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Thursday 28 November 2002

Jeudi 28 novembre 2002

Speaker
Honourable Gary Carr

Clerk
Claude L. DesRosiers

Président
L'honorable Gary Carr

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LEGISLATIVE ASSEMBLY OF ONTARIO

Thursday 28 November 2002

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Jeudi 28 novembre 2002

The House met at 1845.

ORDERS OF THE DAY

JUSTICE STATUTE LAW AMENDMENT ACT, 2002

LOI DE 2002 MODIFIANT DES LOIS DANS LE DOMAINE DE LA JUSTICE

Mr Flaherty, on behalf of Mr Young, moved second reading of the following bill:

Bill 213, An Act to improve access to justice by amending the Solicitors Act to permit contingency fees in certain circumstances, to modernize and reform the law as it relates to limitation periods by enacting a new Limitations Act and making related amendments to other statutes, and to make changes with respect to the governance of the public accounting profession by amending the Public Accountancy Act / Projet de loi 213, Loi visant à améliorer l'accès à la justice en modifiant la Loi sur les procureurs pour autoriser les honoraires conditionnels dans certaines circonstances, à moderniser et à réviser le droit portant sur les délais de prescription en édictant la nouvelle Loi sur la prescription des actions et en apportant des modifications connexes à d'autres lois, et à modifier les règles qui régissent la profession de comptable public en modifiant la Loi sur la comptabilité publique.

The Acting Speaker (Ms Marilyn Mushinski): Mr Flaherty has moved second reading of Bill 213—

Hon Chris Stockwell (Minister of the Environment, Government House Leader): Dispense.

The Acting Speaker: Dispense?

Mr Peter Kormos (Niagara Centre): No.

The Acting Speaker: —An Act to improve access to justice by amending the Solicitors Act to permit contingency fees in certain circumstances, to modernize and reform the law as it relates to limitation periods by enacting a new Limitations Act and making related amendments to other statutes, and to make changes with respect to the governance of the public accounting profession by amending the Public Accountancy Act, the Honourable Mr Young.

1850

Hon Mr Stockwell: On a point of order, Madam Speaker: I believe I have consent to move this motion.

May I ask for consent to let the debate proceed as follows: that one hour be divided equally among the parties, beginning with the government caucus, and that the remaining unused time for each party's one-hour leadoff speeches be reserved to the next time this bill is called; for the purpose of standing order 46, tonight's debate be considered a sessional day and that at the end of tonight's debate the motion for the adjournment of the debate shall be deemed to have been made and the Speaker shall adjourn the House.

The Acting Speaker: Is there unanimous consent? Agreed.

Mr John O'Toole (Durham): After the complex rulings and legal decisions prior to my speaking tonight, I just want, for the viewers tonight, to reassure them that this Bill 213—I always like to go to the basics—is 32 pages in length. Of course half of it is in French, so it's really quite a small bill in terms of content, but it is significant in the three sections which were in the notice that Minister Flaherty explained in the introduction.

It is schedule A, amendments to the Solicitors Act, which is the section dealing with the permission of contingency fees.

I'm going to read the preamble here:

"The Schedule amends the Solicitors Act to regulate contingency fee agreements. Contingency fee agreements may not be considered to reduce an award of costs and a client may collect full payment for an award of costs, even if it exceeds the amount payable under an agreement, if the award is to be used to pay the client's solicitor and the solicitor and client have entered into a contingency fee agreement."

This is clearly an agreement where, in my view, this is considered an access-to-justice issue. There are prohibitions, of course, of contingency fees in two areas: criminal and quasi-criminal issues with respect to family matters. Those are two areas in which you can't enter into an agreement with your solicitor or your lawyer to split any award or ruling with the lawyer. In the case of people who have civil matters that they feel need to be well represented, many lawyers in many cases would be happy to find these agreements.

My realization is that Ontario is the last jurisdiction in Canada and indeed North America—and a recent court ruling has indicated that in fact it is a process that Ontario should adopt. So I will speak to some extent, in the limited time I have, more on that, but I do want to mention the two other sections. Schedule B, which is the Limitations Act—I'll read a few clauses here for the viewer:

"A basic limitation period of two years is established" in section 4, "running from the day a claim is discovered"

which is in section 5 of the Limitations Act. "A claim is discovered when the person with the claim is, or ought to be, aware of" the "material facts." That is, they are aware that there is some violation. "This basic limitation period replaces the general limitation periods found in the existing Limitations Act and most of the numerous special limitation periods found in individual statutes." The importance here is harmonizing with some predictability or confidence the limitations period in a variety of statutes.

Now there are some important exemptions, Madam Speaker. It's a pleasure to see you in the chair this evening as well. I think we should take time and recognize Madam Speaker.

I think for the viewer this evening it's important to say the act lists a variety of proceedings in respect of which there is no limitation period.

They are listed in section 16: "proceedings for declarations; proceedings to enforce court orders and other orders that are enforceable in the same way as court orders; proceedings under the Family Law Act"—in fact is what's mentioned here—"relating to support; proceedings to enforce arbitration awards; proceedings by persons in possession of collateral to redeem or realize on it; proceedings arousing from sexual assault in certain circumstances; proceedings to recover fines, taxes and penalties owed to the crown."

There is also no limitation period with respect to undiscovered environmental claims, which is very important. So there is a schedule here that lists exclusions from this imposed limitations period.

The third section, which I think has been long sought after, is a sense of fairness. The issue here is schedule C, amendments to the Public Accountancy Act. For the viewer this evening who may not be familiar, there are a number of people who practise accounting, and public accounting is technically the issue here. It's been something that all levels of government, provincially etc—some provinces have dealt with this issue; Ontario hasn't. It's really recognizing professional accountants who are able to do public accountancy functions.

I'll read for the record here: "Currently the Public Accountants Council for the Province of Ontario consists of 15 members, 12 of whom are appointed by the council of the Institute of Chartered Accountants of Ontario and three of whom are elected by licensed public accountants." This is replaced by a provision under which the composition of the Public Accountant Council is established by regulation made by the Lieutenant Governor in Council.

"The Lieutenant Governor in Council may prescribe, by regulation, additional functions for the Public Accountants Council.

"The qualifications for being licensed currently include membership in the Institute of Chartered Accountants of Ontario." That's really been the nub of this whole issue, sort of a monopoly position. It isn't an issue about lowering standards; in fact it's allowing access. There will be those—and I see Mr Kwinter here this evening—who disagree. I don't know their position, nor would I presume to know what the Liberals stand for.

"This is replaced by a reference to membership in any one of three organizations"—Madam Speaker, with your indulgence, this is important—"the Certified General Accountants Association of Ontario, the Institute of Chartered Accountants of Ontario and the Society of Management Accountants of Ontario." These again must go through rigorous training and also examinations to be licensed to practice as public accountants. So there's more to this bill as well.

"The schedule adds to the grounds on which a public accountant's licence may be revoked after an inquiry held by the Public Accountants Council. The licence may be revoked if the inquiry finds that the licence holder meets prescribed conditions. These conditions are to be prescribed by the Lieutenant Governor in Council after consultation with the Public Accountants Council."

In this era when public confidence in the financial community is extremely important, I believe that bringing openness, clarity and transparency is extremely important to the public and in many respects could be considered a consumer protection issue.

I know that we as members of the Red Tape Commission have met. There have been judges involved or retired judges retained to try and find agreement between the existing council and the proposed reform of governance, and I believe this is a very good first step to raise the standard in public accountancy.

I think that in my own particular experience the contingency fee is an area where I want to spend a bit of time in the very limited time that's allowed. Again, there can be arguments on both sides of the issue, as in all cases, but contingency fees to me really mean access to justice. In these matters where persons may, for a lot of reasons, not have the resources, they can engage a contract with a lawyer who will professionally represent their issues and bring them to the attention of the courts and receive proper hearing. It is my understanding that regulations will determine the sharing or some formula for sharing any award. Failure to win the case would mean that the lawyer arguably would be working for nothing.

I guess in the agreement and depending on how generous these awards are and the risk situation with respect to something going before the courts—that is why at the moment there is no regulation specifying the amounts within that agreement that are allowable. But it's my understanding as well that there would be some mechanism to appeal the contingency fee schedule.

1900

I think it is important in today's very complex, rather litigious world that Ontario catch up with other jurisdictions and address the access to justice issue. Simply put, the cost of using the legal system should not be a barrier to justice, as I see it as I look into the issue. The proposed legislation would regulate the way in which individuals enter into contingency agreements with their lawyers. Contingency agreements tie legal fees to the outcome of the case, as I said before. Under such agree-

ments, if the client wins a case, the client pays a prearranged fee. If the client does not win the case, the client does not pay the fee. In these ways, individuals may be given the option of negotiating a different financial agreement with their lawyer so that the unpredictable legal fees and upfront costs do not serve as barriers to justice.

Middle- and low-income Ontarians should not have to sacrifice their families' future to exercise their legal rights. This legislation is designed to ensure that this does not happen. By modernizing the way legal fees are regulated and ensuring strong public protection, Ontario would benefit from a new tool, contingency fee agreements, to help them deal with the escalating costs of hiring lawyers. Escalating costs is another issue. Legal aid, as we have dealt with, and the public defender, which was in a previous bill—I believe our Attorney General, David Young, has done an admirable job of trying to improve in the overall aspect of access to justice, as well as providing legal aid certificates in those cases where deemed appropriate.

By their very nature, complex cases are often lengthy and costly in civil matters, prepared so that the cost of complex cases may be prohibitive, as I've said, for many Ontarians. Yet this type of case can be among the most important. Not only is the individual or organization involved, but the evolutionary process by which common law adjusts to the ever-changing realities of society—that is, there is just more litigation today.

This further highlights the importance of affordability. In the market, if there are plenty of lawyers willing, eventually the client will find a lawyer that they deem to be competent and comfortable, and the rates themselves, these contingency fee rates, would be determined in that kind of context. There's no reason why they couldn't talk to one or two lawyers to determine that. Allowing contingency fee arrangements will help to ensure that such decisions are less the product of pocketbook considerations and are based to a greater extent on the principles of justice itself.

In speaking on the importance of contingency fees as a means of enhancing access to the justice system, Supreme Court Justice Cory stated a few years ago—it's very important for those viewing to know what has motivated this deep consideration by our Attorney General. Justice Cory said the following:

"The concept of contingency fees is to make court proceedings available to people who could not otherwise afford to have their legal rights determined. This is indeed a commendable goal that should be encouraged. Legal rights are illusionary, and no more than a source of frustration if they cannot be recognized and indeed enforced."

This is with respect to a case called Coronation Insurance v. Florence in 1994. It's important to quote Justice Cory in 1994.

I wouldn't in any way try to make this a political thing. It has occurred in the Attorney General's file over a number of years. Again, I commend our current Attorney General and predecessors for the work they've done on this important issue of access to justice. Actions, really, at the end of the day, are the real testament to this commitment to the people of Ontario. I cannot underline that strongly enough.

There are a couple of other sections under the Solicitors Act, but the limitations period is, I believe, an administrative issue in the general sense. Of course, as in all cases, there will be those who say it's not long enough, but if you look at section 16, as I mentioned before, in the preamble to the bill, there are clear determinations in certain types: persons dealing with environmental issues, disability issues, access issue, liabilities to the crown. Those are listed in the schedule of exemptions that aren't going to be included in this two-year, overarching limitation period.

I won't spend a lot of time, because in the last few moments remaining, public accountancy is an issue that I feel each of us—income tax may be our only time, but for small business particularly and for not-for-profit organizations this is an extremely important issue: access to public accountancy. When you have a marketplace, others bidding to do the work, competent and capable of doing the work, that's what this issue is about. Any person who by prescription or legislation has achieved a non-contested position of providing that service—often it's government's role to take the bold and committed step of improving access of the citizens of Ontario to that very service.

In no case would we be lowering standards. This issue, public accounting, is the practice of preparing audited financial statements and other reports which investigators lead to and shareholders may rely on. So investors need to have clear confidence, as we have seen in the more recent uncertainty in the marketplace, in becoming an investor in part of an enterprise.

It is important here that on October 30, 2002, our government retained the dean of the University of Toronto's faculty of law, Ron Daniels, to hold consultations and advise our Attorney General and this government on how best to reform the public accounting licensing regime. I think it's important to look at the third-party resource here as a professional: the faculty of law of the University of Toronto, very highly respected. Ron Daniels has given some information to the government, and the Attorney General obviously has chosen to act.

Again, there are always two sides, or more, to every issue. What reassures me as a member of government is that you have to have the sense of what the people want and the courage to do it, because there is a line-up behind each one of those dissenting voices—and you may, in the next hour, hear some of those dissenting voices. But I can clearly feel comfortable, in standing and speaking on behalf of my constituents of Durham and indeed having worked with the Attorney General and other ministers, that this is having the courage to do the right thing.

At the time, we discussed the idea of broadening eligibility for public accounting to include members of the three major accounting bodies—chartered account-

ants, certified general accountants and certified management accountants—who meet prescribed high standards. The proposed legislation addresses this important issue. It proposes the framework for the work from Professor Daniels as he developed recommendations on a more modern, effective and transparent licensing regime based on high, internationally-recognized standards. The new competency-based licensing system would protect the public and maintain investor confidence in Ontario by ensuring that only the best-qualified are licensed to practise public accounting in the province of Ontario. I want to stress that while this legislation would broaden eligibility for public accounting licensing, CAs, CGAs and CMAs—these are the designations they have—would still have to meet prescribed high standards that we will put in place after professor Daniels's report to the government. We look forward to receiving Professor Daniels's report. I would like to once again thank the many stakeholders who took the time to participate in this very important process.

In all cases, clarity and access to Ontario's statutes and laws is what this is about. There will be those who oppose and are resistant to change, but it is to have the courage to make a difference that is really the by-line of this government. Taken together, the proposals contained in the Justice Statute Law Amendment Act modernize outdated laws and enhance access to justice while protecting the public. These are important steps that we are taking to ensure that the justice system, the Limitations Act and the Public Accountancy Act are modernized to become more accountable and more accessible to the people of Ontario.

1910

I can only say that I have engaged the professionals in my community and I am going to put a couple on the record. Donna Chambers, as well as Janet Collins, who's a CGA, live in my riding. In fact, each year when the CAs, CGAs and CMAs receive their designations after fulfilling the very difficult exams, I always try to send a recognition or at least a letter to congratulate them, commend them, for the hard work, not just in undergraduate studies—many of them may even have master's degrees—but for receiving the designation and passing the very difficult high-standard tests.

I also shared these comments with our Attorney General, David Young. I would like to say that I worked very closely with Ralph Palumbo, who was involved with the CGAs and who I believe has patiently and persistently tried not to lower the standards but to set standards and have the standards accessible to all persons who want to be public accountants.

Also on public accountants, I've had a listener, Stephen Horton, who is a CGA student with a bachelor of science and a registered insurance broker. He applauds the government for taking this action.

There is e-mail and a number of other ways, but I believe it's important for the people of Ontario to feel they have access to their MPPs. As an MPP, I can assure you I have access to our ministers; in the case of Bill 213, which we're talking about tonight, it is our Attorney General. I commend him for his effort. I'll be supporting this bill. I expect others to do the same.

Mr Michael Bryant (St Paul's): I also want to express thanks and gratitude to the Attorney General for, with the cameras rolling and the tapes whirling, saying on the record something that I appreciate by acknowledging the contribution, however modest, that Bill 178, a private member's bill to bring forth, legalize and regulate contingency fees, had on this process. The official opposition often must blow wind into the sails of government, and if our efforts to try to legalize and regulate contingency fees in Bill 178—which passed, by the way, unanimously in the House, I'll proudly tell everybody here—did that, that is a good thing.

I'm back to talking about contingency fees, as I was with Bill 178, my private member's bill to address that very issue. Let me say that when I first introduced my contingency fee bill in the spring, at the time, contingency fees were considered illegal, really. Contingency fees were covered under provisions of the Solicitors Act, 1990, and An Act respecting Champerty, 1897. Under those acts, the prevailing view under the common law was that those provisions in those statutes prohibited the use of contingency fees in most circumstances. In turn, the rules of professional conduct which govern the conduct of lawyers in Ontario prohibited lawyers from entering into contingency arrangements unless it was approved by statute, which it was not, as it was understood then.

The Class Proceedings Act, 1992, permitted contingency fees in relation to class proceedings, and commission or percentage agreements were permitted in relation to some non-contingency business and conveyancing matters under the Solicitors Act.

When I introduced the bill, it was an effort on my part to try to, among other things, legislate the recommendations of the joint commission report that had been submitted to the Attorney General of Ontario, the Honourable Mr Flaherty, who subsequently rejected those recommendations. I'll get into that in a moment.

However, the work of the joint commission report, which was an advisory committee to the Attorney General, was excellent work and involved, really, a settlement, a negotiation and a compromise between all the major stakeholders impacted. Not everybody came out particularly happy, but they came out with something that could be taken to legislation. That was not done by the government of Ontario, so I introduced a private member's bill to do just that.

Everything then changed in September, when the Ontario Court of Appeal released its decision in McIntyre. The judgment was written by the Honourable Mr Justice Dennis O'Connor, famous, of course, for heading up the Walkerton public inquiry. The other judges on the panel who concurred were Justices MacPherson and Abella. It was September 10, 2002. I'll get into the judgment in a minute, but to make a long story short, the Ontario Court of Appeal said that the law of Ontario was such that contingency fees were not illegal.

The Attorney General of Ontario at the time of the hearing took the position that they were, but to be fair, he was just arguing the common law as it then stood. The Attorney General took the position that in fact it should be the Legislature and not the courts that should be changing our laws on contingency fees. While that particular submission was rejected by the court, nonetheless the court did go on to say that it really was almost necessary for the Legislative Assembly of Ontario to enact regulations through statute of the conduct—not necessarily by regulation, but via statute—of lawyers entering into contingency fee arrangements. Therefore, I had to amend my contingency fee bill, because it was operating under a different set of assumptions. It then went before the Legislature and, as I said, passed unanimously.

Now we have a government bill which is remarkably similar, in terms of addressing the contingency fee aspects, to my private member's bill, and in that sense I have little to add in terms of constructive criticism to those provisions, because the only thing worse than a sore loser is a sore winner, as the member for York Centre constantly reminds me.

In any event, it is fair to say that there are arguments for and against the legalization and regulation of contingency fees, and I suppose we ought to address those. I have no doubt that consumers and members of various professions may have concerns about what this means. The chief concern over the years with that is that this would somehow Americanize our system and result in a lot of frivolous litigation. To paraphrase Justice O'Connor in the McIntyre case, those fears just never turned out to be in any way validated by the facts as we know them; namely, that every single province in this country has contingency fee legislation in some fashion. Manitoba has had it for over 100 years. Every other province has had it for more than 25 years. Clearly, Ontario had to join the rest of the country in regulating this activity because, as many people understand, a contingency practice was well underway and has been underway for many years. It was simply unregulated, and the potential was always there for abuse. The point of my private member's bill, and I think the point of this government bill, is to do just that.

The first and obvious reason for bringing in contingency fee legislation is that it's going to increase access to justice. We have a brutally expensive justice system, accessible to very few. Most of the court dockets on the civil side, in most jurisdictions in this province, are dominated by what I would call professional litigants, that is, businesses who have to, as part of doing business, get into the business of litigation, whether it be insurance companies acting as defendants or whether it be matters involving the various professions which are often being sued or whether it be simply the commercialists, companies which go to court to try and resolve disputes because the stakes are so high. What that means is that the docket is totally unavailable and unaffordable to the vast majority of Ontarians. Noted in a 1995 report prepared by the Ontario Civil Justice Review—this was a report by the Ontario Court of Justice and Ministry of the Attorney General—this was one of the observations:

"It is important to ensure that access to justice applies fairly to all members of society. There is a particular concern that the middle class, who do not qualify for legal aid, cannot afford the costs of litigation and therefore encounter a barrier to access to justice. As well, wealthier members of society can wear down middle-class members since the latter cannot afford to fund lengthier lawsuits."

1920

That obviously applies 10-fold for those who do not even consider themselves, or otherwise fit into, the demographic of the middle class. There's just no access to justice for so many Ontarians because of this. Now, is this bill a panacea? No, it's not, nor is my private member's bill a panacea. Rather, the hope and the assumption here is that the experience will be the same in other provinces, and that is that some cases that otherwise might not have gone to court will get access to justice.

Legal services are normally purchased with an initial retainer to the lawyer and a commitment to pay an hourly rate for services in disbursement. Many clients, therefore, simply cannot afford that initial retainer and cannot, on an ongoing basis, afford the hourly fees.

"As noted in the 1995 report"—just stated—"the cost of hiring a lawyer is commonly perceived as the single biggest obstacle to litigation in the Ontario Court (General Division). Another difficulty with hourly billing is that it creates incentives for lawyers to prolong cases"—some believe—"by ... conducting more interlocutory proceedings"—in other words, having a whole bunch of motions—"and extending discoveries."

Contingency fees mean that you don't pay unless you win and you don't pay your legal fees until you have a damage award from which to pay them. So it basically means that the risk is borne by the counsel, by the lawyer. It's because of that, really, that we will not have frivolous litigation in Ontario, simply because lawyers are not going to gamble on frivolous cases because they are going to want to be able to collect a fee for it.

Why else do we need contingency fees? "By increasing access to justice, contingency fees may save the public purse"—in many ways. "The purpose of the civil justice system is to enable those who have been injured or harmed by another to be compensated by that person." If people cannot afford to retain a lawyer in order to pursue their claim against another party, then they must turn to the public purse, in many cases, for assistance, instead of getting the person who ought to be paying for it to pay for it through the courts.

Next, "Ontarians should have the same right to enter into such arrangements as other Canadians. All of the provinces and territories in Canada, except Ontario, permit contingency fees with varying controls."

Last, we have right now in Ontario a legal assistance crisis, where fewer and fewer Ontarians simply cannot

qualify for legal aid because it is so restrictive and so difficult. Contingency fees, outside the criminal law and family law context, which obviously is the main focus of legal assistance and Legal Aid Ontario, would provide for such funding for actions no longer covered by legal aid. Contingency fees in that sense are meant to fill the gap that has been left by legal aid cuts, particularly as they apply to the civil side.

In my bill and in this bill, it is made clear what is clear I think in the common law, namely, that contingency fee arrangements cannot be entered into for family law matters and for criminal law matters, which should be self-evident, but this must be spelled out, in my view, in legislation.

The arguments against contingency fees tend to focus upon the potential for abuse. Let me start out by citing Mr Justice O'Connor, who said of these abuses as follows, in the McIntyre case, on September 10, 2002: "While historically these concerns about the potential for abuse by lawyers or damage to the lawyer-client relationship were frequently expressed, there is little, if any, evidence to show that the fears were well founded. We do know that for years lawyers have acted in what they considered to be meritorious cases for clients of modest means with the realization, if not the express agreement, that they would be paid only in the event of success."

He went on to say, "We have the benefit of the experiences of the many jurisdictions that have enacted legislation permitting regulated contingency fee arrangements. This court was not shown any evidence to show that lawyers in these jurisdictions, properly regulated, are more likely to engage in the types of abuse to the administration of justice that were once feared to be the result of contingency fee agreements," which really addresses, typically, succinctly and brilliantly, the definitive counter-argument to the concern about abuses.

Mr Kormos: Brilliant?

Mr Bryant: I'm describing Mr Justice Dennis O'Connor as brilliant, not me.

Some of the reasons for a contingency fee bill are in fact to address the abuses, whatever abuses there may be, to provide for a cap; to provide for the circumstances in which contingency arrangements are not allowed; to deal with the question of double-dipping, getting both the award and costs and in what circumstances that might happen; and to deal with instances where the consumer feels ripped off and needs some recourse. All those issues are addressed in my private member's bill and also in this bill as well, and that's the purpose of this: to address those concerns.

Is it possible that we can improve on the bill? I have no doubt that at the committee hearing stage we will endeavour to do that, and we will hear from all the stakeholders and consumer groups and the like to ensure that in fact we have covered all our bases. I certainly would not suggest that my private member's bill is infallible. I look forward to improving it as a private member's bill; I look forward to addressing that in the context of a government bill as well.

Nonetheless, let me just quickly go to some of the potential concerns about contingency fee arrangements and try and address them. First, there is the concern that contingency fees may lead to excessive fees. Well, that's the whole point of putting caps in, the whole point of limiting double-dipping: that you address the ability of lawyers to obtain excessive fees. In the Canadian context, interestingly, statistics compiled by the Insurance Corporation of British Columbia showed, in a nutshell, that for cases involving damages worth 25%, most of the claims saw that the level of fees for the contingency contract are less than they would have been had the matter just been billed out. The next 20% of writs issued involved cases between $25,000 and $100,000, and at that level the lawyer's contingency fee is probably slightly higher than the hourly rate would be if the case did not have to go to trial. So it is written in the British Columbia access to justice report of the justice reform committee of 1998. It is only in the remaining 14% of cases involving more than $100,000 where contingency fees can be considerably higher than an hourly rate bill would be. Yet, of course, if we have someone of limited or modest or even just average means, they would never have the opportunity to bring that $100,000-plus case to court because they would never be able to afford the retainer and the hourly rates along the way.

The other concern is that of frivolous litigation. When I first put forward my private member's bill I found myself on CBC Radio debating eminent counsel Paul Morrison. Mr Morrison expressed a concern about frivolous litigation, although he was very, I think it's fair to say, balanced and complimentary in his remarks. I'll just say now what I said then. In Canada, unlike the United States, we have a party-and-party cost rule, which generally means that a losing party must pay a winning party's costs of the litigation. There is no similar requirement in the United States. It is generally felt that the concern of having to pay the other side's costs in the litigation is a significant deterrent to frivolous litigation.

The second check on frivolous litigation arises in our caps on what are called non-economic costs. In Canada, unlike the United States, there is a cap on the amount that can be recovered for non-economic losses. The Supreme Court of Canada has limited the amount of court awards for non-economic losses, meaning pain and suffering, loss of amenities, reduced life expectancy. It reduced that amount to $269,000 in 1999 dollars. No limit exists in the United States, and awards have run into the millions of dollars.

In other words, it is not the case in Canada, as it is in the United States, that you can bring a contingency fee action in what amounts to buying a lottery ticket. It's worth the investment because the lawyer may recoup millions of dollars because somebody gets multiple millions of dollars for having a cup of coffee spilled on them. Those kinds of damages just are not awarded and have been limited in our country, thanks to the Supreme Court of Canada, and as a result of that you don't have those huge damage award lottery cases in Canada, which

again checks against frivolous litigation. As I also said, there's a certain lack of logic to the concern of frivolous litigation, and that is, lawyers are a lot less likely to accept cases of little merit when their fee is contingent upon success.

1930

The private member's bill that I introduced did receive the support of some of the stakeholders and I just want to acknowledge it now because I appreciate it very much and time didn't permit me to do so during private members' hour.

The Advocates' Society wrote to say:

"The Advocates' Society continues to believe that permitting clients and their lawyers to enter into regulated contingency fee arrangements will serve the important objective of enhancing access to justice for the people of Ontario.

"It is clearly a concept whose time has come."

That is from Philippa Samworth, president of the Advocates' Society.

The Ontario Bar Association wrote that "the OBA has since 1988 advocated for, and supported the implementation and regulation of, contingency fees in Ontario....

"Mr Kidd"—who is the chair of the OBA committee on contingency fees—"... reviewed your bill to amend the Solicitors Act and believe that it accords with the key recommendations on implementation that we have consistently favoured. We approved of your efforts to formally recognize and organize this most important access-to-justice tool for the Ontario public." That is from Virginia MacLean, QC, president of the Ontario Bar Association.

Then the treasurer of the Law Society of Upper Canada wrote:

"As you know, the law society has for many years advocated for contingency fees for lawyers....

"In this context, we thank you for continuing to highlight this important issue." The letter goes on to deal with the McIntyre decision.

My time is running short. I will not have a chance yet to speak to, among other things, the limitation period consolidations, which were originally introduced by—who?—the Honourable Ian Scott, that great Attorney General, who I know wants those particular provisions to pass. I'll certainly look forward to speaking to that in the near future.

The Acting Speaker: Further debate?

Mr Kormos: Regrettably, we only have 20 minutes, but that's OK because we're going to make up for it the next time we address the bill.

The bill has three distinct parts. Let's deal right off the bat with certified general accountants. They've waited long enough. I know there are chartered accountants out there who aren't happy about the legislation. I know there are chartered accountants out there who are probably phoning the Conservative backbenchers and cabinet ministers, telling those backbenchers and cabinet ministers that this chartered accountant is revoking his or her membership in the Conservative Party, or that this chartered accountant has lost all confidence in the Conservative Party to uphold the hierarchical, tiered nature of accountants in this province.

New Democrats have for a long time advocated for the inclusion of certified general accountants in a public accounting regime that recognizes the skill that requires them to meet appropriate standards and, should they meet those standards, and I'm confident they do and will, permits them to perform the full range of roles that we call upon accountants to do. As a matter of fact, I was pleased that Bill 200, which of course predates this bill before the House this evening, is a bill that was designed to amend, among other things, the Public Accountancy Act.

Bill 200 makes "significant changes to the Public Accountancy Act. It restructures the Public Accountants Council for the Province of Ontario as the Ontario Public Accountancy Oversight Board, consisting of six members appointed by the Minister of Finance and one member appointed by each of the following professional bodies:

"1. The Certified General Accountants Association of Ontario.

"2. The Institute of Chartered Accountants of Ontario.

"3. The Society of Management Accountants of Ontario."

It then further requires that a majority of the board "must not be public accountants." The board's functions of course are to set quality control and accounting standards and review accounting practices.

The bill further went on to indicate, "The qualifications for a licence to practise as a public accountant are amended to require an applicant to pass the qualifying examination approved by the board and to be a member of one of the professional bodies referred to above," including the Certified General Accountants Association of Ontario. Bill 200, introduced in this Legislature by Howard Hampton, leader of the New Democratic Party, on October 30, 2002, reflected a long-time commitment that the NDP has had to certified general accountants being entitled to utilize all of their skills in the practice of their profession, in the practice of public accounting.

There's some concern with the amendments to the Public Accountancy Act, schedule C of the bill, unlike Mr Hampton's bill, which very clearly spells out the makeup of the governing body: one from each of the three accounting associations—certified general accountants, chartered accountants and management accountants—and with a guarantee that the majority of the board must not be accountants. There was no suggestion, of course, that they had to be lawyers or anything like that. It provided a secure structure wherein there was no doubt by the affected bodies that there could and would be fairness.

I have to tell you, because this bill has only been here before the Legislature a couple of days—it has just been printed—I had one of our staff call the Attorney General's office, because I wanted this afternoon, knowing we were going to speak to the bill this evening, an

opportunity to talk to ministry staff and get what we call a briefing around the bill. The Limitations Act, which is yet another part of the bill, is something with which all of us should have some familiarity because, heck, there have been two Limitations Acts introduced by this government, neither of which has ever proceeded very far. But I was grateful to the staff who came over from the Ministry of the Attorney General. I am grateful to them, and quite frankly they were extremely helpful in both the contingency act portion of this bill and the Limitations Act portion of this bill and in the acknowledgement of the expertise and skill of the certified general accountants portion of this bill—because that's really what it is, isn't it?

I want to thank the staff who joined me in the NDP caucus area today: Mark Leach, who is the director of the policy branch; William Bromm, counsel in the policy branch, Ministry of the Attorney General; John Twohig, senior counsel in the policy branch; Sunny Kwon, counsel, policy branch, business policy and planning division; Marie Irvine, counsel, policy branch, business policy and planning division; Abiodun Lewis, counsel, policy branch, business policy and planning division; John Lee, counsel, policy branch, business policy and planning division; and John D. Gregory, general counsel, policy branch, business policy and planning division. I really am extremely grateful. These are smart people; these are very competent people. These are civil servants who conduct themselves in the best manner of the civil service. They understand this legislation inside and out, and they were extremely helpful to me in ensuring that I understood the legislation as best it could be understood. They, of course, were joined by the warden, the political staffer. He was a pleasant enough young fellow too, Mike Langlois, MPP liaison, office of the Attorney General and minister responsible for native affairs.

It was a pleasure to meet with these folks this afternoon. I've had occasion to deal with them before. I have the highest regard for them. I want you to know, and I quite frankly want them to know, that I appreciate their assistance not only on this bill but on similar bills that have come out of the Ministry of the Attorney General.

One concern that we have with finally recognizing certified general accountants and their expertise in their capacity to perform public accounting, or public accountancy—far be it from me to inappropriately refer to that practice—is that we're still very much in the dark about the structure of the governing body. Unlike Howard Hampton's bill, which laid out the nature of the governing body—one from each of the three branches of accounting and then a majority appointed by the government who shall not be accountants—we don't have that structure available to us yet with respect to the amendments to the Public Accountancy Act. I'm advised that the matter has been referred to Professor Ron Daniels, whom most of us are well aware of, from over at U of T law school. The advice given to me today was that Professor Daniels has indicated that he will attempt to effect or facilitate a consensus between the three accounting bodies and present that to the government. Failing a consensus, he's said he is going to do what he thinks should be done and recommend that to the government to implement by way of regulation.

1940

I also want to indicate the history of the Limitations Act. We had Bill 163 introduced on December 12, 2000, and it looks like that one got killed in a prorogation of the House. It just died a natural death as a result of the House being prorogued. Then we got yet another one. The first one was introduced by an Attorney General called Mr Flaherty, and the second one—I suppose that would still be the same Attorney General, as I recall it. I'm not sure; I don't have it in the note that was given to me, as to who the second Attorney General was who introduced yet another Limitations Act, Bill 10, on April 25. Bill 10 is the bill still before the House, the Limitations Act. Was it Mr Flaherty or Mr Young who introduced Bill 10? One or the other, obviously. It doesn't happen to be in my notes.

Here we have the Limitations Act again. This time I suspect it might pass, because the government has proceeded with second reading pretty promptly, and we've seen this before when they create a mini omnibus bill. I predict that this government will want this bill to pass before Christmas. Quite frankly, at the end of the day, if that's the case, if the government calls it and it proceeds through second reading, committee and then third reading, so be it.

I predict the government will not want to have anything by way of significant public hearings around this bill. I bet you dollars to doughnuts right now that the government does not want this bill to go to committee. It's not because we don't want it to go to committee. I'd love to hear from members of the various accounting professions. I'd love to hear from certified general accountants. I'd love the opportunity to meet with those certified general accountants and tell them how New Democrats have backed their interests for a long, long time. I'd also like to hear concerns expressed around the Daniels review and then the proposal to be done by regulation, because I'm a little fearful, as I suspect some of the members of these professions are, about the prospect of regulation being utilized to set up this governing body, this council.

I told you the other part of the bill dealt with the Limitations Act. Again, what lawyers and any number of professions have told me is that an overhaul of the Limitations Act is probably long overdue. It's nice, I suppose, in the total scheme of things to see a broad single limitations period of two years being created in this act, if only it were all-encompassing. I took a close look here, and I understand there are some lengthier periods, which are not inappropriate, the 15-year period, due to the circumstances that it contemplates.

But guess who had their cake and ate it too again. Guess who. The auto insurance industry. Those highway robbers are so deep in this government's back pocket,

and this government is so deep in the highway robber insurance industry back pocket, that both of you are spitting out lint. Because sure enough, although the general two-year limitation period is considered fine for most people under most circumstances, what does the insurance industry get? Catch this. Section 39, a new section to the Insurance Act: "A proceeding against an insurer under a contract in respect of loss or damage to an automobile or its contents shall be commenced within one year after the happening of the loss or damage." You see, everybody figures, over on the Conservative side, that a two-year limitation period is good enough for regular folks, right? But oh, no, the auto insurance industry gets special consideration. I find that objectionable. Once again, what's sauce for the goose ought to be sauce for the gander. I see once again that the insurance industry—I'm not suggesting they own this government, but it's obvious that from time to time they're renting it, at least for a sufficient period of time to get the amendments they want in bills like the Limitations Act.

Shame on you guys for succumbing, for taking a dive and biting the canvas so quickly. Shame on you. How come people in your caucus weren't standing up saying, "Tell the insurance industry to pound salt. If we're creating an across-the-board two-year limitation period, let it be an across-the-board two-year limitation period for everybody."

Understand what limitation periods are all about: they're there to protect the defendant. You understand that, don't you? Limitation periods are about protecting the defendant. In this case, it's about protecting the insurance industry. One of the rationales—gosh, there are probably people who could put it better than I can—is you can't expect a defendant against whom a claim is being made X number of years after the fact to be in possession of all the things that might be necessary to resist that claim. That's why the two-year limitation period, consistent and uniform, is not, in the total scheme, such a bad idea, because more than two years after the fact—let's say you loaned me some money, and then you decide I didn't pay it back. If you wait longer than two years after when I was supposed to pay you back, I could say, "I gave the money back, and you gave me a receipt, but how do you expect me to have the receipt after two years?" Heck, I can't keep stuff around for two days—look at my desk—never mind two years. It's designed to protect me as a defendant in that case from having to defend myself against a claim made against me, whereby the passage of time means that just time alone would cause little bits of evidence—my memory, my recollection, my possible witnesses—to have disappeared, flown the coop or moved on.

Why are we giving special consideration to the insurance industry? Haven't they picked enough pockets in this province? You gave them their amendments in Bill 198, which restrict the no-fault benefit medical rehab services that innocent injured victims are going to be able to access, and the insurance industry still promises double-digit premium increases. They had their way with you through Mr Sampson—shame on you, Rob Sampson—in terms of Bill 198, and now they've had their way with you with respect to the Limitations Act.

When are people going to stand up to the insurance industry? They're not your friends. Well, I suppose they're your friends, because of course they cut cheques when it comes to making campaign contributions. Well, you heard Howard Hampton earlier today talking about Rent-a-Wreck, Rent-a-Chalet or Rent-a-Beach House—Rent-a-Government. Why do you guys keep biting the canvas, taking dives for the insurance industry? It beats me.

But there's more to come on the Limitations Act; there's more to be considered. I've go to move fast, because we've got to talk about the contingency act. I was particularly upset—again, the staff I referred to were extremely helpful in pointing out what changes had been made in this Limitations Act from the earlier two acts that have been introduced, most recently Bill 10, which the government never saw fit to proceed with.

I've had accountants on my back saying, "When is this government going to get off its duff and move along with the Limitations Act?" I said, "Search me. These guys aren't the most organized." The Conservatives—the over-the-hill gang, the shoot-themselves-in-the-foot gang. I've got accountants down where I come from who want this Limitations Act passed; they want it debated and passed. They've said, "Where is Bill 10?" I said, "Search me. I'm not the government House leader. I don't call the orders of the day for the government. I don't determine the government agenda. The government didn't see fit to proceed with its Limitations Act." Finally, by including it with two other bills—this mini-omnibus—it looks like we're going to move on. However, what's interesting is that with respect to claims by the government, there's no limitation period.

I want to you take a careful look at this, because this is repugnant: a proceeding brought by the ODSP or Ontario Works has no limitation. ODSP and Ontario Works can bring the action 10 years after the supposed overpayment, 20 years, 30 years or 40 years. I've already had experience in my constituency office of Ontario Works calling up good folks down where I come from in Niagara Centre, saying, "What about the money you owe welfare from 15 years ago?" They say, "What are you talking about? How can I possibly, 15 years after the fact, argue my case? I'm saying to Ontario Works, 'You're full of it, telling me, 15 years after the fact, that you overpaid me. Why didn't you tell me then? Cause you sure as heck didn't tell me then.'"

There is no limitation act in claims being made by ODSP and Ontario Works. I think that is repugnant and I would hope that government backbenchers will take a look at this. I don't think it's fair. It's not decent; it's not just. How can you expect somebody who might have been on welfare, social assistance, Ontario Works, 15 years ago, who insists they didn't receive a penny of overpayment, and not only didn't they receive a penny of overpayment, they were never notified of a penny of overpayment, and 15 years after the fact, when they've

moved on with their lives as people like that want to, they get hammered by ODSP or Ontario Works saying, "You owe us as a result of an overpayment"? It's not right. A two-year limitation period should be a two-year limitation period for all. This is nothing more than an ongoing effort to beat up on some of the poorest people in Ontario.

I hope you folks will take a look at it, and I'm referring very specifically to section 16. There is no limitation period in respect of that section of this bill.

I'm going to have to talk about the contingency act next time we come back. I'm going to want to talk about the McIntyre decision, the Ontario Court of Appeal decision by Mr Justice O'Connor. One of the things I'm going to be explaining to you is that we have had contingency in this province for a good chunk of time; Justice O'Connor said so. We'll get to that next time this bill is called.

Thank you very much for your patience with me tonight.

The Acting Speaker: In accordance with the agreement made earlier tonight, this House stands adjourned until 1:30 pm on Monday, December 2.

The House adjourned at 1952.

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Une liste alphabétique des noms des députés, comprenant toutes les responsabilités de chaque député, figure dans les premier et dernier numéros de chaque session et le premier lundi de chaque mois.

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CONTENTS

Thursday 28 November 2002

SECOND READINGS

TABLE DES MATIÈRES

Jeudi 28 novembre 2002

DEUXIÈME LECTURE