No. 36B

Nº 36B

ISSN 1180-2987

Legislative Assembly of Ontario

Second Session, 38th Parliament

Assemblée législative de l'Ontario

Deuxième session, 38e législature

Official Report of Debates (Hansard)

Journal des débats (Hansard)

Monday 13 February 2006

Lundi 13 février 2006

Speaker
Honourable Michael A. Brown

Clerk
Claude L. DesRosiers

Président
L'honorable Michael A. Brown

Greffier
Claude L. DesRosiers

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8. e-mail: webpubont@gov.on.ca

Exemplaires du Journal

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8 courriel : webpubont@gov.on.ca

---

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

Monday 13 February 2006

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Lundi 13 février 2006

The House met at 1845.

ORDERS OF THE DAY

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

Mr. Bryant moved second reading of the following bill:

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

The Acting Speaker (Mr. Michael Prue): Minister?

Hon. Michael Bryant (Attorney General): I will be sharing my time with the member from Willowdale and parliamentary assistant to your humble attorney. I proceed with second reading of the proposed Access to Justice Act, 2006. We're in second reading debate, and I would submit to members of this House that the principles at stake in this bill have been supported by all three parties at various times in the history of our service here or otherwise. Certainly, a number of members of this House have indicated to a number of people and stakeholders support in principle, which isn't to say that there isn't much to debate here.

There are in this bill a number of items that have been before us as MPPs for some years now. I'll begin with the first issue, and that would be paralegal regulation, which has been kicking around as an issue for probably as long as you've been in the House, I say to the justice critic for the third party.

Mr. Peter Kormos (Niagara Centre): Since before you were born.

Hon. Mr. Bryant: Fair enough. Well, give or take.

The issue of paralegal regulation arises in this sense: There is no regulation of paralegals. Zip. None. A former treasurer of the law society, Frank Marrocco—in the absence of his leadership, I don't think this bill would be here right now—has lamented often that to sell a hot dog on the streets of Toronto, you need to get a licence. If on the other hand you want to hold out services to people, to represent them and give them legal advice in circumstances where they could be quite vulnerable, they need no such licence, no such training, no qualifications, nothing. It is a totally and utterly unregulated profession.

From time to time, I think people in this House have had constituents come in to tell them a story about the effects of an unregulated paralegal profession. Furthermore, we have seen a number of published reports, which I don't think need to be recounted here again, about what happens in an unregulated profession with important responsibilities.

Of course, on a very positive note, regulation of the paralegal profession provides for an alternative to people for getting legal advice and legal services that will open up and increase access to justice in a way that is in the public interest. Paralegals represent clients before boards and tribunals, in small claims court, in court on provincial offences and elsewhere where permitted by law, but paralegals have never been regulated in the province of Ontario.

The issue for many, many years has not been about whether to regulate paralegals, although I suppose one could debate that as to the value of regulation. But I would argue that the debate over whether to regulate has been received with a general response, and that is that yes, we should regulate this profession. It will increase access to justice and it will protect consumers. The question has always been how. Is it government regulation? Is it self-regulation? Is that possible, or is there another possible regulator? After many, many years of debate over this—and I mean many, many years—the Law Society of Upper Canada, the regulator of lawyers, in a moment of high public interest, in my view, and responsibility, said, "All right, we will expand the mandate of the law society's regulator to regulate not only lawyers but also paralegals."

1850

The ability of this totally unregulated profession to magically be able to regulate itself has been a concept that's been around for more than 15 years but it has never happened. It's not surprising that it has never happened. I call it a profession because I respect the profession, but that assumes there are qualifications and education and that there's some level of discipline, that there's some possibility of reporting, but of course there's none of that. Increasingly, we are seeing people turn to people who hold themselves out as paralegals.

What is the support among paralegals for this bill? Well, it's difficult to generalize. It's not as if there is already a regulated, self-regulated, profession or that there is an organization that is able to speak on behalf of all

paralegals. No one suggests that that exists. Not surprisingly, some paralegals don't want regulation, but that's perhaps because they don't want the rules, the oversight and the accountability that comes with it, because they may feel that it's unnecessary. I would submit otherwise. But there are many paralegals themselves who see and accept that the future of the profession—and certainly the profession is going to grow—lies in having it regulated in some fashion.

Stephen Parker, president of what was the Professional Paralegal Association of Ontario, said that the "regulation of all paralegals will benefit paralegal operations and ensure that the public can more easily access justice services."

I have said before that currently paralegals do not have any training, formal, informal or otherwise, necessarily. They don't have to carry liability insurance, which creates a potential major injustice for consumers who seek their services, and there's no public body to investigate complaints made against them.

Under the proposed legislation, we would ensure paralegals' training, professionalism and competence by requiring them to complete an approved college program, including field placement, and pass a licensing examination. They would also be required to adhere to a code of conduct, carry insurance and contribute to a compensation fund. A process for receiving and investigating consumer complaints would be developed to mirror the system already in place for lawyers. Paralegals found to have engaged in misconduct would be subject to the same types of penalties lawyers face, including the loss of their licence, possibly.

The Law Society of Upper Canada is the expert, obviously, in regulating lawyers. They have a monopoly over it. That's the purpose of a self-regulating profession, extensive experience in the ability to regulate professionals providing legal services, and it was not after significant debate that the law society agreed to enter into discussions with the Ministry of the Attorney General to undertake this task. It is not something that in fact the law society wanted to do in the past. They wanted to keep to their own mandate, and expanding it to regulating paralegals is not going to come without additional responsibilities, but they agreed to do it. A number of benchers showed very significant leadership. I don't want to name one or two for fear of leaving out some.

I will say that for those who want to know how fair this new system will be—will this just be lawyers regulating paralegals? The answer is no. Paralegals would have a prominent role in the governance of the law society and in particular over the regulation of paralegals—a paralegal standing committee, the majority of which will not be lawyers. So a non-lawyer majority will sit on the standing committee that will be chaired by a paralegal. That committee will take the lead in implementing paralegal regulation for the law society. That, in addition, will be matched with a requirement for grandparenting existing paralegals that will be set out under law society bylaws.

There has been extensive consultation with the law society, the Ontario Bar Association, the County and District Law Presidents' Association, the Advocates' Society and a number of paralegal organizations. This is the result that has come forth after years of debate on the subject and a significant amount of negotiation. I'll say on that subject, in closing, that the regulation of paralegals will protect people who get legal advice from non-lawyers and increase access to justice by giving consumers a choice in the qualified legal services that they use.

This bill is also intended to increase access to justice on a number of fronts. Another aspect involves the modernization of the justice of the peace system. The proposed Access to Justice Act, if passed, would ensure a more transparent and open appointment process for justices of the peace and allow for greater flexibility in dealing with the workload of the Ontario Court of Justice. Right now, there are, by statute, no minimum qualifications for someone to be a justice of the peace. The discipline body has the extreme opportunity to remove someone by way of public inquiry, but otherwise, discipline, investigation and complaint is quite limited and not similar to the same kind of regulation and oversight that you have of the judiciary for all the other levels of court.

Similarly, unlike the Court of Appeal for Ontario, the Superior Court of Ontario and the provincial court of Ontario, we have in the JP bench no capacity for, in essence, supernumerary justices of peace, JPs who are retired or in the last stages of their active JP career who wish to participate and provide their services where needed. It's an important element of flexibility for the chief justices of each of the three courts in Ontario—as I say, Court of Appeal, Superior Court and provincial court—but we don't have the ability to appoint per diem JPs in the province of Ontario right now. That will add flexibility, so that if there's a jurisdiction that, because of case flow reasons, needs a number of JPs brought in there immediately, but it may be that, within a year or two years, in fact they don't need that number of JPs, we will have a flexible system, which we have in all other levels of court, that will allow us to manage that. Certainly, it's not a panacea to ensuring all traffic court and other Provincial Offences Act issues are addressed in a timely fashion, but it would give the judiciary and the chief justice a tool to permit for greater access to justice and more timely justice for that very important bench.

Justices of the peace, obviously, have a very, very different job than they had half a century ago, maybe even 25 years ago. They are adjudicating upon some very serious issues, in some cases involving an individual's liberty, if it involves bail; in some cases involving legal issues, whether it be charter issues or otherwise. At the same time, the character of the JP bench has been one where you get a mix. It is primarily a lay bench—in other words, most of the appointments are not lawyers; it's not that they are disqualified—the purpose of it being, I guess, dating back to the Commonwealth system that we inherited, a system of magistrates, where you would get more of a regional and local approach to issues involving

regional and local issues for the community, yet you would want to have that independence there. JPs also used to perform a number of ceremonial functions, such as marrying people, and increasingly their workload is such that they're not able do that. So we are seeking with this bill to try to modernize the bench and ensure that people have confidence in an important part of our justice system that the people deserve to have confidence in.

The Criminal Lawyers' Association of Ontario is one of a number of groups that support this proposed reform. The president of the association, Louise Botham, has said, "People need to have confidence in their justice system. The proposed reforms to the Justices of the Peace Act would ensure that the quality of justice of the peace appointments is high, given the increasingly important role they play in the justice system."

This bill would amend the JP act to establish minimum qualifications for justices of the peace.

Under the new law, a new justices of the peace appointment advisory committee would be established, making the appointments process more open and transparent, incorporating community and regional input.

The powers of the Justices of the Peace Review Council would be expanded to allow it to deal more comprehensively with complaints against justices of the peace. The Justices of the Peace Review Council would be empowered to conduct investigations and hold hearings into the conduct of justices of the peace. For example, they could establish a hearing panel that would impose a range of penalties, from a warning to suspension without pay. The hearing panel could also recommend, to the attorney of the day, removal of a JP. This will improve the JP complaints and discipline process, making it more effective.

1900

If this bill is passed, retired justices of the peace could also serve on a per diem basis. I spoke to that already. It would permit for flexibility for the Chief Justice to ensure that in Provincial Offences Act courts there would be some flexibility to put in additional JPs for however long was needed to deal with a case-flow issue in a particular region. As we have urban and suburban centres in the province of Ontario with significant changes in growth over the years—significant changes, and in some cases rapid growth in a small period of time—we need to be able to deal with case flow by sending in those per diem JPs, and when I say "we," I should say that the Chief Justice is the person who would place a particular JP or per diem justices of the peace in a particular region. But once you had a case flow and that population growth stabilized, then you wouldn't have a dozen more JPs than you needed.

To some degree, the inspiration for the appointment process comes from a system set up for the appointment of provincial court judges which was established by Ian Scott, the idea being that there would be a body to field, consider, vet and interview applicants, then provide a set of recommendations, and that would mean that the appointments that were made had gone through a process where, in my view, you are going to get the highest-quality appointments, but maybe just as importantly, the people will see that there is an independent process in place. It has certainly served the Ontario Court of Justice very well. It has become one of the finest courts of its level in the Commonwealth. It is without a doubt the best provincial court in the country, in no small part as a result of leadership of Chief Justices past, attorneys past and the appointments process itself.

The Provincial Offences Act will also see changes, again the point being to increase access to justice, and in some cases make some changes that have a common-sense appeal in that we are trying to update the rules to reflect the reality of what police officers, JPs and people who appear before these courts and the people who are being charged with or accused of offences under these courts are dealing with. I think most people would want to see, on an ongoing basis, an update to prosecuting Highway Traffic Act offences and parking infractions. This would see proposing amendments to the Provincial Offences Act as well. The Provincial Offences Act is a code that establishes procedures and processes to enforce and prosecute offences created by provincial statute and municipal bylaws.

One proposed amendment to this act would allow regulations to be made that would permit witnesses to be heard by electronic means, such as by videoconferencing. Videoconferencing takes place in a number of parts in our justice system but, similar to the changes to the JP bench, videoconferencing is not available to Provincial Offences Act charges and proceedings, and in that way, proceedings where the due process requirements are higher, either because there's the potential of a very significant fine or the potential of somebody being incarcerated, in those circumstances videoconferences are present, yet they aren't for this level of court. So to some extent this is about modernizing the system and dealing with a situation where a court that has developed and evolved in terms of numbers and charges and offences into a very, very significant court is working with some old rules. We want to try to update those old rules through this bill.

This change that I just mentioned, videoconferencing, for example, could allow police officers to provide evidence in traffic court and other matters without being physically present in the court. It's an important step, in my view, in modernizing the procedures for prosecuting provincial offences through the use of available technology. I think all of us have probably had a conversation with a chief of police, a staff sergeant, a police officer or a leader or a member of a police association who have said there's something about how that works, where the police officer is sitting in traffic court all day, sometimes never being called, that just doesn't seem to make sense. This would provide for a statutory tool, however it may be used, that would enable some flexibility and permit to us to modernize the court and the way we got evidence before that court.

Given that traffic court and Provincial Offences Act court very often include very routine matters—we're not talking about month- or months-long trials; we're not talking about expert witnesses being called on both sides; we're not talking about multiple witnesses; in some cases it's just a matter of establishing that the said offence took place on that date, and the police officer is there to verify the evidence. If there is a way to provide for that kind of verification, that kind of proof to get before the court in a way that does satisfy due process requirements, but also keeps in mind the liberty interests of the accused, the potential penalty that's involved, and recognize that, for a lot of these matters, perhaps there will be the need to have someone come and testify—sure, there may be. But for so many of these matters that are just routine, it doesn't make sense to anybody that matters get thrown out because on that particular day there was a scheduling problem with someone, and it was a matter of saying, "So-and-so was in such-and-such place on such-and-such date and, yeah, I'm the officer who signed that." So this would provide for a tool that would permit those routine cases to be provided for in a way that does take advantage of existing technology, again in circumstances where we're often applying that technology for videoconferencing at other levels, but not for this court.

There are also amendments to the Limitations Act, 2002. Here's another issue that had been around for a long time. I know that Ian Scott had a draft of the limitations bill that ended up being passed. David Young introduced the changes to the Limitations Act in 2002, and a number of attorneys past had introduced the bill. It was to bring together and put into statute the many, many limitations periods that are out there in, I think, more than 100 statutes and certainly court cases. The idea was to provide some more certainty for everybody—for the courts, most importantly, for the people who would be appearing before the courts—and it meant that there wasn't this guessing game as to the limitations period, as sometimes was the case.

All parties supported the Limitations Act amendments in 2002. It passed unanimously, as I said. I voted for it. I supported it. Then, after it passed and before it was proclaimed, there were a number of calls to not proclaim it. I was told, "Don't proclaim it." It was a bill that I inherited, so to speak. There was no power to do so. There were a couple of changes—quite important changes—that they felt should have been made, and the Legislature wasn't given the opportunity to make those changes.

Now we do have the opportunity to make those changes. The proposed amendments would give parties the flexibility that they had before the Limitations Act, 2002, came into force, allowing them to agree to limitation periods that are either longer or shorter than those set out by current statute. Again, that's parties who, rather than go full steam ahead on litigation, agree to suspend this. It also allows potential individual litigants to agree to extend limitation periods to promote out-of-court settlements. Lastly, it clarifies the rule regarding the suspension of limitation periods where a third party is engaged to help resolve a claim. This is responding to concerns raised by people who work in this area, consumer groups and a number of businesses that saw that, but for these changes, they would be forced into litigation, often with a client or a customer or a partner that they didn't want to be litigating with, but if they didn't drop the writ within that two-year period then they would find themselves without a claim. So this provides for some flexibility.

It has resulted from consultations with the legal community, the ombudsmen for banking services and investments, the Toronto Board of Trade and small investors in developing these amendments.

Courts of Justice Act amendments: I should say that Mr. Tascona, the justice critic for a period for the official opposition, worked very hard at trying to move forward on getting amendments to the Limitations Act, for which he deserves credit. I'm not sure if everything is in the bill that he would like—we'll certainly hear from the official opposition on that—but it is an issue that he was alive to before the bill came before the House, and he deserves credit for that.

1910

Courts of Justice Act amendments are also in place. In a nutshell, these try and entrench by statute agreements in principle that I have with the Chief Justice of the Ontario Court of Justice, that Attorney General Sterling and Attorney General Young had as well. It's memorandums of understanding that were entered into, and the goal here is to entrench them in statute so that it doesn't have to come up for negotiation. It's there to provide greater transparency and accountability for the public. The publication of standards of conduct for deputy judges would ensue, as well as for case management masters, and it would require a report on the progress of meeting goals through an annual report to be published by the courts.

For a number of years in Ontario, we have had in place by statute the ability of courts to order so-called periodic payments for matters involving medical malpractice. Instead of a lump sum for a significant amount, the court would order periodic payments for a particular plaintiff. It ended up being not the norm, which I would argue was the purpose of the bill. Rather, the provision that was brought in in the 1980s was to in fact make periodic payments the norm for these large awards for medical malpractice cases. It made no difference in terms of the dollars and cents coming in to the person who had brought the claim, to the plaintiff—no difference at all. They were going to get that award, and it would be the same award, whether it be lump sum or otherwise.

It ended up having significant taxation differences, obviously. If you had a very big lump sum award, you'd be taxed on that very big lump sum award and that would end up factoring into the overall damage award. So you ended up having circumstances where the damages didn't really reflect what the court would otherwise have ordered. Why? Because you had to account for that additional income tax dollar coming back to the taxpayer. All in all, it led to circumstances where premiums On-

tario doctors paid for medical malpractice increased and increased to account for that. Of course, the taxpayers subsidize malpractice insurance for doctors. The goal is to try and address that issue while, in no way, shape or form, compromising the interests of injured plaintiffs.

This proposed amendment would increase the use of tax-free periodic payments to compensate successful plaintiffs in medical malpractice cases where future care costs exceed a quarter of a million dollars. The goal here is to strike a balance between the right of a plaintiff to compensation and the right of a defendant to pay only for the losses actually suffered.

Lastly, there's the creation of the Legislation Act. The proposed Access to Justice Act would bring Ontario rules for how laws are published and interpreted into the electronic age. Right now, to file a statute that's already up on e-laws, that's already established—and this is awful—you have to print it up and file the paper. It doesn't make any sense. There has to be a way in which you can file e-Laws in a fashion that the courts recognize as an official document. Obviously there have to be issues around accuracy. That isn't the issue here. The issue is about clarifying the official nature of electronic statutes, e-Laws. So the e-laws website would become an official source of Ontario law.

The Legislation Act would replace or re-enact several existing statutes and, among other things, would give the chief legislative counsel the authority to make very minor, non-substantive changes to the consolidated versions of statutes and regulations, such as fixing typographical, grammatical or numbering errors and updating the names of courts in all the statutes when official court names have changed. This is the kind of thing that used to be done by legislative counsel every 10 years, when the statutes were consolidated. Ongoing consolidation is much more useful to the public, but it requires an ongoing change to power. The act provides that no such changes alter the legal effect of the text that is being changed. In other words, the new Legislation Act, if passed, would make all legislation easier to understand for the public, the courts and legislators and make all legislation easier to use. It would reduce legal uncertainty and facilitate all government business. The goal, again, is to increase accessibility and transparency, as well as cost savings for the public and the government.

I'm sharing my time with the member for Willowdale. I look forward to hearing from all members of this House on this legislation. I would submit to you that the principles in this bill are commendable to your constituents and commendable to you as legislators, that we are moving forward in some areas and on some issues that have been around and with us for many, many years. This affords an opportunity to provide resolution that will protect consumers and increase access to justice.

Mr. David Zimmer (Willowdale): I'm pleased to take part in second reading debate of Bill 14, the Access to Justice Act. The people of Ontario deserve a justice system that is fair, efficient and accessible. This bill would help modernize and improve upon what is already considered one of the best justice systems in Canada. Access would be improved, there would be enhanced openness and accountability, and public confidence in the justice system would be bolstered.

Several significant areas of the law are covered in the bill, as we've heard from the Attorney General. Let me highlight the components of the bill again, for members of the assembly. If this bill is passed, we would regulate paralegals, thus allowing consumers a choice in qualified legal services while protecting people who get legal advice from non-lawyers. We would reform the justice system to ensure a more open and transparent appointment process, and establish minimum qualifications. We would amend the Courts of Justice Act to make the justice system more open and transparent, and provide greater accountability to the public for the administration of the courts. We would amend the Limitations Act, 2002, to promote a healthy business environment by allowing businesses the flexibility to set their own limitation periods. We would create a new act, the Legislation Act, which would be a single source for rules on laws here in Ontario.

Let me speak for a moment about the justices of the peace reform. No one can dispute the important role of justices of the peace in serving the people of Ontario. For many people, they are the first and the only point of contact for court users within the justice system. The proposed reforms in the Access to Justice Act would, if passed, ensure a more open and transparent appointment process for justices of the peace. For the first time, legislation would require justices of the peace candidates to meet minimum qualifications: a university degree, a comparable community college diploma, an equivalency, and at least 10 years paid or volunteer experience.

The justices of the peace complaints and discipline process would also be improved, making it more effective. The powers of the Justices of the Peace Review Council would be expanded to allow it to deal more comprehensively with complaints against justices of the peace. It would be empowered to conduct investigations and hold hearings into the conduct of a justice of the peace. For example, it may establish a hearing panel that could impose a range of penalties from a warning to suspension without pay. The hearing panel could also recommend removal of a justice of the peace to the Attorney General.

If this bill is passed, retired justices of the peace could serve on a per diem basis, helping out with court backlogs and other special projects within the court system. Per diem justices of the peace could be dedicated by the judiciary to particular matters, including various Provincial Offences Act courts.

As we've heard from the Attorney General, all new justices of the peace would be presiding full-time if this bill is passed. Presiding justices of the peace can perform a broader range of functions than non-presiding justices of peace, including presiding over trials in Provincial Offences Act proceedings.

1920

Let me say a word now about the Provincial Offences Act itself. The Access to Justice Act would also amend the Provincial Offences Act, and we will be consulting with the Association of Municipalities of Ontario, the judiciary and the police on these amendments. The Provincial Offences Act is a code that establishes procedures and processes to enforce and prosecute offences created by provincial statute and municipal bylaws.

One of the Provincial Offences Act amendments could be to permit witnesses to be heard by electronic means. For example, they could be heard and cross-examined by videoconferencing. Police officers would not necessarily be required to attend in person in court for provincial offences proceedings, including, for instance, traffic ticket charges.

The aim of the bill, if passed, would be to reduce the time and cost for police in attending at trial, and to alleviate the growing caseload pressure on the Provincial Offences Act courts. The amendments would also permit alternatives for resolving municipal bylaw disputes, like parking, without the parties having to go to the bother of a provincial offences court.

These proposed amendments are just one part of our government's action plan to improve the administration of justice. We fully intend to keep working with the municipalities, the police and the judiciary on these matters to ensure that the Provincial Offences Act works as smoothly and as efficiently as possible.

Let me say a few words about paralegal regulation. Currently in Ontario, paralegal services are not regulated. This puts consumers who use paralegal services at risk. This needs to be rectified now. Experts in the field have been calling for regulation of paralegal services for years.

We are committed to creating a modern regulatory system and educational programs to train paralegals. This system exemplifies the kind of innovation and leadership that makes our justice system here in Ontario truly great. By regulating paralegals, we would increase access to justice by giving consumers a choice in qualified legal services, and at the same time protecting people who make that choice to get legal advice from non-lawyers.

The Law Society of Upper Canada, which has experience in regulating professionals who provide legal services, would regulate in this area; however, paralegals themselves would have a permanent and continuing role. A paralegal standing committee, composed of a non-lawyer majority, would be key in directing the affairs of paralegals within the law society. We have consulted widely. Both the profession and the law society support the regulation of paralegals.

Let me say a few words about the Limitations Act amendments. This bill also includes amendments to the Limitations Act that would, if passed, promote a healthier business environment in Ontario. It would meet the needs of both citizens and businesses in Ontario who may be involved in a civil court proceeding. The amendments would give the businesses the flexibility they had before the current act came into force, allowing them to enter into agreements with limitation periods that are either longer or shorter than the limits provided by the current statute. In addition, individuals would be able to extend limitation periods to promote settlement of disputes out of court. The amendments would ensure that Ontario retains its place as an international legal and commercial leader in business law. As well, they respond to concerns from small investors and seniors by removing an obstacle to the efficient resolution of legal disputes.

Let me say a few words about the Courts of Justice Act amendments. Our government is committed to enhancing the transparency and public accountability for the administration of Ontario's courts. The roles and responsibilities of the Attorney General, judiciary and court services would be clarified. The amendments would also require the annual publication of information on the operations of the courts and the publication of standards of conduct for deputy judges and case management masters.

Let me say a couple of words about the creation of the Legislation Act. This bill creates a new single source for rules about laws here in Ontario called the Legislation Act. If passed, the new act would increase access to justice and modernize Ontario's law-making system by bringing the way laws are published and interpreted into the electronic age. Several provisions about the publication, citation and interpretation of Ontario laws would be amalgamated into the act. If passed, this legislation will modernize and improve the underlying legal framework for Ontario law. It would also address outdated and obsolete laws by removing them from the statute books in the process of setting up the e-Laws base.

The proposed Legislation Act would replace or enact several existing statutes. The e-Laws website would then become an official source for all of Ontario law. Currently, only statutes printed on paper by the Queen's Printer are legally recognized as accurate, even though the e-Laws version of the statute is widely and practically used and often provides a more timely and more accurate record of the actual amendments. The new act would make this e-Laws website officially usable to show what the Ontario law is, and further, the website will be kept up to date within three days of any change of the law. This will all be done electronically and on computer.

The new Legislation Act, if passed, would make all legislation easier to understand and use. It will reduce legal uncertainty and facilitate government and commercial business.

The proposed Access to Justice Act is a tremendously important piece of legislation that will greatly enhance the openness and transparency of the Ontario justice system. If passed, it will benefit all—lawyers, business persons, citizens—anyone using our justice system.

I'm proud to speak in favour of this bill. I urge my colleagues in this assembly to support the bill.

The Acting Speaker: Questions and comments?

Mr. Cameron Jackson (Burlington): I've been waiting for almost three years for some substantive justice reform from the Dalton McGuinty government. Of course,

we got pit bull legislation, which was their signature, landmark, marquee effort on behalf of victims in this province.

So for the second major piece of legislation to come from this Attorney General, we had hoped that it would be more victim-focused and would understand that this isn't about restructuring the justice system so that this government could save money, which is essentially what this bill purports to do. It forms part of an overall strategy, which was uncovered by the recent media reports of documents that were determined to be legitimate cabinet presentations, to turn this into an offender-friendly justice system. These are concerns.

We have an Attorney General who, while in opposition, was one of the greatest supporters of and a fan of the victims' services office in this province. He said its independence was to be prided and it was to be upheld; it was to be promoted. Yet, once he became the minister, he gutted it and reduced it to an ineffectual, small operation that gave no real voice to victims.

There is a lot in this legislation that the public of Ontario needs to see in the light of day. There are issues underlying this legislation which are of great concern to me. The whole notion that paralegals would be removed from our justice system for all intents and purposes is a concern on matters involving custody and marriage breakdown situations where women do not have access to justice, and yet they will surrender them to a justice system which is really not consumer-friendly.

Ms. Andrea Horwath (Hamilton East): I'm pleased to make a few comments on the speech by the Attorney General and the member for Willowdale. I have to say that I'm looking forward to a little later on this evening, when—I believe, anyway; I'm hopeful—we'll be able to hear from Peter Kormos, the member for Niagara Centre, who is our critic in this area. But I know, just from some of the work he's done in keeping our caucus up to date on this particular bill, that the bill is an interesting one. Not only does it bring forward some of the issues that the Attorney General began his remarks on this evening—I think particularly about his remarks around paralegals—but then, as people will recall, having heard the discussion, he went on to talk about other pieces of legislation or other areas that are being affected, areas like provincial offences, court administration, limitation periods—all kinds of other pieces of legislation.

1930

The point is this: In fact, this is an omnibus bill. Unfortunately, what we often end up with in omnibus bills is a lot of gobbledygook that we can't support and maybe the odd thing that we can support. Certainly, as we review the pieces of work that the Attorney General has put into this piece of legislation, we continue to have concerns.

The current government, when they were previously in opposition, had many, many criticisms of the former government when they brought in omnibus legislation. I want to give you one quote to outline these issues. It's from one Dalton McGuinty, dated December 6, 1999, speaking about the previous government's omnibus legislation: "This omnibus, megabill approach to legislation makes for bad legislation.... We will not set a precedent that gives the government the green light to continue to ram omnibus bills down our throats. We want the bill split to allow separate votes on each piece of legislation."

That's the right way of doing things; too bad the government hasn't taken its own message.

Mr. Peter Fonseca (Mississauga East): It gives me great pleasure to speak on this piece of legislation. Often, laypersons have little knowledge of the law. When they get caught in an emergency situation, they often seek legal advice in a hurry. I have found that this has happened in a number of cases that have come forward to my constituency office, my community office, to tell me about their stories. In those stories, they've recounted really gut-wrenching situations, where these men and women have suffered bodily harm, emotional harm, financial loss.

One that comes to mind is a young father who was hit by a vehicle and found unconscious. He was taken to hospital, and he lost a number of days of work. He suffered a great deal. Not knowing much about the legal system, he went in search of some advice in terms of how he should move forward to recover some of those losses. He found himself getting some advice from a paralegal—not licensed—and that person gave this gentleman some advice that wasn't very good. He found himself settling for something that was very little in terms of finance, in terms of some monies, that would not compensate him for much of what he was going to feel in later years. He came into my office. He's suffering a great deal. He's disabled. He's not able to work or to do the type of job that he used to do in the past. This has to be fixed.

So the Attorney General bringing forward the regulation of paralegals, making sure that we do have regulated professionals who are able to provide the type of advice that our citizens need, is paramount.

Mr. Norman W. Sterling (Lanark–Carleton): I believe that this kind of bill shouldn't really engender too much political positioning. I believe that it should really be referred to a committee relatively early in the debate and that the various professions that are involved in it should have a say at that point in time. The major debate should really come on third reading or during the committee. I hope that the government is open to amendment, because it's a large bill, and they certainly can't have it all right, because there will be nuances to it.

I'm very, very much in favour of the paralegal area. When I was the Attorney General, I appointed the first paralegal to be a lay bencher of the Law Society of Upper Canada. I believe that the law society is the only group that can do this at this time. Perhaps in the future, the paralegal profession will become strong enough to enter out onto their own self-governing body, but for the present time I think this is a good solution to the problem.

The one area that I think engenders a little bit of question and examination is the whole area of video evidence, particularly with regard to traffic courts. Presently, I

believe that we have unrealistic speed limits in various parts of our province. At the present time, the only part of the process which makes sense in terms of the person who is charged, in terms of having a negotiating position, is with regard to whether or not the officer will show up in court. Once we take away that particular negotiating position, we're going to find that there probably will be a lot more traffic tickets than there presently are, and it may be driven by a financial desire by municipalities, rather than by a real attempt to have a fair system in terms of charging people who are driving too fast.

The Acting Speaker: Response?

Hon. Mr. Bryant: I want to thank the members for Lanark–Carleton and Hamilton East and Burlington and Mr. Fonseca, the member for Mississauga East, for their comments. I want to also thank the member for Willowdale, not only for his remarks but also for the huge, huge contribution that he made to this bill, working with a number of people to create the opportunity that we have in this bill, although all errors are mine. I appreciate what the member for Lanark–Carleton says, and I know that that issue will be ably left in the hands of our House leaders. Also, importantly, I want to thank the many, many people who were a part of, in some cases, a very significant and long debate, certainly a very significant consultation on this bill. I mentioned the Law Society of Upper Canada. The Ontario Bar Association, the County and District Law Presidents' Association, the Advocates' Society, the Toronto Board of Trade also provided submissions, and a number of people—Roger Anderson as well—provided comments on this, and members of this Legislature—the former attorney, the member from Lanark–Carleton—also played a role in some of this getting to where it is now.

The bill has a lot on the subject of access to justice, in the same way that the bill in 2002 saw changes to contingency fees, limitations periods, as well as addressing public accounting—all three issues in one bill, all three issues having a commonality. Justice bills do sometimes have different elements of the same theme in it. That's the case with this bill. I know the member is not suggesting that the bill is out of order, because it is in order. But I look forward to hearing from all members of this House as we continue to debate these important issues that could have a real and important practical effect on the way in which our justice system operates.

The Acting Speaker: Further debate?

Mr. Robert W. Runciman (Leeds–Grenville): I appreciate the opportunity to participate in the debate on Bill 14. I want to say at the outset that I am not a lawyer. I'm a former Solicitor General. I like to put that on the record. I think people assume that because I am a former Solicitor General and the Attorney General critic perhaps I am a lawyer, but I am not. I'm bringing this debate from a layman's perspective—and I also have to say I'm advised that every time I tell the public or my constituents and others that I am not a lawyer, my popularity seems to increase rather dramatically.

Interjections.

Mr. Runciman: There were a few groans over there, but they're all coming from members of the profession.

The title of the bill, "Access to Justice," I think provides us with a bit of latitude in terms of the discussion and debate surrounding the legislation and the implications with respect to some of the changes being brought forward by the Attorney General. But I don't think other activities the member from Burlington mentioned earlier are beyond discussion during the debate on this legislation. Certainly, I intend to raise them in passing, if not in some detail, during my lead-off contribution.

1940

At the outset, I want to say that, up until a couple of days or a week ago, I felt that perhaps this legislation was innocuous, that there wasn't a lot of concern about it. But all of a sudden, talking to the third party critic as well, we're starting to get a lot of input now from a variety of groups, organizations and individuals who have specific concerns about the legislation.

Some of it seems to be focused on the paralegal aspects of this omnibus bill. I think, when the minister tabled this legislation, both the third party and myself indicated our disappointment that he had reached a decision to incorporate the regulation of paralegals in an omnibus bill rather than stand-alone legislation, because clearly there may have been some concerns and some amendments that would have been forthcoming from the opposition party, if not the government. I felt that the indication was pretty clear to the Attorney General, to the government and to the House leader of the government that we could have moved rather expeditiously with respect to regulation of paralegals and hopefully addressed any concerns that organizations and individuals might have. But the government, for reasons known best to them, have chosen to do otherwise and have somewhat complicated the issue by the decision to incorporate that particular initiative within an omnibus bill.

Just in the last few days, I've been approached with respect to concerns about the changes to the Limitations Act—and we'll get those clarified in the next couple of days—by the real estate industry: Again, with respect to paralegals, there are some paralegals as well who have specific concerns, primarily about the make-up of the governing body and the representation that they will or will not have.

I also received a letter today from an organization of various groups that are expressing concern: First Canadian Title, the Ontario Real Estate Association, Chicago Title Insurance Company, Canada. They're just a few of the companies and organizations that have contacted all of us. I have a copy of a letter sent to the Premier. I found it interesting that one of the signatories to this is a fellow by the name of Steven Offer, whom some of us will remember—those of us who have been around this place for a while—as a former Liberal MPP and, for a very short period of time, Solicitor General. He's signed on to this letter expressing a range of concerns about the legislation and the amendments to the Law Society Act providing regulation for paralegals.

I'll just give you one reference to this at this point: "The powers being provided to the Law Society are so broad as to encompass the business activities of our industries, employees and members, and the responsibilities of our regulatory bodies." I think that pretty well summarizes the concern, although they go into greater detail in the body of the letter. As we go forward, we're going to have more opportunities, certainly during the remaining debate on the bill, but also when the bill actually gets into committee and we can call witnesses who can provide us with a further understanding of the concerns that they have related to this particular aspect of the legislation.

I also had one that just arrived on my desk before I came down here. I'm not going to assign attribution at this point, but they go into a range of concerns, again related to the paralegal issue. One of the issues they raise is—I'll put it on the record for the moment—how will court administration cope with the proliferation of statements of claim, applications, motions, affidavits and appellate documents drawn by non-lawyers? That's just one question they pose, but there's a whole range of areas and issues that this particular organization has. I'll be a little more forthcoming as the days proceed with respect to this debate in terms of this organization, and hopefully at some point they'll be able to publicly express their concerns.

I want to point out a few of the matters of interest to our caucus with respect to this legislation. The legislation creates this new position of chief administrator, whose responsibilities are naturally enough for the administration of justice in Ontario. This individual, whoever it ultimately will be, has dual reporting responsibilities to the Attorney General and the various chief justices of the different courts in Ontario. The act specifically indicates that certain directions given by these justices are binding, which to us seems odd and suggestive of a change regarding overall leadership within the administration of justice. It's not clear what the difference will be between this person and the ADM for court services. I would suggest that we shouldn't be surprised if this results in double or even triple court administration bureaucracy. That exactly, I think we would all hopefully agree, is not needed, but certainly that's one of the concerns we have arising out of our reading of the legislation. We obviously want to pursue this with the Attorney General as to his rationale for such a position, and hopefully receive assurance that we're not going to end up with multiple bureaucracies, and hopefully get an explanation of the binding authority change that he's proposing in the legislation from the current situation.

The bill speaks to defining matters within judicial authority—the Attorney General, the chief justices and the memorandum of understanding. Again, from our perspective, this is suggesting a formalization of roles, and that would lead to an assumption of greater control by the judiciary over court administration. This is going so far as to indicate, in section 78(1), that court services staff are under the justices' authority in designated areas, except for the authority of a presiding justice while courts are in session. Laws are generally passed or changed for a reason, and it's probably worthwhile to ascertain what lies behind this proposed change.

In addition, there are several portions of the act that they're suggesting where there's some growth in the bureaucracy, both in the ministry and the judiciary, and that's something that should be articulated as unnecessary duplication, wasting money and really doing nothing to improve productivity in the courts. We're going to be asking for an explanation of the memorandum of understanding, the judicial responsibilities. We're also going to be talking about this whole implication—implied, if not embodied—in the act with respect to growth in the bureaucracy.

Section 71 talks about the goals and responsibilities of the administration of the courts in Ontario. Again I guess it's not surprising, given the judicial fingerprints which are all over this bill, that the first of these is, "maintain the independence of the judiciary as a separate branch of government." The goals are all vague, which is not surprising, and they're reinforced by the duty placed on the chief administrator to produce an annual report on the administration of the courts. But instead of being required to report specific results, the report is to be on progress in meeting those goals, not specific results. So we're certainly concerned about that and will be following up on that as we go forward. I'd like to hear a response from the parliamentary assistant with respect to if the numerical order of goals and responsibilities is reflective of his government's priorities for the administration of justice.

1950

Also, we will at some point in committee be suggesting amendments to 74(9) to require inclusion of the number of crimes committed while on bail, on probation, on conditional release or subject to or eligible for criminal deportation orders. We want that kind of information. We think it's important. We also would like to know the number of remands per case, and we'd like to have the court locations and/or the justice, preferably both. We'd like to have them categorized by the Criminal Code or Provincial Offences Act pre or post the trial date being set; the adjournments, whether it's the crown, the defence, the court.

We think this report by this individual should also include the number of public servants employed, the dollars allocated for court services or duties pursuant to duties under the act for all of the ministry, the justices or the chief administrator himself or herself.

As well, the act is continuing several judicial committees, including the Ontario Courts Management Advisory Committee, in section 79.2. This august body has judges, defence counsel, ministry representatives and six people appointed by the Attorney General—I think this is important—whom the judges and defence counsel approved. We believe this is an opportunity to remove, as we see it, that biased screening and introduce a role for this place, the legislative branch. Let's introduce a role for the legis-

lative branch. I think the mere fact of having open hearings in this Legislature, in the justice committee, would be popular among the non-lawyer crowd, which may be a minority here this evening, and preclude any real ringer getting appointed by the Attorney General. So, hopefully, when we bring this kind of amendment forward, the government is going to be receptive to it. I think it's something they have overlooked, an omission. It could go a long way to improving the public sense about the failures of the justice system.

A couple of recommendations: I'm giving a heads up, I guess, to the parliamentary assistant with respect to some of the amendments we'll be bringing forward during committee. We will be suggesting that the act be amended to have six persons appointed to this Courts Management Advisory Committee, as recommended by the justice committee of the Legislature. I think that's an eminently responsible suggestion which hopefully you will be receptive to. We will have a similar recommendation for the regional committees. Again we put on the record our concern about ballooning bureaucracies.

I'm dealing essentially with the act and provisions of the act. I may move off with respect to some of these issues, but one of the big ones in terms of this omnibus bill is the amendments to the Justices of the Peace Act and the Public Authorities Protection Act. Some of these changes, I think it's fair to say, we agree with. Our concerns would be that in some ways they don't go far enough to address significant concerns, especially among the policing community. I'll get into that in a bit. We're concerned about the sort of composition of what we call a JP bench. My colleague Mr. Sterling, who is a former Attorney General, used a phrase here earlier: pseudo-judges. I think that's really where we're going with respect to JPs in this province.

I'm not laying this all at your doorstep. I think this has been happening over a period of time and perhaps goes back to the days of the NDP government when they did away with per diem JPs and we made all the JPs salaried individuals. I think that was the start down this road to these pseudo-judges and this JP bench. I believe, from the research we have done, that other jurisdictions haven't made JPs into sort of "judges" the same way Ontario has. Other jurisdictions have relied on JPs to perform traditional procedural functions rather than create a whole new court. This bill is another step forward towards a full-time, legally trained level of court that thinks of itself as a court, and sometimes in the worst way: anointed, not appointed.

The act will permit the appointment of full-time JPs, although currently part-time JPs can be continued as part-time JPs, I guess, under the new act, and the minister talked about that. I want to deviate a bit from this. I was a long-time supporter of going back to creating a contingent of part-time JPs and didn't win the argument with our government, the Attorneys General of the day. I can remember the Minister of Natural Resources, Mr. Hodgson, and myself, who represented essentially rural areas, small-town rural constituencies, listening to the police services with respect to, especially across rural Ontario, their inability to get a JP out for a bail hearing, for example, on a Saturday night at 2 o'clock or 3 o'clock in the morning. My colleague Mr. Dunlop, who was the policing critic for our party, will tell you that this continues to be a very significant concern, the availability of JPs outside the sort of normal working hours. I think this act is only going to exacerbate the situation. I think we should be looking at this contingent, and we should also be directing the chief judge—is it Carruthers who has responsibility in this area at the moment? I'm not sure. I did meet the gentleman a couple of years ago, and I think he's truly committed to improving the situation. But still, if you speak to police officers, that's certainly not being addressed.

It's not that long ago that JPs used to go into the jails in this province. JPs used to go into the jails and do bail hearings. Now we have to look at transportation of prisoners to the courts because these JPs are above this. They can't go into the jails. You know, they're above that sort of thing. This is where they're becoming infected with this sort influenza of being better than the rest of us. I know I'm going to get into trouble here, I suppose, but I'm speaking as a layperson. I look at what's going on in the court system. I look at how these people are reacting and how common sense does not play a role here.

2000

I believe the JPs should be going into the jail system and performing these bail hearings. We should not be required to transport these folks to a court setting. Look at the costs associated with respect to transportation, the risk involved in terms of transportation, the fact that people coming back into the jail system are quite often bringing in contraband, whether it's drugs or weapons. That's happened. As a former minister of corrections, I know this has occurred. This is one of the significant drawbacks. But this legislation is going to exacerbate the situation because section 15(7) will actually prohibit a justice of the peace from performing duties outside a courthouse. That's unbelievable, but that's the sort of thing. This is where the fingerprints of the judiciary and this pseudo-judicial bureaucracy that's been building over the years in Ontario are sort of feathering their own nests again, to the detriment of the public of Ontario and the justice system of the great province of Ontario.

We're talking about, as well, the creation of a JP Appointments Advisory Committee, with three core members appointed by the Attorney General. He or she gets to appoint two and the Ontario Court Chief Justice gets one. Of course each region, undoubtedly a separate entity with supporting bureaucracy, is then constituted with a senior regional judge or his or her designate and a senior JP, two more AG-appointed reps, a lawyer picked by the Attorney General from a list of three supplied by the law society.

There's no doubt that the act does restrict the unilateral discretion of the Attorney General, but what it's

doing really is adding a few more people, and those are mostly appointed by the Attorney General.

This, in my view and the view of my party, is an opportunity for substantive improvement.

As well, this committee is given predetermined qualifications for justices of the peace, obviously tilted towards university graduates. But they're written in such a way as to, theoretically anyway, include others. More to the point from our perspective, there's no specific recognition of the importance and desirability of either law enforcement or criminal justice procedures, and we will be moving amendments to that effect. The process they've outlined here contains repeated and varied mandatory considerations regarding linguistic duality, diversity and gender but no practical experience with respect to law enforcement or criminal justice. They're apparently unimportant, but linguistic duality, diversity and gender are important enough to reference in this legislation. So we think that is a serious weakness.

They also don't reference the capacity and inclination to say no to frivolous or procedurally abusive adjournment requests. That's not listed as a qualification; maybe it should be.

The act contains a provision where the Attorney General can only recommend appointments which the committee deems qualified or highly qualified. We think there should being something there to notify candidates who are deemed to be otherwise qualified.

We also want to talk about the whole business of section 8(19), which gives sweeping powers to this council to order documents held by anyone, including a complainant—this is in regard to the JP review council—to process and consider complaints. The act is giving sweeping powers to the council to order documents held by anyone, including a complainant, to become confidential, not releasable to the public, and council members are also given complete immunity from ever being called as a witness with respect to anything they do pursuant to their duties. The council, under this legislation, is obliged to file an annual report which anonymously summarizes its hearings, including complaints.

Section 11 of the act creates a process wherein some of the members of this review council—judges, JPs, non-judge JP members but not specifically non-lawyers—can be constituted as a three-person committee to investigate complaints against justices of the peace. That committee will make their own procedures, conduct investigations as they deem appropriate. The complainant is not entitled to a hearing. As we read this legislation, 11(7), a complainant is not entitled to a hearing and the investigation is in camera. We may not have trouble with it being in camera, but we certainly believe a complainant should have the entitlement to a hearing. The committee can dismiss the complaint, write the JP a letter or ask him or her in for a talking-to. That's absent the complainant. Or they can order a formal hearing by the review panel. This is another interesting point: The justice of the peace is eligible for fully funded legal costs—the justice of the peace. The complainant is not. If somehow a hearing panel is ordered, the chair of the review council, which would be the Chief Justice of the Ontario Court of Justice or a designate, will then constitute a hearing panel. It has to have two judges, which could be a judge and a JP; it can have three judges and a judge to chair it—this is the formulation, as we understand it—but the bill doesn't clearly specify that the complainant has a right to appear and make submissions at the hearing. We certainly want that to be clarified.

The panel can then dismiss the complaint without having to rule that it's unfounded, and should it decide to uphold the complaint, they can warn or reprimand the JP. They can order an apology, they can order education, they can suspend with pay, suspend without pay, but for not more than 30 days. They can recommend to the Attorney General that the JP be removed, but draconian this isn't.

Section 13(3) of the act defines the goals to be met by JP standards. Once again, this is ensuring judicial independence comes ahead of everything else, including competence or public interest. Per diem JPs, not full-time ones, can be assigned specific duties, such as the Provincial Offences Act, but for some reason people can ask to have a trial held by a judge instead of a JP. We'd like to be able to get our heads around that. Again, as I said, 15(7) is actually prohibiting a JP from performing duties outside a courthouse unless so assigned on some kind of a public roster. There's no question that there is a real need for JPs to perform procedurally required actions beyond the 9:30 to 4:30 courthouse hours. So we think this is an extremely unwise provision that's been incorporated in this act. One of the lawyers present—and he may speak to this later—was suggesting that the judge responsible for JPs could, in terms of assigning responsibilities to JPs, probably have a meaningful impact on the responsiveness of JPs to policing requests by assigning them to some very unattractive responsibilities. He has the ability to do that today, but regrettably, that sort of activity is not occurring.

2010

Again, I'll run over the recommendations so they'll be in Hansard for the parliamentary assistant and others to review prior to getting to the committee process. This may change, certainly as a result of committee hearings; there will undoubtedly be more amendments coming forward, but at first blush, these are some of the changes that we would like to see occur:

We'd like to substitute appointments by the justice committee for AG appointments. We want to change the relevant criteria to include law enforcement and criminal procedure familiarity.

We want to permit local presentation by complainants at investigations and hearings.

We want to include legal expense eligibility for complainants where the complaint is upheld or, at the very least, not dismissed.

We want mandated inquests where a person is unlawfully killed by someone while on release by a JP or pro-

vincial court judge, and we want to stipulate that the judge or JP is a compellable witness at that inquest.

We want to amend the Coroners Act to provide VJF—victims' justice fund—funding for legal counsel for crime victims who have been granted standing at such an inquest.

We want to stipulate that justices of the peace can be assigned duties outside of court at any time of day, or create an appointment process for that purpose: as I said, a specific contingent of JPs across the province on a regional basis who could deal with those kinds of situations, I would suggest, on a per diem remuneration basis.

We want to revise the JP complaint procedure and the disposition entirely.

We'd like to see the act amended to permit a review petition whereby a designated number or percentage of electors in a region of the province can require the justice committee to hold fitness hearings pursuant to the act and thereafter apply sanctions. We believe we should ensure that disciplinary hearings are presumed public.

Moving on to paralegals, I don't have a lot to say with respect to this. I indicated at the outset that there seemed to be a growing number of concerns coming to my attention, I'm assuming the government's attention and the third party's critic as well. Over the coming days, I'm sure we will hear more about this, but as of today, there's not a lot of significant concern.

I have mentioned—and I know I got a bit of a reaction to this from a number of people in the legal community and the defence bar. Initially I was talking about the Bernardo case, where the counsel for Mr. Bernardo had taped evidence of horrific crimes, and if that evidence had been provided to the crown, we have to assume that the plea bargain for Ms. Homolka would never have been agreed to and she would not be walking freely on the streets of Montreal today. There was an extensive investigation, with obstruction of justice charges laid against that individual. If you read the judge's comments related to that, it was rather confusing. They seemed to say that ignorance was an excuse here—I guess we heard the same argument from the Premier today with respect to Mr. Takhar—with respect to this counsel. He then went to the law society for some sort of sanction from the law society, and again nothing occurred.

I think a lot of people were very concerned about that, but I don't want to rely solely on that. I've been advised, and I don't have details, of a situation which has gained some notoriety in the province, where a counsel was advised of a dead body being removed to prevent detection. This was a defence counsel who was aware that his client had moved a body to prevent detection.

I have suggested that perhaps, since we're going to be opening up the Law Society Act to deal with the paralegal issue—this may be an opportunity. If the law society itself can't deal in an effective way with this—and they would argue that they can and that in fact they are moving in that direction, but at a snail's pace, I would suggest—perhaps this Legislature should take a look at strengthening the act itself to ensure that appropriate action is taken in situations such as this. I think it would address widespread public concern.

Most of it focused, I would agree, on the Bernardo case and the fact that Ms. Homolka was allowed to escape, many would suggest, with a relatively minor penalty for participating in horrible, horrible crimes against two young women—three young women, including her sister, which never came to court. Again, this is something that I will be pursuing in committee and perhaps bringing up additional cases. I don't have the full details on the moving of the body, but apparently it has been public and the lawyer involved has been named publicly. But until I receive further details, I won't go into it. I see this as an opportunity, which we should all consider as an opportunity. When the law society and others appear before us at committee to talk about this part of the omnibus bill, we should ask for their feedback. But I'm going to look towards some victims who could appear. I'm told that there is a victim's family in the body-moving case who are quite willing to appear and talk about what happened in that particular situation. And if we had representation from other victims' organizations who could speak to this issue, who may have a slightly different view than the legal profession representatives, that's something I think the public deserves to know about and to hear from those kinds of people who don't get recognition, in my view, that they merit. So that's an area that we will be pursuing as well.

Before I get into some other areas, I want to suggest that because this deals with access to justice, there are so many areas that could be talked about and could be addressed but which are not being dealt with in terms of access. Again, I'm speaking as a layperson and someone who has been involved in justice issues for many, many years as both a critic and the minister. My frustration and my lack of comprehension about what's going on in Canada—not necessarily confined to Ontario—with respect to the justice system I think is a frustration felt by many Canadians.

There was an example in Toronto recently—and I don't believe the case has come to completion—a murder case where a young woman was murdered in an office building up in the Yorkville area. The individual charged with the murder was a janitor in the building. What really upsets me and should upset everyone is that, as I understand it, from the time the charge was laid by police to its coming to trial was three years: a three-year gap between a charge being laid and the individual coming to trial. That should be a significant concern, and at some point I hope to ask the Attorney General to look into that. I'm not sure how frequently that happens, but it happens, I think, too many times.

2020

I relate it to Great Britain. I happen to be aware of the situation because the individual is a former constituent of mine. He's not representative of my constituents; I don't want anyone to infer that. He was charged with smuggling cocaine into Great Britain. He went to trial within

three months and was sentenced very quickly. I think the trial lasted something like two weeks. He was sentenced, and a lengthy sentence. He ultimately came back, with this exchange program we have, to serve his time in Canada. I think that anyone who's sentenced outside of this country wants to come back to Canada because of the leniency shown by our justice system—but that's another issue. It draws a sharp contrast for me between the system in Great Britain and what's happening in this country: the delays, the backlogs, the adjournments, the two- and three-for-one credits that the courts award.

I recall speaking to an individual who was an RCMP inspector; he's now passed away. Upon retirement, he was appointed to be a provincial magistrate and a judge, one of the last lay people to be appointed to the bench. My uncle George Runciman, who was deputy chief of police in Brockville, was also one of the last magistrates and became a provincial judge. I knew the widespread resentment among many lawyers about having someone who wasn't a lawyer actually being a provincial judge. They didn't assign a lot of these folks to permanent positions. They were on relief, if you will. They would go to different communities and provide relief services. I remember him telling me about going into a community. There was this huge backlog. The judge was off sick, and he was asked to go in and sit in that particular community until the sitting judge could come back and take over his duties.

He said the backlog was enormous. He cleaned it up in two or three weeks, because what was happening was that the hours of the court were lax, to say the least, and this sitting judge was allowing adjournment after adjournment after adjournment. The defence bar would come and say, "You know, I didn't take my headache pills this morning." Whatever the rationale was, the judge would grant the adjournment—eight, nine, 10 adjournments.

Mr. Kormos: Oh, we were more creative than that, Bob.

Mr. Runciman: I'm sure you were.

This judge said they appeared before him and he would say, "You've already had three adjournments. On with the case." He cleaned up that backlog in no time at all.

Maybe this is being too simplistic; again, a non-lawyer not looking at all the complexities of these things and looking at it from a purely common sense perspective, from my seat, anyway. There are so many things we could be doing here if we had the intestinal fortitude.

I've often said that maybe we need someone appointed who has a strong belief in what has to happen in the justice system who's not a lawyer, who doesn't have to worry about a future in the brotherhood, who doesn't want to be recognized later on, in some respect, looking for a fine sinecure in one of the more prestigious firms in downtown Toronto. Maybe, if that occurred, we may see some of these things happen.

Many of the problems are national and require significant changes. Some of them may be related to the charter. I'm not sure. I just know that we have real problems in this province, real problems in this country.

Another issue that isn't addressed here—and I made reference to it with the JPs and their ability to turn down some of the requests that are before them—is the two- and three-for-one credits. There should be some real effort—and I don't believe I've heard the Attorney General speak to this issue—to try and change that situation so it is not occurring on a regular basis. There's a linkage here with adjournments. This is arguable and debatable, but I had a lawyer in my own riding approach me who is so frustrated with the court system, saying that these adjournments—of course they're related. He contends, and I've talked to the legal aid folks, who disagree with this, that a lot this is coming from the legal aid bar. Of course, part of the reason is that if you're getting adjournment after adjournment after adjournment, there are some compensation issues there. But also, if you're getting at least a two-for-one credit in the provincial system, there's a bonus to delaying that case coming to court, because you're going to get two- or three-for-one credits for the time spent sitting in a provincial lock-up. Those are very significant issues, which the Attorney General has not spoken to, has not addressed.

There are some changes in the act to amend the Limitations Act. The Attorney General spoke to that briefly. At this point, I don't have any criticisms, but I have been approached by an organization that may have some concerns about this. They were very supportive of the changes brought in by the former government and Attorney General Young, I think it was mentioned, in 2002. They were quite supportive and felt that had really assisted many people. They feel we may be getting into difficulties by in some ways going backwards here. I'll have more clarification on that as we go forward. In fact, I've indicated to the organization that approached me that if they have specific amendments they would like to see put forward, I'm certainly prepared to take a look at them and, if they make sense and I have support within my own caucus, put forward on their behalf. But at this point, we have no significant issues to put on the record with respect to the Limitations Act.

The Provincial Offences Act amendments: We're probably going to have some more to say about this. I know my friend to the left certainly has extensive comments to make about this. There appear to be two substantive amendments here. The first is going to resort to what I guess is an unspecified alternative mechanism for municipal bylaw infractions, which may include parking tickets. It appears that the alternative mechanism must be established either through the Provincial Offences Act or a different act, as opposed to a new municipal bylaw. If such mechanisms are not present, in our view this amendment is meaningless without any further amendments. Perhaps we need to take a closer look at the Provincial Offences Act, but at first look, we can't find anything in the act, so we're concerned about that.

The second amendment, which I gather caused the most consternation, is the one that is going to permit evi-

dence to be given remotely through video, audio or other electronic means. This might sound like an improvement, though having officers wait to give evidence in the police station instead of the courthouse isn't much of an improvement. The amendments really don't contain anything that deals specifically with a systemic obligation, in scheduling trial times, to directly consider officer availabilities and priorities. That's a long-standing problem; I'm not laying that at the doorstep of the current government. But with this legislation, there is an opportunity to address this. I know there are questions about cross-examination, the Evidence Act and a whole series of other issues in terms of the rights of the accused which have to be addressed as well.

2030

At this point, we're just making a couple of recommendations here. We think that the Provincial Offences Act and the Courts of Justice Act should be amended, which would oblige the chief administrator, who was referenced earlier in the legislation, to prepare and report annually on the system to ensure the availability of police witnesses—police witnesses available prior to and at the time of the setting of the trial dates. This is going to maximize the productivity of police resources required for evidentiary purposes.

The folks who are going to be setting trial dates have to give consideration to police witness scheduling. We have to have information available, again, so that we can maximize the productivity of police resources. As we all know, this could have a huge impact on police budgets. Court pay—overtime pay—is a pretty dramatic component of police budgets. We all know these problems of a police officers sitting there for two or three hours and then being told that the case has been delayed or adjourned. Some courts, I'm told, work quite well in terms of scheduling, but a great many do not. We don't seem to have that co-operation and coordination, and perhaps we have to in some way mandate it, regulate it and report on it. In the courts that are failing, we can take the steps to ensure that the situation is corrected.

The Legislation Act, another component which was briefly referenced earlier—I don't profess to be an expert in these matters, but there are a couple of items there that I think merit scrutiny: the power given to correct errors in published versions of legislation and the Attorney General's authority over regulation filing. Both of these are procedural, technical and seemingly benign, but how and when such authority can be exercised and how there is public notification of such action—how it can be carefully detailed—we think those are legitimate concerns.

There are some other practical issues that, given the breadth of the act, we have an opportunity to raise, practical issues which I would say could dramatically improve the productivity of the justice system and hopefully ensure the appropriate use of public resources, which all too frequently isn't the case.

We'd like to suggest as well the creation of Ontario court services prisoner escort and court security details, which would be funded by the provincial government. This is a program that would either operate full-time in larger centres or fund local police services to supply escort and security as required. We know this is a significant problem, especially court security—the cost associated with it and some of the demands that the judges have made related to court security and full-time police officers. This is a burden that is growing on police services across the province and we believe that it is something that could and should be addressed.

I believe it's Justice Carruthers—and I stand to be corrected—who was responsible for the JP program. He and I spoke about three years ago, and he was very strongly supportive of expansion of the video remand capacity. That is happening, but perhaps not to the degree that we would like to see. We should be working with the Ontario Association of Chiefs of Police to determine the best ways to maximize the deployment of video remand equipment and, as I mentioned earlier, the deployment of justices of the peace to avoid these unnecessary prisoner escorts, the dangers associated with that and the costs associated with that. If we move in that direction, I think it would be very well received in the policing community, to say the least.

I want to talk a bit about some of the things—and I'll get back to this; I only have a few minutes—that this government has been considering, and we're not sure exactly how far. The member from Burlington talked about the document that was made public a few weeks ago about some of the plans to cut about $340 million out of the justice system, which included a whole range of serious changes, including the parole board being transferred to the federal parole system, the sex offender registry being offloaded, the national security counter-terrorism, the closure of a couple of thousand jail beds, including the Don and the Chatham jail. We know they've already closed down the Crime Control Commission. They closed Project Turnaround, which was effectively dealing with serious young offenders. We know they planned more and more pre-charge diversion, especially with young offenders.

We see these crime stats about youth crime falling. We know what's happening in Toronto with gun crime. But the reality, when you talk to police officers out in the front lines—and I was talking to an officer a few weeks ago. They were involved in the pursuit of a stolen car. Ultimately, the individual who stole the car was arrested—15 years of age, and he was known to police. What do you think the sanction was for that 15-year-old who stole a car? He got a warning letter—a warning letter for stealing a car. This is the new Youth Criminal Justice Act and the emphasis on diversion and warning letters. How much of this is going on across the province that we do not know about? We have these statistics that I would suggest are not very accurate in terms of what's happening out in our communities in terms of youth crime. And this is an initiative not only supported by the McGuinty government but promoted by the McGuinty government. Through this renewal program, whatever they called it—justice modernization—this was one of the initiatives

they wanted to expand on: pre-charge diversion, post-charge diversion, closing jail beds and getting people out onto the streets of our communities more quickly. Those are issues that we can continue to talk about at length.

We think there should be an early-case-resolution facilitation fund. It would seem reasonable to us that the financing of that be accepted, at least in part, as an expense borne systemically by the province rather than by individual police services.

I think I've used up my time, Mr. Speaker, but I have appreciated the opportunity to contribute here this evening.

The Acting Speaker: Questions and comments?

Ms. Horwath: It gives me pleasure to have a few minutes to talk about the issue of Bill 14, and also to mention the thorough way that the member from Leeds–Grenville has outlined the issues that he sees from his party's perspective in regard to this bill. Later on this evening we'll be hearing from the member from Niagara Centre, Peter Kormos, who I believe is up next to talk about some of the things we're concerned about in this bill. One of those is the very construct of the bill itself, in that, as I mentioned before, it is in fact an omnibus bill. So where there may be pieces of that omnibus bill that we might want to support, might find supportable, unfortunately, what often happens with omnibus bills is that there are other pieces that are included that are not so easy to support. So I'm not positive where we're going to end up with this one, but my understanding is, there are pieces of it that we unfortunately are not going to like very much at all. As I say, that's unfortunate, because it's not unusual that omnibus bills come before this House.

2040

I did take an opportunity, in my last opportunity for questions and comments, to quote a member of this Parliament who was elected last time around in opposition. I want to do that again. I want to quote from a member who used to be in opposition who said, "What we look at in a bill of this kind is the fact that it's an omnibus bill. That means it has so many components to it that it should probably be broken down into four or five different bills. As is the case with many omnibus bills, some of the provisions in this bill are supportable; others are not. What the government usually does is put a hostage in the bill so the opposition won't vote for it, and then they can say about the good and popular things in the bill, 'The opposition voted against it.' But you really can't fool people with that." That was said by Jim Bradley, November 18, 2002, now a current government member.

The Acting Speaker: Questions and comments? The member from Perth–Middlesex.

Mr. John Wilkinson (Perth–Middlesex): Thank you, Mr. Speaker. It's good to see you in the chair this evening. Welcome to everybody.

I've had a chance to take a look at Bill 14. It's a bill that only a lawyer could love. Only a lawyer could love this bill. But it's a wonderful job. I want to commend the Attorney General, who is a brilliant lawyer himself, and his great parliamentary assistant, Mr. Zimmer, my seatmate to the right, who also is a fine lawyer, for the work they have done on this bill. We need to be able to—

Mr. Kormos: Michael's brilliant, David's only fine?

Mr. Wilkinson: Well, there is the first and there is the second. But there's always hope when you're the second that perhaps one day you will be first.

I want to comment on the fact that just a few weeks ago I had a chance to do a drive-along with Constable Ryan Million of the Stratford police force. It was an interesting day with him, front-line in his police cruiser. What was brought home to me is the fact that he has a tremendous sense as a police officer, and what he needs to do is to be out on the street, to be in his car. He has an amazing sixth sense about the criminal element in my hometown. He had an unerring ability to make a number of stops that day, and showed me some of the techniques he had learned. And I want him to be in that car.

That's why I support Bill 14, because as the member from Leeds–Grenville mentioned and our own members mentioned, the ability for officers to be able to give testimony by the 21st-century means of video and audiotape—I think this is a wonderful idea, because our officers are tied up so many times, not on the street, not enforcing the laws, but stuck in courts, waiting for their attempt to testify to keep us safe. So I think it's a very important reform that we've put in here. There is—

Interjection.

Mr. Wilkinson: I think he should be able to testify, but I think he needs to be able to do that in a 21st-century fashion so he or she can spend their time on the street keeping us safe.

Mr. Norm Miller (Parry Sound–Muskoka): It's my pleasure to add some comments to the speech from the member from Leeds–Grenville, his hour-long speech. I note that the member from Leeds–Grenville has a keen interest in the administration of justice. He used his full hour and was still not done the entire bill in his critique. I note that he had pointed out that if the regulation of paralegals was separated out of this bill, that part could certainly proceed quite quickly. I note that the member from Hamilton East also pointed out that this is an omnibus bill and that if certain sections were stood on their own, they would pass more quickly. Even the member from Perth–Middlesex noted that this is a bill only a lawyer could love. Certainly, it sets a record for the longest explanatory note—15 pages. It's usually about a page of an explanatory note, so I suspect a lawyer was involved in writing that.

I also note that this government has been inactive in terms of appointing justices of the peace. It's high time they got on the job and started appointing some, because we've seen some real delays in terms of court cancellations happening because of a shortage of the numbers of justices of the peace.

I also note that the member from Leeds–Grenville pointed out that, under this bill, justices of the peace would not be able to go into jails and that this would be a problem because then we end up with unnecessary prisoner escorts. I think that's probably a very valid point.

I'm concerned that there might be increased bureaucracy as a result of this bill. But certainly there are a lot of unanswered questions. I look forward to having the opportunity to discuss it in caucus, and as well I hope that it will be going out to committee so the public, lawyers, paralegals, justices of the peace and other interested parties may make comment on the bill once they have a chance to read it.

Mr. Kormos: I indeed listened carefully throughout all of Mr. Runciman's comments—the member for Leeds–Grenville. I find his contribution to this debate to be an important one. I look forward to him being on committee with me and others.

This bill covers a whole lot of ground and it is not without more than a few flaws. In fact, it raises a whole lot of concerns with respect to a whole lot of areas. Mr. Runciman has highlighted, in the short period allowed to him, but some of them. This bill needs committee hearings. Quite frankly, it needs extensive committee hearings. I suggest that people who are interested in any number of facets of this bill start working on that process promptly. I can say with confidence that his constituents can sleep well knowing that Mr. Runciman is pursuing the law-and-order interests of his folks and Ontarians with vigour and zeal here at Queen's Park. But folks had better be very concerned about some areas where this bill creates more problems and provides more grief than it does solutions.

I'm going to have a chance in around two minutes' time to speak to this bill for the brief one hour allowed me. This is only second reading debate, as Mr. Runciman indicated—if it wasn't Mr. Runciman, it was his colleague Mr. Sterling. The real debate occurs on third reading and during the course of committee work. People had better pay close attention to this bill, because there are problems here that are going to cause some real grief for a whole lot of folks.

The Acting Speaker: The member from Leeds-Grenville.

Mr. Runciman: I thank those who participated with comments. I want to indicate I share Mr. Kormos's view that extensive public hearings are required on this legislation. This is a wide-ranging bill with significant implications and some serious problems, as he pointed out, but I also think some real opportunities that are necessarily addressed in the legislation, and perhaps through amendments and a co-operative and productive atmosphere on the committee we can really address some of the long-standing concerns of the public of Ontario with respect to the justice system.

There were references to policing by one of the members earlier. The things that are out there that we don't appreciate—the search warrants, the time involved, the red tape involved in Ontario versus Quebec; for example, a 75- or 80-page application for a search warrant in Ontario versus a very modest application form in the province of Quebec. Domestic disputes—does anyone know the time a very mild domestic dispute takes an officer off the road, or two officers? Seven or eight hours on average, on someone complaining about someone yelling at them, for example. Impaired driving—does anyone know the red tape involved? A police officer, especially if there is a death involved, is off the road for two weeks dealing with paperwork and reports being filed, if he's the investigating officer in an impaired driving charge involving death.

When I was the minister, we undertook a red tape review which was I think completed by the former ADM, and it's still sitting on a shelf over there. There are so many things we could do to improve the system of justice in this province. All we have to do is make the effort.

2050

The Acting Speaker: Further debate?

Mr. Kormos: I wish this bill were just about paralegal regulation, because if it were, we could proceed with it probably in a far more expeditious manner. That's not to say that anybody is going to rush anything through without a whole lot of careful thought. But regrettably, the government, rather than producing a bill that would provide for a framework for the regulation of paralegals—which everybody agrees with. Paralegals agree with the proposition, folks out there in communities across the province agree with the proposition, and it seems to me that every member of this assembly agrees with the proposition that we need regulation of paralegals. Rather than proceed with a bill that dealt with regulation of paralegals—no. Not only do we have a stall, we wait—Mr. Runciman, how long did we wait for this bill? Years, from this government alone. But then when it comes forward, rather than a bill that deals with the issue at hand, it's got a number of schedules dealing with any number of not just bills but areas of the law.

First, I've got to tell you, I want to express gratitude to Sheena Weir from the Law Society of Upper Canada. Ms. Weir is an incredibly effective and knowledgeable and skilled member of the staff at the law society.

Mr. Runciman: Put me on the record agreeing with you.

Mr. Kormos: Bob Runciman concurs. Sheena Weir is an incredibly effective person who worked hard, incredibly hard, with all parties in this Legislature to get this paralegal regulation legislation on the front burner. As she has always been, Ms. Weir was extremely helpful in terms of getting background material for the respective critics and their caucuses, helping us wind our way through the various reports that have been commissioned and produced over the course of the years. So I want not only to thank Sheena Weir; I also want to express my personal gratitude and the gratitude of the NDP caucus and, based on some of the affirmative nods from folks in the two other caucuses here, I suspect the gratitude of everybody in the assembly. I say this to the law society: They are extremely lucky to have Ms. Weir working for them and with them.

It was Mr. Sterling who said that the real debate is going to take place in committee and on third reading, because right now we're dealing with some very preliminary stuff. I also want to say that I was shocked and

disappointed when I sat here listening to the member from Perth–Middlesex describe the Attorney General as brilliant but the parliamentary assistant as nothing more than fine. I find that an extremely objectionable observation and comment by the member for Perth–Middlesex. I know the parliamentary assistant. I've seen his work. To call the Attorney General brilliant but Mr. Zimmer nothing more than fine is, I say, a contempt of this Parliament. I want to stand here and now and make it clear that David Zimmer, the parliamentary assistant, would in his own right make an outstanding Attorney General. I tell you that David Zimmer wouldn't have fed us pap and phony spin like pit bull bans and phony claims about somehow acquiring, by delegation, constitutional authority from the federal government to ban handguns. David Zimmer would know better, does know better, and I say to you that David Zimmer is the match, from anybody's perspective, of this Attorney General.

Mr. Runciman: Easily.

Mr. Kormos: Easily, Mr. Runciman says. Mr. Runciman said "Easily" in response to my comment. I responded. That gets him on the Hansard record.

Look, let's deal with the easy stuff first: the amendments to the Limitations Act. Indeed, I sat down with Mr. Zimmer to make sure that I had a clear understanding of what they did based on the existing section 11 of the Limitations Act. It appears to be not problematic at all. As a matter of fact, I'm astounded that during the course of introductory comments by government members with respect to this bill they would somehow claim to have made meaningful amendments to the Limitations Act. Please. It's not meaningful. There's a little bit of cleanup.

But that begs this question. I remember, as does Mr. Runciman, the passage of the Limitations Act that prevails now in the province of Ontario, passed in 2002. That Limitations Act was the second version of the act that had been presented to the House, and we believed and we were told—I think accurately, honestly, legitimately—that it had been vetted over and over again by any number of bar association types and law society types. But I put to this Attorney General that the time is clearly due for a review of that Limitations Act. That's not to suggest that there's anything inherently flawed with it, but, for instance, in the area of claims by investors—and the parliamentary assistant knows full well what I'm speaking of. There has been a number of newspaper articles talking about the difficulty that investors have had litigating against investment operators who have been less than straightforward in how they've dealt with their money. The limitations periods, as you well know, that were included in the Limitations Act of 2002 have barred them from making claims. So what I'm suggesting to the Attorney General, but even more importantly to the parliamentary assistant, because I think he has a better understanding of these sorts of things, is to bring the Limitations Act forward to the appropriate committee for a review, for public input, with a view to addressing shortcomings and deficiencies that have been displayed over the passage of time, the last three to four years. That would be long overdue.

Let me talk about schedule E, the amendments to the Provincial Offences Act. Look, I've been blessed here in this Legislative Assembly to witness a succession of Attorneys General who have demonstrated some real skill and acumen, going back to my first years of service here with Ian Scott. It boggles the mind to think that an Attorney General of this province would let his name attach to a bill that would change the evidentiary rules so as to deny an accused person the right of full answer in defence. Please, do you understand? I appreciate and understand and sympathize with and have concern about the adequacy of police officers out on the streets doing crime prevention and crime investigation and investing their time in investigations and in arresting bad guys. But please, to somehow suggest that it's in any way consistent with our due process legal system to face your accuser over a telephone line is repugnant. I know there will be efforts on the part of those people who would choose to defend this particular schedule, schedule E, the amendments to the Provincial Offences Act, saying, "Oh, these are only Highway Traffic Act offences" or other provincial offences.

2100

Look, the fact is that we operate with a very hallowed premise, and that is the presumption of innocence. You can mock and scoff at the presumption of innocence—until you find yourself on the receiving end, and then all of a sudden, that presumption of innocence becomes very valuable to you. The fact is, even the best-of-intentioned police officers sometimes make mistakes. The other fact is that a Highway Traffic Act conviction for dangerous driving, speeding or, not inappropriately so, school bus offences can result, for instance, in the loss of a licence, as well as huge fines and huge insurance premium increases, and it could well lead to the loss of a job.

So who in this government is of the view that a person accused of an offence should not be able to face their accuser, that they should not be able to have a trier of fact? I say this to the parliamentary assistant, who I am confident is well aware of the role of a trier of fact and the need for a trier of fact to see the witnesses, to hear them, to watch them as they give their evidence, to watch them as they submit to cross-examination, to use all of their senses, their human senses, to determine very fundamental issues like credibility or accuracy. The fact is, you can't do that over a telephone line.

This just doesn't fly. And right here and now I put to this Attorney General that he should immediately sever schedule E. I understand the motive. The motive is to address—I don't know this for a fact, but I assume the parliamentary assistant was reading from a prepared speech, because I am hard-pressed to think that he truly believes this. He talked about how the provisions in schedule E, the amendments to the Provincial Offences Act—I wrote it down; I made a note, did it verbatim, so I would not suffer from even the slightest inaccuracy. Schedule E, undermining the historic rules of evidence, is

"to alleviate the growing caseload pressure on the Provincial Offences Act courts." This has nothing to do with access to justice; it has nothing to do with justice at all. It's an efficiency measure designed to reduce the caseload.

You see, this government has a serious problem—it's not a new problem—and that is huge court backlogs in criminal courts, in family courts, in provincial offences courts, in courts presided over by justices of the peace. What does the Ministry of Finance do? It flatlines and/or reduces the budget of the Attorney General. In fact, the justice budgets were amongst those that were heralded in the 2005 budget as being part of the overall cost reduction scheme of the government—remember that?—ministries whose budgets were either flatlined or reduced. There is a crisis in our justice system, in our court system, in terms of the lack of resources and the huge backlogs. Does this government speak to and address those crises? No. It says, "We'll accelerate things, we'll get things done, we'll grease this up and slide 'er right through" by changing the rules of evidence so that the prosecutor and the crown's witnesses can give their evidence over the telephone.

Please, Mr. Zimmer, the people of Ontario need you on their side on this one. Justice needs you on its side on this one. Sever schedule E. Acknowledge that it is just wrong-headed. A trial, with a determination at the end of guilt or innocence, guilt or non-guilt, with its consequences, is far different from a videoconference bail hearing, far different. Furthermore, I suspect—I don't know for a fact. Look, I'm from down in Niagara, small-town Ontario. But I suspect that there are going to be some smart lawyers, good smart lawyers, capable smart lawyers, men and women who are committed to the service of justice, who are going to take this schedule E through challenges, like the right to full answer in defence, and chew it up and spit it out for breakfast. I call upon the Attorney General to simply sever schedule E. It's bad policy and it's certainly not good law. It may well even be—think about it—against the law.

And let's not talk just about Highway Traffic Act offences. What about Occupational Health and Safety Act offences where people have died and where charges have been laid under the Occupational Health and Safety Act to determine the quasi-criminal liability of a company or its supervisors? It's pretty serious stuff, isn't it? You are no longer talking about a seat belt charge—which is serious in and of itself, especially if you've been wrongfully accused. Please, schedule E just doesn't fly and should be severed. It would give a lot more integrity to this process. New Democrats are eager to talk about paralegal regulation, and I think the public is too.

Let me speak for a few minutes, because I don't have a whole lot of time, about schedule A, the amendments to the Courts of Justice Act. I want you to understand that there are already serious concerns being raised from some very important and legitimate and significant sources about elements of schedule A. I want to bring to your attention right now the expression of concern that I've received and that others may well have also, and that is section 76 of schedule A. Now, understand what section 76 does. Let's talk about the motive for a minute. Don't get up on some point of order, because I'm not impugning motive; I'm merely identifying it. There's a difference, isn't there, Mr. Zimmer? There's a difference. I'm merely identifying the motive, far from impugning it. Section 76 says: "Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the Chief Administrator," etc.

2110

I've got correspondence here from the Association in Defence of the Wrongly Convicted, a very important organization and group of people. Its honorary president, someone most of us know, is Judge Gregory Evans, and its board of directors are some of the best legal minds that this country has. They expressed to me, and I suspect to others as well, their concern about section 76 of schedule A of Bill 14, or what will be the new section 76 of the Courts of Justice Act. This is talking about disposing of—burning, shredding, otherwise getting rid of. We'll get to motive in just a second, or what I understand to be the motive. This is what the authors of this letter, Mel Green and Paul Copeland, have to say on behalf of this volunteer organization:

"For various reasons, the majority of wrongful convictions do not come to light until years after they occur and long after the people affected have been dealt with by the justice system. In most cases, it is necessary for" the association "and other innocence organizations to review the court files of those who claim to be innocent as part of the investigation of innocence claims.

"The court files often contain critical documents which may not be available from other sources. In some cases, the court file may contain biological exhibits, which could be used at some future time for DNA analysis or other scientific testing. For these reasons," the association "believes that it is entirely inappropriate to leave the disposal of court file materials to the 'discretion of the chief administrator,' whether or not that discretion is subsequently approved by a judicial officer." The association "submits that discretion has no place whatsoever in this context.

"It is the submission of" the association "that when dealing with materials which could be critical in the determination of guilt or innocence at some future time, there should be explicit and strict guidelines with respect to the preservation of such materials"—the preservation of those materials and, at a minimum, and I'm paraphrasing now, a complete prohibition against getting rid of any materials in a homicide court file and a similar prohibition against disposal of biological exhibits in any court file.

I agree entirely and the New Democrats agree entirely with the position put forward by the Association in Defence of the Wrongly Convicted in this letter to me of November 15. I suspect—and this is the sort of reason why we want committee hearings—that the motive be-

hind what will be section 76 of the new Courts of Justice Act, schedule A of the bill, should the schedule pass, is, again, efficiencies. The ministry's budget is flatlined or reduced. These things have to be stored; they have to be stored securely and in such a way that it preserves the integrity of them.

Well, at what price? At the price of wrongfully convicted persons, which is surely one of the great stains on our criminal justice system, isn't it? The wrongly convicted young men or women sent to penitentiaries, wrongly convicted of oftentimes atrocious crimes, which subjects them to some of the most inhuman treatment—unspeakable treatment—in those institutions. Surely, the phenomenon of the wrongly convicted is a horrible stain on our criminal justice system. What are we doing in Bill 14 with section 76, which would deny those wrongfully convicted persons the capacity to prove their innocence when the criminal justice system has failed justice?

I simply say to the government here and now that this observation is an illustration of yet another flaw in their bill, and it demonstrates why we in the New Democratic Party and why Mr. Runciman on behalf of the Conservative Party have insisted on full and complete hearings.

It also demonstrates why it's extremely dangerous to put forward omnibus legislation. I remember, for many of us, our baptism by fire when it came to omnibus bills. Sitting across from me here at this late hour is the member for Thunder Bay–Superior North, who was there too when Bill 26 was presented to this Legislature—yes, a baptism by fire. What we predicted at the time, when we were commenting on the dangerousness of omnibus bills, has come true in spades. It's not a healthy way to process legislation through the assembly. It isn't. What you've got here, once again, is an omnibus bill. I'm not trying to pretend it's the same weight as Bill 26—

Mr. Dave Levac (Brant): Thank you.

Mr. Kormos: —but it has the same inherent dangers, Mr. Levac.

We were all committed and the New Democrats were calling upon this government to come forward with the legislation that would permit us to begin the debate around the regulation of paralegals. We were as eager as anybody—and I'm going to get to paralegals in just a few minutes—to see that matter debated and discussed in committee, to see it made the subject matter of public input and then see it put into effect. But instead, no. We get an omnibus bill.

We've already got a schedule E that, I put to you, should be excised simply because it's bad law and bad policy. And I put to you that schedule A, the amendments to the Courts of Justice Act, similarly deserves and warrants consideration separate and apart from the debate around paralegal regulation.

There was some reference made to section 18 of schedule A of the bill, which will become section 116.1 of the act. I query here and now—and this is simple, honest, legitimate; just me asking—why, when the payments for future care of a victim of medical malpractice are going to be made over a protracted period of time, those payments for future care costs, would the government specifically say that the courts shall determine the amount without regard to inflation? Why would the government do that? There may be a very clear answer. People from the medical malpractice branch of the Ontario Bar Association could well be on the phone to me the first thing tomorrow morning saying, "Kormos, how dare you make that comment?"

2120

But just from a little bit of a commonsensical view, if periodic payments for future care costs of a seriously injured party—because when you're talking about the application of this section, you're talking about somebody with some pretty significant injuries and future care costs, and those future care costs could take place over a period of 10, 15, 20 years or more, and if we calculate inflation, just as a guesstimate—you know more about this stuff than I do, Speaker—at 2% a year, and that is, I dare say it, a relatively conservative figure, look what that does to those future care costs paid out in periodic payments over the course of 10 or 15 or 20 years.

You thought I had somehow moved beyond advocating on behalf of innocent accident victims? Well, clearly, once again, this cries out for some answers. Why would the government not inflation-proof future care costs for a victim of a medical malpractice, I say to the parliamentary assistant? Once again, the insurance companies get a break and the innocent victim suffers. That's what it amounts to, doesn't it? Insurance companies get a break. Dalton McGuinty and the Liberals are in bed with the insurance companies and innocent victims of medical malpractice bear the burden. It never ends, does it? It never ends. I'm not suggesting that the insurance industry owns governments, but they sure as heck appear to be able to rent them from period to period. I raise now the concern around that particular section.

Let's talk about justices of the peace. Do you remember that period, from 1995 through to 2003, when we were plagued with bills from the Conservative government that had titles that were the 180-degree opposite of what the bill did? What was one of them? The Tenant Protection Act. Have I got that right? Does my memory serve me well? The Tenant Protection Act gave it to tenants. It did. "Tenant Protection Act" my foot. It was—well, I'll leave it at that. It gave it to tenants big time, and not a break, either. So here we've got a bill that's called the Access to Justice Act. We're going to have time to talk about that.

But first JPs. Look, I want to tell you, I was so incredibly fortunate, during my adult working life in my first career as a lawyer, to have been in an incredible number of courtrooms and to have been before some outstanding judicial authorities. I'll say it from the mountaintops: Ontario is blessed with probably the finest bench judicial authorities anywhere in the world. Certainly the ones I've had experience with and exposure to have demonstrated that.

I remember justice of the peace Tony Argentino. I don't know whether Mr. Bradley remembers him or not;

he's dead now. Tony Argentino from Thorold was a police officer with the old Thorold police force. And Tony Argentino was one darned good justice of the peace. Even when people were convicted and fined—

Interjections.

The Acting Speaker: Order, please. I cannot hear the speaker. The noise over there is much louder than he. Please continue.

Mr. Kormos: Would it help, Speaker, if I increased the volume a little bit?

I remember Tony; again, a delightful person, an outstanding justice of the peace. One of the tests of that was that even people who were found guilty and were fined or had their licences pulled walked out of his courtroom feeling that justice had been done. Mind you, the police thought he was a little too pro-defence. So be it. Another one, who's very much alive and well, Gabe Tisi in Welland, a friendly, hard-working justice of the peace, retired; and Morley Kitchen, who just brought an incredible level of expertise and professionalism to the bench during his service as a justice of the peace. He was a firm justice of the peace but very well read in the law and he ran a very, very capable, competent, professional courtroom where lawyers, witnesses and the accused all felt well served and treated with regard.

But just as I can name any number of good JPs, my goodness, I can name any number of really bad ones. Regrettably, the history of justice of the peace appointments in this province up to very much the present time has been a history of some pretty crass patronage, and when you've got crass patronage—patronage without merit—you end up with some pretty bad appointments. That's not telling stories out of school by any stretch of the imagination. I'd far sooner emphasize the good ones, the Tony Argentinos, the Gabe Tisis and the Morley Kitchens. But we all know who some of the bad ones are, don't we, Mr. Zimmer?

New Democrats welcome this legislative endeavour to professionalize the provincial offences bench. Is that a fair way to refer to the JP level of adjudication, the provincial offences bench? I say it's a good and positive thing.

We all remember the notorious report by the Ontario Association of Chiefs of Police that, in a somewhat anecdotal way, referred to the practices of JPs, some of whom were as lazy as all get out, as indifferent as all get out to the responsibilities, and that's where Mr. Runciman talked about the duty JPs.

So I'm pleased to see—and it's not inappropriate—that in the legislation that's being proposed, there is the responsibility of the supervisory judicial authority to create a duty roster, which, as I understand it—but that's why this has got to go to committee. I want this to be very clear. I understand the duty roster is what puts a justice of the peace on midnight call over the course of the weekend so that he or she is available for police officers who need search warrants, arrest warrants and those sorts of things. Obviously, failure to perform your duty roster is going to get you into trouble with the review process.

And I welcome a process that takes the political patronage away from the appointments. However, let's be fair and understand that it's very clear that the appointments advisory committee will present to the Attorney General those justices of the peace that are identified as qualified and highly qualified. Of course, we still suffer the risk of political consideration rearing its ugly head. But, having said that, the appointments advisory committee will at least determine some level of merit. Patronage without merit is despicable and counter-productive; it's downright dangerous. Patronage with merit is understandable, at the very least. Not necessarily laudable, but understandable.

But I put this to you: I received a fascinating package of material from—

The Acting Speaker: I think before you get to the fascinating package—it's now 9:30, so you can save that for the next time.

The time now being 9:30 of the clock, this House stands adjourned until tomorrow at 1:30.

The House adjourned at 2131.

STANDING AND SELECT COMMITTEES OF THE LEGISLATIVE ASSEMBLY
COMITÉS PERMANENTS ET SPÉCIAUX DE L'ASSEMBLÉE LÉGISLATIVE

Estimates / Budgets des dépenses

Chair / Président: Cameron Jackson
Vice-Chair / Vice-Président: Garfield Dunlop
Wayne Arthurs, Caroline Di Cocco,
Garfield Dunlop, Andrea Horwath,
Cameron Jackson, Kuldip Kular, Phil McNeely
John Milloy, Jim Wilson
Clerk / Greffier: Trevor Day

Finance and economic affairs /
Finances et affaires économiques

Chair / Président: Pat Hoy
Vice-Chair / Vice-Président: Phil McNeely
Wayne Arthurs, Toby Barrett, Pat Hoy, Judy Marsales,
Phil McNeely, Carol Mitchell, John O'Toole,
Michael Prue, John Wilkinson
Clerk / Greffier: Trevor Day

General government / Affaires gouvernementales

Chair / Présidente: Linda Jeffrey
Vice-Chair / Vice-Président: Vic Dhillon
Vic Dhillon, Brad Duguid, Andrea Horwath,
Linda Jeffrey, Jean-Marc Lalonde,
Deborah Matthews, Jerry J. Ouellette,
Lou Rinaldi, John Yakabuski
Clerk / Greffière: Tonia Grannum

Government agencies / Organismes gouvernementaux

Chair / Président: Tim Hudak
Vice-Chair / Vice-Président: Gilles Bisson
Lorenzo Berardinetti, Gilles Bisson,
Michael Gravelle, Tim Hudak,
David Orazietti, Ernie Parsons,
Laurie Scott, Monique M. Smith,
Joseph N. Tascona
Clerk / Greffière: Susan Sourial

Justice Policy / Justice

Chair / Président: Shafiq Qaadri
Vice-Chair / Vice-Président: Bob Delaney
Jim Brownell, Bob Delaney, Kevin Daniel Flynn,
Frank Klees, Peter Kormos, Jennifer F. Mossop,
Shafiq Qaadri, Mario G. Racco, Elizabeth Witmer
Clerk / Greffier: Katch Koch

Legislative Assembly / Assemblée législative

Chair / Président: Bob Delaney
Vice-Chair / Vice-Président: Mario G. Racco
Bas Balkissoon, Bob Delaney,
Ernie Hardeman, Rosario Marchese, Ted McMeekin,
Norm Miller, Tim Peterson, Mario G. Racco, Mario Sergio
Clerk / Greffier: Douglas Arnott

Public accounts / Comptes publics

Chair / Président: Norman W. Sterling
Vice-Chair / Vice-Présidente: Julia Munro
Shelley Martel, Bill Mauro, John Milloy,
Julia Munro, Richard Patten,
Liz Sandals, Norman W. Sterling, David Zimmer
Clerk / Greffière: Susan Sourial

Regulations and private bills /
Règlements et projets de loi d'intérêt privé

Chair / Présidente: Andrea Horwath
Vice-Chair / Vice-Président: Tony C. Wong
Gilles Bisson, Kim Craitor, Andrea Horwath,
Kuldip Kular, Gerry Martiniuk, Bill Murdoch,
Khalil Ramal, Maria Van Bommel, Tony C. Wong
Clerk / Greffière: Tonia Grannum

Social Policy / Politique sociale

Chair / Président: Mario G. Racco
Vice-Chair / Vice-Président: Khalil Ramal
Ted Arnott, Ted Chudleigh, Kim Craitor,
Peter Fonseca, Jeff Leal, Rosario Marchese,
Mario G. Racco, Khalil Ramal, Kathleen O.Wynne
Clerk / Greffière: Anne Stokes

Electoral reform / Réforme électorale

Chair / Présidente: Caroline Di Cocco
Vice-Chair / Vice-Président: Norm Miller
Wayne Arthurs, Caroline Di Cocco,
Kuldip Kular, Norm Miller, Richard Patten,
Michael Prue, Monique M. Smith,
Norman W. Sterling, Kathleen O.Wynne
Clerk / Greffière: Anne Stokes

CONTENTS

Monday 13 February 2006

SECOND READINGS

DEUXIÈME LECTURE

Lundi 13 février 2006