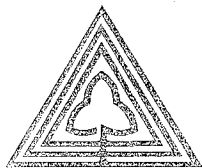


Ontario Public Service
Employees Union

OPSEU



SEFPO

Syndicat des Employé-e-s
de la Fonction Publique
de l'Ontario

September 8, 2006

DELIVERED

The Standing Committee of Justice Policy
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario
M7A 1A2

Attention: Ms. Anne Stokes, Clerk

Dear Ms. Stokes:

**Re: Submissions by the Ontario Public Service Employees Union to the
Standing Committee on Justice concerning Bill 14, An Act to
Promote Access to Justice by amending or repealing various Acts
and by enacting the Legislation Act, 2005**

The Ontario Public Service Employees Union ("OPSEU") wishes to thank the Committee for the opportunity to make these submissions in respect of the matter of the regulation of paralegals, a matter that is of general public interest but is also of particular interest to OPSEU and its members.

OPSEU is a trade union that represents in collective bargaining 130,000 employees both within and beyond the Ontario public sector. Our members provide the public services, both in a direct and support capacity, that are critical to the province's well-being. The work of our members frequently involves them in the provision of information, advice, and at times, representation of a legal nature to the general public. In turn, the union itself accomplishes its goals through the marshalling of both volunteers and employed staff employees to engage in a broad variety of employment-related issues. These functions, as well, involve the provision of information, advice and representation of a legal character. Particularly in light of the extremely broad definition of "provision of legal services" found in subsection 2 (10) of Schedule C of the Bill (amending section 1 of the *Law Society Act*), both OPSEU as an organization and the members that we represent are directly affected by the proposed legislation.

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OPSEU SUPPORTS THE REGULATION OF PARALEGALS

OPSEU supports the legislative initiative to provide a regulatory framework for the provision of legal services by paralegals. Within the employment law and workers' compensation areas with which we are particularly familiar, OPSEU has had the misfortune of witnessing, first-hand, highly vulnerable employees being taken advantage of by agents that were either unscrupulous, incompetent, or both. Often, the results are tragic. The lack of accountability and the absence of any requirement for insurance coverage have significantly aggravated what is an already appalling situation.

The abuses we have seen are particularly rampant in the workers' compensation field, especially in communities of new Canadians for which a broader range of legal services in their language is particularly difficult to obtain. We have witnessed unconscionable contingency fees on pension claims and exorbitant fees for the performance of simple administrative tasks, much of which takes place in the context of shamefully incompetent or incomplete representation. But we have also witnessed unscrupulous and incompetent agents in the employment area, providing employees extremely poor quality advice and representation during the course of proceedings before the Ontario Labour Relations Board. This kind of representation not only victimizes the consumer of the services, but through their incompetent and inefficient case presentation and unprofessional conduct, has an adverse impact upon the processes of the tribunals hearing the case. It frequently multiplies the costs and inconveniences of litigation by the other parties.

This kind of victimization should not be allowed to continue in a civilized society. We believe that working people, who may not be able to afford the legal services provided by lawyers, should nevertheless have access to services provided by non-lawyer practitioners who are reliable, professionally trained and regulated, and insured in the event of negligent performance of their duties. Contrary to the suggestions of those who oppose regulation in this area, we have not seen anything that could be considered an improvement in the quality of services employees receive under the current system of non-regulation. We therefore welcome the general thrust of the legislative initiative's requirement for professional training, licensing, professional discipline and insurance obligations.

TWO CONCERNS ABOUT THE DEFINITION OF "PROVISIONS OF LEGAL SERVICES"

Nevertheless, OPSEU is concerned about the manner in which the legislation intends to regulate certain persons who would qualify as "paralegals" under the legislation. As the Committee is of course aware, the proposed legislation provides for an extremely broad definition of what constitutes the "provision of legal services" found in subsection 2 (1) of the Bill, and then delegates 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 not only a virtually unlimited mandate to regulate persons who provide legal advice, information or representation to the general public, but also the power to determine whether or not a particular form of activity constitutes an area that should be the subject of regulation.

We believe that a much more carefully calibrated legislative mandate ought to be provided to the Law Society. While we recognize that the process of delineating between those areas of social life that should and should not be subject to the Law Society's regulatory purview is a difficult one, we urge the Committee to embark upon that task, and our brief intends to assist it in that respect. Specifically, OPSEU believes that the legislation should preclude 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. Further, 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 it is the current intention of the Law Society to *not* regulate in these areas. Nevertheless, we strongly believe that these important decisions ought to be decisions made by the Government of the Province, and is not a matter that ought to be left to the Law Society. Government, and not officials who are not elected by the general public, should determine what are, at bottom, matters of social policy.

OPSEU appreciates that the Law Society's processes have been extremely thorough in the regulation of members of the legal profession, and that it appears that the mischief that they have focused upon is, quite appropriately, the individual non-lawyer legal agent providing his or her services on a fee for service basis. Indeed, we are pleased to see that the Law Society, after consultation with the community at large, has reached the conclusion that neither the work of our members or the work of our trade union representatives, ought to be subject to its regulatory systems. However, 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.

a) No rationale for the regulation of public service providers

Our concern with the current definition of the term "legal services" is a two-fold one, one arising from the rights of our members that may be needlessly disturbed by subjecting them to regulation by the Law Society; the other from

what we consider the most unnecessary regulation of the activities of a trade union by effectively placing trade union representatives under the regulatory umbrella intended for lawyers.

Among the employees that we represent are 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 whom provide both individuals or the general public information or advice about their legal rights and obligations, and some of whom act as their representatives in *quasi*-judicial proceedings. These individuals are highly trained, perform their duties under supervision which itself is often of a professional nature. Frequently, as is the case with social workers, these employees are regulated by a self-governing professional body. It is arguable that, under the definition of "legal services" presently found in the Bill, each of these employees would be susceptible to the regulation of their work by the Law Society of Upper Canada. This is a matter of significant concern to us, and we ask, in these submissions, for the Committee to preclude the Law Society from regulating in this area.

It is unnecessary to go any further than the Law Society's consideration of this matter in its Task Force's Report to Convocation¹ to find reasons why regulation should not take place in this area: the mischief to which the legislation is responsive, i.e., incompetent, unscrupulous and unaccountable agents preying upon individual members of the public, is not found in this area of social activity. The individuals in question provide information concerning legal rights and obligations are employed by a highly accountable institution, usually the Government itself. It is their employer (be it the Government or other service provider) who in practical and in legal terms is responsible for the training, the supervision and the quality of the advice that is generated. It is the employer that bears legal liability in the event of the negligent performance of the duties. Further, and as already noted, in many cases, the quality of their work, and the issue of professional obligations to the public, are 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.

OPSEU does not believe that these reasons militating against regulation of such employees are transitory ones, or that the circumstances giving rise to the provision of information concerning legal rights are susceptible to change in the foreseeable future. For that reason, we see no reason why the Law Society

¹ Law Society of Upper Canada, Task Force on Paralegal Regulation, *Report to Convocation*, September 23, 2004

should be granted the power by the Legislature to regulate in this area at all, and that it is entirely inappropriate that it hold these powers in reserve.

OPSEU'S PROPOSED AMENDMENTS:

- 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 an agency in the broader public sector 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.**

b) Regulation of service delivery of trade unions is inappropriate and unnecessary

Our second concern about the definition of "legal services" arises out of the fact that OPSEU, like other trade unions in Ontario, by its very nature provides information about legal rights and obligations of employees, and represents these 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. Trade unions for the most part earn their support from their members through their success in achieving these objectives. The collective agreements that are developed in the course of bargaining may frequently be complex legal documents, requiring considerable expertise in their proper interpretation.

In this regard, it must be recognized that the representational actions of trade unions extend far outside the specific realm of the collective agreement and labour arbitration. 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, very frequently in a legal forum. It is important, we respectfully submit, to keep this broad range of union activity in mind when crafting an exclusion from the regulatory framework for union representatives.

Both 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, but also in society at large. In turn, section 74 of the *Labour Relations Act*, which regulates the quality of trade union representation insofar as it relates to rights under the collective agreement, makes it very clear that a professional negligence standard is an inappropriate one for trade unions in light of the essentially voluntary nature of such organizations, which will be described below.

Indeed, the Ontario Labour Relations Board, in interpreting section 74 of the *Labour Relations Act*, has made it very clear that 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. The labour legislation already recognizes that trade unions, by their very nature, do not function as professional lawyers in their representational activities. OPSEU is concerned that Bill 14, as it is currently drafted, provides the Law Society the unquestioned power to regulate the service provision function of trade unions. This would alter in a fundamental the manner the way in which trade unions conduct their representational functions for its members. We believe that this is not only inappropriate, but would be contrary to clearly enunciated public policy set out in labour legislation.

Like other trade unions, OPSEU primarily accomplishes its representational function by enabling employees to represent themselves, by providing them resources, training, and professional support. The large majority of union representation is thus performed by rank-and-file volunteers, 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 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 also makes possible a level of participation in shaping ones' destiny that is 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.

It is only secondarily that the trade union's representative function is carried out by staff hired for the purpose of providing professional trade union support to our membership. Nevertheless, these individuals are utilized by the union in significant numbers. In order to provide the trade union members support for their bargaining or other activities, the trade union hires persons experienced in collective bargaining. These persons are most often themselves union activists and elected officials, who have developed considerable expertise in collective bargaining through experience in its processes. In other cases, a trade union hires professionally-trained persons, such as actuaries, journalists, accountants,

lawyers and economists, in order to assist in the representational activities. At the present time, OPSEU employs over three hundred employees, of which more than half provide direct representative functions. As is the case, to our knowledge, of all other unions, our representatives never work on a fee for service basis.

It is entirely likely that most, if not all of these persons could be characterized as providing members of the public information about legal rights and obligations, and would be susceptible to the educational and regulatory requirements of the legislation. 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, by creating a credentialism and professionalization that is anathema 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.

OPSEU'S PROPOSED AMENDMENT

- 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. To reiterate, we support the regulation of legal agent "paralegals" and encourage the Committee to ensure that the significant harm that the incompetent and unscrupulous among them are causing to vulnerable consumers is stopped. OPSEU further submits that the Legislature provide that service providers in the public sector and beyond, and trade union representatives, both of whom would normally provide legal services to members of the public, should be exempted from the regulation.

If you have any questions or comments, I would be pleased to provide further comments.

Yours truly,



Leah Casselman
President

