to say, "Okay, they can appear in small claims, but they can't appear in divisional and appeals," because at that point you would have to tell the client, "Well, I can't represent you any more," and they would have to abandon that case. If it's something serious, like the person is hurt or it's something that they can't just throw away, it's hard for that person. If it's only a claim for \$1,000, a person could let that go, but if it's a more serious matter, it's harder for that individual. We would have to stop at that point, and if they can't afford a lawyer, then they have to just accept that fee.

My recommendation is for paralegals to work in the following areas of practice: immigration; family matters; litigation; personal injury; wrongful dismissal; corporate law; real estate; mediation, arbitration and negotiations; provincial offences and anything that deals with the Liquor Licence Act or Highway Traffic Act; debt or creditor law; tribunals and public laws; working with companies such as children's aid societies, Ford—they have legal representatives—SABS representatives and collection agencies.

In closing, to have paralegals restricted from certain areas of practice is prejudicial. If lawyers are so opposed to paralegals, why do they hire us and let us do all the work with no supervision? Some paralegals are equally as competent as lawyers. The recommendations from lawyers are not stemming from their interest in public welfare but an attempt to stop us from taking their piece of the pie, so to speak, because we are competition to them. Lawyers only like paralegals under their belt, where they can make us do everything they are responsible for and pocket all the rewards and give us next to nothing for our hard work and dedication. Lawyers do not want paralegals working independently, where we cannot easily be manipulated or left hanging like a puppet with the lawyer pulling the strings. A question I pose to the committee is: Is this fair?

Mostly, I am talking from experience. On the flip side, I do agree that there are some individuals who carry on business as paralegals but have no formal education, and I think there should be something in place in the legislation to prevent this from happening.

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Also, I am speaking of lawyers' misconduct, but I'm not here to say that lawyers don't make mistakes or paralegals don't make mistakes. All I would like to see is that we have a choice in representing our clients and the clients have a choice in retaining us. I don't think this bill should be passed if the only goal is to make it impossible or to hinder or prejudice paralegals from practising what, by right, is morally and humanly just.

My questions that I pose to the committee:

What is your main objective in regulating paralegals and how are you going to accomplish this?

If you are going to choose the law society to govern paralegals, how is that going to take effect?

If you guys choose the law society, how will you ensure that they are acting impartially and what complaints procedures will be in place for this?

What areas will you allow paralegals to practise in?

Will you make this bill a public hearing?

Will you allow paralegals to hold a seal and be able to sign as a commissioner for taking oaths?

Will eligibility, standards of conduct, complaints procedure and disciplinary guidelines be implemented in the legislation?

Thank you.

The Chair: Thank you. There are about three minutes for each side. We'll begin with the government side.

Mr. Zimmer: Thank you very much for taking the time and sharing your thoughts with this committee.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you for being here. I just want to clarify something Mr. McMeekin said when I was absent, that I was suggesting no one had talked about self-regulation. That wasn't my point at all. No one was suggesting, realistically, that self-regulation could occur over a six-month period. I think anyone sitting on this committee should realize that it would require withdrawal of this legislation and introduction of new legislation to establish a regulatory structure, etc. That's just to clarify that so that Mr. McMeekin understands my view of that.

I appreciate your being here. Your concerns are shared by a great many of your fellow paralegals. What has been raised by a number of people who have appeared before us, and Mr. Kormos raised it earlier today as well, is: as an option to the Law Society of Upper Canada, regulation by the government through the Ministry of Government Services, with the intent of ultimately moving to self-regulation. Have you given that any thought? Do you have a view on that?

Ms. Muraca: Yes, that would be a beneficial option.

Mr. Runciman: How long have you been practising? I missed your opening comment.

Ms. Muraca: I've been practising for a year.

Mr. Runciman: Oh, just a year, so you're new to the business.

Ms. Muraca: Right.

Mr. Runciman: Our previous presenters, who'd been with PPAO—do you have errors and omissions insurance?

Ms. Muraca: No, I was working under a lawyer's supervision.

Mr. Runciman: So that's not required?

Ms. Muraca: No.

Mr. Runciman: Thanks again. We appreciate you being here.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Muraca, please don't go.

Ms. Muraca: Sorry.

Mr. Kormos: Are you from the Toronto area?

Ms. Muraca: No, from the Hamilton area.

Mr. Kormos: Great. It's very important that we get the point of view of somebody who is out there in the trenches, on the front lines. I agree with you about lawyers having short arms and deep pockets when it comes to paying their staff, which is why I've long-time felt that what we need is a broad-based movement to unionize staff in law offices, because they do most of the heavy lifting, especially when it comes to things like real estate deals and a whole lot of solicitor work. So I very much appreciate you coming

We just got a written submission from somebody called Worrick Russell. I'm not going to comment on his comments, but if in fact this is a real account from a lawyer—and I can only assume that it is: May 24, to instructing law clerk to call client and arrange an appointment, charging 0.1 hours; May 24, to call to client and confirming appointment with client, 0.1 hours; May 25, to instructing law clerk to call client and push back appointment as MT is stuck in court, 0.1 hours, and then the law clerk calling to say, "The lawyer is stuck in court. He can't make the appointment," calling the client, 0.1 hours. This is the sort of stuff that drives people crazy and that the law society doesn't seem prepared or capable of dealing with. Read page 3 of that lawyer's docket. That is absolute crap—if this is a real document, and it looks like one—that a lawyer would charge for instructing his law clerk, then the law clerk would charge for making the call and then the lawyer would charge for instructing his law clerk to say, "I can't be there. I'm going to be in court," and then the law clerk to charge for calling.

You weren't ever asked to do anything like that, were you?

Ms. Muraca: Yes. Something like that, yes.

Mr. Kormos: Thank you, Ms. Muraca.

Mr. Runciman: You should ask her if she's paid \$100 an hour.

Mr. Kormos: And the lawyer is billing 100 bucks an hour for the law clerk—oh, sure. Thank you kindly. Good luck in your career.

The Chair: Thank you very much. We're finished for the morning presenters. We'll be recessing till 1 p.m.

The committee recessed from 1156 to 1304.

The Chair: Good afternoon. The committee is called to order. First of all, I want to remind the committee that there's a research paper in front of them prepared by Ms. Margaret Drent, as requested by Mr. Kormos and the committee.

WORKERS COMPENSATION ADVOCATES INC.

The Chair: Our first presenter this afternoon is Mr. Robert Govaert. You may begin, sir. You have 30 minutes.

Mr. Robert Govaert: I'd like to thank the standing committee for this opportunity to present my views on Bill 14, access to justice.

I'm the president of Workers Compensation Advocates Inc. I've been providing independent paralegal services to the public for over 10 years. Prior to my independent practice, I gained in-house experience as a non-lawyer advocate and received specialized training in assisting injured workers and the disabled with appeals, which included training from the Ontario Federation of Labour and training staff from the Office of the Worker Adviser. My practice is confined to Workplace Safety and Insurance Board and Canada pension plan disability benefits appeals up to the final level of appeal. I do not practise outside my area of expertise, such as Small Claims Court, provincial offences, landlord-tenant, family law. I'm a member of the Paralegal Society of Ontario and a member of the Better Business Bureau of Ontario. I've had no complaints in over 10 years of independent practice.

I was not consulted by the provincial government regarding the proposed legislation to regulate paralegals.

My concerns: Bill 14, section C, amends the Law Society Act to give the Law Society of Upper Canada the authority to regulate paralegals and authorizes the Law Society of Upper Canada to regulate all aspects of the practice of law and the provision of legal services. The government is effectively handing over legislative authorities to a private organization.

The Law Society of Upper Canada is the self-governing body for lawyers in Ontario. The provincial government and Bill 14 fail to consider prior reports to the government on the regulation of paralegals. It is unfair to have the Law Society of Upper Canada regulate paralegals because of the obvious conflict of interest to have lawyers regulating their competition. No other profession is allowed to regulate its competitors.

The government report I'm referring to is the Ianni report, 1990, which noted that if the law society were to regulate paralegals, it would be "placed in a potentially difficult position of having to make decisions on issues where the interests of independent paralegals and those of the legal profession are in conflict." The Cory report, a more recent report, indicated, "It is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the law society should not be in a position to direct the affairs of paralegals." Even the law society itself has indicated that they have not always accepted paralegals as part of the legal services landscape. This is from their own report.

I agree with the recommendations proposed in the Cory report that paralegals should be self-regulated and that the Law Society of Upper Canada should be consulted for their advice and experience on many topics. I agree with the Cory report recommendation that the law society should not be in a position to direct the affairs of paralegals.

The definition of legal services in the proposed legislation is very broad. The legislation does even not recognize the term "paralegal," only the services we provide. Under this proposed legislation, lawyers will be involved in any matter of legal services, which will create a monopoly and increase costs and fees. Paralegals are the lower-cost alternative to lawyers.

Most of my clients could not afford the services of a lawyer. If paralegal costs are going to increase, these costs will be passed along to clients. Exorbitant costs to paralegals will result in the closing of many competent paralegal businesses. This legislation may result in individuals not pursuing an appeal option or proceeding with no representation. This would not be in the best interest of the public.

No one will know the full extent of Bill 14 until it has been passed and the law society develops by-laws and details, but by then it will be too late. How much is the regulation of paralegals by the Law Society of Upper Canada going to cost the taxpayers of Ontario? Specifically, is there a limit on costs or is this a blank cheque? I am sure that the self-regulation of paralegals would be less expensive and save the government and Ontario taxpayers' money. Self-regulation of paralegals, as recommended by the government reports, would ensure true access to justice for the most vulnerable of our society, such as immigrants, women, the disabled and low-income and single parents.

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The 2006 Toronto central west Yellow Pages has 45 pages of advertisements for lawyers. The competition between lawyers themselves is fierce. There are approximately 1,000 lawyers coming out of law school every year. Recent graduates have indicated that there is no guarantee of income once they graduate. I have had graduates call me up for assistance with articling. I am concerned with the additional costs, fees, restrictions and potential limits on areas of practice that may be imposed on paralegals by being regulated by their competition. My concern is being regulated unfairly, rendering it difficult and costly to practise, or being regulated out of business, thus creating a private monopoly for the Law Society of Upper Canada with regard to legal services and access to justice.

I have won additional entitlement and benefits for many clients who had claims previously handled by lawyers. There is no course in law school specifically teaching lawyers about WSIB. Actually, my office even receives occasional referrals from lawyers. For me to work under a lawyer would mean handing over a large percentage of my income for the same work that I'm doing right now. My fees would have to increase accordingly.

Paralegals are in favour of regulation but are against being regulated by the Law Society of Upper Canada, the competition. We should have the right to be self-regulated like other professions.

My first recommendation would be to withdraw schedule C from Bill 14 and introduce separate

legislation for self-regulation of paralegals which is independent from the Law Society of Upper Canada and the provincial government, and which is consistent with the Cory report recommendations. The Paralegal Society of Ontario already has a plan in place for self-regulation. Paralegals should be given a chance for self-regulation.

Considering all the information presented at these hearings and the prior government reports on paralegal regulation, plus the agreement of the law society for their willingness to assist in paralegal regulation, it should be fairly simple to introduce new separate legislation which follows the Cory report recommendations. We submit it is the best option for true access to justice for the most vulnerable people of our province to find affordable access to the justice system.

Knowing that pulling schedule C from Bill 14 is unlikely, in the alternative I ask the following:

Recommendation 2: Add a clause to Bill 14 which will require steps for self-regulation of paralegals in two to three years, following the recommendations of the government reports: the Ianni report and the Cory report.

Another one of my concerns is that convocation is the governing body for the Law Society of Upper Canada and will determine the bylaws that are enforceable regarding the regulation of paralegals. Convocation is composed of 50 members or benchers: There are 40 lawyers, eight laypersons and two paralegals. That's 4% representation in the governing body determining the regulation of paralegals. I would like to think that that was a typographical error which was carried over into the legislation. Is there any regulated profession which has only 4% representation in the governing body that determines their regulations, bylaws and scope of practice?

In addition, 40 lawyers sounds expensive. Are we going to have to pay for that? Are we going to get a bill whenever they look at a regulation? Again, how much is the regulation of paralegals by the Law Society of Upper Canada going to cost the taxpayers of Ontario per year? Is there a maximum, or is this a blank cheque? How much is it going to cost the independent paralegals?

The legal services provision committee makes recommendations to the Law Society of Upper Canada convocation regarding bylaw changes as they relate to legal services and is composed of the following 13 persons: five paralegals, five lawyers and three laypersons. Convocation has the power to overrule the recommendations of the legal services provision committee and provide their own recommendations. I submit that the legal services provision committee is only for show and is useless.

Recommendation 3: The legal services provision committee should be given the powers of the governing body to regulate paralegals, to determine what bylaws are enforceable. I recommend specifically indicating in the legislation that the legal services provision committee should be independent from convocation and independent from the provincial government. This would at least appear to follow the Cory report recommendations. I propose the composition should be composed of 13 per-

sons: seven paralegals, four lawyers and two laypersons. You will note the majority of the governing body should be paralegals. The initial paralegal benchers should be chosen by a paralegal organization, and I propose the Paralegal Society of Ontario.

Another concern is that Bill 14 is very specific when it describes how to prosecute paralegals, but it does not indicate the scope of practice. Even the law society task force consultation paper indicated the scope of practice for paralegals, as follows: Small Claims Court; Provincial Offences Act; tribunals, agencies and boards that allow for appearances by agents.

Recommendation 4: Scope of practice should be written into the proposed legislation.

Cost of licensing examinations and grandparenting existing paralegals is another concern. Many paralegals confine their practice to limited areas; for example, Small Claims Court, Highway Traffic Act or WSIB. If grandparenting paralegals will be subject to the costs associated with writing licensing exams, for most likely both a general licence and a specific licence, this could be very costly to both the paralegals and to the Law Society of Upper Canada.

Examination preparation will be one of the largest expenditures with paralegal regulation, and the costs would have to be multiplied by the number of licences. This is from the law society itself indicating this.

Recommendation 5: Legislation should include exemptions from the licensing examinations for grandparenting paralegals. This will save costs. An example of the criteria may be independent or supervised experience in three out of the last five years, and two references.

Another concern is that being regulated by the Law Society of Upper Canada should include some benefits to paralegals. We're going to be regulated by them.

Recommendation 6: Legislation should specifically indicate that the same benefits lawyers receive from the Law Society of Upper Canada should be extended to paralegals, including a referral service.

I thank you very much and I'm willing to hear some questions if you have any.

The Chair: Thank you very much. About five minutes each, beginning with the official opposition.

Mr. Runciman: Thanks for taking the time to be here and to devote as much time as you have to the preparation of your submission; it's quite comprehensive.

You don't talk to—although, in a sort of peripheral way, I guess you're referencing it—your concern about the makeup of the governing body and the fact that two paralegals will be your only representation, the 4% representation that you reference here. If that were amended and you were given, as I think one of the previous presenters suggested, an associate membership in the law society—right now you're going to be paying in and not even having the privileges of membership—

Mr. Govaert: Correct.

Mr. Runciman: —do you think that would allay your concerns or some of the concerns of your fellow paralegals?

Mr. Govaert: Change the composition to—what do you propose?

Mr. Runciman: Well, a more representative number, and provide you with either associate membership or full membership.

Mr. Govaert: If we are forced to swallow this legislation, I would hope to have all the benefits of being part of the Law Society of Upper Canada. The composition should definitely be at least a majority of the regulatory body. I believe I heard a few days ago from a member of the government that he's not aware of any profession that has less than half of the majority part of the regulatory body.

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Mr. Runciman: I know you are advocating self-regulation. That came up earlier today about the feasibility of moving in that direction when the government is this far down the road. I think you're right to be skeptical that it's going to happen. But I think one of the things that's been talked about by a number of witnesses—Mr. Kormos raised it earlier today and I referenced it with one witness earlier as well—which is a feasible alternative and certainly worthy of consideration, is regulation through the Ministry of Government Services, with the full intention to move toward self-regulation at some point in the future. Certainly that's happened with a whole range of other areas. Real estate is one that I was directly involved in. So it's something that you can have control through the government, and when the organization itself has matured to the point where it can handle those responsibilities, then the changeover occurs. How would you react to that as an option?

Mr. Govaert: I agree with that. That sounds along similar lines to the initial government report, the Ianni report, in which he mentioned control under consumer relations, I believe it was.

Mr. Runciman: Yes. What about the use of the term "paralegal." That's been omitted from this legislation as well. Do you have any concerns about that?

Mr. Govaert: I did actually mention that in my submission. It's unreal. We're going to be regulated, but now we can't even call ourselves a paralegal any more?

Mr. Runciman: Why do you think that is?

Mr. Govaert: Because there won't be any left.

Mr. Runciman: No, I think there's more to it than that. I just wonder what your views are and what drove that surprising direction from the government not to even—we're regulating paralegals but we can't use the term "paralegal."

Mr. Govaert: It's beyond me. I can't swallow it. I don't know. I don't know what they're thinking.

Mr. Runciman: I'm starting to reach some suspicions about what happened there, but in any event, thank you very much for being here.

Mr. Kormos: Thank you Mr. Govaert. I appreciate it very much. You're right: People who have expertise in workers' comp, WSIB, are very skilled. The area is very narrow. Most lawyers neither can nor are they interested in doing that kind of work; similarly with small claims

work, as well as highway traffic work. We had Mr. Lawrie and Mr. Parker here this morning and Mr. Saunders is here this afternoon.

One of the hurdles is the clear statements by Ianni and by Justice Cory about the inherent conflict of interest. Mr. Zimmer over there knows that conflict of interest is perceived conflict of interest as much as it is cash register conflict of interest. That's one of the hurdles.

The other hurdle, I suppose, is that the government's expecting you and other paralegals to sign a "trust me" contract, "Don't worry. Trust us." That's coming from the government.

Mr. Govaert: That's what we hear from lawyers too.

Mr. Kormos: I know. It seems that the real thrust is the scope of practice. If you boil it down—and maybe I'm wrong; I'm going to talk to other people about that—it's the issue around scope of practice. What are paralegals going to be permitted to do? At the end of the day, is that one of the real fundamental issues in your analysis of it?

Mr. Govaert: If it's actually written down in the legislation, then it can't be really taken away.

Mr. Kormos: Quite right, but is that the nub of the issue as far as you're concerned? There are all sorts of things.

Mr. Govaert: The major issue is being regulated by the competition. That's my biggest issue.

Mr. Kormos: But the fear, in that regard, is that you'll be denied access to certain arenas in an unfair way, right?

Mr. Govaert: That's correct. The law society can come around and say, "You can't practise at this level."

Mr. Kormos: That's the fear. So what it comes down to is, what is going to be the scope of practice of paralegals, right?

Mr. Govaert: Correct.

Mr. Kormos: I ask you this because I suspect that, like the rest of us here, you pay taxes. Like the rest of us, you probably don't like paying taxes, but then again, I don't like paying for gas in my truck either. But do you expect your legislators to make the decisions, like scope of practice, rather than passing the buck off to an unelected body of benchers from the law society?

Mr. Govaert: I don't feel comfortable with that at all. I feel the government has actually handed over legislative authority to a private organization. If people are not happy, they can actually vote you out. I'd rather hold yourselves responsible.

Mr. Kormos: Thank you very much. It's an important contribution. Eduardo DiSanto is coming this afternoon and he's in a similar line of work as you are. I hope he's going to be here. I'm interested in hearing what he has to say.

There are some problems here, and I agree with Mr. Runciman. First, when Mr. Zimmer wasn't coming to committee—he's the parliamentary assistant—I thought maybe the government was just going to let this derail, but there it is, he's back, Zimmer's back, and maybe the government's going to force this through. That then takes

us to the second stage: What can we call upon the government to do to make this unpalatable, from your point of view, proposition a little easier to take? And that's what you've suggested today.

Mr. Govaert: I would also suggest—I talk to many clients, to family and friends. They have no idea what's going on here. They're totally shocked and offended that paralegals will be regulated under lawyers. They have no clue. I think it's just astonishing that the general public is not aware of what's going on.

The Chair: Government side?

Mr. McMeekin: I appreciate your presentation. It appears to be in sync, consistent with a number of others that we're hearing, particularly related to the option of self-governance. As you probably are aware—you've obviously been monitoring some of the presentations—there have historically been some difficulties with that. If we can find a way to mitigate that, that would be helpful. Mr. Runciman referenced one. That may be an option. There may well be others.

Somebody made a generic reference to, "Give us time and some of the tools to do the job around self-regulation and watch us." I'm wondering if you might address what tools you think might be needed in order to empower paralegals to actually move forward on the self-regulation front.

Mr. Govaert: I appreciate your question. Like I said, if the government can pull schedule C and introduce separate legislation for paralegal regulation—give some legislative teeth to a paralegal organization. The Paralegal Society of Ontario has a plan in place but there's no obligation of paralegals to become members, and I think maybe that could be the problem. If legislation forces paralegals to become members of an association and to be regulated by that association, your problem will be solved. That's why I think it's not very difficult to pull new legislation in. Everybody's in agreement here.

Mr. McMeekin: We want to solve our problem. We need to do maybe a little outside-the-box thinking here and revisit this with that kind of enabling wink—yes, nod.

Mr. Govaert: I agree.

Mr. McMeekin: Yes, okay. Thanks. That's good.

Mr. Govaert: Thank you very much.

TRAFFIC VIOLATION SPECIALISTS

The Chair: The next presenter is Mr. Don Saunders of the Traffic Violation Specialists.

Mr. Donald Saunders: Good afternoon. First of all, Mr. Chairman, with your permission, I will provide a copy of my presentation at the close of my talk, which should be in about 12 to 15 minutes, if you don't have any objections. If you do, then by all means you can have them now.

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The Chair: Go ahead.

Mr. Saunders: Thank you, sir. I'd like to take this opportunity to provide information that you may want to

consider in your deliberations of Bill 14. I consider myself privileged to make this presentation, especially when I see the panel. Some I've never met, but certainly I've watched them on TV, and then I just heard the previous gentleman. I honestly feel honoured and privileged for this, and I also feel a daunting responsibility to represent others who do the same type of work as I do.

My practice is restricted to representing persons charged under the Highway Traffic Act. I do not do civil litigation, preparation of wills, immigration work or any other court work.

My background: I have developed and practised over my career as a police officer—25 years in Toronto—from a constable up to a staff sergeant, and then on to chief of police in Charlottetown for five years. During that period of time, I've developed a deep and abiding respect for the judicial process and legal principles. I have championed these as a teacher with 13 years' experience, teaching young persons who were pursuing a career in policing, and with my 11 years as a professional paralegal.

It is with this background that I appear before you this afternoon to express my thoughts on Bill 14, legislation that will ensure that the average person with limited financial means has access to retain the assistance of a paralegal's experience.

Professional accountability: I would respectfully suggest that one of your challenges as legislators is to bring needed accountability to the paralegal profession in Ontario. With proper legislation, you can make paralegals legally accountable for their actions—which is not the case today—first, by requiring a paralegal to be licensed for a specific area of law which the paralegal will be practising, and second, by establishing a self-regulating board of governors that will, in turn, create a code of conduct, rules and regulations, policies and procedures, investigation protocols, hearing process and enforceable sanctions.

Affordable representation: Licensing paralegals in specific areas will continue to provide access to justice for the average citizen who can't plug into the legal aid system—though I would interject that there is no legal aid—or can't afford a lawyer.

Many of the people I represent just don't have someone to speak on their behalf to a prosecutor or to the court unless they hire an attorney. These have included bank clerks, housewives, students and persons referred by an attorney. The average citizen who suddenly finds themselves facing a court experience and all the anxiety that involves needs an affordable advocate.

For most Ontarians, attending court and facing a judge is a daunting experience. The experience is even more intimidating if the defendant is going to give evidence and be subjected to cross-examination. Even the educated and sophisticated need an experienced person to inform them of their rights, explain the legal process and prepare them for what to expect in court. This is a service that paralegals provide.

Having affordable access to justice as provided by paralegals enables the average citizen to have their day in

court without feeling they've been deprived of justice because they couldn't afford a lawyer.

Mr. Justice Peter Cory, as you are well aware—you heard his name mentioned by the last speaker; I'm sure you've heard others—formerly of the Supreme Court of Canada, recognized the role of paralegals when he stated:

“The importance of legal services to society is self-evident. The public needs access to adequate, effective, affordable legal services. To increase access to justice in a manner that protects the public must be the aim of the legal profession”—which is well-represented at this table—“and the goal of society. Paralegals have a significant role to play in increasing public access to legal services.”

Self-regulation of paralegals: I am here to recommend that schedule C be withdrawn from this legislation and that the government and paralegals work together to establish a self-regulated program for the licensing of paralegals. This is the only way that paralegal regulation and access to justice can be accommodated in one piece of legislation.

Let me give you an example from my own background as a police officer here in Toronto and as a chief of police. Police services boards don't regulate or oversee private investigators or the private security system, nor does the private security system regulate or oversee the province's police services. It would be preposterous for someone to even suggest such an arrangement. That is what Bill 14 recommends or proposes.

I support 100% the Honourable Mr. Justice Cory's position that, “The protection of the public and proper functioning of the courts, boards and tribunals urgently require the establishment of a system of licensing and regulating paralegals”—no argument there—and his recommendation that, “The province of Ontario should enact legislation for the regulation of licensed paralegals and delegate to a corporation which functions independently of the Law Society of Upper Canada and the government of Ontario the responsibility of regulating paralegal practice”—their responsibility, not the law society's.

Grandfathering clause: Before closing my presentation and attempting to answer your questions, I would like to deal for a few moments with a most important aspect of the legislation you will be presenting to the Legislature: a grandfathering clause. I am a grandfather, so I know some of the problems that go with it, but also the joys that go with being a grandfather.

It is my view that the essence of paralegal practice is specialization. My experience and area of practice is traffic court. This legislation would specify that practising paralegals with a minimum number of years' experience are exempt from qualifying under the regulations. This grandfathering should be based on sectorial practice or special skills. Paralegals should not be required to demonstrate knowledge or develop skills in areas of law in which they will never practise.

Alternatively, the legislation may be amended to require the regulator to develop specific examinations or

evaluation criteria based upon sectorial practice. Many experienced paralegals would find their careers over if the legislation were passed in its present form. However, should these paralegals be grandfathered into their specific area of specialty or expertise, such as traffic court, small claims—the gentleman who was here a few moments ago—workmen’s compensation, Co-operative Corporations Act, tenant protection, immigration act, most current paralegals will be able to continue to practise if they’re restricted and licensed for that particular area. The average citizen needs these services at a reasonable rate. Ontario cannot afford to lose this wealth of experience and knowledge.

I think this is the proper time to insert the information I’m about to give concerning our courts. What I’m going to say is not an in-depth survey or anything like that. On Tuesday morning, I was in court in Lindsay. At that time, it was what we call provincial offences court, traffic cases. I had been in, I had one case; another paralegal had 10 to 14; another a couple. There was one lawyer and he had two cases. I left, and then I had to go back into the court. On walking out, I suddenly realized that here are 30 or 40 citizens, average people from all walks of life. They’re sitting in court and there isn’t anybody to speak on their behalf. Yes, there’s a crown attorney. I respect the crown attorneys, and I guess if I had another life, I would have been glad to have been a prosecutor, but I’m not.

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Suddenly, it dawned on me: These people are sitting there, they don’t know which way to go. They know they walk up to the front and speak to the prosecutor but, other than that, they’re strictly in the hands of the system. So I made a couple of phone calls and asked a couple of prosecutors, one in Peterborough, where I basically work out of, and the other in Lindsay, “Just give me a ballpark figure: How many cases do you have in an average day?” In one particular court, it was 113. That’s a lot of people. That’s not 113 names on a list, because we all know, those who have been to court, you may have one person charged with two or three or more offences. That’s 113 people. In that particular court, 2% had an attorney; 22% had an agent. That leaves 76% having no legal representation. I find this really astounding.

For the other court, it broke down in their case that they averaged 45 to 60 in the mornings and 15 to 20 in the afternoons. There again, the average is about the same: 1% to 2% had an attorney, 20% had an agent, 78% had no legal representation. I would suggest that that will go much higher if schedule C is not amended.

In closing, my presentation has addressed the importance of passing legislation that would:

- require a paralegal to be licensed for a specific area of law which the paralegal will be practicing;

- establish a self-regulating board of governors. We’re all familiar with self-regulation. Look at our own families. We aren’t controlled by the neighbour next door or the neighbour across the street; our parents did it. That’s self-regulation, and there isn’t any reason why paralegals can’t do the same;

- provide affordable access to justice to the average citizen;

- provide for grandfathering of paralegals on an individual basis, testing them only in their specific area of practice.

I would add, aside from testing, that I wouldn’t have any objection whatsoever to being required to provide references from the judges, from lawyers in Peterborough or Lindsay. I have no problem. If I’ve done anything wrong, I don’t get the reference, I don’t get licensed. That’s fair ball, but that’s on a personal basis rather than just generalities.

Are there any questions? I want to thank you for your attention.

Mr. Chairman, if you’d like to hand out those hand-outs now, I don’t have any objection whatsoever.

The Chair: Okay. We’ll do that.

Mr. Saunders: I’ll do my best. I don’t promise to be able to answer your questions, but I’ll do my honest best. That’s all I can do.

The Chair: Thank you very much. Mr. Kormos, five minute each.

Mr. Kormos: Thank you very much, Mr. Saunders. A very important contribution to the hearings, especially in view of your diverse background. What years were you a police officer in Toronto?

Mr. Saunders: I started in 1949 in Etobicoke and left at the end of 1974. I shouldn’t elaborate, but I will for a moment. Etobicoke—if you were a suburb, you were taken over. If you were a member of Toronto, it was amalgamation. Anyway—

Mr. Kormos: Yes, I understand that principle very well.

Mr. Saunders: I carry on. To the end of 1974, I had been a staff sergeant in traffic for quite a while, and I had the privilege of going to Prince Edward Island as the chief of police for five years. One of the things that that gave me was the opportunity to become a member of the Canadian Association of Chiefs of Police. In fact, I’m now a life member. I became involved with the law amendments committee right off the bat, and this gave me an understanding of the role that police agencies have to make presentations to justice committees. So I’m certainly in favour and that’s why I feel privileged to appear before this committee today, sir.

Mr. Kormos: We’re privileged to have you here. We’ve only had one judge come before the committee, a deputy judge from the small claims court. It was a valuable contribution, and I say to you and to my colleagues, why we haven’t had a chance to hear from more JPs, provincial judges, especially family court provincial judges, amongst others, beats the life out of me, because we could probably get as good an insight as any into the types of people appearing before them who are not lawyers, advocating for folks. I think you raised that point very effectively.

Look, the law society, as one of the participants early today gave us the most recent—I don’t know whether it’s a bi-monthly report; it’s the magazine they publish—

showing lawyer after lawyer after lawyer who's been disciplined, including disbarred. The law society appears to not be reluctant to disbar bad lawyers, right, to suspend them and require them to do all sorts of things. Why wouldn't you and the rest of Ontario say, "Well, if they can do that with lawyers, why can't they do that with paralegals?"

Mr. Saunders: First of all, I agree with that, and I've been very careful not to knock the law society other than in quoting, once, Mr. Justice Cory, as far as the law society goes. But I would suggest that the law society would be quite upset if a group of private citizens had the authority to regulate the lawyers or if the paralegals had an organization and government gave the paralegals the right to legislate lawyers and to punish them and so on. I would think they would legitimately be upset.

Mr. Kormos: But wait a minute, Mr. Saunders. There you go, Mr. Zimmer: What's sauce for the goose is sauce for the gander. We could just change it to the Paralegal Society of Upper Canada and have it dominated by paralegals, but then give it the supplementary role of regulating lawyers. Isn't that interesting, Mr. Saunders? That's, in Swiftian terms, probably a relatively modest proposal.

Mr. Saunders: Basically, I would think it would be most unfair, obviously. It would be most unfair for either party to be regulating the other party. Doctors, nurses—they regulate. Almost every profession that one looks at is self-regulating. Why not paralegals?

Mr. Kormos: Do you function out of an office or out of your home in Peterborough?

Mr. Saunders: Peterborough.

Mr. Kormos: How do people get hold of you?

Mr. Saunders: I advertise in the Yellow Pages and by word-of-mouth.

Mr. Kormos: And how is it listed in the Yellow Pages?

Mr. Saunders: Paralegal.

Mr. Kormos: Under paralegal? And what do people look for, "Donald Saunders"? Is that how you're listed, or Traffic Violation Specialist?

Mr. Saunders: They look under Traffic Violation Specialists.

Mr. Kormos: So if somebody wanted to hire you from the Peterborough area, they would go to the Yellow Pages under "paralegal", go to Traffic Violation Specialists, or they could go to the white pages and just look up traffic violation specialists.

Mr. Saunders: They would have a problem there. It would be the Yellow Pages.

Mr. Kormos: So Yellow Pages, paralegal, Traffic Violation Specialists. That's how you're listed, Mr. Saunders, huh?

Mr. Saunders: That's correct, sir.

1350

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

Mrs. Van Bommel: Thank you for your presentation. I'm certainly interested in your grandfathering clause

concerns, and I have to agree, it should be done by sort of a skills set. It'd be not much different from asking a chicken farmer to have detailed knowledge of a dairy cow.

Mr. Saunders: It's a good analogy.

Mrs. Van Bommel: So I can understand why you would say that, but later on, you qualified that with the good character issue, and that was my concern out of the grandfathering issue, the fact that, as much as lawyers have disreputable practitioners, we do also hear of paralegals who are unscrupulous in their practices as well. So how would you make sure that those particular individuals don't get the accreditation as a paralegal under a new system?

Mr. Saunders: I unfortunately can't answer part of that, but I can answer for the area that I specialize in, traffic court. I wouldn't have any hesitation whatsoever in asking a couple of the prosecutors, a couple of the judges, "I've appeared in your court. Are you prepared to give me a reference to continue?" If they say no, then that's it, I've deserved it and I would let it falter.

I unfortunately don't have the ability to know how you would regulate the other areas unless possibly the same areas. Well, maybe immigration. That's one of the areas where I hear from time to time that there's a problem. I don't know of any of those personally, okay? But if that's an area, then go to the lawyers in that area and the judges, the people in the tribunals, and say, "Do you have a problem with so-and-so?" If you do, once again, I feel that most paralegals I know are prepared to have their track record stand and be counted. That's the best way I can answer that.

Mrs. Van Bommel: Another question: You talk about self-regulation. One of the things that's come up repeatedly is that paralegals don't have one particular organization that they belong to. There's been mention of a number of them. Are you a member of any paralegal organization?

Mr. Saunders: No. As a matter of fact, I'm not.

Mrs. Van Bommel: Is there a reason for that?

Mr. Saunders: Yes, there is. Because I checked into it. There were three or four, and at that point a number of them were good, and in some of the material that I presented today, I got research, I got assistance from—but I didn't feel that there was a need for it. First of all, there was no legal requirement for it, and I didn't see the actual advantage to me personally. But having said that, I would have no hesitation whatsoever if legislation is passed that paralegals shall be members of a recognized association and that they be licensed in that area. I could fit into that very comfortably.

The Chair: Thank you, Mr. Runciman.

Mr. Runciman: I join with the other members, Mr. Saunders, in thanking you for being here today. If I ever get in trouble in traffic court, you're the kind of guy I want to have represent me, no doubt about it.

One thing that you made reference to, being a life member of the Canadian chiefs association—I don't expect comment on this, but I mentioned earlier my dis-

appointment in the fact that the Ontario chiefs have declined to participate and offer their advice and assistance to this committee in terms of this legislation, not necessarily the paralegal components, but all of the other impacts on the justice system that this legislation includes, many of them affecting the operations of police services and the courts across this province. For whatever reasons, they have declined to participate, and I think that's, certainly from my perspective, a significant disappointment, and I think should raise some questions and some issues from their own membership.

Mr. Saunders: Sir, I will answer that.

Mr. Runciman: I'd appreciate that.

Mr. Saunders: Now, I may get in hot water, but no. That's one of the reasons that I'm here today. I feel that if I stayed at home and said nothing, didn't make a presentation, then why should I be surprised when certain legislation is passed? I have a belief; I'm here. I go back to the Canadian Association of Chiefs of Police experience that I had. Being on the law amendments committee, they made a presentation to our federal Parliament. At that time I was teaching at Sir Sandford Fleming College, and I took down a vanload of students. That was a most informative afternoon. It's like you've said. There were issues on the table, and the chiefs spoke to those issues. Whether the people liked it or not, that's not the point. They're part of the justice system, the police department are part of the justice system, and they should be making input into it. Why be critical of the laws that we have or don't have if we're not prepared to stand and be counted? So I'm sorry, sir, but that's the position I take.

Mr. Runciman: Well, so do I. I appreciate you putting that on the record.

One quick comment, and Mr. Kormos was touching on this, is the government's decision that we're going to regulate paralegals but, mysteriously, there's no reference to paralegals in the legislation; the word is verboten. When you look at Justice Cory's quote which was provided by the previous witness, which is pretty strong with respect to his view of the law society being the regulator and his feelings that that shouldn't happen—and we certainly know about the suspicions, and in some areas direct animosity—I guess to me this failure to use the word “paralegal” in this legislation tends to reinforce the suspicions that people have about the motivation behind this in terms of reducing the number of people providing competitive services in the province of Ontario. Would you share that view?

Mr. Saunders: Well, I would share part of it. I am not privileged to know the whys and wherefores of how the law society arrived at their position. But I do share the view, sir, that any time you start to change something—it's taken a while for people to understand what paralegals were. When I first started, it was, “Paralegal? What's paralegal?” So now people are getting educated. Now we turn around and wipe this off the books and we talk about “agents,” and now you could be into almost anything.

Mr. Runciman: Right. Thanks very much.

The Chair: Thank you, Mr. Saunders.

DAVID CLANCY

The Chair: Next we have David Clancy. Is Mr. Clancy here? Good afternoon, sir. You have 20 minutes, and you may begin.

Mr. David Clancy: Please forgive me, but I have a little hearing problem.

The Chair: Okay. You have 20 minutes to make your presentation.

Mr. Clancy: Yes. I hope that I'll be able to do so. Did you receive my little note that I sent up?

The Chair: Yes, we did.

Mr. Clancy: If I may explain to the assembled group that by prearrangement with the clerk and by a request submitted to the Chair, I have first said that I myself will ask no questions of the committee. I ask that I just be allowed to use my time to say my piece and to leave and that I not be interrupted with questions from the committee, which would tend to take away from my time.

1400

Mr. Runciman mentioned a few moments ago the animosity that exists with some people with regard to the law society and their behaviour on the subject of independent paralegals. I can assure Mr. Runciman that I do indeed come from that position, and it's a position at which I have arrived after a number of years working in the field, as indicated on the first page of my statement. I am now retired and I therefore have no further personal interest in what happens here, but I am very much concerned about the public and the public interest and the fact that the public has not been told the truth by the law society or by the Liberal Party about Bill 14. So that is what my object today is, to try to register some of that truth on the record in the hopes that perhaps somebody out there in the public will hear it and perhaps begin to realize what's really going on here.

I wish to begin my statement by simply reading my script, which I have in front of me and which you have as well, I believe.

I say, first of all, good afternoon to the members of the hearing subcommittee. I am, as you shall hear, vigorously opposed to Bill 14 because I believe it to be, and I insist that it is, not a bill about regulation at all in the proper and normally understood sense of that term as relates to regulation of other fields and occupations. It is, rather, a contrivance deliberately sent forth to deceive the public while in fact intended to achieve ends which have clearly been identified in both the Ianni report and the Cory report as being utterly contrary to the public interest.

As you know, these are Ontario government studies funded by Ontario taxpayers, both of which—and Dr. Ianni's report especially—commended these independent services at affordable prices established in the marketplace as being very much in the public interest, and both regarded it as prudent that they be regulated so as to give the public some confidence of government supervision,

as in many other occupations with protection and recourse for all as against the unsatisfactory occasional operator who could be expected to come along in this occupation as in others.

Each report made clear to the government that while regulation of independent paralegal services certainly would be in the public interest, it would be so only if the services continued to be delivered to the public in a system which did not involve the law society. The obvious, blatant and overwhelmingly powerful conflict of interest with regard to the law society as custodian or regulator of these services could not and would not be overcome by the law society, which could be expected—and, I would add, is still expected—to do about the paralegal option in the public marketplace one thing and only one thing, and that would be of course to simply kill these services, taking them off the market and away from the public. The pressures and the temptations would be so strong upon them that they would not be able to resist. They just would not be able to help themselves.

I say this would apply to lawyers in the assembly as well as to all the others, as has indeed turned out to be the case. Both the Liberal Party and the law society are of course well aware of these facts, and they have long since vowed to make sure that Dr. Ianni's fine report in particular would never become the law in Ontario, the public interest notwithstanding and in utter defiance of the public interest. Therefore, the ends which will issue forth from Bill 14, the law society agenda, are in fact the precise opposite of the public interest as set out by Dr. Ianni, and this government and its cronies at the law society have gone to very great lengths to make certain, and deliberately so, that the people shall not be told the truth about Bill 14, and it has been the precise opposite of the truth which the people have been told and continue to be told to this day.

The lawyers say that they will regulate, but, just as foretold by the government studies, they will do no such thing. They will destroy these services in pursuit of monopoly profits. If this is not the case, then what is the purpose of the blanket of silence? I respectfully submit that there can be no other reason.

And yes, this does mean that I am suggesting that both the Liberal Party and the law society have engaged in what can only be described as misconduct of a serious sort, not in aid of the public interest but in service of the private law society agenda, which is very much and very deliberately against the public interest, and this fact is being hidden from the public. Therefore, I maintain that, by design, absolutely no substantive truth has been told about Bill 14 to the people of Ontario, who will not be the beneficiaries of this bill, for they are instead its intended victims.

The managers of this bill have made certain that no substantive debate has taken place with respect to it, and they have made certain that any public statements made by any of their people will at least not enlighten, and, if possible, will actively and positively mislead. In addition, it certainly seems as if someone somewhere has gone to a

great deal of trouble to make certain that the news media in Toronto have taken no significant editorial or news interest in these highly unusual and newsworthy events which I am describing. After all, how often do we find the government of any province inviting an outside private interest group into the assembly and turning the facilities over to them for their own private law-making use in service of their own private interests and against the public interest, as noted by many impartial commentators in the past? It is as though we have, for a little while at least, a guest government, as it were. It certainly seems like something which newspaper readers would consider to be interesting news.

So in my time remaining, I intend to do my bit to squeeze in as much truth as I can for the people. I of course speak to you, but the message is intended equally for the public.

Specifically, I intend to demonstrate—and we will come to this a bit later on—as well as possible in these few minutes just how far and to what extent the law society and its allies in government have gone to mislead and misinform the people of Ontario with regard to these matters.

When independent paralegal services first began to appear between three and four decades ago, the public reacted strongly and favourably. In a few short years, a significant market in these services was established between the people and the independent paralegals, one which has continued to grow to this day.

This market was, and has continued to be, based upon some basic points which were recognized both by service providers and by consumers:

First, and most important, it quickly became clear that, for the broad array of low-end services which these paralegal services were providing, no law school education was necessary. It was found that any reasonably intelligent person, with a certain amount of orientation time, could do an acceptable job of providing these services to the public. It was true then and it is still true today. It is ironic in the extreme that as we sit here pondering the pending removal of these services from the people, the people are still keeping the services very busy as we speak.

Now, if a service can appear on the market and be satisfactorily delivered by people without law degrees, then why should the public have to pay for law degrees? Public policy in almost all other areas of goods and services is aimed at making certain that the market works to the lowest feasible prices which still put the goods and services on the market. There can be no public policy argument which would justify higher prices than are necessary to accomplish that purpose. The lawyers inside and outside the Legislature, however, are in effect claiming to be exempt from this basic principle, and they will go to the extreme of abusing their power as legislators to secure that special status, even at the expense of their fellow citizens and their constituents. They claim entitlement to what amounts to a tax or a subsidy for them and their lifestyle.

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The next section is essentially a little treatise on the subject of monopoly pricing, which is the object of Bill 14. Without stopping to go through it in detail, I'll simply indicate what I'm sure everyone here is aware of, and that is that the true value, the true market price, of the services which independent paralegals have been providing for all these years is the price arrived at between them and their customers. Therefore, when they are gone, as they soon will be, when they are no longer in the market, there will be no check on what the prices will be for these services, the exact same services, coming from law firms and individual lawyers. I submit that the difference between the true market price established in the market between paralegals and their customers over the years and the price that is going to be charged in the future by lawyers, once they have successfully shed themselves of paralegal services, is in fact a monopoly profit, an excess profit which is not justifiable in any economic sense of the term. Therefore, Bill 14 is all about establishing that kind of a situation in the marketplace.

Any providers who can make laws which drive consumer alternatives off the market, as is being done with Bill 14, put themselves in a position which is denied the rest of the population, which does not get invited in to write and pass their own laws. They have a monopoly, and that is true whether we are discussing paperwork divorces or widgets. They can add on almost as much of a surcharge above the true market value of the service—if there were a market—as they would wish, because their customer or their client has nowhere else to turn.

A typical example used on this is to note that the actual true market value of the above-noted paperwork divorce is now about \$300 plus disbursements, as charged by an average paralegal service. Right now, with paralegal services still in the market, law firms are somewhat constrained in what they can charge. And I will just add here the comment that this means that even the people who go to law firms benefit from the existence of paralegal services, because the law firms can only charge so much more before people start looking for another place to go. The object of Bill 14, of course, is to make sure that they have no other place to go at all, ever. It would now typically be, I'm estimating, \$1,500, or about five times as much as the exact same service from a paralegal service would cost. Once you get your Bill 14, these paralegal services will disappear, at least for a while, and the sky will be the limit.

So we go on to come to the conclusion that under circumstances such as this—all the protestations of Mr. McGuinty's Liberals, all the claims being made by the law society and by the people who have created this bill in the Ontario Legislature notwithstanding—it becomes clear and actually quite easy to see from this example that Bill 14 is an attack on the public, not a boon to the public.

You may say, "Wait a minute. What about the fact that these paralegals are not lawyers and are therefore not qualified to do this or that service?" With respect, you are

many years too late for that argument. We are talking here about a 35- to 40-year market that is being destroyed. After all these years, and with all those thousands of satisfied customers served at fair market prices in cases of many different kinds, that argument will not wash, and the people know it. And, of course, it is just exactly that thriving market at true market rates which brings Bill 14 and brings us here today.

The law society has tried many different ploys over the years to convince or to force the people to stop using these services. They have over the years kept up a constant drumbeat about all those "bad" paralegals out there. But it has, of course, always been the good ones about whom they were worried and whom they have vowed to destroy, as is now finally happening with Bill 14.

At first, the lawyers tried litigation against the early paralegal services, but they could not get the courts to agree that the services should not be allowed. After losing their cases at the appeals levels, they tried a different tack by constantly lamenting the fact that the paralegals were not yet regulated and by badmouthing them at every turn in public. Of course, the fact that we were not regulated for all of that time resulted from the law society's own backstage manoeuvring and fierce lobbying at all times to make sure that we were not regulated by the government, because this would have been much harder for them to undo.

So they first fought off regulation under Dr. Ianni's report, which was and is, by the way, a very fine report. It is the model that all responsible paralegals have always asked for. He advised the government of the day to have us regulated by the ministry now known as government services, with no lawyers involved. That is still the correct path to take if this government were interested in and concerned about the public interest, which you are not. This ministry has had a long record of service to the people by registering, licensing and regulating a number of different occupations and preserving them in the free marketplace at true market prices, while also providing complaint services and consumer protection measures for consumers. As Dr. Ianni pointed out, this is precisely the sort of regulation needed for paralegals. He said that then, and I say it still is.

If the lawyers were upset with Dr. Ianni, whom they had counted on as a fellow lawyer to turn the paralegals over to the law society to be put to death, they were utterly outraged 10 years later when Justice Cory also refused to hand us over. Judge Cory's report certainly showed signs of having been affected by active law society tampering behind the scenes, but still they could not get the one, and only one, thing which they sought: his recommendation that the services be turned over to the law society. Justice Cory also cited the conflict of interest and instead pointed to other kinds of regulations which would not have paralegals under the power of lawyers. Judge Cory too was concerned about the public, not the lawyers.

The Vice-Chair: Mr. Clancy, you have one minute.

Mr. Clancy: One minute. My goodness. Where shall we go?

I think the next paragraph is pertinent. If the law society were truly concerned about the public interest, and if they truly wanted real regulation of independent paralegals, they could have had it years ago with Dr. Ianni. But, of course, they prevented that because they did not want true regulation. They have never wanted true regulation, and they do not want it now, and they do not intend to have it. Mr. McGuinty's Liberals are handing these services over to them, not to be regulated, but to be destroyed.

I think my time is up.

The Vice-Chair: Thank you very much, Mr. Clancy.

CANADIAN CHILDREN'S RIGHTS COUNCIL

The Vice-Chair: I now call upon the Canadian Children's Rights Council: Mr. Wilson.

Mr. Grant Wilson: Good afternoon.

The Vice-Chair: You have 20 minutes to do your presentation. If you would introduce yourself for Hansard and then proceed, please.

Mr. Wilson: I'm Grant Wilson, president of the Canadian Children's Rights Council. My oral presentation will take about 10 minutes, leaving 10 minutes for questions and general discussion.

The Canadian Children's Rights Council is a non-profit, non-governmental organization which supports the human rights of Canadian children. We are one of the leading child human rights organizations in Canada, with volunteers from coast to coast to coast. Canadian children are those under 18 years of age, using the definition provided in the UN Convention on the Rights of the Child. Those under 18 comprise about 25% of the population, and, of course, those aren't voters.

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Our website, at www.canadiancrc.com, is one of the most visited children's rights websites in Canada concerned with Canadian children's rights and responsibilities. Typically, over 80,000 unique visitors per month from around the world read our website. Many of our website visitors are university or college students taking such courses as child and youth studies, child and youth law, early childhood education and care, social work, psychology and journalism.

Our website is an online resource providing analysis, our position and general information on Canadian children's rights issues for politicians, policy analysts and the public regarding the rights of Canadian children. Part of our educational archiving mandate is achieved by our use of hundreds of news articles from across Canada and around the world relevant to issues and laws impacting Canadian children's rights.

Some of the websites linking to us as a resource are those of such organizations as Health Canada, Library and Archives Canada, the University of Victoria International Institute for Child Rights and Development, Queen's University law school, University of Ottawa Virtual Human Rights Library, International Bureau for

Children's Rights, Divorce Magazine and CRIN, which is the Child Rights Information Network—a network comprised of over 1,400 child rights organizations from around the world. We have over 100 universities in North America that link into our website to get information on children's rights. In fact, over 1,000 major websites around the world link into ours as a resource. We have approximately 2,000 web pages.

Our website content covers all aspects of children's rights in Canada, including child poverty, child and youth justice, children's identity rights, children's general integrity, child protection, adoption, family law, parental alienation and much more.

Which brings us here today: In reviewing aspects of this bill before you, we are very concerned about family law and the effect this bill would have on anybody counselling, advising or parenting children who could be deemed to be a lawyer or practising law.

We see that about 90% of families cannot afford lawyers in family law situations. Many of these have been reflected in surveys presented here with regards to surveys done in courts. Of course, those don't consider those not in attendance at courts who are seeking family law assistance. Obviously, we have a monopoly in the legal industry here. We figure it's a conflict of interest for any MPP who has a law degree to vote on such a bill—lawyers running a monopoly who are voting on a situation affecting their future employment.

We see a number of areas which should be dealt with. Obviously, the justice policy committee has done nothing with family law since the special federal joint committee on custody and access in 1998, which has caused even more turmoil for families, and none of the implementations have happened here in Ontario. We still don't consider any kind of residency requirements in calculating financial child support, and there are no limits like they have in Germany on child support. There seems to be this big prize which causes all sorts of concern for parents and fighting in family law situations.

We do know of many paralegals and many family law lawyers who—quite frankly, the paralegals are providing an extremely important service to these people. Many of them operate on a pay-as-you-go basis for people who could never afford lawyers. They are operating at nights and on weekends to help people who are low income. They are helping them to complete forms, and although some of these paralegals don't go to court, they are helping to educate them. They are using entrepreneurial skills to provide education in group settings, running support groups so that people who are knowledgeable about this can help others gain knowledge so they are better consumers of legal services. We see a very strong need for these paralegals to continue.

We heard some testimony here yesterday with regard to why these people didn't form into a society or into groups and come here and speak, and it's because they're very afraid of this monopoly. That's what it comes down to. They're afraid of the results of this bill, they're afraid that this monopoly will be maintained, and they're afraid

that they're going to become targets if they put themselves on a list.

Some of the ridiculous things that we have seen in our own observation of hundreds of cases that we've attended in family law courts—this again is to do with the administration of justice—is that of audio tape recording or audio recording in the courts. We've addressed this with police departments, which come back with either trying to avoid putting anything in writing or skirting the issue. But in Toronto here, there are very large signs saying that you can't audio-record in this courthouse. Well, it's against the law to put up that sign and make that statement, because the media can go in there and do this, and if you're a party to your own proceedings, you can audio-record that.

When we brought this up with lawyers and said, "Well, what if your client wanted to come in and tape-record the hearing so that they could go and get a second opinion after the fact the next day, or go and discuss this with their relatives or their new partner, whatever the case may be, or just for the purpose of learning more about the system?" the lawyer says, "Oh, yes, that would be fine. They could come to court and tape-record it." If you ask the lawyer, "Well, why don't you just take the tape recorder with you and tape-record?" the lawyer says, "Oh, I won't do that." Well, paralegals would be willing to do that kind of a thing, and they even recommend it for their clients. Unfortunately, the Toronto Police Service is blocking people from doing this, and I have personally witnessed this myself.

I've also had situations that are just ridiculous in the courts. One of them has got to do with a case in St. Catharines, where I was an observer with other people from the Canadian Children's Rights Council at the criminal courts down there. Standing outside of the door, 20 feet from the door of a courtroom, where there were witnesses, people who were charged with crimes and a variety of other people, a woman who was irate with me because she heard what I was saying to a reporter who was there to cover this case came up and flashed my picture. I immediately turned to the police and said, "Under the Courts of Justice Act, nobody can take a picture in this courtroom. I feel threatened about this." The police talked to this woman, who had a criminal record and had been put in jail before for a violent act, and did not take the camera away from her, did nothing, did not charge her with anything. I filed a police complaint, and, of course, we have the police handling complaints for police.

We obviously see the Ontario government now taking action here to have somebody other than the police investigating their own actions, and this is the same kind of thing that I would like to see with regard to paralegals. Certainly, a society of paralegals should have a governing body which does analyze what they're doing and handles complaints, but this should be a public body, unlike that of the law society, where family law complaints are virtually ignored. It's a ridiculous circumstance. This is a higher standard than is acceptable to lawyers with their law society.

Basically, there are many people as well in schools, whether it's school counsellors, whether it's teacher, whether it's people educating children about the laws, who could be considered to be giving legal advice or all sorts of things, which is totally abhorrent to us.

Are there any questions regarding this?

The Chair: Thank you very much. We'll start with the official opposition. There are about seven minutes each.

Mr. Runciman: I note that we heard a similar submission earlier this week, and I really thank you for being here. I don't have any questions.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: No, thank you, Chair.

Mr. Wilson: I have a question here, because Ontario's got the worst record as far as provincial Legislative Assembly members responding to us. We seem to be able to pick up the phone and make a phone call to an Alberta MLA and get a phone call back and actually talk to them. Do the MPPs here even know what the UN Convention on the Rights of the Child is? A show of hands? Has anybody got a working knowledge of it? Nobody has a working knowledge of that? The Ontario government ratified that convention.

1430

The Chair: Mr. Kormos, do you have any questions?

Mr. Zimmer: He said no.

Mr. Wilson: He said no, he doesn't have any questions, and nobody else did.

Mr. Zimmer: And there are none over here.

The Chair: Thank you very much for appearing in front of the committee.

Mr. Wilson: Well, we haven't used up the 20 minutes yet, so I'd like to ask a few more questions myself.

The Chair: It's not a question-and-answer situation—

Mr. Wilson: Okay, then I would like to make a further speech if there are no questions or discussion to complete my time. I would like to inform you about what your obligations are to that 25% of the population with regard to this committee and this bill, because you are obligated to provide an analysis under the UN Convention on the Rights of the Child, which was ratified by the Ontario government on behalf of the people of Ontario. You are required to provide an analysis of this and the impact it will have on children, and children are defined as those under 18 years of age. You people are delinquent in providing such an analysis, and you're required to do so. In fact, I would challenge anybody here to even know when National Child Day is, which was a day declared by the federal government to review the rights of children in Ontario and the rest of Canada. It's November 20 of each year.

Mr. Zimmer: On a point of order, Mr. Chair: I understand the process is that a witness makes his statement and then there's time set aside for questions from the three parties. That question period's over, so we're done.

Mr. Wilson: Well, I was given 20 minutes, and other organizations were given 30 minutes.

The Chair: Thank you, Mr. Zimmer. Sir, you have 30 minutes. If you have any further statements, you can finish that and continue with speaking with what you have to say. Go ahead.

Mr. Wilson: We'll note Mr. Zimmer's comment on our website.

The Chair: Thank you very much.

Mr. Wilson: Can I speak?

The Chair: That's what I said. You can continue. You do have time.

Mr. Wilson: I thought you said I didn't have time.

The Chair: No, no. I said that you have the remainder of your time left. Go ahead.

Mr. Wilson: I was referring to article 42 of the convention, which refers to the responsibilities of every MPP here. I see this is of no concern to Mr. Zimmer, who has left.

Article 42 states, "Parties undertake to make the principles and provisions of the convention widely known, by appropriate and active means, to adults and children alike."

The government of Canada, to assist you, has designated November 20. I'd like to see the full page ads that are appearing in the Toronto Star and in other newspapers across this province and the TV ads talking about this. It is only through education of our children in support of their human rights, such as universal education and stopping child poverty, that we can truly realize the potential of this country.

Being an ancestor of the one of the fathers of Confederation and one of the first 12 non-aboriginal families that occupied York, which is now Toronto, I have a bit of a historic perspective on some of these issues and how important they are to aboriginal people, to all Canadians and the future of this country.

I think the politicians here should seriously take the time to read the convention, take the time to talk to their correspondence people so that we can have some kind of meaning dialogue on policies regarding these issues. As any class of eight-year-olds will tell you, you can end child poverty, you can stop family law cases, and you can have meaningful family laws which have a much more positive effect on children.

I believe paralegals are an important part of providing good-quality, low-cost services to those who need family law help. We're certainly in favour of ongoing training with paralegals who are dealing with the area of family law, but this isn't even a requirement for the law society members, who are lawyers. Any corporate lawyer in downtown Toronto who hasn't been to law school in 15 years can move up to Barrie and declare that they're a family law lawyer and practise family law. We have all sorts of people in small communities across this province who are generalist lawyers who really don't have any specific training or expertise in many areas of the law. But as general practitioners in a very small population area, they're the local lawyers, and the population just doesn't support specialists in that area, although there may be a market there for paralegal services for the 90%

of the people who couldn't afford the hourly rate of that lawyer.

One of the most fundamental principles of the UN Convention on the Rights of the Child is participation, even at hearings like this, of children and for their voice to be heard and considered, based on their maturity and a number of other factors. That input is not extended to children with regard to most hearings before any of the provincial committees.

I did take the opportunity of phoning Craig and Marc Kielburger of Free the Children—they're both on a book tour this week in the US—and I talked to a couple of other people who are out of province with regard to this. It would be very interesting to have more of these children appear before you politicians. You have a lot to learn from them, such as Hannah Taylor, who started the Ladybug Foundation. They have done more in some social justice causes than many other long-standing Canadian adults.

I'm finished. Thank you very much. I appreciate your time.

The Chair: You're welcome.

GLENN ROBERTSON

The Chair: Glenn Robertson is the next presenter. Good afternoon, Mr. Robertson. You have 20 minutes. You may begin your presentation.

Mr. Glenn Robertson: I would like to express my appreciation and thank each of you for the opportunity to sit before you, the appointed representatives for the government of Ontario, and offer my viewpoint concerning the ongoing debate of Bill 14, specifically schedule C, the area that addresses paralegal regulation. In addition, since the Law Society of Upper Canada has presented inappropriate and callous statements about the overall credibility of paralegals both to you and the media—and, therefore, the public—I feel obligated to address those as well.

I am a family mediator by profession and have been for 14 years. I trained in business management at Mount Saint Vincent University in Halifax, and I got a certificate in mediation and paralegal education from Dalhousie University Law School in 1997 and a certificate in specialized family mediation from the University of New Hampshire in 1999.

A related and growing area of work I do is as a divorce solutions consultant. Basically, I provide assistance to people suffering the effects and trauma of marriage breakdown and divorce. I find clients today are increasingly asking for services which would be termed that of a paralegal, so I work with lawyers practically as often as I work with people who choose not to have a lawyer, and some of them are really good guys. I have a very professional relationship with many lawyers in Nova Scotia. But many people tell me each day of the difficulties and frustration in dealing with lawyers and the high cost of trying to get a divorce. With hundreds of testimonials testifying to customer satisfaction, as well as

my involvement with assisting people by coaching them on court preparation and having personally represented clients in court, I offer you my comments and observations on this most important issue.

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Just a couple of quick quotes from three sample client testimonials: One would be from Anne. She's a federal government officer, and she says in part, "Having been to two lawyers, I can honestly say that paralegals are the best way to go. Just trying to get going with lawyers was frustrating and overwhelming, so I was kind of in limbo for well over a year, not knowing where to turn. Once we went to you, things started moving along immediately and we got through everything in a very reasonable period of time. We know if we were with a lawyer we could have ended up in court, costing thousands of dollars in legal fees. The cost for your service is very reasonable and I would highly recommend your services to anyone."

I have one from Darlene, who is a Pentecostal school teacher. She says in part, "My experience with a lawyer has left me with a sad and gloomy view of the justice system. We need more paralegals that can get to the root of a problem fast and inexpensively, and get results when people need them."

I have one here from a girl who is 17 years old. Her name is Amanda. We did a divorce arrangement for her mother and she sent us a card with this nice little picture, which makes me think, you know, that the topic of discussion today is for the families of Ontario, the low-income people, and the children, and the effects this will have on them. Amanda writes, "I want to thank you, personally, for all you have done for our family over the last year. I know things could be vastly different without you. Thank you, not only for your legal and professional help, but also for your friendship ... you both are very dear to me"—referring to people working in our company.

Many like me want to help these people, and the main reason I am here is because I truly believe the government of Ontario wants to help these many people too. For you to open your ears to someone from outside the province shows the serious concern that you have for this important matter. So I view this as both a privilege and a responsibility to voice some important, candid and truthful facts. I feel that any discussion of a bill such as Bill 14 is a national issue, as what happens in the larger provinces tends to overflow and be either helpful or damaging to the people in the smaller provinces. As a matter of fact, I feel that this matter is of such importance to the public that I flew here from Nova Scotia this morning. I've done this voluntarily at my own expense, as were two previous trips I made to Toronto regarding this serious and significant matter. In essence, this is important to me because I feel that, as it stands, schedule C of Bill 14 is fundamentally wrong, as it is not in the public's best interest. At the very minimum, I think it is past time for the public to have increased areas of practice by paralegals as well as self-regulation for the respected paralegal profession.

It was somewhat sad to hear the law society state they don't think paralegals are worthy of similar self-regulation that many other professions in Ontario enjoy today. We've all heard them say paralegals are uneducated, uninsured, untrustworthy and unregulated. Well, I don't know if they speak that way of the paralegals in their office, as being uneducated and untrustworthy. Certainly, the ones I know aren't. As for regulation, that's something that's been out of the hands of the paralegals for many years. That appears to be quite a naive comment for them to make. By my experience, I would have to question their comments stated to this committee. The law society puts forth an offensive image of paralegals.

There is one quote to support this view that the paralegals may be adopting about the lawyers. It's from United States Chief Justice Warren Burger. Referring to lawyers, he said, "Ours is a sick profession marked by incompetence, lack of training, misconduct and bad manners. Ineptness, bungling, malpractice, and bad ethics can be observed in courthouses all over this country every day.... These incompetents have a seeming unawareness of the fundamental" professional ethics.

Then the lawyers say that nobody is in authority, protecting the public from paralegals. In response to that, I submit that if the Auditor General were to do an investigation of the Law Society of Upper Canada and reveal the extent to which the Law Society of Upper Canada has drastically failed in regard to regulating lawyers' conduct and its drastic failure to live up to its mandate to govern the legal profession in the public interest, it would likely no longer remain self-regulated.

I would like to quote from information supplied by the Law Society of Upper Canada. In 2002, there were 6,051 new complaints filed against members of the Law Society of Upper Canada. A 20% increase in 2003 made for a total yearly number of 7,470 new complaints. Only 68 resulted in any discipline at all, leaving 7,402 disregarded.

I found that number quite shocking, so I placed a personal telephone call to the Law Society of Upper Canada and they confirmed that those figures sound accurate from their website.

History tells us, from figures available to us throughout the 1990s, that the rate of success for complainants going to the Law Society of Upper Canada is about 3%. I feel that lawyers have abused their privilege of self-regulation. So the number of complainants has greatly increased; lawyer behaviour isn't getting any better. The law society continues to protect lawyers at the expense of the client; that is, at the expense of the public. As a result, people are pursuing their own legal issues without full representation, in effect creating a consumer rebellion against the use of lawyers, which, I caution the committee here and the government of Ontario, will definitely grow under Bill 14 as it stands now.

Lawyers, their private legal organizations and the Attorney General have conspired together to seek restrictions of paralegal activities. Bill 14 is in fact the lawyers' reality of the advancement of a two-tier justice system in

Ontario, one where some people pay and receive services at a big price and one where lower-income people get no access at all.

Lawyers have priced themselves out of the divorce arena. Paralegals can greatly help in that regard and, as well, save the government a huge amount of money, free up court times, bring financial and health benefits to clients and make the community a much safer place to live by defusing the anger and sometimes violence that is involved when issues remain unresolved in divorce proceedings.

I heard a gentleman mention this morning about one lawyer's account and the summary of it and the high cost of it. It made me think of a case back in Nova Scotia, where I was involved in helping a gentleman trying to seek a divorce. He had been to a lawyer for over five years. They had a preliminary hearing, then they had a settlement conference, then they had a pretrial conference, then they had another settlement conference, then they had another pretrial conference and then they had a hearing to set a date for court, and the court date never came. But all those conferences were taking up the time of the judge and using up the public's resources, whereas if you have paralegals and people who cut to the meat of the matter, you can resolve these things quickly in the interests of everybody concerned.

We know that many independent experts, consultants, even judges and people from within the justice system, support expanded areas of practice for paralegals.

I think you are all very well aware of the relevant comments of Dr. Ron Ianni. He reported a high level of satisfaction among consumers of paralegal services. He also mentioned, "The law society should exercise no authority over independent paralegals in Ontario." I also feel this is vital for both consumers and paralegals and that this must be heard by the government.

The comments by a former Justice of the Supreme Court: The Honourable Justice Peter Cory stated that "it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario." He stated that it is his opinion that "the law society should not be in a position to direct the affairs of the paralegals." The governing body of paralegals must be able to function independently of the province of Ontario and the Law Society of Upper Canada.

Professor Frederick Zemans of Osgoode Hall Law School recommended the creation of an independent, self-governing legal services corporation, similar to Legal Aid Ontario, for paralegals. What a positive comment that was from a professor of a well-recognized law school. He also recommended expanded areas of practice.

The primary recommendation of Professor Zemans's report, which, notably, concurs with other independent reports, is that the law society is not the appropriate body to regulate paralegals. His report takes the position that the law society has a conflict of interest in regulating paralegals. This is contrary to the Attorney General's viewpoint, which was the origin of that very study.

We've heard about independent reports and the spirit of Bill 14, as it stands, and how it departs from these well-known and respected individuals.

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Back in 1997, when Ontario Judge Mr. George Adams left the bench to explore new ways to help people solve problems, it was seen as another indication of the growing dissatisfaction, even within the legal community, of the costs and delays associated with the traditional justice system. He said, "Most of the cases that go to court are settling too late, at too great a cost." He also said, "Many of these cases are settling because the people involved are running out of money, or out of patience, or out of anger and frustration."

It's interesting. On the Nova Scotia government Department of Justice website, it states that an increasing number of people don't want to retain lawyers for court representation and offers the following reasons, as we all have heard so much: the high financial cost, the consumers' movement and anti-lawyer sentiment. People are dissatisfied with lawyers, and this is increasing throughout Canada, as it is internationally.

One Nova Scotia lawyer who has actually started a paralegal office states, "We offer lower prices than lawyers are allowed to charge." It is very interesting to read the opening comments on his website, which read, "We have helped hundreds of Canadians avoid the stress of high legal bills which often accompany a divorce or preparing separation agreements." So he is actually doing and saying the same things that opponents to Bill 14 are saying, and he is in fact a lawyer. His website is howardmackinnon@sympatico.ca.

Under an explanation of cost for his services, he makes a comparison that "lawyers may charge up to several thousand dollars for this same service" that his office does for \$249. He mentions that these paralegals charge \$100 for preparing separation agreements. That sounds like something in the best interest of the public. So there is one lawyer who puts his opinion in writing.

Here are some very interesting comments from someone else who has put his viewpoint in writing. He is a level IV court officer in Nova Scotia. In his letter dated August 15, 2006, he states, "The majority of people arriving at the court do not wish to have, or feel they need to have, legal ... representation, opting to proceed as a layperson" instead. He states, "Paralegal services would accordingly fill a widening gap in providing valuable assistance in preparing applications and supporting documentation. [...] Private paralegal and mediation services that do exist in this area provide valuable and much-needed assistance to parties who wish to consider or proceed with this option ... Paralegal services have provided much-needed assistance to lay litigants in having their applications or concerns placed before a court with properly prepared documentation."

In closing, he says, "Resistance to paralegal services has been identified as coming from some members of the Nova Scotia Barristers' Society." He says, "Law firms have historically not been recognized as forerunners in

advanced long-term planning or business expansion.” It is his opinion that “such reaction is a ‘knee-jerk’ reaction which does not fully take into account the benefits paralegal services can directly provide to the legal community.” This letter is signed by Mr. Keith Mumford, justice officer, level IV, family court of Nova Scotia.

It’s quite an observation: Most resistance to paralegal services comes from the lawyers.

Independent experts, judges, the public and people within the system are generally recognizing that paralegals can play a useful access to justice role by providing assistance to individuals who, for various reasons, are unable or unwilling to hire a lawyer.

There should be two main objectives behind a bill such as Bill 14 so that people don’t muddy the waters: consumer protection and access to justice. None of these consultants or experts have ever said that paralegals should not be involved in these two areas or that there should be any concerns with them.

Our adversarial system is reasonably good at caring for judges and caring for lawyers, but the system fails when it comes to caring for the people actually going through divorce and when it comes to caring for the children of divorce.

In defence of paralegal regulation, I ask you to consider the comparison with midwives that I had submitted in my written presentation. It involves a decision of the Ontario government some 30 years ago that has had very good results. Since then, midwifery has evolved from being something illegal to practise in Ontario to standing as a tall, beneficial and effective model for health care. It took until 1993 for midwives to be regulated in Canada, when the Ontario Midwifery Act was passed.

Interestingly, prior attempts to pass legislation failed due to the opposition expressed by the Canadian Medical Association. It’s like in many parts of Canada today: Barrister societies are mainly the ones who oppose self-regulation of paralegals. It’s quite interesting to note that midwives in Ontario are expected to provide services to over 9,000 clients this year. What an outstanding contribution that profession has made to society.

As with midwives, there’s a huge demand for self-regulation for paralegals. The government of Ontario has in front of them a chance to do something really good for many people in Ontario and, ultimately, people in smaller provinces.

We’ve heard the analogies that this is kind of like Wal-Mart being in charge of Zellers or the Keg steakhouse being in charge of the Ponderosa family restaurant. I also thought about that on my airplane flight here this morning. There was a large majority of the people sitting in what I didn’t realize until afterwards was referred to as the economy class when there’s a very small percentage of the people sitting upfront. Those people were riding in first class. They wanted to pay extra money and have a few fringe benefits besides what the large majority of the population wanted.

Mr. Runciman: Federal politicians.

Mr. Robertson: Yes, I thought I recognized them.

I don’t think people should be forced to sit in first class. People should have the right to choose.

The Chair: You have about a minute left, so if you want to wind it down.

Mr. Robertson: I think the public is deserving of a choice. You’ve heard a lot of outstanding comments lately about this choice, and I think the decision the government of Ontario makes will have a far-reaching impact. If the government of Ontario really wants to do something right and good that would be long-lasting like the midwives, they should seriously take a look at the effects and the trauma that will be caused by Bill 14. Thank you very much.

The Chair: Thank you, sir, for coming all the way down from Nova Scotia to make your presentation. Thank you very much.

GUY BABINEAU

The Chair: The next presenter is Guy Babineau. Good afternoon, sir. You have 20 minutes to make your presentation, and you may begin.

Mr. Guy Babineau: Mr. Chairman, members of committee, it’s my pleasure to be here; it’s an honour. I’ll start in English rather than French.

Monsieur le Président et membres du comité, c’est un plaisir et un honneur pour moi de me présenter devant vous.

That will be the end of my French.

I’ve prepared a fairly extensive presentation, and what I would like is not to read from it but rather to talk about my experience over 40 years in court, which includes going to the Supreme Court of Canada on a few occasions, as well as the Supreme Court of Ontario, the Divisional Court of Ontario, the Court of Appeal and the New Brunswick Court of Appeal.

I appeared before the tax review board in 1972 requesting a proceeding in French, and the only person that had a hard time speaking French was myself because all my legal training has been done mostly in English. Just like I don’t talk about religion in English, I don’t speak legal in French.

One thing that’s important for me is the concept of the Constitution of Canada, which brought about a Constitution similar in principle to the Constitution in the United Kingdom. And it’s very important, because the Magna Carta says that “to no one shall we deny or sell justice.” What happens to the one that cannot afford justice? Is that not a form of denial? Is that not a form of sale? If you have a choice between what you can afford and what you can’t in the pursuit of justice, is the Ontario government going to deny the people that choice?

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Quite a few years ago, I brought a case before Divisional Court on a matter of urgency on the appointment of a former judge of the Supreme Court of Ontario, Mr. Morand. Because he had reached 65 years he had to resign. As a result, he was appointed temporary Ombudsman to fulfill the function of the Ombudsman, and he

couldn't fulfill the function of the Ombudsman because he was 65. How could you appoint somebody to fulfill a function that cannot be fulfilled because of the age factor? I went on a matter of urgency, and the Attorney General of Ontario decided there was no urgency. When the case went before the Divisional Court on a regular basis, he was no longer there. The Attorney General of Ontario then took the position that he is no longer Ombudsman; therefore, it is moot. I was denied my rights under the Constitution to establish whether he was entitled or not. I appealed that decision to the Court of Appeal on the basis that I was entitled to a decision, based on the Constitution and the Magna Carta, that we should not delay. The fact that they had delayed denied me a judgment. Now, funny enough, the judge who decided the case was moot commented in his ruling about how well prepared my documentation was, and I'm not a lawyer.

Therefore, when I come to the law society—the court was satisfied with my documentation and even mentioned during the hearing that I was better prepared than most of the lawyers—now I have to fight for the purpose of establishing whether I am competent in the area that I choose to practise. The problem that we have here is that some of the areas of practice are out of reach for paralegals; for instance, divorce. Even in uncontested divorce, there are court decisions that go against it. And they are still practising to some extent.

When I was working on a case recently, a group action case with the Ontario Rental Tribunal, the landlord was not satisfied. He decided to raise an appeal on a ruling. When it came to the filing, he couldn't file on us because we were paralegals. He had to go to the court on an *ex parte* motion so that he could file the application with the court in order to proceed, and then we would advise our client to seek proper representation, because at that point in time we were dealing with a slumlord and a lot of the tenants had skipped.

The other problem that I have as well with not being able, in one of my fields of involvement—it's with landlord and tenant. Now, if I have a bad decision, my client cannot afford a lawyer, and if there are grounds to appeal I cannot go to court and fight on behalf of my client. When I go and try to raise an issue with the Ombudsman, because I'm not a lawyer, the Ombudsman will not take my complaint. If I were a lawyer, he would take the complaint.

To me, that's a charter issue under subsection 15(1), "equality before the law." If the lawyer can't do it, go to the Ombudsman, and I can't, and I have a right to be before the Ontario Rental Housing Tribunal, that's the only course of action that I can take to raise my complaint. I cannot go to court, because the act forbids me. The Divisional Court will not even let me see the light unless I could make an appeal to go on special leave. But then I would have to file it and it would be depending on the mood of the person at the wicket. If the person decides, "Well, we don't think we like the colour of your hair, so you cannot raise the objection," where do I go from there? I cannot get past the wicket, therefore I

cannot go to the judge unless I call the judge's secretary and say, "Can I come into your office?"

To me, that testimonial—I have some concerns there. These concerns were expressed by a lot of people who appeared before you and also presented by some of the experts who were asked to prepare reports that at least paralegals should be allowed to take their appeals to the first level.

There were the cases I was working on. One case involved a superintendent. Under the labour code, superintendents are exempt from the hours of work. That means that the owner of the building can force a guy to be there 24 hours a day, seven days a week, and some landlords do it. I went in a case before the Ontario Rental Housing Tribunal, and clearly the Tenant Protection Act states that that act overrides any other act except for the Human Rights Code. But the problem there was that when I tried to bring an issue of enjoyment of the superintendent's apartment because he was overworked, the Ontario Rental Housing Tribunal overruled me on it. There are some documents from the labour board that said that that section of the act doesn't apply to the Ontario Rental Housing Tribunal. When I tried to raise that complaint with the Ombudsman of Ontario, he refused to address it. I had the minister of housing on another issue telling me to go to the Ombudsman. The Ombudsman already told me that I couldn't go there. So there are some real issues here with Bill 14.

I liked it when Bill 109 was before the House. I really enjoyed one of your friends, who did a beautiful performance on the Liberal Party, saying they were better in opposition than they were leading the province. Another guy I worked with was expelled, again on the NDP side, because he called one of the ministers a liar. Excuse my French; I might get thrown out of here too, but you have to call the shots the way they are, and if somebody doesn't tell the truth, what is it? Because of parliamentary conduct, he's not allowed to, but still, in my mind the truth is the truth, and if it's not truth, what is it?

The thing that is extremely important is that I'd like again to go back to my friends with the NDP when they brought about the health regulations that dealt with the midwives and all those things in 1991. It was a very comprehensive piece of legislation. It dealt with something like—I have it in my report and I haven't really counted them. Sometimes, depending on which way you count them, there are 16 and sometimes there are 21. Anyway, it's all the lines with the different colleges that look after each speciality. My point is, why can't we do that with paralegals? We talk about, "Paralegals might not be ready to be self-regulated," but why not form a college, the way it's done in the Health Professions Act and associated acts and establish a code of conduct and everything else? Eventually, if you want to go to self-regulation, then the door is open, but the program has already been set by the government.

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I think it would be fair because a lot of paralegals are very competent; a lot are caring. A lot of lawyers are caring as well; a lot of lawyers care about what they put

in their pockets. But I think that it's extremely important. I don't think, in all fairness, that the bill can go as it is. It's against the Constitution of Canada. It denies the people access to justice.

I had a person I'm aware of fighting a company before the Ontario Human Rights Commission. That person cannot afford a lawyer and tried to go to a legal aid clinic, but they're overburdened. Not only that; I found that in every case where I had a client before the Ontario Rental Housing Tribunal who faced eviction, I was always able to mediate so that if they kept on paying their rent, if they paid a portion over a 12-month period to bring their arrears in line, they could stay in their apartment. They had that second chance because I was there.

There are bad apples in the paralegal profession as well as there being bad lawyers. If you read my report—and some of you have the whole thing, where I refer to an application that I had made to the University of Moncton—I go into detail about my work in the French language and how that thing was miscarried. It took me 16 years to get the reference going before the Supreme Court of Canada. I even asked the Attorney General of Ontario at one point in time to submit a petition to establish the same thing. When I went to the Supreme Court of Canada the last time on leave to appeal, I wrote a notice of motion requesting dismissal of the case because the courts were illegally constituted.

Faced with that—the issue was already before the Supreme Court of Canada—the federal government couldn't take the chance that a judge would say, “The courts in Manitoba are illegally constituted because the act has only been enacted in French.” They already had a court of appeal decision in Quebec stating exactly that fact: that if the act was only enacted in French, it's not valid because it's got to be enacted in both languages. Faced with that, the government had to bring in the Manitoba language reference because they couldn't take the chance of having to answer questions by a judge. If they read the questions, then the whole presentation could be a test case that wouldn't have a chance to be thrown out.

That's the point I was raising with many lawyers at one point in time, but they said, “The courts will never deny the fact that the courts are legally constituted. We can sit back, and eventually if we are forced to, we will do it. But until we're forced to, we won't do anything,” and those are lawyers, my friends; those are government lawyers. That's the sad reality. There was a court decision in 1892 stating that the law was illegally ultra vires, and the Lieutenant Governor kept on proclaiming the acts in English only. To me, where is the sense of justice if the Attorney General, who represents the crown, does not make sure that the Constitution respects it? These members of Parliament are raising this issue. Those were not issues raised by a lawyer, my friends; they were by a paralegal. At that time, I didn't even call myself a paralegal; I called myself a reactionist. Thanks a lot.

The Chair: Thank you. We have about a little less than two minutes for each side. Mr. Kormos.

Mr. Kormos: Mr. Babineau, it has been a delight to hear from you again. You've got an amazing CV. You've worked for decades in the public sector, and have indeed made major contributions there. The documentation is here: This man has appeared in Divisional Court, and he sought leave to appeal to the Supreme Court of Canada. You've prepared some very capable and sophisticated legal arguments.

I don't know what your very earliest years were like, and I just tell you that you've kept some politicians and judges on their toes over the years. Back in 1980, it was my dear old friend Marion Bryden who presented your petition in the provincial Legislature; some folks here might remember Ms. Bryden from the Beaches. So you've kept politicians and, as I say, more than a few judges on their toes. You illustrate how effective people can be with some incredible native intelligence on your part, some very specific skills and some tenacity. So I thank you very much for your comments on this bill. As I say, it's a real pleasure to have you before the committee.

The Chair: Thank you, Mr. Kormos. From the government side?

Mrs. Van Bommel: I just want to say thank you as well. It was a very animated presentation, and I certainly appreciate your taking the time and preparing such an extensive document..

The Chair: Thank you, Mr. Babineau.

SEAN VOISIN

The Chair: The next presenter is Mr. Sean Voisin. Good afternoon, gentlemen, and if I can have you identify yourselves for Hansard. You have 20 minutes. You may begin.

Mr. Sean Voisin: My name is Sean Voisin.

Mr. George Carter: George Carter.

Mr. Voisin: I'm here today to speak to you in reference to schedule C of this bill and how it may affect paralegals.

I can appreciate the effort that you've put in extensively during this period of time to listen to a lot of people present a lot of different views, and I can appreciate the amount of effort that the government has gone forward with from different avenues to investigate the background in developing this bill and bringing it forward to Parliament. Your duty as our leaders in the law-making industry is clear. It's very vital that the law is defined for our society, and we appreciate the efforts that you've put forward.

We're concerned a little bit about this bill. I've been running an independent paralegal office since the summer of 1997. My practice specializes in the Ontario Rental Housing Tribunal as well as Small Claims Court. I've been involved in mentoring programs and the placement of students through Durham College in our office. I received an advanced certificate in mediation in 2004 through Durham College as well, and I sit on their

steering committee in reference to the court and tribunal agent placement program as well as the development of the educational components. So our concern is always how we can deliver competent individuals back into the marketplace who can serve the public with what the public is asking for.

Paralegals, I believe, are an important member of the legal team. I don't profess that they're the only element in that team, but I do think that they play a vital role in the legal process. The work that experienced paralegals have undertaken is quite often virtually undistinguishable from, or very similar to, the undertaking that a lawyer might present. Sometimes the paralegal is either presenting it as an independent paralegal or presenting it in the employment of that lawyer. Also, within commerce and industry, many organizations need employees who have the broad knowledge of law and procedures, together with the expertise applicable to their particular sectors, that paralegals do offer. They offer this in such vast areas as financial services, WSIB, the different varying tribunals.

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But I'm sure you've heard all of this. You've listened to different venues for the last week, and the week prior. I've got a long speech, but honestly, I think in many instances you've heard all of this. I don't know if I can deliver anything of more substance, other than the fact that there's a belief that, generally, paralegals desire regulation of some form, only for the benefit that it will raise the proficiency that would be delivered in the marketplace. From their standpoint, there's a great deal of concern as to how that regulation comes into effect and what it's actually regulating. Our view is that this bill does a wonderful job on outlining some of the regulation components. The fact that it misses the areas of practice where paralegals and our community are actually asking us to perform gives us some concern, that either we missed the opportunity to deliver all of that information to you or there wasn't enough information gathered when the bill was being generated.

I know the member was very diligent in his efforts to try to encompass a lot of elements from the community to gather that information and deliver it back in the bill itself. This isn't a bill that came about lightly. The fact is, though, that several governments have tried to present this bill at varying different stages—I'm sure Mr. Kormos is fully aware of that—but we haven't been able to deliver on that bill as of yet. We know that the bill is needed and we know that government is needed in this marketplace, but the right components aren't being delivered at the moment.

Our Attorney General has made a great effort to improve access to our legal system. He's given us the opportunity to get online forms or improve procedural conduct through small claims so that the public can gain access to the service themselves. Unfortunately, at times, though, our legal system seems to be somewhat overwhelming for our public to use. We try to make a good effort from the legal system, but it can be a little

complicated, and that's when the public tends to turn to a specialist, either a lawyer or a paralegal, who can assist them in that area of need.

If you look at the marketplace, the marketplace tends to be specialized, from a paralegal standpoint. A lawyer can graduate and basically open up shop in whatever field he wants. A paralegal tends to be focused on one area of practice to serve that client base specifically in that area. They tend to want to get the best out of that because that's where they can maximize their value back to the community.

I think the public has continued to demand the need for paralegals, or these legal service providers, as the bill tends to name them. And if they didn't demand it or desire it, paralegals would have vanished from the face of the earth some time ago.

I think by failing to define what a paralegal or a service provider is, we've not gained any assurance as to who will fit in as a paralegal after this bill is passed. It may be a very narrow field, that the law society decides that this scope can be only measured to allow a certain level of paralegals in, barring the rest who don't meet that criteria. Will that criteria be through a language impediment or a conveyance of language, or a speciality that may not be proficient enough, which might be wiped out from being served in the public and the public still asking for that service?

I think our duty, for one, was to look at how we could raise the proficiency level of paralegals to still service the public and have that assurance that we can do that. I think the government is looking at it, but, quite frankly, the bill itself doesn't say what level you have to be at. It says, "We're handing this power over to somebody else to determine that." I'm very concerned that the people whom we elect, whom we trust to help us in our time of need, are turning to another body to say, "You decide that for us," whether they are experts or not. Their input is important, but we rely on you to define what areas of law we should practise in, how much competency we should have, some securities towards our practice itself for the community, and this bill doesn't do that. It does some wonderful things, like tell us how we can regulate and remove people from the community that's providing this service, and it hands over the authority to someone else to tweak that service at a later point yet to be determined.

I went to the law society's own website just recently, and on their main page, dated April 11, they confirm that once this bill is passed, they basically have three elements that they're looking at:

—establishing the required competencies for paralegals, which they consider to be a necessary step for the development of the licensing and examination of paralegals in a specific area;

—developing a procedure to understand what grandfathering is. So they're going to look at paralegals who are in the marketplace right now servicing clients and determine whether they can stay in business, but that's going to be determined after this bill is passed. The government doesn't know what that constitutes;

—drafting bylaws that will exempt candidates who are either inside or outside of this bill.

Again, it's handing over the power to another party to make a determination on how this bill can be enforced, which is of concern, considering that you've put a lot of effort into developing this bill. To suddenly say, "Here, somebody else can define how this bill runs," I'm not sure that's what your intentions were. I'm sure it's for the best interests of the public that you say, "We want to ensure that paralegals deliver service, deliver good service, are held accountable for it"—and then open it up to the public to go about doing that—"and if they don't, let's see how we can make sure that the paralegals do meet that standard and then move on from it."

In reviewing the Hansards on this meeting and being at some of the presentations in the past—what the law society and even the treasurer of the law society has deemed fit for this bill has already been talked about. Clearly, the intention is that he's going to govern this bill on what the law is today. If the law says, "You can't practise in family law," that's what he's going to govern, and that's what you're allowing him to do. So if the community says, "We want people to help us with filling out forms in uncontested divorces or filling out forms in the Ontario Rental Housing Tribunal or filling out forms in small claims" or wherever they're asking for the assistance, he's going to follow the law specifically. "If you're allowed to assist somebody in filling out a form in the tribunal, that's great. As long as you're doing it properly and providing the service to the client, that's great. If the community is asking you for divorces or wills or registration of liens or transfer of land property, but the law says that you're not able to do that right now"—and he has clearly said he's going to come back and administer that. He's going to administer the law that's presented in front of him. He's not a bad man. He's just doing what is within his parameters.

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Whether our community itself is asking for that may be a different story altogether, which we see on a daily basis. We see clients coming through the door asking for specific services that they feel more comfortable dealing with a paralegal on, or they don't feel comfortable with the cost of a lawyer, or they don't feel comfortable with the communication that's going back and forth. But they are coming through the door understanding that that service could be provided through a paralegal and asking for that. To turn them away, whether you're able to assist them in the right format—this bill doesn't allow that to happen.

Coming back to what we're saying, there are basically two things we're looking at. One is the lack of defining the areas of practice in this legislation. If you took the legislation out and said, "This is what a paralegal can do"—just not have it as broadly scoped as a lawyer is, that being providing legal advice and administering to the law, but clearly defined that they are able to work in these areas of practice—then you have an act you can work with to outline the different components of edu-

cational requirements or commitment back to the community itself, and some assurances.

I don't think this bill is doing it right now. We would ask that you (1) look at removing this section of this bill, from the preceding on; (2) look at setting up a body that can set out the different areas of law and the different proficiencies, and manage that, be it a self-managed paralegal group, something similar to the OMVIC relationship, where they're self-governed; or TICO, where they're self-governed but their interests are (1) ensuring that the community has the value that's being provided to them, the assurances of that service being provided and (2) constantly improving or developing the participants in that community to be better paralegals or better participants and providers of service.

That is our presentation at this time. I'd like to thank you for listening to us. I'm sure, as I said earlier, that you have gone through a lot of this. I've tried not to be repetitious. I'd leave it at that at this time.

The Chair: Thank you. About a minute each. Mrs. Van Bommel.

Mrs. Van Bommel: Just a quick question. You're talking about scope of practice and that you want to have this entrenched in the legislation, but if we start to list the different kinds of practices, that doesn't give a lot of flexibility for the future in terms of things that could change. You may get programs in the colleges that open up for certain fields of practice that wouldn't be listed. How would we be able to deal with the scope of practice thing without cementing you into one kind of practice and never being able to expand or grow into new things?

Mr. Voisin: That's a very good question. If I understand it, you're saying that in creating a specific legislation you still want to have the ability to change it down the road.

Mrs. Van Bommel: You may, as paralegals, want to have the ability to change it.

Mr. Voisin: As you can see, the law tends to be fluid throughout time. It has developed itself, ongoing. Right now the Attorney General is involved with over 115 different acts that he's responsible for. He's created acts that were very specific towards, let's say, the commissioner's act. It defines a certain parameter as to how you qualify for that and what is entailed in it, but he's amended that as he's gone along.

The other portion is the management itself. All we're asking for is that you define the areas of—

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you very much, sir. Again, an important contribution from somebody who delivers these types of services out there in our communities.

Is Mr. Robertson still here? He used the analogy between first class and second class on the airplane. I understand what he was trying to say. One's far less expensive than the other. I'm not being critical, but I really don't think it's fair to talk about paralegals—not that he was; he was trying to illustrate that one was less expensive.

Paralegals are not second-class lawyers, in my view. Paralegals are professionals with a particular type of

service to provide, quite frankly—the WSIB, Small Claims Court, highway traffic court—wherein they, more often than not, have more expertise and experience than most lawyers do simply because of the nature of the beast. That’s why I agree with you that it’s our job, as a Legislature, to talk about scope of practice. We may not want to get into the minutiae of exactly which educational programs would be appropriate or not, because that can be done by regulation, among other things. But I think it’s incumbent upon us to talk about what it is that, in a regulated paralegal world, we’re going to let paralegals do versus what we let lawyers do. I think it’s an entirely fair and reasonable proposition. So thank you very much.

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

I believe we’re setting up a teleconference?

Mr. Kormos: Chair, if I may. Again, I’m advised that the teleconference may not be ready to go—

The Chair: That’s been postponed. Okay.

Mr. Kormos: —and that Mr. Odoardo Di Santo, whom I know well and love dearly, isn’t here yet. In view of that, I’m wondering—yesterday and today Sheila McKenna’s been patiently observing this committee and she’s desperately eager to have perhaps 10 minutes to make submissions. I’m seeking unanimous consent—she’s here in the front row—that she be given that 10 minutes.

The Chair: Do we have unanimous consent? We do. You may come up.

Mr. Kormos: Thank you, colleagues.

SHEILA MCKENNA

The Chair: Good afternoon.

Ms. Sheila McKenna: Good Afternoon. I’m Sheila McKenna, a resident of Ontario. I didn’t realize until this bill was well advanced that you were going to be dealing with issues that touch on experiences that I’ve had and observations I’ve been working on, so I’m afraid that my thoughts are not very well prepared. I want to draw attention to something which has been alluded to, but I want to zero in on it a little bit more closely, and I hope that’s useful for you.

To give you an idea of how I came to be interested in these issues, I made the mistake, seemingly, of marrying the wrong person.

Mr. Kormos: Well, it’s good you can laugh about it now.

Ms. McKenna: I hasten to say wrong husband, right daughter. Actually, when my daughter went to Oxford to take up her full scholarship, I brought back a copy of the Magna Carta with the same words that were quoted this afternoon, “To none shall we sell, to none deny justice,” which is so apt for what you’re considering this afternoon.

Such were the disasters of my divorce that my ex-husband suffered a heart attack after we were long separated. At that time, he suffered brain damage and he

came under public guardianship. To put it in a nutshell, I spent 10 years or so getting divorced from a department of the Attorney General’s office, and I know much more about the dysfunction of the legal system in Ontario than I ever wanted to know.

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It’s my understanding that part of Bill 14 would extend supervision of legal services beyond lawyers to paralegals, and while I haven’t had any experience of paralegals myself, I think somebody has to bring to your attention what you must already know—if you don’t, it’s through wilful ignorance—and that is that the law society does not operate currently such that it can place the public interest routinely ahead of that of its members. I believe that is manifest and demonstrable.

If you care to look at the procedures, and lack of them, laid out by the law society to those who need their good offices to defend them against abusive or fraudulent or otherwise misbehaving lawyers, you’ll find that they have not set themselves up such that it is likely that they would protect the interests of ordinary Ontarians above the sometimes improper interests of its members. So before you give any consideration to extending the scope of their supervision, I believe that in order to improve the likelihood and equity of access to justice in the province, you must start by requiring the law society to operate in a manner which makes it likely that it will honour its mandate. You need to exercise some oversight over its manner of operation.

Just to bring this alive for you, I’ll give you an example of how things may well go for people who need to complain.

The likelihood is, if you’re in this situation, you’re already involved in matters where there’s retaliation, where when you try to assert your rights or you try to get what you need, you’re already experiencing the other side coming at you and making life hard for you. I had officials of the Attorney General’s office doing things that I think would make your hair stand on end: calling me down for non-existent court proceedings, failing to make payments that they were able to make from their client’s funds and that they were obliged to make by a court order, withholding needed funds, generally conducting themselves in a way that conveyed to me that they felt they could make my life hell unless I would sign on to something that would give the appearance that I was in agreement with what they wanted the outcome to be.

When you find yourself in that situation, you say to yourself, “Well, how can lawyers be conducting themselves like this in public in Ontario in 2006?” So you approach the law society and you want to know, “What am I letting myself in for here? I’m already seeing government lawyers misbehaving, so I need to assure myself of the professionalism of the person who may be looking at my complaint.” If you ask at that point, “What are your procedures? What will be happening? Who will deal with my complaint? What kind of investigation could I expect? When will I have an answer?” the gist of what

you'll hear from the law society could reasonably be described as, "Don't worry your pretty little head about that. Just put it in writing and wait."

You have no way of knowing at what point the person against whom you're placing a complaint will be given the information that you're complaining. You have no way of managing the kind of retaliation that may come back at you. The general sense that you're given is that you have to go into it blindfolded. You have no dignity. You have no resources to support you. You're not given any confidence that there is a professional procedure which is going to look fairly at what you need to complain about.

So I want to suggest to you that it is a matter of urgency to require the law society to change its manner of operation to make it likely that they honour their mandate and that that is an absolutely necessary first step before you give any consideration to extending the scope of their jurisdiction. And if you don't know what I've just told you, go take a look. Try it out and see. Ask them, "What are your procedures? What can complainants expect?" Don't be fooled by assurances: "We do it right. We're the law society. Everything is hunky-dory." You've heard enough at these hearings to know that for many Ontarians, everything is not hunky-dory in the legal system.

Thank you for your work on this. Good luck with doing the right thing. I'm sure that's why everyone voted for you. Give it a try. We need you to do it.

The Chair: Thank you very much.

We're just trying to get the 4 o'clock presenter on the line for the teleconference, so we'll recess for about 10 minutes. Thank you.

The committee recessed from 1548 to 1600.

MARTIN, COIN AND ASSOCIATES INC.

The Chair: The committee is called back to order. Our next presentation is via teleconference. It's from Martin, Coin and Associates, and I believe we have Mr. Al Martin on the line.

Mr. Al Martin: That is correct. Good afternoon.

The Chair: Good afternoon, sir. Welcome to the committee. If you can just spell your name for Hansard; you have 30 minutes and you can begin any time.

Mr. Martin: My name is Al Martin. Surname M-a-r-t-i-n; first name Al. I am the CEO of Martin, Coin and Associates Inc., a legal corporation founded by myself and Tim Coin. Keeping in mind that we were dedicated to one common goal, that goal being to provide the most comprehensive and cost-effective legal support solution through years of research and consultation with lawyers, judges, adjudicators, crown prosecutors and paralegals inside and outside of Ontario, we developed a paralegal platform with three premier services, consisting of delinquency management services, which includes communicating with debtors and negotiating settlements of delinquent accounts or debts and, where necessary, representation in the Superior Court of Justice, Small Claims

Court; landlord and tenant services, representing landlords and tenants at the Ontario Rental Housing Tribunal with respect to the Tenant Protection Act and; lastly, representing motor vehicle drivers who have been charged under the Provincial Offences Act, Highway Traffic Act and Compulsory Automobile Insurance Act.

My presentation will consist of three critical questions and answers, and before I go into those three items, can everybody hear me okay?

The Chair: We can hear you just fine.

Mr. Martin: Thank you.

(1) Do paralegals agree that the industry should be regulated?

2) Is it a conflict of interest for the Law Society of Upper Canada to regulate paralegals, considering the past attempts to disqualify and discredit the industry years ago?

(3) What could result if we add to the paralegal cost equation variables such as high fees for licensing and unaffordable errors and omissions insurance?

I'll start with my first question: Do paralegals agree that the industry should be regulated? Legitimate paralegals have always been pro-regulation as no paralegal enjoys the notion that the government doesn't care to regulate, draw boundaries or provide a code of ethics or a code of conduct for the profession that you are in. Frankly, ask any paralegal how many times they have been asked or had to explain what a paralegal is or the difference between a lawyer and a paralegal. It's cumulatively tiresome. How about working in a profession where you're not recognized by a majority of the general public as a profession, or having to hear the horror stories about another fly-by-night paralegal and having to pull out your broom and mop to clean up the mess?

How about trying to market to that potential a huge new corporate client and, in the back of your mind, believing that you can influence public opinion by working hard and achieving results, only to find that they've never heard of and do not use paralegals? You can provide an explanation, only to receive a reply in return that said company does not want to have anything to do with an unregulated profession, or the wild, wild west, if you will. There was one publicly traded corporation client of ours—a telco—who decided they were ready and willing to venture into new paralegal terrain. They used our delinquency management service and continue to use it today. It was a gamble, but a gamble that paid off dramatically and continues to pay off for them today. Our client's policy was in the past, and is also presently today, that they would collect all data and statistics and publish them on a monthly basis, showing a percentage of recovery results. Before we came on board, the highest percentage of recovery was 7%. Within six months, we came in at just over 26%, and within another 12 months we were at 36%—once again, the highest result in the past being 7%.

This was our precedent-setting case, and although we obtained many referrals because of these results, many of the referrals refused to bring us on board because we were an unregulated profession.

The bottom line is that all legitimate paralegals welcome regulation for various reasons. To all paralegals, I ask you this: What are your reasons? To the standing committee, all you need to know is one thing: Paralegal regulation is definitely a step in the right direction.

Second question: Is it a conflict of interest for the Law Society of Upper Canada to regulate paralegals, considering the past attempts to disqualify and discredit the industry years ago? Is this a case of the fox guarding the henhouse, or, to quote LSUC bencher Robert Topp, "Is it like a corporation that's making widgets and is now going into the commercial airline business? The board of directors may want to do that, but the shareholders might want to have something to say about it." I believe the analogy, as hard as it may be to swallow, is applicable, and it's for that reason that almost all paralegals are not in favour of regulation by the law society.

There have been many questions: "Well, then, who is? Who's in the best position to make critical decisions on the various issues?" I would respectfully submit, who better than the paralegals themselves, the paralegals who fight on the front lines in various courts across the province every day? The law society has been quite outspoken on their views about paralegals, and the views have not been the positive viewpoints in the past. I suppose the law society proposes to bury the hatchet and now regulate the profession? I believe the law society has found itself in a conflict of interest. Regardless of the notion that paralegals would have a prominent role in the governance of the law society and over regulation of the paralegals, it does not erase the history of the past.

My third question is: What could result if we add to the paralegal cost equation variables such as fees for licensing and unaffordable E and O insurance? The paralegal industry grew exponentially in Ontario due to one basic premise: the premise of affordable legal services. Allowing the law society to regulate paralegals could jeopardize this option to the public, as the law society's proposed regulations are certain to include new licensing fees and costly E and O insurance. This will inevitably result in paralegals having to increase hourly rates in order to compensate for the added expense, thereby narrowing the cost differential between lawyers and paralegals. It seems clear that the end result of this new legislation, Bill 14, could ultimately be the elimination of the paralegal cost advantages.

I ask you to suppose that in column A we have a lawyer, a member of the Ontario bar, and in column B, we have an Ontario paralegal. It would be my honourable submission that the addition of licensing fees and E and O insurance rates, as dictated by the Law Society of Upper Canada, could minimize that cost differential. So you have a new client. You have a member of the Ontario bar in column A and an Ontario paralegal in column B. Suddenly, it's not so enticing to use a paralegal anymore. Quite personally, if I was the client and I was looking at column A and column B and there was only a cost differential of about \$10 or \$15 per hour, I believe, myself, being a paralegal, that I would choose

the lawyer. I would choose the lawyer because the lawyer went to law school.

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Along with many others in Ontario, we have provided exceptional legal services at a reduced rate in comparison to lawyers for many years. This, in our view, is a humane approach to basic legal services in Ontario. It has been our main focus since day one to provide cost-effective and professional legal support services. The reality is that many of our clients are lay persons with limited income who may otherwise not have been able or are not able today to afford the cost of a lawyer.

In closing, allowing the law society, a competitor, to regulate the paralegal industry could in the end result in a large population not being able to afford or utilize our justice system. The public interest must be taken into account. Access to Justice Act: Is it all in the name, or is it really going to provide access to justice? Thank you for listening.

The Chair: Thank you, Mr. Martin. We have about seven minutes of questions or comments from each side. We'll begin with Mr. Runciman.

Mr. Runciman: Thanks, Mr. Martin. It was an excellent presentation. I think you wrapped up your concerns and suggestions very succinctly, and I appreciate it.

I'm wondering about the errors and omissions insurance question. Do you have that kind of coverage now to some degree?

Mr. Martin: Yes, we do. We're currently with Encon.

Mr. Runciman: I know that that was raised earlier when we were talking about what they called the PPA, I believe it was, which collapsed, and which was going to be the vehicle to head towards self-regulation. Apparently, one of the significant causes of the failure of that was the reluctance of paralegals to take on errors and omissions insurance. At least, that was the testimony that we heard. But I guess in your case, that is not the case.

Mr. Martin: Absolutely not. We take the position that any responsible paralegal will carry errors and omissions insurance and that it is a necessity. I don't think it would be a really big problem for a paralegal regulatory society or body if it was a requirement and an offence not to carry errors and omissions insurance.

Mr. Runciman: I appreciate what you're saying with respect to the law society being the regulator and the concerns you and so many others in your profession have, and certainly we've heard that day in and day out from a range of people. Having been around this place as long as I have, I am very doubtful that the government is going to back away from this initiative in terms of the law society, despite some of the comments Mr. McMeekin of the Liberal Party was making. I think the only way that might happen is if the backbenchers in the Liberal caucus, and certainly the members of this committee, rebelled, and given the history around this place, I think that's an extremely remote possibility. With what we're hearing from the Liberal members of this committee, I wouldn't hold out much hope that they're going to back away from the law society as the regulator.

What some members have contributed to this process is, “Well, if we have to accept that as a reality, here are ways we can improve upon that situation.” We’ve talked about ways in terms of the professions that are already regulated being eliminated through amendment to the act, and in terms of the scope of practice, that perhaps that could be left in the hands of the Attorney General, the justice committee or the Legislature. Do you have any reaction to those kinds of initiatives that perhaps could allay some of the concerns that members of your profession have?

Mr. Martin: I know specifically what you’re talking about. Please correct me if I’m wrong, but I believe you’re referring to a specialization in certain areas of practice and (2) qualification for scopes of services.

Mr. Runciman: Well, actually, spelling out or regulating and defining, if you will, will not be left in the hands of the law society. They could be the regulator, but the defining body, if you will, of who is or isn’t a paralegal would be left in the hands of the government.

Mr. Martin: I understand. Actually, if I could just ask a question: Was it Justice Peter Cory who proposed, I think in May 2000, that paralegals should be licensed, but they should be a self-governing body?

Mr. Runciman: That’s right. The other option that’s been suggested in this committee is that, rather than the law society, the Ministry of Government Services be the regulator for a period of time while the industry itself prepared for self-regulation. But again, hearing what we’re hearing from the Liberal members of the committee, I’m not optimistic they’re going to consider that as a possibility.

Mr. Martin: Well, in any case, if for nothing else, it feels good to be heard.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you, Mr. Martin. The Ontario Bar Association, the law society, Osgoode professional development and at least one private firm that I’m aware of operate ongoing, continuing education programs focused primarily on lawyers and people working in law firms, and there are, by the time the year is done, probably several a month available. Whether or not lawyers attend them is up to that lawyer. Where and when and from whom are there similar ongoing educational programs for people in your profession?

Mr. Martin: That’s a really good question. I would only reply by saying this: At the inception of the lawyers’ profession, those were things that had to be developed and nurtured, and the same would have to be in the paralegal profession. It would be up to the regulatory body, through the charging of fees, to facilitate that type of educational process for paralegals, just as it’s provided for legal people. Paralegals of the future would be the ones that would be responsible for putting those programs together.

Mr. Kormos: Sure. I don’t want to be unfair, nor am I being critical, but my impression is that there aren’t a whole lot of these courses available. If there are, I wish I knew where they were, because I’d be sending my

constituency office staff to some of them. So is it a fair observation that there aren’t a whole lot of these courses currently available for people in your profession?

Mr. Martin: That’s a fair thing to say. I may be getting myself into a little bit of trouble here, but to be quite frank—

Mr. Kormos: We’re in good company.

Mr. Martin: —I’m tired of having to sneak into these lawyers’ conferences in order to update my skills and obtain this sort of information.

Mr. Kormos: What do you mean “sneak in”?

Laughter.

Mr. Kormos: I’m serious.

Mr. Martin: I have a lot of friends in the legal profession, a lot of lawyers, and if you approach them and tell them right from the outset, “Look, I’m not lawyer, but I take a lot of interest in the presentation that you’re going to be making at the courthouse on this date,” oftentimes, if you pay the fees, they’ll allow you in.

Mr. Kormos: If you were a person with some input into a regulatory body, would you require a minimum number of hours per year of this type of continuing education for members of the paralegal profession, acknowledging that lawyers do not have a minimum number of hours per year?

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Mr. Martin: You know what? It’s always been my personal mandate to get as much—not necessarily even training but to update yourself on amendments to laws and that sort of thing.

Mr. Kormos: Exactly.

Mr. Martin: It’s always been my personal mandate to do that. In response to your question, I would say if a paralegal is not pursuing that on an ongoing basis, then they should really think twice about why they’re in the profession in the first place.

Mr. Kormos: I appreciate that paralegals who have come forward, almost to the final one, have talked about being in the profession because they want to provide assistance in advocacy at a more affordable rate than lawyers, but at the end of the day you have to make money. If you’re not making an income—or if you’re independently wealthy like members of the Canadian Senate—you can’t keep on doing it. What do you expect would be a fair annual fee for a paralegal to make, knowing what your annual revenue is, what your income is and knowing that lawyers pay—how much do they pay, Mr. Zimmer?

Mr. Zimmer: Fees or insurance?

Mr. Kormos: Fees, for a start.

Mr. Zimmer: About \$1,700.

Mr. Kormos: Lawyers pay 1,700 bucks a year, give or take, according to Mr. Zimmer. Again, what should a paralegal fairly pay for a regulatory annual fee?

Mr. Martin: I guess that would depend on what they’re getting.

Mr. Kormos: Lawyers would say the same thing about their \$1,700, I suppose.

Mr. Martin: I don't know if I can give you a precise monetary figure without knowing what a paralegal would get for that \$1,700. For example, if they were getting those updates and training sessions, like lawyers get, then obviously there would have to be a cost factored into what their annual fees would be. I guess to answer your question, it's my guess that lawyers pay about \$8,000 in fees to the law society, and that doesn't include everything. So I would say—

Mr. Kormos: Those are the guys who have had a lot of claims on their errors and omissions. Right, Mr. Zimmer?

Mr. Zimmer: Yes.

Mr. Martin: I'm just taking a guess. Is that somewhere in the neighbourhood of the total fees for a lawyer?

Mr. Kormos: Seventeen hundred, and errors and omissions insurance is another—

Mr. Zimmer: Fees, and errors and omissions insurance for a claims-free lawyer are about \$5,000.

Mr. Kormos: Okay.

Mr. Zimmer: And it goes up—

Mr. Kormos: Right. So a lawyer whose record is basically clean in terms of claims, it's \$5,000 a year total.

The Chair: Thank you.

Mr. Kormos: Interesting.

Mr. Martin: Five thousand total. Okay. I would say something in the neighbourhood of about \$2,000 to \$2,500, provided that was enough—let's say, for example, it was a self-regulated profession. If \$2,500 a year per paralegal was enough in order for them to be updated on the law, have training sessions and have access to updated legal information much the way lawyers do, I would say that—

The Chair: Thank you.

Mr. Kormos: We've got lots of time, Chair.

Mr. Martin: I would say that that's fair. But as I told you, Mr. Kormos, we would have to—

The Chair: Thank you, Mr. Martin. Government side? Mrs. Van Bommel.

Mrs. Van Bommel: Thank you, Mr. Martin. We've heard a lot of different presentations over the last few days from all sides of the argument and a lot of good ideas coming forward from paralegals about how they should be regulated. But one of the things that concerns me is that in spite of all these great ideas of how to do this stuff, nothing has happened up to this point, and I'm wondering why that is. Why does it seem to take this kind of thing to make everybody start talking about regulation and self-regulation when there's been the Ianni report and the Cory report and, I would say, ample opportunity for the profession to start organizing itself and preparing itself for self-regulation?

Mr. Martin: I would reply by responding first of all that I believe there have been steps forward, but I believe the reason why we have everybody coming forward now is because we legitimately see the law society regulating our profession as potentially killing the industry; and for anyone, no matter what the priorities are in your day, you

see that as a very, very serious threat. So that's to answer your portion of the question dealing with why everybody is coming forward.

I would agree with you that there are a lot of really great ideas that are coming forward. Maybe that's what it takes. Maybe it requires a threat of possibly killing the industry for us to come forward and provide a platform that's acceptable to the Ontario government in terms of regulating paralegals.

The Chair: Thank you very much, Mr. Martin, for taking the time to speak to the committee.

Mr. Martin: Thank you very much for allowing me. Have a good day, everyone.

CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS

The Chair: The next presentation is from the Canadian Society of Immigration Consultants—Mr. Ross Eastley and John Ryan, chair.

Mr. Kormos: Are these dissidents, or are they mainstream CSIC people?

Mr. John Ryan: I can assure you, Mr. Kormos, we're mainstream.

Mr. Kormos: Not that there's anything wrong with dissidents.

Mr. Ryan: It goes against my grain—maybe when I was a unionist at one time.

Mr. Kormos: There you go.

The Chair: Good afternoon, gentlemen. You have 30 minutes. You may start your presentation.

Mr. Ryan: I'd just like to start out by thanking the committee for allowing us to appear and to give you some comments on what we believe is an admirable initiative: the Legislature considering Bill 14, the Access to Justice Act.

My name is John Ryan. I'm the chairperson of the Canadian Society of Immigration Consultants. Seated to my left is Mr. Ross Eastley, who is the chief executive officer and registrar of the Canadian Society of Immigration Consultants.

A little about my background: I'm an ex-immigration officer. I have been a national president and vice-president of immigration consultant advocacy groups for the better part of eight or nine years, prior to the Mangat BC law society case at the Supreme Court. I was a director on the Canadian College of Immigration Practitioners, which was the first body to sign a memorandum of understanding with the Department of Citizenship and Immigration Canada to develop a two-track system toward self-regulation of the immigration consulting industry in Canada. I was also one of the key individuals who led the intervention at the Supreme Court of Canada on behalf of the Association of Immigration Counsel of Canada in the BC law society versus Mangat. I was also honoured to be a member of the minister's advisory committee on the regulation of immigration consultants, which presented a report to the minister that was adopted by the federal government and now serves as the base

paper for what exists in the Canadian Society of Immigration Consultants today.

Our remarks today are largely going to be directed toward the sections of the Access to Justice Act that pertain to the regulation of paralegals within the provincial jurisdiction of Ontario.

We are supportive of the initiative of the province of Ontario to regulate paralegals. We believe in the interests of the consumer. It's an important initiative which places the interests of the consumer above that of the practitioner, which is one of our primary fiduciary responsibilities: to hold their interests before our own.

We believe that the Law Society of Upper Canada can be an effective regulator. We certainly share many concerns with the law society about the protection of the consumer, as the designated professional body tasked with overseeing the regulation of consultants at the national level.

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Just as a little background, the Canadian Society of Immigration Consultants is a federal non-profit corporation whose members are recognized as authorized representatives under the Immigration and Refugee Protection Act. Authorized representatives are those individuals who the federal government will deal with who charge a fee to represent, advise or consult persons subject to an immigration proceeding.

Since April 2004, under the Immigration and Refugee Protection Act, only authorized representatives—authorized representatives are defined as members of the bar, one of the provincial and territorial bars, as lawyers; Quebec notaries, members of the *Chambre de notaires du Québec*; and members of the Canadian Society of Immigration Consultants—are recognized and allowed to appear as paid representatives in front of the government of Canada in immigration proceedings. This also extends to the Immigration and Refugee Board and proceedings that happen with the Canadian Border Services Agency.

The federal government's jurisdiction to determine who may appear as representatives before immigration boards and tribunals or officers was affirmed in the Supreme Court of Canada decision, a unanimous decision, the *Law Society of British Columbia v. Mangat* in 2001. This decision came after a royal commission and two separate standing committee reports which recommended the regulation of immigration consultants. It was always a question, though, as to whether the regulation of immigration consultants was a federal or provincial jurisdiction. The Supreme Court decision in the *Law Society of British Columbia v. Mangat* cleared that issue up and clearly established that, should the provinces fail to occupy the space, the federal government had an obligation to do so, and the federal government has done so in April 2004 with the introduction of the immigration and refugee protection regulations.

For over two years, our CSIC members have been recognized by the federal government as persons who, for a fee, are authorized to act in immigration matters. CSIC has established an extensive system of self-

regulation for qualified immigration consultants, which includes requirements for membership, an effective complaints and discipline process—although I'm sure I'll get some questions on that later—mandatory errors and omissions insurance, mandatory continuing professional development courses for its members, and a code of professional conduct.

You will find in your appendices, in appendix 4, a detailed CSIC rules of professional conduct. You will also find in appendix 5 the discipline council rules for our hearings directorate for the hearings of discipline complaints against our members.

Given the fact that immigration is a federal undertaking, as it deals with foreign nationals seeking immigration to Canada, and CSIC members are recognized by the federal government as authorized representatives, CSIC submits that its members are already regulated by the federal government. Should the province of Ontario seek to include immigration consultants within the ambit of the Access to Justice Act, we suggest that CSIC members should be exempt from being regulated by the Law Society of Upper Canada. The support of this existing system by the province of Ontario will avoid creating unnecessary and confusing levels of duplication in services and provide for the most effective consumer protection for those availing themselves of services of non-lawyer immigration representatives. Quite frankly, it will remove confusion from the consumer as to who the proper regulator of the profession is.

Other provincial governments currently do not regulate immigration consultants. They have recognized CSIC members—just off the top of my head, British Columbia and Manitoba jump to mind—in regards to their own respective provincial immigration programs, although that's been a policy choice by the provinces themselves. CSIC respectfully recommends to the committee that the committee consider and follow two of the options if it feels that it needs to examine whether or not to include immigration consultants in the scope of practice of Bill 14.

As I've already said, CSIC believes that we are already regulated at the federal level. However, we recommend that, should you choose to amend Bill 14 to explicitly exempt full members of the Canadian Society of Immigration Consultants and other groups, which, in the public interest, should be exempted from the legislation—just off the top of my head, I'm thinking about union reps, about people who would be involved in appeals, non-government agencies that would possibly be working in the interest of the public for no fee. This is one of the areas that we examined extensively on the minister's advisory committee.

Alternatively, if you do not choose at a legislative level to create classes of exemption, we suggest that you amend Bill 14 to explicitly state or instruct the Law Society of Upper Canada to be able to exempt, on a class-wide basis, members of the Canadian Society of Immigration Consultants and other groups that are effectively regulated or, in the public interest, you deem it necessary to do so.

In closing my official remarks, I'd like to say that when we get together to address the interests of the consumer and we try to create legislation or a system that will design a system that will protect the consumer, we all have to realize that we can do the best job we can but we're not going to create a perfect system. There will always be individuals who will try to circumvent or frustrate the good intentions of the system. With any regulatory system or professional body that governs the profession, it's an incremental process that happens over time. Certainly, that's been our experience to date with the Canadian Society of Immigration Consultants, and I think it will be the experience of the Law Society of Upper Canada once it starts to examine questions such as scope of practice, what standards they should put in to transit people who are in an unregulated space to a regulated space. Will they consider grandfathering? Will they consider language abilities? Will they consider testing criteria before people will be allowed to practice? Inevitably, there are some very serious choices that have to be made.

I will tell you, given the years of involvement I've had on the issue, the federal government and the various parties that have looked at this, from the Supreme Court to the royal commission to the standing committee, have given a lot of thought specifically in the area of immigration consultants and immigration law. It's not a simplistic solution that can be thrown at it. As you peel layers back from the problem, you start seeing nuances that you have to adapt to as a regulator and overcome.

I would suggest to you, however, that it's our view at the Canadian Society of Immigration Consultants that your efforts with Bill 14 are complementary to the efforts that have already been undertaken a number of years ago by the federal government, in that the provisions that you will be devolving to the law society will actually strengthen our ability to enforce the provisions for people who would try to circumvent our regime in terms of the standards and mechanisms we've put into place to ensure ethical and competent practice in the interests of the consumer.

So on that note, I'd like to thank the committee again and I'm more than willing to answer any questions you may have.

The Vice-Chair: Thank you very much. We have 18 minutes for comments and questions. I believe, Mr. Kormos, you have the lead.

Mr. Kormos: Thank you, gentlemen. Legislative research has spent a lot of time assisting us, getting us a copy of the Mangat decision, which—help me—predates the regulation that requires membership in CSIC. The critical language was, “or other counsel,” in Mangat.

Mr. Ryan: Yes.

Mr. Kormos: Okay.

And it was because the federal statute said that, that that paramountcy principle applied. Had it not said that, then there would have been a vacuum. Is that correct?

Mr. Ryan: There was also the concept of the foreign national's right to obtain the counsel of their choice. A

lot of the thinking, from reading the judgment, turned on that: the ability of the individual to choose who they would feel best or comfortable with representing their case to the various organs of immigration.

Mr. Kormos: Now, the part where there's still some lack of clarity, at least on some of our parts, is, when does the CSIC membership requirement kick in? Does it kick in with immigration consultants who assist people in preparing applications before those applications are, in fact before an immigration officer? You'll understand why that's important to some of us, because that means there's a gap in the front end where the CSIC requirement may not apply. And that's where some of the most atrocious rip-offs are taking place; right?

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Mr. Ryan: I think, to do justice to a correct answer to you, the federal government has interpreted the regulations narrowly in that it believes that its processes will only apply once an application is before the minister; in other words, an application has either been filed in front of the minister or an application has been received by one of the visa posts or embassies overseas. In our view, the regulations are much more expansive and in fact talk about “anyone who advises, consults or represents for a fee.” This creates a dilemma, and has created a dilemma, not only at the federal level but at the provincial level, because, Mr. Kormos, respectfully, even Bill 14 will have difficulties dealing with this issue. To get at that person under the banyan tree or in the basement who is deliberately trying to circumvent the regulation requires the will of governments to enforce. There are resourcing issues. There are all sorts of things that factor into that.

Immigration has made the choice; they have the resources to look at the stuff that's before them. We, however, at the society interpret the law to say that it's much wider than that; in fact, anyone who advises, consults or represents for a fee falls under the ambit of the regulation. And counsel has advised us that that's a correct interpretation.

Mr. Kormos: I understand the problem, though. Let's assume for a moment that you're not correct, that that narrow interpretation applies. That means that there would be, then, room for provincial regulation of those people doing that work up to the point where that application is placed in front of an immigration officer. So the dilemma is, hearing what you're saying and knowing that there's—again, we've already talked about this. Of course, we can't control the people in the Tim Hortons coffee shops giving legal advice or immigration advice; here and now, as we speak, it's happening. But I'm talking about the people who run offices. Some do good work but a whole lot do really, really scurrilously bad work and rip off people and create all sorts of false hope. What's happening? If the federal government doesn't agree with you, how are those people going to be taken to task?

Mr. Ryan: I think I'd like to call the committee's attention to the actual provisions under—I think it's appendix 1, is it? Appendix 2, the penalties. The Immi-

gration and Refugee Protection Act, under sections 124 and 125, does provide some pretty stiff penalties for individuals who would do exactly what you're saying, Mr. Kormos. I'm just going to read it.

"125. A person who commits an offence under subsection 124(1) is liable

"(a) on conviction on indictment, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both; or

"(b) on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both."

Mr. Kormos: Sure.

Mr. Ryan: So my point, to respond to you, is that certainly at the federal level there are tools within the act under the general offences to get at these individuals. I think it's fair to say that the reason we feel Bill 14 is complementary to the provisions in the Immigration and Refugee Protection Act is because it provides an extra way to get at these individuals who are deliberately circumventing the system in that it empowers your regulator if they are practising law. This is in addition what already exists; okay?

So we believe that the federal and provincial laws are really complementary to each other in what's being proposed here, and this is why we're supportive of it; we think it's in the interests of the consumer. However, we think that you don't want to get into a situation—the danger that we examined on the minister's advisory committee, because we looked at this from a whole bunch of different angles—of creating a patchwork of standards, regulations and qualifications across the country. You need a national standard. Certainly, if the provinces feel that they want to regulate, constitutionally they can do so. But that, I think, to be of the most benefit to the consumer, has to be complementary to what exists at another level of government. Therefore, we get a one-two at the people who are trying to circumvent the regs.

Mr. Kormos: And 13.1, which is the reg in question here, the contentious reg—"No person may, for a fee, represent, advise or consult with a person who is the subject of a proceeding or application before the minister and officer of the board"—has not been litigated.

Mr. Ryan: No. That's not been tested. Our interpretation of that is that the process begins the minute a person seeks advice or consultation about putting an application forward, not when it physically arrives before an immigration officer.

Mr. Kormos: There seem to be a whole lot of potential test cases out there.

Mr. Ryan: That certainly has been the modus operandi for the last nine years, yes.

Mr. Kormos: Yes, but how come it hasn't been—

Mr. Ryan: Mr. Kormos, the law society and the regulation of other professions have been around for 100-some-odd years. The law has evolved. It's been perfected. Mechanisms have been perfected.

In the last presentation, I heard you question why things haven't been done. It takes a while to run out a

regulatory body or a professional body. Currently, we have been on a two-year plan. We've ramped up our professional body to regulate nationally in the space of about two and a half years. We have just switched on our full hearings component. It takes that long to do the research, to put the right people in place, to have the investigations come to the point where you actually have a hearing to discipline. It's not something that you can just go down to McDonald's and order, with extra fries and a Coke. There's a lot of development, a lot of hard work that goes into rolling out a professional body, and the law that goes along with it sometimes is playing catch-up.

It's my belief that in the regulation of consultants, the regulation of paralegals, the Ontario government is going to be faced with the same issues. The law society is going to be faced with the same issues. You're going to have the same test cases. You're going to have people who are going to resist regulation simply because they want to resist regulation, and there is going to be a body of law that's going to be built up over time about the law society's ability to regulate paralegals if, in fact, it becomes the regulator.

Mr. Kormos: That's fair enough. I suppose the resistance is going to be even greater if the people being regulated don't see the regulation as legitimate, or the regulatory body as legitimate.

The Vice-Chair: Thank you, Mr. Kormos. I'm going to go to the government side. Mr. Zimmer.

Mr. Zimmer: To the registrar, how many members do you have?

Mr. Ross Eastley: Currently, we have 1,354.

Mr. Zimmer: How many potential members are out there?

Mr. Eastley: That's hard to say.

Mr. Ryan: I may be helpful with that, Mr. Zimmer.

Right now, we have a national system of education and colleges for new people coming into the profession. We currently have co-operative partners with five, I believe, universities and colleges across Canada which are offering full-blown immigration practitioner courses. Our enrolment there for new people coming into the profession is ranging about 400.

Mr. Zimmer: You've got 1,300 members out there, and I understand the hammer to get the member in is that, to put it bluntly, you can't do business with the feds unless you're a member of the society. Is that right?

Mr. Eastley: Yes.

Mr. Zimmer: All right. So that's how you get your 1,300 members.

Mr. Ryan: It's a delayed hammer.

Mr. Zimmer: I know.

Mr. Ryan: And if I may explain—

Mr. Zimmer: But you've got to be a member of the society or you can't do business with the feds at the immigration board and various other things. I gather that when a member of the society writes in or something, he's got to identify he's a member in some way.

Mr. Eastley: It would be recorded on our website. So the government of Canada can check the website in order to determine whether they're a member.

Mr. Zimmer: How long has the organization been set up?

Mr. Ryan: We incorporated in November 2003.

Mr. Zimmer: Okay, and how many members have you disciplined in three years?

Mr. Ryan: As I said in my earlier submissions—

Mr. Zimmer: I just want the numbers from the registrar.

Mr. Eastley: It depends on what you recognize as discipline. We've had—

Mr. Zimmer: How many complaints have you had?

Mr. Eastley: We've had in excess of 820 complaints, and we have disposed of 640.

Mr. Zimmer: How many of those have gone to a sanction?

Mr. Eastley: All of them would have been, in terms of—what do you interpret as—

Mr. Zimmer: Well, for instance, if the law society gets a complaint, when it's disposed of, it's either dismissed or it's upheld, and if it's upheld, there's some kind of sanction.

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Mr. Eastley: Three hundred and sixty-seven of those files in which there were sanctions involved.

Mr. Zimmer: And typically, what was the sanction?

Mr. Eastley: There's a wide variation, because we employ a lot of mediation as part of the sanctions, so as you are getting together with the complainant—

Mr. Zimmer: How many people got kicked out of the society?

Mr. Eastley: It would have been two who have been kicked out. You have to bear in mind that the society itself has the discipline part of it that is coming into place, plus the process that they go through for admission, the writing of exams and things like that. We've had a number of members—

Mr. Zimmer: But two members have been kicked out.

Mr. Eastley: Two members have been kicked out, but we've had in excess of 300, probably, who are not able to meet the criteria of the society; thus—

Mr. Zimmer: They're not members.

Mr. Eastley: They're no longer members.

Mr. Zimmer: And they're not a part of that 1,300.

Mr. Eastley: No, they're not.

Mr. Zimmer: Your society catches anybody who, broadly speaking, has to do business with the feds, but you have no jurisdiction or ability to regulate anybody who's out there as an immigration consultant who, broadly speaking, is offering general advice to people: "Go here, go there, do this." As long as the consultant doesn't himself or herself do business with the feds, they don't have to be a member of the society. Is that right?

Mr. Eastley: If they don't do business with the federal government, no. They can operate—

Mr. Zimmer: So there's still a need, then, for regulation of all those folks out there in the world of general immigration advice?

Mr. Eastley: I think that was what the chairman was referring to.

Mr. Ryan: Mr. Zimmer, if I may assist: Anyone who charges a fee for rendering advice, consultation or representation is subject to the amendments. You used to be on the IRB; you know that the mechanism or the model that's been proposed and adopted by the federal government is one that's a co-operation between industry and the government, where the government has retained the right to enforce against those individuals who are holding outside. The mandate of the society is exclusively to oversee the activities of our members.

Mr. Zimmer: But from a practical point of view, if the consultants are not doing business with the feds, if they're just out there doing general advice kind of stuff, how do you get at them?

Mr. Ryan: That's the job of the enforcement agencies. We have protocols with the government where, if we become aware of consultants who are doing that, accepting a fee and are not members of the society, we will advise the government. The government works along with its enforcement agencies, the CBSA and the RCMP, to investigate and prosecute if necessary. That's their role. Our role is to control the activities of our members.

Mr. Zimmer: On a more general level, because of course an issue with the law society or indeed other any other professional body is how governable their members are, what's the history been with your 1,300 members? Are they reasonably governable?

Mr. Ryan: Moving from an unregulated space to a regulated space, it's fair to say that the profession has embraced the idea of being regulated. In fact, I would say the majority of our members are happy and are proud to be members and to be in a regulated profession. You have to understand that it's an important distinction.

However, there is a core group, a small group, which does not want to be regulated. Because CSIC adopted a policy of standards, we made the choice that we would have verifiable standards for competency at the get-go. We have a group that is being reluctant because (1) they're afraid of standards, or (2) they still haven't made the adjustment.

"Standard," by definition, Mr. Zimmer, means that some people won't make that standard. We have tried to help them through this, but at the end of the day, in order to have a standard that serves the public interest, some people won't be consultants after this is over.

Mr. Zimmer: Those people who are unhappy, generally what form does their resistance take?

Mr. Ryan: It depends on what their particular issue is. The committee may not know, but one of the requirements or competencies that an immigration consultant has to demonstrate is proficiency in one of two of Canada's official languages to a level where they can understand complex legal issues and be able to make an argument to an officer or to a hearing or tribunal, either

in English or French. We have a system of testing which tests members for this, which is offered by third parties such as the British Council, the IELTS and the University of Michigan—there are a number of providers that we use—but the resistance has been largely because of the language requirements. People have been having some difficulty meeting the language requirements.

On the other side of it, on the professional standards test, we have seen a good number of our full 1,340 members already move through and qualify for full membership. I think in the area of 730 of the 1,350 members now have passed the full professional standards. We have two levels of testing. We have entry level testing and the full membership testing.

I think it's been resistance and fear—the fact that you're moving from an unregulated space to a regulated space. It's also something that we've seen in other jurisdictions as well, such as in Australia with the Migration Agents Registration Authority, and in the UK when they brought their regulation in. I would suggest to you that when you try to regulate the paralegals, you will also experience this kind of, "Please don't regulate us."

Mr. Zimmer: How long have you been the chair?

Mr. Ryan: I've been the chair since November of last year. I was the vice-chair prior to that.

Mr. Zimmer: This was the organization that someone by the name of Trister was the chair of?

Mr. Ryan: He is our former chair; that's correct.

Mr. Zimmer: And there was some—I don't know all the details—dust-up and internal goings-on and he quit or he got fired.

Mr. Ryan: No, no. "He quit," I think, is a good way to put it. He resigned.

Mr. Zimmer: He was critical of the organization? What was the essence of his criticism?

Mr. Ryan: I'm really not here at the committee to comment on the essence. I think Mr. Trister has already spoken to the committee about what his concerns are; I certainly read that testimony. However, I will say that the majority of the board of directors, which is tasked with running the society in a cabinet democracy, which the board exercises, including 50% of the public interest and 50% consultant members who decided to stay on, realized that the allegations that Mr. Trister had made were serious. In response, we commissioned a special audit, where we expanded the scope of the audit to investigate some of the allegations. That audit opinion by an external auditor came back clean.

The Vice-Chair: Thank you, Mr. Zimmer. The time has expired.

Thank you very much for your presentation.

R.H. ASSOCIATES

The Vice-Chair: I would like to now call forward R.H. Associates, please. Good afternoon, sir.

Mr. Robert Heughan: Good afternoon, Madam Chair and esteemed members of this committee.

The Vice-Chair: You have 30 minutes to make your presentation. If you don't use that entire 30 minutes up, then there is opportunity for committee members to make comment or ask questions of your presentation. Could you please identify yourself for the Hansard and then proceed.

Mr. Heughan: Robert Heughan of R.H. Associates.

The Vice-Chair: Could you get a little closer to the mike? Thank you.

Mr. Heughan: Good afternoon again. My name is Robert Heughan. I've been a court agent for about 18 years, practising mostly in the GTA. My curriculum vitae you can peruse at your leisure. I'm not going to get into it too much, the areas of practice that I have been practising over the years. I've also worked for solicitors on a contractual basis for about 15 of those years, which I've set out in my experience in my curriculum vitae.

I'm sure that you've probably heard a lot of the points I'm going to make in these now two weeks of hearings. However, I started studying indigenous spiritual law of the Seneca Indians perhaps 20 years ago, and an elder there at the Seneca Indian lodge that I first visited back in 1991 near Cleveland, Ohio, said that you may hear the same thing again and again, but the thing is, you can learn something unique and different from it, because each of us is a different expression of spirit. What one has to say, even if it's on the same point, can be said in such a way that if you listen and you view it, you will pick up something new and learn something new again from the thing repeated. It's just a little nugget that I learned a long time ago from a Seneca Indian elder which certainly has served me well in my own life since I've been working with that.

Also, I'd like to say that it's somewhat exciting to see you all in person, because usually I see you on the TV, for instance, and to be here in person is somewhat exciting.

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Mr. Kormos: Television does add weight.

Mr. Heughan: Well, yes, it adds a little bit of weight. You look a little more trim and svelte in person, Mr. Kormos, but certainly no less dapper or vital.

The first thing I'd like to talk about, which has really been on my mind since I've been looking at the whole history of affairs of agents in court, or paralegals, as some call us, trying to organize and to get established as a professional group, is the conflict of interest issue. The Law Society of Upper Canada, which I will refer to as the LSUC throughout my presentation, has been called upon by the Attorney General of Ontario, a government minister, to regulate another private interest group which is the court agents. I think it's patent and obvious on its face that that is a conflict of interest. In the research that I've done, I haven't found any private group that at least continues to exist that has been regulated by another private group.

I think an honourable member of this committee, Mr. Kormos, actually commented on this last week—I don't know whether I'm paraphrasing exactly—that the gov-

ernment, really, and the Legislature are absconding from their responsibility to regulate us, handing it over to the law society. In fact, in the draft legislation, I see very little about regulation in there. It's kind of left ad hoc as to what shall be constructed and drafted upon after the bill is passed.

Also, I think one of the previous presenters, perhaps for the PSO—I'm a member of the PSC, which has now merged with the PSO, and they have by far the greatest number of court agent members. They've been in existence since 1987; the PSC, I think, has been in existence for about seven or eight years. They have a very comprehensive white paper about self-regulation, which includes such areas of importance and necessity as self-government, parameters of practice, discipline and regulation, registration, licensing, educational experience requirements, a fee and insurance structure, a code of conduct and ethics, and protection for the public. Everyone in the society must have errors and omissions insurance and, as I've already said, I think we're by far the one that has the most members of such a group. I think all paralegals would rather be regulated by a group which is made up of its own, as opposed to a group that's in direct competition.

I'd like to comment a little bit about cost. My learned friend Susan Koprach has told me that to get this up and running—she has been confided in about this by a spokesperson for the LSUC—would cost \$5 million to \$8 million, and that does not include the cost to administer it annually. If the PSO model were given credence by the government and we were allowed to get up and running on our own and given some seed money and tools, we'd be able to get this running. Also, that same LSUC spokesman has said that we will not be charged more fees than a lawyer. To me, that's hardly fair and equitable. Reading between the lines, that probably means that we're going to be charged just as much in terms of fees as a lawyer, and yet certainly not have the earning power to earn as much as a lawyer.

Another example I'd like to put before this committee is that the LSUC once had the management and governance of legal aid. That was taken away from the law society in 1988, and a management corporation was set up. Principally, my research shows that one of the main reasons this was done was because the law society has a record of underestimating costs. In fact—and this was taken from the legal aid website—between 1980 and 1990, as an example of a 10-year expanse of time, the total costs of administering the plan doubled from \$36.8 million to \$73.6 million, to run the plan on an annual basis.

I'd like to talk a little bit about the validity of court agents and paralegals as a profession. Mr. Chudleigh, another esteemed member of this panel, commented last week during this forum that to have the LSUC regulate us is like having Wal-Mart regulating Zellers; I trust I am paraphrasing close enough. Mr. Chudleigh is precisely right. Other professions do not have what is being proposed. I don't know of any that has a competitor

regulating. We have operated for more than 30 years with what is in place with the law regulating us. Most statutes and court precedent, as far as the procedure in whatever court or tribunal you are before, have tools for the trier of fact to exclude somebody who's incompetent. Not all, but generally speaking every court or tribunal has the ability to control its own process. They have the ability to exclude a person who's found to be lacking, or perhaps apply to a Superior Court judge to have that put into place.

There are already safeguards in place. The LSUC would have one believe that this is the wild, wild West and we're in something akin to that, but that is furthest from the truth. The thing is, we are distinct from lawyers. We approach a case presentation differently and we organize a case differently. We deliver legal services differently and at a much lower cost.

I'm sure you've heard quite a bit this week about Mr. Justice Cory's report that came out in May 2000, Dr. Ianni's report that came out in 1990, and a little bit about Professor Zemans's report. All of these individuals are highly respected and esteemed members within society, yet next to nothing of what, for instance, Justice Cory, a retired Supreme Court justice of the highest court in the land, said is actually being proposed within this legislation. That should be reviewed now.

What is the agenda of the LSUC as far as regulation is concerned? They're going to be given free rein if this bill goes through as it is. The LSUC was against most of Justice Cory's recommendations, virtually without exception, such as in the area of family law, the Financial Services Commission of Ontario, criminal law, provincial offences carrying incarceration, wills, simple real estate conveyance, small claims court appeals, landlord/tenant appeals and appeals at the first level of a provincial offence appeal. Justice Cory recommended that we be able to have carriage of those matters, but either lawyers' associations or the LSUC felt we should not appear or only appear in very restricted circumstances in these various areas.

In family law, there was a division on when a paralegal should be able to act on an uncontested divorce. Some allowance was made by the LSUC at the time of the report of Mr. Justice Cory, but there's certainly nothing about that, for instance, in this particular legislation.

At the time, Justice Brownstone at the Ontario Court of Justice (Family), what was then the Ontario Provincial Court (Family), in 2000 estimated that between 75% and 85% of litigants before him were unrepresented. Justice Zuker at the same venue estimated that 50% to 75% in his court were unrepresented litigants. The situation really has not changed much now.

As a matter of fact, in a general comment, Madam Justice Beverley McLachlin, the Chief Justice of the Supreme Court, noted very recently that—I'm not sure whether I'm commenting on her comment exactly, but it was something along the lines that access to justice is diminishing and it's becoming harder for the average

man or woman within our society to have that relief, have that access to justice, which I think is the cornerstone of society. You need to have that in a civilized society so that one can forcefully put one's argument before an impartial tribunal, before the trier of fact, in order to be dealt with in the most auspicious and just way.

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To get back to the family issue, lawyers do not fill this void to assist these vulnerable people, Justice Cory said. Often these people are intimidated by court forms, even the simplest, by court procedure, even the most straightforward, and have difficulty with either official language. They desperately need assistance, and none is forthcoming. Yet the position of the lawyers' associations and the LSUC—various lawyers' associations, and in particular the family bar—is that these people should be denied help from licensed paralegals. Justice Cory recommended that paralegals be able to act, having special training in the area. I in particular have acted in Family Court for over 15 years on leave from the justices, and I've helped people at many levels across a wide cross-section of society.

Another area, for instance: Few lawyers that I've seen actually practise on a regular basis in WSIB law. Justice Cory commented on that in his report, that that's a greatly required service, especially for assisting the injured worker—not so much companies, because they have the resources and money to have a lawyer, but injured workers.

Justice Cory commented throughout his paper that there are many paralegals who are competent, dedicated and reliable, and that remains today at large. The late Dr. Ianni, the former professor of Osgoode Hall Law School—and I think at the time he wrote his report, in 1990, he was dean of the University of Windsor law school—recommended more or less the same parameters, except that Dr. Ianni was a little more liberal in what he thought paralegals should do with representation in criminal court.

Mr. Zimmer: Small-l.

Mr. Heughan: Pardon?

Mr. Zimmer: Small-l liberal.

Mr. Heughan: One of the things Dr. Ianni said was that he felt the Ministry of Consumer and Commercial Relations—and I think Dr. Ianni had it right—should be the one to be regulating us.

The foregoing was put forward to emphasize that paralegals/court agents are a valid profession within the court system. They are not simply assistants to lawyers.

Given that we are a competitor but giving a different service than that of a lawyer, why should we be governed by lawyers? Who wants this legislation reflecting that point? I don't believe it is in the paralegals', nor the public's, best interests.

Both Dr. Ianni and Justice Cory emphasized—and I believe this quote that I've written is from Mr. Justice Cory's report—that it is of fundamental importance that paralegals be independent of both the LSUC and the province of Ontario. However, Justice Cory agreed with

the LSUC that perhaps the governing body should be modelled after the Legal Aid Ontario corporate model. Justice Cory further emphasized that the governing body must be able to function independently of the province and the LSUC.

I'd like to comment briefly on some other professions. For instance, a good example is denturists and dentists. In 1973, with then-Bill 246, groups that wanted better dental care were calling upon dentists to provide reliable, well-fashioned dentures at a better cost, and the dentists at the time responded that they would start with denture therapists and provide a cost-effective denture. The denturists at the time were filling this void and dentists were attempting to destroy the legitimate domain of denturists. After many years of fighting, the denturists were given full licensing in 1993, with full scope of practice as an independent profession.

I think the fight there is somewhat analogous to ours, in that we've been providing service in many areas where lawyers also provided service in the past but no longer do so, either because there is no interest or because it is not cost-effective. With a lot of what I do, some of the lawyers I am associated with or know are not interested in providing these services. In the comparison, as the denturists did and do, paralegals/court agents now fill a void. Then, with the dentists in the dental industry or the dental profession of service, the denturists came along to fill a void by giving a professional denture, something that the dentists weren't providing very well.

Other areas of interest are the doctors and the other health care providers; I've listed a number of them in my summary. Likewise, in the health care field, there are many who do aspects of what doctors did but no longer do because they don't have interest or it's not cost-effective—and the doctors are trained to do more complex and highly involved things—such as midwives. Midwives deliver babies. A lot of people in society want the choice of being able to have their baby brought into the world with a midwife, outside the hospital, and they want the expertise of a midwife.

Respiratory technologists take care of very sick people at times. They monitor respiratory and cardiovascular disorders. Often, people with these disorders are very ill and their condition can be life-threatening. They also may provide emergency services such as intubation for an artificial airway to keep a patient who's in distress alive, with suctioning to keep the trachea or lungs clear and monitoring of mechanical ventilation for those who require assistance to breathe.

Others who work side by side with doctors but have their own governing bodies are nurses, chiropractors, chiropractors, naturopath doctors, dietitians, massage therapists, medical lab technologists, medical radiation technologists, optometrists, opticians, occupational therapists, physiotherapists, psychologists, pharmacists—to name some who provide health care in a health care team and all have their own regulations.

Another group where there are several different types of people providing services is the accountants. We have

chartered accountants, certified general accountants and management accountants, all providing a niche within the accounting services.

So, to me, the ultimate question is, why is law so different from the medical or dental field that we have to have but one regulator? There is no doubt the PSO or another body could easily come up with a scope of practice governing rules and regulations for paralegals and court agents. All we need are the tools and to be given a chance by the Legislature.

It is my submission that the LSUC professes that a prime plank of their driving force in this legislation is to protect the public from unscrupulous paralegals. The LSUC has not been able to protect the public from unscrupulous lawyers. I have people in my office almost on a weekly basis complaining about how they felt they were dealt with improperly by a solicitor. This bill is not about the lawyers protecting the public interest; it's about lawyers protecting their own interests, in my view. That's the crux of it.

As far as my presentation goes, what I would like to leave you with is that if you sit with this, there is an over-reaching; it is just not fair and equitable. We can always look at something from our self-interest. We exist as individuals, but we also exist in the greater picture. We collectively, together as a society, are moving forward, so that the whole is considered as apart from any particular group controlling other groups. It needs to be arrived at by the whole and for the greater good of the whole. I say that if you look at it from that point of view—and I would urge the members of this panel to look at it that way—you can see that the way this legislation is coming into being at the present moment and what is within it is not in that fair and equitable and wider view.

There are a couple of other things too that I'd like to put on the record, which I've heard some of my previous colleagues in different areas talk about.

As far as the PPAO is concerned, the PPAO was a conglomeration of a number of different paralegal societies, and it was brought into being, I think as Mr. Dray said in his presentation the other day, to try to bring a consensus upon all different groups of paralegals. But in October 2005, Mr. Parker—I'm not sure what position he held at that time—had written a letter to the insurer saying, "We don't need insurance any further because we're going to be disbanding. We're not going to be continuing on." Then, in fact, the members voted to dissolve because they did not like the direction that their executive was taking them. That vote was taken on January 14, 2006.

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The members who came to the PPAO were already existing, and by and large all of those members already had E&O insurance before they even came to join the PPAO. I'm just putting forward that point because those are the facts of the matter.

I would say that if we were given the chance to regulate, I think it would be in one of two ways. Either we would be given two years to go forward and perhaps have the same route as the real estate agents did—have a

paralegal registrar who is part of the ministry of consumer and commercial relations or of government services help us along with regulation to come into place for two years, and then at the end of that have the full working model in place and go forward in that way—or, I think six months has been put forward. Some of my colleagues said that number has been banded around. That would be fine if all the players were brought to the table who needed to be, such as participants from the government, participants from the law society, and each segment was given time limitations that it had to be done by, so that at the end of six months it was done and there's no shotgun clause that upon default the reins of this regulation be given back to the law society.

If there's any time for further questions, that would be the sum of my submissions, and I thank you.

The Vice-Chair: Thank you very much. We have five minutes remaining, so I'd say we start with the government side.

Mr. Zimmer: Thank you very much for your presentation and the material.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mr. Heughan. You are the final submission from the public in these hearings. It's an unenviable position. I suppose you're sort of like Elizabeth Taylor's last husband: You know what it is you're supposed to do; you're just not sure how to make it exciting. But I do compliment you, because you've managed, notwithstanding that you've underscored what so many have said, to bring some yet additional insight into the issue.

I think one of the problems the government has, and perhaps the law society shares it with the government—because let's understand: The Attorney General asked the law society to undertake this regulatory role; that appears to be very much the case. I don't fault the law society for having agreed to this request from the Attorney General. The problem is the clear, clear statements by Ianni back 16 years ago, commissioned by the last Liberal government, and by Cory in 2004. And you can disagree, and there is disagreement, obviously, about, for instance, Cory's recommendations in terms of scope of practice, right? But the fundamental observation that both made about the inherent, basic—be it real or perceived—conflict of interest is a pretty big hurdle to overcome, I submit. This is where I agree with you.

What I find interesting is whether or not over the course of the next several days there will be opportunities undertaken by the government to overcome the reality or even the perception of bias by altering things like membership, things like voting rights, things like the number of benchers, or perhaps recognizing that the government has a role in regulating to the point where paralegals can become self-regulated.

I thank you very much for your comments and your patience over the course of several days here.

Mr. Heughan: Okay, thank you. I'd like to add that I'm not anti-lawyer. I have many friends who are lawyers. There are many lawyers who are members of the bar of this province who do a great job, and I've worked

with them. As with any other profession, they have some bad apples. We have some bad apples. Most paralegals want to be regulated, but they want fair regulation. As a matter of fact, some of the tenets of what our white paper is concerned about—we're taking it from the model that the law society has. The problem, the way I see it, is that the lawyers want the whole power; they want their pie, to keep it. The universe is plentiful. There's enough for everybody.

Mr. Kormos: And it seems to me that one of the core differences, when you scrape away all the other stuff, is around scope of practice. That's why it's of some con-

cern that we won't just come clean here and now in a public forum, the Legislature, and talk about scope of practice. That's just an observation.

Mr. Heughan: It would be a good idea.

The Vice-Chair: Thank you very much. We certainly want to thank you for attending at such a late hour of the day.

This committee is now adjourned until Wednesday the 20th at 10 a.m.

The committee adjourned at 1726.

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