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**Official Report
of Debates
(Hansard)**

Tuesday 18 June 2002

**Journal
des débats
(Hansard)**

Mardi 18 juin 2002

**Standing committee on
justice and social policy**

Portable Heart
Defibrillator Act, 2002

Marriage Amendment Act, 2002

**Comité permanent de la
justice et des affaires sociales**

Loi de 2002 sur les défibrillateurs
cardiaques portatifs

Loi de 2002 modifiant la Loi
sur le mariage

Chair: Toby Barrett
Clerk: Tom Prins

Président : Toby Barrett
Greffier : Tom Prins

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 18 June 2002

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 18 juin 2002

The committee met at 1533 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Toby Barrett): Welcome, everyone, to this regular meeting of the standing committee on justice and social policy for Tuesday, June 18.

The first item on our agenda will be the report of the subcommittee dated June 13, 2002.

Mr Marcel Beaubien (Lambton-Kent-Middlesex): Do you want me to read it for the record?

The Chair: Yes, please.

Mr Beaubien: Report of the subcommittee, which I will move:

Your subcommittee met on Thursday, June 13, 2002, to consider the method of proceeding on Bill 51, An Act to help save the lives of Ontarians who suffer from cardiac arrest by promoting the widespread availability and use of portable heart defibrillators in public places; and Bill 74, An Act to amend the Marriage Act, and recommends the following:

(1) That the committee spend 15 minutes on Bill 51 as the first order of business on June 18, 2002.

(2) That the committee then proceed to consider Bill 74.

(3) That the Ministry of Consumer and Business Services and the Ministry of the Attorney General be offered 75 minutes on June 18 to address Bill 74 and to answer questions from the committee.

(4) That the committee schedule public hearings in Toronto in the remaining time on June 18 and 24.

(5) That the committee have one day of clause-by-clause consideration on June 25.

(6) That each party submit a list of witnesses to be invited to appear before the committee on or before Thursday, June 13, at 2 pm.

(7) That the clerk undertake to create a balanced set of hearings from the names provided from the parties and from any witnesses that call the clerk's office directly.

(8) That if there are unscheduled time spots on the agenda, the clerk will seek direction from the subcommittee members.

(9) That the clerk place an advertisement on the Ontario parliamentary channel.

(10) That groups and individuals be offered 15 minutes in which to make their presentations.

(11) That the Chair authorize the payment of reasonable requests by witnesses to have their travel expenses paid.

(12) That the research officer prepare a background paper containing information on other jurisdictions, current practices and other pertinent information.

(13) That the clerk be authorized to begin implementing these decisions immediately.

(14) That the information contained in this subcommittee report may be released to interested parties immediately.

(15) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of these bills.

The Chair: Any debate on this report?

Mrs Lyn McLeod (Thunder Bay-Atikokan): I just have a question of the clerk. Were there sufficient witnesses' names presented that we are going to continue public hearings on the 24th, or does this conclude—

Clerk of the Committee (Mr Tom Prins): Yes, and you have the agenda.

Mrs McLeod: For the 24th? OK.

The Chair: Mr Levac.

Mr Dave Levac (Brant): Same question.

The Chair: Any further debate on this report of the subcommittee?

Shall this report be accepted by the committee? I declare this report accepted.

PORTABLE HEART
DEFIBRILLATOR ACT, 2002LOI DE 2002 SUR LES DÉFIBRILLATEURS
CARDIAQUES PORTATIFS

Consideration of Bill 51, An Act to help save the lives of Ontarians who suffer from cardiac arrest by promoting the widespread availability and use of portable heart defibrillators in public places / Projet de loi 51, Loi visant à contribuer à sauver la vie des Ontariens qui souffrent d'un arrêt cardiaque en promouvant la disponibilité et l'usage généralisés de défibrillateurs cardiaques portatifs dans les lieux publics.

The Chair: The next order on the agenda is debate on Bill 51. I understand from the report of the subcommittee that we would spend 15 minutes discussing Bill 51.

Mr Peter Kormos (Niagara Centre): Chair, I wonder if you could explain what happened with Bill 51. It's

strange, because it seems to me that this committee spent considerable time on it and now I just find it peculiar that the bill is back before the committee. What happened?

The Chair: Why has it returned to this committee?

Mr Kormos: Did somebody make a mistake?

The Chair: I think I would ask the clerk if he has some details.

Mr Kormos: I trust your word on this, Chair. We don't have to bother the clerk.

The Chair: I don't have the details on this, Mr Kormos. So I would like to ask the clerk for a brief explanation, and then I will go to Ms McLeod.

Clerk of the Committee: The committee did have two days of public hearings on Bill 51 and proceeded with the clause-by-clause process. The committee defeated all amendments to this bill and then defeated all sections in the bill. The committee then reported that the bill not be reported. That report was not received by the House, so the bill is back before this committee and, as the Speaker indicated, it's up to the committee members to really decide how to proceed.

Mr Kormos: As I recall, this committee was at least in Ottawa—am I correct in that regard?—with respect to this bill, at considerable expense to the taxpayer. Then, as I recall it, they were recorded votes. They may or may not have been, because I know I had to be absent during some of the voting. But the government then defeated every section of the bill, including the title of the bill, gutting the bill after spending all that taxpayers' money going to Ottawa, among other places, and didn't even let the bill go back to the House to be considered for third reading, because it's the government that has the power to call. Is that correct? Is my understanding correct in that regard?

The Chair: I attended the hearings in Ottawa.

Mr Kormos: How much money did it cost to travel to Ottawa with the committee? Do we have an estimate of that?

The Chair: We could get those dollar figures in a few minutes, if you wish.

Mr Kormos: I would appreciate that.

The Chair: Shall I go on to Ms McLeod?

Mr Kormos: Yes, sir, please.

Mrs McLeod: I trust that my colleague who originally presented this bill will speak to his frustration with the process that we've been through. But the comment that I wanted to make was, first of all, I'm not sure what it is we're debating since what we have in front of us, technically, after the last round of committee clause-by-clause, is a blank piece of paper. The process that the clerk has just been forced to describe—if any sane person from outside this place was hearing that description, he would be asking the question we should all be asking: what does it mean to virtually take a blank piece of paper and report that it not be reported and have that non-report not accepted by the House and referred back to committee? I've been here for 15 years and I have no idea what we've just done.

1540

But what frustrates me—and my frustration will be less than that of my colleague who proposed this in the absolute conviction that what we were talking about here is exactly what we were talking about in the title that this committee saw fit to defeat, which is that we would be helping to save the lives of Ontarians who suffer from cardiac arrest. The frustration is that that bizarre process is actually reflecting on a bill of this kind of significance.

It would be interesting and rather appalling if we could see the statistics on people who have died of cardiac arrest in potentially high-risk situations that could have been identified, where defibrillators could have been in place, since the committee made a mockery of this bill. I think we need an explanation from the government as to why they have made a mockery of this process.

Secondly, what is this government prepared to do, having turned this into a sham, to take the very serious, important issue of the further provision of defibrillators in public places to some kind of next step? Surely it is now the government's responsibility, having played this kind of game with what started out as a very serious piece of legislation in the interests of the health of Ontarians.

Mr Levac: The concern I have is that when the clerk described the final step we are now facing—and if I'm understanding this correctly, the purpose is to get this back into the House. If that's the case, this debate should be based on what actions we can take to get this bill back into the House. I would be open to receiving direction as to how we can get virtually a blank piece of paper reported back into the House so that we get an opportunity to at least let the entire House know how the bill that was described very eloquently by my colleague ended up becoming a blank piece of paper, so that the entire House, and therefore the rest of the province of Ontario, knows that.

Quite frankly, I would like to know, and need to know, the logic behind, first of all, reporting back to the House—I think I heard this right—that there's no report to be made on a bill that was stripped of its usefulness and then we bring it back into this committee to put it back into the House again. If we're going to do that, what is the purpose? What are we trying to accomplish today? If it's simply to report back again another blank piece of paper, I think we're still wasting time. I would ask for guidance in terms of what exactly we're supposed to be doing right now in this discussion.

Mr Kormos: If I may, Chair, this is rather Kafkaesque. Who was the Chair at the time this happened? Surely the Chair had control of the process and wouldn't let anything as silly and as irresponsible take place as what took place. I appreciate that it wasn't you, but who was the Chair at the time?

The Chair: I can explain. The Speaker in the House—

Mr Kormos: Just who was the Chair? I know it wasn't you, but who was the Chair at the time?

The Chair: The Speaker in the House was the Honourable Gary Carr.

Mr Kormos: No, no, the Chair of the committee.

The Chair: I was the Chair of this committee.

Mr Kormos: Oh, you were? I'm sorry. My apologies.

The Chair: To further explain, at your direction I did present the report of this committee to the House. Circumstances ensued in the Ontario Legislature and I will quote in part from the Speaker, who indicated, "The report will go back to the committee. Those who are members of that committee can then redecide what to do. It is now in the committee's hands.... I understand that this may be one bill that is non-controversial and may have support. If that is the case, then the House leaders hopefully will be able to get together...."

I quote in part as well the Speaker's concluding remarks: "—the committee needs to be able to decide. My hands ... are tied in this instance ... it's back in the committee's hands and it is their responsibility." As I understand it, here it lies.

Mr Hardeman, did you have a comment?

Mr Ernie Hardeman (Oxford): Yes. I didn't have the opportunity to serve on the committee that heard this bill the first time, but I did read the Hansard from all the travelling and the process that the public hearings went through to deal with the bill. I guess it's one of the anomalies that comes out of a process like this. Obviously as a committee you go to hear what the public has to say about the bill. After hearing from all the presenters, it appears that the committee decided, clause by clause, that there was nothing in the bill that they were supporting—

Mr Kormos: On a point of order, Mr Chair: Let's make it clear. It was the Conservative members of the committee who did this to the bill, none of the members of the opposition.

The Chair: That's not a point of order.

Mr Hardeman: I didn't say which members of the committee. The majority of the committee went that way, Mr Kormos.

I have a question on process, as to how one could word a presentation to the Legislature that brings in a bill regardless of what's left of it or not left of it, that would say we are not reporting. Is that not the process of reporting? Would it not have said, "We are reporting what's left," which is nothing, as opposed to saying, "We are not reporting nothing"?

Mr Kormos: Very Nietzschean.

Mr Hardeman: I don't understand the process—

Mr Kormos: I know.

Mr Hardeman: —of the words "reporting" or "not reporting." It would seem to me that at the end of a committee process you always report whatever the committee decided.

Mr Mike Colle (Eglinton-Lawrence): They usually do.

Mr Hardeman: But in this case it's still reporting that the committee decided the bill should not be proceeded with.

Mr Kormos: You guys reported nothing.

Mr Colle: You reported a blank piece of paper. There's no bill left.

Mr Hardeman: The only thing the committee recommended to be proceeded with was a blank piece of paper.

Mr Colle: Yes, right. That's what we still have: a blank piece of paper.

Mr Hardeman: The committee decided that there was nothing in the bill that should be proceeded with.

Mr Colle: Not even the title.

Mr Hardeman: That's what they've decided.

The Chair: Order.

Mr Colle: That's what you guys decided.

Mr Hardeman: That's what the committee decided in a vote.

The Chair: Order, please. I'll go to Ms McLeod. Mr Colle, did you wish to make a comment as well?

Mr Colle: Yes, sure.

Mrs McLeod: I'm glad Mr Hardeman corrected what would have appeared in the record from his earlier statement, which was that there was nothing in the bill—he's now said nothing in the bill that the majority of the committee chose to proceed with—because there was a great deal in the bill. There was in fact far too much in this bill for the government members to be prepared to accept because it was perhaps more extensive. It went beyond what the government felt they would be comfortable with.

However, having sat through much of the hearings on this bill, I want to make it very clear that while there were some concerns with the bill, there was also considerable support for it and a considerable body of evidence presented in terms of the effective use of defibrillators in places where municipalities have chosen to place them and the fact that those defibrillators have saved lives. Those are statistical facts and they need to be recorded on the record again.

It should also be recorded for the sake of this meeting that not only was each clause of this bill defeated but so were Liberal amendments, because my colleague was more than willing to modify this bill. If it went too far for the government to be comfortable with, we were prepared to amend this bill in ways that would have made it something that would at least have taken the process of putting defibrillators in public places. Even if it was just here in this government building, that would have been a first step. It would have been some sign of interest in pursuing what is widely recognized as being in the public interest.

Would it be possible to do it all at once? Were there cost implications beyond what the government was prepared to condone? Yes, OK, but we could at least have taken a first step. It would have been possible to take this bill, to amend it and to put something in place that could be reported back to the House. Even if it was nothing more than, "The Ministry of Health and Long-Term Care"—section 3 that used to be in the bill—"shall develop and publish guidelines on the use and maintenance of portable defibrillators in co-operation with appropriate health and emergency service stakeholders."

How could that possibly have hurt? One of the things we heard was that defibrillators need to be operated under very clear conditions. Why wouldn't the government have been prepared to accept some responsibility for at least putting safety precautions in place?

Mr Chair, unless the government is prepared to reconsider its clause-by-clause consideration—and I'm not sure of the conditions under which we can do that—I would suggest that we draft a report that can be reported to the House. That report should indicate very clearly that this committee, with a majority of government members—and I think those were all recorded votes—voted to defeat each clause and each amendment and failed to put in place any amendments that would allow the bill to go forward.

1550

Mr Colle: I appreciate the opportunity. I should mention in recollection that I know the member from Ottawa West, Mr Guzzo, was very supportive of the concept of the bill, and we had excellent deputations in the city of Ottawa from I think one of the premier paramedic response teams in North America, and that's the city of Ottawa's EMS.

As my colleagues on this side of the House said, the vast majority of people—I think, Chairman, you will recall—were in favour of introducing this life-saving technology, which basically allows portable defibrillators to be used in public places like this precinct. Oddly enough, the other day when one of the members of the precinct unfortunately passed out, one of the Tory members was heard to say, "I wish we had a defibrillator here." We still don't have one here, which is disgraceful.

It was also about putting these life-saving devices in rural parts of Ontario. That's where I thought they really should start, where the emergency response is a half-hour away. It would save lives—at least give people an opportunity to have their lives saved.

I think in many ways this bill is very non-partisan. In fact, based on the deputations we heard here and in Ottawa, I even made amendments to the bill that asked for the government to start some very minor steps toward introducing this type of life-saving technology in public places.

As you know, the committee leadership, the government whip on the committee, I think it was Mrs Molinari from Thornhill, basically was given the orders to vote against everything, even the title of the bill. That's not only an affront to all members of this House; it was an affront, really, to all the people—I mean, we had people come here from Sudbury, from all over Ontario. They made deputations here to be heard. By killing the bill and leaving a blank piece of paper, all of that record is gone. So it's really an affront to the people who in good faith—I know Mr Beaubien will remember—came here.

It was really a travesty, the way this bill was treated in that it was a modest attempt to put something on the public agenda which is good public policy. Really, now that it's a blank piece of paper, I don't think there's any other thing to do but in essence start the process all over

again. I think the Speaker indicated this had never happened in the history of this Legislature, where even the title of a bill was defeated. It has never happened.

In fairness, Mr Chairman, I would implore the committee to respect all the people who came here and made—there were medical doctors; I had Judge Monte Harris from Toronto city hall begging us to put defibrillators in Toronto city hall, because he's afraid of people not having this device there. For the first time in the history of the Legislature, a sitting judge was given permission by the Ontario Superior Court to make a deputation, and you're laughing at him too, by the way you treated this bill. Mrs Molinari should be ashamed of herself in the way she disregarded sincere deputations, even defeating the title.

I think the only fair thing to do is to restart the whole process and get the deputants back in here, because in essence you can't now proceed, because you've got nothing to proceed over, because there's nothing here. I don't know how you can deal with, in essence, a blank piece of paper, as everybody said.

The Chair: The subcommittee did report back 15 minutes to this. Very briefly, Mr Levac and then Mr Beaubien.

Mr Levac: There's not much more I can add to what my colleagues on this side have said about the bill itself, but I am concerned that we still need to follow the concept and the precept—

Mr Kormos: On a point of order, Chair: The bells are ringing. I believe this committee must suspend itself in order for members to vote.

The Chair: I think the bells have stopped.

Mr Kormos: The vote has just been deferred.

Mr Levac: Should I continue, Mr Chair?

The Chair: Yes, briefly, and then Mr Beaubien.

Mr Levac: Thank you. I will be brief. I guess my train of thought was to ask the direction of the Chair and clerk as to the directions you read to us regarding the Speaker. Bringing it back to this committee, the implication in my mind was that something needed to be done by this committee in order to forward a report that's acceptable to the House. That being said, I would seek that direction—

Mr Kormos: On a point of order, Chair: What is going on? The assembly just adjourned the House.

Mrs McLeod: I suspect it's been adjourned, which means we probably can't sit, can we?

Mr Kormos: Have you guys not got a House leader? Who has adjourned the House so that this committee can't sit? Who's done that?

Mrs McLeod: Mr Chairman, is it in order to move a motion that outside the hearing we could hear from the witnesses who've come forward today so that we don't lose the benefit of their presentation?

The Chair: I've asked the clerk to confirm what's happening. I don't believe everything I see on television.

Mrs McLeod: I suspect that what's happened is that the Leader of the Opposition has concluded his speech on the budget and that there are no further orders of the day for today. I think we have a dilemma. My concern with

the committee is that we can resume our debate on Mr Colle's bill, but we have witnesses here that I suspect have come some distance to present today.

The Chair: I would like to call a two-minute recess and we'll find out.

The committee recessed from 1557 to 1601.

The Chair: The House did adjourn for the afternoon; however, the standing committee can continue. I would suggest, if there is any further discussion with respect to Bill 51, that it be raised in the subcommittee. The allotted time is completed.

Mr Levac: On a point of order, Mr Chair: To ensure this is correctly handled, that means it will just sit in abeyance until the subcommittee; it doesn't mean it goes away because we've expired the 15 minutes. Is that correct?

The Chair: I understand that this bill is still the responsibility of the standing committee. I would suggest, if there is further discussion, that it be in subcommittee.

Mr Kormos: On a further point of order, Mr Chair: What is before the committee? Is there a bill with a number?

The Chair: I have—

Mr Hardeman: Mr Chairman, upon investigation I find from the Clerk's office that in fact the original bill is back with the committee.

Mr Kormos: What original bill?

Mr Hardeman: Bill 51.

Mr Kormos: How did the original bill come back to committee?

Mr Hardeman: According to the Clerk of the Legislative Assembly, the Legislative Assembly sent the original bill back, even though they didn't have it.

The Chair: The Speaker did indicate that this bill is back in the committee's hands and is the responsibility of the standing committee. Those are his final words.

Mr Kormos: Then I submit that we schedule some hearing dates for it. It's the responsible thing—

Interjection.

Mr Kormos: No. Let's do it here. Let's get this thing going.

Mr Hardeman: In the subcommittee report—and I stand to be corrected—we were to spend 15 minutes discussing this topic, and then we were to move on and have depositions on Bill 74.

Mr Kormos: On a point of order, Mr Chair: This committee is entitled to organize and conduct its own business. There isn't a time allocation motion that binds the committee at this point. The committee is empowered and entitled to set business. I submit that we start setting business for the weeks following next week, when this House may or may not be sitting, to accommodate this bill.

The Chair: With respect to public hearings, I understand that our schedule—there's a good chance we will complete before 6 o'clock; can we return to this item at that time?

Mrs McLeod: In the event that we don't, would you indicate how we will proceed? As I understand what Mr

Hardeman has said, this bill is now before committee. It forces a reconsideration of the bill. If we don't get an opportunity to deal with that before 6 o'clock, will you undertake to call a subcommittee meeting so we can arrange—

The Chair: That would be the option. I suggested just previously that it go to the subcommittee.

I declare this order of business closed.

MARRIAGE AMENDMENT ACT, 2002

LOI DE 2002 MODIFIANT LA LOI SUR LE MARIAGE

Consideration of Bill 74, An Act to amend the Marriage Act, 2002 / Projet de loi 74, Loi de 2002 modifiant la Loi sur le mariage.

MINISTRY OF CONSUMER AND BUSINESS SERVICES

The Chair: I wish to call forward the Ministry of Consumer and Business Services. I would ask you to give us your names, please.

Mr Barry Goodwin: My name is Barry Goodwin, director of policy at Consumer and Business Services.

Ms Victoria Vidal-Ribas: I'm Victoria Vidal-Ribas, director of legal services at the Ministry of Consumer and Business Services.

Ms Anne Marie Predko: My name is Anne Marie Predko. I'm counsel with the Ministry of the Attorney General.

The Chair: Please proceed.

Mr Goodwin: Thank you, Mr Chair and members of the committee, for the opportunity to speak to you today about Bill 74. We have some brief comments to make, and then Victoria and myself and our colleagues would be able to answer any technical questions or other questions you may have.

In Ontario, individuals can be married in either a religious or a civil marriage service. Currently, civil marriage services are only provided by judges or justices of the peace.

Bill 74 proposes to add the office of marriage commissioner. Marriage commissioners would provide civil marriage services in Ontario.

Allowing for additional civil marriage service providers would appear to be a straightforward way to enhance the public's access to marriage services. The mechanism to provide this improved access must put in place accessible, well-trained individuals who will provide quality services to the people of Ontario.

To date, MCBS has not been made aware of a significant public demand for increased access to civil marriage services. Over the past several years, the ministry has received only a small number of letters from couples expressing concerns about their ability to find a judge or a justice of the peace to perform a civil marriage ceremony. The majority of them are from couples from

outside Ontario seeking marriage services here in Ontario. More letters have come to us from individuals who would like to become marriage commissioners, who indicate there is a local demand in their area for increased access to civil marriages.

On average, about 66,000 marriages are solemnized in Ontario every year. This figure has been stable for approximately the last decade. Of these marriages, approximately 5% are civil marriages, the rest being religious.

Bill 74 would increase access to civil marriage services through the creation of marriage commissioners. The bill leaves the ministry with some questions and concerns about the framework for marriage commissioners to perform their functions. For example, who should become marriage commissioners, what are the appropriate criteria to become a marriage commissioner and how would marriage commissioners be trained to meet the legal requirements of the civil marriage service? The issue of fees, the appropriate fees to charge and who would determine the amount of a fee would need to be determined.

There is the potential for a lack of solemnity in conducting marriage services, leading in extreme cases to Las Vegas-style weddings, drive-in chapels or skydiving marriage ceremonies. There are some concerns about how marriage commissioners might be remunerated, the registration of marriage commissioners, how compliance with the Marriage Act would be overseen and enforced, how inadequate marriage commissioners would be investigated and disciplined, and how complaints about civil marriage ceremonies would be addressed. This is not at all an exhaustive list but just indicates some of the significant policy and operational issues that will need to be addressed.

One of the Ministry of Consumer and Business Services' important mandates is protecting Ontarians in commercial transactions in other contexts, like public safety. Protecting the public is also an important feature of civil marriage services. Entering into marriage is obviously a serious step with significant legal and other implications for both parties. Of course, most couples entering into marriage see this as a critically important life event.

Proof of marital status is required for a number of legal and financial transactions. Providers of civil marriage services need to ensure that the couple to be married meets the legal requirements for marriage, including being of the proper age, not being intoxicated, not being under duress and so on. If this is not the case, they must challenge the couple and have the fortitude to refuse to conduct the service, if that's appropriate.

Given the significant implications that flow from entering into marriage and the importance that society and most couples place on marriage, the rationale for creating marriage commissioners must improve public access to quality civil marriage services but do so in a way that recognizes the solemnity and importance of marriage in our society, and it must avoid the potential for degradation of the institution of marriage.

Protecting the public interest requires an appropriate regulatory regime for the appointment and overseeing of civil marriage service providers. At a minimum, an appointment mechanism needs to include a set of criteria or qualifications for appointment, an orientation and training plan, a mechanism for performance management and disciplinary action if necessary.

Any process by which individuals are selected and appointed to a position of public responsibility, such as marriage commissioners, that includes the authorization to collect payments and funds for services must be perceived as a fair, transparent, accessible, open appointment process to avoid allegations of conflict of interest or patronage, and the appointment process itself must meet these tests of fairness.

1610

Implementing a regulatory regime for marriage commissioners could involve significant costs and resources to the government. Bill 74 anticipates the appointment of six marriage commissioners per electoral district, or a total of 618 marriage commissioners for the province. This would represent approximately a 30% increase in the workload of the public appointments secretariat, with a similar impact on the work of cabinet and cabinet committees to process orders in council. Additionally, we would need to cost out and consider the expenses in setting in place a governance structure, recruiting appropriate marriage commissioners, ongoing orientation, training and the investigation of disciplinary matters.

Our concern is that it is not yet clear to us that there is sufficient public demand for increased access to civil marriage services to justify such an expense. However, if the government is assured that the government needs to create better access to civil marriages, there are mechanisms to provide such access currently within the Marriage Act. The Marriage Act provides that judges, justices of the peace and "any other person of a class designated by the regulations may solemnize" civil marriages. So the ministry has the capacity to select a specific pre-existing, identifiable group of persons who could be prescribed and authorized to solemnize civil marriages by way of regulation.

There are some advantages to this approach, in that it is more quickly and easily implemented and in that there are classes or groups of individuals that have a governing body or accountability framework that could assist with compliance and disciplinary matters. Most likely this would be a lower-cost solution to the government.

Another option would be to entertain amendments to Bill 74 to provide the appropriate legal framework to the Ministry of Consumer and Business Services to establish a new class of marriage commissioners and the appropriate regulation-making authority to put in place the appropriate framework to regulate marriage commissioners in the future.

If it is indeed the will to increase access to civil marriage, the government has a couple of mechanisms it could use to further that objective, keeping in mind the cost considerations and the issues around public pro-

tection, and the business case would need to be examined and determined by the government.

That's the extent of my prepared comments.

The Chair: Before we commence, in the subcommittee we were allocating 75 minutes. Did you wish to have questions now and then proceed with a continuation of this ministry's presentation?

Mr Kormos: It might be helpful for everybody, including these people, to put them now, unless these people object.

The Chair: Let's proceed. Mr Kormos, then Mrs McLeod.

Mr Kormos: I heard your list of, I guess, caveats, including, who's going to train these people and what about remuneration? I was very interested in your concern about patronage. You should be here when the committee screens appointments to government positions. As a matter of fact, we'll be reading your comments into that committee process.

But who trains clergypeople? Who controls the remuneration of clergypeople? It seems to me that if you don't have a training program for clergypeople—I acknowledge that ordained clergypersons can come from either very sophisticated, complex structures, where there might be internal training within that church about the Marriage Act etc, or I'm well aware of clergypeople from far more informal grassroots types of religions that don't have that hierarchy.

Similarly, remuneration: you don't exercise any control under the Marriage Act over the remuneration to be given to a clergyperson.

Thirdly, you talk about section 24 and the regulation power, and it's true; it's there. Why hasn't the government, for instance, regarded retired judges as a class of persons who could perform marriages? Because all the caveats you issued are non-existent with retired judges. Surely the one thing the ministry isn't saying is that there isn't a demand or a need. I'm talking about demand and need. One, there are people who want civil marriages. You didn't mention the restrictions placed on justices of the peace in terms of access to a JP, and judges have even more restrictions, because judges, as I understand it, have to seek the permission of their Chief Judge or senior judge. Similarly, JPs have to jump through hoops, and JPs, as you probably know, and judges, have got case-loads and dockets coming out of their ears.

Ms Vidal-Ribas: Mr Chair, would you like answers to the questions now or would you like us to hold them until later?

The Chair: No. We'll do some questions now and then we'll go back to the formal presentation. We just like to intersperse it with some questions.

Ms Vidal-Ribas: Thank you, Mr Chair. Mr Kormos, I'll start off on the answer to this question and my colleague Mr Goodwin will help me out.

In terms of who trains clergy, it's a two-stage process to be authorized to solemnize marriage as clergy. First, the denomination must come forward to the Office of the Registrar General and set out a number of things, in-

cluding what the rites and usages are, how open and transparent the process is, what the training is and so and so forth. So the denomination must first be approved by the Office of the Registrar General.

That step having been taken and the denomination having been approved, then, if for example Barry Goodwin wished to be a solemnizer for a particular denomination, his application would be sponsored by the denomination subject to certain terms and conditions. So the control we have there in terms of public protection, discipline and accountability for the actions of the solemnizers lies with the denomination, and they provide that service on behalf of the solemnizers, and the Office of the Registrar General relies on the denomination.

From time to time we will receive a request from a denomination that someone's authority to solemnize be revoked because they are not performing according to the rites and usages. So we have that control there with the denomination. I think it's fair to say that it is something that the Office of the Registrar General takes a rigorous look at, and denominations have been turned down because of the insufficiency of their process and their materials.

In terms of remuneration, we do have a regulation that provides for a fee of \$75. So that is provided for by regulation.

In terms of classes of persons already, with the judges and the JPs there are admittedly certain restrictions in terms of hours for judges and so on. Clearly these are justice officials. My colleague from the Ministry of the Attorney General will speak to the issue a bit more in terms of their obligations to perform justice services such as bail hearings and trials and so on.

We have used the regulations for classes previously a couple of times, I believe, to include people who wish to come into Ontario to provide marriage services. So for example, a judge from out west may wish to come and marry a niece or a nephew here, and we've created a class for that situation.

In truth, Mr Kormos, what we have found is that we have not received in the ministry a demand for these services. In fact, the deputy registrar general has done some research into this, because she is concerned that the marriage services be adequate to the demand out there, and she has looked at the kinds of requests we've had. As my colleague Mr Goodwin has mentioned, the requests we get are largely from individuals who wish to be solemnizers and very minimal requests from individuals saying, "There is no access to civil marriages and we feel thwarted in this regard."

Mr Kormos: I've got the regulation before me. It regulates the fees paid to section 24 solemnizers, not to clergy people. Correct me if—because I have the one reg that regulates fees paid to section 24 solemnizers, but I don't have the regulation that regulates fees paid to section 20 solemnizers.

Ms Vidal-Ribas: Our apologies, Mr Kormos. My colleague is just looking for the reference.

The Chair: I'll go to a second question from Mr Murdoch while we're getting that information.

Interjection.

Mr Bill Murdoch (Bruce-Grey-Owen Sound): I can't believe what I'm hearing from people who work in the ministry. Do you guys work for the ministry or did you just start today? Where have you been? We haven't had anybody marrying people out there for years. The JPs don't do it any more. They just don't do it. They've been ordered not to do it. I guess I should have brought the letter that tells them that. They've been told to do the work they have on their agenda and not to be marrying people.

You're saying you didn't know. I guess that voice mail works really well in your ministry, then. They must just go into the voice mail and nobody answers. I just can't believe what I'm hearing from you people.

There are lots of people out there who can't get married because there's nobody to do it. There is nobody to marry them unless they have a religious ceremony. The JPs don't do it. Who else is there? The judges, and they don't do it either.

I don't know where you guys have been. You mustn't have worked for the last two ministers of that ministry, because I've been on both their backs telling them. If they didn't come back and tell you people, then they're at fault, or if they did, you're not telling me the right thing.

1620

Mr Goodwin: Let me just, if I may, make a clarification. What I said was that very little express demand has come to MCBS, the ministry, from the public.

Mr Murdoch: Very little? My riding must be odd, then, because we're getting all kinds of people. I want to tell you, if you know what the Chi-Cheemaun is, that the captain of that boat says he never does one crossing without having at least one person wanting to get married, and maybe two or three. He can't do it, of course, and there's nobody on the boat to do it, so it can't be done. I get a call at least once a week in my office from somebody who says, "We're at city hall, and they tell us there's nobody who can marry us because the JPs won't do it." So when you get further out in northern and rural Ontario, there just isn't anybody to do it, so they can't get them. That is why this bill was put in there, and I am astounded that you would come in and say this.

I understand some of the things you said about regulations, and that's fair. But I was under the impression, after being at this place for 12 years, that you're better to put in a bill with less in it, because somebody in the government wants to make regulations later, people like yourselves. So those regulations can be done; I understand that. A lot of the stuff you talked about: I understand you have to have fees, you may have to set up—but I don't see where it's going to cost the government a whole lot of money. That was one of the concerns of the ministry, but I don't understand where you're coming up with that.

The whole thing is, I think you've missed the point. There is a problem out there and there isn't anybody to marry them. There isn't. You tell me who they are. You're saying the JPs. Well, they don't do it in my riding

and they obviously don't do it in a lot of other ridings, because I've heard the same thing. They can legally do it, yes. I won't deny that they can do it, but they've been ordered not to do it, so they're not doing it. I had a couple that phoned the other day and they live right beside the JP. He said, "I'm sorry, I'm not supposed to do it, so I can't do it." They said, "What are we going to do?" and I said, "Well, hang on for a little while. I guess that's all you can do. Hopefully we can get something through here." So I think somewhere along the line you guys at the ministry have missed it. I didn't think I'd hear that, but we've heard it and I'm telling you it isn't true.

Ms Vidal-Ribas: My colleague has been good enough to clear up the reference that Mr Kormos was interested in. The \$75—you're quite correct, sir—is for civil marriages. The remuneration for the clergy is generally a donation to the particular religious institution.

Mr Kormos: I've always seen it put in an envelope and discreetly passed to the clergyperson and he or she then puts it in their breast pocket, feeling to see how thick it is.

Ms Vidal-Ribas: That would be the donation, sir.

Mr Murdoch: There shouldn't be any problem setting the fee. That shouldn't be a big problem.

Mrs McLeod: It's very seldom that anyone comes forward to speak so closely to something you're dealing with in a personal way, but I gather my daughter is a statistic, since she's being married in a non-church ceremony this summer. You're from the registrar general's office directly?

Ms Vidal-Ribas: No, I'm from the legal services branch. I'm a legal director.

Mr Goodwin: I'm the policy director. We have a representative from the registrar general's office with us today.

Mrs McLeod: Because it is under your ministry.

I just wanted to publicly, on the record, express my appreciation to the MPP liaison with the registrar general's office, because she has been enormously helpful in clearing up the confusion around what you have to do. In my daughter's situation it is a United Church minister who is a relative of the groom, who lives in Saskatchewan, who's coming to Ontario to perform the ceremony. There is provision in the act for that to happen, but there's enormous confusion around what has to happen and how to register. I do want to express my sincere appreciation to Vicky, who has taken several phone calls and been most helpful. I wanted to pass that on.

In light of the fact of my daughter's experience, I have to say I'm surprised by the 5% statistic, because in her age group and her friends', I would almost guess anecdotally a majority of people are opting to be married outside the church building, not necessarily in a civil ceremony. That's why I'm wondering about your statistic. If there is a marriage performed outside the church but performed by a minister, is that then considered to be a religious service?

Mr Goodwin: Yes.

Mrs McLeod: Because that would be occurring on a significant basis. When I read Mr Murdoch's bill, it suggested to me that we were fortunate because there was somebody whom they wanted to have perform the ceremony, but I would think in many cases if that option hadn't been there—I know there are judges who prefer not to do any ceremonies outside of their chambers. In my part of the province—I knew a JP once; he's no longer a JP—I wouldn't have known where to go.

I saw by the nodding of heads that there are probably a lot more marriages being performed outside of the church, but if they're performed by a minister because that's who's available, they are considered a religious ceremony. I think that helps to explain why the stats seem so low.

But could you tell me, in light of the training concerns that you have and the criteria for carrying out a solemn ceremony, which obviously are important, what the criteria have been to ensure that JPs are properly trained and sensitive to carrying out a solemn ceremony?

Ms Vidal-Ribas: Let me answer your question in two parts, because you alluded to something a bit earlier.

Marriages that are performed outside of a church can be performed by clergy as long as the denomination's rights and usages permit it. I'm told that we are seeing an increase in ecumenical or non-denominational types of services by ministers who perform those kinds of services and that seems to be filling the need for a great many individuals.

In terms of judges and JPs, both judges and JPs, as you know, have bodies to whom individuals can go if they feel aggrieved, if there's been inappropriate behaviour. When JPs are appointed, because they are officers of the court, they sit as adjudicators, and because we create legal obligations here, they satisfy themselves that the couple does not have an impediment to marry—that they're of legal age, they're not under duress and they're not incapacitated by drugs or alcohol, the usual things.

As to specific training to provide to JPs on this subject, I don't know. I'd have to cede to my colleague from the Ministry of the Attorney General. Certainly we have not seen a significant bundle of troubles with JPs and judges, who seem to take their responsibilities very seriously. We believe it is because they understand the solemn nature of the legal obligations that parties are entering into.

Mrs McLeod: There would be no reason to believe that you would run into any greater problems with marriage commissioners than you would with JPs.

Ms Vidal-Ribas: Marriage commissioners—it would depend on how we defined the class. If it were just any individual, you might have some unevenness in training, unevenness in the understanding of the legal solemnity, of the obligation unevenness and the appreciation for the legal requirements, because there are some very specific legal requirements that a solemnizer must meet. As my colleague indicated, they may in fact be asked to turn away a couple who appear to be under the influence or otherwise incapable of entering into the ceremony, so we

would want to make sure, from a consumer protection standpoint, that whoever was in a class of marriage commissioners understood their legal obligations and those of the parties, were prepared to discharge them and were prepared to act in accordance with the legislative—

Mrs McLeod: Which is what you do with JPs now.

Ms Vidal-Ribas: Yes.

Mrs McLeod: So it would be virtually the same kind of thing.

Ms Vidal-Ribas: Yes, and with clergy and with judges, exactly the same kind of thing.

The Chair: Two more questions: Mr Guzzo and Mr Kormos. Then we may want to go back to the presentation.

Mr Garry J. Guzzo (Ottawa West-Nepean): I have a little difficulty here. First of all, I'm not a big supporter of this but I think on a balance of probabilities I would come down in support of Mr Murdoch's bill.

I think I'm reading it properly that 54% of the marriages in British Columbia are performed by commissioners. Interesting. They've been doing it since 1982 and they're up to 54%. I find it difficult with your statistics. I was a judge for 11 years in this province at a courthouse in Ottawa where there were three other judges and a justice of the peace who also did weddings. For 11 years I was obliged to perform my share and that amounted to approximately six a week. I had no training when I started. The justice of the peace had no training, nor did any of the other judges. Maybe we should have had, but we didn't. I find your interest in the training aspect at this point in time—for your interest, I was there between 1978 and 1989.

As far as the solemnity is concerned, one judge who objected to doing them would do his six between 9 and 9:30 on Wednesday mornings—no concern on the part of your department or any other department of this government with regard to the impression that was left by running through six marriages in a half-hour. For those of us who would do them on a lunch hour to try and accommodate people, let me just tell you that I was personally responsible for two illegitimate children because I put them over until Friday afternoon and the children were born beforehand. I, unfortunately, have taken responsibility. Those things happen.

1630

Mrs McLeod: Partially responsible.

Mr Guzzo: This is getting complicated.

I don't know of any place where the judges or the JPs enjoy doing them, or want to do them. Certainly I don't know of anybody who was ever turned down by a Chief Judge.

Let me also tell you that in the city of Ottawa, which had 700,000 people at the time—and I'm talking about 30 a week at our courthouse. Downtown, at the criminal court, there were 12 or 14 criminal judges and seven or eight of those were doing a number, as well as two or three justices of the peace three or four miles away in the downtown part of the city. So in the 1980s in Ottawa there were a considerable number being performed.

When I went out of town to sit outside the city, particularly in the rural communities, I oft-times would come in with a combination list and find a marriage on the list in Pembroke or Cornwall or Kingston or Brockville, places like that. I was never surprised on a one-day visit, and if you were there filling in for a judge on a weekly basis, oft-times during the week you would perform two or three in Brockville or Kingston.

So I have a little difficulty with the information, I have a little difficulty with the statistics and I have a little difficulty with the training issue. I suggest to you that even today the question of the reverence being shown by the people performing them in a very minute number of cases should be called into question.

I know the demand is there, and I know it's becoming more and more difficult for people to arrange, certainly within the time schedules that they want. I can't help but think that the time has come for this government to meet that demand. I have no difficulty putting restraints on the way in which they're done, but I think we have an obligation to meet that demand.

Mr Kormos: Clearly Minister Hudak has been briefed on this.

Ms Vidal-Ribas: Yes, he has.

Mr Kormos: And he approves of the position you're taking today?

Mr Goodwin: Minister Hudak is relying on the information that comes to the registrar general in terms of the expressed public demand or lack thereof. He is aware of that and is supportive of our information brought to you today. He also shares the concerns that if people are convinced that increased access needs to be provided through the establishment of marriage commissioners, it needs to be done in a rigorous way with the appropriate controls.

Mr Kormos: In other words, you read him the same submission or let him read the same submission you have made here today.

Mr Goodwin: Yes, the minister is aware of our submission today.

Mr Kormos: And he knew that it was in preparation for Mr Murdoch's committee hearing regarding Mr Murdoch's private member's bill?

Mr Goodwin: Minister Hudak was aware of the purpose of the presentation and the forum, yes.

Mr Kormos: And he was conscious of the fact—and I refer to section 7 considerations here—that your report to this committee was one that effectively recommended against the bill?

Mr Goodwin: I think our presentation stops short of making that specific recommendation. We spoke about the lack of expressed consumer demand for increased access to civil marriages and we spoke about the existing authority that the ministry has under the Marriage Act to use the regulation that we have now. But I don't bring a recommendation from the minister with respect to what happens to Bill 74.

Mr Kormos: Why did you raise concerns about section 7 of the act? Lay people, in any number of posi-

tions, are entitled to express opinions about the sobriety or level of inebriation of other people, and they do in many contexts. The kid at the service station has to refuse me gas if I'm drinking or drunk; the clerk at the LCBO. I could go on and on.

Mr Guzzo: The bartender.

Mr Kormos: Yes. The bartender has to cut me off. So all sorts of lay people are entitled, without any special training, to form conclusions about somebody's drunkenness. I appreciate that mental illness is there as well, but you're not suggesting to me that clergy people or judges or JPs have any specialized training about mental illness, so I'm curious about your waving red flags around section 7 here.

Why isn't a commissioner, who undergoes a screening process by the ministry entitling him or her to perform marriages, capable of being assessed as to whether or not this person is responsible enough to know when somebody is showing up drunk before them? Just like the marriage licence issuer has to be responsible enough not to issue a licence to drunks—not that it has ever happened, I'm sure.

Mr Goodwin: I'll defer to my colleague in a second, but the consideration is that, for the most part there is a fair bit of lack of definition around the role of the marriage commissioner position that would be created. There is a context that's assumed for judges and justices of the peace in terms of the framework within which they work.

If there is indeed a will to increase access to civil marriages, our point is that it needs to be done in a way that provides the appropriate legal framework for that to be completed.

Mr Kormos: Did you study other jurisdictions, including British Columbia, before you reported this matter, and the fact that most Canadian jurisdictions have commissioners?

Ms Vidal-Ribas: Yes, we are aware of that.

Mr Kormos: Do you find their procedures for training, evaluating and assessing the performance of applicants to be appropriate?

Ms Vidal-Ribas: We haven't assessed the appropriateness of their training and so on. We have consulted with them as to how they find the experience. I think it's fair to say, subject to my colleague confirming this, that it has been a mixed experience across the country in terms of how workable it is.

To reiterate my colleague's comments, the only concern we bring before this committee is, if we are going to do marriage commissioners, that we put some parameters and safeguards around this so the public is protected and there is a level of expectation of service and quality of service.

Mr Kormos: I believe that people who live together in an intimate relationship, where not only their lives but their finances are intertwined, and even more so when there are children, should be married because there are all the ethical considerations, but importantly, from my point of view as a lawyer, they can't access the Divorce Act

and they can't access and utilize certain sections of the Family Law Act.

Surely this government isn't discouraging people in that position from being legally married, nor does the government want to put an impediment to people. I think it's incredibly important. We're liable to hear stories from witnesses about the fact that some people are actually living together—again, I'm not as interested in the “living in sin” part as I am about the horror show it creates for the rights of those parties from a practical point of view in terms of not accessing the Divorce Act and certain sections of the Family Law Act. Why isn't that a valid concern?

Ms Vidal-Ribas: It is a valid concern. That is our concern around parties understanding the solemnity of the contract they're entering into and that the solemnizer is in a position to assist with that understanding to the extent possible.

Mr Kormos: Thank you kindly.

The Chair: Mr Hardeman, a question. Following that, I think we should hear the presentation from the Ministry of the Attorney General.

Mr Hardeman: Just a final question. I'm sorry I missed it. You spoke earlier about the fees that are allowed to be charged. For the clergy, most of those are in the form of a manila envelope going under the door.

Ms Vidal-Ribas: It's a donation. That's general.

Mr Hardeman: If the clergy get the donation, how does that work when the majority of the civil ceremonies are also performed by the same clergy?

Ms Vidal-Ribas: They are clergy who are authorized under the auspices of their denomination, so there is the link back to the denomination.

Mr Hardeman: Is it your suggestion then that the majority of those civil services performed by the clergy are also done based on a donation to the church?

Ms Vidal-Ribas: That's my understanding. Let me just confirm with my colleague from the registrar general.

Mr Hardeman: Of the ones I know, there are a number who will do it outside the church, but then it's totally removed from the church.

Ms Vidal-Ribas: Then it isn't a civil ceremony. It is a religious ceremony performed outside of a church location. But it continues to be a religious ceremony because it is performed by a clergyperson.

Mr Murdoch: Only because it's performed by a clergyperson. There are lots of them done and they don't use any religious remarks.

Ms Vidal-Ribas: But they're doing it under their authorization as a clergyperson.

Mr Hardeman: My question really is, is there a system in place that regulates the cost of that?

Ms Vidal-Ribas: Not currently for clergy, no.

Mr Guzzo: On a point of order, Mr Chair: I just want to make it clear that I did not endorse my colleague's comment with regard to retired judges being authorized to do them.

Mr Kormos: You'll have to run that past me again. You surprised me here.

Mr Guzzo: I'll get kicked out of the union if they think I'm endorsing that.

Mr Kormos: You come talk to me. We'll take care of you.

1640

MINISTRY OF THE ATTORNEY GENERAL

The Chair: I would now ask Ms Predko—a presentation on behalf of the Ministry of the Attorney General.

Ms Anne Marie Predko: Good afternoon, ladies and gentlemen. I'd like to, first of all, express my appreciation for your inviting the Ministry of the Attorney General to attend these committee hearings about Bill 74, a proposal to amend the Marriage Act to provide for marriage commissioners. I have reviewed the bill and I'd like to make a few specific comments in addition to those made by staff from the Ministry of Consumer and Business Services.

First, I should explain that I am counsel with the policy branch of the Ministry of the Attorney General. My primary area of policy responsibility is family law. In that capacity, I'm familiar with trends and policy considerations relating to marriage as a method of forming and recognizing adult partnerships and also as the union into which most children in Ontario are born. I've spoken with my colleagues as well in the court services division of the Ministry of the Attorney General, and I am prepared to also address this committee's interest in the performance of marriage by justices of the peace and by judges.

First of all, I just want to make a few brief comments about the legal structure of marriage. As this committee is no doubt aware, under the Constitution Act, jurisdiction over marriage is divided between the federal and provincial governments. The government of Canada has jurisdiction over a head of power called marriage and divorce, which has been interpreted to mean that the federal government defines who has the capacity to marry and also determines the law and procedure with respect to divorce. The provinces have jurisdiction over the solemnization of marriage, meaning that Ontario law defines the persons who may perform marriage, the authority under which they may perform that marriage and the form of the civil ceremony of marriage. All of that information is laid out in the existing Marriage Act.

Religious marriage ceremonies, as has already been discussed, must conform to the requirements of the religious body to which the religious leader belongs who's performing the service. As Mr Kormos pointed out, the law of the province of Ontario also deals with some of the fallout of relationship breakdown, when a marriage relationship breaks down. At its most basic level, a marriage is a contract between two persons who have agreed to share their lives with one another. Most marriage ceremonies feature the exchange of property. In

the case of a Christian marriage ceremony it's in the form of the rings that are exchanged.

Marriage is also a societal concept which is protected by a number of statutory provisions within Ontario and in other jurisdictions. Just a couple of examples: a person cannot be compelled to divulge any communication made to him or her by his or her husband or wife under section 11 of the Evidence Act of Ontario; also as I mentioned, in Ontario only a married spouse is entitled to a share in the value of property owned by their spouse in the case of relationship breakdown.

As many of you have already commented, the Ministry of the Attorney General has another area of interest in the proposed amendment to the Marriage Act. Under section 24 of the current Marriage Act, a judge or a justice of the peace may solemnize a marriage under the authority of a licence. Anecdotal evidence indicates it is now less common for JPs to be specifically scheduled to perform marriages. In most or possibly all courthouses, times are no longer regularly scheduled for marriage ceremonies.

I'd like to make a few comments about the scheduling issue. First, it's important that we have a common understanding at this committee about the limits of each branch of government's influence over this issue of scheduling judges and justices of the peace. In our parliamentary democracy the judiciary, the executive and the Legislature all have separate and distinct roles that they carry out. I like to think of them as three distinct but interconnected spheres of decision-making authority. In essence, what section 24 of the Marriage Act does is create a discretion for judges and justices of the peace to perform marriage. That discretion is within the decision-making authority of the judicial branch of government. What that means from the Ministry of the Attorney General's perspective is that the scheduling of judges and justices of the peace is not something over which the ministry has influence.

It is my understanding, from talking with people who are more familiar with the issue in the court services division, that faced with competing demands on finite resources, senior members of the judiciary who are responsible for the overall scheduling of judges and justices of the peace have made a policy choice that judicial functions, particularly for justices of the peace, are to be preferred to non-judicial functions. What this means is that faced with demands for justices of the peace to sit, for example, in highway traffic court or to sit in bail court, if they have those types of competing demands, it is preferred that they perform judicial functions rather than non-judicial functions. This decision is within the judiciary's discretion.

It's also my understanding that we are not hearing in our ministry—and I don't want to repeat the same thing again—of a high level of unmet demand for civil marriage. That does not mean it does not exist. We are reporting in our court services division three to four telephone calls per year requesting civil marriage. That's at the level of the ministry in Toronto, not in the local courthouses.

The Ministry of the Attorney General is not opposed to the expansion of the classes of persons who can perform marriage. We concur with the Ministry of Consumer and Business Services that the expansion of this service is possible within the current wording of the statute. We would also like to see that any person who's empowered to perform marriage should have the following characteristics: that they would be of good character; that they understand the Marriage Act and the common-law rules surrounding capacity to marry; that they be regulated in some form so that complaints about conduct can be addressed; and that they participate in training and education relating to their role in the solemnization of marriage.

I appreciate the honourable member's comment, Mr Guzzo, that as a judge he's not aware that justices of the peace may have participated in training, though there is a requirement that judges obviously have legal training in terms of their ability to understand the statute. It's my understanding that JPs as well do get basic training in terms of statutory understanding. It's not directed specifically to the issue of marriage, but it's certainly our position that those particular judicial officials are equipped to meet these characteristics.

Subject to your questions, those are my comments. If I can't get the information for you today, I'm happy to return it to the clerk and he can provide it to committee members.

The Vice-Chair (Mr AL McDonald): Mr Murdoch.

Mr Murdoch: After listening to you, I would be safe in saying in public that the Ministry of the Attorney General has no policy as to whether JPs should marry people or not?

Ms Predko: That's correct.

Mr Murdoch: There have been no letters from the Attorney General to JPs saying they shouldn't do this?

Ms Predko: From the Attorney General, no.

Mr Murdoch: JPs, who are basically under the auspices of the Attorney General, then, are quite easy about going out there to marry people. I wonder where they got that idea. There must be some misinformation going out into the public.

I don't have it with me, but when we started this whole process, I was informed by the Attorney General's office that the policy was that JPs were discouraged by the Attorney General's office from doing marriages. That was one of the main reasons I proceeded, because in our area JPs tell me to my face that there is a policy within the Attorney General that they're not to marry people. They can, but the policy is that they shouldn't because they have other duties to do. So you're saying that's not true.

Ms Predko: I'd like to see the letter. I'm not going to say to you it's not true because obviously the letter could exist.

1650

Mr Murdoch: There doesn't even need to be a letter. I just need to know whether there's a policy or not. If there's no policy, then I'm quite easy to go out tomorrow

and say that I talked to the Attorney General's office and they informed me there is no policy toward JPs. They are quite free and willing to go and marry people and they should—

Mr Guzzo: What the contributor is saying is that it's from the AG; it's probably from the judiciary.

Mr Murdoch: We're just talking about JPs.

Mr Guzzo: They're subject to the judiciary. They take direction from the judiciary.

Mr Murdoch: Well, we will have to go after them for that.

Mr Guzzo: Let me assure you that the JPs have been so advised. I would have thought it came from the AG as well, but it probably came from the local judiciary.

Ms Predko: As I understand it, if I can just clarify, JPs are scheduled by their local regional senior justice and that scheduling is then delegated to the local regional senior justice of the peace. Then locally there may be some flexibility in terms of their scheduling, mostly because of demand for their other services. It is perfectly possible that they have a directive within the judiciary. My concern is that the judicial scheduling decision is completely within the power of the judiciary, how they decide to schedule resources. There is a known lack of resources for justices of the peace. There is an ongoing justice of the peace review at this point in time. It's not unknown that there's a justice of the peace resourcing issue. It's possible, as a component of that justice of the peace review—there has been discussion about what would be an appropriate categorizing of resources, but certainly it is still always within the authority of the judiciary to schedule their members. It's not something that's within the power of the Attorney General.

Mr Murdoch: They could do it on a Sunday afternoon. There are not many court—they won't do it. I don't know of too many JPs who will do it.

Mr Guzzo: Time and a half for overtime.

Mr Murdoch: They won't do it.

Mr Guzzo: The Prime Minister doesn't mind calling in justices of the Supreme Court of Canada on a Sunday afternoon when he reshuffles his cabinet.

Mr Murdoch: I understand that.

Mr Guzzo: Did they get time and a half?

Mr Murdoch: My problem is that the perception, if you want to say, is out there that the Attorney General's office has discouraged JPs from doing marriages. We got that impression from the Attorney General three years ago. I'm not saying it's the same now, but that's what we were told in my office at least more than once. If that's not true, though—I hear what you're saying: it may be coming from the judicial thing. Maybe we have a problem here: who's running what?

That seems to be one of the biggest problems out there. There is absolutely nobody to marry people who want to have a civil marriage. Two weeks ago I had a mother phone. She lives beside a JP and that person wouldn't do it. He said, "I've been discouraged not to do it." I know of a new JP who has just been appointed. I told them to phone that person. They had already done

that. They said no. Where it's coming from, I don't know. But if you're saying it's not specifically coming from the Attorney General's office, then I guess we have a problem. But that's what's out there and that's the perception.

If that's it, that's fine; I can live with that. That's why we have a bill here that can help solve that problem. I appreciate the fact you're not against the bill. So that's good. But I'm just saying there is a problem out there. That's about all I have to say on that.

Mr Kormos: I noticed Mr Barrett had the poor luck to be absent when the classroom monitors came in from the House leader's office and were taking attendance. I hope he doesn't get a failing mark as a result of it.

Thank you very much, Ms Predko. I appreciate all of your submissions here and I understand you've got to do what you've got to do when you come here.

I'm interested in subsection 24(2) where it restricts a judge to his or her office between the hours of 9 and 5. By inference, then, were JPs not to be operating under a direction, presumably not from the minister because that probably would be perceived by them even as interference with their independence—but I appreciate a senior judge, a senior JP, and the directive role they have. Are JPs not restricted then? Is that the only inference to be drawn there?

Ms Predko: JPs are not restricted. They can perform marriages at any time of the day and at any location.

Mr Kormos: I really don't know what the rationale was for judges. Was it to convenience judges, the restriction of 9 to 5 and in the office, so that you wouldn't even think of calling upon them to go out there on a Saturday afternoon? What was the reason for subsection (2)?

Ms Vidal-Ribas: We don't have the history for why subsection 24(2) was put in.

Mr Guzzo: I'll make it clear. It was at the request of the judges to limit it. But I don't know of anybody who has ever turned down permission to go out on a Saturday night to a hotel or to a golf club and do it. The fact of the matter is that you would have been doing one a weekend and it was the pressure of, you know, if you do it for one, do you have—

Mr Kormos: Ms Predko, one final question: I have seen a number of manuals. The most recent one I've seen is the stuff people have to study for firearms acquisition certificates, the stuff people have to do for boating, administered by any number of ministries, where they read the manual and there are sample tests and multiple-choice answers—a driver's test and the preparation for that. I could just go on and on to the sort of things that regular folks have to self-study and get tested on. The Marriage Act is relatively straightforward, isn't it?

Ms Predko: It's relatively straightforward, yes.

Mr Kormos: There's not a whole lot of case law around it. There hasn't been a whole lot of litigation. I've got an annotated version and there's only one section that's annotated. That's section 31, "Marriages solemnized in good faith." So there's nothing contentious in there. Stuff is pretty straightforward and clear. Why

couldn't that be studied in a manual similar to the boating manual that people who want to operate power boats study and then have a test administered by the appropriate ministry with multiple choice? Wouldn't that be more than adequate to test somebody's familiarity with the act?

Ms Predko: Our position is that people should engage in training and education. I'm not saying what form that training and education would take. I'm certainly not in the position to know what training and education MCBS is requiring from their current solemnizers. From my perspective, I wouldn't want to express an opinion in terms of the policy choice.

Ms Vidal-Ribas: In terms of the training, we agree with the Ministry of the Attorney General that there ought to be some form of training. I can tell you that for some of the things you have referred to, Mr Kormos, you must have 10 hours of instruction for a firearms acquisition certificate, now known as a possession and acquisitions licence, and that's for each class of licence that you get. So there is a minimum training requirement. I think both ministries' position is simply that if the choice is to go with some form of marriage commissioners, we ought to work on what an appropriate training mechanism should look like, how long it should be, whether it's self-study or classroom study. But there ought to be something.

Mr Kormos: Do any of you have a preference about terms rather than for-life appointments? If you take a look at the other jurisdictions you will see they are appointed for fixed terms. Do you have a preference?

Ms Predko: The bill provides for a fixed term.

Mr Kormos: But do you have a preference?

Ms Vidal-Ribas: My advice to the minister would be that a term would be preferable from a regulatory standpoint. Certainly in other areas, with one exception, within the ministry we prefer to have terms. It allows for renewal and for revisiting of the qualifications if there is a difficulty with the individual or their capacity. It allows for an easier mechanism. Life appointments get into a whole messy area of the law, as you know, sir.

Mr Kormos: In terms of removing somebody.

Ms Vidal-Ribas: Yes. So that would be my advice to the client.

Mr Levac: My questions tend to be more of what-ifs and clarifications. Do I take it from both of your presentations that I'm hearing it isn't a ringing endorsement of the particular legislation but it also is not a rejection of the bill before us? Is it fair to characterize it that way, that it's not a ringing endorsement and is also not necessarily saying you're against the bill?

Mr Goodwin: I guess I'm uncomfortable with being characterized as supporting or opposing this particular bill. What I'm just trying to bring to your attention is that the way the bill is currently drafted, it leaves open a number of very important issues and questions about which we have concerns about the role of marriage commissioners.

1700

Mr Levac: That's fair. That leads me to the next question. In terms of what you've been saying—and both deputations have referred to this—the three to four phone calls you are receiving and you don't see there's an actual swell of need for a commissioner at this particular time, what research have you done and investigated in a backwards way to supplement that concern if indeed we're hearing from Mr Murdoch that communities he's been familiarized with seem to be saying the opposite? Is it based on, simply because you've received only three phone calls, therefore there isn't a need?

Ms Vidal-Ribas: We've done a couple of things. When Mr Murdoch raised this issue, and he has raised it, as he rightly points out, previously with other Ministers of Consumer and Business Services, we did go back to see, was this an anomalous year, did we have a lot of demand in previous years? We haven't seen a pattern of demand over the years.

What we did within the ministry was write to clergy and say, "We have this issue of marriage commissioners that's been brought before us. How do you feel about it? Do you think there's an issue?" I believe we've had about 70 responses, and they seem to be evenly divided in thirds: roughly a third of the people who don't care and don't have a view, a third of the people who are opposed to the concept and a third of the people who support the concept. That's the additional work we've done, in addition to going back.

From time to time, of course, people will go to clergy who will say, "No, I'm afraid I can't marry you" because of whatever reasons and—

Mr Levac: Do I assume that's mostly denominational or mostly clergy that you've been making that contact with?

Ms Vidal-Ribas: Yes, it is.

Mr Levac: That seems to actually go down a different silo than what Mr Murdoch's trying to fill. What I'm getting at is the very specifics of those people who don't necessarily want to use denominational, don't necessarily want to use clergy.

Ms Vidal-Ribas: No, we haven't gone out to chat with the public around this.

Mr Levac: Right. I sense that there's some type of gap between the information that's necessary to support Mr Murdoch's contention and yours that maybe you're not receiving it. In other words, it's not getting to you but it's getting to him. There seems to be a gap there in fulfilling that. If that seems to be the case, and I wouldn't doubt that, we need to fill that gap. If that gap is going to be filled by this bill, the question I'm asking then as a follow-up is, for you to have a ringing endorsement of this you're basically saying, if I'm getting this right, that it needs to have in place the concerns you've outlined today: the concept of accountability, costs, effectiveness, avoidance of patronage, training and all of those things. If those things get filled in, then support could come from both ministries.

Mr Goodwin: If those issues are addressed, I don't think the ministry would object to increasing access to

civil marriage services. The one issue you didn't mention was just with respect to the quantum, the level of demand, and having a more accurate sense of that. Is the proposed approach of six marriage commissioners per electoral district commensurate with the demand or, as is the case in British Columbia, could this be a social trend that takes a decade or two to fully develop so there are high levels of demand? We're concerned that at this time, based on the information we have, demand may not support that kind of large-scale response.

Mr Levac: I appreciate that. That actually answers the question about whether or not we're finding the information to plug it in. It might be three commissioners, whatever, with the information provided.

Finally, getting some of that clarification—well, I'll leave that for another day because it actually doesn't cover off my next question.

The final question I would have is in support of Mr Murdoch's attempt to find these commissioners to free up the judicial concept. There was a concern raised, I believe, about the choice between judicial versus non-judicial for the work of the JPs. Would that not simply take care of that issue and not have to have these letters, no matter where it's coming from, so that they can focus on the judicial?

Ms Predko: It certainly would appear to address that issue. Without consultation with the judges and the justices of the peace, we don't know that that would be their preferred solution. It's an issue that requires some consultation with the judicial officials as well. But as you can see now in the act, they're simply authorized to perform marriage—they may perform marriage—and it's not a closed class in terms of other people performing marriage.

Mr Levac: The creation of the commissioner wouldn't stop the judicial from saying that anyway.

Ms Predko: No.

Mrs McLeod: One brief question of the Attorney General's office: I have known a couple of situations where judges have performed weddings on weekends outside of their chambers. They'll be nameless until you answer my question. Are they technically in breach of the law or are there provisions that can be made to make that acceptable?

Ms Predko: I was a little concerned about that myself when Mr Guzzo said it was occurring outside of chambers and outside of these hours. It's a difficult question. From my perspective, as I read the statute, it's not permissive. It says it "shall" take place in chambers between the hours of 9 and 5. Marriages performed outside those hours would be irregular in one sense. I don't think they would be void or voidable; I just think they would be irregular.

Mrs McLeod: I'm ready to move passage of this bill and send it to the House immediately. I think we're all right now, thanks to Victoria.

The Chair: I'll go to Mr Hardeman.

Mr Hardeman: First of all, looking back at my past, it would seem much more important that we provide better training for people getting married than for people

performing the ceremony. We'd likely all be well served with that type of an approach, I would think.

I just wanted to quickly say, with tongue in cheek, how do you measure and survey the rate of people who think they are appreciative or think they got a good job done in their marriage ceremony, who are satisfied with the performance, compared to using a JP, using a judge, using a—obviously for a good marriage you only use one of the options. How do you ask people which is the best option?

Ms Vidal-Ribas: Somewhat facetiously, I'd be inclined to ask very shortly after the ceremony.

Mr Hardeman: Thank you. The one thing I did want to ask in seriousness has to do with the comment that my good friend Mr Murdoch suggested about JPs not doing it. Going to the scheduling, you said the judiciary schedules the JPs' time and they give a preference to the legal part of their job as opposed to the marriage side of the job. Then, in essence, they're eliminating the ability of the JP to perform marriages—not telling JPs they shouldn't but just not providing time to do it. The question is, can they schedule doing marriages beyond the time the judiciary scheduled their job, and if they can, is there no limit as to what they can schedule beyond what the judiciary scheduled for them?

Ms Predko: Certainly justices of the peace can perform marriage in accordance with the statute outside of regular court hours. The statute is permissive for them to do that. I'm not clear on what sort of controls regional senior justices could exercise over justices of the peace, if they have an established policy, for example, that JPs will not perform marriage. I'm not aware of such a policy, but it's not clear to me what methods of control regional senior justices would have over their JPs outside of regular office hours. From the straight reading of the statute, not knowing what power the regional senior justice might have over JPs, it's certainly possible for JPs to perform marriage.

Ms Vidal-Ribas: Mr Hardeman, in answer—serious answer—to the first part of your question, we don't have a systemic way of getting client satisfaction. To the extent an individual is happy and they tell us, that's great, and if they're unhappy and they tell us, then we know, but we don't have a system in place.

The Chair: Seeing no further questions, it is time to wrap up this testimony from the two ministries. I wish to thank the representatives from consumer and business services and also from the Attorney General.

We have three more delegations. We have an allotted time of 15 minutes for each. I would ask the delegations, if they wish to do so, to leave a bit of time for questions from committee members during that 15-minute period.

1710

REID SCOTT

The Chair: For our next presentation I wish to call forward His Honour Judge Reid Scott, retired. Good afternoon, sir, if you wish to proceed.

Mr Reid Scott: My name is Reid Scott. I'm a retired provincial court judge. I reside in Fenelon Falls and have since I retired in 1991.

I am very much in support of the bill. I have been in Fenelon Falls now for approximately 11 years as a retired judge. I carry on a mediation and consultation business there. With respect to the issue raised here, of the need, I can assure you that the need is very real and very necessary.

I have received every year at least 40 or 50 people who wish to get married, and I have to explain to them that, being a retired judge, I am unable to do so. That's why in one of my letters to one of your members I suggested that you might consider including in section 24 retired judges as those eligible to perform marriages.

There are two or three areas where we have difficulties. Years ago, when I was at city hall, we performed marriages every Friday afternoon for three or four hours in the old city hall. We had some very strange groups, some very interesting groups and some very serious groups. Some of them came with everybody completely decked out and with flowers, as though it were a completely formal wedding. The only thing they wanted at the end was a picture of me with the bride on one side and the groom on the other. These were largely new Canadians coming from countries where the state was very important. They then would take my picture with the bride and groom back to their church and have their own ceremony in their own way. They took the view that the state had in effect sanctioned their marriage and they were very glad to get that.

Gradually our duties were reduced by the ministry. They cut down the hours when we could do it, and when they said we could only do it during our chamber time, we just gave it up, because by the time you have reviewed judgments, preliminary reports, sentencing reports and everything like that, it would just be a ludicrous situation to adopt. So we don't do it.

In my own area of Fenelon Falls, which takes in Victoria county, Haliburton, Muskoka and areas like that, we have a very strong demand. I say that because many of our young people do not attend church and the churches are reluctant or will not marry people who are not members of their congregation. They are very busy with their own duties and are unable to accommodate them, so we get a very large number of people who would like to have a civil ceremony. As I've explained, I've had hundreds since I've been up there and have had to turn them all down, so there is a very real demand for it.

The problem that arises is that the refusal of the clergy to perform the ceremony doesn't stop the hormones. These young people all just simply live together, have children, and then when they have a fight and a breakup, it's catastrophe all over the place and enormous difficulties in trying to resolve it. Some have been very violent and dangerous, and we have had to try and deal with them as best we can in that capacity.

Mr Murdoch is absolutely correct: the reason they're not phoning the Attorney General is because, to phone

Queen's Park, you need to have a copy of *Gone With the Wind* with you when you ring the initial number. By the time you go through all the permutations and commutations from one division to another, you almost could have read *Gone With the Wind*. I can well understand why individuals don't call Queen's Park.

With young people it's very important, in my view, to get them married and into the system. Once they are married, various jurisdictions have done a pretty good job over the years in codifying what takes place on a dissolution of marriage as to custody, division of assets, pensions etc. None of that is available to people who break up and are unmarried and it's a true tragedy. For example, a wife has no interest in the house unless it's in her name. Custody is always a difficult and very tragic problem, as well as support. There are some ways they can appeal these to the courts, but it's extremely expensive and very cumbersome. I don't know of a single one that has worked properly.

Another group that I find very anxious to use civil marriages is the elderly. Victoria county has the highest per capita rating of people over 65 in Ontario. Most of them live in residences etc. Many are widows and widowers. They meet each other, would like to marry and spend their twilight years together. There's still unfortunately a bit of a stigma about not being married and yet they have no way of becoming properly married.

The reason I'm so interested in younger people is that I took one term on the board of education a few years ago in our area only to do the amalgamation of Muskoka, Haliburton and Victoria into the Trillium Lakelands District School Board, which is now the size of Prince Edward Island. But we did complete it properly and legally. I found there that by the time children reach school, their outlook on life has pretty well been predetermined, as the Mustard report and countless others show. It's really a matter of good parenting, and a person can do that if he has the power to marry them through pre-interviewing and discussing etc. That is in an area where I have taken a great deal of interest.

I might say, by way of JPs: for example, Peterborough JPs will not perform any weddings at all in their community of 90,000 people. In Victoria they don't do them either. They simply have no time. They are so burdened down with their other duties that they just can't get around to it; or, if they can, it's sort of a quickie, in the door and out the door. It's a revolving door and it's very unbecoming to the important issues of marriage.

I am highly supportive of the bill. I think demand will increase. The reason you don't know about it or the ministry doesn't know—I hardly think anybody would have the courage to call the ministry. But the need is there. The advantages are great. I do not believe it would be very expensive to the government, since they already have a comprehensive system in place governing this whole area, and it would be extremely useful.

1720

I must compliment Mr Murdoch. When Jim Flaherty was Attorney General, he had brought forward the idea

of retired judges being admitted to the category, but then there was a ministry change—you know these things happen—and it disappeared. I had spoken at great length to his executive assistant, who agreed completely with me and was going to take it up with the minister and urge him on, but he was changed to another ministry before it could be done.

There is a very real need for this and it's going to grow because Canada is going to grow by immigration, not by birth. Our birth rate is too low. You're going to get all these people from other countries who will not be familiar with our system and the ability for people other than—judges can't do it at all. We just gave up and said, "No. If you're going to stick it to us for a few hours in our chambers, we won't do them at all." JPs will not perform them because they don't have the time. They're burdened up to their eyes. The courts are clogged. They're like meat markets.

The civil answer is a good one. When I heard all the regulations they were thinking of, I had a little bit of concern, but I can see where regulation of some sort would be required. I thoroughly congratulate Mr Murdoch on his initiative and the members who have already indicated they will support it. I have reams of material, but I don't want to bore you with it. I'd sooner take your questions.

The Chair: Thank you, Mr Scott. I have one question from Mr Guzzo.

Mr Guzzo: Your Honour, it's great to see you again and looking so well. Thank you very much for your words of wisdom and your written submission, which has been forwarded to us, your letter of June 11 to Mr Kormos. I simply wanted to say to you that if you're having trouble filling up your hours, the new Premier is always looking for candidates, and we have a precedent now in this province for former judges to run.

Mr Scott: Our sitting candidate is Mr Chris Hodgson. I don't know whether the Premier would pay for me to seek to unseat him as a Conservative representative. I've already turned the Liberals down, so there you are.

Mr Guzzo: I have one question for you. It relates to the last paragraph of your letter, where you commend Mr Kormos for his work. I really have to ask you, did he ever appear as a counsel in your court?

Mr Scott: No.

Mr Guzzo: You see, he did in mine, and I have to tell you this: that's why I worked so hard to send him back. He was an excellent lawyer and he did an excellent job. I think the public deserves him back there.

Mr Scott: It's nice to have all his abilities and I envy him for them.

Mr Kormos: I'm glad you restricted your comments to my appearance before you as mere counsel.

The Chair: Next question. We just have a minute.

Mrs McLeod: Thank you very much, Judge Scott. I appreciate both your oral and your written presentations.

Mr Chair, I just wanted to ask Mr Murdoch to address a couple of the issues that I think aren't addressed in Mr Murdoch's bill that you raised in your submission, one being the fact that there should be a provision for retired

judges perhaps to be allowed to do marriages. Second, I think you made reference again—Peter referred to it as section 24—to restrictions on judges of having to perform services between 9 and 5 and in their chambers. I'm wondering whether it would be appropriate to ask Mr Murdoch whether he would consider amending his bill to include those two further amendments. They would be consistent with his intent, I believe.

Mr Murdoch: I'm open to amendments to the bill; no problem. I made it the way it is so that we could probably all sit down together as legislators and make a bill that will work. I'm open for any of that stuff. When we come to that, I certainly would be. I think we have to leave it open that more than just retired judges can apply. The ministry didn't have too many concerns, but I think we can work some of them out.

Mr Scott: I appreciate retired judges being allowed to lobby, although a lot of us are slowly dying off, but there are still a few around. I have conducted hundreds and hundreds of marriages over my years on the bench and always tried to do them in a dignified and decorous way and in keeping with the importance of the occasion. I'm sure that would continue.

I agree with the commissioners. Edmonton, for example, has a series of marriage commissioners. Last night I spoke to my brother, who lives there, and he explained that they did have commissioners in Alberta and that the system worked reasonably well. They have some problems with the Indian population, but Premier Klein appointed two Provincial Court judges who were of the Indian race, and they have no difficulty getting on the reserves and that sort of thing. So the system works well there; it's not highly regulated.

I think some of the fears that people here are expressing are because they're not in the field. They really are not on the front lines and don't see what is happening in our community. This is a problem that's growing at an alarming rate. If you get these problems early, if you're able to deal with the young people before they get married and discuss with them and interview them, it would be a wonderful opportunity to explain to them the complexities of marriage and divorce and the consequences etc.

It's not the kind of bill about which you're going to get horn-blowing and whistles and everything else, but in the long run the government will save hundreds and hundreds of thousands of dollars in social costs.

The Chair: I should go to Mr Kormos—we've pretty well run out of time.

Mr Kormos: Very quickly, you heard the concerns raised by some of the ministry people in terms of fees. Right now, clergy people have no restrictions, no controls on fees. People are either told by other church members what the fee should be, what the acceptable range is—I know of cases where they ask the clergyperson what would be acceptable, and the clergyperson tries to be liberal in the interpretation.

Do you see any reason why there should be an imposition of restrictions in the area of fees—regulation of fees—for the commissioners, as is being proposed?

Mr Scott: You might want to put a reasonable limitation on them. It's not a difficult ceremony and would not warrant a large fee. I've never charged anything or received anything. I never considered that as being important. Of course, you people have been kind enough in our pension plan that it wouldn't matter to me at all whether I charged a fee.

Mr Kormos: But you had good lawyers as well.

Mr Scott: Oh yes.

You might want to put an upper limit just for the sake of the individuals concerned, because I can see cases where there might be some exploitation of a situation where the situation is very critical.

I would encourage greater freedom in where the ceremonies are conducted. I once married a couple on the Jadran. The vice-president of one of the large companies had rented the whole boat for the night, and I went down and performed a ceremony there. We all danced in the moonlight and it was wonderful. In the summertime a lot of people like to have canopies, tents and that sort of thing at their homes, and you have very, very fine ceremonies of marriage that people long remember, rather than being crammed into the JP's office, where there are files and junk all over the place.

In any event, it's a very useful piece of legislation. Mr Murdoch and those who support it are to be congratulated on it. I think it will solve a lot of social problems that I don't have the time to go into here but which I have run into in the last 11 years. I would of course be most happy if you would accept an amendment to permit retired judges to perform the ceremonies, in any event, since we are already well trained in that department.

The Chair: Thank you, Justice Scott.

Mr Murdoch: On a point of order, Mr Chair: I'd just like to bring something to our attention here. We had discussions before with Anne Marie Predko of the Ministry of the Attorney General, and I'd like to tell you one thing. I have a letter in my hand. It was sent to me on May 12, 1999. It says, "I understand the concerns you have raised. As set out in your letter, justices of the peace are no longer performing civil marriage ceremonies in Grey-Owen Sound. However, in view of the principle of the independence of the judiciary from government, the responsibility for the assignment, as well as the education, supervision and monitoring of justices of the peace, falls solely within the purview of the Associate Chief Judge, coordinator of justices of the peace, the Honourable Marietta L.D. Roberts. In areas where civil marriage ceremonies can be arranged privately, the judiciary made the decision that non-core functions would be phased out throughout the province."

That's signed by Charles Harnick, Attorney General.

So, as I said, I did have a letter from the Attorney General telling me it would have been phased out—the ministry was right; it's done by the judicial system. But there it is, and I just wanted to read that into the record.

The Chair: Thank you, Mr Murdoch.

1730

ROGER DENCHFIELD

The Chair: I wish to call forward our next delegation. We have two delegations of 15 minutes each. I call forward Mr Roger Denchfield. Good afternoon, sir.

Mr Roger Denchfield: Thank you, Mr Chair and honourable members of the committee. I appear before you today to voice my support of Bill 74. I wish to share my personal views as to why I feel this bill should be passed.

First, allow me to introduce myself. I am Roger Denchfield. I currently hold a Bachelor of Theology degree. I was an active pastor for many years. I chose to resign from that position in 1974, as I had a family to feed and other obligations. I relocated to Ontario in 1974 and became an associate pastor of a local church in my home city of Welland, Ontario, until 1985. Due to the changes in my own personal beliefs and experiences, I have chosen not to affiliate myself with any particular religious licensing body.

Currently, I am a sales representative with Freedom 55 Financial and hold a mutual fund licence with the Ontario Securities Commission. So I am very familiar with licensing and regulations, as far as having to abide within certain governing bodies. Being a sales representative with Freedom 55 Financial has given me much opportunity to interact with the public, giving me a perspective as to what people are encountering when wanting to be married.

I have become aware of the changing trends among young people in our society today, and I believe the judge alluded to that too. For the most part, they have a belief system that does not see them in regular attendance at a church or synagogue. Many of them do not approve of formal prayers and ritualistic words. Approaching the idea of marriage brings a conflict of concerns: whose religion do we honour, the bride's or the groom's; will we be able to use a sanctuary; if we choose to have an outdoor wedding, will the pastor/rabbi/priest be willing to come and join us in this outdoor ceremony; if we cannot find a minister, should we attempt to set a time with a justice of the peace?

Now I've got parents mad at me because they will not have the wedding they've always dreamed of for their daughter.

Here are some examples that pastors encounter which, because of the regulations and guidelines of their own particular denominations, would place their ministerial licence in jeopardy or result in their denial to marry a couple.

A pastor may be in a position where a young couple has come to him whom he hardly knows and they want to be married. The pastor may think to himself, "I vaguely remember that her mother came to church for a while, but I've not seen her for some time. So now I must arrange to have both of them attend my church to meet the regulations of my denomination—the number of Sundays—

so I don't put my ministerial licence in jeopardy if I perform this wedding. I also must have them attend the required number of counselling sessions."

Much discussion has gone on regarding training. I'll just sideline you here for a second: within the ministerial documentation of most denominations, they do require intensive counselling of the couple prior to performing that ceremony.

A couple has just come into my office. One is divorced and the other has had a child out of wedlock. How am I going to be able to handle this situation and keep my head office from revoking my ability to perform future weddings? If I am to perform this wedding—I don't know; I think I'd best send this couple to a justice of the peace or tell them to find another more liberal pastor willing to do the ceremony, if they can find one available.

A couple approaches to be married. One is strong in his faith and the other is strong in her faith. From the standpoint of many churches, this is an unequal yoke. They must become agreed and come to a common union, a common denominator. Either they both become of my faith or I will not unite them in marriage. Again, I must tell them to seek out a judge or a more liberal-minded minister to perform this wedding. Examples of this would be found between Protestant and Catholic, Protestant and Muslim, Catholic and Jewish. In today's society this is becoming more and more frequent.

There are also those who would like a traditional wedding without a lot of religion, especially when involving those who claim to be agnostics or atheists but do not want an impersonal, quick wedding.

I feel this bill is needed, as it will offer an alternative for both the couple and the church. It will also lessen the workload of the judicial system, as has been aptly noted in previous discussions thus far.

I personally have felt the need for an alternative to the existing system for some time. As I said, I've been a resident of Ontario since 1974. As a former pastor, I'm often approached by a couple wishing to be married to perform the service for them. I've had to turn them down because I'm not registered with the province to perform the ceremony. They have then approached several churches, only to be told, "No." One of the couples did find out about a Valentine's Day service in Niagara Falls and participated in that service. They then found out there were problems with the registration of the licence of the particular person who had officiated their own local cell. They're legally married today, but the problems were there which they had to get corrected.

I know of several instances similar to the one cited above, where they would have liked to have a service done by a clergyman but they were refused for one reason or another and they had to go to a short, secular service.

If I were a marriage commissioner, I would offer them a dignified service that suits the couple. I've always tried to find what the persons want and accommodate them as much as possible. As I mentioned, having been a pastor for several years, I have done several weddings. No two

people are alike, and definitely when you have two people in love, there are a lot of options to sort through.

There are some things that must be included in a ceremony, as no wedding vows should ever be taken lightly. The regulation of the marriage licence is done through the laws of the province, and thus a public acknowledgment of those regulations made publicly is a serious matter. One thing that has always concerned me, and I will ask it here, is: why is it that it often takes more time to buy a car, get a driver's licence or, in my current line of work, buy a life insurance policy than it does in the wedding ceremony itself today?

This is a lifelong commitment, or at least it should be, so why not spend a little time in the ceremony? I am also a strong supporter of some sort of pre-counselling with the couple, and this can be coupled with the planning of the service.

I would accommodate them also as to the place of nuptials, within reason. I would like to quote a marriage commissioner from Alberta. I sent her an e-mail; I was trying to get more information regarding her office's marriage commissioner in Alberta—it was such short notice, I haven't received a response yet, but I will take the liberty of quoting her public Web Page. In it she states that she has "had more fun, met more wonderful people and been to more interesting places than most folks ever hope to do. These ceremonies have been as varied as the bride and groom themselves. Many smaller weddings have taken place in the privacy of my own Victorian-style living room (with its lovely oak staircase for the bride to make a grand entrance). Some of the more adventurous ones have taken place on a mountain-top, under a waterfall, an airplane, hot air balloon and boat."

I suppose I could go on and on, but I do want to leave time for questions, as well as trying to be brief.

Let me just summarize that I feel this is a bill which should be welcomed by many couples within Ontario. Currently I know of five couples who are looking for someone to solemnize their marriage and they're still looking. Those who are still waiting for the church to change its restrictions—but if the church does change its restrictions, now they have put themselves in jeopardy until it is changed—they're on a waiting list at city hall; they're waiting for the other partner to change their mind as to which church or parish to get married in.

I do thank you for your time, and I do hope that Bill 74, Mr Murdoch, will have a speedy passage. Perhaps I would be considered as a marriage commissioner in a capacity that it would afford. Thank you.

The Chair: Thank you, Mr Denchfield. On behalf of the committee, I do want to thank you for testifying this afternoon.

1740

MARGARET ANNE McHUGH

The Chair: I would ask for our next delegation, Margaret Anne McHugh. Welcome. We have 15 minutes.

Ms Margaret Anne McHugh: I'm Margaret Anne McHugh. I have no real reason for being here except that for 23 years I've been annoyed that I didn't get to have the marriage ceremony I wanted because I had to have a Christian religious ceremony. I'm not a Christian and I didn't want one. This is something I've been following for 23 years that brought me here. When I saw the act I was very keen to get here.

I did a little work. I brought a written submission, but this submission suggests that, instead of it being by electoral district and essentially patronage appointments, it should fall to the office of the registrar general. Having heard those people present, I no longer feel that way. I'm happy to hand them out as long as you can record that I don't actually believe my first recommendation.

I thought I wouldn't have to speak very much to the need for this. To me, it was so blatantly obvious, but I did try to do a little work around it. There are some things on there—there's a link to a Web site called marryus.org. If you want to be married in the city of Toronto—I wanted to find out if it is possible to have a secular ceremony. It is not. Period. The end. The city of Toronto clerk's office, if you want to be married at city hall in Toronto, links you to an organization called Ministerial Associates; their Web site is www.marryus.org. They are all Christian ministers. I spoke to them at length. They said there are many issues in Toronto. The issues in the rural areas, I think, have been better expressed. It has to do with diversity. It's exactly the same issue. When people from fairly new religions in the country can't get their clergy established because their denomination has not been established for long enough in Canada, those people want to have secular marriages. If they're from a small Muslim group that doesn't yet have their clergy established as a denomination that can be registered, they can have a secular ceremony but it's going to be conducted by a Christian minister. They said they are faced with that daily, with people being upset about it. They get way more requests than they can handle. On their Web site, and on many other Web sites I found—I don't know about this donation thing—the rates are posted. The posted rates are not exorbitant, I don't think. For marryus.org it's \$155 if it's on-site and \$250 plus travel expenses if it's off-site.

Also, when the ministry says they have no demand, I started out today trying to call the registrar general at the Ministry of Consumer and Business Services. The line you get for the registrar general doesn't let you talk to anyone, period. It lets you make one of four selections to get information. I had to get a government directory or go on-line to get a phone number that would get me into the policy branch. I only knew how to do that because I worked for nine years in the Ministry of Health.

The other thing I want to say that you'll find in my presentation is that I took a very different view. Everyone is so concerned about the solemnity of the ceremony. I was concerned about people who wanted to have different kinds of ceremonies. That's the other thing that's not available now that hopefully this bill would solve, which

is if you want to get married in your bare feet on a beach at sunset, some people might not consider that solemn. I might consider it an extremely spiritual, deep experience and that is what I want to have.

There's the solemnity, I think, in the seriousness of the legal contract you're entering into, but there's the joyfulness of the ceremony and people wanting to have different ways of doing that, and it is simply not available in this province at this time.

That's really all I wanted to say, so you're finished quickly.

The Chair: Thank you very much. That leaves about eight minutes for questions. Are there any questions?

Mr Kormos: Thank you very much. I didn't have a chance to say thank you to Mr Denchfield as well as to the judge.

It's interesting because I've read your written submission. You've addressed the issue of fees in there and the number per constituency or riding. I agree, if you take a riding like Timmins-James Bay, to have six marriage commissioners is impossible. You've got Peawanuck, an isolated community, and Attawapiskat. Each one of those communities should have one marriage commissioner.

What are you suggesting? Because my sense is that nobody is going to be doing this to make a living, right? So it's not as if you want to control the numbers so they can share the proceeds in a small enough number to earn a living. Nobody is suggesting that these commissioners are doing this to earn a living.

Ms McHugh: But it needs to not be out of pocket. That's what I was taking issue with. In BC they have a \$75 fee, and that's been a problem, I think.

Mr Kormos: Quite right, there should be some minimum fee, but in other words, we shouldn't be worried about saying, "If we create too many they won't have enough to support themselves."

Ms McHugh: That's right.

Mr Kormos: Then I'm saying, why is there a top limit at all? Why do we care? In Welland-Thorold—Niagara Centre riding—let's say there are 20 or 30. Nobody is doing it to make a living. You're suggesting they have to perform a minimum number of marriages a year.

Ms McHugh: My concern was that you can't get them. So my concern is that if it was a kind of patronage appointment, if you like, an order-in-council appointment, particularly if they are highly limited in number, it might be perceived by people as something that gives them some credibility or increased status in the community. So people would want to get the appointments as marriage commissioners but then would only want to do them occasionally or for a small group or limited only to within five miles of where they lived or something, and that if there was a small number, they wouldn't actually be available.

My concern was actually, would people not just be appointed as marriage commissioners but have to do marriages once they were appointed? Because I was assuming people wouldn't make a living at it and they'd only be available maybe on evenings, Saturdays, Sun-

days, and they'd only want to do a certain number. You don't want to use every available hour of your time. That was because I had assumed there was a very large demand. I believe that with very little effort—in fact, I'm going to start tomorrow to demonstrate the demand. It seems to me it's huge.

Mr Kormos: Would you restrict them from receiving gifts from the people they marry?

Ms McHugh: I wouldn't.

Mr Kormos: Let's say there was a rate established by regulation of \$25 or \$30. Would you then forbid these people from accepting anything else that a married couple might want to give them, the way married couples do with clergy?

Ms McHugh: I would not.

Mr Kormos: Or I presume they can with a judge. If they want to give a judge a gift, they can.

Ms McHugh: I wouldn't restrict. I actually don't feel too concerned about it. I think that people should be able to have some limited fee. If you're doing them every half-hour in your house, in your living room, \$35 is probably fine. But if somebody wants you to drive 200 kilometres to a location out in the woods to do something a bit unusual and get eaten by blackflies, you should probably be compensated at a much higher rate. So I think the regulations or contract or whatever is used should be able to do that.

I'm not worried about people extracting things like special gifts. If someone did a good job for me, I might want to give them some little present and I wouldn't want them to be feeling they had to refuse.

Mr Kormos: When Mr Hardeman asked about how you evaluate a marriage, he was obviously just talking about the ceremony. He wasn't talking about its longevity. We go to 40th and 50th wedding anniversaries. Those were good marriages.

Ms McHugh: I had a ceremony I didn't like but I've been married 23 years.

Mr Murdoch: Thank you for coming. When we first started, Lyn and I talked. Lyn mentioned to me why we needed a whole lot of witnesses when we all like a bill. But after hearing the ministry, we can see why we did need a bunch. I'm certainly glad we are. I never thought they'd be like that, as bad as they were, and so misinformed, as we can see—every witness we've had so far, and I'm sure you're going to hear that from more. As I said, there was a letter saying that they didn't do—they were so misinformed.

Ms McHugh: But you can't call their ministry—

Mr Murdoch: I mentioned that—

Mr Kormos: Does that mean the minister doesn't know what he's talking about here?

Mr Murdoch: On this point I guess he obviously doesn't. Maybe we'll have to ask him in the House.

Our systems are terrible. I'm glad you brought that up. Somebody else can maybe carry that on another time. But when you try to get some ministry—some are good and some are bad and obviously this one—I didn't even have to phone them because I always talk to the minister

in the House when there's a problem. I know that's really frustrating when you get in. I once even had a voice come on and say, "I don't you understand the system. Maybe you should try again." I don't know where he got that one.

I just want to thank you for coming. I appreciate your support and hopefully we don't get bogged down too much on some of the details. I use six because I looked at an overall, but there are other areas like the Rainy River district where we might to have an exception or something. I'm not stuck to that figure by any means.

The Chair: We now go to Mr Levac.

1750

Mr Levac: I wasn't here for the presentation. I apologize for that, but I did hear some of the answers to the questions that tweaked me on just a couple of quick questions.

Thank you, first, for coming and showing your interest over these years. The ministry people have expressed a concern about patronage and you're also making that same observation. How do you avoid that if it ends up being an appointment?

Ms McHugh: I'm not so concerned about them being appointments that are patronage, in the sense of rewards, as I am about the outcome of that, that it may not be reflective of multiple communities in a riding, in an electoral district. That's more my concern about it being an order-in-council appointment: how is it going to ensure diversity? If you don't have some diversity, I have a concern where someone says, "Oh, you're white and you want to marry this brown, yellow, black, purple, whatever, person," some of the things the previous presenter in some ways was talking about. Let people make some decision based on their own lifestyle or choices or whatever, that they don't want to perform ceremonies for certain groups. You need a diversity of people so you don't end up with people refusing to do ceremonies.

Mr Levac: Inside of that, then, the concern would be raised that there needs to be some type of reporting mechanism or some type of regulation that allows for the perusal of that happening to ensure that the concerns you raise are taken care of. By that, I simply mean that you need to find statistically or even anecdotally that that's not happening.

Ms McHugh: There should be some complaints process. I did assume there would be some regulation. There certainly is reg-making authority in the Marriage Act, but my concern is that the bill didn't specifically say how the regulations concerning the commissioners would be done or whether it would be by policy. I guess you weren't here, but having heard the people present from the policy area of the Ministry of Consumer and Business Services, from the registrar general, I just thought I don't want those people to have anything to do with it, thank you. They just seemed so out of touch with reality, I couldn't believe it.

Mr Levac: Having said that, though, there needs to be something in the bill that defers it to regulation, if I'm not mistaken. Right, Bill?

Mr Murdoch: Yes.

Mr Levac: We can get that cleaned up to make sure it allows that to happen in order for us to take the steps you're alluding to, and the ministry staff actually alluded to it in their deputation to us.

Ms McHugh: Theirs are for the opposite reason. I'm concerned that people won't do ceremonies, that they'll be too restrictive. They're concerned about it being solemn and dignified.

The Chair: I'll go to Mr Hardeman.

Mr Levac: I appreciate that, Mr Chairman. Thank you.

Mr Hardeman: Thank you very much for the presentation. At the bottom end of your letter you speak about some of the requirements, such as being able to withdraw the appointments because of preaching to the couple as opposed to just instructing them about the legalities of the ceremony. You deal with how they should or shouldn't be appointed, and I appreciate your changing positions after hearing what the presenters told us.

Ms McHugh: I'm concerned, at any rate, that they may not be the right place.

Mr Hardeman: I'm wondering if setting maximums is in fact what is causing the problem. If enough people come forward who want to preside over marriages and enough are appointed, then what they do or don't do—doesn't the marketplace deal with that? If the individual preaches to people and they shouldn't be, because they're preaching to people who don't want to be preached to, then they go to the neighbour, who also has the right to perform the ceremony. Would you see the possibility—

Ms McHugh: That was assuming there were six or less.

Mr Hardeman:—rather than restricting who and what should be appointed, of making sure that all the appointments are qualified to do it but we can have various types of people doing it? We can have people in the clergy who are no longer connected to a denomination being appointed. They very well may want to be somewhat religious about the civil ceremony, but I could make that choice.

Ms McHugh: In the phone calls I made, I encountered so many people, even people who have the right of a denomination to perform ceremonies but who want to be able to perform the ceremonies outside of the demands of that denomination. I spoke to three separate ministers who said that. They said, "Oh, what a good idea. I'd love to be a marriage commissioner. Then I could do it outside of all the confines." So I was saying, "Don't let those people do it." There we have the right to perform marriages. If they don't like it the way it is, take it up with their denominations. So I thought the commissioners shouldn't be those people.

Mr Hardeman: My concern is that there very well may be people who want the marriage performed who

don't affiliate themselves with any denomination but who do think in general terms that they would like some type of preaching.

Ms McHugh: Of course. You know what? My worry about preaching was not about preaching at the marriage. My concern was that marriage commissioners could be people who would say, "Until you lose weight and you give that child up for adoption, I'm not marrying you," or who would say, "I want to explain to you that marriage is X, Y or Z or it has to be entered into with this or that thought." If they're doing secular marriages, it's not the ceremony but the pre sort of time, that counselling shouldn't be a consideration of that.

The Chair: I'll go to Ms McLeod, and we are running out of time.

Mrs McLeod: I'll be very brief. I just want to thank you and the previous presenter for your presentations and to say to Mr Murdoch that I now understand why we needed to have the witnesses who have come forward. I made some assumptions, based on the Hansard and debate in the House, that all three parties were supportive of the bill and that it would just be a formality. Now I'm actually thinking, from everything I've heard, that we should be doing a much more extensive revision of the acts we're working under.

One of the terms you used—and I just want to make note of this because I don't think you said it facetiously—was "solemn." That's a good word and "solemnity" is a good word. "Solemnization" sounds like something ritualistic. It bothers me. It has bothered me from the time we started having these hearings. It does take away from the sense that this is supposed to be joyful in whatever setting the couple chooses to be married. I am not seriously going to propose that we start amending that word all the way through the act but I would be tempted to.

Thank you very much for your presentation.

The Chair: On behalf of the committee, I do wish to thank you, Ms McHugh, for coming forward.

We have one final, very brief bit of business. I declare these delegations wrapped for today.

There was a question from Mr Kormos with respect to Bill 51 and the cost of the hearings and travel, and the clerk has some numbers. I would ask the clerk to briefly summarize or report those numbers.

Clerk of the Committee: The cost incurred for the rooms, airfare, cabs, limos and expenses submitted by members was about \$11,000 for the trip to Ottawa.

The Chair: Thank you. I now declare this committee—

Mrs McLeod: With Bill 51 to be further considered by a subcommittee in terms of procedure.

The Chair: Yes. Thank you. We'll adjourn.

The committee adjourned at 1758.

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