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JP-19

Standing Committee on Justice Policy

Smarter and Stronger Justice Act, 2020

1st Session
42nd Parliament

Friday 12 June 2020

Chair: Roman Baber
Clerk: Christopher Tyrell

Journal des débats (Hansard)

JP-19

Comité permanent de la justice

Loi de 2020 pour un système judiciaire plus efficace et plus solide

1re session
42e législature

Vendredi 12 juin 2020

Président : Roman Baber
Greffier : Christopher Tyrell

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Friday 12 June 2020

Vendredi 12 juin 2020

The committee met at 1000 in room 151 and by video conference.

SMARTER AND STRONGER JUSTICE ACT, 2020

LOI DE 2020 POUR UN SYSTÈME JUDICIAIRE PLUS EFFICACE ET PLUS SOLIDE

Consideration of the following bill:

Bill 161, An Act to enact the Legal Aid Services Act, 2020 and to make various amendments to other Acts dealing with the courts and other justice matters / Projet de loi 161, Loi visant à édicter la Loi de 2020 sur les services d'aide juridique et apportant diverses modifications à des lois traitant des tribunaux et d'autres questions relatives à la justice.

The Chair (Mr. Roman Baber): Good morning and welcome, everyone. I call this meeting of the Standing Committee on Justice Policy to order. Today, we're here to resume and conclude public hearings on Bill 161, An Act to Enact the Legal Aid Services Act, 2020, and to make various amendments to other acts dealing with the courts and other justice matters.

Today's proceedings will be available on the Legislative Assembly website and television channel.

We have the following members of the Legislature with us in the room today, in addition to myself. I'm Roman Baber, MPP. We have MPP Lindsey Park and MPP Lucille Collard.

We also have the following members in attendance by video link, by Zoom: Will Bouma, Parm Gill, Suze Morrison, Gurratan Singh, Nina Tangri, Kevin Yarde, Sheref Sabawy and Lorne Coe.

As well, we're joined by our Clerk, Christopher Tyrell, and Heather Conklin from research.

ONTARIO PARALEGAL ASSOCIATION

HAMILTON CENTRE FOR CIVIC INCLUSION

BIG SIX ACCOUNTING FIRMS

The Chair (Mr. Roman Baber): I want to invite our first panel to join now. Good morning, everyone. For our first panel, we have the Ontario Paralegal Association, specifically George Brown, president. We have the Hamilton Centre for Civic Inclusion, and we have the Big Six Accounting Firms—it's six now?—represented by external counsel and general counsel.

I invite the presenters to commence today's proceedings with seven minutes of submissions followed by questions from both recognized parties and the independent member.

With that, I'll invite George Brown of the Ontario Paralegal Association to commence your seven-minute address to the committee by stating your name for the record.

Mr. George Brown: My name is George Brown. I am the president of the Ontario Paralegal Association.

The Chair (Mr. Roman Baber): Welcome, Mr. Brown.

Mr. George Brown: Thank you very much. And I may commence?

The Chair (Mr. Roman Baber): Yes.

Mr. George Brown: I will first start with schedule 9. Paralegals don't do a lot of work under the Estate Act, but it's my opinion that any changes to statute that permit the working class to navigate and have an easier understanding of their rights is always in the best interest of access to justice. Over the past couple of years, Ontario has developed a reputation for being sensitive to access to justice and I think this is in line with that. It's going in the right direction.

I will then move on to schedule 14. Given past treasurers, the privileges under the Law Society Act, I think, is an honourable gesture in that they have served the profession and the law society, and this is a way of showing appreciation. We do the same in the Ontario Paralegal Association by making all past presidents honorary members and advisers to the existing president. I think this is a good initiative.

In terms of the increase to the fines from $10,000 to $100,000, many people believe that the existing fines are not indicative of some of the evils that could be committed by some of the licensees and that the fines need to be more in order to punish wrongdoers and give the public perception that no one basically commit atrocities and gets away with it.

Paralegals have been receiving expansion to their scope gradually over the years, and I believe that being held to the same standards is in line with what should be expected as licensees at the law society.

I believe that the LSO will apply these fines in apportion to the degree of the offence. If the increase in

fines gives the public a perception that licensees are held to a high standard, I think that is a good thing for the profession. I welcome these changes and these additions to the Law Society Act.

I don't believe I'm going to utilize my entire seven minutes, so I will, at this point, pass it on.

The Chair (Mr. Roman Baber): Thank you very much.

Before we proceed with the Hamilton Centre for Civic Inclusion, I just wanted to welcome and confirm that MPP McDonell has joined us. MPP McDonell, you're muted on your end, but we need to confirm your identity and your location in Ontario. Would you be so kind as to come online?

He may have stepped away.

Okay. Thank you, Mr. Brown. We'll now proceed with Kojo Damptey of the Hamilton Centre for Civic Inclusion in Hamilton. Please commence your seven minutes by stating your name for the record.

Mr. Kojo Damptey: Good morning, everyone. My name is Kojo Damptey, and I work for the Hamilton Centre for Civic Inclusion.

The Hamilton Centre for Civic Inclusion is an organization with a mandate to build an inclusive city. Over the years, our organization has witnessed first-hand the many barriers that racialized communities and other disadvantaged communities face, such as low-income individuals, individuals living with visible and invisible disabilities, and unhoused people.

One of the many barriers is access to justice. In Hamilton, the Hamilton Community Legal Clinic has represented and/or worked with residents to ensure their rights to justice. As per the recommended changes in the LASA, we're concerned that, by changing the core mandate of Legal Aid Ontario from promoting access to justice throughout Ontario for low-income individuals to facilitating "the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services," this will curtail, and in some cases leave racialized and other disadvantaged communities without a clear path to accessing, their human right to justice.

On the issue of housing, Hamilton continues to have an increasing problem with harassment and threats, illegal charges for rent increases collected by landlords, and landlords' failure to accommodate disability-related needs. Our organization feels this and sees this every day. On average, we send 10 referrals a month to the Hamilton Community Legal Clinic. Most of the referrals are particular in nature, and the language of "flexible and sustainable legal aid" does not speak specifically to some of the needs that are facing residents of Hamilton who are living on the margins, and I would also expand that to our province.

Our last issue involves a more inclusive approach of asking stakeholders who use legal aid clinics across our province to inform the changes in the LASA. It is our estimation that not enough consultation has taken place, especially regarding residents and stakeholders. Until then, we are asking that this committee reject schedules 15 and 16 and further connect with people, organizations and stakeholders that work with and receive services from legal clinics across this province.

I submitted a document, and in that document there is a paper that was written by a number of lawyers from the Osgoode school of law. The research paper is entitled Neither Smarter nor Stronger: Bill 161 Is a Step Backwards for Access to Justice and Community-Based Legal Services in Ontario. I've included that as the footnote for the reference. Thank you very much.

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The Chair (Mr. Roman Baber): Thank you very much, Kojo.

Mr. Brown, a member was asking if you had a chance to make a written submission to the committee. If not, and you wish to do so, the deadline is 6 p.m. today.

Mr. George Brown: Thank you for that opportunity. I did not make a submission, but I may consider doing so by the end of the day.

The Chair (Mr. Roman Baber): Thank you very much.

We'll now move to the Big Six Accounting Firms. We have Andrea Laing, securities counsel, and Peter Sahagian, general counsel. You may commence your seven-minute address by stating your name for the record. And maybe, just for my personal interest, let us know when you became the Big Six.

Mr. Peter Sahagian: It wasn't that long ago, actually. It's Peter Sahagian. Good morning. I'm here on behalf of the Big Six but I am general counsel at KPMG, which is one of the Big Six firms. We are here to address, on behalf of the Big Six, the proposed class action reforms that form part of Bill 161.

As you may know, the Big Six perform audit, accounting and various other services on behalf of businesses and individuals all over the province of Ontario. We're very plugged into the Ontario economy. We have considerable experience with the Ontario class action regime, and as a result we feel that, because of that practical experience, we have insight into and are able to comment constructively on what is happening in the Ontario class action environment and how things may be improved.

Although we admittedly have a defence orientation as the Big Six, we are not against class actions. We believe class actions serve an important societal function. We believe that access to justice, in particular for vulnerable and disadvantaged members of our society, has to continue and be at the centre of the class action regime. But having said that, at one end of the spectrum of class action cases we have ones that involve systemic harms or injustice in our system, such as the residential school cases, Walkerton, and tainted blood. Those types of cases deal with very serious subject matters and I think clearly advance the objectives of using class actions and the class action regime. And those objectives, as we all know, include access to justice, appropriate allocation of resources and the censure of wrongful behaviour. We support all of that.

But the reality is that there is a spectrum of class action cases that are brought, and not all of them have a meaningful access-to-justice component to them. Some of these

cases, really, serve no social utility and do not result in meaningful compensation to plaintiffs.

In our view, Bill 161 represents a balanced approach, a proportionate approach, aimed at reining in the most unworthy or less meritorious class actions and giving judges the appropriate tools to respond to them. From our perspective, what we think is needed is a balanced approach and that the class action regime should not be a one-size-fits-all. We should not be devoting the same resources to unmeritorious cases as we do to deserving cases like residential schools or things of that nature.

This proposed legislation would provide courts with some effective tools to eliminate cases that we believe are at the spurious and unmeritorious end of that spectrum. We think that it provides a necessary balance and proportionality to provide those tools and allow us to focus on the meritorious cases.

I wanted to comment briefly on some of the specifics; not all of them. The first is, there's going to be proposed mandatory consideration of extra-provincial and multi-jurisdictional actions, in that the legislation would allow the court to promote more coordination of multi-jurisdictional class actions so you don't have the duplication and have the same action, essentially, brought in various provinces across the country. We believe that's a welcome change and a sensible change. It gives discretion to the court to make a decision when there are overlapping or duplicative cases. It's permissive; it's not mandatory. And it should help relieve the administrative burden and costs associated with duplicative actions across the country, which really serve no one's interests.

By allowing the judges to make this decision early in the proceedings, it's permitted in the proposed legislation that it would be allowed to be decided before certification, so early on you will have a determination as to which jurisdiction will be the appropriate one to conduct the class action. Nowadays, what often happens is that you have multiple class actions across the country.

The second thing I wanted to focus on is that there is a proposed change that would require that any motion to dispose of the proceeding or deal with the proceeding in whole or in part, including a summary judgment application, has to be dealt with prior to the certification motion, unless the court, in its discretion, decides the two motions should be held together, so you should delay the motion until the certification. We believe that this is actually a very positive development and one that should be welcome. It gives judges discretion. We believe that cases that can result in the whole or partial dismissal of a class action prior to certification are beneficial. It provides an off-ramp, so to speak, for cases that don't have merit at an early stage, so we don't expend a lot of judicial resources and costs on the case when they don't have merit. This also allows for meritorious cases, conversely, to have more judicial resources dedicated to them. We believe that this is a sensible approach, and that cases that are fundamentally flawed should be taken out of the system early before parties have to spend a lot of money and court time.

Finally, I want to talk about the new certification criteria, which people tend to refer to as predominance and superiority. Essentially, under the act, the current test for certification—the class proceeding is to be the preferable procedure for the resolution of common issues. But once Bill 161 is enacted, then the class proceeding would be considered preferable only if the questions of fact or law common to the class members predominate over any questions affecting individual class members. Again, we think this is a welcome development. There has been some concern expressed that perhaps this will create an issue and not allow certain cases to be certified. We don't share that view. We think that serious cases addressing systemic harm, such as I mentioned earlier—residential school cases or Walkerton or that sort of thing—would not be affected by the proposed changes. That's because, in those situations, the common question, underlying core or central issue that predominates is a systemic issue.

There has actually been a Supreme Court of Canada case that dealt with this quite a few years ago, Rumley, where the court dealt with systemic issues and said that they can be certified and you can deal with any individual damage issues secondarily. So that is possible to do that, and so we would encourage that going forward.

My final point—

The Chair (Mr. Roman Baber): You're out of time. Please conclude.

Mr. Peter Sahagian: Okay. I had one more point, but I'll conclude there, then.

The Chair (Mr. Roman Baber): Thank you very much, Counsel.

Before we proceed with questions, I would just like to welcome some of our guests and confirm their identity and location. I understand that MPP Jane McKenna has joined us.

Ms. Jane McKenna: Yes, I have.

The Chair (Mr. Roman Baber): Good morning, MPP McKenna. Where are you located?

Ms. Jane McKenna: I'm at my office in Burlington.

The Chair (Mr. Roman Baber): Thank you. Also, I understand that MPP McDonell is with us as well. Jim, will you—

Mr. Jim McDonell: Is that okay?

The Chair (Mr. Roman Baber): Yes. It's nice to hear you, MPP McDonell.

Mr. Jim McDonell: Yes, I know. The host hadn't unmuted me before.

The Chair (Mr. Roman Baber): That's okay.

Mr. Jim McDonell: I could hear you. I am in Williamstown, Ontario—my home office.

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The Chair (Mr. Roman Baber): Thank you.

We'll now proceed. The first round of questioning this morning is to government, with five and a half minutes. I recognize MPP Tangri.

Mrs. Nina Tangri: Good morning, everyone. I'd like to thank all of the presenters for joining us this morning.

My question is to Mr. Brown. I understand that part of the Attorney General's proposal is to permit the law society to regulate law firms in addition to just lawyers and paralegals. With all of that comes a myriad of different

business arrangements in place at law firms as well as the non-traditional type that law firms are now taking on. But could you expand on why the changes to the Law Society Act serve to protect the public?

Mr. George Brown: In terms of the increase in the penalty, I think it represents a deterrence—that licensees know that the potential for these huge fines is there, and so we are more cautious and will not take that risky process that could bring us into a disciplinary situation.

I guess, from my personal perspective, we take our time and we make sure that it's done properly and we utilize the law society's process in terms of practice management. I think those kinds of initiatives inside the law society and the prospect of these huge fines help us to deliver this message to the public: that we are cautious and we have to be cautious because of the potential that our regulator could come down on us really hard.

Mrs. Nina Tangri: Thank you. Just to expand on that—as you understand, this has been quite a lengthy consultation process for this bill. But I'd like you to let us know, and let the committee know, about the consultation process for the bill and how your group often engages with the Attorney General office. Let us know some of the work that you've been doing together with them.

Mr. George Brown: We have approached the Attorney General on a number of different initiatives that we thought were in the best interest of the public and the profession. We find them extremely receptive to listening and to crafting ways of improving the delivery of legal services in Ontario.

We've met with them with respect to issues with the Residential Tenancies Act, issues having to do with the bill that was implemented to increase the summary conviction process. They really put their heads to it and came up with something that was middle ground, to permit over 3,000 paralegals in Ontario to continue representing people in quasi-criminal proceedings and in summary conviction proceedings.

We've met with them with respect to the commissioner and notary. We are pleased that they went back to the table and crafted something that allows Ontarians to be able to access these services through non-lawyer processes or businesses and possibly even through virtual, which is something that's being done widely in some areas of the United States. So I find our Attorney General office to be progressive and that they're listening.

Mrs. Nina Tangri: My last question was: Did you find that the office was very receptive and listening, and have taken all things into consideration?

I'm just very pleased, and I want to thank you for the great work that the OPA does for the profession and for putting your constituents and your clients first. Thank you very much.

Mr. George Brown: You're welcome.

The Chair (Mr. Roman Baber): Thank you. Mr. Coe, with exactly a minute remaining.

Mr. Lorne Coe: I'll be very quick, Chair.

Mr. Brown, thank you for your presentation.

Your association, along with the Association of Community Legal Clinics of Ontario and the law association of Ontario, has spoken about the need to modernize the system and put the focus back on client needs. I'd be interested in your perspective, sir, on the impacts of the pandemic and how, in your view, it's affected the justice sector.

Mr. George Brown: I believe there are a number of areas within the legal profession where there were backlogs, and being caught off guard with COVID-19, I think we've kind of increased the backlogs in those areas. I was impressed that shortly before COVID-19, the Attorney General and his staff went out to British Columbia to look at a model that is right now at this moment perfect for Ontario. They were pushing towards that and I see that—

The Chair (Mr. Roman Baber): Please conclude.

Mr. George Brown: Yes. If that system is implemented in Ontario, it would ease a lot of our backlog. So I see the Attorney General's office looking at all of these and trying to deal with them.

Mr. Lorne Coe: Thank you, sir, for your response.

The Chair (Mr. Roman Baber): Thank you, Mr. Brown.

Over to the official opposition for five and a half minutes. I recognize Mr. Singh.

Mr. Gurratan Singh: My question is for Peter. You're aware of the Law Commission of Ontario?

Mr. Peter Sahagian: I am.

Mr. Gurratan Singh: And you're aware that—would you agree with the Law Commission of Ontario's assessment that they are one of Ontario's leading law reform agencies, that was originally created by the Ontario Ministry of the Attorney General, the Law Foundation of Ontario and the Law Society of Ontario, along with Osgoode Hall Law School and the law deans of Ontario?

Mr. Peter Sahagian: Yes, I attended Osgoode, actually, so I'm very familiar with it.

Mr. Gurratan Singh: You and I both. Then you would also be aware of their letter that they had written on January 22, with respect to Bill 161. Are you aware of that letter?

Mr. Peter Sahagian: Yes.

Mr. Gurratan Singh: In the letter, they state specifically that, "Bill 161 adopts mandatory and conjunctive 'superiority' and 'predominance' tests.... These provisions fundamentally restructure class action law and policy in Ontario...."

They write specifically that, "Bill 161 will effectively restrict class actions and access to justice in a broad range of ... cases," and they specifically note Indian residential schools, Walkerton, and tainted blood supplies.

Further, in your testimony you stated that those are important cases and that the current changes in Bill 161 would not impact them, but your testimony is in direct contradiction to the opinion of the Law Commission of Ontario. Would you agree with that?

Mr. Peter Sahagian: Yes, I guess I'm entitled to a different opinion, and that's what I've concluded.

Mr. Gurratan Singh: Further, the Law Commission of Ontario has stated that these restrictive policies coming forward would actually result in less access to justice for Ontarians with respect to their ability to collectively come together and put forward non-frivolous and incredibly important cases to Ontario. Would you agree with the law commission's opinion on that?

Mr. Peter Sahagian: No, I fundamentally disagree, as I've said.

Mr. Gurratan Singh: You agree that that is their position—not that you disagree or not. Would you agree that that is their position?

Mr. Peter Sahagian: That is their position, but I fundamentally disagree with it.

Mr. Gurratan Singh: Further, the law commission states that the kind of law that is coming forward is very much consistent with a more restrictive American legislative model, which is "inconsistent with decades of Canadian law." You agree that is the Law Commission of Ontario's position?

Mr. Peter Sahagian: That's their position; it's not our position.

Mr. Gurratan Singh: How do you reconcile your differences with the position of the Law Commission of Ontario, such a well-established and well-recognized body of law professionals within Ontario? How do you reconcile those differences?

Mr. Peter Sahagian: From our perspective, we think, as I said earlier, if there are systemic issues, common systemic issues that are central to the case, that they would be certified and that would not undermine the ability to get the cases certified.

We also know that in the US they've had this concept of predominance for many years, and they actually originated the concept of class actions in the US. They have a proliferation of class actions. So it hasn't impacted the number of class actions there at all, so we don't think it will have that effect.

With respect to superiority, I didn't get the chance to finish my view on it. I think you have to establish also that it is superior to all other available means of resolving disputes. I think that there are, in many cases, alternative dispute resolution mechanisms or regulatory mechanisms which can be used in lieu of class actions, and result in a less costly and less intensive impact on the judicial system We believe that they're actually favourable, and we at KPMG were involved in one. About 10 years ago, we had a class action brought against us with respect to overtime, and we resolved it by creating our own alternative suit resolution mechanism and all the cases were resolved through that.

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We take the position that these proposed amendments are quite balanced and will not result in deserving cases not getting certified. We believe deserving cases will continue to be certified.

Mr. Gurratan Singh: Self-admittedly, initially in your testimony you stated that you are more defence-oriented because of your positioning as an organization. Is that fair to say?

Mr. Peter Sahagian: We're always the defendant. We don't start class actions. That's why our familiarity is higher with respect to the defence perspective.

Mr. Gurratan Singh: And you recognize and you agree that the Law Commission of Ontario is a completely independent, non-partisan body that helps provide law recommendations and opinions in Ontario. They are completely independent. You recognize that, correct?

Mr. Peter Sahagian: They're independent. They're populated by people who have their own views, and I don't think that their views are necessarily shared across the spectrum.

Mr. Gurratan Singh: Like I said, my question was not that, but you recognize they are an independent body and they are of high repute within Ontario within the legal sector.

Mr. Peter Sahagian: I can't not tell you how high they are held in terms of their reputation, but certainly they're a body that's been in position for many years and have contributed a lot to the public debate on these issues.

The Chair (Mr. Roman Baber): Mr. Singh, with 10 seconds remaining—

Mr. Gurratan Singh: No further questions.

The Chair (Mr. Roman Baber): We will now proceed to our independent member for four minutes of questions.

M^me^ Lucille Collard: I'll address the question again to Mr. Sahagian. You've mentioned that the predominancy requirement doesn't prevent the pursuit of individual damages by class members for the certification of an action. However, as it implies in the name, it requires the predominant damages to have occurred jointly.

Do you accept that there are circumstances where this requirement will prevent the certification of class actions for individuals who have suffered deeply personal and significant injury as the result of a common injury caused by a product or an institution?

Mr. Peter Sahagian: No. As said, actually, we think that in situations where you have a systemic or a common problem, like in residential schools, or tainted water, the impact on an individual may be different. It might be an idiosyncratic impact—one person would have a kidney infection from drinking water; another person might suffer some other ailment. But the core issue is the tainted water, or the core issue is abuse in the residential school. How we think of that would still be certified, and then the court can look at the individual damages separately.

That was done in the Supreme Court of Canada to decide this in 2001, in a case called Rumley. It's well-considered by the courts and has been accepted by our Supreme Court that you can do it in that sort of two-step fashion. But critically, I think that any cases involving common systemic harm can and will still be certified even under this new test that's being proposed.

M^me^ Lucille Collard: Thank you. No further questions.

The Chair (Mr. Roman Baber): We're now going back to the government for five and a half minutes. I recognize MPP McKenna.

Ms. Jane McKenna: I am Jane McKenna, MPP, and I'll be directing my questions to Kojo Damptey.

Mr. Kojo Damptey: Yes, I'm here.

Ms. Jane McKenna: Thank you so much for being here today, and thank you, Chair, as well.

Over the last 15 years, funding for legal aid in Ontario increased exponentially with no improvement in outcomes. Past consultation and reports, including the Auditor General's 2018 annual report, have identified a need to improve the system. Stakeholders, including the Association of Community Legal Clinics of Ontario, the Ontario Paralegal Association and the CEO of LAO have all said that the changes in Bill 161 modernize the system and put the focus back on clients' needs.

Do you think we need modernization of the legal aid system, particularly in light of the challenges and impacts raised by the recent COVID-19 pandemic and how it affects the justice sector?

Mr. Kojo Damptey: Yes, I would say we need modernization, but modernization impacts different people. As I mentioned in the statement, when we are talking about low-income, disadvantaged folks, people living with visible and invisible disabilities, people having issues with employment—those are the individuals that we need to listen to. I think that, in terms of them accessing the relevant justice and the relevant issues to ensure that their safety is taken care of, the current amendments made or the changes that are before you today will eliminate that. So again, it's more of: What is the actual effect on the people that access the legal clinic? Newcomers, new immigrants, people living on low incomes, people that have disabilities are the ones that feel the effects.

When we are talking about our current climate, in that we have a global pandemic, access to justice becomes a real issue. Like I said in my testimony, we have to name the issue. If we just use "modernization" and "sustainable legal aid system" without naming some of the issues that people that access the legal system are trying to address, then that modernization will not have the required impact that we need.

Ms. Jane McKenna: Thanks so much, Mr. Damptey.

The Attorney General has been very public in his strong support of the important work that legal clinics do for Ontarians who are faced with a variety of legal needs. In the new Legal Aid Services Act, 2019, we have recognized that foundational role as something that Legal Aid Ontario must have regard to when it considers decisions with respect to providing legal aid services in Ontario communities. Can you tell us why it is important to have that critical role continue to be recognized in legislation?

Mr. Kojo Damptey: Yes, I think it's very important, and like I said earlier, we have to name some of the issues. If we don't name the issues, if we don't name the systemic racism, if we don't name disability justice, if we don't name economic justice, then that undermines our ideals of access to justice and will further continue to marginalize residents across Ontario that are trying to access justice.

So I think that those are some of the things that need to be addressed here. I wouldn't say that they have been done in a fulsome scope. That would be our assessment when we talk to community members and when we talk to individuals and families that come to our organization and are talking about their issues, and we have to refer them to the Hamilton legal clinic.

The Chair (Mr. Roman Baber): Thank you very much. The government's time has expired.

We'll now move back to the official opposition with five and a half minutes. I recognize MPP Morrison.

Ms. Suze Morrison: I would like to direct my questions to Mr. Damptey. Thank you for being with us today.

Would you say, in your opinion, that this legislation as it's currently drafted would negatively impact Black communities, Indigenous communities and racialized communities from accessing justice?

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Mr. Kojo Damptey: Yes, that is our assessment. Like I stated in my documentation, I think schedules 15 and 16—that's where the issues are. I think in the footnote that I submitted or referenced, there are a number of law professionals that have stated why. If we look at our current situation in terms of the global pandemic, where COVID-19 has disproportionately affected people of colour, Indigenous communities, Black communities, then these are some of the circular, systematic issues that we are having. That's why it's important to name some of these issues.

Ms. Suze Morrison: Thank you. Are you aware of the return on investment for investment in legal aid in our communities?

Mr. Kojo Damptey: Yes. I know that the Hamilton legal clinic has always tried to provide that information to residents, and so those are some of the benefits that we see from legal aid clinics across Ontario.

Ms. Suze Morrison: Yes, I know. We've heard other deputants say that the figure is anywhere between, I think, $6 to $9 that a government can reap from investing in legal aid. The very act of investing in legal aid is cost savings to our broader system.

Could you speak to why investment in legal aid is a such cost-saving measure in our communities?

Mr. Kojo Damptey: I would say that because of the some of the historical colonial effects that have impacted Indigenous and people of colour in this country and in this province, investing in legal aid clinics also brings to the forefront some of the systemic issues that our disadvantaged communities are facing. When we invest in legal aid clinics, what happens is that we are trying to address these issues so that we can reduce the cost on health, on immigration, on education and what have you. So that's why legal aid clinics provide an important role in the province.

Ms. Suze Morrison: Thank you. Now, last year, the Conservative government cut 30% from legal aid across the province. Are you aware of what impact that has had on your community in Hamilton and your ability to make referrals to legal aid organizations in Hamilton?

Mr. Kojo Damptey: Yes. Like I said, we send a lot of referrals to Hamilton legal aid. I think the huge impact in Hamilton has been on the newcomer community and new

immigrants community that try to access legal aid in terms of when they are transitioning into society, into the way of living. So those are the impacts.

We also have to state that even before the cuts were mentioned, legal aid was still seeing that increase in people trying to access services around housing and employment and what have you.

Ms. Suze Morrison: So before the cuts, you would say that legal aid was substantially underfunded and doing more with the dollars they were allocated, and then were asked to cut back even further?

Mr. Kojo Damptey: Yes.

The Chair (Mr. Roman Baber): A minute and 15 seconds.

Ms. Suze Morrison: Thank you. Further to the cuts, with the provisions in this legislation that change the provision of services from what legal aid "shall provide" to the services they "may provide," if legal aid receives another across-the-board cut at the same level that we saw this Conservative government implement last year, is it your concern that whole areas of law will be cut from legal aid services across this province?

Mr. Kojo Damptey: Yes. And I think also what happens is that it broadens the scope, and we're not dealing with specific issues. That change in language also means that anyone can decide what is pertinent and what is not pertinent. But if we name the issues that disadvantaged communities have, low-income communities have, then we are able to address the issues that they've been facing and that they continue to face, and that will be even exacerbated by our current climate where we're seeing huge deficits in our municipalities.

The Chair (Mr. Roman Baber): Thank you very much.

Ms. Suze Morrison: Thank you so much. No further questions.

The Chair (Mr. Roman Baber): Back for a final round of questions to the government side for five and a half minutes, beginning with Mr. Coe.

Mr. Lorne Coe: Thank you, Chair, and through you to the general counsel for the Big Six Accounting Firms: You will know, sir, that one of the significant proposals for the Class Proceedings Act is amending the certification test. Part of that new test will now include a superiority requirement, meaning that the court has to assess whether a class action is superior to other means of resolution.

In my riding, I know that some stakeholders have noted that this new requirement will incentivize businesses to develop more creative, robust alternatives, and that's what they've been looking for for quite a long time—robust alternative dispute resolution mechanisms that will help to get people in my riding quicker and more meaningful access to justice.

Can you please provide some examples, either with reference to your own experience, which I know is long and accomplished, or based on case law, of what these alternative resolutions may look like in your estimation and how they will help?

Mr. Peter Sahagian: I endorse what your constituents have said. I think that's exactly apt.

I can speak from our own experience. I think I alluded earlier to the fact we had been exposed to an overtime class action. I remember getting that claim and taking it to our CEO that day, explaining what it was and what it meant. He said, "Do you believe, Peter, that we are offside?" I said, "I think we have gone offside." The reason was, we started out as an accounting firm, and accountants are exempt from paying overtime. But over the years, we had expanded and taken on consultants who were not CAs or CPAs, so we did have to pay them overtime. We said, "Jeez, we don't want to fight with our employees. We want to create a system whereby we pay them what they're rightfully owed."

So we created our own overtime redress plan where we got forensic accountants to analyze all the records and determine what we thought people were owed. We provided that to our people and said, "If you don't agree with it, we will pay for an independent mediator to adjudicate that and help you resolve it. If you don't agree with the independent mediator, we'll go to an independent arbitrator. We'll pay for that process."

We did all that, and we ended up paying out, I think it was, $8 million. We had about 30 cases that went to mediation and, I think it was, four or five that went to arbitration. We resolved it all with minimum expense, and the class action that was commenced against us was not proceeded with. This was much more expeditious. It was all done within a matter of six or seven months, at great benefit to the judicial system, I would say, and to our employees, who got their recovery much quicker.

Mr. Lorne Coe: Sir, there was another point you wanted to make earlier in your presentation, as you ran out of time, that you wanted to make. Can you take that time now?

Mr. Peter Sahagian: Thank you. It was with respect to the point you just raised and the superiority component to the preferable procedure test. So there's one aspect, predominance, which I've addressed; the second aspect is superiority. Unless a class action is superior to alternatives, then the alternative should be proceeded with. And that is at the discretion of the judge. The judge decides that question.

In many cases, the business community may come up with their own mechanism, which we did, or there might be a statutory or regulatory one, like the securities commission has—mechanisms to compensate investors who are hard done by—or in some cases, they can be industry associations like the bankers' association or automobile association. Automobile manufacturers oftentimes do recalls, so they bring back the equipment or the car and they repair it at their own cost, that sort of thing. So there is a myriad of mechanisms to deal with this.

All that's happening here is that the legislation is saying. "That should be considered by the court when they decide whether or not to allow the class action to proceed," because it could be there's another way to deal with the matter that's more economical and more efficient and will

result in higher recoveries for people. As you know, in many cases in these class actions, the lawyers end up taking large contingency fees and the class action members end up with very modest recoveries and sometimes just a coupon to redeem. So we think that there are, oftentimes, other mechanisms that can yield better results, and more efficiently.

Mr. Lorne Coe: Thank you, sir, for your answer. Back to the Chair to transition to one of my colleagues, please.

The Chair (Mr. Roman Baber): Mr. Bouma, with a minute remaining.

Mr. Will Bouma: I'd like to thank all the panellists for coming here today. I really appreciate this format, where we can have more witnesses in. But in the last few seconds remaining, I want to just turn to Ms. Laing—she hasn't had the opportunity to say anything yet—if she had anything to add.

1050

Ms. Andrea Laing: My intention today was to let Mr. Sahagian speak. Frankly, he's a more compelling speaker, and my job was to be available if there are technical questions that I could answer for the panel. We've been working with the Big Six throughout this process. The Big Six has engaged with the law commission, and subsequently during this process. I would just like to say that they are an extremely well-informed organization. Their interests are in genuine, balanced and sensible reform. They are not out to prevent class actions; they would just like the regime to be better. That has been my experience working with this group.

Mr. Will Bouma: Thank you.

The Chair (Mr. Roman Baber): Thank you very much. I just want to alert members—I know that members are hoping to get the floor in a timely fashion. We try to accommodate everyone on a first-come, first-served basis. Some requests come by private chat or text, so we try to feed those into the order received and not just what appears visually on the screen. But we try to get to everyone.

Back to the official opposition, with five and a half minutes remaining: I recognize Mr. Singh.

Mr. Gurratan Singh: I'm okay to pass the questions to Mr. Yarde if he wants to go first.

The Chair (Mr. Roman Baber): Mr. Yarde.

Mr. Kevin Yarde: I want to thank all the representatives for coming today.

My question is for Kojo Damptey of the Hamilton Centre for Civic Inclusion. I'll try not to go through the same questions that my colleague Suze Morrison asked.

We're looking at this system going from "access to justice" to "value for money," as proposed under Bill 161. Would you say that if this bill is passed as prescribed, it would eliminate focus on crucial issues like discrimination and human rights work?

Mr. Kojo Damptey: Yes. I think in our estimation and the work that we have done with the Hamilton legal clinic—and also the concerns of some of the community members that use the legal clinic—these are some of the concerns that we are hearing. I think we also have to understand that sometimes when we are dealing with issues of access to justice, we have to try and not see those that are accessing legal clinics as clients, but we should be seeing them as residents and community members. That is what the legal clinic has tried to do. It has tried to be part of the community so that everyone can have access to justice, since it's their human right.

Mr. Kevin Yarde: Okay. And if you could speak to how the removal of funding for legal aid clinics has affected your clinic in general.

Mr. Kojo Damptey: I'm not speaking on behalf of the Hamilton legal clinic. What I'm saying is that, in our partnership with them, we have seen some of the reduction in terms of outreach, in terms of connecting with other community members that have issues. The Hamilton legal clinic has access to Black justice for youth, who are seeing huge amounts of expulsions and suspensions within our school system. They also have access for Indigenous communities—because as we know, there is rampant systemic racial discrimination amongst Indigenous peoples and communities. And they also have access to justice for the LGBTQ2+ community that continues to face an increase in hate crimes. Hamilton has the highest number of hate crimes per capita in the country. So when we are reducing funding to legal clinics, it reduces the amount of justice for the disadvantaged communities that I just mentioned.

Mr. Kevin Yarde: Okay. The reason why the government is bringing forth these changes to Bill 161 is because, under their belief, the system, the way it is right now, is broken and needs to be fixed. Do you feel that the way the legal aid system is set up is broken and needs fixing, or is it working efficiently in terms of helping marginalized communities?

Mr. Kojo Damptey: The Hamilton legal clinic has done a great job in supporting many residents across the city. I know that there have been stories from newcomers and new immigrants that have moved here from Colombia, that have moved here from Nigeria. The legal clinic has supported them throughout their time here in Hamilton, in terms of providing them with access to justice, in terms of building a more inclusive community, where people understand where they can go when they have issues, who to talk to, and also how to be engaged in a civic manner.

These are the important and informed benefits of investing in legal aid and ensuring that they have the scope they need to address the particular issues that marginalized communities and other disadvantaged communities face in our province and this country.

The Chair (Mr. Roman Baber): Fifty seconds remaining.

Mr. Kevin Yarde: Fifty seconds? Okay. My final question to you, Kojo: I know you mentioned that there hasn't been enough consultation done, and that schedules 15 and16 should be rejected. If you can elaborate a little bit on what you meant by that.

Mr. Kojo Damptey: Yes. I think it's important to also have conversations with the individuals and the communities that engage with legal clinics across this province. I'm well aware that associations and other institutions that

have done this work have the know-how and resources to provide input and consultation. But when we are talking about folks that are low-income, that are working to scrape a living wage so that they can provide for their family—those are the particular individuals that we need to have discussions with, because sometimes their sole living and purpose and sustainability come from organizations like the legal clinic.

The Chair (Mr. Roman Baber): Thank you very much.

Mr. Kevin Yarde: Thank you.

The Chair (Mr. Roman Baber): That concludes the time available for this panel. I'd like to thank the Ontario Paralegal Association, the Hamilton Centre for Civic Inclusion and the Big Six for their presentations today. Just a reminder, your deadline for written submissions is today at 6 p.m.

We will now take a minute to say goodbye to our 10 a.m. panel. Thank you.

NORTH YORK WOMEN'S SHELTER
COMMUNITY LEGAL EDUCATION ONTARIO
CLASS ACTION CLINIC: UNIVERSITY OF WINDSOR LAW SCHOOL

The Chair (Mr. Roman Baber): Okay. Welcome, everyone. My name is Roman Baber. We are here to continue with this morning's hearing, and the final day of hearing, of the Standing Committee on Justice Policy on Bill 161.

For our 11 a.m. panel, we have, from the great riding of York Centre, the North York Women's Shelter, Community Legal Education Ontario, and the Class Action Clinic at the University of Windsor law school. So welcome to all of you. You will have an opportunity to make initial submissions not exceeding seven minutes, followed by questions from both recognized parties and the independent member.

I invite Miriam Roger from the North York Women's Shelter to appear before the committee now. Ms. Roger? Good morning to you.

Ms. Miriam Roger: Hello. Good morning, members of the justice committee. My name is Miriam. I'm a lawyer working with North York Women's Shelter, which, as the Chair has pointed out, is in his riding. I know he is aware of the important work and valuable service that we offer to his constituents.

Today I would like to speak to you regarding our concerns about Bill 161 specifically; the proposed changes to the Legal Aid Services Act. I have three recommendations for you to consider: The first is to maintain "access to justice ... for low-income individuals" in the purpose of the act; the second is that the imperative language of "shall" remains in section 4 of the act, which lists the areas of law in which legal aid services are to be offered; and the third is to conduct a meaningful, intersectional, gender-based analysis when enacting legislation that affects survivors. This could include consulting with survivors as well as front-line workers.

1100

Let me tell you a little bit about our shelter and about our clients and why we think these recommendations are necessary. We at North York Women's Shelter house about 40 women consistently. We're always at capacity. We also offer our shelter to their children and their pets. These women come to our shelter looking for safety after fleeing violence and abusive relationships. They're looking to get safety, and they often have to do this through accessing the justice system. This may be for family law matters, immigration, criminal as well as any of the other areas of law listed in section 4.

Using the justice system can often cause more harm for our clients. We see an increased risk in lethal violence as well as stalking behaviours, and the justice system itself provides further avenue for harassment, including tactics like conflicting lawyers out from representing our clients, proposing endless motions in Family Court and making unfounded complaints to judges. The list goes on and on.

Due to financial abuse and financial insecurity, the vast majority of our clients require legal aid in order to access justice and to work towards safety. We are very thankful that Legal Aid Ontario has made a commitment of support for domestic violence survivors and survivors of gender-based violence. However, despite this official message, last year's cuts and an emphasis on value for money will and have directly affected the services upon which our clients rely. Our clients need fully funded legal aid duty counsel, community legal clinics as well as private certificates in order to get legal representation, advice and information.

In order to help demonstrate the experience of our clients, I'll use an example. A woman we'll call Maria left her home province after fleeing her home, which was after years of abuse. She arrived in Toronto with her child. She accessed our shelter in order to get safety. Unfortunately, her husband reported to police that she had kidnapped her child, so she needed criminal law advice. She needed an emergency ex parte family court order for custody of her child, so she needed family law advice. There was some precarity about her status in Canada, so she needed immigration law advice. She also eventually needed some assistance around an Ontario Works decision. We were able to get her a certificate for her family and criminal law matters, she was able to access a community legal clinic for her social assistance appeal and she used duty counsel for some criminal law advice.

Last year's cuts affects all of the services which Maria required. The cuts stopped all new certificates for immigration matters until the federal government stepped in to fund them temporarily. Tariffs have been reduced on family law files. The cuts also meant layoffs at community legal clinics, resulting in longer wait times and a reduced ability for staff lawyers to take on files. In criminal courts, we see duty counsel now performing the vast majority of bail hearings as certificates are no longer issued to private counsel in the vast majority of cases. That means women

like Maria are not prioritized and they're often left waiting while duty counsel is tied up in bail court.

And to top it off, the position of the domestic violence strategy lead, the one person at Legal Aid Ontario whose job it was to ensure that the needs of survivors are represented—her job was cut as a result of last year's budget reduction.

We have serious concerns about our clients' ability to access justice if the pursuit of value for money to further cuts is put ahead of ensuring access to justice for low-income individuals.

Legal aid also needs to serve all areas listed in section 4, including human rights, health and employment law. Like I mentioned earlier, survivors regularly require support in all of these areas. While we're unsure what the permissive language of "may" might mean for the future of these services, one can only assume that further cuts might result in some of these areas no longer being funded.

Conducting an intersectional gender-based analysis would assist the government in understanding the way that proposed policies and legislation would affect women and men. It is particularly important that the considerations of Indigenous women, women of colour, trans women and women fleeing violence are considered.

As part of the intersectional gender-based analysis, we ask that the government meaningfully consult with survivors and front-line workers when drafting new legislation like the Legal Aid Services Act. The knowledge and experiences that these people can bring to the table will ensure that the justice system and legal aid do not put up more barriers.

In conclusion, access to justice for low-income individuals must remain the focus and goal of legal aid. Understandably, the government, as the warden of public funds, must ensure value for money as well. However, this must not come at a cost of our vulnerable members falling through our legal system's cracks. Legal Aid Ontario needs to be fully funded to be functional and to do what society requires it to do.

The Chair (Mr. Roman Baber): Thank you very much, Miriam.

Next I'd like to invite Julie Mathews, executive director of Community Legal Education Ontario, to make seven minutes of submissions to the committee. I kindly ask that you begin by stating your name for the record.

Ms. Julie Mathews: Yes, I am Julie Mathews, and I am the executive director of Community Legal Education Ontario, or CLEO. You may not have heard of it. We produce and disseminate information about the law for people across Ontario. Thank you very much for allowing me to present to you today. I will briefly describe how people across Ontario are accessing legal information about their rights and responsibilities and CLEO's role in that, and then I will make a few comments on Bill 161.

CLEO is an organization that wears many hats. We are a specialty community legal clinic, serving communities across the province living on low incomes or experiencing other social disadvantage. We are what's called a public legal education and information, or PLEI, organization. This is our sole purpose, and we've been doing the work for over 45 years.

We hang our hat in the literacy field as well, specializing in clear-language, easy-to-understand legal information. Working closely with our sister legal clinics and non-legal, non-profit organizations that serve their local communities, our information resources are driven by community needs. We provide information on issues in family law, employment, consumer debt, housing and social assistance, immigration and refugee law.

We are perhaps best known for our Steps to Justice legal information website and its French sister site, Justice pas-à-pas. These sites are models of justice sector collaboration. We worked and continue to work with the Ministry of the Attorney General, the Superior Court and the Ontario Court of Justice, LAO, the law society and numerous legal clinics in developing and sharing content through Steps to Justice. We saw 4.5 million visits to the site last year.

Turning to Bill 161, which aims to modernize Ontario's legal aid system: CLEO would like to seize on the opportunity offered by this legislation to ensure that CLEO's key role as the primary public legal information provider in Ontario is clarified and supported. This doesn't mean that CLEO can or should be the only legal information provider in Ontario or among Ontario legal clinics. Many other legal and community organizations provide legal information geared to their communities, and we collaborate with, support and share their work. But with our sole-purpose, province-wide mandate, we are uniquely placed to develop core legal information on high-need legal topics that we and our numerous legal and community partners can disseminate to people across the province.

Let me offer a recent example of CLEO's impact and our ability to respond quickly to developments. In the midst of COVID-19, people across Ontario are seeking—some with desperation—practical, action-oriented information. In response, we launched a body of COVID-19-related information on Steps to Justice and Justice pas-à-pas on March 16, shortly after COVID-19 was recognized as a public health crisis. Since then, we have added to and updated the information to reflect continual changes to government programs and people's evolving concerns. Ontarians can now find a total of 235 detailed questions and answers in English and French in 12 areas of law in the COVID-19 section of our site. We've had 400,000 views on one question alone: about applying for the CERB.

We didn't stop there. The demand for quick and accessible information during COVID-19 has been overwhelming from many quarters. We also doubled the number of live chat sessions we offer. We now house two two-hour sessions a day helping members of the general public to find information they need. And we realized that front-line workers at small non-profits are fielding a lot of questions from community members about COVID-19. We set up Zoom webinars intended specifically for those front-line workers to ask questions of legal experts, primarily expert

lawyers from legal clinics, so that those on the front lines would be better equipped and more confident helping their community members. Between 250 and 425 front-line community workers have attended each of CLEO's co-ordinated webinars—we've had four of them, I think I said—including Ontario Works staffers; public school board and adult learning staff; staff from YMCA offices across the province; workers at offices of the Canadian Hearing Society—we provide ASL interpretation; women's crisis centres; public health units; offices in many municipalities; and MPP constituency office staff. So please check with your staff to check on how they found the webinar.

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Finally, many people are worried about catching the virus and the impact that might have on their health care and families. Again, responding nimbly and quickly, people can now find guided pathways on Steps to Justice to help them do their power of attorney. Soon, people will be able to access a guided pathway to do their own simple will. These two pathways join CLEO's 39 guided pathways that help people prepare their own Family Court forms. The Ministry of the Attorney General has been highly supportive of our work in this area, funding our development of these family law pathways and working closely with us on them. I encourage you to take a look.

The digital age is transforming the ways in which we can offer legal information, and CLEO is seizing on those opportunities. You might ask: How can we afford to do our work to reach so far and in so many ways? Well, CLEO seeks and receives multi-year funding from Legal Aid Ontario, the Department of Justice Canada and from the Law Foundation of Ontario. For the last few years, we have received additional project funding from MAG, as I said, the Ministry of Government and Consumer Services and the Canadian Bar Association Law for the Future Fund. In the fiscal year recently ended, CLEO was carrying out work on more than a dozen separately funded projects.

We leverage our core funding to get more and to do more. The fact that so many funders are willing to step up and support our work attests to its quality and helps us to punch well above our weight.

Why am I telling you this? What's the problem? What does this have to do with Bill 161? Bill 161 is intended to modernize Ontario's legal aid system so that it's more efficient and more effective. We are concerned at CLEO about this shift in authority. In our view, it's important that the determination of the highest priority legal needs and the best way to respond to them is made by those closest to home, by local legal clinics working in their communities.

The Chair (Mr. Roman Baber): Please conclude.

Ms. Julie Mathews: So we fully support the submissions of the ACLCO and other clinics in recommending amendments to Bill 161. I won't go into our support.

I'll turn to CLEO very briefly—

The Chair (Mr. Roman Baber): I'm terribly sorry. Unfortunately, you are out of time. However, I'm sure you'll be able integrate the conclusion of your submissions into one of your answers.

If we could kindly proceed with the Class Action Clinic at the University of Windsor law school. Please begin your seven-minute submission by stating your name for the record.

Ms. Jasminka Kalajdzic: Good morning, and thank you, honourable members, for this opportunity to address schedule 4 of Bill 161. My name is Jasminka Kalajdzic. I was co-principal researcher of the Law Commission of Ontario's class action project. I'm an associate professor at Windsor law school, where I research and teach class actions, and I'm here as the director of the Class Action Clinic, the only clinic anywhere in North America devoted to the study of class actions and to serving class members by giving them advice, legal information and help with settlement claims. We are not-for-profit and we represent the interests of ordinary Canadians.

While the clinic supports most of the amendments to the Class Proceedings Act that aim to improve transparency and efficiency of the class action system, the two proposed changes to the certification test, predominance and superiority, are significant. If implemented, I am convinced they would undermine the other improvements being made to the statute. There is no doubt that these two changes will disadvantage Ontario residents vis-à-vis other Canadians, and they will weaken, not strengthen, the justice system and the rule of law in the province.

You have our written submissions, which contain detailed arguments about why we think superiority and predominance will result in Ontario having the most restrictive class action regime in the country. Having considered the language of the bill further and looking at US case law more closely, I have three additional points to make.

The first is to explain why our courts will inevitably rely on American jurisprudence and what that means for the new predominance requirement. Attorney General Downey stated in his introduction of the bill that it will be up to Ontario judges to interpret predominance in the context of our Class Proceedings Act, but the bill introduces two additional steps to the certification test that must be proven on our evidentiary standard. What do those new provisions mean? Defendants will undoubtedly be relying on American case law to interpret language that is identical to the American Rule 23(b). In fact, our courts do this already. In a 1997 case called Caputo, the Ontario court said that despite differences in our two certification tests, "the American experience can, nevertheless, provide guidance. American jurisprudence has to date been considered by the Ontario courts in several class proceedings."

So how do American courts approach predominance in federal Rule 23(b)(3)? The US Supreme Court has described predominance as a demanding prerequisite that will not be established merely because the majority of contested issues are common. In Walmart, the US Supreme Court said, "What matters to class certification ... is not the raising of common 'questions'—even in

droves—but, rather the capacity of" the class action to resolve "the litigation."

There is no one approach to predominance in the various US circuits. Some courts interpret it to mean that common issues will resolve the litigation. Other courts state the common issues must dwarf the individual issues. This ambiguity is a warning signal to you. There will be a lot of energy spent by litigants in courts as they try here to determine what to make of this new requirement. But what I know for certain is that the requirement makes certain types of mass wrong difficult or impossible to litigate as class actions. I can get into some details about that in the Q&A.

It's not just about institutional abuse cases. It's also about tainted blood. Tainted blood actions were not certified in the US; they, of course, were certificated in Canada. Defective medical devices—not litigated as class actions in the US; certified as class actions in Canada. Employment discrimination and gender discrimination—not certified in the Walmart case; in contrast, gender discrimination cases against the RCMP were recently certified and settled.

So for Ontarians with a tainted blood claim or defective drug or employment harassment, they will either have to engage lawyers to launch cases individually, with the added risk of being potentially liable for costs if they are not successful, a risk class members don't face; or, more likely, they swallow their losses and suffer the harm without redress. They get no justice. That is not a good result for Ontario and it cannot be the intended goal of this bill.

There's another reason why I worry the predominance requirement will actually be worse for Ontario, maybe even than in America, and that's my second point. This clause, the predominance clause and superiority, was cherry-picked from a lengthy Rule 23 and dropped into our statute. But federal Rule 23 is very different from our certification test. The most important difference that I'll flag is that there are provisions in the US rule that specifically allow for what are called limited issue class actions. In those situations where a case does not meet the predominance test in America, there is a separate rule that provides that an action can be brought and maintained as a class action with respect to particular issues. Limited issue certification under the US rule allows certain issues for class treatment even if the class member's claim cannot be ultimately resolved other than by individual adjudication. That rule allows a class action to move forward, even where it wouldn't pass the predominance test.

Bill 161 does not have a provision like Rule 23(c)(4). Under our statute, either a case gets certified or it doesn't. So in this way, Bill 161 makes certification harder in Ontario, in some ways, than even in the US.

Some of you might be asking, "So what? What if there are fewer class actions?" That brings me to my third point.

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The Chair (Mr. Roman Baber): Forty-five seconds.

Ms. Jasminka Kalajdzic: Two things can happen, like I said: Either you hire lawyers to bring multiple lawsuits, and that cannot be good for our justice system to have a multiplicity of suits; or, more likely, people swallow their losses. Companies that price-gouge or violate privacy or break their contracts get away with that bad behaviour. Worse, those companies know that if they get away with not paying for that conduct today, they have little incentive to do better next time. That is the concept of deterrence that class actions were designed to facilitate. Deterring rule-breakers is necessary for the rule of law.

Rules need to be enforced. It's not fair to consumers that they have to suffer consequences of corporate malfeasance. It's not fair to businesses that operate fairly that those who don't abide by the rules get away with it, and that, at its core, is what we mean when we talk about the rule of law. Either the government enforces the rules or, in this era of deregulation, you allow the private sector to do so.

The Chair (Mr. Roman Baber): Thank you very much for your submissions, Jasminka.

The first round of questioning is to the official opposition. MPP Morrison.

Ms. Suze Morrison: I would like to thank all of our panellists today. I have so many questions for all of you, and unfortunately, because of the shortened format that this government has chosen to proceed with, we're going to have to be really succinct. I wish I had a whole session for each of you.

I want to start by thanking the folks from CLEO. I know that my staff use your resources in our constituency office all the time.

But I am actually going to direct my first round of questioning to Ms. Roger. You spoke about the impact of this bill on women fleeing violence quite passionately, and I really hope the government members take those concerns to heart. But I want to touch on the value-for-money piece. When you spoke about duty counsel being tied up in bail courts because legal aid is underfunded, is that good value for money in our justice system?

Ms. Miriam Roger: No, it's not. The criminal justice system has a lot of issues and does not run efficiently at the best of times, and with last year's cuts, things have really slowed down. What you see is a lot more self-represented people.

Bail hearings: A bail hearing that would take private counsel a morning to do is taking duty counsel a whole day to do.

Ms. Suze Morrison: What's the cost in a courtroom? What is your estimated cost of a courtroom for a half-day delay for the judge and the bailiffs and all of the staff that are involved?

Ms. Miriam Roger: I don't even want to hazard a guess, but it's a lot. I'm not sure of the numbers, but it's not an effective way to run a courtroom having duty counsel do bail hearings.

Ms. Suze Morrison: Our government is paying for all of those folks to be in that room. If we invested a small amount in legal aid, we could more efficiently work through all of those cases. So the investment in legal aid saves us probably millions and millions of dollars in tied-up time. Would you say that that's accurate?

Ms. Miriam Roger: I would agree with that, yes.

Ms. Suze Morrison: Okay. And then looking at other parts of our publicly funded system: If, in your scenario, a woman fleeing violence is delayed in accessing the justice that she needs and faces violence as a result of that—would you say it's good value for money when a woman fleeing violence ends up in our health care system, in a hospital bed at a cost of several thousand dollars a night, when she can't get access to justice in our justice system? Is that good value for money?

Ms. Miriam Roger: No, it's not. The reality is that inefficient justice is ineffective justice. It's not like this is because there's a delay and things are going to eventually resolve it; it just takes longer and longer to resolve so it costs more and more money.

Ms. Suze Morrison: Absolutely. And then when we take the cuts last year to legal aid in context with the 33% cut we saw to the rape crisis centres across the province, the cuts to legal aid, the cancellation of the provincial round table on ending violence against women, and the complete inaction of this government on the calls for justice in the missing and murdered indigenous women report, would you say that it's a fair characterization that this provincial government is attempting to balance their books on the backs of survivors in this province?

Ms. Miriam Roger: Sometimes it really feels like that. Like I said, the official message does seem to be that there are always supports for survivors, but the reality that we're seeing on the ground is that that's not true.

Ms. Suze Morrison: Thank you so much. I'd like to point a few questions at Jasminka as well, related to the class action pieces.

Would you say, in your opinion, that the Indian residential schools class action would not proceed under the current predominance and superiority tests that this government has proposed?

Ms. Jasminka Kalajdzic: I think it's very likely that that kind of case would not be resolved by way of a class action because, as I said, the way that the idea of predominance has been interpreted in the US is, at the very least, that the issues that are common are greater in importance and even in number than the individual issues.

Indian residential schools, the Ontario case, Cloud, was certified on one issue: Was there a fiduciary duty owed by the government of Canada and the churches to residential school survivors? It's hard to see how, on the basis of a predominance test, a case could get certified on one issue. So no, I don't think institutional abuse cases could survive this new, stricter test.

Ms. Suze Morrison: Who do you think this new, stricter test benefits? From what I've heard for the last three days of these depositions, it certainly doesn't help or benefit people in our community seeking access to justice. Who does this test benefit?

The Chair (Mr. Roman Baber): Twenty-five seconds.

Ms. Jasminka Kalajdzic: I can say that the amendments were proposed by the bankers and insurers association. The law commission received 30 written submissions, and there was only one submission that proposed predominance and superiority. It wasn't a sophisticated or detailed proposal, in my humble opinion. They introduced it by saying that the current certification test was too lax, but they only gave one example of a case that should not have been certified. So I think that it's safe to say that industry, and certainly lobby groups like the US Chamber of Commerce, which also made a submission, are the ones that are really supportive of this new provision.

Ms. Suze Morrison: Thank you so much.

The Chair (Mr. Roman Baber): Thank you very much. We'll now go to the government for five and a half minutes. We'll begin with MPP Park.

Ms. Lindsey Park: Thank you, Chair. I'll just ask one question and then I'll pass the mike over to MPP Tangri.

My question is for Miriam Roger. I must admit that in the example you used, I'm really trying to understand how you arrived at the conclusion you arrived at. You mentioned Maria, a victim of domestic violence in Ontario, a low-income Ontarian who would qualify for legal aid services. You mentioned that today, from your perspective, Maria would not be eligible for all the services she received when you had your interactions with her. As far as I'm aware—and I've followed these changes very closely, even though it's an independent organization making these decisions in legal aid—the most comprehensive certificate coverage exists for victims of domestic violence, and that has not changed. So I wanted to understand: Is there a memo you've received from legal aid recently that I should be aware of? Is there a specific date you received it? Because I'm not aware of that kind of change.

Ms. Miriam Roger: Thank you for the question.

I'm not saying that she would not be eligible for these services, but the reality is that the reduction in the budget has reduced the availability of some of the services that she used to be eligible for. For example, in a family law certificate, disbursements are no longer eligible, including things like covering interpreters. Also—I'm trying to think of more examples—in criminal court, there's no benefit given to domestic violence survivors. Like I said, accessing summary legal advice through duty counsel—it doesn't matter if you're a survivor; the fact is that duty counsel is stretched as is. Again, obviously she can access community legal clinics, but the fact is that the cuts have affected the services that community legal clinics provide. So I'm not saying that, as a domestic violence survivor, she can't get certificates. I know that that's a commitment in child protection matters as well; you can always get certificates. But the issue is what you can get with that certificate, if that answers your question.

The Chair (Mr. Roman Baber): Seeing no further questions by Ms. Park, we'll move on to Ms. Tangri.

1130

Mrs. Nina Tangri: Good morning. I'd like to thank all of the presenters for joining us this morning. My question is for Ms. Roger as well.

First, I would like to thank you for the great work that you and your organization provide for the community. I'm

just going to touch a little bit on the Civil Remedies Act, when it was first created back in 2001 by the Progressive Conservative government. It was a very innovative crime-fighting piece of legislation that was intended to, and it was successful in, deterring unlawful activity. This act allows police to seize property and funds used in or gained from illegal and criminal activity. We wanted to redirect those funds into the hands of victims and police programs that fight crime. I wanted to hear from you if you could share with us about how the proposed changes will help programs or victims' groups and why that is so important.

Ms. Miriam Roger: Sorry; are you asking me a question about the Civil Remedies Act?

Mrs. Nina Tangri: Correct, yes. And how the proposed legislation will help victims' groups.

Ms. Miriam Roger: I'm not sure. I haven't reviewed it. I was speaking more on the Legal Aid Services Act. I'm sorry, I'm not aware of, or haven't informed myself, about the remedies in this bill.

Mrs. Nina Tangri: I think a lot of us around the table here and on this committee agree that crime shouldn't pay. If you could speak a little bit more about in your experience—on the grounds of seizing illicit assets from criminals and how that important measure may help in preventing crime as a deterrent. A lot of the funds or seized assets go towards victims' groups. I've done quite a bit of work with Victim Services here in Peel, and that's something that they certainly were very pleased to hear that we would help do that. I just wanted your opinion.

Ms. Miriam Roger: Any funds being directed towards survivors is appreciated. I can't speak to the Civil Remedies Act or the efficacy of funds coming from proceeds of crime. I'm not exactly sure how the Civil Remedies Act would benefit survivors, but again, any funds that the government can direct towards survivors—I'm specifically talking about legal aid and how funds can be directed to legal aid this morning. If there's any way that the Civil Remedies Act could benefit to fund legal aid, that would be wonderful.

The Chair (Mr. Roman Baber): Okay. That concludes the time available for the government in this round. We'll now move on to the independent member for four minutes.

M^me^ Lucille Collard: My question is for Miriam Roger again.

We know that women that go to shelters are in a very vulnerable position; there's no question about that. With COVID-19, we know that there is a need for help, that that need has increased because of domestic violence and that you had to adapt really quickly. Necessarily, quick access to community services, such as legal aid services, is very important.

I want to know if you have any concerns with some of the changes in the bill that actually are centralizing community-level service decisions with the Legal Aid Ontario board. Do you have any concerns with that?

Ms. Miriam Roger: We do. I focused my submissions this morning on the language in sections 1 and 4, but we also have concerns about the impartiality of Legal Aid Ontario's board. If government appointees are—again, this isn't the strength of my argument this morning, but my understanding is that the new bill proposes that the board of legal aid is going to be changed and that appointees will be done through the government. I have concerns about that, as well as concerns with any sort of impartiality being taken away from Legal Aid Ontario and it being used as a tool for the government.

M^me^ Lucille Collard: Okay. Thank you for that.

The Chair (Mr. Roman Baber): No further questions, Madame Collard?

M^me^ Lucille Collard: No further questions.

The Chair (Mr. Roman Baber): Okay. We'll move on to the official opposition. Mr. Yarde.

Mr. Kevin Yarde: Thank you, Mr. Chair. My question is for Miriam Roger.

Thank you for coming in today. I'm not going to ask you a question about who's going to win the Stanley Cup or a science-and-nature question. I'll stick to why you're here, unlike what you've been getting the last couple of rounds.

You mentioned that value for money must not come at the cost of the most vulnerable. Can you expand a little about that in terms of access to justice and value for money?

Ms. Miriam Roger: Sure. The reality is that with our justice system as is, people are already falling through the cracks. People are forced to self-represent; people are being forced to plead guilty when they think they have no other option. And any further focus on value for money, any more policies that are more concerned with austerity than with access to justice will exacerbate the issue. Our justice system does not function the way it should, the way it can. So when "access to justice" is included in the purpose of the Legal Aid Services Act, and that is accompanied by the removal of "access to justice ... for low-income individuals," we have serious concerns about the direction that legal aid will take in our province.

I'm not sure what it's going to mean for the future with value for money enshrined in the purpose, but you can only be signalling further cuts, further reductions in budget, further layoffs, and so we have serious concerns.

Mr. Kevin Yarde: Also, you mentioned that the word "shall" should remain in section 4. What's the importance of that, as opposed to "may"?

Ms. Miriam Roger: The imperative language of "shall" ensures that all of those listed areas of law will continue to be offered by legal aid. Again, I can't predict the future. I don't know what that permissive language will mean for the future. But one can only assume that that means that if there are cuts, some of those services may no longer be offered, or at least the law will allow them to no longer be offered. Like I said, our survivors use all those types of law. They require services in all those areas of law, as do many Ontarians, so it's concerning.

Mr. Kevin Yarde: In your opinion, that should remain in the act?

Ms. Miriam Roger: Yes.

Mr. Kevin Yarde: Okay. Thank you, Miriam.

My next question is for Jasminka. You have a lot of knowledge on class actions. Can you explain to people at home, or people watching, as I don't think they really understand, that if certification is not met, someone will be on the hook for those charges? Can you explain a little bit more about that? Also, we've been seeing what's been happening in the long-term care homes, all the problems with the seniors. What would happen if certification was not met in that type of situation as well? Would an individual who's on a fixed income be able to proceed on their own? Would that be feasible?

Ms. Jasminka Kalajdzic: Thank you for those questions.

Starting with the first, the adverse costs issue: In our province, in all litigation, if a person loses—either loses a trial or loses a motion in court—they're liable for paying the other side's costs. That's true also in class actions for the representative plaintiff. If the representative plaintiff launches a class action and doesn't get certificated, the representative plaintiff is exposed to an adverse cost award. In reality, what this means is, because most people aren't going to be willing to bankrupt themselves to stand as a lead plaintiff, the law firm bringing the case for them pays those costs, or the law foundation through the class proceedings committee pays those costs.

This act is, I think, a good deterrent—or sometimes over-deters the bringing of cases. Lawyers simply have to be really, really careful about the types of cases they bring because bringing cases that are frivolous is going to expose the law firm to a hefty adverse cost award.

Your second question about long-term-care COVID-19 class actions: If they don't get certified, I'm confident that those individual family members who lost someone are going to have a really tough time bringing individual lawsuits, both because of the cost barriers—everybody knows it's expensive to hire lawyers and to go to court—and because there really aren't a lot of damages. Unfortunately, our system doesn't value a lost life very highly, so the damages that are available at the end of such a case are not so significant for one person that it's economically feasible for a lawyer to bring that case.

1140

Mr. Kevin Yarde: Can I ask how much time I have left?

The Chair (Mr. Roman Baber): You're out of time. In fact, you got an extra 10 to15 seconds. So we'll move back to the government.

Do we have any government questions in this round? Mr. Bouma?

Mr. Will Bouma: Thank you very much. I appreciate all the panellists for coming forward, and I really appreciate the opportunity to hear so many things. I was hoping to be able to ask Ms. Kalajdzic a little bit about her expertise in class action, which you are—I read your bio from the University of Windsor; very, very good.

If I could start first just from my own experience—I was always under the understanding that the tainted blood class actions didn't go anywhere in the United States because they started doing testing so much earlier, and we waited until 1985 with the HIV issue. You had mentioned that was because of the predominance and superiority tests. I was wondering if you could help me understand that a little bit better?

Ms. Jasminka Kalajdzic: Sure. I think it's important to distinguish between a case failing at certification versus failing on the merits. The class proceedings statute is supposed to be a procedural one. It's supposed to be about deciding how an issue gets decided on the merits: Do you have to bring an individual lawsuit? If you've got a lot of people who suffered the harm, do they each have to bring individual lawsuits, or can you prosecute the action in a single lawsuit?

My point about tainted blood was that those cases involving hemophiliacs who were HIV-infected were not allowed to proceed as class actions in the United States. Eventually, there were individual cases, and those may have failed on the merits because the facts were different on the ground in the United States.

But the point remains that you're forcing individuals to bring lawsuits separately, and that's why we have whole categories of cases in the United States that simply do not proceed as class actions. People either suck it up and don't get justice, or they have to launch individual lawsuits.

Now there's a whole other procedure that's had to develop in the United States called a multi-district litigation—MDL—list to try and manage a situation where you've got hundreds or even thousands of lawsuits that are launched because they cannot proceed as a class action. Of course we know in our jurisdictions all across Canada, personal injury cases can be prosecuted as class actions, whether it's a medical device or tainted blood or legionnaires' disease. The case can be decided on the merits as a class.

Mr. Will Bouma: All right, I'll take that. Thank you. I was curious, then, would you say that people who are going into a class action—that that takes a very, very long time for a class action?

Ms. Jasminka Kalajdzic: Yes, class actions do take a long time. Unfortunately, lots of litigation in our system takes a very long time. Someone close to me is in a family law dispute right now. That's taking a very long time.

The law commission was really concerned about delay, and that's why you have a lot of provisions, which the Class Action Clinic supports, that specifically target the problems of delay. Adding complexity to the certification test, in my view, does not address delay. In fact, I think it's going to make it worse as we try and sort out what this new test means.

Mr. Will Bouma: Because I've seen the statistic—that some people would say that certification is too easy in Ontario. You see 75% of cases get certified, and yet less than 50% actually see any benefit to the plaintiffs in those cases. I was wondering if I could get your opinion in the final minutes here of—if we can make the certification process a little bit stronger so that you see potentially less successful cases moving forward, wouldn't that serve the public interest by being able to have valid cases move forward more efficiently and be done faster so that we can

get that 75% certification so that you have more cases moving forward better?

Ms. Jasminka Kalajdzic: I don't agree with the statistic that 50% of the time people don't get anything out of a certified case. I've been trying to do empirical research on class actions in this country for the last 12 years. Unfortunately, with really outdated records, not having digital records and so on—which I hope your government will address—it's really impossible to do that kind of empirical research. So I don't agree that that's the case. In fact, I think that many more than 50% actually get something out of a class action. Our clinic is specifically designed to make sure that all class members who are entitled to participate in a settlement get it.

The 75% certification rate, I also don't think, as a normative matter, is a bad statistic. It means, I think, that lawyers are making sure that they pick good cases that are amenable to class determination. So restricting whole categories of cases from not being able to be resolved by way of a class action isn't good for Ontario. This is supposed to be about modernizing class actions. It's not modern to import a rule that was designed in 1966 in the United States.

Mr. Will Bouma: I find it interesting—if I have any time left—

The Chair (Mr. Roman Baber): Sorry. Unfortunately, Mr. Bouma, you're out of time.

Back to the official opposition: Mr. Singh.

Mr. Gurratan Singh: Jasminka, you represent an organization that is completely independent and focused purely on access to justice as their pursuit.

Ms. Jasminka Kalajdzic: That's our mission, for sure.

Mr. Gurratan Singh: You stated that Bill 161—that the changes that were being put forward were recommended by US interest groups, including the US Chamber of Commerce, and that they provided these suggestions that the government has included.

Ms. Jasminka Kalajdzic: If I remember correctly, it was only one written submission which specifically asked for predominance and superiority, and that was the bankers and insurers submission. The US Chamber of Commerce actually asked for even more restrictive provisions of certification.

What I would say is that the US chamber is a lobby group from the United States. Their central mission—and I get this from the website—is to lobby for the eradication of regulations that protect consumers and the environment, among other constituents. They are lobbying governments all over the world—Australia, the United Kingdom, the EU—to neuter collective class action mechanisms. They have no time for regulation, and they also reject the role for private enforcement. You can't have it both ways. If you believe in rules, you have to have mechanisms for enforcing them.

Mr. Gurratan Singh: And this organization has substantial economic interests in Ontario. Is that fair to say, that the US Chamber of Commerce would represent individuals who would have substantial economic interests in—and impact businesses—

Ms. Jasminka Kalajdzic: I'm not sure who their constituents or their membership is in the United States, but they've made submissions to law reform commissions all over the world, trying to limit the spread of class actions.

Mr. Gurratan Singh: The proposed model right now in Bill 161 would actually be more restrictive in Ontario than America. Is that fair to say—that you mentioned earlier?

Ms. Jasminka Kalajdzic: Looking at it last night more closely and comparing the language, it does seem in some ways that it would be possible—for sure possible—that it would have a harsher effect for class members in Ontario than in the States because we don't have these other provisions. The US federal rule has lots of provisions that allow for different types of class actions, including, for example, civil rights cases, that don't necessarily seek damages. Our class action rule is just very different. We don't allow for non-damage class actions or, like I said, for limited issue class actions. So in that way, I think we would be narrowing access to justice in Ontario compared to the US.

1150

Mr. Gurratan Singh: With just two and a half minutes left: Very succinctly, would you say that the ambiguity in Bill 161 would result in the potential for a lot of appeals and potential further litigation in interpreting and understanding this new piece of legislation?

Ms. Jasminka Kalajdzic: I think everyone on both sides of the bar will agree that that's true. This is language that doesn't exist in the rest of Canada. There are tests that aren't available in other jurisdictions in a mandatory way. It will most definitely result in an upheaval in the law and lots of litigation to try and sort out what it means. This is unfortunate at a time where we have settled the law after 25 years and people really just want to get on with it and get to the merits of their case.

Mr. Gurratan Singh: And further, this would ultimately result in a greater cost to Ontario with the cost of litigation and the associated cost of court time—very shortly, because we only have about a minute and a half left.

Ms. Jasminka Kalajdzic: I think that's true, yes.

Mr. Gurratan Singh: Further, you would agree with the position that the negatives proposed in Bill 161 outweigh any positives with respect to modernization or any other positives presented in this piece of legislation.

Ms. Jasminka Kalajdzic: What I would say is that there's an easy fix. As far as the class proceedings amendments—

Mr. Gurratan Singh: Just as written, though—because of the shortage in time. As it's written right now, would you agree that the negatives outweigh the positives?

Ms. Jasminka Kalajdzic: I think that the negatives that predominance and superiority will bring will undermine the benefits that are introduced in the other amendments.

Mr. Gurratan Singh: With just a minute left: The government has often stated the opposition is often doing

"fearmongering"—they've used that term—when we raise that issue. Would you agree that this is not fearmongering and that in fact the concerns around Bill 161 with respect to class actions are real and are something that must be addressed?

The Chair (Mr. Roman Baber): Twenty seconds.

Ms. Jasminka Kalajdzic: I don't want to characterize—my concern on behalf of class members is that these provisions are going to add delay and they're going to make certain types of cases very difficult to bring as class actions. That hurts vulnerable people; it doesn't help them.

Mr. Gurratan Singh: Thank you.

The Chair (Mr. Roman Baber): Thank you very much.

We'll go back to the government for a final round of questioning. Ms. Park.

Ms. Lindsey Park: I'll take this opportunity now to turn it over to CLEO. Ms. Mathews is here on behalf of CLEO. I'll just remind everyone that that stands for Community Legal Education Ontario.

First off, I just want to thank you, Julie, and your organization for the incredible work you do to provide the public and so many constituents in all of our ridings with legal information. I just wanted to open it up because I think you and I know what we mean when we say "legal information" and the importance of it, but we've had a number of discussions throughout this committee process distinguishing between full representation, summary advice and legal information. They all serve important functions at different places at different times. So I just wanted to give you a chance to really explain what legal information is and why it's so important that it's available.

Ms. Julie Mathews: Thank you for the question. Legal information does play several roles in the provision of legal services and helping people with their legal problems, and that's particularly the case with technology now enhancing and boosting the potential for legal information. Its critical role is early in what you might think of as a person's journey in dealing with a legal problem, legal information. Early on, if people understand that they have a right or responsibility, it can help them prevent a problem because they know, "Okay, I should sign that lease. I should make sure I read that cellphone contract." If they take that early action, it can actually prevent or minimize the potential for a problem to escalate—also, once somebody is encountering a problem or a question, if they get information they can understand whether there are timelines they need to worry about, their basic responsibilities, where they can go and get help. That's a critical feature of legal information, so they can gain some sort of basic understanding of the problem and how they might go about dealing with it. It even goes into helping people in the actual legal process. More and more, we're looking at the potential for legal information to be used by people to fill out forms. As I mentioned in my remarks, we have a system of interactive interviews where the guided pathway asks people questions, they answer the questions one by one and it automatically completes their form. It enables them to fill out restraining order forms, Family Court forms, powers of attorney, simple wills, and generate those.

There are many roles, possibilities for legal information, and we try not to assume that all people will access it and make use of it in one way. CLEO's approach—and we work very closely with clinic partners—is to provide information in a bunch of different formats and a bunch of different languages for different purposes. We do a lot of training, as I mentioned, of community workers, particularly those in more rural and isolated communities who may not have digital access as reliably. They can be the key conduits for people who need that legal information.

Ms. Lindsey Park: Very good. I think that's a helpful description and you highlighted the importance of it. There's the formal legal process that starts when someone initiates a court action or an application. Although lawyers think of them as legal problems, they are real problems in someone's family or in their business that initially is just a problem to them in their household. There is a period of time from when they discover they have a problem to when a court action is initiated where they're trying to get their bearings and trying to figure out how to get connected to legal services. So the role that you play in developing this public legal education resource and information is invaluable, and you've done great work on the Steps to Justice initiative.

I will mention that section 3 of the new act, titled "Legal aid services," specifically mentions that one of the legal aid services to be provided is public legal education and information. I just wanted to get directly from you: Are you supportive of that specifically being pointed out in the legislation?

Ms. Julie Mathews: I'm not particularly supportive of that provision, particularly in the absence of some clear recognition of CLEO's role as the primary public legal information provider, which is what we are looking for, which I didn't get to because I ran out of time. We're looking for that recognition of our role either in the legislation or through the delegation authority in regulations. We think it's critical because there isn't clarity here, and there has sometimes been duplication in effort between LAO and CLEO. I think that given our leadership and given our reach and our connections and because this is our sole-purpose work, we would like that clarity and that confirmation that we are the primary public legal information provider in the province.

So that provision concerned me, frankly, but I don't have a particular suggestion about what should happen with that. But what we'd like to see is the recognition I just mentioned.

The Chair (Mr. Roman Baber): The time for questions has expired and the time for this panel as well. I'm very grateful to all of you for your attendance today. Just as a reminder: The deadline for written submissions, if any, is 6 p.m. tonight. Thank you so much and enjoy your day.

Thank you very much, everyone. I understand that we have two panels remaining. We'll have a 1 o'clock panel and then we'll have a second panel at 2 p.m. consisting of

only one individual. I have received a reply from Mr. Singh with respect to some of the subcommittee business that we dealt with yesterday, and so it appears that we will be proceeding with one witness for the full hour.

In the meantime, we are in recess until 1 o'clock. Thank you.

The committee recessed from 1200 to 1300.

The Chair (Mr. Roman Baber): Good afternoon. I call resumption of the Standing Committee on Justice Policy. We're here to conclude our hearings on Bill 161, An Act to enact the Legal Aid Services Act, 2020 and to make various amendments to other Acts dealing with the courts and other justice matters.

Welcome back, members. We do not have any change in composition of the committee, so we will not need to reconfirm attendance. We can simply jump into our next panel of presenters.

LAW COMMISSION OF ONTARIO
FAMILY LAWYERS ASSOCIATION
ADVOCACY CENTRE FOR TENANTS ONTARIO

The Chair (Mr. Roman Baber): I'd like to welcome the Law Commission of Ontario, the Family Lawyers Association and the Advocacy Centre for Tenants Ontario. Welcome to all of you. Each entity will have an opportunity to make an initial seven-minute submission that will be followed by questions from both recognized parties and the independent member.

I invite Nye Thomas and Susie Lindsay from the Law Commission of Ontario to make the first submission of the afternoon. Please begin your seven-minute remarks, commencing by stating your name for the record.

Mr. Nye Thomas: My name is Nye Thomas and I'm executive director of the Law Commission of Ontario. I'm joined in this deputation by my colleague Susie Lindsay, who is one of the counsel at the commission.

I'm going to make a three-part presentation. First, I'm going to give you a very brief introduction to the Law Commission of Ontario; second is to talk about the Estates Act amendments to the legislation; and third, I'm going to give the balance of my remarks to the class action amendments.

First, the LCO: As I hope you know, the Law Commission of Ontario provides independent, balanced and thorough advice on complex legal policy issues. Through our work, we promote evidence-based legislation and legal policies, access to justice [*inaudible*] important legal issues. We were established by an agreement between the Ministry of the Attorney General, the law society, the law foundation, the law schools of Ontario and Osgoode Hall Law School. We have an independent board. We are located at Osgoode Hall Law School.

Our position here in the hearings is a little [*inaudible*] than many of the other deponents, and that's—we're a bit of a different organization in at least two respects. First, we are independent of the bar, the judiciary, stakeholders, NGOs, the government, and legal organizations. We have no entrenched financial, institutional or political interest in class actions or any of the other topics that we investigate. As a result, I believe that we truly bring an independent, public-interest analysis to these issues.

Second, simply stated, we are a legal policy research think tank, and as a result we very often do more research and more consultations in our work than other justice system organizations. As a result, I think our work brings independence, comprehensiveness and balance that I hope is reflected in our work. I will return to these themes of balance, independence and the public interest later in my presentation.

First, let me talk briefly about the Estates Act amendments. As you know, the [*inaudible*] for these amendments is the law commission's recent report on small estates. We said publicly that the law commission fully supports these amendments. We, of course, recognize that the full effectiveness of these reforms will be based upon regulations and rule-making. Nevertheless, we are supportive and look forward to future amendments.

Class actions: As you know, the foundation for these amendments is the commission's July 2019 report titled Class Actions: Objectives, Experiences and Reforms. As you further know, I believe that our report was in fact the first comprehensive analysis of the Class Proceedings Act in Ontario in 30 years. I won't go into all the details. but want to note for the record that Bill 161 substantially adopts our recommendations in the following areas: timing of certification motions; administering dismissal; carriage; multi-jurisdictional class actions; settlement approvals; settlement distributions; fee approval; third-party funding; and appeals.

If the bill had stopped there, this would have been a very good piece of legislation. If the bill had stopped there, Bill 161 would have improved access to justice, reduced delay, reduced frivolous cases, reduced costs and significantly improved the accountability and transparency of class actions in Ontario. In those circumstances, the law commission would have supported the legislation, and the government could rightly have taken credit for important and necessary reform to the Class Proceedings Act.

The difficulty, as you know, is that the bill went further. It goes beyond the amendments I've just talked about and introduces both a predominance and a superiority requirement to the CPA certification test. As we note in our submission and indeed in our full report, the impact of these provisions will be to reduce access to justice and worsen class action delays, inefficencies and costs—in, I want to highlight, two particular manners.

First, these provisions will reduce access to justice in important areas: in consumer matters, product and medical liability cases, and class actions where there may be a combination of common and individual issues. Many deputants to the committee so far have talked about the impact of these amendments on particular cases. The issues that have arisen include, but are not limited to, residential schools, Walkerton, nursing homes and the like. That's sort of the headline point, but there's a further point that I believe is important.

Second, because these amendments are inconsistent with other Canadian legislation, the amendments actually create a significant number of legal issues that will increase costs and increase delays. More importantly, however, these amendments will create a situation where Ontarians potentially have fewer legal rights and less access to justice than other Ontarians. In our view, that is simply inequitable, unfair and unwelcome. I will, of course, answer any questions about these provisions.

I want to conclude by talking very briefly about the public interest. The Class Proceedings Act is a procedural statute governing mass litigation. It is intended to promote the public interest by facilitating access to justice in cases where individual litigation [*inaudible*] for plaintiffs, defendants or the justice system generally. Class actions are complicated; the litigation is complicated; the statute is complicated. You have to balance a number of factors. For example, there are the three main objectives of class actions: access to justice, judicial economy and behaviour modification. In addition to that, the legislation has to balance the rights of plaintiffs, the rights of defendants and the public interest.

The problem with the amendments at issue is that they tip the balance of the legislation too far in favour of defendants' interests. Our view, which I'll expound on in more detail in the questions, is that in this circumstance the defendant's interest is not the public interest, and in fact the public interest will be harmed should the legislation adopt these two provisions. As a result, we believe that the proposed amendments to section 5 of the CPA should be withdrawn and the government should proceed with the original amendments, or the first amendments, which we believe would be a very positive step forward.

Those are my remarks.

The Chair (Mr. Roman Baber): Thank you very much.

I next invite the Family Lawyers Association. I understand we have Julia Vera with us.

Ms. Julia Vera: Yes, hello.

The Chair (Mr. Roman Baber): Welcome.

Ms. Julia Vera: Thank you, Mr. Chair and committee members. As chair of the Family Lawyers Association, I will be making my submissions on behalf of the FLA.

By way of background, the FLA was founded 26 years ago in response to the legal aid funding crisis of the mid-1990s. The FLA is governed by an eight-member volunteer board, and our membership consists of Ontario lawyers working primarily with low-income clients. The majority of our members accept legal aid certificates and are also on the panel of lawyers who represent children as agents of the Office of the Children's Lawyer in both custody and access and child protection matters. Accordingly, the focus of the FLA has always been to work towards improving Legal Aid Ontario and protecting the rights of our most vulnerable low-income citizens. As such, my submissions will focus on schedules 15 and 16 of Bill 161.

While the FLA is pleased that section 4 of schedule 16 has expanded the enumerated list of areas of law for which services should be provided, we are concerned that changing the wording from "shall" to "may" has eliminated legal aid's positive and clear obligation to provide these services.

With regard to the legal aid board, the FLA supports a skill-based board with a broad skill set. The board should include lawyers who have experience with providing certificate services. The board would benefit from having board members who could add their own experience with the process, including the often overlooked nuances that come from working on the ground. Groups such as the Family Lawyers Association, the Criminal Lawyers' Association and the Alliance for Sustainable Legal Aid would be appropriate groups to draw from.

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The FLA believes a mixed service model that centres around legal aid certificates is the most effective approach. The private bar already provides legal services at a deeply discounted rate, while still maintaining the highest quality. Although legal aid staff duty counsel are an important part of the legal system, they should only be used in situations where there is a gap in services or where certificates are not available, thereby avoiding the duplication of existing services.

As of today, there is no mechanism in place to adjust tariff rates to reflect the changes in law. This deficiency has resulted in capped hours and certificates that do not meet the actual time spent on a matter. Our own data indicate that almost 20% of services provided by the private bar in family law are not billed to legal aid as a result of the tariff providing insufficient hours.

The FLA also believe that the eligibility test is too restrictive and limits access to justice. Forty per cent of self-represented litigants earn less than $30,00 a year, and another 17% earn between $30,000 and $50,000 a year. Without adequate funding for LAO, the most vulnerable, unrepresented litigants, those earning between $25,000 and $30,000 a year, are left without a viable solution to their access-to-justice issue, as they are not in a financial position to retain the services of a lawyer in any capacity.

Poverty in families is often a contributory factor to the difficulties with resolving family disputes outside of court. Resources that are easily available to families with means are rarely a possibility for the working poor. Adequate funding of the LAO certificate program will have a positive impact on the lives of almost half of the self-represented low-income Ontarians involved in the family justice system.

The FLA is pleased that a requirement for public consultation policy has been included in the act, as consultations with stakeholders are of tremendous importance. These consultations, in order to be meaningful, will have to be extensive and held for an appropriate length of time. Lawyers' organizations require time to properly consult with their own members before presenting their position on a given matter. These same organizations should be provided with the data relied upon by legal aid when a change to services is being proposed. This data must be presented in its entirety and with sufficient time to unpack.

Data must also be collected by region so as to have the greatest impact in our communities. As COVID-19 has demonstrated, regionality must always be considered when implementing any new policies.

Lastly, the FLA does not take issue with section 39 of schedule 15, if the new legislation [*inaudible*], as long as it is confirmed that the fees and disbursements for court-ordered legal services paid out of LAO's budget will be reimbursed by the ministry and will ultimately not result in a reduction of funds to legal aid.

Thank you. These are my submissions.

The Chair (Mr. Roman Baber): Thank you very much.

We will conclude with the Advocacy Centre for Tenants Ontario. We have Kenneth Hale with us. Welcome, Mr. Hale.

Mr. Kenneth Hale: Thank you, Chair. Thank you, members of the committee. My name is Kenneth Hale. I'm the legal director of the Advocacy Centre for Tenants Ontario, or ACTO. We're one of the 72 clinics that are funded by Legal Aid Ontario, and one of the 14 clinics with a province-wide mandate to take the lead on systemic issues in our particular area of law.

Systemic issues are the legal issues that underlie individual case-related services. For ACTO, systemic issues include the content of housing legislation and the structure of the Landlord and Tenant Board. Work on these issues is extremely important to the low-income community. Individual services are provided to some 200,000 low-income Ontarians each year by the clinics that are based in geographic or racial or linguistic communities. Working with them, we address the wide range of legal needs that those individuals and communities have.

As well, we run the Tenant Duty Counsel Program. Tenants who are threatened with imminent eviction at the Landlord and Tenant Board get help on the day of their hearings there from our lawyers. Our lawyers served 17,800 tenant households in 2019.

I'm here to speak about schedules 15 and 16 of the new Legal Aid Services Act. With some regret, I advise you that we see nothing good in these schedules. We ask that you vote them down. There is nothing in those schedules that improves upon the current act or enhances services to low-income people. The current act has all the tools needed for the modernization and improved value for money that the Attorney General seeks.

On the other hand, much is being lost in what is proposed. The submission of the Association of Community Legal Clinics of Ontario provides a catalogue of these losses, and we agree with their careful analysis. Two examples that they highlight: Taking decision-making power away from front-line service providers and disadvantaged communities is a loss; removing accountability mechanisms that rein in bureaucratic overreach is a loss. The list goes on.

While the association asks you to amend the bill to address its shortcomings, we ask you to recognize that there's too much wrong here to correct. Access to legal assistance by low-income people was significantly diminished by last year's surprise $130-million budget cut. This is not the time to further diminish it. There may be difficult days ahead for Ontarians caught at the intersection of poverty and the post-pandemic reckoning. You should not be casting your vote for laws like this that are going to make things more difficult for those people.

The bill as a whole raises some basic questions about the value of legal services for the people of Ontario. Law in its many forms is a tool that we use to judge and resolve conflicting needs and interests in our complex society, but it's not the only tool. Conflicts that get pushed out of the legal system erupt in ways that are destructive to individuals and communities, threatening the security of everyone. That's why we make significant public investments in the rule of law, most visibly in the funding we devote to Parliament, provincial Legislatures, municipal councils, courts and tribunals.

But in order for individuals and groups to participate in the work of these institutions, expert legal help is often needed. Our tax laws encourage profit-making entities, individuals and corporations to participate in the work of these institutions. We let them reduce the income they pay tax on by the amount they pay for legal services. To cite an example, the long-term-care-home operators pay Bay Street lawyer rates to fight our nurses and PSWs in the courts over pay equity. They get to deduct every dollar of those bills. They get this form of legal aid because governments recognize the right to run a business and the right to make money.

But the right to make money is not the only right that needs protection in Ontario. Our Charter of Rights and Freedoms helps to define our system of government. It promises rights—rights to life, rights to liberty, the right to security of the person and freedom from discrimination—to everyone in Ontario. Poor people, by definition, don't have the money to pay for the legal help they need to defend those rights. They don't have an income that they can write off their legal bills against. That's why Legal Aid Ontario provides funding to lawyers and community legal clinics. Under the current law, lawyers and clinics have put that funding to use each and every year to protect hundreds of thousands of people from losing their homes; from losing their basic incomes; from having benefits taken away from them; to protect against the loss of their liberty; to fight dangers to their health and safety in the community and in the workplace; and from discrimination on things such as race, ethnic origin, sex and age.

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Our object is to defend these rights and to preserve the human dignity of our clients. But in doing so, we also prevent unnecessary demand on the costly systems of support found in our hospitals, emergency shelters and jails. Over and over again, we have demonstrated diversity, flexibility and creativity in the clinics, showing that we have what it takes to address the contemporary social issues.

You've heard many examples in the course of these hearings. No fair-minded analysis of those schedules

could conclude that they improve the current law for those seeking access to justice.

The Premier has spoken many times of his confidence in the ability of the people of Ontario to match anyone in the world in innovation, hard work and creative use of resources. Ontario's legal aid system is a shining example of that spirit in the field of human services—an example that has shown success in every corner of the province and is admired around the world.

In the face of the great challenges to our way of life that we're facing, we can't abandon the legislative framework that has allowed these services to flourish in the name of a hollow promise of modernization. We urge you to vote against the adoption of schedules 15 and 16 and let us get back to work facing the challenges ahead under a law that has served the province well.

The Chair (Mr. Roman Baber): Thank you very much, Mr. Hale. We'll now proceed with five and a half minutes of government questioning. Ms. Tangri?

Mrs. Nina Tangri: Good afternoon, everyone. Thank you to all of the presenters for coming and joining us today.

My question is for Mr. Thomas. First of all, I want to thank you for the significant input that you've put into Bill 161. We really do appreciate the work that has been done.

I understand that the law commission issued a report on how to simplify the estates and probate process in Ontario and that the Attorney General listened to your recommendations. These proposed changes to the Estates Act are just one example of practical changes that are being proposed in Bill 161—so much so, I believe, that about 75% of your recommendations are being adopted in this bill, should it pass.

I'd like to hear from you how the proposed changes about small estates in Bill 161 could better serve our Ontario families handling the small estates of loved ones and in turn better serve Ontarians who are accessing the justice system during these very difficult times of their lives.

Mr. Nye Thomas: I can answer that pretty simply. I will reiterate the commission's support for the Estates Act amendment in Bill 161. The problem is this: If you have a small estate that's not worth a lot of money, it's very difficult to get probate and to get the estate to pay your beneficiaries and so on and so forth. That's because, as it currently stands, the rules are complicated. You don't need a lawyer, but it helps to have a lawyer. There are many instances where there are people with small estates—under $20,000, under $25,000 or under $50,000—which were prohibitively expensive under the current rules. So we recommended a simplified procedure for small estates. The Estates Act established a procedure to establish rules and regulations to set up such a system. Therefore, we support those amendments.

Mrs. Nina Tangri: Thank you. Just to follow up with that: I understand that there will be regulations to follow this legislation, should it pass, that will also determine the threshold of what constitutes a small estate. Actually, from my own experience, not just in my riding and in speaking with colleagues but actually coming from the estate planning world, some think that $50,000 is an appropriate threshold. Some view maybe even as high as $200,000 to be the appropriate threshold. I just wanted to have your views on what you believe would constitute a good threshold.

Mr. Nye Thomas: I think that's [*inaudible*], and I think it's incumbent upon the government—and I trust they will—to do appropriate consultations to establish the appropriate threshold. I hadn't heard a figure as high as $200,000; however, if it turns out that the cost-benefit of establishing a higher limit is beneficial, we would support it. We would trust the government to do appropriate consultations on that topic.

Mrs. Nina Tangri: Thank you.

The Chair (Mr. Roman Baber): Thank you very much—with two minutes remaining for government time.

Mrs. Nina Tangri: I'll just keep moving forward on that area of questioning. If you could speak a little bit about LCO's 2015 report—I know there are a lot of recommendations that came from that report. Of course, if Bill 161 is passed, sections from the LCO report recommendations, especially number 1 and number 6—obviously, with some variations. If you could speak a little bit about those recommendations that you put forward and where you believe that our government has taken some good information from that report, looking to put it into Bill 161.

Mr. Nye Thomas: Sure. There's a bit of a difference between what we recommended and the proposals in Bill 161. As you will know, our recommendations were a little more [*inaudible*] than the provisions that ended up in Bill 161. The Bill 161 provisions talk about establishing regulatory powers and giving [*inaudible*] powers to administrators and so on and so forth. We support those. In law reform, some of this is a matter of degree [*inaudible*] you can establish matters in statute or you can establish regulations and rule-making powers. In our view, it is the end result that is important. We think the amendments establish the appropriate framework for these progressive reforms. Subject to what those rules and regulations are, we say: So far, so good, and we'd be happy to participate in any further consultations on the details as we go forward.

Mrs. Nina Tangri: I look forward to that. Thank you very much.

The Chair (Mr. Roman Baber): Thank you very much, Ms. Tangri.

With 20 seconds remaining, I'm inclined to turn it over to the opposition for five and a half minutes of questioning. Mr. Singh.

Mr. Gurratan Singh: My question is for Mr. Thomas. There is a letter from the Law Commission of Ontario dated January 22, in which the law commission wrote that the negatives in Bill 161 outweigh the positives outlined in this piece of legislation and that, as a result of that, the LCO would not be supporting Bill 161 as it's currently drafted. Is that still the case, as it is currently drafted?

Mr. Nye Thomas: I believe, as I said in my opening remarks, that is true.

Mr. Gurratan Singh: In the LCO's extensive work on this matter, there was previous reference to the fact that the American chamber of commerce and banks had done extensive lobbying to get these changes to the class action provisions put forward. Were those the two main sources of these kind of changes—the American chamber of commerce and banks?

Mr. Nye Thomas: I want to make [*inaudible*] did not say in our report, nor have I said in our letter, that we know anything about the extent of lobbying on these amendments. What we said in the report was that the source of these recommendations was a submission by the Canadian Bankers Association, and I believe, as Professor Kalajdzic mentioned earlier, they were the only organization that made such recommendations.

I will also say, in the context of our extensive consultation, that that is actually not where the action was, if I can put it that way, in terms of the analysis, debates, legal issues and policy discussions around the certification test. Traditionally, in Canada, defendants have proposed the introduction of a preliminary merits test to certification. The predominance test, as you stated, has been typically an American idea. Only one party to our inquiry, to our study, recommended it. We dealt with both issues in our report. As I believe you know, we recommended both preliminary merits and the predominance test in our final recommendations.

Mr. Gurratan Singh: Further to that, it's fair to say that, as currently written, this piece of legislation, Bill 161, would have a negative impact on Ontarians' ability to access justice by way of a class action?

Mr. Nye Thomas: For a certain class of class actions, yes, absolutely—the important ones.

Mr. Gurratan Singh: The very important ones, yes.

Further to that, the legislation, as it's currently written right now, would also result in inconsistencies with Ontario and other provinces with respect to our law on class actions.

Mr. Nye Thomas: Yes.

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Mr. Gurratan Singh: And this would do two things. It would open up substantial costs, as you mentioned. The fact that it's open to a lot of appeals and in general is a divisive are of law—the ambiguity, rather, could cause a lot of cost. Further, how would it impact class actions that span across provinces?

Mr. Nye Thomas: Essentially, you have inconsistent regimes, so you would have—I believe it's been noted earlier—the strictest certification requirements in the country. You may have a situation where one action that's proceeding in British Columbia is certified, whereas a substantially equivalent class action in Ontario is not certified. That creates inconsistency. That's a negative impact for a couple of reasons.

First, as I mentioned in my opening remarks, you have the situation where residents of Ontario may not have access to the same rights and remedies as you do in other parts of the country. We think that's inherently inequitable.

There are a couple of more discrete points to be made that are important to policy guys like me, but not necessarily to everybody else: There is a trend in judicial administration and justice administration to try to harmonize rules across the country so that multi-jurisdictional cases can proceed more effectively, more easily, more smoothly, more quickly—not just for plaintiffs but also for defendants, because you don't want defendants having to deal with different legal regimes, different rules, in kind of a patchwork across the country. That increases their cost, their litigation risk and so on.

Mr. Gurratan Singh: And in fact, it's been noted that potentially the changes would actually be stricter in Ontario than in America as they are currently written.

Mr. Nye Thomas: I believe so, yes. There is some qualification to that, but essentially I think the answer is yes.

Just to expand on that: The predominance test, were it to be incorporated into Canada without the other benefits of the American system, without the other checks and balances, such as pretrial discovery and costs—in fact, we'd be importing a particularly restrictive element of the American regime into Ontario, without adopting the whole system which creates checks and balances within the American system.

The Chair (Mr. Roman Baber): Thank you very much, Mr. Singh.

We're now going to turn it over to the independent member for four minutes.

M^me^ Lucille Collard: Thank you, Mr. Chair. My question, again, for Mr.—sorry, we were talking to the law community of Ontario.

The Chair (Mr. Roman Baber): Mr. Thomas.

Mr. Nye Thomas: Yes.

M^me^ Lucille Collard: I don't know if your counsel who is accompanying you, Susie, wants to speak on that as well. We're talking about the predominance and the superiority clauses. You've mentioned that the three objectives of the law are access to justice, judicial economy and behaviour modification. Can you give us some examples as to how these two clauses on predominance and superiority would affect judicial economy and access to justice generally?

Mr. Nye Thomas: Sure. Let me pass that question to my colleague Ms. Lindsay.

Ms. Susie Lindsay: Hi. Thank you for that question.

With respect to superiority, the defendants made submissions on that issue, and we took those submissions quite seriously. The main concern with this is that it's really case-specific, and we recommended that judges pay close attention to it. We believe judges are the best positioned to make the call on these issues, and the opportunity is there currently for defendants who believe that they have maybe acted inappropriately in some way to correct their behaviour.

The difference now is that with the provision as it currently stands without the proposed changes, there is

some court oversight so the court can hold parties accountable. If it's up to defendants to decide alone, there's a concern that parties may not be properly compensated for that. It takes away, essentially, the litigation deterrent, and we see that as significant for access to justice.

With respect to the predominance concerns, one of the main issues with predominance is that it affects cases that have a combination of common and individual issues, and those cases often involve quite vulnerable populations. The cases that have been mentioned by a number of witnesses that keep being brought up—Walkerton and tainted blood, cases with systemic discrimination—are cases that are at highest risk of not being allowed to proceed. Most people agree that those are significant cases that involve significant access-to-justice issues. If they're not certified, we end up in a situation where individuals have to determine whether they can bring the case on their own, and in many cases it's not feasible for financial reasons. So it ends up really raising the risk for vulnerable populations to not be able to seek access to justice. If there are cases that do work to bring as individual cases, it's possible the system could then see hundreds of individual cases, which has a major impact on judicial economy.

To summarize, with superiority, we can have some behavioural modification issues, with companies or defendants not necessarily having the litigation deterrent aspect that's important. And with respect to the predominance issue, we have concern with vulnerable populations not having access to justice and hundreds of cases potentially flooding the system.

The Chair (Mr. Roman Baber): Thank you very much. That concludes the time available to the independent member.

We're now going to come back to the government side for five and a half minutes. I recognize—I'm not seeing any questions on behalf of the government as of yet.

Ms. Lindsey Park: Sure. I'll jump in.

The Chair (Mr. Roman Baber): Okay. Ms. Park.

Ms. Lindsey Park: I'll continue asking questions of Mr. Thomas.

Thanks for appearing today. I just wanted you to walk through, in detail, just for clarity—it's my understanding that approximately 75% of the recommendations from the famous report we keep referencing, the class action report that the commission prepared, are in fact in this bill.

I just wanted to get some clarity from you, from your perspective, on which ones actually ended up in the bill and that you support.

Mr. Nye Thomas: Sure. This is in our submission; however, I will go over them again. If you'll excuse me, I'm just going to grab my notes.

Ms. Lindsey Park: Yes, no problem. Take your time.

Mr. Nye Thomas: The bill includes a substantial number of our recommendations and addresses issues around timing of certification and administrative dismissal, carriage, multi-jurisdictional class actions, settlement approvals and distributions, fee approval, third-party funding and appeals. But—I want to emphasize this—those are all important recommendations standing on their own. They would improve the efficiency, timing, access to justice and class actions on their own, if that's all there was.

The problem, however, is that the government didn't follow our recommendations on certification. The reason certification is important is because that is the foundational test of the legislation. You can make all the changes you want to appeals, all the changes you want to carriage motions, and they will not have the same impact on access to justice, on judicial efficiency, as change to certification does. It is the gateway test. It is the foundation of the legislation. That's why it is important to get the certification test right—because the collateral consequences of getting certification wrong, quite frankly, far outstrip any changes you may make, positive or negative, to issues like carriage or administrative dismissal and the like. That's why we have been clear and have wanted to stress that in our submissions.

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We're really splitting the bill into two, if I could put it that way. One is the recommendations we support, which drive, largely, our report: some technical changes here and there, no problem there. Collectively, we cannot support the legislation because the certification amendments are so significant that they, in fact, quite frankly undermine all the positive good that may arise from the other package of amendments.

Ms. Lindsey Park: Thank you. I'm going to pass the floor. I believe MPP McDonell had his hand up. He should be back on the screen now.

The Chair (Mr. Roman Baber): Thank you. We were alerted to that effect. Mr. McDonell?

Mr. Jim McDonell: Thank you.

The Chair (Mr. Roman Baber): With under two minutes remaining.

Mr. Jim McDonell: Sure. I have a question to the family lawyers. The Attorney General has been very public in his strong support of the important work that members of the private bar do for Ontarians who are faced with a variety of criminal and family legal needs. In the new Legal Aid Services Act, 2019, we have recognized that foundational role as something that Legal Aid Ontario should have regard to when it considers decisions with respect to providing legal aid services to Ontario's communities. Can you tell us why it's important to have that critical role continue to be recognized in the legislation?

The Chair (Mr. Roman Baber): With about 45 seconds remaining.

Ms. Julia Vera: Okay, thank you. As I mentioned in my submission, our association believes that the private bar providing certificate services is really the most efficient way to provide these services. It provides the ability to provide top-notch legal services without having any of the additional costs that would be married to providing it through staff lawyers or duty counsel staff lawyers. It has always been our position that [*inaudible*]. Really, it is financially the best option for legal aid. The services are provided to the most vulnerable low-income clients in the best possible way through that method.

The Chair (Mr. Roman Baber): Thank you very much, Ms. Vera.

Back to the official opposition for five and a half minutes. Mr. Yarde?

Mr. Kevin Yarde: Thank you, Chair. My question is for Julia Vera. The changes with Bill 161 as it is going from access to justice to value for money: Would you say that it negatively affects Black, Indigenous, racialized communities, and women in terms of their ability to bring forth the cases which have to deal, say, with discrimination?

Ms. Julia Vera: Thank you for the question. Definitely, the communities mentioned by you are the most vulnerable communities and are the communities that often make up the bulk of the litigants that are using the legal aid system. Our position is that the act needs to centre around providing the same type of quality services that would be provided if these individuals did not have an issue of finances. If it continues to centre around providing the best-quality legal services for those individuals—that is our main concern.

Of course, there are other issues that often tend to provide additional barriers for these communities, but we believe that if the services can be provided efficiently, financially—and it's our position that if the services are centred around certificate services, they will be able to continue to do so. We're expecting that this act will continue to focus on providing those services via legal aid certificates.

Mr. Kevin Yarde: Okay. Briefly, my final question, and then I'm going to hand it over to MPP Singh: You had mentioned some concern in the wording, having it going from "shall" to "may." Can you maybe clarify that a little bit for people listening in?

Ms. Julia Vera: Yes, thank you. Our concern is that it moves it from being a clear, positive obligation for legal aid to something where there could be more ambiguity. As lawyers, we feel a lot more comfortable with the wording being as clear as possible so that later on there are no discrepancies as to what was meant. Really, we don't understand why the change would take place. Given also that the list of areas of laws was expanded to include more—or at least to enumerate the types of laws that should be included within the services—we don't understand why that change was made. We would rather it stay as it was before, where the wording is "shall" as opposed to "may."

Mr. Kevin Yarde: Thank you.

The Chair (Mr. Roman Baber): Mr. Singh, with a minute and 50 seconds remaining.

Mr. Gurratan Singh: Very quickly, to the Law Commission of Ontario: Is it fair to say that the changes being brought forward with Bill 161 will disproportionately impact disadvantaged or low-income individuals?

Mr. Nye Thomas: The answer is yes. Low-income and disadvantaged communities will be impacted, yes.

Mr. Gurratan Singh: Is it also fair to say that it's going to negatively impact the ability to use class actions as a form of deterrence against big business and government from enacting laws that disproportionately impact those said communities?

Mr. Nye Thomas: I think in the kinds of class actions we're talking about, that's accurate, yes.

Mr. Gurratan Singh: Is it also fair to say that these changes will only benefit rich businesses and the government, and will disproportionately benefit them and negatively impact poor, disadvantaged communities?

Mr. Nye Thomas: I will say I'm unwilling to characterize all of the defendants in that manner. [*Inaudible*] defendants generally to class actions. The two new tests go to their benefit and the risks of the new amendments I believe will disproportionately affect individuals and communities who currently do not have access to justice, including low-income and marginalized communities.

Mr. Gurratan Singh: And it would benefit big business and government?

The Chair (Mr. Roman Baber): I'm terribly sorry. Unfortunately, time has expired. My apologies. But Mr. Singh, you'll have another round.

Mr. Yarde, on a point of order?

Mr. Kevin Yarde: Yes, a point of order. I was actually timing it, and I know with the technical glitch we only got to a minute and 15 seconds, so I would ask that Mr. Singh be given some additional time.

The Chair (Mr. Roman Baber): In fairness, Mr. Yarde, I recognize your position and it is meritorious. However, I'm guided by the clock that is presented to me by the Clerk on the table and the time on that clock has expired.

I would venture to say: Despite the fact that we have very useful submissions from all presenters, from time to time technical glitches occur and folks are equally disadvantaged. Also, we don't have an objective way to go back in time and measure precisely how long.

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I'm just going to consult with the Clerk. Look, I have no objections to providing Mr. Thomas with additional time. Unfortunately, I don't have a good time measure and I can only go by what the table gives me.

Interjection.

The Chair (Mr. Roman Baber): Okay. I'm prepared to make a ruling. Throughout these hearings, we've had multiple situations where people were muted and it took them a little longer to clue in. If we start timing every time we have this difficulty, then we're not going to reach any objective consensus. So while I recognize the merit of your objection, unfortunately, it's not practical as of this moment. Thank you.

We'll now move on to the government side for five and a half minutes. Mr. Coe.

Mr. Lorne Coe: Thank you, Chair. Through you to Mr. Hale: Thank you, Mr. Hale, for your presentation earlier—and to the two other presenters as well.

The Attorney General has been firm in his commitment to ensuring that Legal Aid Ontario will continue to focus on providing access to justice to low-income Ontarians. We've also heard from some stakeholders that the new

legislation should specifically refer to these principles. Can you comment and provide your perspective, please, on the need to include these concepts in the legislation itself?

Mr. Kenneth Hale: I think it's very important that the purpose of the legislation is clearly stated in its purpose clause, so as to guide the people who are administering the legislation and courts interpreting it. Often, we can have large, generous purpose clauses but not have the structure within the legislation itself that allows those purposes to be accomplished. And so, as well as improving the purpose clause, I really think that we have to look at the deficiencies in the revised structure, which places much more authority in the hands of the government, in the hands of the appointed board of legal aid, and takes that decision-making power away from local communities and from the front-line service providers. It all has to be a package.

As I said, I do not believe that what's proposed is any improvement whatsoever on the existing legislation. It's difficult to see why it was so important to the Attorney General and the government to bring this bill forward at this time.

Mr. Lorne Coe: Thank you for your response.

Through the Chair again: Stakeholders, including the Association of Community Legal Clinics of Ontario, who I'm sure you're familiar with—

Mr. Kenneth Hale: Yes, we're members.

Mr. Lorne Coe: Well, I raise it because I know you are—and one of our earlier presenters, the Ontario Paralegal Association, and the chief executive officer of the law association of Ontario have all said that the changes in Bill 161 modernize the system and put the focus back on client needs.

Don't you think we need a modernization of the legal aid system, particularly in light of the challenges and impacts raised by COVID-19 and how it has affected the justice sector? I'm interested to hear your perspective on that.

Mr. Kenneth Hale: Well, yes, thank you for the question.

I certainly am in favour of having a modern system, but centralizing power is not a modern concept. The modern concept is dispersing power among communities. The ideas that are put forward in this bill are not modernization. It's a slogan. Where is there any section in there that is more modern than what exists in the current legislation? We don't mandate electronic receipt of documents or things like that. What does modernization mean? It doesn't mean making it more difficult for people to access justice and making it more complicated—building up the bureaucracy. That is not modernization. I've looked in vain for something that is more modern apart from the number at the end of the title of the bill.

Mr. Lorne Coe: Another question for you, sir: Ontario must have regard to when it considers decisions with respect to providing legal aid services in Ontario's communities, as you know. Can you tell us why it's important to have that critical role continue to be recognized in the legislation?

Mr. Kenneth Hale: I'm sorry, I didn't hear the first part of your question.

Mr. Lorne Coe: Sure. Let me repeat it again: Ontario must have regard to when it considers decisions with respect to providing legal aid services in Ontario communities. Can you tell us why it's important to have that critical role continue to be recognized in legislation?

Mr. Kenneth Hale: I think my problem is with the term "have regard to," because it is not the same as sharing decision-making power. We changed the Ontario Municipal Board. The Local Planning Appeal Tribunal, under the previous government, had to respect the decisions of local councils. Under the way that legislation was changed, all they have to do is have regard to those decisions. It's not much of an obligation. Under the current legal aid legislation, decision-making about services is shared between the legal aid board and the local community board in clinic law. Under the proposal, most of that power is transferred to the legal aid board and they have to have regard to those decisions, but they don't have to follow it. I think we're learning that "have regard to" can be a fairly empty phrase.

The Chair (Mr. Roman Baber): Thank you, sir.

With the government time expiring, we're going to move back to the NDP to enable them to follow up with Mr. Thomas, should they wish. MPP Morrison?

Ms. Suze Morrison: I would like to direct my comments to Mr. Hale from ACTO. Thank you for being with us today. I don't mean to challenge the decision of the Chair, but I would like it noted for the folks who are here today that if we had more time to hear your deputations, losing a mere minute or two to technical difficulties wouldn't eat into half of our time in a round of questioning. I think if we were able to have a more fulsome conversation, these technical glitches wouldn't feel so drastic.

That said, Mr. Hale, I know that you said in the beginning of your remarks that in 2019 alone, you helped more than 17,800 folks at the Landlord and Tenant Board to access justice with relation to tenant law. If your organization was unable to provide those services, what would happen to all of those tenants at the Landlord and Tenant Board?

Mr. Kenneth Hale: I think those tenants would be left to their own devices. They would use their best efforts to present themselves, but I think really what would happen is—virtually, all landlords that appear at the Landlord and Tenant Board are represented. So professional agents, paid property managers and landlords' lawyers would be on one side, and the unrepresented tenant would be on the other side. I think the outcome would be less fair results in the determinations that the Landlord and Tenant Board is able to make, because they rely on the advocacy, the advice, that we give to those tenants to make sure that the whole picture is presented to them at their hearings.

Ms. Suze Morrison: And do you think we would see an increase in the rates of evictions and homelessness if

you weren't able to do the work that you do with the Landlord and Tenant Board?

Mr. Kenneth Hale: Yes, unfortunately, I do.

Ms. Suze Morrison: And there's probably no succinct way to measure that potential impact, but would you say that overall the cost to the province of Ontario would be greater if we had to fund at higher levels, for example, shelters and emergency housing, as compared to providing folks with a few hours of legal support in the system to prevent an eviction in the first place? Would you say that there's more value to the services that you provide than having to house folks who have become homeless?

1400

Mr. Kenneth Hale: We certainly believe that prevention of evictions is perhaps one of the most effective parts of our housing policy. We believe that our interventions can result not only in protecting tenants but actually in creating outcomes that are more fair for society generally and often beneficial to the landlord as we help to direct tenants to the programs that are set up for them, to prevent evictions, to access benefits and financial assistance. There aren't any other direct channels that tenants have to get that information at the time that they need it. So we really do believe that we're contributing to keeping the general cost to society down of the stresses that low-income tenants face.

Ms. Suze Morrison: Thank you. I certainly agree with you on that point.

Taken in context with COVID-19, we know that there's a temporary ban on evictions at the moment, but when those eviction hearings resume, we know that there is an increasingly long backlog of tenants who will be facing eviction hearings as a result of COVID-19. How do you think COVID-19 will affect people to access justice in those hearings as a result of the changes in this legislation?

Mr. Kenneth Hale: I don't see anything in the changes to the legislation that is going to help. I think it's fair to say that this legislation was not drafted—it was drafted much before we ever heard of COVID-19 and nothing is really taken into account here to address the issues that we're going to be facing.

We hope that it's not just going to be back to business as usual—payment plans that are impossible for tenants to meet. We hope that the government is going to be willing to engage in some kind of constructive dialogue about how a disaster can be prevented through systemically dealing with the potential flood of eviction cases, but that can't be done without proper input on the tenant side from legal professionals who understand the way that the system works and understand the way that government policy impacts on the housing of low-income people.

Ms. Suze Morrison: And do you think that, considering this bill was drafted prior to COVID-19, it's a good use of the Legislature's resources at this point to be focusing on a bill that may hinder people's ability to access justice rather than focusing on COVID-19-related business?

The Chair (Mr. Roman Baber): Twenty seconds, please.

Mr. Kenneth Hale: I haven't been able to understand why this bill was brought forward at this time. It wouldn't have been my choice.

Ms. Suze Morrison: Thank you. No further questions.

The Chair (Mr. Roman Baber): Thank you very much. Mr. Singh, with six seconds remaining.

Mr. Gurratan Singh: Just an answer to the question I had previously to the law commission.

The Chair (Mr. Roman Baber): Sorry, Mr. Singh. The time for questions has expired.

Mr. Gurratan Singh: Understood.

The Chair (Mr. Roman Baber): I'd like to thank the 1 p.m. panel for their submissions, and we'll just take a minute to say goodbye to them.

Ms. Susie Lindsay: Thank you very much.

Mr. Kenneth Hale: Thank you for the opportunity to appear before you in this unusual circumstance. This was a bit of a new experience.

The Chair (Mr. Roman Baber): I would submit respectfully to MPP Morrison that the Chair does his very best to be neutral. I believe I've demonstrated that, and I would suggest to you that all parties have been equally disadvantaged by this use of technology. Suggesting that one party is aggrieved over another in the context of these proceedings I don't think would be fair, respectfully. We are bound by the limitations we're experiencing.

Ms. Suze Morrison: Respectfully, if I may, I wasn't trying to challenge the assertion that your decision prior to my comments specifically disadvantaged us over any other party—but more to the point, that if we had more time per panellist in this new format that we're experiencing, a two-minute technical delay wouldn't eat into half of our time. If we had a full committee format, which is—I'm expressing my disappointment with the format. If we had longer per deputant, losing two minutes wouldn't be half of our time.

The Chair (Mr. Roman Baber): Understood. That is an appropriate submission to make at the subcommittee for our next hearing, depending on what our next hearing may look like. I would invite the opposition member of the subcommittee to make such argument when appropriate. But your point is taken.

M^{ME} ANNE LEVESQUE

The Chair (Mr. Roman Baber): I'll invite Professor Anne Levesque as the last deponent of the day. I also understand that at least some of the submissions are going to be in French. Members are able to avail themselves of the interpretation feature, bottom centre right. From experience, we understand that when you're speaking, you need to turn off the interpretation feature or, unfortunately, we may not be able to hear you.

Madam Levesque, thank you so much for appearing before our committee today. You have seven minutes for initial submissions, followed by questions from the official opposition, the government and the independent member. Please begin your seven-minute submission by stating your name for the record.

M^me^ Anne Levesque: Bonjour. Je m'appelle Anne Levesque. Je suis professeure adjointe au Programme de common law en français à la Faculté de droit de l'Université d'Ottawa.

Mes sujets de recherche portent sur l'accès à la justice, et de l'accès à la justice en particulier. Je me penche aussi sur les droits de la personne et les droits de la pauvreté. Je suis particulièrement fière d'avoir commencé ma carrière juridique en tant qu'avocate oeuvrant en droit de la pauvreté à la Clinique juridique francophone de l'Est d'Ottawa, à Vanier ici à Ottawa.

Je vous remercie, les membres du comité, pour cette invitation de parler d'une question qui me tient énormément à coeur, et je vous remercie aussi de vous pencher sur cette question très importante dans ces circonstances exceptionnelles.

Ma présentation, qui sera en français—mais n'hésitez pas à me poser des questions en anglais—va porter sur les retombées possibles de ce projet de loi sur les communautés francophones de l'Ontario, mais notamment les changements proposés à la Loi sur l'aide juridique. Comme plusieurs des autres experts et militants que vous avez entendus, j'ai des préoccupations au sujet des changements proposés aux cliniques juridiques communautaires de l'aide juridique.

D'emblée, j'aimerais vous rappeler que le gouvernement de l'Ontario a des obligations envers les Franco-Ontariens. Vous devez offrir des services gouvernementaux en français. Les services offerts à la communauté linguistique minoritaire de la province ne doivent pas juste être une traduction des services en anglais. Ils doivent être des services pour et par la communauté.

L'ancien commissaire aux services en français, François Boileau, appelait les services un traitement modulé : des services particulièrement adaptés aux besoins uniques de cette communauté. La structure des cliniques communautaires juridiques se prête naturellement à cette obligation de l'Ontario d'offrir des traitements modulés à la communauté franco-ontarienne. Une des caractéristiques essentielles des cliniques juridiques est qu'elles sont redevables à la communauté. C'est une condition indispensable à l'offre des services en français modulés et adaptés aux besoins uniques de notre communauté. Ce caractère essentiel des cliniques communautaires est menacé par ce projet de loi et, selon moi, doit être conservé pour protéger la communauté franco-ontarienne.

Je vais me pencher sur trois points en particulier : d'abord, la représentation des francophones sur les comités des cliniques, les domaines de pratique des cliniques et, finalement, les champs d'activité des cliniques juridiques. Avant de me pencher sur ces trois points, j'aimerais faire écho des préoccupations qui ont déjà été exprimées par plusieurs personnes qui ont comparu devant vous, d'abord de certains changements inquiétants proposés dans le projet de loi, d'abord le retrait des termes « accès à la justice », « population à faible revenu » et « collectivité désavantagée » dans la loi. J'étais aussi préoccupée par le libellé permissif quant à la fourniture des services d'aide juridique dans le projet de loi.

1410

Je vais maintenant me pencher sur les trois caractéristiques essentielles des cliniques juridiques communautaires qui sont menacées par la loi, et l'impact potentiel que ceci pourrait avoir sur les francophones de la province. D'abord, la redevabilité à la communauté : comme vous le savez, le projet de loi propose de définir une clinique juridique communautaire comme un organisme juridique « dont le conseil d'administration est composé de membres de la collectivité ou des collectivités que l'organisme sert.... »

Les cliniques juridiques les mieux placées pour desservir les francophones de la province sont des cliniques juridiques avec des membres francophones qui siègent sur le CA. On l'a vu, par exemple, avec la Clinique juridique de Prescott et Russell, qui a proactivement fait demande pour la désignation sous la Loi sur les services en français. Au moment de la désignation et de la demande de la désignation, le conseil d'administration était composé uniquement de francophones.

Ce n'est pas le cas pour toutes les cliniques juridiques de la province. Selon moi, toute barrière au recrutement de membres francophones sur les comités des cliniques est problématique. Donc, cette exigence de membriété dans la communauté, selon moi, est problématique, et en fait, pour mieux protéger les droits des francophones de la province, on pourrait ajouter, comme modification proposée, une exigence de représentation francophone dans les cliniques juridiques situées dans les zones désignées.

La Présidente suppléante (M^me^ Lindsey Park): Deux minutes.

M^me^ Anne Levesque: Aussi, on modifie les domaines de pratique traditionnels des cliniques. On enlève, notamment, le droit à l'éducation. Juste ce matin, il y a eu une décision importante de la Cour suprême en matière de droit d'éducation en français. La Cour suprême a parlé du droit à l'éducation comme la clef de voûte qui ouvre la porte à tous les autres droits linguistiques. On ne peut pas sous-estimer l'importance des droits linguistiques et du droit à l'éducation pour les francophones. Donc, je vous implore de réinstaurer les domaines de pratique historiques des cliniques.

Finalement, le champ d'application : on doit réaffirmer le rôle des comités à déterminer les champs d'application et des priorités des cliniques pour qu'elles puissent s'adapter aux besoins uniques des communautés.

To conclude, there was one question about COVID-19. If the recent events relating to COVID-19 have taught us anything about the relevance of this bill, I would say that it's taught us a lot about the relevance of community legal clinics. The provincial government itself has adopted a regional strategy to responding to COVID-19, and this is something that the legal clinics have been doing since their existence. So I would just implore you to preserve—

La Présidente suppléante (M^me^ Lindsey Park): Trente secondes.

M^me^ Anne Levesque: —this community-based model.

Donc, pour conclure, mes recommandations sont de réaffirmer le mandat traditionnel de l'aide juridique en conservant les termes de référence à l'accès à la justice et aux communautés défavorisées, de retirer l'exigence de membriété aux collectivités des membres des CA et d'ajouter une exigence de représentants francophones pour les cliniques situées dans les zones désignées sous la Loi sur les services en français, et de réaffirmer les domaines traditionnels de pratique des cliniques juridiques.

The Acting Chair (Ms. Lindsey Park): Thank you. We'll commence now with a round of opposition questions. Mr. Yarde.

Mr. Kevin Yarde: Thank you, Ms. Levesque. Merci beaucoup. You went through, in great detail, about how the bill will affect francophone communities; of course, it also will affect Indigenous communities, Black communities, marginalized communities. Specifically, how do you see this bill affecting the francophone community?

M^me^ Anne Levesque: First of all, I'm very concerned about the elimination of the reference to education rights in the scope of practice of clinics. The Supreme Court released a decision just this morning, and they referred to education rights as the key that opens the vault to all other rights for the francophone community. It's the foundation upon which all other rights are built, because if we can't transmit the language through education, there's no language to preserve. So to strip away that area of practice of clinics would be detrimental to the francophone community.

Mr. Kevin Yarde: Would you be able to explain—perhaps; maybe you don't know—how the elimination of funding last year to legal aid clinics affected some of the clinics that you may be familiar with?

M^me^ Anne Levesque: Do you mean the francophone language commissioner?

Mr. Kevin Yarde: The $130 million that was removed—

M^me^ Anne Levesque: Oh, yes, the funding of legal aid services.

Mr. Kevin Yarde: Yes, the funding.

M^me^ Anne Levesque: I was mostly concerned with the direction of the Ontario government. Luckily the government of Canada stepped in, but to cease funding of services in refugee law is very problematic because the survival of our community depends on immigration. There are quite a few legal services provided in French to refugees coming in from Haiti, especially with everything that's happening in the United States. That had a disproportionate impact on the francophone community.

In terms of the cuts and the way they impacted the francophone clinics in particular, fortunately the francophone clinics weren't amongst the hardest hit, though Ontario's largest francophone community in terms of numbers is in Toronto, and those clinics were hit. Francophones are tenants and francophones are workers, and we know that the specialty clinics were hit as well, so I would say that francophones and especially low-income francophones were impacted.

Mr. Kevin Yarde: Okay. And if you could speak to Bill 161 and how it is going to impact access to justice, going to a value-for-money type of situation—how do you see that affecting future cases, say, in discrimination? And how would that affect those marginalized communities, francophone communities?

M^me^ Anne Levesque: I'll refer you to the decision that came out of the Supreme Court of Canada just this morning in terms of language rights. The court said that sometimes when you're offering services to a disadvantaged community, the services will cost more. So you can't just look at numbers; you have to look at the quality of the service. That is precisely what the Supreme Court of Canada said this morning, and I would say that that analysis lends itself very well to the changes that are being proposed in this bill.

Mr. Kevin Yarde: And you mentioned that there should be some members from the francophone community on the board.

M^me^ Anne Levesque: Yes, I think that that would be a recommendation that I would propose going forward. We've seen that the boards that have had more francophone representation have been the boards where the clinics have opted for designation under the French language act. That has had a positive impact on the francophone community because it has ensured that those clinics can provide services in French that are adapted to the francophone community.

In some communities, unfortunately, even though there's a strong francophone community population, there isn't representation on the board. This is one of the requirements under the French Language Services Act. Once an organization is designated under the act, they actually have a requirement to have francophone board members. The problem is that it's kind of a vicious cycle. If you don't have francophone board members, you won't ask for designation and you won't need that requirement. So a way for the government to proactively address this problem would be to set the requirement of boards in clinics that are located in regions that are designated under the French-language act.

Mr. Kevin Yarde: I'm not sure how much time I have left.

The Chair (Mr. Roman Baber): Thirty seconds, Mr. Yarde.

Mr. Kevin Yarde: Thirty seconds? I guess my final question to you, Ms. Levesque, is: Would you be willing to be on the board, if asked?

M^me^ Anne Levesque: With enthusiasm.

Mr. Kevin Yarde: Sorry, I didn't hear.

M^me^ Anne Levesque: Yes. Yes.

The Chair (Mr. Roman Baber): We'll now turn over to the government for their first round of questions.

Ms. Lindsey Park: Chair?

The Chair (Mr. Roman Baber): Ms. Park?

M^me^ Lindsey Park: Merci. Au cours de 15 dernières années, le financement d'Aide juridique Ontario a augmenté de façon exponentielle, sans obtenir de meilleurs résultats pour les gens de l'Ontario. Plusieurs

rapports, y compris le Rapport annuel 2018 de la vérificatrice générale, ont démontré la nécessité d'améliorer le système. Les intervenants ont tous déclaré que les modifications du projet de loi 161 modernisent le système.

1420

Ne pensez-vous pas que le système doit mettre davantage l'accent sur les clients, surtout lors de cette pandémie que nous vivons et ses effets sur le système judiciaire?

M^me^ Anne Levesque: Je peux vous dire, moi, j'ai oeuvré comme avocate dans le système des cliniques et dans la pratique privée, et je vous assure que le rapport qualité-prix des avocats dans les cliniques est beaucoup plus élevé que ce que ça coûterait d'embaucher un avocat à la pige pour obtenir ses services.

Si nous voulons parler de la qualité des services offerts à des clients, le meilleur investissement pour le gouvernement est de financer des avocats qui offrent des services compréhensifs à des justiciables en besoin et qui sont ancrés dans la communauté. Encore, ça, c'est une facette très importante des services en français. C'est une des recommandations du rapport Rouleau-Le Vay. Souvent les problèmes d'accès à la justice en français ne sont pas créés par le fait qu'il n'y a pas de services mais que les gens ne se parlent pas et ne réfèrent pas bien aux bons services francophones.

Les avocats des cliniques juridiques sont ancrés dans la communauté et connaissent où référer leurs clients pour qu'ils aient un service juridique en français sans faille. Donc, si vous voulez parler de services de qualité en français sans faille, le meilleur modèle, selon moi, c'est les avocats des cliniques. Ils faisaient depuis 30 ans ce que le rapport Rouleau-Le Vay a recommandé en 2016.

The Chair (Mr. Roman Baber): Two and a half minutes.

M^me^ Lindsey Park: Le procureur général a clairement exprimé son appui pour les cliniques juridiques dans la nouvelle Loi de 2019 sur les services d'aide juridique. Nous avons reconnu ce rôle fondamental. Pouvez-vous nous dire pourquoi il est important que ce rôle essentiel continue d'être reconnu dans la législation?

M^me^ Anne Levesque: Selon moi, les cliniques sont vraiment avant-gardistes. Comme j'ai expliqué dans ma présentation, c'est un modèle qui se prête parfaitement au traitement modulé dont on a besoin pour offrir des services de qualité en français, que le gouvernement est obligé de faire ce selon la Loi sur les services en français. Donc, c'est une solution qui était déjà mise en oeuvre depuis longtemps. Il n'y a pas lieu de réinventer la roue. Je crois qu'il suffit de réaffirmer son mandat historique et les fonctions traditionnelles des comités.

M^me^ Lindsey Park: Merci.

The Chair (Mr. Roman Baber): With a minute and 20 seconds remaining, anyone else by the government?

Ms. Lindsey Park: I didn't realize I have so much time. I can continue.

The Chair (Mr. Roman Baber): You have a minute and 10 seconds.

M^me^ Lindsey Park: Okay.

Le procureur général s'est aussi engagé à faire en sorte qu'Aide juridique Ontario continue de se concentrer sur l'accès à la justice pour les Ontariens à faible revenu. Pouvez-vous commenter sur la nécessité d'inclure ces conseils dans la loi elle-même?

M^me^ Anne Levesque: La version antérieure de la loi faisait référence dans son préambule à l'accès à la justice, à l'importance de desservir les communautés à faible revenu. Donc, je comprends mal les motifs du gouvernement de vouloir retirer ces valeurs clés qui affirment le mandat traditionnel et logique de l'aide juridique.

The Chair (Mr. Roman Baber): Okay. We'll now move on to the independent member.

M^me^ Lucille Collard: Bonjour, Anne. Ça me fait vraiment plaisir d'avoir quelqu'un de mon comté qui comparaît devant le comité, sur lequel je siège pour la première fois d'ailleurs, un comté que je représente puis pour lequel je travaille très fort.

J'apprécie beaucoup tes efforts puis tes commentaires concernant les changements de la loi, puis l'impact que ça va avoir sur les francophones. Comme toi, je me réjouis énormément de la décision de la Cour suprême ce matin qui réaffirme les droits des francophones.

Alors, tu as parlé beaucoup d'accès à la justice, puis j'aimerais te donner l'opportunité de parler un petit peu plus de la façon dont les changements qui sont proposés dans le nouveau projet de loi vont avoir un impact négatif justement sur certains des services qui doivent être livrés aux francophones, certains de leurs droits, également. On a introduit différentes notions—je ne sais pas si tu as regardé la Loi sur les recours collectifs, où on a introduit des clauses sur la prédominance puis la supériorité, qui ont vraiment un impact négatif sur l'accès à la justice? Mais je vais te laisser adresser les points que tu trouves les plus importants.

M^me^ Anne Levesque: Donc, mes préoccupations centrales portent sur les changements—et en fait, mon domaine d'expertise aussi, c'est surtout sur les changements qui sont proposés auprès des cliniques juridiques. Comme j'ai dit, je suis très préoccupée par rapport à l'étroitissement des domaines de pratique des cliniques, et surtout par rapport au retrait du domaine de pratique du droit à l'éducation et des droits de la personne. Les francophones portent beaucoup de plaintes. Ils sont victimes de discrimination. Le droit à l'éducation, on l'a vu ce matin, c'est un droit très important pour les francophones. Notre survie en dépend.

Aussi, toutes les attaques à cette structure des cliniques qui permet un traitement modulé, qui est vraiment bien adapté pour les communautés—et vous en avez une, madame la députée, dans votre comté, la clinique juridique francophone de Vanier, je pense. C'est exemplaire comme modèle de service, un service adapté à la communauté. Moi, j'y ai travaillé; j'habitais dans le comté, je connaissais mes clients et je connaissais leurs besoins, et ça nous permet vraiment d'être bien adaptés et de pouvoir répondre rapidement et efficacement à leurs besoins.

Toute attaque à ce modèle, c'est une attaque contre les francophones.

M^me^ Lucille Collard: Donc, en parlant de la structure puis de la nécessité d'avoir des services qui sont rapides, est-ce que vous êtes préoccupée par la nouvelle structure qui est proposée qui, justement, centralise le pouvoir décisionnel avec le « board » qui va être situé à Toronto?

M^me^ Anne Levesque: Absolument. Le modèle des cliniques, ce qui le rend si innovateur, efficace—et efficace sur le point de service à la clientèle mais aussi, je pense, d'argent; ça nous permet de conserver de l'argent en étant en mesure de répondre rapidement et efficacement aux besoins locaux de nos clients. Donc, je suis très préoccupée par tous les changements qui pourraient centraliser le pouvoir et faire en sorte que les services des cliniques sont moins adaptés aux besoins des justiciables locaux.

M^me^ Lucille Collard: Do I have a few seconds left?

The Chair (Mr. Roman Baber): Twenty seconds.

M^me^ Lucille Collard: OK. Bien, je vais juste en profiter à ce moment-là pour te remercier encore une fois, Anne, d'avoir pris le temps puis d'avoir mis les efforts aussi à développer cette position-là, puis de nous expliquer la réalité des francophones, qui est très importante. Alors, merci beaucoup.

M^me^ Anne Levesque: Merci. Ça me fait plaisir.

The Chair (Mr. Roman Baber): Thank you very much, Madame Collard.

Back to the official opposition for five and a half minutes. Mr. Singh?

Mr. Gurratan Singh: I think Suze may have had some questions. Do you want me to go first?

The Chair (Mr. Roman Baber): Sorry. I thought you nodded, so I thought you asked for the floor.

Mr. Gurratan Singh: That's all right. I'll go ahead.

My question to Anne is, what do you think are the greatest—

The Chair (Mr. Roman Baber): Mr. Singh, you should turn off the interpretation.

Failure of sound system.

The Chair (Mr. Roman Baber): Mr. Singh, we think there's a problem with your microphone. We'll move to Ms. Morrison in the meantime.

1430

Ms. Suze Morrison: Thank you. I'll take over while Mr. Singh is figuring out his technology. I'm hoping we can proceed en anglais. I've been taking French lessons, but it hasn't been going well yet.

I'm wondering if you can speak to the overall value of legal aid in our community. I know we've had some stakeholders that have come before committee over the last few days to say that there are some studies that show that for every dollar invested in legal aid it gives us a return of about $6 saved in other parts of our system—and if you have any comments on the value savings of legal aid services.

M^me^ Anne Levesque: I haven't myself conducted empirical research on that. I can say anecdotally, having worked in the clinic system, I've seen it first-hand that preventing an eviction, preventing someone from getting fired, or getting their job back to prevent them from getting unemployment, and having a job and paying taxes—those are things that I did regularly as a clinic lawyer. I was still at a small firm, and I think our rates were very accessible, but the cost of a trial and the cost of an appearance using the four per-hour billing model just would not work in a poverty law model. It would be extremely expensive. I don't know what clinic lawyers would cost if they were to bill by the hour, but I imagine it would be at least five or six times their annual salary. They are a bargain.

I just cannot imagine a more efficient model to deliver comprehensive legal services that are grounded in the needs of the community.

Ms. Suze Morrison: Thank you for your answer.

When we think about the overrepresentation of, particularly, Black and Indigenous folks in our justice system, especially in relation to the conversation that we're having right now around racism in our policing system and racism in our communities, do you think that it's particularly important for Black and Indigenous communities to have good access to legal aid services?

M^me^ Anne Levesque: I think there are two facets to that. There is systemic discrimination in the criminal justice system, which means that Indigenous people and racialized individuals are disproportionately affected by the criminal justice system. That results in higher interactions with the criminal justice system, which means a greater need.

On the other hand, we see a lower amount of Indigenous people and racialized people affirming their rights. That doesn't mean that they're not experiencing discrimination; that doesn't mean they don't need income support.

If we want systemic change to address the root causes of poverty and overpolicing, I think that taking proactive measures to empower the communities to affirm their rights, to know how to navigate complex legal systems and to do it in a way that's accountable and appropriate to the community is a very effective solution and, I think, cost-efficient.

Ms. Suze Morrison: Would you say that the changes in this bill, considering everything that you've just said, would have a disproportionately negative impact on Black, Indigenous and racialized communities?

M^me^ Anne Levesque: Yes, I'm very concerned about the changes being made to the legal clinics and the changes that would remove accountability to communities and make community legal clinics less nimble and less able to respond to changes that are occurring in their community.

With everything that's going on, for example, with Black Lives Matter, I think a lot of communities have adapted their legal strategies and public legal education materials to respond to this. Those are the kind of proactive, nimble legal services that I think are cost-efficient and effective.

Ms. Suze Morrison: Thank you so much. Chair, how much time do I have left?

The Chair (Mr. Roman Baber): One minute.

Ms. Suze Morrison: Okay, thank you so much. In the last minute that we have, do you have anything else that you'd like to add that you perhaps didn't have time for in your earlier presentation?

M^me^ Anne Levesque: Just that the structure of clinics I think is cost-effective. They're comprehensive, and they're a proactive way of addressing a lot of social problems. They're efficient. The impact of cutting or changing the structure of these clinics would disproportionately impact, in my view, francophones but a lot of disadvantaged communities.

Ms. Suze Morrison: Merci.

The Chair (Mr. Roman Baber): Thank you very much. We'll now go back to the government side for five and a half minutes.

Ms. Lindsey Park: No further questions, Chair.

The Chair (Mr. Roman Baber): No questions.

Back to the official opposition for five and a half minutes. Mr. Singh.

Mr. Gurratan Singh: My question is as follows: In your opinion, do you think that the role of government should be to fundamentally provide access to justice to those who are low-income and disadvantaged?

M^me^ Anne Levesque: Yes. Our system depends on that. If we claim to live in a country where there's the rule of law, the government needs to ensure that everyone has equal access to the courts. That means eliminating barriers, whatever they could be—building ramps to courthouses so they're accessible to people with mobility issues. But for people who have financial barriers to affirming their rights, that means access to justice and a robust legal aid system.

Mr. Gurratan Singh: The removal of access to justice to the low-income and disadvantaged, then, goes against the spirit of a government that's trying to provide greater support to those who are in disadvantaged situations. Do you agree with that statement?

M^me^ Anne Levesque: Yes.

Mr. Gurratan Singh: Would you also agree that the stronger support you provide to disadvantaged communities provides not just access to justice, a layer of support, but also economic—it helps lift people out of poverty, it helps uplift society in every different way?

M^me^ Anne Levesque: Yes.

Mr. Gurratan Singh: So by supporting access to justice, it's not just this ephemeral, purely moral position—which is important to have—but also, there's a direct economic, social and political advantage to doing so.

M^me^ Anne Levesque: Yes, and the research shows that, especially in the areas of poverty law, the legal issues faced by people living in poverty are different than those of the upper and middle classes. They're issues that will determine what they eat, where they sleep, whether they can stay in Canada or not, and actually who they date. These are really issues that affect the everyday aspects of their lives, so it is fundamental to just living in society and also having access to basic government services and being able to participate in society.

Mr. Gurratan Singh: And further, these kinds of cuts could—the stigma associated with a conviction—the impact that has—it does disproportionately impact racialized, low-income and disadvantaged communities. But in addition, it can further put them down a path of marginalization through the stigma of convictions and going through the criminal process.

M^me^ Anne Levesque: I'm not an expert in criminal law, but I'm aware of research that has made those conclusions, yes.

Mr. Gurratan Singh: And then it's also fair to say that the government taking this direction is ultimately something that is going to push those at the margins potentially further into the margins and further disadvantage them.

M^me^ Anne Levesque: I think that's a fair conclusion.

Mr. Gurratan Singh: Are there any statistics to look at the rates at which—any issues on access to justice and limitations that francophone communities face particularly in Ontario?

M^me^ Anne Levesque: Yes. There's currently a working group that has been created as a result. I misspoke earlier. I said that it was a 2016 study; it's a 2012 study by Justice Rouleau, who's at the Court of Appeal, and Paul Le Vay, who is a lawyer very involved in the francophone community. They've identified many barriers to access to justice for the francophone community, and I would say that those barriers are disproportionately faced by francophones who face intersecting barriers linked to their race or poverty.

The research shows, however, that a lot of these problems are the lack of coordination between different government services. Again, I would just reiterate the role of clinics in helping to do adequate referrals and being grounded in the community to be able to ensure a seamless experience in French. It only takes the one person to not provide that service in French for all the services in the past to be lost and for the trial to turn, all of a sudden, to English, for example.

So everyone needs to be on board to providing this experience in French, and for that, you need to be grounded in the community. That's what clinic lawyers have been doing since the beginning. Even before this recommendation was made, it's what clinic lawyers were doing.

Mr. Gurratan Singh: In Ontario, have you seen that francophone communities do face greater systemic barriers to access to justice?

M^me^ Anne Levesque: Yes. What I would say is that, for example, there are no such things as French trials in Ontario; we can only have bilingual trials. There is added cost. There are delays because French adjudicators are not always available. There's a lack of French lawyers and judges. There are many facets to the problem, but it's a well-documented phenomenon.

The Chair (Mr. Roman Baber): Thank you very much. The time for questions has expired.

Back to the government side, should they have any questions.

Ms. Lindsey Park: No further questions, Chair.

The Chair (Mr. Roman Baber): Thank you. With that, that concludes the submissions of Ms. Levesque. Thank you so much for coming and joining us today.

Members, just a couple of housekeeping matters: No amendments have been filed as of yet. As a reminder, the deadline for amendments is 6 p.m. on Monday, June 15. And unlike normal practice, they can be filed electronically with the Clerk.

Clause-by-clause is this coming Wednesday, from 9 a.m. to 10:15 a.m. and 1 p.m. to 6 p.m.; and Thursday, from 10 a.m. to 12 p.m. and then 1 p.m. to 6 p.m.

Interjection.

The Chair (Mr. Roman Baber): In room 1, I'm being told.

Seeing that there is no further business, the committee is adjourned.

The committee adjourned at 1443.

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