

Hearings of the Standing Committee on Justice Policy
concerning Bill 14, An Act to Promote Access to
Justice by amending or repealing various Acts and by
enacting the *Legislation Act, 2005*

September 11, 2006

Speaking Notes of
Michael Grimaldi, Executive Assistant to the President of the
Ontario Public Service Employees Union

Good Morning.

I am Mike Grimaldi, the Executive Assistant to the President of the Ontario Public Service Employees Union. Next to me is Roman Stoykewych, OPSEU's General Counsel. Leah Casselman, the President of OPSEU, is unable to attend today, and she has asked me to express her regrets for not being able to do so.

We would like to thank the Committee for the opportunity to speak on behalf of the union in respect of the extremely important matter of the regulation of paralegals.

We have provided the Clerk with a copy of submissions which fully sets out OPSEU's position, and which we request that the Committee consider.

As the Committee is aware, OPSEU is a trade union that represents employees in the Ontario Public Service and in what is often known as the broader public sector. We represent approximately 130,000 such employees at the present time. Our members provide services to the public. In doing so, many of them provide advice, information and representation to members of the general public. Very frequently, their advice-giving and representational function takes place in a sophisticated legal environment. In addition, as a trade union, OPSEU is an organization whose very purpose is to represent our members in a variety of legal contexts. Especially in light of

the extremely broad regulatory net that Bill 14 provides, the proposed legislation has an impact upon us in two distinct ways.

However, before addressing this impact, and some of the concerns we have with the Bill, I wish to state on behalf of OPSEU that we are in favour of this legislative proposal.

We strongly believe that it is high time to regulate legal agents and paralegals. We believe that the legislation is necessary to ensure that people who cannot afford the services of lawyers – and these are mostly working people of the kind we represent – can nevertheless be able to obtain the services of competent, trained, accountable and professionally regulated non-lawyer agents to assist them. Based on our experience, particularly in the workers’ compensation and employment contexts, we are of the view that the quality and the trustworthiness of the services provided by paralegals at the present time are entirely unacceptable. Vulnerable people, particularly individuals with limited language skills who have an even more greatly diminished choice of legal services, are being under-serviced at best, and terribly exploited on other occasions.

My own personal experience bears on this. I have represented injured workers for over thirty years on behalf of various trade unions. I have witnessed, very much on a first hand basis the serious abuses that working people have had to sustain at the hands of paralegals in the workers’ compensation area. Let me provide you some examples:

- In Kitchener, one group of paralegals was able to focus on a particular ethnic group on the strength of their language expertise. Injured workers were required to sign life-time contracts that required all WSIB cheques to be sent directly to the paralegal, who would provide the remainder after their expenses were deducted. The contract included a life-time subrogation of the claim, with a 15% withholding of any benefits, including pensions, for life. Needless to say, this service would only be commenced upon the payment of a large initial consultation fee.**

- **In Niagara Falls, I saw a paralegal take substantial retainers from injured workers; they then took their files, and simply disappeared;**
- **In Welland, a paralegal charged injured workers a stiff fee to photocopy their files when this service was being provided free of charge by the Board. That same paralegal charged \$500 to for a consultation fee which to obtain a re-examination by the Board doctor, which was also free.**

There are countless examples, and I am sure that the Committee has heard of many of them by this stage in the hearings. This kind of victimization should not be permitted to continue in a civilized society. There are excellent training facilities for paralegals in the Province, particularly in our College system, and we believe strongly that agents who hang out their shingle to provide advice and representation services to members of the public should be required to complete them. We also strongly support the requirement that these kinds of services be backed by adequate insurance, and that the providers of the services be accountable.

Nevertheless, OPSEU is concerned about the extremely broad definition of what constitutes the “provision of legal services” found in subsection 2 (1) of the Bill, and then its delegation to the Law Society of Upper Canada the task of further delimiting the appropriate scope for regulation. As the Bill currently stands, the Law Society is thus provided with a virtually unlimited mandate to regulate persons who provide legal advice, information or representation to the general public. Even more troubling for us is that it is the Law Society that is given the power to determine who it is that is being regulated.

We believe that the Law Society’s powers in this respect should be more tightly drawn. Although we are sure that there are other areas that are might give rise to similar concerns, our major concern is two-fold:

- **First, OPSEU believes that the legislation should prevent the Law Society from regulating employees working in the public service or for analogous service providers who**

provide individuals in the general public or their employers information concerning their legal rights and obligations.

- **Second, OPSEU believes that the legislation should specifically exclude the volunteers and employees engaged by trade unions who provide advice and representation in the various legal matters in which they are involved to the employees that they represent.**

We recognize, of course, that the Law Society has indicated that it does not, at the present time, intend to regulate in either of these areas. Our first point here is one of political process: Government, and not unelected officials, should determine what are, at bottom, matters of social policy. OPSEU does not consider the Law Society to be a body that is properly mandated with the task of determining whether whole areas of civil society should be regulated. That is the role of government, and it is a responsibility that should not be, and we suggest, cannot be contracted out in the manner that the legislation proposes.

As indicated a moment ago, our first substantive concern with the legislation is the possibility it presents for the regulation of what are broad swaths of the public sector. OPSEU represents social workers, lay case presenters employed with various Ministries and tribunals, public health inspectors, employment standards officers, occupational health and safety inspectors, meat inspectors, and the various other employees in the public sector broadly understood. All of these employees, and many others, provide members of the general public information or advice about their legal rights and obligations. Some of these act as representatives in *quasi*-judicial proceedings.

These individuals are highly trained. They perform their duties under supervision, which is often of a professional nature. Frequently, as is the case with social workers, these employees are regulated by a self-governing professional body. Under the definition of “provision of legal services” that is included in the current version of the Bill, each of these employees would be susceptible to the regulation of their work by the Law Society.

The Law Society, of course, has already recognized that it is unnecessary to regulate employees who provide “legal services” in this capacity. They are not the problem to which the legislation is addressed, namely, incompetent, unscrupulous and unaccountable agents preying upon individual members of the public. The work performed by members of the public service and the broader public service are invariably performed in the context of highly accountable public institutions, usually the Government itself. Their employer is responsible for training them, and it is their employer that is responsible for the quality of the service that is provided. It is the employer that bears legal liability in the event of the negligent performance of the duties. In many cases, their work is already regulated by other professional bodies. Finally, in contrast to the mountain of evidence crying out for the regulation of individual non-lawyer agents and paralegals, there is no suggestion that the public has been adversely affected by the absence of regulation for employees providing public services.

This is not a transitory situation. There is no reason to wait and see whether a problem will develop. There is therefore no reason to leave the power to regulate the work of these employees in the hands of the Law Society.

- 1. We therefore propose that the legislation be amended to expressly exclude from the scope of paralegal regulation those persons who provide legal services while employed by Government or by broader public service agency providing services to the public.**
- 2. Further, we propose that the legislation be amended so as to preclude from regulation by the Law Society of Upper Canada employees who are already regulated by a professional body.**

Our second concern is that the legislation, as currently drafted, may have an extremely adverse impact upon the representation that trade unions provide to workers they represent. OPSEU, like other trade unions in Ontario, by its very nature provides information about legal rights and obligations of employees. It represents employees before the employer and before tribunals.

In most regards, the very purpose of a trade union is to establish and enforce the provisions of a collective agreement, which if nothing else, is a document setting out the rights of employees, with an employer on behalf of its members.

Moreover, trade union representation today goes well beyond the simple enforcement of collective agreements. Trade unions provide their members invaluable advice and representation before a broad variety of statutory tribunals in relation to such matters as Employment Insurance, Canada Pension Plan entitlements, workers compensation matters, and professional licensing and discipline. Moreover, just as we are doing at the present moment, trade unions advance the legislative and political objectives of the members we represent. We submit that this entire range of trade union representation, and not just collective agreement enforcement, ought to be exempted from the definition of what constitutes the provision of legal services.

Historically, and as a matter of social policy expressed in such legislation as the *Labour Relations Act*, the *Crown Employees Collective Bargaining Act*, the *Colleges Collective Bargaining Act*, the *Hospital Labour Dispute Arbitration Act*, and other similar legislation, a trade union is the instrument by which employees' interests are to be advanced both *vis à vis* their employers, and also in society at large. The law has never required trade unions to meet the standards of professional representation in the course of the provision of the services they provide to their members. Labour legislation in Ontario, and through Canada, recognizes that trade unions, by their very nature, do not function as professional lawyers in their representational activities. To the contrary, the duty of fair representation, found in the *Labour Relations Act*, sets out a very different approach to the issue: union representation is not to be regulated by the standards of lawyers or professionals in a self-regulating profession, but on the basis of non-arbitrariness, non-discrimination, and good faith.

And that is because trade union representation takes place in large measure through the volunteers that serve in union positions. The large majority of union representation is performed by rank-and-file members, who act as stewards, committee members, local presidents, and other similar union

officials. These volunteers, of course, do not work on a fee-for-service basis and for the most part receive no compensation for the representational work that they perform.

The high level of voluntarism present in trade unions makes it a rather unique civil society institution inasmuch as it both advances the social interest in providing employees effective representation *vis à vis* their employers, but it also makes possible a level of participation in shaping ones' destiny frequently absent in the experience of working people. We do not believe that there is any public policy rationale to change this extremely important trade union value.

OPSEU, of course, also employs staff, much of it professional, to provide support for the activity of its members. The same rationale for exempting them from regulation is present as is in place for the employees of the public sector:

- The union staff members work on behalf of a large institution that is responsible, both legally and politically, for the quality of the work that is provided to the membership.**
- The nature of the work, training, supervision, and other support systems of the work that they perform are all arranged by the employer.**
- None of these individuals work on a fee for service basis, and are remunerated on a salary or hourly basis.**
- To the extent that there are professionals working in the union, they are already regulated by their respective professional bodies.**
- Overall, the trade union's core representational function is already regulated by statutory duty of fair representation.**
- Finally, and perhaps most importantly, there is no identifiable problem concerning the quality of trade union representation that would be meaningfully addressed by regulation by the Law Society.**

Once again, while we appreciate that the Law Society has indicated that it has no current intention of entering into this area of regulation, we do not believe that the legislation should permit it as a possibility. Regulating the legal service providers in trade unions would change the very face of union representation, and indeed, unionism. It would create a credentialism and professionalization that is contrary to the very concept of the trade union. It would significantly detract from and even eliminate the voluntarism that is so much a part of trade union life, and would impose organizational and financial obligations upon trade unions that they would be unable to meet. And, to repeat the point we made at the outset of these submissions, this is certainly not a decision that should be made by the Law Society.

3. Accordingly, OPSEU recommends that the legislation specifically exclude from the ambit of the Law Society's regulatory power, and thus, from the scope of the legislation, the provision of legal services by employees or volunteer representatives of trade unions.

We thank the Committee once again for the opportunity to make these submissions. If you have any questions or comments, I would be pleased to address them now.