Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

M-24

Standing Committee on the Legislative Assembly

Accelerating Access to Justice Act, 2021

1st Session
42nd Parliament

Friday 12 March 2021

Chair: Kaleed Rasheed
Clerk: Tonia Grannum

Journal des débats (Hansard)

M-24

Comité permanent de l'Assemblée législative

Loi de 2021 visant à accélérer l'accès à la justice

1re session
42e législature

Vendredi 12 mars 2021

Président : Kaleed Rasheed
Greffière : Tonia Grannum

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 :

https://www.ola.org/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

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 416-325-7400.

House Publications and Language 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 linguistique et des publications parlementaires
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

ISSN 1180-436X

CONTENTS

Friday 12 March 2021

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Friday 12 March 2021

Vendredi 12 mars 2021

The committee met at 0902 in room 151 and by video conference.

ACCELERATING ACCESS TO JUSTICE ACT, 2021

LOI DE 2021 VISANT À ACCÉLÉRER L'ACCÈS À LA JUSTICE

Consideration of the following bill:

Bill 245, An Act to amend and repeal various statutes, to revoke various regulations and to enact the Ontario Land Tribunal Act, 2021 / Projet de loi 245, Loi modifiant et abrogeant diverses lois, abrogeant divers règlements et édictant la Loi de 2021 sur le Tribunal ontarien de l'aménagement du territoire.

The Vice-Chair (Mr. Vijay Thanigasalam): Good morning, everyone. I'll call this meeting to order. We are meeting to conduct the second day of public hearings on Bill 245, An Act to amend and repeal various statutes, to revoke various regulations and to enact the Ontario Land Tribunal Act, 2021. Are there any questions before we begin? I see none.

Our presenters have been grouped in threes for each one-hour time slot. Each presenter will have seven minutes for their presentation, and after we have heard from all three presenters, we will have 39 minutes of questioning divided into two rounds of seven and a half minutes for the government members, two rounds of seven and a half minutes for the official opposition members and two rounds of four and a half minutes for the independent members.

SOUTH ASIAN BAR ASSOCIATION OF TORONTO

CRIMINAL LAWYERS' ASSOCIATION, ONTARIO

ONTARIO BAR ASSOCIATION

The Vice-Chair (Mr. Vijay Thanigasalam): I would like to welcome Janani Shanmuganathan, board member of the South Asian Bar Association, Toronto chapter. Janani, you have been allotted seven minutes for your presentation. You may begin.

Ms. Janani Shanmuganathan: Thank you to the members of the standing committee for allowing me to speak today. My name is Janani Shanmuganathan. I am a board member of the South Asian Bar Association of Toronto, also known as SABA Toronto. SABA is the largest diverse bar association in the country and the largest association of South Asian lawyers anywhere in North America.

SABA wants more diversity on the bench. We strongly feel that a diverse bench is a better bench. Canadians are diverse, and when Canadians see themselves reflected in those who sit on the bench, they have more confidence in the administration of justice. A diverse bench is something we should be striving toward. That being said, we don't want tokenism. We don't want diversity to be invoked as a justification for changing something when there is no evidence or reason to believe that the change will actually improve diversity.

My submissions today will focus on the proposed changes to the Judicial Appointments Advisory Committee, also known as JAAC. I have two points I want to make.

First, the proposed changes to JAAC would increase the Attorney General's influence over who gets appointed, and this represents a step backward.

The current selection process we have in Ontario was a move to merit-based judicial appointments and away from political appointments, where some judges were selected for reasons aside from their merit; for instance, because their ideologies aligned with that of the government appointing them.

If we were to think about the judicial appointment process in terms of a continuum, on one side you have judicial appointments that are purely political, made solely by the Attorney General himself, and on the other side of the continuum you would have completely apolitical appointments, appointments made solely by a selection committee that is independent from the government of the day.

The current model in Ontario is only one step away from the apolitical appointments spot on the continuum, where instead of JAAC picking the person directly, JAAC gives the Attorney General at least two names to choose from. The change from a list of at least two names to at least six names marks an incremental step away from apolitical appointments and back towards political appointments. More choice means more room for appointments based on ideology, as opposed to merit.

I have the same concerns about the proposed changes to how members of JAAC are selected. Currently, the

three lawyer members of JAAC are chosen by lawyers' associations themselves. The Law Society of Ontario chooses a member, the Ontario Bar Association chooses a member, and the Federation of Ontario Law Associations chooses a member. These three organizations choose members who they feel are best suited for the job. The Attorney General wants to change this. Rather than allow the lawyers' organizations to choose who is the best member for the job, the Attorney General wants to choose from a list of three names for each of the three spots. This puts the Attorney General's fingerprints and influence all over the selection committee itself. Again, more choice means more room for appointments based on ideology as opposed to merit.

When you consider these two proposed changes together—increasing the list from at least two names to at least six, and requiring choice over who gets appointed on JAAC—we are moving now much further down the spectrum towards political appointments and away from merit-based appointments. SABA does not want this.

My second point is that the claim behind these proposed changes is that giving the Attorney General more discretion will somehow improve diversity in those who are appointed, but there is no evidence that this is true. Implicit in this claim is that there is something wrong with the names currently being put forward by JAAC to the Attorney General; if six names will be better than two, there must be worthy and diverse candidates the Attorney General wants to appoint but whose names are not on the list the Attorney General has been receiving. But who are these deserving candidates that the Attorney General is talking about? Who is it that he wants to appoint but hasn't been on the list of names being provided to him? Where is the evidence that diverse and deserving candidates are being overlooked by JAAC?

SABA strongly suspects that the way to encourage more diversity on the bench is to enact policies that encourage greater diversity in law schools and in the workplace and by encouraging more diverse candidates to apply for the bench, but these proposed changes don't do anything to address that; they simply give the Attorney General more influence over who gets appointed.

The process for selecting judges is one that lasts for a long time. The current government may be very comfortable giving its current Attorney General more choice and more input in the selection process, but will the current government be comfortable when it is the next government whose Attorney General has that increased input, or the government after that? The selection of judges should be as free from politics as it possibly can be, and these changes represent the opposite of that.

0910

I want to end by saying that judges wield a lot of power in this province. As a lawyer, when my client and I walk into court, we want confidence that the judge who will be deciding my client's fate—whether my client goes to jail to be locked up in a cell or my client gets to go home to their family—is a judge who is appointed because of merit and not because their ideology is aligned with that of the government. We don't want to go back to a selection process that—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Next we have Annamaria Enenajor, a member from the Criminal Lawyers' Association, Ontario. You have been allotted seven minutes for your presentation. You may begin.

Ms. Annamaria Enenajor: Good morning. My name is Annamaria Enenajor. I'm a criminal defence lawyer practising in Toronto. I am here testifying on behalf of the Criminal Lawyers' Association. This is one of the largest specialty legal organizations in Canada, with more than 1,500 members. We are a voice for criminal justice in Ontario.

The Criminal Lawyers' Association is deeply concerned about the proposed changes with respect to the composition and function of the Judicial Appointments Advisory Committee.

I start by saying this: Ontario's judicial appointments process is not broken. It does not need fixing.

As criminal lawyers, the majority of our practice is before the Ontario Court of Justice, where provincial appointees sit. This is where most criminal matters are litigated. The Ontario Court of Justice presides over 95% of all criminal matters in this province. It's safe to say that the Ontario Court of Justice is our home, as criminal defence lawyers. As an organization with members who span across the province, who practise in this court on a day-to-day basis, our consensus is that the strength of this bench, in terms of the qualifications of our judges, can match any level of court in Canada. The current JAAC process has a lot to do with that. It is a process that is the envy of other provinces and the federal government. It is a process that is successful in creating a diverse and incredibly skilled bench, because it is an arm's-length and independent process that allows and actively works towards minimizing political interference in the appointments.

This is not to say that diversity can't be strengthened in our courts. It is essential that we have the best, most qualified and most diverse judiciary for this important role. But what is clear is that the current process has gone a very long way in achieving these lofty goals and we should be moving forward, not backwards—and moving backwards is precisely what these proposed amendments would do.

The government has recently touted increasing diversity as an impetus behind the proposed changes to the JAAC. This is merely window dressing that has been touted at the eleventh hour; there's absolutely nothing in these proposed amendments that would expressly increase diversity or, by design, would have even the incidental effect of increasing diversity in the judiciary. More can be done to increase diversity, but in terms of the general composition of our bench, we have gone a long way, and the process facilitated that. It facilitated moving towards a more diverse bench and increasing gender parity, as well as even ideological composition of the bench. In this

sense, it is not broken, and what it has been doing right needs to continue. So if it's not broken, then why should the government fix it? Well, the government shouldn't fix it. And this isn't, in fact, a fix of anything that has to do with lack of diversity or access to justice.

We should make no mistake about what this is really about. On November 21, 2019, the Attorney General, Doug Downey, appeared on TVO's The Agenda, and explained publicly, for all of Ontario to hear, what these proposed changes in what is now Bill 245 were really about. He stated: "There are two parts to the appointment of judges. One is to decide whether they're qualified or not.... But the second part is for me to pick people who reflect some of the values that I have...." This isn't about diversity or access to justice; this is about him and what he wants, and he wants to stack the bench.

For a truly independent judiciary, which is the highest and most admirable form of a judiciary in a free and democratic society, the judiciary must be free from corruption, and there should be no litmus or ideological values test on any issues that would disqualify a top recommended candidate who is otherwise extraordinarily qualified for that position.

The government shouldn't be casting a net far and wide, overlooking exceptionally qualified candidates—that has, to date, been precisely who the JAAC has been putting forward—just so that they can appoint an ideological soulmate.

What is important is that arm's-length process that ensures that these positions do not become patronage appointments, that they are not filled by lawyers who are loyal to the governing party, political donors, or friends. We don't want to politicize these positions, and politicizing these positions is precisely what these changes to the Judicial Appointments Advisory Committee would do.

Changing the Judicial Appointments Advisory Committee recommendations to the Attorney General from two candidates to six would allow them to shop more broadly for candidates who fit an ideological mould.

The standards of becoming a judge should be rigorous and exacting. An independent body should put forward only the very best narrow set of candidates, and to prevent political interference the government should choose from that narrow set.

The current Judicial Appointments Advisory Committee process has resulted in some of the finest judicial appointments in the country and in the criminal justice system, and a criminal justice system that Ontarians can be proud of. It's free from petty political and partisan interference. We have a process that is the envy of other jurisdictions. It is an arm's-length process that has eliminated politics and patronage from the appointment of provincial judges in Ontario, and the proposed changes seek to reverse that incredible accomplishment. Thank you.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Next, we have two representatives from the Ontario Bar Association: Charlene Theodore, president, and Lionel Tupman, chair of the OBA trusts and estates law executive. You have been allotted seven minutes for your presentation. You may begin.

Ms. Charlene Theodore: Thank you. I'm Charlene Theodore, president of the Ontario Bar Association, Ontario's largest and most diverse lawyer association, with approximately 16,000 members. Our members are a cross-section of the race, gender and otherwise diverse makeup of Ontario, and they practise in all areas of law across the province. With me is Lionel Tupman, chair of the OBA trusts and estates section. I'll be commenting on the judicial appointments process in schedule 3, and Lionel will speak to schedules 8 and 9.

First, I want to recognize that yesterday was the National Day of Observance for COVID-19. Over the past year, Ontarians have lost colleagues, friends and family to COVID-19. They are in our thoughts this week.

While lawyers have pivoted to provide legal services remotely, so many members of the bar continue to attend at court and jails in order to provide critical services. They are putting their professional obligations to their clients ahead of personal safety. Like all Ontarians, we look forward to the completion of the vaccination rollout so they can do their work in a safer manner.

Ontario's judicial appointments process is regarded throughout the world as a model for ensuring an independent, highly qualified judiciary. Two hallmarks of this renowned process are that the appointments committee must have the sole responsibility for determining whether or not someone is qualified to be an Ontario judge, and the committee must be able to provide recommendations that are meaningful. The committee cannot have their hands tied and cannot be simply ignored.

Last year, the Attorney General proposed to change the judicial appointments process in a manner that would allow the Attorney General to review all candidates for a judicial vacancy and be able to order the advisory committee to reassess a candidate deemed not qualified. These proposals would have undermined the confidence in the quality and, more importantly, the independence of the judiciary. At that time, the OBA made it clear that the bar objected to these changes, as they jeopardized the foundational elements critical to the independence of the process. Having looked at Bill 245, we do feel that our specific objections were heard and the critical elements of the process are not jeopardized the way they were with the original proposal.

0920

In terms of the composition of the appointments advisory committee, we are now being asked to provide a list of three names from which the Attorney General will choose one, rather than sending only one name. I can say confidently that I have no doubt whatsoever that the OBA will be able to provide three recommendations of lawyers to sit on the appointments committee from a diverse cross-section of the bar. As we have before and pledge to continue to do, our selections will be qualified to fulfill the duties of the committee, and none of them will rely on partisan factors for their appointment.

In terms of the list of potential judges to be provided to the Attorney General by the advisory committee, I don't think that being required to provide a list of six lawyers for appointment puts the non-partisan nature of appointments in jeopardy. In my role, I have met hundreds of diverse, talented, intelligent, fair-minded lawyers from every corner of this province who are dedicated to justice and service to the public. I have no doubt that in most cases, there are easily six people who can do the critical work of delivering justice to Ontario's people. In smaller regions, of course, this may be a more difficult process. But it should be clear that in no case will the committee be required to include anyone on a list whom they don't consider qualified. In a province with hundreds of cultures and ethnicities, a list of six provides the committee with three times the opportunity to present racialized candidates with different perspectives and lived experience. That is how we have always treated our role in the appointments process at the OBA.

I have been involved in issues to advance diversity within the Ontario legal community throughout my career, from my time at the African Canadian Legal Clinic through to my current position within the OBA. Diversity requires setting the groundwork to get perspectives from across Ontario's many racialized communities in an intersectional manner. In terms of a diverse judicial bench, it means broadening the applicant pool and ensuring that diversity is central, core to the appointments process.

To be clear, getting this right is going to require continued and sustained consultation with the OBA and other diversity associations, including SABA, CABL, FACL and others.

At the OBA, we've laid some of this groundwork. Our judicial competencies program is teaching members of the bar how to work towards a career as a judge, and helping them to understand the application and appointments process. This program was developed specifically with racialized lawyers in mind—those who have traditionally been excluded from the informal support networks that assist so many in the application process. We have a dedicated program this year to outline the ways in which diversity on the bench is being encouraged and to encourage a more diverse pipeline of candidates.

After the Attorney General's proposal was put forward, we voiced our objections and we asked specifically for three changes: making the application process more straightforward so it can also result in more qualified candidates putting their names forward; publishing diversity statistics to let us know where advances are being made, but to also let us know where work still needs to be done; and enshrining in the act that diversity and gender balance need to be taken into account when appointing members of the appointments committee, so that we can make sure that every Attorney General keeps these matters front of mind. We feel that we've been heard on these points, and we commend their inclusion. We are optimistic that these changes will advance diversity on the bench so that all Ontarians will see the bench as reflective of our society. Thank you.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Mr. Lionel Tupman: Good morning, committee members. I'm speaking to schedules 8 and 9, which make four major changes to estates law in Ontario. We are pleased to see the government moving forward with important reforms in this area. We are providing a written submission in respect of this issue.

The emergency order permitting remote witnessing of wills and powers of attorney provided an important option for Ontarians to execute these documents during the pandemic, and the OBA supports permitting remote witnessing of wills and powers of attorney on a permanent basis.

Over the course of the last 11 months, under the emergency order, two practices have developed for the execution of wills and powers of attorney and using remote witnessing. The first involves the testator or grantor, along with witnesses, joining a video call and all parties signing the document in counterparts, which together constitute a will or power of attorney.

The second practice involves a series of video calls, with the testator or grantor and witnesses present on all of them. The document is circulated between the testator—

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; your time is up. Thank you for your presentation.

We will now move to questioning. This round of questions will start with the official opposition, for seven and a half minutes.

MPP Singh, you may begin.

Mr. Gurratan Singh: Janini, it's a pleasure to meet you.

I've been quoting a Toronto Star article quite a lot over the past day and a bit, during these hearings. In the Toronto Star article, you argue that allowing the Attorney General more choice in who to appoint to the bench leaves room "for a partisan or patronage appointment—some sort of appointment based not on the selection criteria or on who is best fit for the job, but for other reasons." Could you expand on how this could really jeopardize the integrity of the process of judge selection?

Ms. Janini Shanmuganathan: The current model that we have right now allows JAAC to present to the Attorney General at least two candidates they think are best fit for the job. When you now move from two to six, it's allowing room for people who may not have been the best fit, and an Attorney General could select a different member from the list of six because their ideologies or their politics align with those of the Attorney General.

As a diverse organization, we don't want people appointed just for the sake of diversity; we want diverse, qualified, deserving candidates being the ones appointed.

Mr. Gurratan Singh: Next, I'll move to Annamaria from the Criminal Lawyers' Association.

I've been referencing this article a lot. A member of the legal advocacy committee of the Canadian Muslim Lawyers Association stated:

"We see this as a power grab dressed up in the very thin veneer of purported diversity.

"Our view is that diversity and excellence are best preserved by maintaining the independence and integrity of the current process."

A lot of folks have been describing the fact that integrity and independence of the system are actually a better way of encouraging diversity, because it allows people to have a lot stronger faith and belief in the independence of the system. What are your thoughts on that?

Ms. Annamaria Enenajor: I think that's absolutely correct. When you have a system that is untied from any political ideology or any political considerations, you have a greater chance of welcoming into the judiciary individuals who are extremely qualified but may have positions that are opposed to the government or positions that vary from the government's stated view. When you open up the process to more interference from the government or more contribution from the government in terms of the selection criteria, it's less likely you're going to have candidates who are opposed to the government's position being appointed.

Mr. Gurratan Singh: Very good.

It's very nice to meet you, Charlene. The entire bar was incredibly proud of the appointment of someone who is racialized and a woman in this very prominent position. It's something that makes all racialized communities, I think, very proud.

The question to you, specifically, is, although the changes being put forward are something that are now in line with the recommendations put forward, was the system needing change prior?

Ms. Charlene Theodore: Sorry; just to clarify—you said, was the system broken or needing change prior?

Mr. Gurratan Singh: Did the system in the selection of judges, the JAAC system, require—I understand that you initially had a lot of opposition to it. I've seen the system described as the gold standard across the world. Was it needing this change? Is this a necessary change? Does this actually improve the system? Were there other methods by which the JAAC could have improved, or other systems brought into place to encourage diversity that would not bring in these questions around potential impacts to the integrity of JAAC selection?

0930

Ms. Charlene Theodore: Both things are true, and I'll clarify like this: The Ontario Bar Association and myself personally, throughout my involvement with the OBA and other diversity organizations, have never swayed from our opinion that we are the gold standard for the selection of judges and enshrining the independence of the judiciary. However, a lot of the work that I've done with the OBA and other diverse bar associations has, within that system, been calling for more diversity among the bench, and we've been doing that work for years. So the fact that the system in and of itself was great doesn't change the fact that we've been advocating for increased diversity on the bench for years. I think one of the reasons for that is that lawyers see the job of justice and our systems and the way our systems work as never being done, especially when it comes to diversity. You can have a system that was working well and highly regarded throughout the world and still be looking for opportunities to improve and to actually build upon our existing successes.

Within the confines of those systems, like the rest of the bar, we didn't ask specifically for the changes that were put forward last year—and when we came to voice our objections to them—but we have long made it known that we need to improve diversity on the bench, along with making it clear that we need to constantly have a full complement of judges on the bench.

Mr. Gurratan Singh: My question, specifically, though, is this: Could we have done changes or brought in policies to allow for more diversity on the bench without bringing in a system that now is giving rise to many community groups, many individuals—FOLA provided evidence yesterday, saying that this could impact the integrity of the system. Why not implement a system that allows for the encouragement of diversity but doesn't bring even an inkling of a question into the integrity of the selection of judges, something which is foundational to our democracy? Wouldn't that have been a better approach towards ensuring there's more diversity?

Ms. Charlene Theodore: What I want to stress here is the legitimacy of the various points of view put before you yesterday and today and the fact that consultation with stakeholders like CABL, like the OBA, like SABA, like FACL, is critically important.

Secondly, I don't speak on behalf of a homogeneous—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time up.

Next, we'll move on to the government members for seven and a half minutes. MPP Skelly.

Ms. Donna Skelly: Good morning to all of the presenters.

Mr. Tupman, you were unable to finish your comments. Did you want to use the last few minutes of this time to complete your comments?

Mr. Lionel Tupman: Thank you. I appreciate that. I'll start where I left off.

In the last 11 months, under the emergency order, two practices have been developed for the execution of wills and powers of attorney using remote witnessing. This is very important in terms of amendments to estate and trust legislation.

Appreciate as well, if you will, that estate and trust legislation hasn't received as much attention as other areas of legislative reform in the last number of years.

The practices that I'm describing are very important. The practices for remote witnessing of wills and powers of attorney involve, as I said—the first being the testator or grantor, along with witnesses, joining a video call and all parties signing the document in counterparts, which together constitute the will or power of attorney. The second practice involves a series of video calls with the testator or grantor and the witnesses present on all of them. The document is then circulated between the testator or grantor and the witnesses, with each signing the document on a subsequent video call. This could be completed on the

same day or over a number of days, depending on locations of the parties.

Throughout the pandemic, members of our bar have successfully used both methods to provide valuable services to their clients. Each practice has its benefits and challenges, and very senior practitioners have expressed preferences for one or the other of these methods.

The important thing about Bill 245, from an estate and trust lawyer's perspective, is that it includes a new requirement that does not exist under the emergency order, which is that the signatures must be made contemporaneously. This is a bit concerning, because it appears to preclude the second practice that I outlined in my submissions here in those circumstances. It's a significant departure from the practice that has developed in the bar over the past year, so it's critical that the language used in this legislation is very clear. Our written submission that will be filed today on behalf of the OBA's estates and trusts section outlines a couple of small suggested amendments to clarify this.

These legislative changes in Bill 245 will also need to be supported by changes to the rules of civil procedure and the corresponding forms.

We would also encourage the government to consider making regulations to assist in streamlining the use of counterparts, to address some of the challenges of that process, which include the voluminous nature of wills and powers of attorney executed in this manner.

For clarity, we are very much in favour of the proposed amendments, with these minor caveats I am providing.

In my limited time left, I'd like to briefly comment on the repeal of section 16 of the Succession Law Reform Act, which revokes a will on marriage. This reform addresses a very real concern about "predatory" marriages. This is a word that has been thrown around in scholarship and in the news, and it's a very important amendment. My comment on this is that if a will is not automatically revoked on marriage, the onus will fall to a married spouse who is not adequately provided for in a will prepared before the marriage to bring the claim for dependant's relief or to make an election for equalization under the Family Law Act, which may lead to increased litigation. Notwithstanding this risk, the amendment in this regard, the repeal of section 16 of the Succession Law Reform Act, does address a significant issue of predatory marriage which has been raised repeatedly over the last decade at least in scholarship and in the news.

Finally, a comment with respect to the amendments to sections 17 and 43.1 of the Succession Law Reform Act, and specifically, the application to spouses who have been living separately and apart for three years: Given what we know from the family law field, the date parties separate is often a source of dispute and cannot always be easily ascertained. We can expect to see an increase in litigation arising from disputes as to whether or not the parties are separated and the date on which they are separated.

Subject to those comments and our input on those issues—again, schedules 8 and 9 make changes which are largely supported, subject to these minor concerns.

Thank you very much.

The Vice-Chair (Mr. Vijay Thanigasalam): MPP Skelly.

Ms. Donna Skelly: My question is to the OBA. I'm not sure who wants to answer this.

I understand that there have been numerous opportunities for the legal organizations and the bar to engage with the Attorney General and his team over the past year or so on various topics in this bill, from, as you mentioned, estates to judicial appointments and beyond. I also understand that these opportunities have come by way of consultation letters by the Attorney General or fireside chats and round tables he has participated in, even some hosted by the OBA.

Can either one of you please share more about the OBA's engagement with the Attorney General and his office on the changes to Bill 245 and your involvement in the process leading up to this bill being introduced?

Ms. Charlene Theodore: I can speak to that.

What I want to be clear about saying is that the number of letters put out or times that organizations like the OBA or other diverse organizations are consulted may or may not be a reflection of the depth and nature of the consultation needed. I can't speak to how many times other organizations, like CABL, SABA and FACL, were consulted; I can speak to our role in the process.

First off, I don't speak on behalf of a homogeneous organization. We represent broad perspectives in the OBA—40 different practice sections and a diverse cross-section of equity-seeking groups. We also have a professional public policy staff.

In terms of our role, the process in coming to this place has been difficult, but what it has led to is two things: a consensus within our organization—which is very hard to build, but ultimately, I think, is a rich consensus—and, really, the understanding that continued reform in the justice sector depends both on being critical when necessary and recognizing progress where possible.

We gave advice and we made demands of the government when the appointments reform was first proposed. Some of that advice, which I said earlier and I'll repeat again, was the need for consultation with us and other stakeholders, and some of our demands were listened to.

We have landed in a better place than we were a year ago. We asked for explicit legislative changes that specifically recognize diversity, and that is important to me. That progress is important to recognize, because there isn't a week that goes by where I don't meet diverse OBA members whom I would be proud to see on the bench and whom we would be proud to have participate as an OBA appointee to the JAAC.

0940

But as I said, in order to continue to get this right, the need for consultation is important.

Ms. Donna Skelly: As you're aware, schedule 3 of Bill 245 makes—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the allowed time period has ended.

Next we'll move on to independent members for four and a half minutes. MPP Collard.

Mme Lucille Collard: Thank you to all the presenters. I do appreciate the presentations from SABA, the Criminal Lawyers' Association and also the OBA. I found that your presentations were really clear and on point.

I'll direct my first question to the OBA. Do you agree that the principle of the independence of the process of appointment needs to be perceived to be and actually independent? You're familiar, I'm sure, with this principle. Do you agree that the perception is as important as the fact that it is?

Ms. Charlene Theodore: Yes, I do.

Mme Lucille Collard: So then the fact that so many people are speaking out on the impression that the changes in the bill give the impression that the judicial appointment process is not as clean as it should be, and that it actually gives the Attorney General a shopping list to pick someone who aligns with his own values—and that's from his own admission, as it was pointed out—don't you think that flies in the face of that principle of perception of independence of the process?

Ms. Charlene Theodore: The fact that I, as a racialized woman and the head of the Ontario Bar Association, have a different perspective and viewpoint does not delegitimize any other heads of racialized bar associations. It does not delegitimize their viewpoints nor mine. I am speaking on behalf of the bar association, who have a role, along with the law society and FOLA, to put candidates before the Attorney General who we feel should serve on the JAAC. I'm speaking specifically to that. As I said before, I'm not speaking about a homogenous organization; I'm speaking about an organization where we represent a cross-section of members in terms of race, sexual identity and gender.

What we do is that we make sure that—previously, the one name we put before was not influenced by any partisan factors at all and was someone who represented the diversity of people in Ontario, but also the diversity we'd like to see in the bench.

With the proposed changes that are in front of you, what we're doing is being called upon to submit three names. From my perspective within the context of leading the OBA, I see that as an opportunity to provide three times the diversity in that process.

Mme Lucille Collard: Yes, I understand, and this is your part. We're talking about the changes that the bill brings that give the Attorney General a lot more names to pick from. So he gets six names now, instead of—

Ms. Charlene Theodore: Understood.

Mme Lucille Collard: —and then he gets six more. Doesn't it give the impression that he can get the whole list and pick the person he thinks fits his values?

Ms. Charlene Theodore: I apologize; I thought you were speaking about our appointments to the JAAC. In terms of the lists of six, I see it similarly, with some safeguards in place.

Again, based on our work at the JAAC, what I would like to see is this used as an opportunity to provide triple the amount of diverse candidates who all meet that highly qualified status.

If there is reassurance needed—and I'm hearing that there is reassurance needed—I proposed two things in my opening statement: (1) diversity statistics to understand where we're going and where we need to go, and (2) we need to know, as in the bars and the public, how many times the Attorney General, if at all, sends that list back for reconsideration, because that is the issue we had at the beginning, and that is a concern that is still being voiced today.

Mme Lucille Collard: So I understand you think that's going to resolve the question of giving the perception—because we would be publishing it. We don't know whether this amendment will actually be accepted by the committee, but you think that it would resolve the problem.

Ms. Charlene Theodore: Exactly.

Mme Lucille Collard: I want to turn to SABA. You spoke about how there are different ways of ensuring that we can have more diversity on the bench, and that what's being proposed right now is probably not the best way of going about it. You talked about enacting some policy. Can you speak a little bit more about how we can be more—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time has ended.

The second round of questions will start with the government, for seven and a half minutes. MPP Park.

Ms. Lindsey Park: My question is to Charlene at the OBA.

Charlene, first of all, I want to thank you for being a diversity champion within the profession. There's a lot of work left to do; I think we all see that.

I'll share a personal story. I practised law for four years before being elected, and I never once appeared before a female judge or a judge who was a visible minority. If you've spent a day in a courtroom in the province of Ontario, you can see there is more work to do as far as diversity on the bench, so I thank you for appearing before the committee and adding your perspective to how we can get there.

Specifically, adding the mandatory disclosure annually of diversity statistics—that stood out, when I read the bill for the first time, as one measure that can help us get there and really understand better. Is one of the challenges that we don't have enough diverse candidates applying to be appointed, or is the challenge more so that there are many diverse candidates applying and qualified diverse candidates are not being recommended and appointed or are not getting an interview? I wondered if you could add your perspective to that element of the bill and how you think it may help—or, if you don't think it will help, what other things you think are required.

Ms. Charlene Theodore: I will speak, first of all, to the pipeline issue.

In order to get this right—there is never just one issue—there are a number of issues within and outside the legal system and the system of legal education that should be addressed.

As I said in my opening remarks, we developed a judicial competencies program specifically with racialized lawyers in mind, to do our part to increase the pool of applicants coming to the appointments committee and ultimately going to the Attorney General.

In terms of the JAAC—again, I'll speak to the history of our work—and diversity in terms of our role in the appointments of the JAAC, at all levels of government, when we have these appointments, we have always had diversity as our core focus. Again, from the part of the OBA, as one of the three people who provide those members to JAAC, we see it as an opportunity to continue to do more of that work.

Based on my knowledge of the work that our members do on the JAAC, I see the list of six as a real opportunity that we would like to take advantage of. If you want two names, we'll give you two diverse names. If you want six, we'll give you six names. I don't think that six names in and of itself necessarily introduces bias, at least not in the way that we at the OBA do our work.

Ms. Lindsey Park: I think that's a great point. I've appreciated your perspective.

There are absolutely different ways to look at this, and I've appreciated hearing from everyone this morning and yesterday, to hear everyone's perspective. As Madame Collard has mentioned, on perception, we always have to be aware of that when thinking about our justice system and its independence.

0950

When I went to law school—and I'm not sure what year you went to law school—there were actually more women than men in my class, and I had many classmates from diverse backgrounds. When I entered the legal profession, I did not see that same diversity at law firms. So there's work to do, as you described, at many points in the pipeline to encourage people to remain in the profession. Many get started at law school and don't remain in the profession for various reasons. But if they've been in the profession for 10 years, encouraging them to put their name forward for appointment—and the statistics will tell us more.

Do you think enough diverse candidates are being encouraged to apply? If you had to take a best guess at where you think the most work to be done is, where do you see it?

Ms. Charlene Theodore: I think we are on the way to getting more diverse candidates to apply.

I do think trying to pinpoint one area that will be the fix is perhaps the wrong approach. We are able and should be able to work in concert, in terms of recruiting diverse candidates to law schools, encouraging diverse candidates to have equal opportunity to shine in their respective areas of practice, safe and culturally diverse workplaces, and encouraging candidates to apply for the bench who haven't traditionally applied, within a system that maintains judicial independence and fairness and that has diversity at its core.

Ms. Lindsey Park: You mentioned that you made some recommendations to the Attorney General, after the initial proposal was put forward a little over a year ago, around judicial appointments. Would you be able to speak to which recommendations you made that were adopted or what those recommendations were that you made to improve the proposal?

Ms. Charlene Theodore: We asked for changes to the application, overall, to make it more straightforward, and transparency, which includes publishing diversity statistics to let us know where advances are being made and what work still needs to be done, and enshrining in the act that diversity and gender balance need to be taken into account.

I don't know how much time we have left, but if there is more time, I'll speak specifically to the—

The Vice-Chair (Mr. Vijay Thanigasalam): Five seconds.

Ms. Charlene Theodore: Okay. I'll wait for the next question.

The Vice-Chair (Mr. Vijay Thanigasalam): Before we move to the official opposition—I see that MPP Bourgouin has joined. MPP Bourgouin, can you confirm that you are present and that you are MPP Bourgouin? Can you also confirm that you are currently in Ontario?

Mr. Guy Bourgouin: I'm MPP Guy Bourgouin. I'm in Kapuskasing, Ontario.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

We will move on to the official opposition for seven and a half minutes. MPP Singh.

Mr. Gurratan Singh: I'm going to be a bit quicker now, because I only have seven minutes. I don't mean to interrupt, but just for the purposes—so I'd be able to get all the questions out. We got a little bit cut off beforehand.

Charlene, my question to you is, do you think we could have addressed this issue around diversity without having to implement a system that would have this perception or reality of bias that people are rightfully bringing forward?

Ms. Charlene Theodore: It is hard for me to speculate whether or not that would have been possible, but what I will reiterate—if you want wholesale adoption of changes that you think are in the best interests of the judicial system and Ontarians, a full, wholesome consultation with all stakeholders, including members of diverse bar associations, of which the OBA is one, is necessary.

Mr. Gurratan Singh: This is the quote I was looking for earlier. Raphael Tachie, the president of the Canadian Association of Black Lawyers, stated: "It's challenging to read something that says, 'We're doing this to increase the diversity of the judiciary,' when the equity-seeking groups didn't ask for it."

Ms. Charlene Theodore: That's exactly the point I made in the answer to my previous question. To introduce asking for it—the process of listening to what people need and asking questions is how you get richer and more comprehensive reform in no matter what area of law.

As a former director of CABL, not speaking on behalf of CABL—I can understand why someone would say, "Well, we didn't ask for this," when the changes come out without consultation. As I said, we felt the same way

because we weren't consulted, either, before the initial changes came out. But we did take the opportunity to participate in the consultation after voicing our objections initially.

Mr. Gurratan Singh: So you were consulted, not initially, when the initial—there was a response to it, but then subsequent to that, you have been consulted.

Ms. Charlene Theodore: Yes.

Mr. Gurratan Singh: I'm going to turn my questions over to Janani from SABA.

Was your organization, SABA, consulted prior to the secondary suggestions put forward?

Ms. Janani Shanmuganathan: I know that SABA had written a letter to the government requesting more information, more consultation and more ability to provide feedback. So there was a request for more consultation. I know that the president of SABA met with the Attorney General or a representative, and we voiced the concerns we still have about these proposed changes.

Mr. Gurratan Singh: My question to you, Janani, is, do you believe that there is a way to have more diversity without having changes that are impacting the perception or the reality of how these changes will make a less independent and less unbiased and non-partisan selection of judges?

Ms. Janani Shanmuganathan: Yes. I think if you tell JAAC the importance of diversity, what does diversity look like, to stress this as a factor for them to consider, to encourage diverse applicants to put their name forward and say, "You are a worthy candidate. You should put your name in the hat"—those are the kinds of means to increase diversity on this bench.

Mr. Gurratan Singh: To you now, Annamaria: Do you similarly feel like there are other ways that they could have brought forward changes to allow for greater diversity that did not result in this real—I would purport it's real—change towards the independence of the selection of judges?

Ms. Annamaria Enenajor: Absolutely. As I mentioned in my previous submissions, one thing that stands out about the proposed changes is that they mention nothing about diversity. They don't prioritize it; they don't mention it as important. It's simply an increase of the pool of candidates from which to choose. So without the express direction that diversity matters, we're not guaranteed in any way for diversity to be a consideration in increasing the number of people who are put forward as candidates for judges.

There could have been a way of making amendments to the process that expressly addressed the concerns relating to diversity, that give direction to the JAAC about the importance of diversity. That could have been done without expanding the number of candidates who are put forward by the committee and giving more opportunity for selection on the basis of improper grounds by the Attorney General.

Mr. Gurratan Singh: Just to this point around being a part of the Criminal Lawyers' Association and the fact that this is an area of law that directly deals with people's ability to make sure they have their liberty and their freedom protected, how could this perception or reality of partisanship—let's go with the argument that it's more of a perception than a reality. Even that, in and of itself, though, would weaken people's ability and their faith in the administration of justice; correct?

Ms. Annamaria Enenajor: One of the things I tell my clients when they are faced with a process that could result in the deprivation of their liberty is that they have reason to be proud of the judges we appoint, and that they have a reason to believe that they will get a fair shake before the system. When that affirmation is questioned or that promise is shaken, then we have people who are before the system who will lose confidence in its ability to be fair—and that is central and incredibly important for a functioning democracy.

1000

Mr. Gurratan Singh: Back to you, Janani: To what extent did SABA consult with members? How did SABA reach this position that they've taken now with respect to the JAAC?

Ms. Janani Shanmuganathan: SABA has always been a strong proponent of increasing diversity on the bench. Our approach to that has been increasing the pool of applicants, increasing people applying to the bench. This is an area that we've discussed with the board members. We've had panels on these sorts of discussions, and that's how we arrived at our position on this.

Mr. Gurratan Singh: Similarly, to you, Annamaria: How did the CLA reach their position, and what was your experience with respect to that?

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended.

Now we'll move on to the independent members for four and a half minutes. MPP Collard.

M^me^ Lucille Collard: Janani, I want to go back to you. You didn't have a chance to answer my question. You did provide some of the elements through the latest questions, but I'd like to know a little bit more about what we can do to encourage more diversity, other than giving the Attorney General the choice to do that. I think we can do that at the outset.

Has your organization identified ways to encourage people and have people put their applications forward to the JAAC for appointments?

Ms. Janani Shanmuganathan: The proposed changes, in my view, are somewhat premature. We don't have the necessary data to see, are these changes actually going to effect the result that they want? With data, if we know who the applicants are who are putting their names forward—what is their gender, what is their race, what is their age—we will know whether the pool of applicants is sufficient or not, or if there is an issue somewhere else. And so, in many ways, we should wait. Before you start changing the integrity of JAAC, you need to know that these changes are actually going to effect the result. Otherwise, diversity becomes tokenism, and we don't want that.

Mme Lucille Collard: To the OBA: We've talked about how important perception is, and I think you agree that it is.

So I want to know what your opinion is about the Attorney General's own statement that a judicial appointment is two parts: one is qualifications of the candidate, and the other one is for him to pick someone who aligns with his own values. Do you see a problem with that?

Ms. Charlene Theodore: Absolutely, and we have stated our objections, not just specifically to that statement, but to the initial changes that were proposed last year. We've done a lot of hard work internally, as an organization, to put specific requests before the government in terms of the changes to schedules 3, 8, 9, some of which are reflected here today and some of which we would still like to see that I've spoken to in my opening statement.

Mme Lucille Collard: We're seeing changes—that the Attorney General appoints a majority of the JAAC members. He's getting a longer list—actually, an unlimited list, almost—of qualified people. Putting that in line with that statement, I think that the perception in the public is really concerning right now. We've spoken about the importance of the perception for democracy and the fact that people need to have confidence that the system is fair, is going to treat them fairly, that they're going to get a fair decision because people who are appointed are not biased.

Do you have a concern with that? How are we going to manage that perception going forward?

Ms. Charlene Theodore: Sorry; I don't want to take up too much time. I just want to clarify. Are you talking about the concerns that we raised last year?

Mme Lucille Collard: No. I'm talking about the current changes in the bill. The Attorney General appoints a majority of the JAAC members. There is, right there, a perception that he's got an influence—

Ms. Charlene Theodore: Okay. I understand what you're saying.

This is how we move forward: We move forward by having discussions like this. We move forward by having discussions before this process and during this process and continuing after this process, by talking to stakeholders.

As I said before, continued improvement in the justice sector, specifically speaking to diversity on the bench, really depends on being critical when necessary but also recognizing progress where possible. I think what I've been able to do is outline the work we've done at our organization, independent of the judicial appointments process, to increase the diversity pool—our program that's having a lot of success—and how we will take these changes and continue our duty to stand for diverse judicial candidates, whether they be appointments to the advisory committee or appointments to the bench.

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended.

Thank you to all the presenters.

HULL & HULL LLP / WHALEY ESTATE LITIGATION PARTNERS

ASSOCIATIONS DES JURISTES D'EXPRESSION FRANÇAISE DE L'ONTARIO

The Vice-Chair (Mr. Vijay Thanigasalam): Now we will move on to the next set of presenters.

We have Ian M. Hull, co-founder of Hull & Hull LLP. You have been allotted seven minutes for your presentation. You may begin now.

Mr. Ian Hull: Thank you, Vice-Chair, and thank you very much to the committee for taking the time to hear from me.

We have done this a little bit differently; we have a team.

I have been practising in the area of estate, trust and capacity litigation for over 30 years. I worked with my father for 20 years, who had been in this practice area as well. So my experience from the estate perspective is as an estate practitioner.

I've also got Professor Emeritus Albert Oosterhoff, who is going to speak to what I would describe as some of the specifics or the technical comments we have with regard to Bill 245, and then Kimberly Whaley, who is also a senior estate litigation lawyer in the city of Toronto and practises in this area exclusively. Unfortunately, just because of technical reasons, Kimberly is not on and won't be speaking.

The three of us, along with some of our colleagues, have put together a brief presentation.

I want to thank the committee for its time, as I say, and I want to thank the Attorney General, Doug Downey, and the parliamentary assistant, Lindsey Park, both of whom have been instrumental in reaching out to the profession and seeking out our thoughts and our guidance in respect of many of these changes, and specifically in respect of the changes to Bill 245.

It's an exciting time for the estate bar, and it's an exciting time for the public, in my view. This kind of legislation is crucial. The amendments are vital to the profession and to the public at large, and we are pleased to see these changes, since many governments haven't paid as much attention as we'd like to have to the practice of the area of estates law. We're also very excited about the Justice Accelerated program.

I just want to say a couple of things, and then I'm going to have Professor Oosterhoff speak. The one thing I wanted to add in respect of the bill is, first of all, general praise for all of the amendments that are being put forward. Access to justice has been accelerated and implemented at a level that is second to none in the past 25 years, in respect of the simplified procedures relating to estates and the concept of permanent virtual witnessing and counterpart execution provisions. These are tremendous steps that are being taken by the government and by this legislation, so I can wholeheartedly endorse it from an access-to-justice standpoint alone.

I'd like to cede my time now to Professor Oosterhoff, who will speak to two specific and, as I say, maybe

technical but very important comments in respect of the legislation, which we think need to be addressed from a drafting standpoint.

I thank you again for your time and your consideration.

Professor Oosterhoff?

Mr. Albert Oosterhoff: Thank you very much, ladies and gentlemen. It's a pleasure to speak with you this morning.

I would certainly underline the remarks that Ian has just made. These are very important and very good proposed amendments to the Succession Law Reform Act—all of them. The remarks that I'm going to make—Ian has called them technical, and indeed they are, but they are, I think, important ones that the committee needs to address.

1010

The first one is about the signing and subscribing of wills in counterpart. Again, as Ian said, it's wonderful that the emergency orders that were made last year are now made permanent, but there is a potential problem here. This has to do with revocation of wills. That is dealt with in section 15 of the Succession Law Reform Act. Clause (a) is being repealed by Bill 245, but then there are a couple of other provisions—you can revoke a will by another will or by a writing, in both cases if the maker of it indicates an intention to revoke. But then there is a fourth one, too, and that says you can revoke a will by destroying it. The problem with that is that when a will is executed in counterpart—suppose that a testator wants to revoke a will and tears up one of the counterparts, but not the others. That raises the question, then: Is the whole will revoked or is only part revoked, or is it not revoked at all? It could be argued that section 21.1, the new validation provision that has been taken in section 5 of the bill, would solve the problem; unfortunately, it doesn't, because section 21.1 refers to validation only when there is a document, such as a will. Then, the court can validate an imperfect execution or whatever the problem may be. That's not the case with a revocation by destruction.

We recommend that thought be given to an amendment, and I've given two possibilities in my memorandum. The first is a new subsection to section 21.1 in which, in effect, the court is given the power also to validate an imperfect revocation by destruction under that section. The other possibility that's also listed in the memorandum is to, in effect, copy section 55, or part of that, from the British Columbia legislation. I think it may be more elegant, because what it does is, it basically would replace section 15, clause (d) of the SLRA. As you can see, in this case, the court has power to validate any other act of the testator, or another person in the testator's presence and at the testator's—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the first seven minutes has ended. However, each presenter has seven minutes to present. Since you both shared seven minutes, you have an additional seven minutes. You may continue and share the next seven minutes.

Mr. Albert Oosterhoff: In that case, I would like to say something about the other point, and that is the repeal of sections 15(a) and 16 of the Succession Law Reform Act—wonderful provisions; we support them wholeheartedly. In particular, this goes some way—it's a first step—to dealing with the scourge of predatory marriages in the province and indeed in the country. But there is a potential problem here, because there are no transition provisions for this particular section.

That raises the question—suppose that a testator makes a will in 2010, then marries in 2019 and dies in 2020. Under the existing legislation, that will would be revoked by the marriage. But suppose that the estate is still under administration. Is that will now revived? That's unlikely, under the presumption against retrospectivity and retroactivity, but there's uncertainty about it.

Suppose that, however, the testator dies after the will becomes law. Now the legislation no longer demands a revocation of the will. So, again, the question is: Is that will revived or not? It's possible that section 19 of the SLRA solves the problem, but it's somewhat debatable. So, again, I refer to the British Columbia statute, section 186, which deals with the matter very elegantly and, I think, would solve the problem.

I want to point out one error in that section 186—it's subsection 3. The memo says that subsection 1 "does not invalidate a will"; that should actually read "does not revive a will." I apologize for that error.

That concludes my presentation.

The Vice-Chair (Mr. Vijay Thanigasalam): You have four minutes and 20 seconds remaining for the presentation. Mr. Hull, do you want to continue, or do you want to move to the next presenter?

Mr. Ian Hull: Unfortunately, I don't think we were able to get Kimberly Whaley online because of the filing, so that concludes both of our remarks.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Next, we'll move on to Marc Sauvé, president of the Association des juristes d'expression française de l'Ontario, and Andrée-Anne Martel. You may begin your presentation. You are allotted seven minutes for your presentation.

M. Marc Sauvé: Thank you. Merci. My video camera isn't allowing me currently to put it on.

Monsieur le Président et messieurs, mesdames les députés, bonjour. Je vous remercie d'avoir invité AJEFO à témoigner aujourd'hui. Je suis accompagné par notre directrice générale, M^{e} Andrée-Anne Martel.

L'accès à la justice en français est un droit dont jouissent les Ontariens et Ontariennes depuis plus de 30 ans. Toutefois, entamer des procédures en français en Ontario peut s'avérer difficile, long et coûteux. L'accès à la justice en français est un défi pour les Ontariens et Ontariennes. L'accès égal à la justice en français constitue un défi supplémentaire pour les usagers d'expression française des tribunaux en Ontario.

Il nous fait donc plaisir d'appuyer deux modifications proposées par le projet de loi 245 qui améliorent de façon significative l'accès à la justice en français en Ontario en renversant certains obstacles devant les tribunaux.

Premièrement, l'AJEFO appuie les modifications contenues à l'annexe 3 du projet de loi 245 visant à modifier la Loi sur les tribunaux judiciaires. Le projet de loi 245 prévoit modifier la Loi sur les tribunaux judiciaires afin de permettre le dépôt de documents en français dans tous les tribunaux de l'Ontario, c'est-à-dire partout dans la province.

À l'heure actuelle, les dispositions relatives au droit de déposer des documents en français sont complexes. Certaines s'appliquent partout dans la province; d'autres varient en fonction du lieu, du tribunal et du type de langue de l'instance. Le paragraphe 126(2) de la Loi sur les tribunaux judiciaires prévoit que des documents en français peuvent être déposés par une partie à une instance bilingue devant la Cour de justice de l'Ontario, la Cour des petites créances et la Cour de la famille de la Cour supérieure de justice. Ce droit s'applique partout en Ontario. Cependant, dans tous les autres types d'instances devant la Cour supérieur, le droit de déposer des documents en français est seulement disponible que dans les secteurs mentionnés à l'annexe 2 de la loi ou avec le consentement de la partie adverse.

Afin de complexifier le tout, les 20 secteurs mentionnés à l'annexe 2 de la Loi sur les tribunaux judiciaires ne sont pas identiques aux 26 régions désignées en vertu de la Loi sur les services en français. Prenons un exemple pour illustrer ce problème : Charlotte et Bryson sont en instance de séparation à Markham. La Loi sur les services en français désigne la cité de Markham, alors que Markham n'est pas désigné par la Loi sur les tribunaux judiciaires. Ainsi, Charlotte a le droit de se faire servir en français au palais de justice de Markham, mais elle n'a pas le droit de déposer de documents en français sans le consentement de son ex-conjoint Bryson.

1020

Les lacunes et les incohérences législatives découragent, voire empêchent, les francophones à procéder en français devant les tribunaux. L'AJEFO appuie donc la modification apportée par le projet de loi 245 accordant le droit de déposer des documents en français partout en province.

Je profite de l'occasion pour rappeler que l'AJEFO et l'AFO revendiquent le besoin de moderniser la Loi sur les services en français. Comme le propose le projet de loi 245, nous proposons abolir le concept de régions désignées. Selon l'AJEFO, l'accès aux services en français partout en Ontario devrait être garanti partout en Ontario.

Le projet de loi 245 prévoit également modifier la Loi sur les tribunaux judiciaires afin de donner le droit de demander la traduction d'une décision judiciaire dans une instance bilingue et la traduction de documents, peu importe la langue parlée par la partie. Présentement, la loi prévoit le droit de recevoir du tribunal la traduction de certains documents pour les instances bilingues. Cependant, ce droit varie en fonction du tribunal et du type d'affaire civile.

L'AJEFO appuie donc la modification apportée par le projet de loi 245 prévoyant le droit de demander la traduction d'une décision judiciaire dans une instance bilingue et la traduction de documents, peu importe la langue parlée par la partie. Cette modification à la loi viendrait simplifier la demande de traductions et ainsi améliorer l'accès à la traduction de documents pour tous les Ontariens et Ontariennes. Notre système de justice doit être accessible en français dès le début d'une instance et jusqu'à sa conclusion, sans créer de frustrations excessives pour les usagers et les administrateurs des tribunaux.

Cela conclut les points que je voulais adresser avec vous. Je cède maintenant la parole à ma collègue M^{e} Andrée-Anne Martel.

M^{me} Andrée-Anne Martel: Merci beaucoup, Marc. Le deuxième point appuie les modifications contenues à l'annexe 9 du projet de loi 245 proposant plusieurs modifications à la Loi portant réforme du droit des successions. L'AJEFO appuie spécifiquement les modifications proposées à l'attestation à distance des testaments par des témoins.

L'AJEFO a connaissance de faits anecdotiques qui suggèrent que, dans certaines régions de la province, il peut être très difficile pour une personne de trouver un avocat ou une avocate à proximité qui exerce dans les domaines du droit de succession et qui est en mesure de fournir des services en français, comme, par exemple, la rédaction des testaments en français.

Les personnes qui désirent ainsi obtenir des services en français doivent souvent se déplacer sur de longues distances pour obtenir des services en français ou, malheureusement, opter de procéder en anglais, ce qui mine l'accès à la justice en français. Par conséquent, l'AJEFO est en faveur de l'utilisation de la technologie afin de permettre à une personne de retenir les services d'un avocat capable d'offrir des services en français dans une autre région et sans avoir à se déplacer.

Afin de faciliter un meilleur accès à la justice en français, l'AJEFO appuie ainsi la modification proposée visant à rendre permanente la capacité de reconnaître la signature d'un testament par la technologie de communication audiovisuelle pour les testaments faits à partir du 7 avril, 2020. Des mesures de contrôle, évidemment, et de protection devraient être mises sur place pour prévenir la fraude et les abus.

En conclusion, l'AJEFO se doit de souligner que l'amélioration de l'accès à la justice en français constitue un défi continu. Par contre, les modifications proposées par le projet de loi 245 constituent des pratiques concrètes et efficaces. Elles permettront d'éliminer des défis inutiles auxquels sont confrontés les usagers d'expression française des tribunaux en Ontario.

Monsieur le Président, il me ferait plaisir de répondre aux questions, et messieurs, mesdames les députés, nous vous remercions.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. Now we'll move to questioning.

This round of questioning will start with the official opposition, for seven and a half minutes. MPP Bourgouin.

M. Guy Bourgouin: Mes questions sont pour l'AJEFO. Merci, Marc et merci, Andrée-Anne pour vos commentaires. La première question que j'aimerais vous

demander c'est, avez-vous été consultés par le procureur général avant le dépôt du projet de loi pour améliorer les services de justice en français et la nomination des juges bilingues?

Mme Andrée-Anne Martel: L'AJEFO a été consultée sur différentes thématiques. Nous avons soumis nos observations par rapport à l'attestation de testament à distance par voie technologique. Nous avons également été consultés par rapport à la question des modifications apportées à la Loi sur les tribunaux judiciaires.

M. Guy Bourgouin: Mais ils vous n'ont pas posé de questions par rapport aux appointements ou d'autres améliorations qu'ils pourraient avoir dans les services en français?

Mme Andrée-Anne Martel: Nous avons déposé des observations en janvier 2020 quant aux modifications proposées à la nomination de la magistrature provinciale.

M. Guy Bourgouin: OK. La prochaine question, c'est : tout récemment, nous avons appris qu'une juge unilingue anglophone remplacera le seul juge bilingue dans le district d'Algoma et ce poste sera transféré à plus de trois heures de là, à Sudbury. Le procureur général, par la suite, a indiqué qu'il s'agit d'un transfert et que c'est donc la juridiction de la juge en chef, Mme Maisonneuve, de prendre une décision. Hier, lors de sa présentation à ce comité, le procureur a offert la même réponse.

J'aimerais savoir, êtes-vous en accord avec l'interprétation du procureur?

M. Marc Sauvé: Merci pour votre question. L'AJEFO s'oppose à la nomination d'un juge unilingue anglophone dans une juridiction bilingue. Les francophones de cette région devraient avoir le droit de comparaître devant un juge bilingue, sans question, surtout qu'il s'agit de questions de droit criminel.

En faisant cette nomination d'un juge unilingue, ce qui arrive, c'est que, pratiquement parlant, le francophone doit choisir s'il veut procéder en français ou en anglais et, s'il veut procéder dans un temps opportun, va devoir attendre. Donc, selon nous, cela n'équivaut pas à une justice égale. Puis on va demander, en fait, à monsieur le Procureur général de s'assurer qu'il y a un juge bilingue de disponible dans le district et la juridiction d'Algoma pour qu'il y ait justice égale pour les francophones.

M. Guy Bourgouin: Vous avez fait mention aussi dans votre allocution que c'est très difficile d'avoir des services en français. Selon votre opinion—et il va y avoir des impacts, c'est sûr, sur les francophones. Mais j'aimerais vous entendre : quelles sortes d'impacts croyez-vous que les francophones puissent avoir dans la région d'Algoma?

M. Marc Sauvé: Ce qui arrive, c'est que le francophone va devoir choisir s'il veut procéder en anglais. Donc, il va être plus facile pour lui ou elle de procéder en anglais, alors qu'auparavant il avait le droit de choisir. Ça, c'est, malheureusement, une des conséquences qui va arriver, à moins qu'il n'y ait une nomination maintenant d'une personne qui est bilingue—chose qui a toujours existé.

Prenez, par exemple, M. Bourgouin, l'inverse : imaginez-vous une situation où un anglophone voudrait comparaître et témoigner en anglais, puis on lui dit, « Non, malheureusement, il n'y a pas de juges qui peuvent vous entendre ». C'est du non-sens. Donc, je ne comprends pas pourquoi, surtout dans une juridiction bilingue, ça serait acceptable.

M. Guy Bourgouin: Merci. On a entendu parler de la femme, pour des agressions sexuelles, qui n'a pas pu témoigner à cause d'un manque d'interprètes et autre chose. Le procureur général, au mois de décembre, il nous avait dit qu'il y avait eu une erreur de la part de la couronne dans l'enregistrement de la demande des services en français du témoin.

Selon vous, de quelle façon les changements dans ce projet de loi auraient un impact sur ce que la juge Melanie Darlene Dunn, à la cour de Sault-Sainte-Marie, a qualifié comme « un échec systémique » lors du verdict final dans ce cas d'agression sexuelle? Selon vous, qu'est-ce que vous pensez, selon l'interprétation—comment ça l'adresse, ce projet de loi, des échecs systémiques dans un système comme celui-là?

Mme Andrée-Anne Martel: Si on parle de causes criminelles, par contre, ça ne va rien modifier, parce que selon le Code criminel, l'article 530, toute personne a le droit de procéder en français. Par contre, si on parle du projet de loi 245, évidemment ça change la position—ça permet à toute personne de déposer leurs documents en français, peu importe le type d'instance, ce qui est très important.

Ce qu'on note également, par contre, et ce qu'on voudrait rajouter : ça serait intéressant que le projet de loi soit étendu afin de supprimer l'annexe 1 de la Loi sur les tribunaux judiciaires pour permettre un jury bilingue dans toutes les affaires, peu importe le type de cour ou peu importe l'emplacement du procès ou de l'audience.

1030

M. Guy Bourgouin: Moi, je sais—j'ai eu beaucoup de discussions avec d'autres avocats de différentes régions où c'est désigné, puis ils me disent : « Guy, le service en français, c'est une joke. » C'est beau de déposer des documents, mais il y a plus qu'un problème systémique là-dedans. Il y a la question d'interprètes. Il y a la question aussi des services qu'on sait qu'ils n'ont pas.

Ce projet de loi va-t-il adresser tous ces problèmes systémiques, ou est-ce qu'il nous reste encore beaucoup de choses que le projet de loi—pouvez-vous nous faire des recommandations au comité? Comment est-ce que nous, on pourrait adresser ça pour qu'on répare certains problèmes systémiques dans le système?

M. Marc Sauvé: Très bonne question. Un des points que j'ai soulevés dans ma présentation, c'est d'enlever la question des juridictions. Il ne devrait plus y avoir de juridictions. Un francophone se situe—et je pourrais déménager dans une juridiction non-bilingue, puis là, je perdrais des droits simplement parce que je suis dans cette juridiction, même si je suis un francophone et même s'il y a une instance criminelle devant moi. Donc, je ne peux même pas exercer mon droit de témoigner en français sans la nécessité d'un interprète.

Les modifications qui sont proposées ne changent pas tout, mais en enlevant la question de juridictions, puis comme qu'on le suggère pour la réforme de la Loi sur les

services en français, ça serait une grosse étape. Ça serait un message clair vers les francophones que vos droits sont équitables à ceux de nos confrères et consoeurs anglophones.

Juste pour reprendre le point de Me Martel, toute la question des jurys : même question si on enlève l'annexe, puis là on aurait le droit à des jurys bilingues partout en Ontario. Ça, c'est bon. Moi-même, j'ai été impliqué dans plusieurs causes où, malheureusement, mon dossier a été repoussé parce qu'il y avait soit un manque d'interprètes francophones—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time has ended.

Now we'll move on to the government for seven and a half minutes. MPP Oosterhoff.

Mr. Sam Oosterhoff: I want to thank the presenters for appearing before the committee today and for all the contributions that have been made. There's some really valuable feedback here.

I'll have questions for both groups of presenters, but I'm going to start off with—I don't know whether to call you Uncle Albert or Professor Albert or Mr. Oosterhoff or what it's supposed to be. We are related, so I don't know if that's a conflict, but I'll just declare that out of the gate.

Uncle Albert, you had a lot of really good analysis. I'm not going to lie; it was pretty in-depth compared to some of the presentations that we've had in broad strokes. You went into a lot of comparators with some of the areas that we do see. Especially, you noted some of the ways that they were able to address some of the issues we're trying to make sure are resolved in this piece of legislation. You also recognized the importance of that digitization piece and, of course, the changing ways of ensuring that we're seeing this at the signing and subscribing of wills.

I want to speak a little bit about the changes to the Succession Law Reform Act on spousal preferential share—section 16 on the will's revocation on marriage, and section 17 on revoking bequests to separated spouses—as well as provisions to allow the courts to validate wills where there are technical deficiencies. I'm wondering if you could speak a little bit to any of these changes in Bill 245, as well, and if you have any thoughts on those areas.

Mr. Albert Oosterhoff: Yes, I do. Thank you, Sam.

First of all, the witnessing and counterpart execution—of course, I've already addressed that, in part, so you're not really asking me about that, I think.

I've also spoken about section 15(a) and section 16, and I don't have to speak about that any further.

The provisions that will provide for terminating the right of separated spouses to inherit under a testator's will or, for that matter, on the person's intestacy—I think is a good provision because, as it stands now, these people can inherit if their name is in the will or if they're simply still the spouse of the intestate.

It has now been, I think, about 40 years ago that we changed the rules with respect to a divorce. When people divorce and there's a provision in the will for the spouse who is now divorced, then the section says he or she is no longer entitled. That can be overridden by the testator, as it happens, by a provision in the will; the testator can say, "My spouse is now divorced. I still want her to get whatever I'm providing for her in the will." But I think this is a fairer way to deal with the situation. The now-separated spouse is no longer entitled, and of course, that gives other members of the family a greater right to inherit.

Mr. Sam Oosterhoff: Would you say that the changes that are made in this legislation allow for greater flexibility and, perhaps, a greater responsiveness to real-world situations that people are experiencing? Do you feel that this addresses discrepancies in family law around the resolution of wills?

Mr. Albert Oosterhoff: Yes, I think it does. The problem is that when people separate, they often don't change their wills—they should, but they often don't—and then you run into problems that these sections try to overcome.

Mr. Sam Oosterhoff: More broadly, looking at this legislation, obviously, its intent is to ensure that there's greater access to justice, that people are able to move through their wills and estates in a more rapid and intuitive fashion, if you will. But I think it's fair to say that a lot of the wills and estates law—which I know you have written about extensively, as well—is not necessarily intuitive to people who don't have a legal background or who aren't steeped in this in the way that I know many of those who are involved in this presentation have been.

What would you say we could do more of, as a government, to create greater awareness around the importance of having wills, of course, but also the differences between wills and the fact that a lot of people don't even know, for example, that when you're married, your will is revoked? There are a lot of those pieces. You've had a whole career working in that particular area of expertise, and so I'm sure you've seen a lot of changes over the years. I'm wondering if you've seen a change in the awareness about what wills and estates mean, and what we can be doing, as a government, more broadly, to create greater awareness and understanding of that process and the differences between these different pieces that are impacted.

Mr. Albert Oosterhoff: Well, I think that the government has a role to play in that respect, but so does the bar. The Ontario Bar Association has what it calls a will-making month, and that's November of every year. They present this to the public, it's accessible to anybody, and some people do take up on the suggestion—"I've got to make a will." But there are also a lot of people who say, "Well, I'll deal with it at some point," and that's where I think the government has a role to play. It can do that and it has done that, for example, when powers of attorney were first introduced. The government prepared all kinds of documents—now it's mostly online, but then it was still very much in document form—telling people what they were all about, how they could enter into them and why they should do that, and those have been taken up quite substantially by the general population, so I think something similar could be done with wills.

One word of caution in this regard: As you know, in Ontario, people can do a holograph will, which means a

will entirely in their own handwriting and signed only by them. That's sometimes a good solution but often is not a good solution because, as you indicate, wills are a technical topic, a technical subject. The average person can readily make mistakes, and that can be costly, because it can lead to litigation after they die. So—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. The time is up.

Now we'll move on to the independent members. MPP Collard.

1040

M^me^ Lucille Collard: Bonjour aux présentateurs. Merci aux membres de l'AJEFO d'être là ce matin. C'est le fun de vous voir. Thank you also for the early information on estates. It's really informative. I must say, it's not my area of expertise, but it looks like it's heading in the right direction.

Donc, mes questions sont plus pour l'AJEFO, parce que je pense qu'il y a des points importants qui ont été soulevés. Je pense qu'on peut tous être d'accord que les changements au niveau de l'accès à la justice en français, que ce soit par la possibilité de déposer des documents en français ou la traduction des documents, ce sont définitivement des pas dans la bonne direction pour lesquels le gouvernement doit être félicité. Je veux définitivement reconnaître ça.

Ma question serait, qu'est-ce qu'on peut faire ou qu'est-ce qu'on doit faire pour s'assurer que ces changements-là soient mis en oeuvre de façon concrète et efficace à toutes fins pratiques? Est-ce que vous avez des idées là-dessus?

M^me^ Andrée-Anne Martel: Merci beaucoup pour votre question, madame la Députée, puis je suis contente de vous revoir également.

Par rapport à ce point-là, si on pense à la mise en oeuvre, techniquement les palais de justice devraient déjà être en mesure d'avoir tout en place pour accepter la documentation en français. Si on pense au Code criminel, le droit de procéder en français dans toute instance criminelle, donc partout en Ontario—les appuis devraient déjà être là.

De plus, avec les nouvelles modifications à la Loi sur le divorce, qui donnent le droit à toute personne à être divorcée dans l'une des deux langues officielles, techniquement l'infrastructure devrait déjà être mise en place. Par contre, est-ce que c'est le cas? On a parlé dans le témoignage, vraiment, du problème d'uniformité entre la Loi sur les services en français et puis la Loi sur les tribunaux judiciaires. Dans la Loi sur les tribunaux judiciaires, nous avons 20 régions. Puis dans la Loi sur les services en français, nous avons 26 régions. Par exemple, dans la région de Markham, on peut déposer des documents en français, mais la personne au comptoir ne va pas nécessairement pouvoir répondre en français ou servir la personne en français.

Donc, certainement, sur le terrain il y a du chemin à faire. Puis une refonte, et une loi modernisée, de la Loi sur les services en français, comme M^e^ Sauvé a fait allusion tantôt, qui vraiment élimine le concept de régions désignées en fonction de la Loi sur les services en français pourraient certainement répondre à ces besoins.

M^me^ Lucille Collard: OK. Merci pour cette réponse. Est-ce qu'on doit se préoccuper des ressources qui vont être allouées pour s'assurer justement que ces services sont là en français, que ce soit au niveau d'avoir des traducteurs, que ce soit au niveau de s'assurer qu'il y a des juges de disponible pour entendre les causes à toutes fins pratiques en français? On doit s'y attarder puis on doit mettre des ressources pour s'assurer que c'est fait, parce qu'on sait que ce n'est pas le cas qu'il y a des juges bilingues partout dans tous les tribunaux ou dans toutes les régions, comme M. Bourgouin l'a très bien illustré par des cas précis.

Alors vous voyez ça comment? Qu'est-ce que le gouvernement doit faire pour s'assurer que ces ressources-là soient disponibles?

M^me^ Andrée-Anne Martel: Je peux passer, si vous voulez. Évidemment, comme vous l'avez mentionné, il faut s'assurer qu'il y a du personnel bilingue. Puis ça c'est vraiment des questions opérationnelles laissées au gouvernement puis aux opérations gouvernementales : s'assurer que le personnel bilingue soit en place pour pouvoir desservir la clientèle dans les deux langues officielles, puis évidemment aussi faire une offre active des services en français partout en région.

Encore une fois, je réitère le besoin de supprimer l'idée de régions désignées en vertu de la Loi sur les services en français. Vraiment, ça serait que le personnel soit en place.

Puis on vient au point de la nomination des juges bilingues à la magistrature. L'AJEFO l'a toujours appuyé, puis on réitère notre appui au besoin de nominations de juges bilingues partout en province pour, en effet, desservir et encourager les francophones d'utiliser leur langue devant les tribunaux. M^e^ Sauvé veut également renchérir là-dessus.

M. Marc Sauvé: Merci pour vos questions. Oui, c'est un pas dans la bonne direction, ce qui a été fait. Je veux souligner ça. Je l'ai souligné dans la présentation. Mais il y a encore beaucoup de pas à faire pour avoir une justice égale.

Spécifiquement sur la question des nominations de juges—

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended. Thank you.

The second round of questions will start with the government, for seven and a half minutes. MPP Park.

Ms. Lindsey Park: I'll switch my questions over to Mr. Hull.

Thank you, Professor Oosterhoff, for sharing your insights in the first round of questions.

One thing I like to try to do in committee is get some real-life examples of how this will affect people on the ground. That's for both of you—Professor Oosterhoff, feel free to jump in if you can think of something on this topic.

There are lots of different scenarios addressed in amendments in Bill 245. I wondered, as you read through the bill, if there were any examples that came to mind or situations you've encountered that have gone through the court process—where these changes would prevent those, perhaps, years of court process.

Mr. Ian Hull: Thank you very much for the question.

There are, unfortunately, many illustrations swirling around that come to mind, but I'll just touch on two aspects.

Number one is the ability to have virtual signing, I think it is such a profound step. We were a little nervous about it when it first came in, because we didn't really know how it was going to unfold, but it came in in an emergency situation. It is an access-to-justice issue that has profoundly changed practice in so many respects, in my experience of due execution.

Then, you combine it with the secondary point of this, and that, of course, is that, essentially, the provisions of the act allow for flexibility in due execution. It's that kind of attention to the reality of what happens in an estate-planning environment, and that is, it's so important to get the client in in some way—Zoom is fine—and get the document executed. If it's done and you've got clear intentions and it isn't perfect—i.e. perfectly in front of someone and perfectly executed—it still can be valid.

The government is sending a strong message: "We really do want wills to be effective. We want your intentions to prevail. We're not going to hang around on 600-year-old rules that may or may not have been a good idea at the time." It's this kind of forward thinking that I can say, from my practice—my clients are relieved, and I'm saying, "Yes, we're coming out of the Dark Ages on process."

So that would be my first illustration of where it is very exciting, day to day, being able to now manage the client experience in a much more user-friendly and much more embraced fashion. That, as I say, has changed my practice significantly.

Ms. Lindsey Park: I think one of the provisions in the bill that you're referencing is a greater ability, if the court is presented with a will that doesn't meet all the formal requirements, to still uphold the will. They have some tools now—it's not to say they don't have any tools currently. We've heard from some others who say the court already has some of these powers.

Maybe you could explain to the committee—I'm a lawyer, but many listening on this committee are not lawyers—the contrast of the tools the court currently has and what additional tools we're giving them through this bill.

Mr. Ian Hull: First of all, I think it's significant—the extra tool is section 5, which allows for the validation provision to fulfill the testamentary intentions. The bill contemplates this mechanism to allow the wishes of the testator to be fulfilled, notwithstanding some inconsistencies with formal requirements. Up until now, the case law and the legislation is a dead stop: If you don't have two witnesses, with everyone in the room at the same time, there is no validity possible. When you create hard and fast rules like that, you create what is, essentially—and certainly, British Columbia is ahead of us on this, but in certain jurisdictions, what you're creating is mistrust for the process. Clients look at you and say, "Are you serious? That's going to be the reason? If I can't follow the rule that has been around and was probably created because"—in the 1800s, this was a much more important fraud prevention tool. "If you're telling me that I can't have other tools"—which this, section 5, does; it allows and expands the opportunity for the court to say, "Wait a minute. Just because you haven't got the hard and fast due execution steps undertaken here, can we preserve the intention of the testator, and can we do it efficiently?" I think this is exactly what is being done by section 5.

1050

Ms. Lindsey Park: I'll turn it back over to MPP Oosterhoff. I think he has some questions for AJEFO.

M. Sam Oosterhoff: Bonjour à l'AJEFO. Merci, Andrée-Anne et Marc pour votre présentation. Je m'excuse; chaque fois que je présente en français, je dis que je ne suis pas francophone, mais je suis francophile.

Je pense que le projet de loi est très important pour l'amélioration des services en français. Peut-être que tu peux expliquer encore au comité l'importance des changements dans ce projet de loi pour la communauté francophone?

M. Marc Sauvé: Écoutez, merci pour votre question, puis merci de la faire en français. C'est apprécié.

Avec les changements proposés, le message qui est envoyé aux francophones en ce moment et aux francophiles, c'est vraiment positif. Maintenant, le droit de pouvoir déposer des documents partout dans la province, c'est un message que partout dans la province, on peut exercer nos droits en français. Donc, encore, je veux vraiment souligner que c'est un pas dans la bonne direction.

Pour reprendre certains points, toutefois, il y a encore beaucoup d'améliorations qui pourraient être faites—question de juridiction. Mais pour revenir à la question, autrement, de la magistrature, ce qu'il faut s'assurer, c'est qu'il y a suffisamment de juges bilingues, et pour faire ça, il faut s'assurer qu'il y ait des francophones sur ces comités de sélection. Nous, ça nous ferait plaisir, comme la plus grande association de juristes francophones dans la province—on compte plus de 1 000 membres; des juges, des professeurs, des avocats—d'agir comme consultants sur ce comité ou quoi que ce soit. Je pense que ça serait un autre grand message très facile, très opérationnel, mais cela assurerait qu'une situation comme celle qui est arrivée à Algoma ne se répéterait pas.

Donc, un message très positif de ce gouvernement : je l'applaudis, mais il y a encore du travail à faire—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time has ended.

Now we'll move on to the official opposition for seven and a half minutes. MPP Bourgouin.

M. Guy Bourgouin: Mes questions vont être encore pour l'AJEFO. D'après l'interprétation offerte par le juge à la retraite de la région de Sudbury, la nomination d'une juge unilingue à Algoma et à travers le seul poste bilingue de la région de Sudbury contrevient à l'article 126 de la Loi sur les tribunaux judiciaires et à l'article 5 de la Loi sur les services en français. Le district d'Algoma est

également assujetti à la loi. Croyez-vous que le procureur général devrait intervenir?

Mme Andrée-Anne Martel: Oui, et nous allons envoyer une lettre à cet effet plus tard aujourd'hui demandant au procureur général—parce que, à notre connaissance, la nomination n'a pas encore été faite. Donc, nous demanderons au procureur général d'effectuer une nomination bilingue pour remplacer et combler ce poste.

M. Guy Bourgouin: Je sais qu'il y a eu des précédents. Ce n'est pas la première fois qu'on vit la même situation. J'aimerais vous entendre sur ces précédents-là.

Mme Andrée-Anne Martel: L'AJEFO est intervenu dans les dernières années à deux reprises, soit pour un poste à la Cour de justice—parce que là, évidemment, on parle de juridictions provinciales uniquement—de North Bay et une deuxième fois à la Cour de justice de Hamilton, pour réitérer l'importance de nominations de juges bilingues. Dans le cas de North Bay, c'était un cas un peu comme le cas d'Algoma : le poste bilingue avait été réaffiché par un poste unilingue. L'AJEFO était intervenue pour réitérer encore une fois l'importance d'afficher ce poste de façon bilingue pour trouver un juge ou une juge effectivement capable d'entendre les parties dans les deux langues officielles.

M. Guy Bourgouin: Croyez-vous qu'il y a des candidats qui seraient intéressés au poste s'il est reposté?

Mme Andrée-Anne Martel: Comme Me Sauvé l'a mentionné, nous sommes l'association avec le plus haut taux de professionnels de la justice francophones en Ontario. Nous avons plus de 1 200 membres. Donc, oui, nous avons des avocats francophones très compétents et capables d'accéder à la magistrature.

M. Guy Bourgouin: Au sujet des changements, le dépôt de documents en français, Mme Anne Levesque de l'Université d'Ottawa a indiqué que bien qu'il s'agisse d'un gain—on reconnaît tous que c'est un gain pour la francophonie—il existe de gros délais, notamment pour ceux qui risquent d'être expulsés de leur logement, qui demandent des avantages sociaux ou qui sont victimes de discrimination. Bref, croyez-vous que la modification de la Loi sur les tribunaux judiciaires améliore l'accès à la justice en français pour les démunis, pour les francophones les plus vulnérables?

M. Marc Sauvé: Dans les situations d'urgence comme celle-là, si le message est envoyé aux francophones que vous pouvez procéder immédiatement si vous procédez en anglais ou vous pouvez attendre quelques mois puis procéder en français, la personne va procéder en anglais immédiatement à cause de la situation d'urgence. Pratiquement parlant, c'est ce qui va arriver. La même situation va s'appliquer à Algoma. Donc, si on dit aux francophones, « Vous pouvez procéder en français dans quelques mois ou vous pouvez procéder immédiatement, » naturellement, la personne va être encline, surtout dans une situation d'urgence—dans le cas d'Algoma, ce sont des procès criminels—de vouloir régler cette affaire-là le plus rapidement que possible.

Bien que ce soit un pas dans la bonne direction, la justice égale en Ontario n'existe pas en ce moment. La nomination de plus de juges bilingues va assurer que cette justice-là soit beaucoup plus égale. Le juge bilingue est appelé à siéger aussi sur des dossiers en anglais. Il fait beaucoup de travail en français. Il répond à toutes les demandes de tous les francophones, mais également, des anglophones. Puis personnellement, j'en connais plusieurs qui me disent qu'ils travaillent très, très fort à cause que la charge est très exigeante sur eux. Donc, il faut s'assurer d'avoir plus de nominations.

M. Guy Bourgouin: Marc, je sais que Mme Collard t'avait posé une question et tu n'as pas eu la chance de finir. Je veux te donner l'opportunité avec le temps qu'il me reste pour élaborer ce que tu étais sur le point de dire.

M. Marc Sauvé: Merci beaucoup. C'est essentiellement sur la question des nominations. Pratiquement parlant, le gouvernement doit et devrait, selon moi, consulter la communauté francophone pour ces nominations-là, surtout dans les juridictions bilingues. Nous, on propose d'enlever la question des juridictions bilingues. L'AFO le propose aussi. On n'est pas là, mais au grand minimum, s'assurer qu'il y ait un francophone, au moins juste un—par exemple, quelqu'un de l'AJEFO—sur ces comités de sélection assurerait que dans le cas d'Algoma, par exemple, cela n'aurait jamais existé, parce que le francophone aurait dit : « Écoutez, c'est une juridiction bilingue. Il faudrait s'assurer que les francophones puissent être desservis en français. »

Donc, ça, c'est quelque chose d'opérationnel qui pourrait être facilement corrigé. Puis nous, on est prêts à coopérer avec le gouvernement pour s'assurer que des choses comme celles-ci n'arrivent pas dans le futur. Présentement, comme le mentionne Me Martel, il n'est pas trop tard.

M. Guy Bourgouin: Écoute, pour l'AJEFO, quand ça vient au—

Interruption.

M. Guy Bourgouin: Le téléphone sonne. Ça me distrait. Pour revenir à ma question avant de te donner la chance de répondre, croyez-vous que c'est assez pour les personnes les plus vulnérables? Je sais qu'ils n'ont pas—comme tu dis, ils ont le choix d'attendre ou aller. Mais pour l'AJEFO, c'est quoi que vous recommandez, surtout pour adresser ce problème-là?

M. Marc Sauvé: Il y a beaucoup de gens qui sont autoreprésentés maintenant, puis on le voit de plus en plus. Les frais juridiques coûtent très chers. Dans les situations de gens vulnérables—par exemple, même ceux qui ont besoin de l'aide juridique et ces choses-là—je reprends le point de Me Martel par rapport à l'offre active : il faut s'assurer que cette offre est connue dès le début et que ça soit aussi facile de procéder en français qu'en anglais. Sinon, le message, pratiquement parlant, c'est que le français n'est pas important, puis si vous voulez avoir accès aux meilleurs droits, il va falloir le faire en anglais. Donc, implicitement et naturellement, le message systémique qui est envoyé c'est qu'on devrait procéder en anglais, alors que je ne pense pas que c'est ça qui est

l'intention, surtout pas quand on prend des démarches comme on fait maintenant.

Donc, pratiquement parlant, pouvoir déposer des documents en français, c'est une très bonne étape, mais ce n'est certainement pas la solution. Je pense qu'il faut s'assurer qu'il y ait une offre active, surtout quand on reconnaît qu'il y a de plus en plus de gens qui sont autoreprésentés dans les cours de droit de la famille en particulier. C'est devenu vraiment un problème, donc il faut s'assurer de répondre à ce problème.

Mme Andrée-Anne Martel: Si je peux renchérir sur votre question, député Bourgouin, c'est d'importance si le gouvernement se doit d'investir dans les projets sur le terrain pour ces personnes vulnérables et leur offrir des services gratuitement. Par exemple, l'AJEFO opère le Centre d'information juridique de l'Ontario. Ce projet est financé par le fédéral dans les différentes provinces du Canada. Les projets sur le terrain permettent d'outiller les personnes dans les deux langues officielles—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time has ended.

1100

Now we'll move on to the independent members for four and a half minutes. MPP Collard.

Mme Lucille Collard: Thank you for pronouncing my name correctly. I get all sorts of—I have no relation with Minister Couillard.

That being said, merci pour toute cette ligne de questions. Je pense que c'est important de parler de l'accès à la justice en français.

Andrée-Anne, tu as parlé du droit des successions. On a des changements qui vont dans la bonne direction aussi, qui facilitent l'accès à la justice. Il y a une question qui n'est pas claire pour moi, parce que pour l'attestation à distance, on exige qu'il y a un des témoins qui soit membre du barreau. Il y a des gens qui ont eu des préoccupations par rapport à ça. Pour toi, est-ce que tu trouves que c'est quelque chose qui est trop contraignant ou qui pourrait diminuer l'accès à la justice?

Mme Andrée-Anne Martel: Excellente question. Évidemment, tout avocat, vous-même—vous avez perçu ce point-là. Sincèrement, ce n'est pas quelque chose que nous avons nécessairement étudié à l'AJEFO. Je veux dire, ça rajoute des mesures précautionnaires, puis des étapes supplémentaires. Évidemment, ça rajoute une précaution qui serait peut-être nécessaire. Mais pour vous dire la franche vérité, ce n'est pas une question qu'on a nécessairement étudiée. Je ne verrais pas—et peut-être que Me Sauvé aurait quelque chose d'autre à ajouter. Je ne vois pas vraiment le problème avec une telle demande, mais c'est certainement quelque chose qu'on pourrait étudier en meilleur détail.

M. Marc Sauvé: Je ne sais pas si j'ai beaucoup à ajouter. La seule chose que je dirais, c'est : le fait maintenant qu'on peut témoigner des documents en français à distance, virtuellement, encourage, par exemple, quelqu'un qui est dans une communauté qui n'aurait possiblement pas accès à un avocat francophone de trouver un avocat francophone en ligne et procéder en français. Juste là, on vient d'enlever des barrières juridictionnelles très importantes.

Maintenant aussi, vous savez possiblement, on peut procéder en français et à distance sur vidéoconférence pour nos procès. Ça aussi encourage les francophones dans une petite juridiction de trouver un avocat francophone et de procéder en français. Donc, ce sont toutes des étapes, selon moi, où on maximise la technologie pour s'assurer que les francophones puissent procéder en français. C'est son droit, puis on vient de faciliter ça, donc c'est un bon point.

Mme Lucille Collard: OK, merci. Concernant ça, justement, pour la signature, quand même, le papier est encore requis, puis les copies papier sont encore requises. Est-ce que vous verriez un avantage ou recommanderiez que ce soit possible de faire des testaments avec une signature électronique, puis qu'il y ait une capacité de, on appelle ça, « online storage » pour qu'on puisse remiser les copies dans un endroit électronique également ?

Mme Andrée-Anne Martel: À notre avis, toute mesure qui pourrait améliorer l'accès à la justice en français est bénéfique. Donc, si ces nouvelles mesures technologiques permettraient à plus de francophones d'avoir accès à leurs testaments en français, l'AJEFO sera en faveur. Du côté technique puis du côté sécuritaire, il faudrait se référer aux experts technologiques puis testamentaires. Mais du côté d'accessibilité, si ça permettrait à plus de francophones de rédiger et de comprendre leurs testaments et leur clauses testamentaires en français, nous sommes en faveur.

Mme Lucille Collard: Excellent.

M. Marc Sauvé: L'autre chose que je rajouterais, c'est : moi, je peux envoyer une lettre en français, en anglais ou quoi que ce soit avec ma signature électronique. Je peux signer des documents et des contrats avec une signature électronique. Tout est électronique. Donc là, le fait que les testaments exigeraient la signature originale, selon moi, encore, c'est quelque chose qui va être changé dans le futur. Pourquoi pas le faire maintenant?

Mme Lucille Collard: Est-ce que vous avez eu l'opportunité de réviser l'ensemble du projet de loi? Puis si oui, est-ce que vous avez vu des sections qui vous préoccupaient?

Mme Andrée-Anne Martel: Oui. Et, non, rien à soulever autre que—nous l'avions mentionné, je crois, dans une des questions. Vraiment, ce qui serait intéressant à voir, c'est une autre modification de la Loi sur les tribunaux judiciaires quant aux jurys bilingues. On a vraiment enlevé ou supprimé l'élément de—le droit de déposer des documents en français partout en province, mais ce serait intéressant vraiment de supprimer l'annexe 1 de la Loi sur les tribunaux judiciaires pour permettre les jurys bilingues partout en province, comme on le fait dans le projet de loi 245. C'est vraiment quelque chose qui nous a sauté aux yeux.

En termes d'autre—

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended.

Thank you to all the presenters.

THE ADVOCATES' SOCIETY
AXESS LAW PROFESSIONAL CORP.
FEDERATION OF SOUTH TORONTO RESIDENTS' ASSOCIATIONS

The Vice-Chair (Mr. Vijay Thanigasalam): Now we'll move on to the next set of presenters.

We have Anthony Moustacalis, director of the Advocates' Society. You have been allotted seven minutes for your presentation. You may begin.

Mr. Anthony Moustacalis: My name is Anthony Moustacalis. I'm a member of the board of directors of the Advocates' Society. Thank you for the opportunity to make oral submissions to the standing committee today. The society will also be providing written submissions to complement this presentation.

The Advocates' Society was established in 1963 as a not-for-profit association of litigators. We have around 6,000 members across Canada, most of whom practise in Ontario.

My submissions to you today will focus on the changes that Bill 245 proposes to make to the judicial appointments process.

As courtroom advocates, the society's members strongly believe that an independent judiciary is a fundamental cornerstone of Canada's justice system and is essential to upholding the rule of law. In addition to judges actually being independent, it is equally important for judges to be seen to be independent. In short, the appearance of independence is just as critical as the reality. Public confidence in our justice system depends upon the public perceiving judges as independent and impartial arbiters of disputes.

I must begin by stating that the society supports the government's goals of increasing the diversity of Ontario's judiciary and also ensuring that judicial vacancies are filled quickly and efficiently. However, we do not believe the current appointments process has been deficient in achieving these goals. Indeed, Ontario's current process for appointing judges is widely respected and considered the gold standard for the transparent, independent, non-partisan selection of judges.

The society believes that Ontario's current appointment process has increased the diversity of Ontario's judiciary and will continue to do so over time. We acknowledge there is more work to do to increase the diversity of Ontario's judges, including by diversifying the legal profession. We therefore support the proposed section 43(9)(a) requiring the Judicial Appointments Advisory Committee, otherwise known as the JAAC, to publish annual statistics about the diversity of candidates for judicial office. We expect these statistics will demonstrate continued progress on this front and will also help identify particular areas of improvement.

Moreover, the society is not aware of any delays in the JAAC's process for filling vacancies on the bench. The society's understanding is that vacancies usually arise on ample notice, and the JAAC's process is completed within the necessary time frame. To ensure this continues, the society supports the proposed section 43(7) to allow the JAAC to meet and screen candidates virtually.

The society is concerned that the other proposed amendments will not achieve the government's stated goals of diversity and efficiency and have the potential to allow political partisanship to play a role in the selection of Ontario's judges. Moreover, when taken together, the proposed amendments create a worrisome appearance that the selection of judges is susceptible to political influence, which will undermine the public's confidence in the independence of the judiciary.

The composition of the JAAC: First, the society is concerned that the Attorney General will be given more control than necessary over the composition of the JAAC. Currently, the law society, the OBA and FOLA each appoint one member of the JAAC. Proposed section 43(2)(b) will require each organization to instead provide a list of three names to the Attorney General, who will select appointees from those lists. The Attorney General will therefore be given the authority to appoint 10 of the 13 members of the JAAC instead of the current seven. This change will undermine both the reality and appearance of the JAAC's independence from government.

Next, the term of the JAAC chair: The society is concerned about changing the term of the JAAC chair from three years to "up to three years," proposed in section 43(5). Allowing the Attorney General to arbitrarily set the chair's term of office also creates the potential for, or perception of, political interference in the work of the JAAC and undermines the independence of the JAAC.

Third, confidentiality of the JAAC: The society is concerned that the confidentiality of the JAAC's processes will be undermined by the proposed section 43(11), which authorizes the chair of the JAAC to disclose information related to the application and screening process. Confidentiality is important both to applicants for judicial office, who want to ensure their applications remain private, and to the integrity of the JAAC's screening process, which relies on receiving candid information from references and other stakeholders. The society recommends that if the chair is authorized to disclose information about the JAAC's process, the chair's discretion should be tightly circumscribed by legislation.

1110

Last, review of recommended candidates: The society is concerned that JAAC will not be able to recommend six highly qualified candidates for every judicial vacancy that arises. This is particularly the case for vacancies located in remote regions or for bilingual positions—this is subsection 43.1(2)(7). As such, we recommend inserting language to the effect that the JAAC will make six recommendations where practicable or absent exceptional circumstances. Moreover, if the list of recommendations is expanded to six, the society believes that the Attorney General will have ample choice in making their selection and does not need the proposed power to reject the list and request a new one, which is subsection 43.1(7).

In sum, the society believes that the current selection process results in the appointment of meritorious and

independent judges. For the most part, the proposed amendments will not improve upon the current system or increase the diversity on the bench; rather, they will raise the prospect of political partisanship playing a role in judicial appointments. This will undermine the appearance, if not the reality, of judicial independence in the Ontario Court of Justice and ultimately weaken Ontarians' confidence in our justice system.

I would be pleased to answer any questions from the standing committee.

Thank you for giving the Advocates' Society the opportunity to present to you today.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Next, we have Lena Koke, managing partner at Axess Law Professional Corp. You have been allotted seven minutes for your presentation. You may begin.

Ms. Lena Koke: My name is Lena Koke. I'm managing partner at Axess Law Professional Corp. We're an estates and real estate law firm with six offices across Ontario.

First, I want to say thank you for the opportunity to make oral submissions today.

We would also like to commend the Attorney General's office on the legal reforms they've been able to make over the past year. We're excited about them.

We think that the Accelerating Access to Justice Act is really a step in the right direction. Welcome changes are present throughout the act, and we've seen first-hand every day the impacts they are going to have on Ontarians. Many of the proposed changes are excellent and needed. We've been waiting a long time for them.

But there is one significant hole in the act that we want to discuss today, and that is allowing virtual witnessing but not electronic signatures. This might seem like a minor and inconsequential differentiation for most people, but what I would like to do is explain the real-world consequences of this difference. The reason I chose to speak today and the reason that we've been promoting electronic signatures for a long time is that every day we see the consequences of not allowing it. The result is approximately 7.5 million Ontario adults who do not have a valid will right now. To provide some context, Axess Law probably drafts more wills than any law firm in Canada. We draft in the range of 10,000 wills a year, so we see this every day. We know what's going on; our feet are on the ground.

The act proposes virtual witnessing of wills. They still have to be signed physically in wet ink—so you can have a video call with your lawyer, there can be another witness on the line, they can watch you sign your paper documents, and they're still signed in counterparts. It was a great solution that was brought forward last year to address a pandemic; it was perfect, it worked. But it is not a permanent solution. There are still a lot of problems with it.

One of the major problems is that wills have to be signed in counterparts. Signing in counterparts is risky because it's difficult to verify if it has been executed properly. Are both counterparts identical? If the client is printing off their own copy, have they cut off half the page? You can check some of these things, but it's very difficult.

The biggest problem is that now you have counterpart wills that are being couriered back and forth. It's expensive, and it's risky. We've done them a lot over the past year. It typically works out to an extra $200 or $300 apiece and it takes a few weeks. That is a non-starter for someone who might not have a couple of weeks. They might be terminally ill. They might not want to spend $200 or $300 extra on a will. We already have 56% of Canadian adults who don't have a will. The reasons they're giving in all the polls that have been given are it's too expensive and it's not convenient. So proposing a solution that makes a situation more expensive and less convenient is not a solution.

We put together some stats, just in the last month—and this is just from our firm alone. In the past month alone, we have turned away 23 people who were in the hospital and needed wills. Electronic signatures would have solved that problem in every single case. We turned away 54 people who wanted to do virtual wills but couldn't or didn't want to do it in counterparts, typically because of the expense. What we're proposing is not new. We're proposing electronic signatures for wills.

We do a lot of real estate at our law firm. That's the other big part of our practice. Ninety-five per cent of all real estate transactions that we do are done completely virtually right now—no in-person meetings, no physical documentation, no papers, no wet ink on signatures. This is an area of law that is rife with fraud—that is traditionally what has been the case—but there are safeguards that have been put in place, and it is working really well. It's working well for the lawyers. It's working well for our clients. It's working well for real estate professionals. The question is, why can we not do this for wills, as well? We work in this space, and, trust me, it's very doable. It has been done for real estate because the will was there—no pun intended.

In any case, similarly, electronic signatures are not a novel concept for wills either. They're already allowed in several states: Nevada, Arizona, Florida, Indiana. British Columbia has just passed legislation. Australia allows it. The UK is about to allow it. And the other half of the states are in the process of permitting it, as well. This is not new. They have all observed that there's a problem, and they're creating solutions for how to address it. I can tell you myself, from fielding calls from Ontarians over the last eight years, that this subject is significant, and it impacts people.

The big response we hear is, "What about security? What about fraud? What about mental capacity issues?" Let me start by saying that our current situation that we're doing right now has its own very significant problems. Right now, I could go online, I could do a will kit, print it out under anyone's name, and bring it to them and have them sign it. Obviously, if I were to bring it to one of you, you would probably say, "No way. I'm not going to sign

this"—but we all know that that's not the case. There are a lot of people out there under undue influence who don't have mental capacity issues, and this happens. Fraud is rampant right now, so the current situation we have has a lot of problems.

What we're suggesting is, electronic signatures with a law society licensee as a witness. So you have somebody there—and this, by the way, is already included in the proposed act, to have a law society licensee as a witness. You have someone there not just to witness that the person who said they're signing is signing, but also to check for mental capacity, to check for undue influence. This would actually bring in a higher bar, a stronger level of reliability. We're not saying to change the current rules. If you want to do a will in person, we're not trying to change everything. But we're saying, please allow electronic signatures, and these are the safeguards that we're going to put in place.

We have submitted proposed legislation changes, the wording—it's actually in exhibit to this committee now—to the Attorney General's office. Just to make things easy, they're based on other legislative changes that have been made in other jurisdictions. It would be a great step forward. Anyway, we ask you to please consider these changes.

That's everything from me this morning.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Next, we have two representatives from the Federation of South Toronto Residents' Associations: Rick Green, the chair, and Don Young, secretary. You have been allotted seven minutes for your presentation. You may begin now.

Mr. Rick Green: Thank you, Mr. Chairman, for the opportunity to present comments on the passage of Bill 245. My name is Rick Green. I'm the acting chair of FoSTRA. My colleague Don Young is the acting FoSTRA secretary.

FoSTRA is a new organization of residents' associations in south Toronto, whose boundaries contain some 400,000 residents. As a group, we support development, but development that has good outcomes based on community participation in a respectful and transparent manner.

Our comments today will concern sections 5, 6 and 10 of Bill 245. To put our comments in context, our member residents' associations have been united in their frustration and deep concern and believe sections 5, 6 and 10 are but one more step in a series of efforts to disregard due process in urban planning, such as the highly questionable use of ministry zoning orders; the application of Bill 257 to make the provincial policy statement not apply to MZOs retroactively; the hollowing out of conservation authorities, making them compliant to the government; the negative impact on local government in the Better Local Government Act; extensive amendments to the TOcore plan that resulted in many negative results; Bill 108's removal of the Local Planning Appeal Support Centre; limiting use of inclusionary zoning, as well as reducing requirements, matters to be considered and fees to developers.

1120

At this point, I would like to turn the presentation over to Don Young for our specific comments on sections 5, 6 and 10 of Bill 245.

Mr. Don Young: Hello. My name is Don Young. I'm the acting secretary of the Federation of South Toronto Residents' Associations, FoSTRA, and a committee member of the Grange Community Association in downtown Toronto.

FoSTRA has the following concerns with the proposed Bill 245:

In schedule 6, the proposed legislation will merge all five provincial land tribunals into one, the Ontario Land Tribunal, OLT. If passed, the expertise and experience in the diverse areas of expropriation negotiation, cultural heritage, environmental protection, local planning, mining and lands will be melded into one generalist, all-powerful tribunal. As a result, FoSTRA fears the following:

Any member will be able to hear any matter. A mining expert may be asked to make decisions on an 80-storey tower in downtown Toronto, and an adjudicator hearing an environmental matter will no longer need to have environmental qualifications.

The less-specialized OLT will be able to dismiss any matter without a hearing if the OLT deems the matter has no chance of success. This could increase the length and cost of hearings, since there will be an incentive for developers to immediately file motions to dismiss. Residents' associations will need to hire lawyers, at a minimum cost of $10,000, just to stay on top of motions and to plead their cases—this in addition to the costs for professional testimony to meet a high standard of evidence.

Access to the OLT will in fact be reduced by limiting participants to making written submissions only. Citizens and community groups who cannot afford the time or money to become parties to an appeal will no longer be allowed to make oral presentations or be cross-examined.

The bill removes the right to a judicial review if the tribunal breaks its own rules or misuses its discretion, unless there is proof that it substantially affected the outcome. This has not been defined. Potentially, one adjudicator could strike down a planning bylaw approved by city council, even if that bylaw complies with provincial law. The OLT will be given the final word on all municipal matters concerning bylaws and finances. Will the OLT have the right to gut master plans like the minister of municipalities and housing has already done with the TOcore plan? Is this meant to take the heat off the government?

Schedule 10 removes the ability to appeal decisions to the minister for seven statutes relating to the environment and natural resources. These appeals have been rare historically, but just such an appeal stopped the infamous Spadina Expressway, which would have changed the face of Toronto.

Significantly, in light of the construction of the Ontario Line in Toronto, schedule 5 of the proposed law will speed up expropriations by repealing certain statutory provi-

sions, eliminate the right of landowners to appeal the necessity of expropriation for transport and highway development, and give the OLT the final say on all decisions concerning expropriations.

FoSTRA is also concerned that appointments to the OLT may become political. Last year, controversy arose when a former CEO of the development lobby group BILD was appointed to the LPAT, while the contracts of four adjudicators with environmental backgrounds were not renewed.

Generally, the assault on local control and planning since the government was elected has already created a new pro-development climate in Toronto. Councillors and city planners are cautioning communities not to push too hard, to be modest in their requests, lest the developers opt to appeal immediately.

Worldwide, cities are being rethought and reimagined. We must prepare for a post-COVID-19, climate-changing era. Large single-purpose office towers are no longer viable. The proliferation of monster glass, steel and concrete condos favoured by developers is creating unaffordable, unlivable cities. New multi-purpose, ecologically sound places for people to work, live and enjoy themselves must take their place. Public spaces, convenient amenities, community centres, schools, cultural facilities and the arts are needed to stem the flight to the suburbs—

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended. Thank you for your presentation.

We'll now move to questioning. This round of questions will start with the official opposition, for seven and a half minutes. MPP Bell.

Ms. Jessica Bell: Thank you to the presenters for coming in and speaking.

My questions are going to be focused on Mr. Green and Mr. Young, given that the concerns you're raising affect the riding of University–Rosedale, and also my interest in schedules 6 and 10 in particular.

It's important to mention that University–Rosedale, like Toronto Centre and Spadina–Fort York, is ground zero for development across Ontario. We have more applications for big construction, big condos, than anywhere else in Ontario and likely Canada. So it's a big concern that many residents in University–Rosedale have. We can't just build; we have to build right. We have to build good, livable cities. We have to build community.

I have some questions. One is just in regard to the changes to the Local Planning Appeal Tribunal and how it's being merged into the Ontario Land Tribunal. If you had a magic wand, how would you change the Local Planning Appeal Tribunal? I'd like Mr. Green and Mr. Young to answer, if that is okay with you.

Mr. Don Young: Okay. Actually, we have three recommendations that I didn't get to; sorry.

We're calling on the Ontario government to amend Bill 245 as it relates to the formation of the OLT and to commission a multi-partisan panel to select the OLT members based on qualifications and experience in environmental science, urban planning and land use. We also ask that departments or branches in the OLT be established that specialize in each of the five areas of concern and that knowledgeable, qualified adjudicators be assigned appropriately.

To truly accelerate access to justice for all citizens, we call on the Ontario government to reintroduce, fund and empower reformed Local Planning Appeal Support Centres to assist citizens and community groups in having their concerns addressed.

Ms. Jessica Bell: Mr. Green, do you have anything to add to the question? If you could reform the LPAT, how would you do that?

Mr. Rick Green: I think we would strive to make it a less partisan body, something that was sustainable beyond this government, so that there's continuity in consideration of land development within Toronto that takes into account community needs and halts the rush to develop regardless of infrastructure or livable elements within the community.

Ms. Jessica Bell: Mr. Allen from the Grange Community Association spoke yesterday, and one of the concerns he raised was around how third parties can only submit written submissions to hearings in this bill—that's what they're proposing—instead of being able to speak and undergo cross-examination at the hearing. The reason he was concerned about it is because the party that is the lead—usually, that's a municipality—doesn't always represent the interests of residents, and so there needs to be diversity of opinion, especially if it's around something controversial, like a waste dump site or a new train line, that has significant impacts on residents. Is that an opinion you share?

Again, this is a question to Mr. Green and Mr. Young.

1130

Mr. Rick Green: From my standpoint, there has to be a consolidation of considerations, so to speak. Community representation, respect for heritage—all these things have to be in the mix when considering what's the best outcome for such things that require expropriation for things like the Ontario Line. There's not one solution, but there needs to be active participation and good-faith negotiation to be able to come to a sustainable outcome.

Ms. Jessica Bell: Mr. Young?

Mr. Don Young: Well, of course, Max is a great authority, and I do feel that his opinion is very valid.

I am quite concerned that third parties, especially parties that are participants—and there are many groups that can't afford to be participants. Only being able to submit to something in writing is a great hindrance to somebody. A single individual or even an unfunded, relatively poor residents' association just don't have the time or the money to engage. Some of these hearings last a week, and they have to take the time and they have to be present at all times during that hearing. If participants were allowed to present orally and to be cross-examined, and then they could go home, that would be fine. It's a problem.

Ms. Jessica Bell: I also want to just get some clarity on your request that the Local Planning Appeal Support Centre be reintroduced.

Once again, Max spoke yesterday, and he said that there were some issues with how the Local Planning Appeal Support Centre was structured, in the sense that it was meant to be an independent body so it could provide advice on what the law is, but it couldn't act as an advocate. He had some concerns with that tension, and he recommended that I read the former Local Planning Appeal Support Centre executive director's final report to get a better understanding of its strengths and weaknesses.

I don't know if you have experience with that support centre that you'd like to share, which you think would be useful for me to know?

Mr. Don Young: I haven't.

Mr. Rick Green: I haven't, as well. Actually, I will say I'm not qualified to comment on that particular point.

Ms. Jessica Bell: Okay, no problem.

That's all the questions I have. If you have anything else that you think would be useful for me to know before we go into amendment writing and whatnot, I'd be very interested in hearing any additional thoughts, Mr. Green and Mr. Young.

Mr. Rick Green: I think the only take-away from this is that FoSTRA is a relatively new organization, but it was born out of a level of frustration and outrage—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Now we'll move on to the government members for seven and a half minutes. MPP Mitas.

Miss Christina Maria Mitas: My question will be for Lena from Axess Law. I'll start by asking you to give us an overview of what changes that we have put forward on Bill 245 over the last year you have been supportive of.

Ms. Lena Koke: Thank you very much for the question.

I have largely been in favour of the entire bill, except for the absence of an electronic signature clause.

Specifically, marriage will no longer revoke a will—I think that is a very welcome addition.

There is a $10,000 limit for amounts paid to a child's parent without the necessity of court guardianship, which would be fixed by regulation. This would increase. I'm very supportive of that.

One of the things I'm most excited about is the substantial compliance, which is now available for court. I think most of you are probably familiar with that. In Ontario, up until now, we've had what's called "strict compliance," which is different from most other jurisdictions. That means that if you drafted a will in a certain way, but your intention was something else—you made a typo or you missed a zero, but it's very obvious from all of the contextual information that your intention was something else—prior to these changes, we had strict compliance and it would be very difficult to go by the intentions of the testator. What's being proposed here is ushering in substantial compliance, which I think is long overdue and something that most, if not all, of the other provinces already follow, and most states.

Lastly, separation, not merely divorce, revokes a bequest by a former spouse. That's something that we've seen has been a big issue time and time again. People get divorced and have a lot of things on their plate, whether they have kids or they have to move etc., so they don't always get around to updating their will, and they have their current spouse but their separated partner still noted in the will. With this, separation, not merely the act of finalizing the divorce, will actually revoke that bequest, which I think is, again, a long-overdue change and something I'm excited about.

Miss Christina Maria Mitas: You mentioned electronic signatures. I understand that you are supportive of electronic signatures, but you say there are concerns out there that they could open the door to undue influence or fraud. What do you say to those concerns?

Ms. Lena Koke: Great question, again, and I'm happy to clarify.

We actually put together proposed legislation, which we submitted to the Attorney General's office, and we circulated it for only about a week or two, because we were quite short on time. We received written support from all of the largest estate firms across Ontario, which was excellent. I have not personally received any negative feedback on that about these risks.

What I do know from just being a lawyer is that lawyers typically tend to have issues, and this is currently the case, with mental capacity, undue influence and technology—"How can we possibly make these changes? It's going to be risky." My response would be, "Guys, the current situation is not good already. What we are proposing is actually a lot safer." If you want to continue to go back and forth on this and come up with a foolproof plan on how to electronically sign a will, it's never going to happen, but what we have is a very, very safe way that's working already in real estate, that's safer than the current way and is in line with what a lot of other jurisdictions are doing.

What you're doing is you're saying, "I'm going to put a licensed lawyer or paralegal, somebody licensed by the law society, who has to be a witness"—not just a witness of the will, because currently, you don't need someone like that to be a witness of the will; you can have your neighbour sign it—"who is also checking for those other things that we worry about." Sometimes, maybe, there are issues of undue influence, there are issues of mental capacity, and just having a licensed individual there who knows they have to be checking for that and also making notes on that is, I think, a huge win in favour of a lot of those wills that end up being contested again and again and again.

Miss Christina Maria Mitas: You actually went to my next question, on what safeguards you would suggest putting in place to ensure that undue influence and harm did not come to people if the Attorney General decided to move in this direction in the future; you mentioned some. Do you believe that there are fulsome safeguards that can be put in place to ensure that this would be something that was a net positive?

Ms. Lena Koke: Oh, 100%, and that's actually why I brought up the real estate example—because they're very

similar. The emergency orders that were put in place by the Attorney General's office just this past year, in response to COVID-19—because people still needed to place mortgages. Especially during COVID-19, a lot of people had to bring equity out of the house. They allowed changes to other legislation, as most of you probably know, that allowed for virtual commissioning of documents.

We do a lot of commissioning, which would mean, for example, that if you were sitting at home and I'm the lawyer, we could actually use electronic signatures for that right now. That's used to transfer properties, to take money out of your home, and that has been very safe. People are uniformly excited about that. I would suggest replicating those rather than saying, "You have to use exactly this kind of technology to do an electronic signature." You never want to legislate that, because technology changes too quickly, and frankly, we're not the right people to be doing that.

What we should say is, there is an insured professional responsible for witnessing and making sure that the right person is signing it—no undue influence, no mental capacity issues.

Those are the three issues that come up every day—and they come up on in-person wills every day.

1140

Miss Christina Maria Mitas: It seems like it expands access, going in this direction, as well.

Ms. Lena Koke: That's exactly what it is. You saw the numbers. Some 56% of Ontario adults don't have a will; it works out to seven and a half million Ontario adults—it's price, it's convenience.

It seems to me that the way the act has been drafted is top-notch in terms of the number of things they have been able to address, but this virtual signing piece does not make sense. It doesn't make sense the way that it's drafted. Any practising lawyer who has been doing wills knows that what's being introduced here is maybe almost meant to appease people and say, "You can kind of cobble it together and make it work." It's not going to work for 99% of people. It's not going to be used. It will not make a dent.

Miss Christina Maria Mitas: That's very helpful.

On the note of what people are going through in order to get these things done: Over this last year, we've heard, in the government, stories from Ontarians who are trying to get their end-of-life affairs in order in these extraordinary circumstances. We hear stories of documents being exchanged through car windows or a window of a hospital—even going outside, distanced in a driveway.

Do you have any similar stories that you can share from your practice to provide our committee with some insight—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Now we'll move on to the independent members for four and a half minutes. MPP Collard.

M^me^ Lucille Collard: I'll continue with Ms. Lena Koke. I think there's an interesting line of questioning here, and I have a couple of questions for you, as well. You seem to be very favourable in terms of using technology. I also think it's a great way to move forward.

Do you think that it would also make sense to allow for online storage of wills? Could it actually facilitate having access to the wills after?

Ms. Lena Koke: I think online storage of wills is a great idea. I know we've actually discussed it at length with people who have come up with solutions for that. I do think it would be important not to mandate one provider of the online will storage, obviously, unless it was government-run. But giving people that option is a great idea.

One thing I have noticed over the years is that people don't know what to do with their wills. They say, "What should I do with my will?" The answer is typically, "Put it in a fireproof safe or bring it to your safety deposit box." There is a common issue with that: You have to make sure that your executor knows your will is there. Does the executor have the key to get into the safety deposit box? They need the will in order to become executor to get the key. So there are a lot of issues like that.

Online storage is something that a lot of other jurisdictions are doing. It has been done well, so I think if the right solutions are out there, I don't see a problem with it. It would be very nice to have a centralized repository. I would tell you, from my experience, it's something people want. People physically store their wills with us right now, and we have fireproof safes in our office. It's not ideal. I don't love doing it, but we just do it as a service.

M^me^ Lucille Collard: Right. I think people do different things with their wills. It's always a struggle when the person passes away, and then you're already in a state of dismay and you have to figure out where the will is. Is it under the mattress or at some other location? So, yes, centralization of storage would make a lot of sense.

You've mentioned that allowing virtual witnessing is also good, because a lot of people don't have wills because it's too expensive and not convenient right now to do it the way it's necessary to do it. But there is also the requirement that one of the witnesses, if you do it remotely, be a lawyer or a member of the bar. Lawyers are not cheap. So do you think that, as the opposite, it might make it less accessible to people who have less means to do a will?

Ms. Lena Koke: That's an excellent question.

First of all, we're not suggesting that the law be changed to make this across the board for physical, in-paper wills, as well. Let's allow people to be able to do their wills on paper if they want to. Let's tackle one problem at a time.

What I would suggest is, if you're doing a virtual will already, you're going to be doing it with a lawyer, so that lawyer can act as the witness as part of the same transaction. We do virtual wills right now without the execution, and we could easily incorporate that into our process for not a penny more. It would actually probably make the process easier and more simple.

If people want to be able to do a will without a lawyer altogether—absolutely.

But if we're going to be ushering in something new with electronic signatures, where there is fear that an electronic signature could be copied and pasted, and there's Photoshop and every number of things, I think it's important that there are security features put in place to provide for that. Because technology changes so quickly, the easiest and the most intelligent way to address that is through an insured professional, the way we've done for real estate. I think making it part of the process hasn't increased prices for real estate whatsoever since it has been ushered in. I think that it could easily be put into the same process and it should not cost more.

Mme Lucille Collard: Mr. Chair, do I have any time left? I don't want to be cut off.

The Vice-Chair (Mr. Vijay Thanigasalam): Twenty seconds.

Mme Lucille Collard: Okay, I'll wait for the Advocates' Society next turn around.

The Vice-Chair (Mr. Vijay Thanigasalam): The next round of questions will start with the government members, for seven and a half minutes. MPP Park.

Ms. Lindsey Park: I'll direct my questions—I have a couple—to the Advocates' Society.

There were recent changes to the federal model of appointing judges. Obviously, many Advocates' Society members appear before the Superior Court of Justice, with judges appointed under that federal model. I wondered if you were broadly supportive of that model of appointing judges.

Mr. Anthony Moustacalis: The answer is, it's not ideal, so no. The reason is, if you compare it to the ideal Ontario model, there is no interview process. The screening is with respect to "highly qualified" and "not qualified." In fact, another organization, the Canadian Bar Association, is bringing a challenge to that process.

You'll recall a Globe reporter got access to some FOI emails that were sent to justice ministers that indicated that outside persons were commending the appointment of certain judges. That sort of bypasses and gives an appearance of unfairness, because it's going around their committee system.

Ms. Lindsey Park: We heard some of those concerns as we watched—obviously, that reform happened before this one that we've been considering at the provincial level. We heard those concerns. I think you referenced in your remarks that Ontario's model is highly respected.

Mr. Anthony Moustacalis: Yes.

Ms. Lindsey Park: And you mentioned that some of the changes we're making you're supportive of and others you're addressing some concerns with.

We didn't go as far as that federal model in the suggested changes at the provincial level, and so I wanted to get a sense of if you are happy we didn't go that far.

Mr. Anthony Moustacalis: That's a self-answering question, given our position, which is that we want a high standard, independent review and a recommendation process that selects the most diverse and most able lawyers to be selected for the judiciary.

Ms. Lindsey Park: I think MPP Mitas is still on the line, and she'll have a follow-up question.

Specifically, one part of the bill I'm really proud of is that we're making it mandatory that there is an annual publishing of diversity statistics—of course, it's up to an individual applicant to decide what they disclose about their background—but of the information that is disclosed, that there be an annual report by the JAAC on the types of candidates who are applying and then eventually being recommended and appointed. I think you referenced in your remarks that you are in favour of that, but I just wanted to hear from you on that.

Mr. Anthony Moustacalis: Yes, we are. We agree with the formalization of that process. My understanding is that this was being done informally before, and it was also a legislative mandate that the committee consider diversity and equity considerations in any event. But we agree that that aspect of the bill should be included.

Ms. Lindsey Park: I'll turn it over to MPP Mitas, Chair.

1150

The Vice-Chair (Mr. Vijay Thanigasalam): MPP Mitas.

Miss Christina Maria Mitas: My question is also for Anthony Moustacalis. Forgive me, everyone, for giving a quick shout-out on our shared Hellenic heritage.

Mr. Anthony Moustacalis: *Remarks in Greek.*

Miss Christina Maria Mitas: *Remarks in Greek.*

It's very nice to see you.

I noticed, as my colleague MPP Park said, that you stated that while our judicial system is widely recognized as representing the gold standard of systems, you have acknowledged that there's always more work to be done on increasing diversity, and in that vein, you said you support data collection.

So my question on this is: Would data collection that is both collected and used in a timely and appropriate manner not work as a safeguard to ensure that the government was fulfilling our stated diversity goal? Essentially, would data collection not act as a safeguard that equals transparency and accountability in this case?

Mr. Anthony Moustacalis: Sure, to an extent, but you need to collect additional data.

This is really a pipeline issue. There's certainly more to be done. For example, the failure to properly fund legal aid, historically, over the years has led to a reduction of lawyers, especially diverse ones—gender balance and so forth. You're drawing from a pool that has experience in criminal law, and that's what's causing this—also, reach-out to law schools and so forth would encourage. So if it's a pipeline issue, collecting of data needs to be broadly cross-sectional, aside from just what comes through JAAC.

Miss Christina Maria Mitas: I agree completely. I was a high school teacher in my former life, prior to politics, and I've seen that in education systems. When we ensure that we are doing the data collection and we're doing it in a way that is specific and targeted, we actually

do see differences in terms of our diversity goals and outcomes.

So you do agree, then, that if we do this the right way, then it will be a tool to make sure that we are increasing diversity. Again, the government is being held accountable. So for people who are fearful that there are nefarious things at play here, any government, under this system, as long as it's done the right way in terms of data collection—that we are held to account by the legal profession, as well, which has great advocates such as yourself in it.

Mr. Anthony Moustacalis: Sure, I agree with that. But again, recall that the thrust of our submission is that there's an appearance-of-fairness issue in that you need to maintain the independence of the committee. That can be done by ensuring that the other points I mentioned, such as ensuring that control with respect to selection of committee members, the term of the committee chair, the confidentiality and the number of recommended candidates, are addressed, as well.

Miss Christina Maria Mitas: I agree, and I think this would be tackled by that transparency piece.

On another note, our Attorney General and the government—we feel that we've made significant progress in the past year in modernizing our justice sector. Can you please share which of these efforts you have found to be helpful for your members' practices and clients?

Mr. Anthony Moustacalis: Certainly, the use of electronic means such as virtual court appearances has been tremendously successful in some ways, but in other ways, it's like patching on electronics to an old system. For example, in court scheduling, it's nicer to wait in my home office while my case gets reached, but it would be better if there was an electronic scheduling that could be done by clerks and so forth—and in fairness to this government, the federal government has to change some things in the Criminal Code, which I understand it's doing, to allow clerks to do things. So it's a joint process there.

Miss Christina Maria Mitas: I agree with you wholeheartedly on that.

In terms of the modernization, you said there have been good things about it.

Would you agree that this modernization process also ensures that there is more access to the legal system and equity?

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended.

Now we'll move on to the official opposition for seven and a half minutes. MPP Bell.

Ms. Jessica Bell: I just want to finish off by asking Mr. Green and Mr. Young if they had any additional comments, because I think they were cut short last time.

Mr. Rick Green: Don, I think you had a few final things to say.

Mr. Don Young: Local control is really important. According to Abha Joshi-Ghani, a senior adviser at the World Bank, where local control doesn't exist, cities will fail.

I think Torontonians want a say in where they live and work and play. This is our city, our home, and we wonder why Toronto should be turned over to developers to build a city that no one will want to live in. I think that's basically what we're doing as FoSTRA—we're just trying to get some sort of say in how things happen, and that attempt is consistently being frustrated.

Ms. Jessica Bell: Thanks so much for coming in and sharing your concerns. I really appreciate it.

I'm going to hand over the rest of my time to MPP Singh.

The Vice-Chair (Mr. Vijay Thanigasalam): MPP Singh.

Mr. Gurratan Singh: My initial question will go to Anthony.

The current JAAC system is the gold standard, correct?

Mr. Anthony Moustacalis: Yes, subject to some modernization in the sense of letting people apply electronically, instead of sending 14 copies by fax or courier.

Mr. Gurratan Singh: And the changes being put forward by the government, you would agree, reduce the independence and open up the door to partisanship.

Mr. Anthony Moustacalis: They do, and they reduce the appearance of fairness; correct.

Mr. Gurratan Singh: And the issues around diversity could have easily been addressed in a way that didn't hurt the perception of fairness and impartiality in our judge selection system.

Mr. Anthony Moustacalis: Our position is that the current system fosters diversity, but that the problem is a pipeline issue. That can be solved over time by reach-out to the legal profession, by properly funding legal aid so that marginalized people get the representation they need, which then creates a system where there are lawyers who are available who have the experience necessary in order to go to this—

Mr. Gurratan Singh: You mention legal aid. Under this Conservative government, there's a one-third cut to legal aid which devastated people's ability to access justice. Would you agree with that?

Mr. Anthony Moustacalis: That's true. In fairness, the minister did manage to forestall an additional cut, for which we're grateful, but certainly it's the uncertainty surrounding continued legal aid funding that's very problematic.

Mr. Gurratan Singh: So, with your submissions, if we want to properly address diversity, instead of bringing in a process that is going to make the selection of judges more partisan—it's actually by making more equity in our legal system, by properly funding legal aid. That's probably a far better way of creating diversity on the bench. Is that fair to say?

Mr. Anthony Moustacalis: That's right, together with outreach to the law schools and also to other communities, to encourage a diverse applicant going to law school and then having legal aid and other supports in place—to know that when women, for example, or men, want to take parental leave, that there's going to be support for that in a private system like this.

Mr. Gurratan Singh: It's also important to note that what we're seeing here is that, if you look at it just based

on what you're describing, you have seen a Conservative government cutting legal aid—they maybe didn't do the additional cut, but the cut was still devastating—then bringing in changes to address the diversity of judges. It's kind of like they're creating their own crisis here, because if they just properly funded legal aid from the get-go, then you would have that pipeline for more diverse judges later on. Is that fair to say?

Mr. Anthony Moustacalis: Sure, but, sadly, this isn't the only government that has reduced legal aid over the years and hasn't followed up. It is not enhancing diversity by cutting legal aid, because you won't get lawyers going into this line of work. It's very troubling.

Mr. Gurratan Singh: I would agree. I think that the previous Liberal government also gutted legal aid and didn't provide appropriate funding, either, towards ensuring there's access to justice in our province.

If we can continue on this line of questioning—when we talk about judges, the strength of our judiciary really upholds our democracy. Is that fair to say?

Mr. Anthony Moustacalis: Entirely.

Mr. Gurratan Singh: And even the perception of that system being eroded is going to impact people's faith in not just the courts, but overall in our democratic systems.

Mr. Anthony Moustacalis: That's true. Part of the problem is, when you have a broad ability to choose from a number of judges and you don't know where on the list somebody was selected and whether the best candidate was selected, then it creates an appearance of partisanship—somebody must have known somebody. And then the gossip circles start, which we're all familiar with in the various professions that we're in.

Mr. Gurratan Singh: The Attorney General, on TVO, said that there are two reasons for—in describing the selection of judges, he said, "The second part is for me to pick people who, you know, reflect some of the values that I have, and I want to put some of those in the regulations so people understand."

I think it's fully inappropriate for judges to reflect the values of the Attorney General. The judges should reflect the independence and the values of our independent justice system. Would you agree with that?

1200

Mr. Anthony Moustacalis: Well, I'm a lawyer, so I'm going to say it depends. If the Attorney General's values—I'm speaking generically here, to include this Attorney General—are the ones that reflect diversity, then that's a good thing. But you won't have any of these problems with partisanship if you follow an independent committee's recommendation.

Mr. Gurratan Singh: So to put it a bit more broadly, hypothetically, one Attorney General could have values that are in line with a democratic belief, but another Attorney General could have less commitment to those values. That's why it's better to just put that value system into an independent, non-partisan selection process. Would you agree with that?

Mr. Anthony Moustacalis: Well, that's right, unless you subscribe to the view that power without caprice is mere duty and you should be allowed to exercise your power however you want. But that's not the position of the organization I'm here for or our society's, which is that you want independence in the selection process of persons such as judges. That's best done through an independent process that not only is, but appears to be, independent.

Mr. Gurratan Singh: How else have members of the bar or members of your organization responded to these changes to the JAAC—

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; the time has ended.

We'll move on to the independent member for four and a half minutes. MPP Collard.

M^me^ Lucille Collard: To the Advocates' Society and Mr. Moustacalis: I totally take your point, and it has been said a lot that the appearance or the perception of independence is just as important as having an actual process that is independent.

There have been a lot of concerns around the fact that now, the Attorney General will be given a list of six names, and then he can get another list of six names—which could be endless.

The Ontario Bar Association has proposed to make an amendment that would require the Attorney General to publish in its annual report the number of times that it returned the list to get another one, to be a way to address that appearance of a shopping list. What are your comments? Do you agree that that would address the issue? And if not, why not?

Mr. Anthony Moustacalis: Yes, our position is that there should be a requirement that any Attorney General who asks for supplemental numbers—that should be reported.

The issue with the numbers is, you have to remember you're selecting from a relatively small pool of lawyers who are able to do this kind of work, and so you want the top small percentage who are exceptional at this. That's why any specific number like six may be too large, which is why we recommend that the committee have the ability to limit the numbers where practicable.

M^me^ Lucille Collard: The Attorney General, actually, the way the law is written, is getting at least two names; it doesn't mean that he's only getting two. So I think that there is definitely a will to expansion on that.

The Attorney General also selects the majority of the JAAC members, and now has required the three organizations to submit not only one name, but three names, which of course operates like an increase in the number of people he personally can choose. How is that a problem?

Mr. Anthony Moustacalis: It's a problem in two ways: because it could be partisan, but as we say in our submission, it also creates the appearance of partisanship, on its own and together with the other abilities to shape the committees, such as the length of term of the chair, confidentiality and the expanded numbers and input.

M^me^ Lucille Collard: I don't have any more questions, Mr. Chair.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you to all the presenters and committee members.

Seeing the time, the committee now stands in recess until 1 p.m.

The committee recessed from 1205 to 1300.

The Vice-Chair (Mr. Vijay Thanigasalam): Good afternoon, everyone. I'll call this meeting to order.

I see that MPP Hassan has joined the call. Can you please confirm that you are present, that you are MPP Hassan, and whether you're currently in Ontario?

Mr. Faisal Hassan: My name is Faisal Hassan, and I'm here in the riding of York South–Weston, Toronto, Ontario.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

We are continuing public hearings on Bill 245, An Act to amend and repeal various statutes, to revoke various regulations and to enact the Ontario Land Tribunal Act, 2021. Our presenters have been grouped into threes for each one-hour time slot. Each presenter will have seven minutes for their presentation, and after we have heard from all three presenters, we'll have 39 minutes of questioning divided into two rounds of seven and a half minutes for the government members, two rounds of seven and a half minutes for the official opposition members and two rounds of four and a half minutes for the independent members.

SOCIETY OF PROFESSIONAL ACCOUNTANTS OF CANADA

COUNTY OF CARLETON LAW ASSOCIATION

ONTARIO EXPROPRIATION ASSOCIATION

The Vice-Chair (Mr. Vijay Thanigasalam): Right now, we have Zubair Choudhry, president of the Society of Professional Accountants of Canada, Ontario office. You have been allotted seven minutes for your presentation. You may begin.

Mr. Zubair Choudhry: Good afternoon, distinguished members of this committee. Thank you for the invitation to appear before you today. My name is Zubair Choudhry. I am the president of the Society of Professional Accountants of Canada.

The Society of Professional Accountants of Canada is a private professional organization established in 1978 for the ongoing education and regulation of its members. Since 1989, SPAC has been operating two certification programs: the registered professional accountant and accredited professional accountant programs. Both designations are subject to registered certification mark under the Trademarks Act.

Candidates with post-secondary education who complete the required courses and successfully pass examinations may be admitted to the society and are licensed to use the corresponding designations, RPA or APA, in the delivery of accounting services to the public. Sheridan College, Durham College and McMaster University are providing and continue to provide the RPA certification pathway for college and university students. The society has also signed international mutual recognition agreements with counterpart organizations in Australia, Pakistan and the United States.

The society has members across Canada and internationally with proven capability in their chosen profession. The society also provides opportunities for new Canadians who have the required accounting qualifications and expertise from their jurisdictions to practise as professional accountants under the RPA or APA designation upon successful completion of their competency exams.

A member of the society also has the singular distinction of providing valuable, cost-effective and reliable services to small and medium-sized businesses. They play an important role in helping local entrepreneurs promote economic growth and job creation in their communities.

Schedule 7 amends the Public Accounting Act to dissolve the Public Accountants Council for the Province of Ontario, which currently governs public accounting under the act, and transfer the governance of public accounting in Ontario to the Chartered Professional Accountants of Ontario. The Public Accounting Act also amends the Chartered Professional Accountants of Ontario Act to reflect CPA Ontario's governance rules.

While schedule 7 does not propose to amend, repeal or revoke the legislative provisions of the Public Accounting Act, we are deeply concerned that RPAs and APAs will inadvertently be obliged to become members of CPA Ontario or be under the impression they must do so. At issue and of grave concern to us is the potential confusion between professional accounting and public accounting in relation to the exception to public accounting under subsection (3) of section 2 of the Public Accounting Act, which states that a public accounting licence is not required to perform a compilation engagement, provided that it can reasonably be expected that all or any portion of that compilation or associated material prepared by the member providing a service will not be relied upon or used by a third party, whether or not the compilation or associated materials are accompanied by the prescribed notice to reader.

I am here to emphasize that RPAs and APAs prepare financial statements with a compilation report accompanied by a notice to reader that are acceptable to the Canada Revenue Agency, the banks, and their clients, whereas public accountants provide financial information with audit and review engagements relied upon by third parties and the public.

CPA Ontario has introduced the compilation engagement standard CSRS 4200, which will be implemented in December 2021. We are already preparing ourselves for the adoption of these newly set standards by CPA Ontario. However, we deserve continued assurance that the proposed amendments to schedule 7 will not extend the powers of CPA Ontario, allowing it to infringe upon the rights of RPAs and APAs to perform a compilation engagement.

The president of CPA Ontario yesterday acknowledged that their organization has no intention of regulating the

work of RPAs and APAs. Nevertheless, we are concerned that the situation may change in the future, and we are therefore requiring assurances to protect RPAs and APAs. We believe that the regulatory and governance framework regarding our professional accountants should be protected. We have recently asked the Attorney General of Ontario to ensure that a drafting of the new legislation takes into consideration the need to differentiate between public accountants and professional accountants. Greater clarity on the government's intention is required to preserve and protect the well-established rights of the society to regulate the RPA and APA designations, as it has done so ably since 1989, to provide great value to Ontarians.

As a first practical step, we submit that the Chartered Professional Accountants of Ontario Act be renamed as the chartered public accountants of Ontario act to avoid confusion. Such an initiative would pave the way for the government of Ontario to enact legislation respecting the society of professional accountants of Ontario to grant to its registered members the exclusive right to use the designations RPA and APA, and to grant that it disciplines its members. This would contribute to delineating the rights and obligations of public accountants and professional accountants.

For greater certainty, we ask the government of Ontario to amend the Public Accounting Act by adding a fourth paragraph after paragraph 3 of subsection (2). The fourth paragraph would state: "The act does not affect the interference with the right of any individual who is not a member of CPA Ontario to (a) use the designation of registered professional accountant or accredited professional accountant if that designation is granted by the Society of Professional Accountants of Canada, and (b), perform a compilation engagement that falls within paragraph 3 of subsection (2)."

Thank you very much. I would now like to allow you to have any questions—

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies. Thank you for the presentation. The time has now ended.

Now we will move on to our next presenters. We have two representatives from the County of Carleton Law Association: president Craig O'Brien and secretary Andrew Ferguson. You have been allotted seven minutes for your presentation. You may begin.

Mr. Craig O'Brien: On behalf of the CCLA, I'd like to thank the Chair and the committee for granting us the opportunity to speak to you today. As was stated, I am Craig O'Brien, the president of the County of Carleton Law Association, and I'm here with Andrew Ferguson, the secretary of the CCLA.

I'll briefly introduce you to the CCLA and our interests and then discuss issues surrounding committee composition, before ceding time, as it were, to Andrew to provide our perspective on the Attorney General's discretionary powers to reject a list recommended by the JAAC.

The CCLA is comprised of 1,600-plus lawyers, judges and paralegals predominantly from the Ottawa area. The CCLA is a component member of the Federation of Ontario Law Associations. Most of our members are also members of the Ontario Bar Association, and virtually all, except the judiciary, are licensees of the Law Society of Ontario. We are a non-partisan association of lawyers, judges and paralegals.

1310

Ontario's judiciary has a stellar reputation for competence and independence. Our current appointments process is copied and mimicked around the world. However, we do accept the Attorney General's view—one that's widely shared—that the stated intention of this legislation to streamline the appointments process is a necessary and valid one. Too many vacancies exist presently, and the province would benefit from a more streamlined system to appoint them. CCLA further believes that the amendments set forth will assist in accomplishing that goal.

I would like to reiterate that the CCLA's only interest here is to help enhance what we view as an already great system. CCLA is cognizant that we represent an important—but not the only—stakeholder in this system. We were quite concerned with earlier iterations of this legislation, and are heartened that many of our concerns have been addressed.

Our main concern is to be able to balance transparency and the discretion which, through the democratic process, is necessarily vested in the Attorney General of Ontario—it has been, it is in this legislation, and it will be going forward—with the ability to fetter that discretion appropriately so that the public can maintain confidence in our system.

The issue that I will discuss is the committee composition and the ability of the JAAC—that is, the ability of the Attorney General, going forward—to obtain three names from each of the Ontario Bar Association, the Law Society of Ontario and FOLA, and to select one from that. We do share the view that this could cause concern at various times with an Attorney General having the ability to select members of the advisory committee without view to balancing for gender, linguistics and racialized communities, to just name a few. That concern needs to be balanced, however, with democratic rights and the democratic authority of the Attorney General.

It's our perspective that the OBA, FOLA and the law society will vet the people they put on their list that the Attorney General ends up selecting from, and that is an important protection that needs to remain within this legislation. We do expect FOLA, the OBA and the law society to put forward candidates that fulfill the various requirements for gender balance and diversity in practice areas, and it's very important to have members from those associations be part of these committees, because they're where the rubber meets the road. They know the candidates, and they can vet in a manner that, without them, would blind the Attorney General to the skills required and the balance required in candidates being elevated to the bench.

One potential improvement in this legislation: There could be a fourth category whereby members of the public

apply to be part of the JAAC, which would be aside from the Attorney General's own discretion to name its own members.

But we need to be cognizant that this is an advisory committee and, constitutionally, the power to name judges rests with the Attorney General.

With that, I'll pass it on to Andrew.

Mr. Andrew Ferguson: I'm going to briefly address what is in section 43.1(7) of schedule 3, and that is the Attorney General's ability to reject the ranked list of six candidates for an appointment. The legislation as drafted will permit the Attorney General the unfettered discretion to simply reject the lists over and over and over again, if he or she feels that there is no candidate on that list who they feel should be appointed.

The problem with the unfettered discretion is twofold: (1) It allows the Attorney General to exercise undue control over the committee, and (2) it raises serious concerns about patronage appointments, as an Attorney General can, in theory, simply require new lists over and over and over again until he or she has someone on the list they would want to appoint. One truly hopes that this is not the case and that the Attorney General would not use their power unreasonably. One way to safeguard against that possibility and to make the Attorney General more accountable when rejecting a list is to provide that the Attorney General must publish when he or she has rejected the committee's recommendations—and not only publish when that has been done, but publish why it has been done, and publish why with sufficient reasons and detail, as opposed to a blanket statement saying the list has been rejected. There must be some sort of rationale behind the rejection of the list. By publishing why it has been done, it holds the Attorney General to account, and it allows the committee to get a better feel as to what the Attorney General is thinking in terms of the next judicial appointment.

In closing, that's the—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time has ended.

Now we'll move on to our next presenter, Shane Rayman, past president of the Ontario Expropriation Association. You have been allotted seven minutes for your presentation. You may begin now.

Mr. Shane Rayman: Good afternoon. I thank this committee for hearing me today. I am a lawyer who has practised in the area of expropriations law for over 20 years. I work for both property owners and expropriating authorities in this process. I have been a board member of the Ontario Expropriation Association for over 15 years, and I'm a former president. I have been asked by the association—I'll call it the OEA—to represent it today in presenting before this committee.

The OEA is a group of professionals who work in the area of expropriation. We have over 400 members, who include government representatives, real estate appraisers, planners, lawyers, accountants, economists and many other professionals in the area. As the OEA has professionals who serve both government and property owners, we really don't take a side between government or the owner, but rather favour an efficient, transparent, balanced and predictable process for expropriation in Ontario.

Although Canada does not have a constitutional protection to protect private property, it has a strong and well-established common-law tradition that ensures full and fair compensation to expropriated owners, to protect the security of private property in Ontario while establishing a fair balance between the owner and government.

As Mr. Justice Rand, writing for the Supreme Court of Canada, wrote in 1949—he summarized the process and the common law by stating: "A compensation statute should not be approached with the attitude that Parliament intended an individual to be victimized in loss because of the accident that his land rather than his neighbour's should be required for public purposes."

To further this goal, Ontario, like all other provinces in Canada, has established an Expropriations Act that provides guidance on this process and ensures a fair balance. The act is an act by government to protect individual landowners from the extraordinary powers of government. Expropriation is what the Supreme Court of Canada called one of the ultimate exercises of government authority. As a result, the Expropriations Act has remained a strong piece of legislation that has been undisturbed since 1967, when it was created. The act was created after a royal commission into civil rights in Ontario investigated expropriation, and then a law reform commission was constituted to provide recommendations to the Legislature for this act.

The OEA has reviewed and considered the proposed legislative changes under Bill 245. The OEA does not take objection to a number of changes and believes that those relating to hearings of necessity and changes to the Board of Negotiation reflect a refined and updated procedure that is consistent with accelerating access to justice. This doesn't mean all members agree or disagree, but I'm speaking for the OEA collectively.

1320

The bill also proposes changes to provisions of the Expropriations Act that affect substantive rights to compensation. Notably, these sections relate to the provision of interest on outstanding compensation and the reimbursement of legal costs. The OEA sees these substantive changes, which have not taken place to the act over the first 53 years, as a degree of concern. It also identifies provisions relating to substantive changes that are now going to be subject to regulation that can be passed by cabinet and are not entrenched in expropriation legislation.

It is the OEA's recommendation that these changes to the Expropriations Act on the substantive portions are not made at this time, but rather, if such changes are to be made, they are done with the benefit of further consultation, a transparent process, the detailed involvement of stakeholders and what in the past has been the possibility of a law reform commission. This is to ensure a balanced and transparent process.

We note that when changes to expropriation legislation have been made in other provinces, they have been made

with the benefit of recommendations of a law reform commission. This enables the public to have a say and to know what is being relied upon by government for these changes.

It is the OEA's view that substantive protections to property should only be changed with exceptional care and balance to ensure that property ownership rights in Ontario remain strong. This would also include a more in-depth analysis on issues like the applicable rate of interest, which for the Expropriations Act is intended to stand in place of real estate capital that's being taken away by government. It's for that reason that our act gives interest to some damages while for other damages it doesn't pay any interest at all.

We approach the interest issue on compensation as a substitute for property that is being lost, and for that reason, the current rate of, let's say, bank interest may leave owners in a worse position than they would be in if their property wasn't taken away, if the property market is rising and they've lost the real property that would be rising with it. I'm happy to elaborate on this further.

There is also the concern that if the government has the ability to make substantive changes to compensation through regulation, it could result in additional uncertainty and corresponding risk to property ownership in Ontario. Having strong and entrenched legislation to protect compensation and the rights of owners mitigates this risk and protects property for everyone in our province. It is for that reason that the OEA is not in favour of regulations being changed without legislative approval and recommends a more detailed process that could involve a law reform commission. Even if there is flexibility to interest rates under the act, it should be entrenched in legislation. That has been done in other provinces.

I'm very happy to answer other questions of the committee relating to these submissions, or if you have any other questions about expropriation. That's why I'm here today. Thank you.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you for your presentation.

We'll now move to questioning. This round of questions will start with the official opposition, for seven and a half minutes. MPP Singh.

Mr. Gurratan Singh: My first question is going to go either to Craig or Andrew at the CCLA.

The JAAC is the gold standard of judge selection in the world, quite frankly. Is that fair to say?

Mr. Craig O'Brien: Yes, it is exported and mimicked globally. Countries and regions that want to have a good judiciary follow our model.

Mr. Gurratan Singh: So you agree that this is considered one of the best in the world.

The changes being put forward by the Attorney General—it's being suggested that they are for the purposes of increasing diversity. Is it fair to say that there's probably another way we can increase diversity on the bench, without having to impact the integrity of the judicial appointments process?

Mr. Craig O'Brien: I'm not sure I completely understand the question. There would be other means. The ill that seeks to be cured here is too many judicial vacancies and the inability to appoint in a rapid process. Yes, there would be alternative means to speed up the process.

With respect to diversity issues in particular, the composition of the JAAC is partly from the Attorney General's own appointments and partly from other stakeholders providing their nominees from which the Attorney General can choose. I'm very confident that FOLA, the OBA and the law society will be putting forward names that they believe fulfill the overall criteria, and any Attorney General now or in the future will have their own names, their own nominees. So to have the—

Mr. Gurratan Singh: For example, FOLA provided evidence yesterday, during the first day of hearings.

Mr. Craig O'Brien: Yes.

Mr. Gurratan Singh: The Conservative government has been putting forward that one of the reasons, aside from the need to fill judicial vacancies quickly, is the need for more diversity on the bench. That is the Conservative government's position—to say, "We need more diversity on the bench, and that's another reason why we need to bring in these changes."

Groups like FOLA have had issues, based on their evidence, towards this process, because they're saying it's going to impact the independence of our judge selection process, even in how it's currently being worded and how it has been currently suggested.

Do you agree that we can fix—even in the filling of judges—these ills in a manner that doesn't also negatively impact the perception or reality of the independence of the JAAC?

Mr. Andrew Ferguson: I believe we can. I believe there probably are other mechanisms by which diversity on the bench can be increased. By all means, those methods should be explored. I believe you've heard from a lot of equity groups during these hearings, and those submissions should be considered very carefully.

In terms of whether the changes really affect the independence of the judiciary—we have to refer back to what the current Courts of Justice Act says, and the present changes. The initial changes that were put forth were quite drastic, and the CCLA was very much opposed to that first round of changes. That has now been clawed back tremendously. So now the changes are not as wide-reaching as they initially were, and they do not differ too much from what is already the present standard.

Mr. Gurratan Singh: But you would agree that the perception of the judicial appointments process is arguably just as important as the actual function of the JAAC? Is that fair to say?

Mr. Andrew Ferguson: I agree, yes.

Mr. Gurratan Singh: We've heard a lot of evidence from a lot of different folks. This morning, we heard from the Criminal Lawyers' Association and from SABA, the South Asian Bar Association. We heard from FOLA, who said there are a lot of folks in the bar right now who have an issue with these changes, and they're calling it out to

say it's going to be—and I'll quote directly from some of their testimony.

There's an article that came out in the Toronto Star where they said—this is from the Canadian Muslim Lawyers Association: "We see this as a power grab dressed up in the very thin veneer of purported diversity." That's how he's describing the changes being put forward. How do you feel about that position?

Mr. Craig O'Brien: This, overall, is an advisory committee. The constitutional obligation to appoint rests with an Attorney General, and that is grounded in our democratic principles. The fettering of that discretion is contained within the prior legislation and retained within this legislation.

We are very confident that the candidates—all three candidates from each—put forward by these associations will be top-tier individuals, and the additional discretion that the Attorney General will have to populate that committee can be questioned in real time.

You will hear from the CCLA if we believe any Attorney General present or future starts stacking the JAAC in order to get the candidates they want or takes steps to undermine the diversity that the public is looking for on their bench. We will squawk if that happens. But these changes, in our view, do fall within the realm of the acceptable.

1330

The current system does have the risk of each of the component associations putting forward certain individuals, but then when you look in the broader context of the committee, the diversity may not be there. Adding the discretion for the Attorney General to populate it in order to promote diversity is a laudable goal, and we, at a legislative stage, need to take the view that any Attorney General, present or future, will be doing this in good faith. We have no reason, as a non-partisan association, to question the good-faith measures that the current Attorney General is taking in this regard.

Mr. Gurratan Singh: The Attorney General, in an interview with TVO, stated the following, and I'm reading from the transcript directly: "There are two parts to—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Next, we'll move on to the government members. MPP Skelly.

Ms. Donna Skelly: My question is to the Carleton law association.

When the Attorney General receives a list of recommended candidates, the Attorney General has and always has had the ability to reject the list and to ask the committee to provide him with a fresh list of recommended candidates—essentially, the next in line.

My question to you is: Why should the Attorney General retain the ability and discretion to reject the committee's classifications or recommendations and require that a fresh list be provided?

Mr. Craig O'Brien: It rests right back in the democratic system. Again, we have an advisory committee, we have intentional fettering of an Attorney General's discretion, but ultimately, they retain the constitutional obligation to make these appointments. In such a system, any Attorney General has the obligation to take advice, and the democratic institution requires that the Attorney General make the choice.

So from that perspective, the ability of an Attorney General to reject a list and seek a new list—again, depending on who the Attorney General is in the future—can go to fostering increased diversity or can go the nefarious direction. But as a system, the Attorney General will need to retain discretion to be able to reject a list and request a new one.

Mr. Andrew Ferguson: It's important to note that you're right that the discretion to ask for a new list is nothing new and exists prior. I think one of the main goals that it accomplishes is to provide that democratic counterbalance to the independent committee. If we look at it as balancing the independence of the committee and the independence of the judiciary versus the democratic nature of the province, we have to keep that balance. If we have a committee on the one hand selecting—"Here are our six ranked candidates"—that cannot and should not be imposed upon the public, and that's why they would have the Attorney General with the counterbalance to offset that. You look at it in tandem and that it works together. I think that's why it has worked so well for so long.

Ms. Donna Skelly: One of the great changes that is coming from this bill is requiring the committee to publish a report with diversity statistics of candidates at each step of the appointments process, from applying, to interviewing, to recommending, to appointment. In your opinion—and I'll ask Craig and Andrew again—what purposes are there in the committee publishing an annual report regarding diversity statistics regarding all the applicants?

Mr. Craig O'Brien: Well, for starters, the public will need to know the characteristics of the individuals who are putting their names forward in order to determine the outcome and whether diversity efforts are bearing fruit or not. It also assists in the democratic process; making it public will alert the public to a big difference, statistically, between the number of applications from a certain group to the number of judges appointed. If we have a certain group of persons who are applying for elevation to the bench consistently and are never getting there under a particular Attorney General, I would expect the Toronto Star to be writing articles about that very quickly, and I would expect organizations such as ours to be standing up on our soapbox and making sure the public is aware that the system is not working. So having it at every stage is important. It's important for the democratic counterbalance to this process, and it is a very welcome change.

Mr. Andrew Ferguson: And I think the overall advantage of that is having the data to collect. If there's data there, then we have better knowledge as to what's happening, and then further changes can be made in the future, depending on what the data shows.

Ms. Donna Skelly: I lost you there, but it could be my unreliable service.

You were already answering this, but I want to get it on record. You spoke to this already in your conversation with MPP Singh, but to confirm your opinion—in your opinion, is asking the committee to provide the Attorney General with a list of six or more recommended candidates, as opposed to two or more, a reasonable number, and if so, why?

Mr. Craig O'Brien: In our view, six is a reasonable number. It enables the Attorney General to select candidates with particular skills with reference to diversity goals, linguistic goals, but also area of practice. There are regions where the vacancy is in a particular area, and you need a new judge with expertise.

Frequently, with there just being two named, it overempowers the advisory committee and actually removes the discretion of the Attorney General, because they don't have enough options and therefore are more inclined to reject a list and require a new one.

Mr. Andrew Ferguson: I agree. I don't know why the magic number of six was chosen. I do know the legislation says "at least six," so I suppose more could be put on the list. Especially today, with specialized areas of law, with needs of diversity on the bench, there needs to be a sufficient list for the Attorney General to choose from so we don't have, as what could happen now with a selection of two—and the Attorney General asking for a new list. I think the more you have on that ranked list, in theory, the less likely it would be that the Attorney General would be requesting a new ranked list.

Ms. Donna Skelly: I've spent a lot of time in courtrooms—not as a lawyer; my background is in journalism. I've covered a lot of trials, and I've covered a lot of stories where trials were delayed or thrown out because of the delay in the process.

One thing I'm really proud of with this government, with our Attorney General, is the significant progress that we have made in the past year in modernizing Ontario's justice sector, making it easier, faster for people to resolve their legal issues.

I'm asking if you could share some personal examples, efforts that you have found to be most helpful for yourselves, for your members' practices, for your clients.

Mr. Craig O'Brien: From the CCLA's perspective, there has been great progress in the last year in this regard—it is an unfortunate, pandemic, reason for this. I can't—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Now we will move to our second round of questions. We'll start with the government members, for seven and a half minutes. MPP Kanapathi.

Mr. Logan Kanapathi: Thank you to all the presenters.

My question is for the president of SPAC, Zubair Choudhry. Thank you for coming to share your organization and expertise and insight into the profession.

I'm not an accountant, but I have a financial background, before I came to public life—economic and financial planning. I understand, for many, the different acronyms and titles can be confusing.

Can you explain to the committee the difference between public and private accounting, and what the difference is between your organization and CPA Ontario? That's my first question.

1340

Mr. Zubair Choudhry: It's a very good question that you asked me.

I think that's why we need clarity. If you ask me what is differentiating RPA from CPA—first, we have to differentiate the CPAs. There are two kinds of CPAs after amalgamation. If you look at that, there are only less than 10% of CPAs who are licensed public accountants who can perform the auditor review engagement for a business's financial statement.

Then, the rest of them are professional accountants. That is where RPAs and those CPAs who are not licensed public accountants are sharing that responsibility, providing those services to businesses and taxpayers—doing their bookkeeping and accounting, filing their taxes and preparing that notice-to-reader compilation statement, which most small businesses need when they go to the bank, when they need to get a loan, or when they file their taxes.

Those compilation statements which we do, for which we are authorized under the act now—the Public Accounting Act, 2004, allowed RPAs to prepare the financial statements with compilations before, and this is what we are asking the current government and the Attorney General: to let that be, and make it more clear that CPAs and RPAs both can do compilation reports and continue giving those services to the small businesses, especially where, post-pandemic, the small business are hurt too much and it's putting a little strain on them. Who can hire as an accountant and who they can hire is also going to be very stressful for them—to face that reality. This is why we need clarity from the Attorney General, to make clear the distinction between public accounting and professional accounting.

Mr. Logan Kanapathi: Thank you for that answer.

You have raised the concern that these proposed changes will inadvertently obligate registered public accountants, RPAs, and accredited professional accountants, APAs, to become members of CPA Ontario. The proposed change in this legislation doesn't in any way change the Public Accounting Act. So can you explain why you think this change, which doesn't impact the existing act, would require your members to become members of CPA Ontario?

Mr. Zubair Choudhry: It's a very good question.

Obviously, after giving all the authority of the public accounting profession for setting the standards and setting the competency for professional examinations—if everything will be given to CPA Ontario, then that means the oversight body will be dissolved, so that means there is no public accounting body overseeing the role of the CPAs and what they're doing.

That is where we are asking them—under the current Public Accounting Act, the compilation is outside of the domain of licensed public accounting, so keep it that way, extend that one and clarify that one. There are some RPA members, but there are some non-RPA members, as well—hundreds and thousands of them, all over Canada—who are providing similar services. We believe that CPAs may extend their power. After getting all that power, after dissolving the oversight body, they may bar other accountants, so that they cannot do the compilation statements, and that will affect small businesses getting affordable services and quick services. This is the main concern we have.

Mr. Logan Kanapathi: That's why I'm asking this question. We want to hear your voice, to be heard on the record—the little guy.

My follow-up question: What kind of professional development programs does your association offer to its members, and how is that different from CPA?

Mr. Zubair Choudhry: I would love to explain that one.

In 2019, RPA did a community consultation with industry leaders, academics and headhunters. We wanted to find out, after amalgamation, what is that which is missing in the industry of the accounting profession, which we need to prepare in our education program. At that point in time, after consultation, academics and industry told us that they need accountants whose education is relevant, whose education is inclusive, and who are also ready with technology, and who can also get the education and training very cost-effectively.

We do not need to teach extensive knowledge to every accountant to become a CPA. The CPAs are doing a wonderful job. We commend them for the knowledge they have and the expertise they have to provide services for large corporations and medium corporations in the area of audit and review. But just to provide a simple financial statement for a mom-and-pop shop, you don't need extensive education. You don't need extra time and savings to do those studies. That is why our core education program, which is based on financial accounting, management accounting, personal and corporate taxes, finance foundation and technology and data analytics, is the future.

Basically, the RPA is preparing the future accountant, the Z generation, the children who are in high school today. When they come out of high school and they want to choose a profession, we want to make sure that they have a choice. If they do not want to become a CPA or they cannot become a CPA, they have an alternative choice: They can become RPAs. By not giving the recognition to RPAs, we'll be depriving the future younger generation of choosing the profession of accounting. That is why it is very important that RPAs get recognition. Let them do the work they are doing already.

The Vice-Chair (Mr. Vijay Thanigasalam): Twenty seconds left. MPP McDonell.

Mr. Jim McDonell: Andrew, just talking about some of the issues around trying to replace the judges quickly—is that an issue that you've run across, the delays?

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time has ended.

We'll move on to the official opposition for seven and a half minutes. MPP Hassan.

Mr. Faisal Hassan: Thank you to all presenters.

My questions will be directed to Zubair and also Shane Rayman. I'll start with Shane Rayman first.

Expropriations happen most of the time. I know it happens in many communities across the province. You mentioned that this bill does not protect compensation—fair and balanced compensation. Could you, on the record, elaborate on why that is the case?

Mr. Shane Rayman: I should clarify my comments. We are not stating that the substantive changes to the act do not protect compensation; we are stating that it's being done without a full, balanced and transparent process to change substantive requirements that have not changed in 53 years, and that runs the risk—we don't really know whether it would change that balance or not because the changes are not being made as part of the legislation, but rather the legislation is having the changes deferred to regulations that can be passed by cabinet.

I don't want to infer that it's unfair. It's just that it leaves the door open to a change being made in the future that does not have the due process protections that legislated entrenchment of compensation legislation would have. That's what the concern is.

Mr. Faisal Hassan: And that is the rights to compensation to property owners.

Mr. Shane Rayman: Yes. It's specifically with respect to interest on some compensation payable and the reimbursement of legal costs to make an owner whole after they've completed a claim.

Mr. Faisal Hassan: Now I'll turn to Zubair Choudhry.

You showed concern about schedule 7. There is also a distinction between public accountants and professional accountants, and there is a reason they exist.

Could you explain, on the record, the importance of the work you do as professional accountants and the assurances that are necessary to protect this profession?

Mr. Zubair Choudhry: That's exactly what we are saying—that the distinction between public accounting and professional accounting must be clarified by the act. Right now, as it's stated, only audits and reviews can be done by licensed public accountants, who are all CPAs. In other words, all licensed public accountants are CPAs, but all CPAs are not licensed public accountants—so that needs to be educated to the public, as well.

1350

At the same time, the distinction between these two, professional and public accounting, under the act—the compilation statement prepared by a professional accountant should be acceptable. This is exactly what we are trying to bring to the attention of the Attorney General and the present government. I think they will do a good job, they will do the right thing, because business is getting hurt. Small business is getting hurt. Big businesses also got hurt.

But through creating these kinds of barriers to the profession and not keeping the profession open or giving the choice to the professional or to the student of what they want to be—do not dictate to them, "You cannot be this, you cannot be that." Open it up.

Similarly, in the legal profession, if a member cannot be a lawyer, then he can be a paralegal. Saying, "No, you cannot be a paralegal, you have to be a lawyer"—and similarly, saying to a professional accountant, "No, you have to be a public accountant. You cannot be a professional accountant. You cannot do this. You cannot do that." This is exactly what the distinction is that we hope that this government—I think that they are on the right track. I hope they are listening to us and they will recognize the RPA designation and they will give them the ability to regulate their members, set their own standards so that small businesses can also have standardized services and feel comfort that a professional accountant is doing a good job. That's where our society will manage them.

We also have a continued professional development program for our members so they get their knowledge up to date on a regular basis, so that they know everything you're doing.

We will also have a program for practitioner training, so any RPA member who wants to go in the practice—we give them very extensive and detailed training, where they go and perform those services, with the standards and with the best services and best knowledge. That means small businesses are getting what they need and the governments are also getting the service, the financial statement and the tax bill filing very appropriately and professionally done by RPAs.

Mr. Faisal Hassan: And you have been doing that, professional accounting, since 1989. Is that correct?

Mr. Zubair Choudhry: Yes, we tried. We have been bringing this over to our—every time we get closer, then the government changes, an election comes in. We had a private member's bill in 2003 that was defeated by three organizations opposing our point of view, three against one. That bill was defeated, and that bill didn't go anywhere.

We still hope that in the near future or very soon, the government will introduce that bill again—the Society of Professional Accountants of Ontario—and open that profession, remove the barriers, bring inclusiveness, let our future generations, young children, become professional accountants and then do the service to society and to business. This is our hope, and that's what we are asking from the Attorney General. I hope that the Attorney General is listening, and I hope he will do the right thing.

Mr. Faisal Hassan: Zubair, you mentioned that you also are proposing that we rename professional public accountants to registered public accountants. Is there a reason for that?

Mr. Zubair Choudhry: Yes, a similar reason: As I said to you, you are giving the public accounting a power and authority to a professional accounting body—and that professional accounting body also has members who they're serving who are not licensed public accountants. So that is where the confusion is. This is why we proposed that you change the name to the professional accountants. That means that the public will understand only those professional accountants can do an audit or a review, so there's no confusion.

On the other hand, if the government amends section 3 of subsection (2) to include RPAs in there as well, that means that the distinction of "professional" and "public" can also be clarified by doing so.

Mr. Faisal Hassan: That's great. I think that's an opportunity of this committee—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time period has now ended.

Thank you to all the presenters, committee members and staff. That concludes our business for today.

A reminder: The deadline for written submissions on Bill 245 is today at 7 p.m., and the deadline for filing amendments to Bill 245 is 5 p.m. on Wednesday, March 17, 2021. Contact information for legislative counsel has been emailed to all members of the committee, and it's also available in the committee's SharePoint folder.

The committee is now adjourned until 9 a.m. on Friday, March 19, 2021, when we will conduct clause-by-clause consideration of Bill 245.

Have a good weekend.

The committee adjourned at 1355.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président
Mr. Kaleed Rasheed (Mississauga East–Cooksville / Mississauga-Est–Cooksville PC)

Vice-Chair / Vice-Président
Mr. Vijay Thanigasalam (Scarborough–Rouge Park PC)

Ms. Rima Berns-McGown (Beaches–East York ND)
Mr. Michael Coteau (Don Valley East / Don Valley-Est L)
Mr. Faisal Hassan (York South–Weston / York-Sud–Weston ND)
Mr. Logan Kanapathi (Markham–Thornhill PC)
Mr. Michael Mantha (Algoma–Manitoulin ND)
Mr. Jim McDonell (Stormont–Dundas–South Glengarry PC)
Miss Christina Maria Mitas (Scarborough Centre / Scarborough-Centre PC)
Mr. Sam Oosterhoff (Niagara West / Niagara-Ouest PC)
Mr. Kaleed Rasheed (Mississauga East–Cooksville / Mississauga-Est–Cooksville PC)
Ms. Donna Skelly (Flamborough–Glanbrook PC)
Mr. Vijay Thanigasalam (Scarborough–Rouge Park PC)

Substitutions / Membres remplaçants
Ms. Jessica Bell (University–Rosedale ND)
M^{me} Lucille Collard (Ottawa–Vanier L)
Ms. Lindsey Park (Durham PC)
Mr. Gurratan Singh (Brampton East / Brampton-Est ND)

Also taking part / Autres participants et participantes
Mr. Guy Bourgouin (Mushkegowuk–James Bay / Mushkegowuk–Baie James ND)

Clerk / Greffière
Ms. Tonia Grannum

Staff / Personnel
Ms. Monica Cop, research officer,
Research Services
Ms. Lauren Warner, research officer,
Research Services