

# Justice *demands* accuracy



Questions and Answers for OPSEU court reporters in the Ministry of the Attorney General

June 24, 2013

The Ministry of the Attorney General's (MAG) plan to contract out court transcripts shows a complete lack of respect for the integrity of the record and the profession of court reporting.

Separating the taking of the record from the producing of the record could increase the risk of inaccuracies appearing in the transcript. Your union strongly believes the reporter of record should prepare and certify the transcript.

Ministry court reporters are skilled and qualified professionals with a proven track record of preparing accurate transcripts in a timely manner. Your union has argued for 10 years that you deserve to be treated as full-time employees with a professional wage, reflecting both your in-court functions and production of transcriptions. We have won legal decisions that have found the production of transcripts is the bargaining unit work of court reporters and is covered under the collective agreement.

MAG has used every stalling tactic and legal manoeuvre at its disposal to avoid complying with these legal rulings. On May 15, the ministry announced "a new model for court transcription" which will take away your transcript work altogether. MAG will issue a Request for Proposals (a tender) this summer for a private operator to set up and run an administrative body to control the production of court transcripts. This private administrative body will oversee a registry of authorized court transcriptionists. Any individual who completes the in-court certification and training will be able to get on the list.

→ **Will the court reporter who took the record in the courtroom prepare and certify the transcript?**

There is **no guarantee** the reporter who took the record will prepare the transcript. MAG is creating a new administrative body outside of government, privately-run, that will control a registry of "authorized court transcriptionists". People will have to order transcripts from a transcriptionist on the authorized list.

→ **What are the possible impacts for the administration of justice?**

Separating taking of the record from producing the record could lead to

inaccurate transcripts and the potential for miscarriages of justice. Parties are required to file transcripts in civil and criminal appeals. The reporter in the courtroom is best placed to produce an accurate transcript. Justice demands accuracy.

→ **Why are some people erroneously claiming that nothing will change under the new system, that the reporter of record will continue to prepare the transcript?**

We don't know why these false claims are being made. Assistant Deputy Minister Lynne Wagner is clear in her May 15 memo distributed to court

reporters: “Ordering parties will select the court transcriptionist *of their choice* from an authorized transcriptionist list maintained by an independent administrative body.” (Emphasis added.) Nowhere does it say the ministry recognizes the reporter of record is best placed to produce an accurate transcript.

→ **MAG says court reporters currently working for the ministry can be ‘grandparented’ on the list of authorized court transcriptionists if they so wish. So what’s the problem?**

The problem is that ministry court reporters will be competing with many other transcriptionists to get transcript work.

→ **Is there anything to prevent agency reporters or other individuals from getting on the authorized list?**

Nothing at all. In fact, the ministry claims it will support an independent professional industry for transcript production. Individuals entering the industry as new transcriptionists have to complete qualification training and testing, and meet the criteria for membership with the new independent administrative body. We have no idea what that training involves; we have no idea what the criteria for membership to the independent body will be.

→ **Is there anything preventing transcript work from going offshore to typists in another country?**

As long as the final product is certified by an authorized court transcriptionist in Ontario, we don’t see any measures in the ministry’s plan to prevent out-sourcing to low-wage countries, or, for that matter, to home-grown typing pools receiving the minimum wage. The Toronto Star reported in an [article](#) May 13 that law firms in Ontario are

sub-contracting ‘high volume repetitive work’ to firms in India and the Philippines where lawyers only charge \$25 an hour.

→ **What happens if the ordering party doesn’t specify who it wants to transcribe the record?**

The short answer is, we don’t know. Will the private administrative body set up a system to ensure the reporter who took the record has the right of first refusal? No idea. Will the private entity set up a system to ensure a fair allocation of work among transcriptionists? We don’t know. We’ve received no assurances. We do know these are uncertain times for the court reporting profession. The implementation of DRD will reduce demand over time for transcripts. And the ministry’s desire to see colleges train more transcriptionists will increase the number of people qualified to do this work. Will the private administrative body simply allocate work to its ‘favourites’? This, we think, is far more likely to happen.

→ **According to the ministry, the private administrative body will “administer agreements” between itself and transcriptionists, will “collect an annual membership fee” and will “respond to disputes” between the transcriptionist and ordering party. Who or what will represent and advocate for transcriptionists if they don’t agree?**

No one. You won’t be covered by a union collective agreement so you won’t be able to grieve a bad decision. You may not even find out the reasons for the decision. As you know, MAG will contract out the running of the administrative body to a private party. MAG has structured other contracts with a “quality assurance” clause, requiring the private party to practice quality control. This could have the effect of giving the private administrative body the freedom to dismiss without cause any individual

they believe is not performing to a set standard. This private body will be outside of government. It will not be subject to investigation or inquiry by the Ombudsman, Auditor General or the Legislature. Freedom of Information laws will not apply. This entity will likely be self-funded through membership and transcript fees and only answerable to the Attorney General. Where there is no public scrutiny, there is no meaningful oversight.

→ **The ministry is going to review the current court reporters' job description. What does this mean?**

We're not certain, but if past experience indicates the direction the ministry will probably take, our suspicion is that CR1s and CR2s who now perform the same job function, using DRDs to take the record, will be working from a generic job spec at the CR1 level. Remember our attempts to bargain the implementation of the Hunt decisions in 2008? At that time the ministry was proposing CR1 reporter positions for employees using DRDs.

→ **The ministry is currently reviewing the transcript fee structure. What does that mean?**

The ministry has advised that they will be reviewing the per page rate prescribed by Ontario regulation 587/91 and researching other Canadian jurisdictions. This could mean an increase or a decrease in the page rate. This prescribed rate is the ceiling, not the floor. Independent transcriptionists could market themselves at a lower page rate to ensure repeat business from ordering parties, since the ordering party will now get to pick their own transcriptionist.

→ **Why is MAG contracting out our work?**

From its actions, we can only conclude the ministry does not believe court

reporters have the right to a decent livelihood with access to benefits and a pension. The union believes MAG is contracting out court transcripts to avoid complying with legal decisions from the Grievance Settlement Board. The GSB settles disputes over contract issues between the Ontario government and its unionized employees.

→ **What are the legal decisions that MAG is refusing to comply with?**

Vice-Chair Abramsky of the GSB decided back in July 2006 that the production of transcripts is the bargaining unit work of the court reporter and is covered by the OPSEU collective agreement. The union has been back at the GSB several times since trying to force MAG to comply.

On March 1, Vice-Chair Dissanayake issued this order: "The employer shall forthwith cease its violation of the collective agreement by failing to apply the collective agreement to court reporters who the Board has declared to be employees performing bargaining unit when producing transcripts. The employer shall forthwith apply the collective agreement to court reporters performing bargaining unit work of production of transcripts and shall not treat them as independent contractors."

→ **What is OPSEU's position?**

OPSEU has argued for 10 years that court reporters must be full-time employees earning a professional wage, reflecting both your in-court functions and the production of transcripts. You shouldn't have to work 60-70 hours a week, through statutory holidays and important family occasions to maintain a decent living. MAG is denying your right to a professional wage, benefits, including WSIB and sick time, and a pension. It is time for the Ministry to comply with the GSB and apply the collective agreement to the production of transcripts.

## → What is OPSEU doing to uphold our rights to transcript work?

We are taking action on a number of fronts:

1. We are taking the province to court over its refusal to comply with Vice-Chair Dissanayake's "cease and desist" order. This is an extraordinary step that we rarely take. MAG's refusal to comply with GSB decisions is more extreme than most other ministries. We have filed an application with the Superior Court of Justice asking for the Ministry of the Attorney General to be found in contempt. Our application will be heard March 17, 2014.
2. We will also be back at the Grievance Settlement Board in separate hearing dates in October, November and December. We will argue MAG's plan to contract out court transcripts is in violation of the collective agreement. The production of transcripts is bargaining unit work. In these hearings we will continue to fight to ensure the employer complies with the collective agreement and the rights and entitlements that are owed to court reporters. This includes that the appropriate provisions of the contract are applied if the work is privatized.
3. We are urging members to file individual grievances, citing violation of Vice-Chair Dissanayake's order. Suggested wording can be found [here](#) in our June edition of the Justice For All newsletter.
4. We are campaigning against the government's contracting out of court transcripts. Lobbying decision makers is a key component of our campaign.

OPSEU President Warren (Smokey) Thomas will meet with Attorney General John Gerretsen to send the clear message that we expect his ministry to do exactly as the GSB has ordered: Apply the collective

agreement immediately to court reporters and the production of transcripts. Stop treating them as independent contractors. Our members are skilled and qualified professionals with a proven track record of preparing accurate transcripts in a timely manner. Do not contract-out our members' work.

## → What can I do to help the campaign and prevent MAG from contracting out our work?

We need **all ministry court reporters** to come together and tell MPPs and members of the legal community:

- There is no guarantee under the ministry's new model that the reporter of record will prepare and certify the transcript.
- Separating taking of the record from producing the record could lead to inaccurate transcripts and the potential for miscarriages of justice.
- Ministry court reporters are qualified professionals with a proven track record of preparing accurate transcripts in a timely manner.
- We are concerned the administration of justice will no longer benefit from our skills and experience.

The only thing that will stop senior managers at MAG is elected politicians saying "no" to their plan for contracting-out.

Your union has fought for more than 10 years through all legal means to uphold your rights. And we will continue to do so. The fact that the ministry in charge of the province's courts is refusing to abide by legal decisions is totally unacceptable.

However, our substantial and extended legal advocacy will not be enough to win this fight. We need court reporters to speak out against MAG's plan. To locate your MPP, go to [elections.on.ca](http://elections.on.ca) and click on Find Your Electoral District.