Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

JP-18

Standing Committee on Justice Policy

Smarter and Stronger Justice Act, 2020

1st Session
42nd Parliament

Thursday 11 June 2020

Chair: Roman Baber
Clerk: Christopher Tyrell

Journal des débats (Hansard)

JP-18

Comité permanent de la justice

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

1re session
42e législature

Jeudi 11 juin 2020

Président : Roman Baber
Greffier : Christopher Tyrell

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

https://www.ola.org/

Index inquiries

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

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et de l'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

ISSN 1710-9442

CONTENTS

Thursday 11 June 2020

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 11 June 2020

Jeudi 11 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, everyone. I call this meeting to order. This is a resumption of the hearings of the Standing Committee on Justice Policy to conduct 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 on the television channel.

We have the following members present. First of all, members in the room: to my right is MPP Lindsey Park; to my left is MPP Lucille Collard. Please note that you will be able to see them through your Zoom link whenever they have the floor. We also have the following members participating remotely: MPP Will Bouma, MPP Parm Gill, MPP Morrison, MPP Singh, MPP Tangri, MPP Rick Nicholls and MPP Wai.

Also, I understand that MPP Yarde has now joined. MPP Yarde, could you kindly confirm that you have joined?

Mr. Kevin Yarde: Thank you, Chair. It's MPP Yarde, and I am in Brampton, of course.

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

Mr. Kevin Yarde: You're welcome.

The Chair (Mr. Roman Baber): We are also joined by staff from legislative research, Hansard, interpretation and broadcast.

Please make sure you speak slowly. Ask any questions if you have any issues, and please be recognized to speak. Since it could take a little bit of time for your audio to come on, please take a minute before you begin. As always, I kindly ask that all comments by members and witnesses are made through the Chair.

Unless there are any questions before I begin—if we could please unmute everyone. Any questions or issues or preliminary business?

DURHAM COMMUNITY LEGAL CLINIC

MR. MEYER MECHANIC

WADDELL PHILLIPS PROFESSIONAL CORP.

The Chair (Mr. Roman Baber): Seeing none, I understand that our first panel, our 10 a.m. panel, has already come online. I will now invite them to appear before the committee. Specifically, we have the Durham Community Legal Clinic—Omar Ha-Redeye, the executive director, and Aravinth Jegatheesan, staff lawyer; Meyer Mechanic; and Waddell Phillips Professional Corp., specifically John Phillips and Margaret Waddell, I understand, appearing again, through a different capacity. Welcome, everyone.

The format for today's proceeding, as agreed upon and articulated in the report of the subcommittee, is that the panel will appear jointly, with seven minutes for each presenter to begin, followed by questions from the two recognized parties and the independent member.

I would invite the Durham Community Legal Clinic to commence their submissions, specifically by stating their name for the record.

Mr. Omar Ha-Redeye: Good morning. My name is Omar Ha-Redeye. I am the executive director for the Durham Community Legal Clinic.

Mr. Aravinth Jegatheesan: Good morning. My name is Aravinth Jegatheesan. I am the staff lawyer at the Durham Community Legal Clinic.

The Chair (Mr. Roman Baber): Welcome. Please begin.

Mr. Omar Ha-Redeye: Good morning, and thank you for having us here today. It is a pleasure to be here and to be able to comment on Bill 161.

In the review of the agenda, I have noticed that there are indeed many clinics appearing today and my hope is that the committee comes to the conclusion, after hearing all of the submissions, that the clinics themselves are very different in their nature, and that is very much by design.

A little bit of background about the communities that we serve: We serve a population of over 650,000 people

over 2,500 square kilometres. The motto is "a great place to grow." and indeed, the region is growing very rapidly in the western parts of our catchment. It increasingly looks like an urbanized area, similar to Toronto, whereas in the eastern and northern parts of our catchment it is still very rural. So there are obviously some diverse and unique considerations, depending on what part of the catchment area that we're looking at.

We also work very closely with our local politicians, who include the President of the Treasury Board, the Minister of Finance, the chief government whip, the deputy Speaker and the PA to the Attorney General, who of course is on the committee. These are collaborative relationships, and we work consistently with them not only to facilitate services to the communities, but also in terms of legislative amendments, such as with Bill 161. It is important, of course, that we do that in a non-partisan way. We work with every government and we work with every opposition—and that is for every government or every opposition that might be in place.

There are some components of Bill 161 that we have supported, but that's not what we would like to use our time for here today—it's to make more pointed recommendations about how it can be improved. We have provided some substantive written submissions that I would hopefully direct to the committee to review in greater detail, at their leisure.

It is positive that there are elements of this initial draft of the bill that have been modified—in particular, the role of the communities and the boards in relation to the clinics—but we do strongly believe that there is more of a need for greater autonomy and independence in the community legal clinics than what is currently enunciated in Bill 161. These are principles that go all the way back to the very inception of community legal clinics in the Osler report. We're looking at almost 50 years of many different governments and several very comprehensive reviews which have all reaffirmed and emphasized the importance of that independence and that type of model, and I think it is of some concern that that model would be so drastically changed in such a short period of time without proper review and consultation. To put that in perspective: The previous review that occurred under the Osler report entailed 285 written submissions and heard 105 oral submissions over three months and in 10 different centres across the province. That was a very, very extensive review, and it's not the type of review that we've seen in light of Bill 161, unfortunately.

So one of the main principles or messages we would like to convey to the committee is that these principles have worked very well for the clinics. They have ensured that there is autonomy in a way that prevents them from being dictated to, if you will, based on the principles or priorities of whatever government might be in power. Most importantly, it has allowed clinics to maintain a very close relationship with low-income populations. It is actually enunciated in the Osler report that low-income populations typically have an inherent distrust not only of lawyers, the legal system and the justice system, but also of government at large. What that means from a practical perspective is that they may not engage with government services that will ameliorate their poverty, that can actually assist them in the circumstances and the situations they're in. Because of that distrust and because they feel removed from a system that is there, they don't access those resources. So community legal clinics play a crucial role in having those linkages and channels to those communities and also being able to convey those perspectives to policy-makers and governments.

There's an additional concern about constraining or restricting the definition of poverty law in Bill 161. I think we can use the example of our clinic, which was founded in 1985. In the early days of our clinic, the bulk of the work very much focused on income maintenance. We have seen that drastically change, especially over the past five years. The largest area of services that we currently provide is in housing law. The fact that we provide services in the area of housing law doesn't necessarily mean that it's increasing the expense, for example, for landlords; in fact, our experience is that it's quite the opposite. By assisting tenants, we give them the tools that allow them to access those tribunals and inform them about the best way to do so. Without legal representation, they often create unnecessary delays and, more importantly and in light of the broader considerations, create additional expenses for landlords who are struggling with tenants who already feel disenfranchised and frustrated with the system. It's not simply an adversarial role that the community clinics play; in fact, it's always expected and intended to be far beyond that and to assist and educate and facilitate resolution and to ultimately lift individuals out of poverty. That is a non-partisan goal. That is a goal that is shared by all political parties, I would hope.

1010

In particular, it is important for any community legal clinic to be responsive to the government of the day and the priorities that are being enunciated. In our written submissions, we make reference explicitly to the 2019 budget, at page 44, and the principles that are enunciated there. We actually detail in great length the extent to which we are trying to be responsive to those government priorities, in facilitating access to justice and alleviating poverty.

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

Mr. Omar Ha-Redeye: Thank you for having us, and I'm happy to receive any questions, if there are questions, from the committee.

The Chair (Mr. Roman Baber): Thank you so much, Omar.

We'll now move on to Meyer Mechanic. If you would be so kind as to commence your seven minutes of submissions by stating your name for the record.

Mr. Meyer Mechanic: My name is Meyer Mechanic.

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

Mr. Meyer Mechanic: It is my privilege to address the Standing Committee on Justice Policy this morning to discuss Bill 161, the Smarter and Stronger Justice Act, and how we can help modernize the legal system in Ontario. I

want to thank the committee for giving me this opportunity to help advance the use cases for virtual commissioning and notarization, as I think both are large leaps forward in making the legal system more accessible and affordable for Ontarians.

I've spent the last three years researching the efficacy of digital signatures and the verification of legal documents. During this time, my team deciphered that the two key barriers to acceptance of virtual commissioning and notarization were the inability to offer secure and reliable third-party verification of these documents and the risks of fraud associated with different types of remote signing.

My partner, Dmitry Semenovskiy, and I, created a company called Vaultie, an Ontario-born legal tech company, to address these problems using proven technologies, including facial recognition, government identification analysis, blockchain and verifiable credentials. These technologies enable us to bind physical people to digital documents by creating secure, globally verifiable and tamper-proof digital documents.

By my estimation, Ontario produces just over 50 million notarized documents and commissioned documents per year. With each signing event, which could include multiple documents, taking an average of two hours, between travel time and appointment time, the ability to execute these documents remotely takes this arduous task down to minutes and in each event could save hundreds of dollars in combined opportunity and out-of-pocket costs of physically signing a document in pen.

A notarization or commissioned document is often a three-party transaction: There's a signatory, who is asserting certain information; there's a notary or commissioner, who is confirming that these assertions have been made; and there is what we call the gatekeeper, the third party that requires that these assertions be validated in order to unlock permissions associated with the document. The gatekeepers could be financial institutions, border agents, other lawyers—a large group.

Third-party verification is the key attribute that's going to allow a gatekeeper the ability to determine the authenticity of a commissioned or notarized document in order to satisfy their concerns as they relate to fraud and enables permissions associated with these sensitive documents.

E-signature is often referred to as any method of signing a document through electronic means. However, there are many types of remote signatures that all offer different levels of authenticity, security and assurances that a specific person signed a specific document. The use of an ill-equipped remote signature heightens the risk of fraud and could negate the verifiability of a document. It is my view that the regulations regarding Bill 161 should address both of these issues.

In the few weeks since virtual notarization and commissioning has been allowed, first temporarily and now permanently, as a result of Bill 190, we've been keeping in touch with our customers and prospective customers about their experiences, successes and challenges with virtual notarization. We have already heard stories where our customers are able to execute these documents in accordance with the changes proposed in Bill 161 but are having challenges in getting financial institutions to accept them. The gatekeepers need a method of verifying the legitimacy of a document in order to be able to prevent their fraud. For example, statutory declarations of possession from a seller of a home need to be commissioned or notarized. They would need to be verified by the bank or a homebuyer as part of due diligence on a mortgage.

The issue extends beyond financial matters. A single parent is required to produce a notarized letter from another parent when travelling with a child. If a border agent has no ability to verify that letter, we may be putting that child in danger. With the inability to verify a seal which, under Bill 161, no longer needs to be present on oaths, affidavits or declarations, neither the bank nor the border agent has a reliable method to prove that a document has indeed been notarized and isn't fraudulent.

There are two parts of this bill I'd like to see addressed in regulations. Page 30, schedule 5, section 9, in the Commissioners for Taking Affidavits Act: "shall satisfy himself or herself of the genuineness of the signature of the deponent or declarant...." It is our view that the regulation should address a minimum standard for the type of remote signature acceptable for a commissioned document. A simple electronic signature, for example, would negate the verifiability of such an important document and place it at a higher risk for fraud. We've spoken to many lawyers who were defrauded or almost defrauded through the use of an ill-equipped digital signature or inadequate identification verification. We would advocate that a commission document or notarization should have a minimum requirement of a signature tethered to a blockchain or a verifiable credential.

Schedule 19, section 3, subsection (4), "When seal not needed" in changes to the Notaries Act: "It is not necessary to the validity of any such oath, affidavit or declaration that the notary public affix his or her seal." Without some form of verifiable seal, we can foresee future issues and current issues where third parties cannot ascertain the authenticity of documents and are thus unwilling to unlock the specific privileges associated with the document. We think, rather than set an exemption to the requirement of a seal, setting guidelines and regulations for what would constitute or could constitute a digital seal makes sense, whereby a notary could apply a verifiable seal based on proven technologies, and third-party verifiers have the ability to check their validity online.

A digital seal could have the additional benefit of enabling new uses for digital legal documents, such as the creation of original copies and the verification of both original and certified true copies. Furthermore, enabling verifiable seals could save government resources by taking verification from days to seconds, since anyone would be able to perform a verification from their own device.

I'm very excited about the new digital age for legal documents in Ontario. I think that Bill 161 ushers in welcome change that could make legal services more

accessible to the average Ontarian. I want to thank the committee for allowing me the time to speak and would like to offer my help and answer any questions that might come from this presentation.

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

We have the Waddell Phillips law firm joining us as our third deponent for the first panel. We have John Phillips and we have Margaret Waddell returning to us. Welcome back. Please commence your seven-minute submission by stating your name for the record.

Mr. John Phillips: John Phillips with Waddell Phillips. Marg will be leading our submissions. I'll follow up.

Ms. Margaret Waddell: I'm Margaret Waddell from Waddell Phillips. I'd like to thank the committee for having us here today to address proposed amendments to the Class Proceedings Act in schedule 4 to Bill 161.

Over the course of today, yesterday and tomorrow, you'll be hearing from a number of members of the plaintiff side class action bar. Waddell Phillips concurs with their submissions and will attempt not to cover the same ground that they will be covering.

We'd like to start by taking a step back to explain to the committee how we got to where we are today. Ontario was at the forefront of the common law provinces in enacting the Class Proceedings Act in 1992. When it did so, it was after a decade of study, starting in 1982 with a three-volume report from the Ontario Law Reform Commission, and then the 1990 Report of the Attorney General's Advisory Committee on Class Action Reform. That committee included representation from diverse stakeholder groups, including lawyer organizations, corporate business interests, public advocacy groups and the Insurance Bureau of Canada.

Despite the diversity of interests, the committee reached a unanimous consensus on draft class action legislation, and the CPA is largely based on the draft act prepared by the committee.

1020

One of the recommendations that came out of the committee was that the effectiveness of the legislation should be monitored, so that if changes were necessary, they could be addressed based on objective evidence. That did not happen, and we're very pleased to see that, in the new legislation, that kind of objective monitoring will be put in place.

However, over the course of the next 25 years after the legislation was enacted, the law developed as the various aspects of the act have been engaged, and we now have a strong body of interpretive case law from every level of court, including the Supreme Court of Canada. The law is really complex. The decisions are nuanced and many of the decisions are deeply infused with scholarly and policy-based analysis. I think that's important as we go forward in looking at amendments to the act, that this is not simple; this is complicated law, and rushing the legislative changes through would be ill-advised.

One of the important things for the committee to know is there is no objective evidence that the CPA is not doing what it's supposed to do: improve judicial economy, promote behaviour modification and provide access to justice for Ontarians. It does all of those thing, and the track record of cases that have resulted in meaningful, substantive justice for people in the province is too long to list, although my partner will speak to some of them. There's no evidence that the act has been interpreted in a manner that's favourable to either plaintiffs or defendants. Our judges are even-handed and the legislation is procedural in nature. Nor is there evidence that the class action procedure is being abused and that frivolous lawsuits are being brought to extort settlements from blameless defendants

So when the law commission undertook a review of the CPA, there was no groundswell movement calling for material reform of the legislation. The review was undertaken because that had been recommended by the committee—that from time to time, they look to see if the legislation is working as it should. It was and it is working as it was intended to do. It provides procedural mechanisms for aggregation of claims where many individuals have suffered harms from conduct of bad actors.

Importantly, the use of the class action process reduces the burdens on the courts that would otherwise be the case—examples in the case of mass personal injuries where individuals have been harmed by defective medical products, faulty pharmaceuticals, institutional abuse or catastrophic events. In a judicial system that's already massively overburdened, the aggregation of these serious injuries into one proceeding does achieve access for the injured person and it vastly reduces the strains on the judicial system.

Without background, we ask the committee to consider what is the mischief that the proposed amendments to the CPA are meant to achieve. What's the evidence that the system is broken and needs to be reworked into a different model? Is there any evidence before you that the changes proposed by these amendments to the CPA will in fact help to resolve legal issues more quickly or improve Ontarians' access to justice? Respectfully, we believe there is none.

In the submissions made to the LCO, there was only one group that suggested the importation of US concepts of predomination and superiority: the Canadian Bankers Association and the Canadian Life and Health Insurance Association. When they advocated for those changes, they did not explain how or why such a drastic change was warranted. They cherry-picked two concepts out of the US legislation, without identifying that there are other checks and balances that work in tandem with the predomination and superiority test, including unlimited discovery rights in advance of certification and the multi-district litigation process for adjudication of mass tort claims when a class action is precluded because of those tests.

What's important to note about this particular submission is that although it was a complete outlier in suggesting the addition of the US test, they did advocate

in favour of harmonizing the certification test across the country. We agree that the test should be harmonized, and the way to do that is to adopt the uniform model legislation proposed by the Uniform Law Conference of Canada that's in place in Alberta, BC and Saskatchewan. That legislation provides, as part of the preferability analysis, that the court consider whether questions of fact or law predominate over individual issues, but that predomination is not a precondition to certification.

I do have more submissions, but I'd like Mr. Phillips to quickly speak about the Indian residential school experience.

The Chair (Mr. Roman Baber): In 40 seconds, please.

Mr. John Phillips: Members, I represented Phil Fontaine and the Assembly of First Nations on the residential schools matter that proceeded by way of a class action to a resolution. In our workup for that—and we would ask that you take this away as part of your consideration—those claims would not be allowed to move forward under the legislation as it's being contemplated right now. It would not have survived.

One of the consequences is this: When we did an analysis just in Saskatchewan on the number of claims that had been filed individually, assuming a one-week trial per claim, the last claim on the residential schools, not being done through class actions but individually, would have taken place in 2050, utilizing all available judicial resources in Saskatchewan. That's what the aggregation does, and it's exactly what's wrong with the predomination concept that's being floated in the legislation.

So, supplemental to Ms. Waddell's submissions, those are our views from Waddell Phillips, and we ask you to consider them.

The Chair (Mr. Roman Baber): Thank you very much. We'll now begin with questioning, and we'll follow the order in which we were yesterday. That will lead us to the official opposition beginning its questioning with five and a half minutes. I'll recognize MPP Singh.

Mr. Gurratan Singh: My first question is for Omar. Omar, my question to you is as follows: Would you agree that the removal of "low-income," the removal of "disadvantaged communities," the removal of—

Interruption.

Mr. Gurratan Singh: My apologies. There's a phone ringing in the background here—the narrowing, rather, of the practice areas that is proposed in Bill 161 would actually disadvantage Black communities, racialized communities and women fleeing domestic violence, with respect to the changes that are happening in Bill 161, and actually create a greater disadvantage for those communities in accessing justice?

Mr. Omar Ha-Redeye: Certainly. We detail some of this in our submissions. For the members of the committee that are looking for that, you can see that starting from page 7. We do have some very significant concerns around the removal of that language, which very much frames the mandate of community legal clinics.

Access to justice is an enormous issue across Canada. We have been in an access-to-justice crisis now for many years, and there's no dispute about that crisis at every level of government, in every corner of the judiciary and the bar.

Community legal clinics play a crucial role, and as I emphasized, government—and even the profession, the bar—the vast majority of lawyers do not have the close ties and the meaningful relationships with marginalized populations and with low-income populations. We need to facilitate those relationships, not only to alleviate the poverty but also to inform legislation as to the detrimental effects that it may have on those communities. So it is, in our submission, absolutely essential that that type of language be retained in the future act.

Mr. Gurratan Singh: Right now, we're seeing, across the world, folks who are coming up to rise up against anti-Black racism, just to narrow in on that point specifically would you say that the removal of "access to justice," "disadvantaged communities," "low-income communities," could disproportionally negatively impact Black communities trying to access justice and further propagate systemic anti-Black racism within our province?

Mr. Omar Ha-Redeye: This isn't speculative for us. Based on our experiences, we know, and we're seeing this during COVID-19, marginalized populations will invariably experience the worst of any inequity. We're seeing it right now.

More directly to your question: We do have issues of racial profiling and challenges in terms of friction with the Black community in areas of Whitby and Ajax, in particular in our area, and that has been documented. There have been incidents. There is a concern, of course, that if our mandate is in some way shrunk or restricted by LAO, then we're unable to facilitate not only those relationships but also the more crucial issues that are needed in terms of reforming our justice system and having our law enforcement system working collaboratively with our communities to keep them safe—

as opposed to an oppositional type of relationship, which we're very much going to see as these concerns increasingly rise and come to the forefront.

1030

Mr. Gurratan Singh: Finally, would you agree with the statement that the positives of modernization that are in Bill 161 are outweighed by the negatives, with respect to what we've outlined earlier—the removal of "access to justice," the narrowing of the practice areas—and further, that it could create a step back with respect to access to justice for Ontario, as it is written right now?

Mr. Omar Ha-Redeye: The biggest challenge there—and we start that on page 19 of our written submissions—is in the way that it's structured—starting, really, from page 21, where we detail that, in terms of the timelines we're looking at. Six months after this bill is passed, the LAO has the ability to enter into negotiations of the contracts with the community legal clinics. That is in a very abbreviated timeline, especially when we're looking at the COVID-19 pandemic. So the balance, in our submission, really is not properly considered. If it does proceed as it currently is constructed, we have very, very significant concerns that clinics will be disrupted and the

services that we provide will be disrupted. This isn't an issue of partisan perspectives. We do provide front-line services, all the way from the executive director—that's me—to support staff, in every aspect of our clinic because that's the only way we can operate. So there will be significant impacts on the services that we provide if this proceeds in this manner.

Mr. Gurratan Singh: We probably have around 30 seconds left. Are you able to articulate, very briefly, how the cuts to legal aid that were made previously negatively impacted your clinic?

Mr. Omar Ha-Redeye: I think we were fortunate in that we received an effective 1% cut, as opposed to 22%, like some clinics in Toronto. But that 1% cut was devastating. Staff morale has plummeted. We've had enormous turnover. I'm new to my role as of September of last year. It has impacted the service that we provide, because we are very lean and we provide very efficient services. The clinic system is incredibly interconnected, so cuts elsewhere in the system have a very immediate and direct impact in terms of what we do in Durham region.

The Chair (Mr. Roman Baber): We'll now proceed with five and a half minutes of government questioning. I'll recognize MPP Park.

Ms. Lindsey Park: Thanks for joining us, Omar. We've had a number of good discussions. I know you've come down to Queen's Park a number of times since taking on the role of executive director.

I just want to jump into one of the things you mentioned in your back-and-forth with MPP Singh: specifically, talking about the commitment of Legal Aid Ontario to continue to provide access to justice for low-income Ontarians. I think what I heard from you—and we've heard it from different stakeholders—is that the new legislation should specifically refer to these principles. I wonder if you could just comment on your perspective on the need to include these concepts in the legislation itself.

Mr. Omar Ha-Redeye: Certainly. I will go back to the comments that I said previously. The role of community legal clinics is not to simply provide legal services and representation—it's obviously a very important part of what we do, including for members of your constituency—but it is also to inform, as I described, the legal system, policy-makers and governments as to the impacts that law reforms have on low-income and marginalized populations. We need that expressly indicated in the legislation. Obviously, there's an intermediary between government and the community legal clinics, which is Legal Aid Ontario, which has its own challenges. What we're very much concerned about—and we saw this with the recent cuts—is that those challenges will be disproportionately put on our laps, as opposed to somehow being resolved within LAO.

It is essential that we maintain that mandate of access to justice because it gives us an ability, in our negotiations and our discussions with LAO, to once again affirm that the role of community legal clinics isn't simply to provide services, but it's to assist Legal Aid Ontario, as well as other partners within the justice system, in finding creative and innovative solutions, and that doesn't necessarily mean asking for more money.

As you know very well, in our clinic and the development of the hub that we're doing that's detailed in our written submissions, we are breaking down silos, we are cutting red tape and we have been increasing the focus on the client and the members of the community. That is really what we very much should be continuing to do in our conversations with our funder, and having this wording in the legislation assists us in doing that.

Ms. Lindsey Park: Thanks, Omar. The Attorney General has made many public statements—and I have, in many discussions I've had with stakeholders—on the importance of community legal clinics. There's no question you are doing terrific work in serving the most vulnerable in the Durham region.

Specifically, you mentioned—I think you were referring to the definition of community legal clinics in the legislation. Maybe you can speak to how important it is that that definition specifically reference clinics' boards of directors and that it be comprised of members of the community, or communities, the board serves.

Mr. Omar Ha-Redeye: Yes. This has been going back to the Osler report and the Grange report and every review that has occurred for community legal clinics. The board of directors should be grounded in the community, and not just grounded in the community in terms of residency, but also have some meaningful involvement. The reason for that, for all of the reasons that I explained earlier, is that community legal clinics are themselves very, very diverse across the province of Ontario. The needs of those communities are very diverse.

In our area, in Durham region, we obviously have the GM plant and the job losses over past years as it relates to that, which have required us as a clinic to start to offer more services in the area of employment law, WSIB, human rights law—but not just in terms, again, of legal representation. It's also about assisting those individuals, then, in finding new jobs and getting back on their feet and becoming taxpayers who can contribute towards society in a meaningful way. Those are unique and specific needs to our community that may not be identified or reflected elsewhere across the province, and so that's why the governance and the decision-making and the prioritization need to really occur at the community legal clinic level.

The definition of poverty law, if I could speak to that, in the new legislation doesn't explicitly refer to those areas like employment law and human rights law and WSIB. It gives that flexibility or that definitional ability to our funder. We will once again reaffirm: That has to happen at the local level. That is very much consistent with the principles that are enunciated in this government's 2019 budget, where it said that decision-making and services should be community-oriented, with a lens and with a focus on the needs of the specific community, as opposed to some bureaucrat somewhere else on the other side of the province.

Ms. Lindsey Park: I think we might be out of time.

The Chair (Mr. Roman Baber): We're out of time. Thank you, MPP Park. We'll now proceed to the independent member for four minutes of questions.

Mme Lucille Collard: Thank you, Mr. Chair. The question is for Omar, again. I wanted to touch upon something that you mentioned in the proposed changes. You did comment on the fact that typically people receiving legal aid services demonstrate a sense of distrust towards government institutions. I want to know if you are concerned with this new power that the government would have to appoint the majority of board members on the Legal Aid Ontario board. Could you give me your sense on that and the impact it would have on the image of impartiality that such a government institution should uphold?

Mr. Omar Ha-Redeye: Certainly. It's worth saying that governments obviously come and governments go, and so the structure and the reformulation of the services that we provide through Bill 161 really need to take a longer-view perspective. Perhaps there is a level of comfort in terms of this government and who they may appoint in that respect, but at some point in the future—it's inevitable—it will be a different government, and so we need to ensure that when we're talking about poverty law and we're looking at the needs of low-income people, that that is done in a non-partisan way. Centralizing that and having that, again, in the hands of the funder is not going to achieve that goal.

It's also going to, as you indicated, create greater distrust because you have decision-making and priority-making occurring from individuals who are not known in the community and are completely removed from the community, and may be actually emphasizing or prioritizing needs that aren't actually reflected at the local level. It is important—that was one of the foundational concepts highlighted in the Osler report—to maintain the trust, build the trust and build those bridges with those communities that are already feeling marginalized and are not accessing the resources that are there that are being provided by the government.

1040

Mme Lucille Collard: Thank you for your answer.

The Chair (Mr. Roman Baber): Thank you. We'll now proceed back to the official opposition for five and a half minutes. I recognize MPP Yarde.

Mr. Kevin Yarde: I'm going to stick with Omar, who is still on the hot seat. I'll try not to repeat some of the questions from MPP Singh.

Regarding justice and value for money: We talked a little bit about that with yesterday's witnesses. I'm just curious if you think that if this bill passes—would it reduce the areas of law that clinics work in, say for instance, eliminating focus on crucial issues like discrimination and human rights? Do you think that would happen?

Mr. Omar Ha-Redeye: It's inevitable that that would happen, especially based on how poverty law is defined in the act.

I think I'll also speak to some of the comments that were made yesterday at the committee, which is that increases in legal aid and specifically in the clinics have indeed been demonstrated to show an increase in services. I know there were some questions around that. We make reference to that in our submissions, explicitly at footnote 25, where we refer to the Office of the Auditor General's 2018 annual report, where legal aid services are examined.

There is a direct impact on services that would occur from prioritizing and restructuring things in this particular way. There is a need, as I've said repeatedly now, for that to happen at the local level and to look at the local needs. I'll use another example of our year-round tax clinic that we have and the fact that many of our constituents don't do their taxes. Again, they're feeling disenfranchised from the system and so they haven't filed their taxes, or feel as if they haven't been working so they don't need to fill their taxes. By having their tax returns done for them for free, they're actually able then to access additional funding and grants that are available from the government. In other words, we're able to bring things from the federal government and federal benefits that might be available to the local level—investments and money that would not otherwise be there that's now being spent in the local economy.

I would suggest that in the COVID-19 and post-pandemic era, where we're going to see an increase in unemployment—we're going to invariably see either a recession or a depression—the role of community legal clinics to be versatile and to be attentive to the needs of their local communities is absolutely paramount.

Mr. Kevin Yarde: Okay. My second question to you, Omar—I know Ms. Waddell talked about it as well briefly. Would you say that the system as it is right now is broken, or does it need fixing?

Mr. Omar Ha-Redeye: As I said when I alluded to the access-to-justice crisis, there is no dispute anywhere in the justice system or in the profession that our legal system is broken—anywhere. I will commend this Attorney General, and Ms. Park is obviously involved with those initiatives, for some of the modernization steps that they have taken, including remote hearings and the use of technology. We do expect that that will improve over time, but it's not going to be enough.

Access to justice, as we detail in our submissions, is not simply a matter of throwing money at a problem. That's not going fix it. We need to transform our system, and we need to transform it specifically in light of marginalized populations and the people who don't have lawyers in their back pocket or in their families. Those are the clients we are actually serving on a regular basis in our community clinics.

Mr. Kevin Yarde: Chair, I just want to ask, how much time do I have left?

The Chair (Mr. Roman Baber): You have a minute and 45 seconds left.

Mr. Kevin Yarde: Okay, good. What I'll do is, I'll switch over to John Phillips, who was cut off when he was talking a little bit about Indian residential schools.

I want to give you an opportunity to talk a little bit more about that. Those claims you had mentioned under this particular set-up would not have survived under the

aggregate. Could you maybe talk a little bit more about that?

Mr. John Phillips: Yes. Thank you for the opportunity. The problem with the predominance test that's being articulated in the new legislation as proposed is: A claim that has major damages for individual claimants can be kicked out of the class action because the predominance test isn't met, and it would then lose the ability to aggregate those claims.

The example of residential schools—and I could list you a dozen others—even the long-term-care facilities would have the same kind of problem: If you can't aggregate the claims, individual [*inaudible*] are going to have to receive, they have large damage components. They are going to go and they are going to overburden the system.

It was a crisis for Saskatchewan if they didn't have an ability to pull together, through a class action, a resolution of the tens of thousands of residential school claims that were individually filed there and literally would have consumed the system until 2050 using all available judicial resources, based on our actuary's calculation. That means they weren't doing family law, they weren't doing criminal law; they were doing nothing but residential schools until the last one was done in 2050, as articulated.

That is what you lose by losing that aggregation. The example of residential schools or long-term-care facilities or you've got the military claims that are going—some of that stuff needs to be brought into the public consciousness. That doesn't happen if you don't have a number of claims brought together. I think you lose the benefits of the system as it is. And I would just echo once more what Ms. Waddell said: The system isn't broken. I hear Mr. Ha-Redeye on other aspects of it; there clearly is a failing in the system for the poor and the vulnerable. But class actions are not something that is crying out for rectification.

The Chair (Mr. Roman Baber): Thank you. Members are welcome to come back to Mr. Phillips when he's back on. For now, we'll move back to the government side with five and a half minutes. I'll recognize MPP Nicholls.

Mr. Rick Nicholls: I would like to address my questions to Ms. Waddell, if that's okay.

First of all, you spoke at length about the need to facilitate access to justice in our class action regime. And, do you know what? I agree with that. But would you agree that access to justice means both procedural access and substantive justice—meaning, you get your day in court to commence your claim but, more importantly, you actually get some relief, monetary or otherwise, in a timely manner.

Ms. Margaret Waddell: Yes. I do agree with you that there are both procedural and substantive aspects to access to justice, and that is part of what the current analysis under the preferability test requires. That was articulated and processed by the Supreme Court of Canada. It is baked into the analysis in the test that exists currently.

Mr. Rick Nicholls: I have another question directed back at you as well, Ms. Waddell. You spoke about how you're worried that the proposed amendments to certification will result in a US model where rather sympathetic cases will not be able to be certified.

But our system here is completely different from the US. From my understanding, our class actions are guided by three principles, including access to justice, whereas the US doesn't have those guiding principles. Also, we don't get into the merits of the case as certification, unlike the US. Lastly, we use a very low evidentiary threshold of "some basis in fact" to guide the preferable procedural analysis, whereas the US uses a preponderance of the evidence. Can you please elaborate further on the differences between the US and Ontario class action models?

Ms. Margaret Waddell: So you've articulated at a high level some of the existing differences between the systems. Ours is a procedural mechanism where the court looks at the nature of the claim and what is being proposed to be pursued by way of a class action and determines whether a class proceeding is the best procedural format for that action to proceed. And it's done at a very preliminary stage in the proceeding, before there have been any examinations for discovery. It's intentionally not meant to be an analysis of the merits of the case.

In the US system, the law has evolved over time, and with the addition of the preponderance test and superiority, what the Supreme Court of the United States said is that merits are essentially ingrained into the analysis of whether or not the case should go ahead in order to determine whether the action is superior to other means of proceeding. Whether the action has predominance of common issues necessarily requires a look into the merits of the case.

Our concern is that if you bring those concepts and infuse them into our legislation, you will be changing the test. You will be importing not just a low evidentiary threshold, but now there's a requirement to establish that there are some merits to the claim and that the claim will be able to be prosecuted successfully.

1050

That was never what was intended by the legislation at the outset. It was always meant to be: Can we proceed with these cases in this process? So when you import concepts from the States, which has a different system, without all of the checks and balances, then you create, like I said yesterday, a disconnect.

Mr. Rick Nicholls: Very quickly, what I'm hearing from my friends across the aisle is, when you break it down into tangible terms, that they do not accept that an independent judge can decide to not certify a case because there was zero basis in fact, that the common issues were a substantial ingredient of the claim or that class action was the most superior procedure. Why should a case like that, that has no basis in fact, sit in the court system for years, if not decades, and keep people waiting to get their compensation?

Ms. Margaret Waddell: Those cases don't sit in the system for years waiting for people to find out whether it's going to proceed or not. If there is no basis in fact, we have procedural mechanisms in place already in order to have

those actions struck out under rule 21 or to be thrown out at the certification proceeding for not being meritorious.

I can tell you from 25-plus years of experience in this field, those cases are extremely few and far between. Canadians don't bring frivolous cases. The bar is small and it's sophisticated. They know what they're doing, and the cases all have merit behind them.

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

We will move back to the official opposition. I will recognize MPP Morrison.

Ms. Suze Morrison: Thank you so much. My question goes to Mr. Phillips. I've heard from several stakeholders who have come before us on the class action piece that the piece of legislation on the class actions is something that's been imported from the United States. From my perspective, I can't understand how this clause ended up in a piece of legislation in Ontario. Can you maybe explain to me a little bit of the history of where this class action piece came from in the States and how you think it ended up in a piece of legislation here in Ontario?

Mr. John Phillips: I think Ms. Waddell touched on this. The defendant's bar representing the larger corporations are looking for ways to try to shut these things down. That lobbying effort paid off in having those two pieces brought in, but it's brought in a way that loses all of the checks and balances that the US system has. The US system is designed to do very different things and has a very different plaintiff's bar behind it.

We're not like that in Canada. As Ms. Waddell pointed out, it's small; we're a fairly sophisticated operation. Frivolous claims get nailed by the judges when they see them, and they're rare and few and far between. So what we've done is, we've cherry-picked two of the criteria that, if I were a well-heeled corporate defendant, I would like to stick in without looking at the rest of the process. For example, massive amounts of precertification discovery, which is conditioned in the US—we don't have that. We don't want that. And the corporate defendants didn't what that either, but they like the idea of having the restrictive model of predominance and superiority.

So they've cherry-picked some issues that I think would tilt the legislation horribly, and Ontarians would lose a massive benefit—and not just Ontarians, but Canada, because what will happen is, without having a consistent class action model across the system, Ontario cases are going to get litigated in national class actions, just not here.

Ms. Suze Morrison: Thank so much. So from what I'm hearing from you, then, the only real benefit to this clause and this legislation is to large corporations that are trying to protect themselves from class action litigation here in Ontario? The only benefit to this legislation, is for large corporations to not be sued in class actions?

Mr. John Phillips: Yes, that's correct. They're the direct beneficiaries. It's going to work for other defendants as well and even government defendants. But as I said, using aggregation has an impact on judicial resources and management and access to justice, and it's the justice component that we lose. I would urge you not to allow those components to be baked into the system that hasn't been adapted for them.

Ms. Suze Morrison: I want to touch on another piece that you spoke to when you were speaking to the Indian residential school case, and that's the broader social benefit of these types of cases. It's not just for the folks who are going through trying to get their justice, but for the larger social change that has spurred out of some of these cases. Would we be where we are in terms of reconciliation, which still is nowhere near where we need to be, without landmark cases like the Indian residential school case?

Can you speak a little bit to the broader social-change piece that's a benefit to everyone in our communities, from some of these large landmark cases?

Mr. John Phillips: Absolutely. What you will lose if you don't allow an aggregation of claims is the concentration of public interest on issues. For example, with residential schools, the consciousness of that was not around until national chief Phil Fontaine brought it in to public consciousness, and then the class actions, individual actions and test cases started to flow across the country. They were aggregated under the Assembly of First Nations class proceeding in the name of national chief Phil Fontaine. That allowed a single point of contact for the press and for the public to see that. It put that issue front and centre. The apology that took place on the floor of the House of Commons was one of the most moving moments I've attended as a Canadian citizen. That's what you lose. An individual claim being dealt with in Moosonee is not going to have that kind of concentrated public attention. Aggregation is important not just for justice, but for public consciousness.

Ms. Suze Morrison: No further questions.

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

Mr. Gurratan Singh: My question is to Mr. Phillips. The LCO wrote a very scathing letter that said that, when taken as a whole, the negatives of the proposed changes outweigh the positives of modernization. Would you agree with the LCO's position?

Mr. John Phillips: Absolutely.

Mr. Gurratan Singh: You have 10 more seconds if you want to expand.

Mr. John Phillips: Other than for a very distinct class of defendants, I don't see any benefits from this legislation change in the class proceedings area. The negatives are huge.

The Chair (Mr. Roman Baber): We'll conclude this panel with five and a half minutes of questioning by the government. I'll recognize MPP Park.

Ms. Lindsey Park: I just wanted to close a loop, Ms. Waddell, on some of your comments. I wanted to make sure I heard your evidence properly. This is just a yes or a no question: Is your evidence that there are no delays in the class action system?

Ms. Margaret Waddell: No, I did not say that. There are delays, and some of the parts of the proposed legisla-

tion will improve those. I particularly commend the government for the changes that are proposed with respect to appeal routes. Taking out the middle section dealing with leave to appeal to the Divisional Court and Divisional Court appeals and having bilateral appeals directly to the Court of Appeal is an important change that everybody on both sides of the bar advocated in favour of and that we're very pleased to see in this legislation. Also, the changes with respect to speeding up the process for carriage motions is an excellent move by the government, although I am very concerned about the removal of the right of appeal from a carriage decision. We all know that judges can sometimes make errors. Sometimes those errors are serious errors of law, and that's why we have a leave-to-appeal system for those. I think it's important that that measure remain in place so that there is a check against errors of law by our judges in the carriage process.

Otherwise, those two in particular are areas that this government has proposed changes in that I certainly commend the government for adding to the legislation.

Ms. Lindsey Park: Thank you, Ms. Waddell. I did want to clarify: I'm not going to ask any questions of our second witness, just because the changes to notarization already passed in a previous bill. But I do want to thank you for coming and still sharing your perspective today.

1100

I'll turn back to Omar with Durham Community Legal Clinic. I found your evidence helpful. I just wanted to ask one specific follow-up question.

Some stakeholders have emphasized the importance that the process Legal Aid Ontario undertakes to determine how to provide legal aid services in the area of poverty law needs to be transparent and based on credible data from all stakeholders.

Would you be in favour of ensuring that Legal Aid Ontario be required to consider certain types of information it receives from all relevant stakeholders in making these decisions? I just want to see if you had a particular perspective on that.

Mr. Omar Ha-Redeye: I do. I think that accountability is important for any taxpayer money, so that's really not a contentious issue. What I will say is that there have been efforts under way for years now where Legal Aid Ontario has been trying to identify and develop the metrics in which to do so. The concern may be, from a clinic level, that because we are all very much focused on providing services, if there is a shift and an emphasis on reporting, that's going to unduly increase administrative costs. I think the concern there would be that that would be also an unnecessary use of taxpayer dollars, if that's not properly construed and streamlined in a system that is quick and efficient. We're not entirely clear that's what's going to transpire.

Ms. Lindsey Park: Just a follow-up on this—I'm just trying to wrap my head around it. What types of information do you think stakeholders could provide to Legal Aid Ontario that would be helpful to them in making these determinations?

The Chair (Mr. Roman Baber): Just about a minute and 15 seconds.

Mr. Omar Ha-Redeye: Part of it is going to be, again, coming from the community legal clinics to legal aid, because we have that information as to what the needs are, but I think part of it is better reporting and through a system that actually is streamlined. There is a system that has been developed within Legal Aid Ontario for reporting back to them certain quantifiable data, but it isn't a system that is necessarily efficient or streamlined, so there is a considerable amount of time and delay from an administrative perspective that goes into using those systems already.

That is my biggest concern. We want accountability. We want to be transparent about how we're spending taxpayer dollars. But we don't want to have to try and do that in a way that's going to spend more taxpayer dollars on administrative tasks. I think that's the inherent tension that we're looking at.

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

I want to thank our first panel of presenters. Again, this was a very interesting discussion. Also, I want to thank Omar, in particular, for coming back to our committee and again offering his perspective to us. Ms. Waddell, also, thank you for coming back and offering some additional insight. With that, we'll say goodbye to our first panel and thank them again for their submissions.

GOLDBLATT PARTNERS LLP
SOTOS LLP
PARKDALE COMMUNITY LEGAL SERVICES

The Chair (Mr. Roman Baber): Members, we are ready to move into our second panel of the day. We have Goldblatt Partners LLP in Toronto, represented by Jody Brown, a lawyer. We have Sotos LLP with David Sterns as one of the partners. We're also joined by Parkdale Community Legal Services. We have a substitution: We have Johanna Macdonald, clinic director, appearing; I believe she's already on the line. We do not have Tenzin Tekan with us, nor do we have Mary Gellatly with us; instead, we have a staff lawyer named John No. Is that correct, Mr. No?

Mr. John No: Yes, it is.

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

I would invite each of the panellists in the order called to provide their initial submission of seven minutes. The balance of the panel is followed by questioning from the two recognized parties and the independent member.

I would invite Jody Brown of Goldblatt Partners to begin by stating his name for the record.

Mr. Jody Brown: Good morning. Apologies for the lack of video today. I'm calling by phone to ensure this is clear. Am I coming through currently?

The Chair (Mr. Roman Baber): Yes, we can hear you.

Mr. Jody Brown: Excellent. My name is Jody Brown. I'm a lawyer with Goldblatt Partners, and I'd like to thank you for the opportunity to make submissions today.

Goldblatt Partners is involved in the forefront of many class actions in Ontario. We've represented thousands of workers, pensioners, retirees and any class member that has sought recourse for a collective wrong. I have personal experience litigating class actions and overseeing settlements for thousands of individuals distributing millions of dollars. I've been involved in cases ranging from institutional sexual abuse to payday loans. As an individual lawyer, I have spent countless hours working directly with consumers, pensioners and victims of historical abuse. I've heard their concerns, and I've added them to complex litigation.

The class action procedure has always been there for these class members. My concern today is that the amendments you are seeking to make, in particular to preferable procedure regarding superiority and to the common issues requirement regarding predominance, will eliminate access to justice for many of the vulnerable individuals we have represented for decades.

I'd like to start with discussing the change to preferable procedure; in particular, the requirements that a class action be the superior method. At the start of this pandemic, the government introduced price-gouging legislation. It was the right thing to do. The pandemic highlighted that certain businesses will take advantage of consumers at the worst of times. Even at the best of times, certain businesses still conspire to fix prices, create illegal monopolies or bring defective products to market.

The proposed amendments to the Class Proceedings Act will harm the very same people you are trying to protect right now. The amendments will hurt hard-working consumers for decades to come.

At the end of the day, a consumer class action is about basic necessities—basic necessities that no one will ever sue about individually. They concern defective car parts, the price of bread, the quality of pet food. These are things for which a class action is the only method for people to access the courts.

Your proposed amendments will ensure businesses can conspire without penalty. They will ensure that every day, Ontario consumers will pay more for illegal conduct—that household budgets will be harder to meet. Class actions have been the counterweight to illegal business conduct and the only effective deterrence.

The amendments to the preferable procedure requirement that an action be the superior procedure will make it harder for the residents of Ontario to hold businesses to account. The requirement will create further litigation and a higher hurdle for hard-working Ontarians to ensure they are not being gouged or taken advantage of. It will encourage businesses to create diversions to avoid litigation as opposed to paying true compensation—true compensation which is under the supervision of a court and publicly accountable.

In my experience, the preferable procedure requirement, as it is, is a robust tool that allows the courts to weed out actions which, in layman's terms, are just not going to work. It is a tool by which judges are accorded a significant degree of deferencing. There is no need to change it. The changes proposed will only ensure that worthwhile cases brought by hard-working consumers will not proceed.

In respect of the predominance requirement for common issues, I'm going to speak to how this is going to impact, in particular, cases that have personal injuries at the root. We should be proud of settlements like residential schools, tainted blood and similar cases concerning personal injury. These cases reinforce that when our institutions commit mass wrongs that alter people's lives in fundamental ways, people will be compensated in an accountable manner through the courts. These settlements provide millions to people who have been seriously injured. The new predominance test effectively says that unless your personal injuries predominate, you cannot have a class action. It will be virtually impossible for some of these cases where people have been seriously hurt to proceed to a class action—and that includes people in long-term-care homes. What has become apparent recently is that there is a systemic problem in long-term care. There's a systemic problem which harmed some of the most vulnerable people—people who have contributed decades of their lives to our society. Those people will not be able to access the courts through a class action if your amendment regarding predominance goes forward.

1110

Improving the speed take-up rate of personal injury class actions is better achieved by focusing on your amendments regarding the monitoring of settlements. The irony of that provision is that the class actions which will benefit the most from improved settlement monitoring are class actions where individuals have been personally injured, but your amendment will eliminate those.

It is unfortunate because many of these personal injury class actions concern some of the most vulnerable people, the people I have spent years working with, and these people cannot access the courts individually. They rely on class actions. The concern is that your amendments will be eliminating their access.

The Chair (Mr. Roman Baber): Thank you, Mr. Brown. You have 15 seconds to conclude, if you wish.

Mr. Jody Brown: My conclusion is that you should reject the amendments concerning preferable procedure and the common issues predominance test. Thank you.

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

We'll now move on to Sotos LLP. Do we have David Sterns on the line?

Mr. David Sterns: Good morning, Chair.

The Chair (Mr. Roman Baber): Good morning. Thank you, and welcome. You have seven minutes. Please commence by stating your name for the record.

Mr. David Sterns: Good morning. My name is David Sterns. I'm a partner at Sotos LLP. I've practised for 20 years in the field of class actions representing individuals and small businesses. I'm also a past president of the Ontario Bar Association, a past chair of the civil litigation section and a past chair of public policy at the OBA.

I'm speaking today on behalf of a group of five leading class action firms in Ontario. Our firms have represented tens of thousands of individuals across Ontario who have all been wronged and who have obtained justice through class actions before the courts of Ontario.

Let me say this as clearly and simply as I can: Bill 161 will shut the door of the courts on the most vulnerable people in our society. It will limit the ability of individuals and small businesses to obtain compensation for wrongs done to them by companies, including foreign companies. It will revictimize marginalized groups, and it will create barriers to justice for residents of this province that do not exist anywhere else in Canada. I'll focus on two elements of the bill: the predomination requirement and the superiority requirement that are both found in section 7, subsection (2), of the bill.

What is a predomination requirement? Predomination means that the court cannot allow a class action to proceed if individual issues will predominate over common issues. "Individual issues" is shorthand for how each person is affected by a common wrongdoing, a common disaster or a common tragedy. Of course, no two individuals are exactly the same, and no two individuals experience harm in the same way. Individual issues exist, to some extent, in many of the most important class actions.

Under the current regime, that is not a barrier to bringing a class action. Take, for example, the case of a roof collapse at a mall, as happened in Elliot Lake in 2012. :Some people were killed or permanently maimed by the collapse. Others suffered minor injuries, but may have also experienced emotional trauma. Some businesses never recovered while others did. Some of them were profitable; some of them were not. Those are all individual issues, and they exist in every case where there's been suffering and there's been a tragedy.

Under our current law, a class action will focus on the main question that is common to all members: Why did the roof collapse, and who is responsible? Once those common issues are addressed, often through costly expert evidence, our regime allows individual issues to be addressed later in subsequent mini-hearings that are often quick and informal.

But under the predomination test in Bill 161, because the extent of the individual issues will likely predominate over the common issues, every person in every small business in that mall would have to sue individually, sometimes for minor damages. The cost of suing individually would be beyond the ability of most individuals or small businesses. This means that the vast majority of these people and businesses would never have access to justice because of Bill 161.

Take a more current example, that of long-term-care homes—Woodbridge Vista or Downsview, for example—where neglect has caused so much suffering and death to our seniors. Each affected resident likely has a variety of the pre-existing conditions. Not all victims were affected by the neglect in the same way. Bill 161 will likely prevent victims and their families from suing long-term-care homes in a class action because determining the extent of their individual harm and suffering will be seen as predominating over what is common to their suffering, which is the shameful neglect of these vulnerable residents by for-profit nursing homes. As a result, Bill 161 will insulate long-term-care homes from liability.

You may have heard last week that Joanne Dykeman, a senior executive of Sienna Senior Living, reportedly called the victims' families "bloodsucking class action lawsuit people" after hearing of their loved ones' suffering. She knew and she resented that class actions mean that her company will have to pay for their neglect. Yet one week later, here we are. This government has introduced a bill that will deprive these long-term-care victims and their families of access to the courts. This government claims to be for the people, but by passing this bill, it is on the side of Ms. Dykeman. It is on the side of Sienna Senior Living and its insurers.

If you think that this is fearmongering, you would be wrong. In a 2009 decision called Glover v. city of Toronto, involving legionnaires' disease in a nursing home, the Ontario Superior Court noted that many individual questions would need to be determined after the common issues are decided, but specifically said that Ontario, then, did not have a predomination test, and therefore the case was certified as a class action.

There is no doubt that if Bill 161 is passed as is, residents of Sienna Senior Living, one of whose buildings was recently taken over by the military, will be denied access to justice through a class action. Their cases will be too small and too costly to bring as individual actions. They will be denied justice because of Bill 161.

Now, let me talk about the superiority requirement.

The Chair (Mr. Roman Baber): Under a minute, please.

Mr. David Sterns: This means that if another procedure for obtaining compensation or for punishing wrongdoing exists, then a class action cannot proceed. Take, for example, a case of an organization that systemically discriminates against a marginalized community or the LGBTQ community: A class action would likely be barred because each of the hundreds of victims could pay a fee and launch an individual complaint before the Human Rights Commission. That process, although clearly more time-consuming, costly and confusing for individuals than a class action, would be a barrier to justice under Bill 161.

This bill is not for the people; class actions are for the people. I ask the Ford government, whose side are you on? If you are truly for the people, remove the predomination and superiority requirements from this bill. Thank you.

The Chair (Mr. Roman Baber): Thank you, Mr. Sterns. We'll conclude initial submissions with Parkdale Community Legal Services. I invite them to commence seven-minute submissions by stating their name for the record.

Ms. Johanna Macdonald: Hello, good morning. My name is Johanna Macdonald, and I'm the clinic director of the Parkdale Community Legal Services. I'm joined by my colleague John No, who will present after myself. We thank you for listening to our concerns regarding Bill 161.

1120

We support the written brief signed by 40 professors of law, many of whom have worked for decades to provide analysis of systems changes to legal aid. We specifically endorse the Association of Community Legal Clinics of Ontario's written submission on required amendments to schedules 15 and 16 of the bill.

The goal of our deputation today is to provide you with examples from our professional experience and work with communities as to why the bill requires amendment. We highlight four recommendations.

Number one: for the act to maintain its purpose of providing access to justice for low-income Ontarians and focus on disadvantaged communities. The law professors' brief cites the resounding cry from our legal profession and our judiciary of an access-to-justice crisis and the essential role of legal aid services providing that access. We know more today about the importance of supporting the access needs to fairness, equity and justice among disadvantaged communities. I'm considering the important submissions that ARCH Disability Law Centre made regarding the discriminatory effects of the COVID-19 triage protocol on persons of disabilities, or the deep expertise of the Advocacy Centre for the Elderly attending to the rights of low-income long-term-care residents, and the opening of the Black Legal Action Centre last year.

My background includes working at legal clinic initiatives, such as five years at the Street Youth Legal Services program and three years at the Health Justice Program. These initiatives responded to complex and urgent access-to-justice individual needs and worked with populations of street youth and persons living in poverty with chronic health conditions to make improvements to child welfare and health care systems.

Removing the purpose and focus of this legislation would be losing accountability to those groups in our society that require the greatest level of legal aid support and access to justice. We strongly recommend reinstituting the current purpose and a specific reference to legal clinic services to disadvantaged communities in sections 3 and 4.

Second, we recommend that the act maintain focus that the community clinics boards of directors are responsible for determining and ensuring service provision. Legal clinics are held accountable to low-income residents' needs because they're governed by a community-led board. The current legislative framework has a framework of accountability, and the association of clinics notes how clinics respond to the chronic and unique issues in our communities, and the law professors' brief outlines how this happens.

Our Parkdale-Swansea neighbourhood is one where different newcomer groups to Toronto have made their home and have distinct poverty law needs. The needs of a Roma community are different from the needs of Tibetan communities. As communities change, legal needs change, such as particular attention to gender-based violence issues or services responding to increased homelessness.

Clinics are the source of modernization, where a community-led board can be nimble and respond to those needs. We recommend the removal of the proposed section 5(5) and that the definition of "community legal clinics" include this essential accountability framework in section 39 of the act.

I now pass to my colleague John No.

Mr. John No: Thank you. Our third recommendation is that we need to keep the current definition of clinic law over the new definition of poverty law. LASA currently defines clinic law in a manner that allows community legal clinics to be responsive and adaptive to the always-changing law.

Clinic law is currently defined as, "areas of law which particularly affect low-income individuals or disadvantaged communities" and includes a non-exhaustive list of what those areas of law could be. This expansive definition of clinic law allows us, for example, to meet the needs of our community in times such as the COVID-19 pandemic.

Consider a very typical legal case that we work on and how we, holistically and with ease, are able to assist this person. A care worker comes to Canada on a restrictive work permit to take care of our elderly, but her employer instead has her cleaning office buildings for what amounts to $5 per hour. The employer also takes away her passport. When this care worker dares to complain, she is fired and kicked out of the house. With little money in her pocket, she finds shelter in an overcrowded apartment unit, where the landlord is clearly not following proper housing standards, exposing her and others to the elements.

What can we, a legal clinic, do to help this person? Immigration law: We're able to help her obtain a new work permit so she can find a new employer, to actually take care of our elderly. Employment law: We represent her at the Ministry of Labour, so she can get her wages. Housing law: We obtain an LTB order forcing the landlord to fix the substandard housing conditions.

We're able to assist this individual in a holistic manner because the current LASA allows us to be responsive. But the new section 4 of the act severely limits what poverty law is, and this change will handcuff us, restrict us and not allow us to properly assist people.

In short, we strongly recommend that you maintain the more flexible definition of clinic law in section 2 of the current LASA or utilize this as the definition of poverty law in the proposed section 4.

Our fourth recommendation is that LASA require LAO to provide services in poverty law, with the regard that clinics form the foundation for these services. The amended LASA states that LAO "may" provide legal aid services; this replaces the current wording that says that LAO "shall" provide legal aid services.

You may be aware of the saying, "A right without remedy is not a right at all." We also submit that a right that is distributed or taken away at the complete discretion of a power holder is not a right at all. A well-written submission from CELA indicates that this is "an unwarranted rollback of existing legal aid obligations in the

LASA," and that, "Conferring open-ended discretion upon LAO to not provide legal aid services ... negates the well-known socio-economic benefits ... that result from properly funded legal aid services."

According to a CBA report, for every dollar spent on legal aid, the government saves $6. Look at our own small neighbourhood legal clinic, for example. In our employment law services in the past few years, we recovered for our clients more than $4.7 million in unpaid wages and other employment entitlements. By putting money back into the pockets of Ontarians, we reduced those relying on social assistance, people getting evicted because they could not pay their rent due to unpaid wages, reduced health care costs associated with poverty, and, since we did all the heavy lifting in collecting evidence and dealing with bad employers directly, we reduced the number of claims and resources that needed to be expended by the Ministry of Labour or the court.

In conclusion—

The Chair (Mr. Roman Baber): Please conclude, sir, yes.

Mr. John No: Thank you. In conclusion, sections 3 and 4 should be amended to include clear language that places mandatory duty on the LAO to provide legal services in all prescribed areas of law, and we need to reinsert 14(3), which states that LAO "shall provide legal aid services in the area of clinic law having regard to the fact that clinics are the foundation for the provision"—

The Chair (Mr. Roman Baber): I'm sorry, Mr. No, you've—

Mr. John No: Thank you.

The Chair (Mr. Roman Baber): I apologize.

Okay. We'll proceed with questions. I believe it's the government's turn to begin. I will recognize Mr. Gill.

Mr. Parm Gill: Thank you, Mr. Chair. I just wanted to take the opportunity to thank our witnesses for taking the time and appearing before our committee.

My question is for Jody Brown, if you don't mind. You spoke at length about the need to facilitate access to justice in a class action regime, and I agree with that. Would you agree that access to justice needs both procedural access and substantive justice, meaning that you get your day in court to commence your claim, but that, more importantly you actually get some relief, monetary or otherwise, from it, and in a timely manner? Would you agree with that? Do you want to speak to that, please?

Mr. Jody Brown: I would agree with that, to the extent that—I would add the caveat: so long as the court agrees that your claim has merit. I think the first part of that, the procedural access, is likely one of the most important. The courts need to be able to determine whether you're right or wrong, and sometimes that means you're wrong. The changes to the act ensure that people can't even get to that first stage. But, in general, I would agree with your statement, yes.

Mr. Parm Gill: We've also heard and are hearing lots of rhetoric from our friends in the NDP that the proposed amendments shut the door to the justice system. But that simply is not true. The proposed changes would not preclude individuals from seeking redress from other remedial avenues, like joinder or a test case or lottery litigation or an individual civil case, not to mention a comprehensive appeal process to appeal a certification decision.

For the benefit of this committee, since some of us are obviously not lawyers, can you speak more about what types of alternative court mechanisms are available for plaintiffs to pursue if their case is not certified?

1130

Mr. Jody Brown: It will depend on the nature of the case, but for many class actions, there's no alternative. It has long been held in the case law that a failure to certify is often a death blow for a case, whether it's individual or collective. I can highlight that with a few examples. One of the most recent ones is likely the bread price-fixing case. There is no legal alternative to join or bring millions of consumers to the courts. It simply does not work. I would also highlight VW emissions-fixing. These cases are just too large for individuals to bring. There may be the exceptional small case which you can join, but in my experience, that is exceptional. Often, you're actually dealing with below 100 people. That is just not the nature of class actions. So there are not other legal avenues.

Mr. Parm Gill: Are you saying there are none or, if they do exist, are extremely rare and in a considerably small situation?

Mr. Jody Brown: In my years of practising, relative to Mr. Sterns, who is also on this call—I've been practising now a bit over 10 years exclusively in this area—I can recall seeing one case. It's a case that probably shouldn't be brought under class action in the first place. It concerned maybe 50 people for a relatively small personal injury.

But class actions are fundamentally about mass wrongs, and they cannot be brought to the courts. It's why the act was passed in the first place. It's a numbers problem. There are too many plaintiffs, and to bring them individually is inefficient and impossible. I believe some of your other panelists have testified how if you brought an individual proceeding for every residential schools claim, you'd still be going, and you might be going long past everyone being dead.

Mr. Parm Gill: How much time do I have, Mr. Chair?

The Chair (Mr. Roman Baber): You have another 45 seconds.

Mr. Parm Gill: Okay. One more quick question: Obviously, what I feel we're hearing from our friends across the aisle, when you break it down into tangible terms, is that they do not accept that an independent judge can decide to not certify a case because there was zero basis in fact and that the common issues were a substantial ingredient of the claims, or that a class action was the most superior procedure. Why should a case like that, that has no basis in fact, just sit in the court system for years, if not decades, and keep people waiting to get their compensation?

The Chair (Mr. Roman Baber): Unfortunately, we're out of time for the answer; however, perhaps we would be able to integrate your answer into future questioning.

We'll move on to the opposition. Mr. Singh.

Mr. Gurratan Singh: My question is to Jody Brown. If you can keep your answer a bit succinct, just because I only have five minutes right now. Just to clarify, picking up on your earlier comments: For the record, would you agree with this position? The previous Conservative MPP stated that it was untrue that the changes proposed in Bill 161 would actually prevent access to justice. Would you agree with my position that the Conservative MPP was wrong in his assessment and that Bill 161 would in fact prevent folks from coming together and enacting class actions together and impact their ability to access justice through that mechanism?

Mr. Jody Brown: Bill 161 will prevent some of the most vulnerable people from bringing class action. There is no question about that. Bill 161 will prevent consumers who rely on class actions to keep basic product prices in check—those consumers will not be able to bring cases.

Mr. Gurratan Singh: The question I'm going to go send now to Mr. David Sterns—it's going to be the same question. Once again, for the record: The previous Conservative MPP Mr. Gill stated that the assertion was untrue, that in his opinion the changes put in Bill 161 would, in fact, not prevent access to justice. Would you agree with the statement that he was wrong in his assessment and, in fact, Bill 161 would prevent folks from accessing justice by way of a class action?

Mr. David Sterns: Yes, absolutely. In fact, these changes are designed to prevent people from accessing justice. I can't agree more with what Jody said—what pretty much everybody in the justice system will say, what every judge will say, what every litigant will say—and that is that it is too expensive, too time-consuming and too complicated to bring individual actions.

Let me add one other thing—and it hasn't been mentioned yet: We are in an adverse-cost regime in Ontario. What that means is, if you, as a lawyer, bring a case against a company and you don't succeed—you don't get certified, you don't succeed at trial—you are on the hook to pay the costs of the other side, in almost every case, because the lawyers will indemnify the plaintiffs. So what you have is many hundreds of thousand of dollars, and in some cases millions of dollars, of a penalty that you will have to pay if you bring the wrong case and you don't get certified.

So people are simply not going to bring these cases. It's going to be a mug's game determining which of the cases where individual issues will predominate over common issues. I can only tell you, based on my experience and that of virtually everyone—and I would say that most of the defence bar as well would concede this: It's going to dramatically limit the access to justice by, as Jody said, the most vulnerable people in this country.

Mr. Gurratan Singh: Further, we're often accused of fearmongering by the Conservative government when we raise these issues. They say that these are actually not real issues, that there is in fact no fear with respect to access to justice. You mentioned the issue of fearmongering earlier. Would you agree with the position, in a bit of a brief way, that it is not fearmongering to say that the changes proposed in Bill 161 are drastic and could, in fact, directly negatively impact Ontarians and their ability to access justice by way of a class action? Mr. Sterns, if you could respond briefly, and then Jody, if you could respond briefly as well.

Mr. David Sterns: Well, again, that's what these changes are designed to do. It's helpful to remember that in the submissions—these changes derive from submissions made by two very powerful organizations: The one is the Canadian Bankers Association and the other one is the American Chamber of Commerce. These are the organizations who lobbied for these changes. They did not do so to help the people of Ontario; they did so to prevent themselves from getting sued.

Again, we're already in an adverse-cost regime, so this argument that we have this flurry of frivolous lawsuits is nonsense. And by the way, these changes affect the frivolous and the meritorious and the righteous cases all from being certified, because merit has nothing to do with this. This is about predomination and superiority.

Mr. Jody Brown: The predominance test—

The Chair (Mr. Roman Baber): Forty-five seconds, Mr. Singh. Go ahead, Mr. Brown.

Mr. Jody Brown: The predominance test is a draconian test imported from the US. It's been designed in the US to crush cases; it is being imported here to crush cases. There is no fearmongering in suggesting that these changes will limit people's access to the courts.

The Chair (Mr. Roman Baber): Okay, with 15 seconds—yes, Mr. Singh, in 15 seconds.

Mr. Gurratan Singh: Would you agree, Mr. Sterns, that the negatives outweigh the positives in the changes proposed in Bill 161?

Mr. David Sterns: I would agree with that. There are some positives in Bill 161. The negatives are huge, but they're also very easily fixed by removing those two requirements that, frankly, serve no function other than the interests of the American Chamber of Commerce and the Canadian Bankers Association.

The Chair (Mr. Roman Baber): Thank you. We'll now move to the independent member for four minutes of questions.

M^me^ Lucille Collard: My question is for Mr. Sterns. With regard to the effect of shielding businesses and government from class action proceedings, given the changes included in Bill 161, are you concerned that this may in fact encourage irresponsible business practices and systemic neglect?

Mr. David Sterns: Yes, because one of the purposes of class actions is to deter bad corporate behaviour and bad behaviour by institutions. If you remove that deterrent, companies will be able to cheat their customers; they'll be able to neglect their patients, as in the case of long-term-care homes; they'll be able to discriminate against their employees, and the victims will have virtually no recourse. So there's no—

Failure of sound system.

1140

M^me^ Lucille Collard: Do you want to add—there's some more time, if you want to add further details.

Mr. David Sterns: Sorry. So there's no cost to that behaviour. Just as Ms. Dykeman was mocking the families of the long-term-care residents, calling them "blood-sucking class-action people" when they were telling her about their concerns over their loved ones, she knew intrinsically that these people had a recourse, they had a remedy, and it's a class action. Here we are, one week later, and trust me when I say it—and I refer to the decision of the Superior Court in Glover and the city of Toronto to support this—they will be without a remedy if this bill is passed.

M^me^ Lucille Collard: Thank you. That's all.

The Chair (Mr. Roman Baber): Thank you, Madame Collard. We'll now go back to the government for five and a half minutes, beginning with MPP Bouma.

Mr. Will Bouma: Thank you, Mr. Chair. Through you, I was wondering if I could just ask Mr. Sterns a couple of questions about his testimony. It seems to me—I don't have a legal mind and I'm not a lawyer, but you said that changing to the predomination change in this bill will mean that there would have been no recourse for the roof collapse victims in Elliot Lake, that they would be denied their justice. You said that the tainted blood scandal victims would have had no recourse. You said that the residential school survivors would have had no recourse because of that. And yet it seems to me, as a layperson, that their damages would all be the same.

I was wondering if you could explain, then, in each one of those cases—you used the example, in the Elliot Lake roof collapse, that their damages were different so that this test of predomination would not work, and yet, as a layperson, it seems that they were all injured, however they were, by the same thing. In fact, the tainted blood—the same injury, the same problem. The residential school system—the same injuries. The systemic issues and damages, even though they may be slightly different, are all caused by the same thing.

I'm wondering if you could give any specific examples, then, of how using that predomination—you said this is a test brought in from the States, or it's been mentioned; if you didn't, sorry—that it's designed to take away justice from people there. It seems somewhat theoretical—and I guess that's my question: How would that actually look on the ground? Going to the cases of the long-term-care homes, it seems to me their damages are all exactly the same: lack of care, whether that's bedsores or being hungry. How would the predominance part of this bill actually work out in a way that you can cite an example where that's happened, to give us guidance on that? Thank you.

Mr. David Sterns: Thank you for the question. What I take from the question is, adding this predomination requirement doesn't really change it. You're one of the legislators, so your view is important. You seem to take the view that this is all very common and why shouldn't these cases go forward as class actions? I'm telling you, from the standpoint of a practitioner who argues these cases in court, that that is exactly what this act tells the court to do—focus on what is individual, focus on what is not common, and then compare that and weigh that against what is common.

That goes on already. Virtually every defendant will try to argue to the court that all these individual issues will overwhelm the common issues. They try to do that without the predomination test being there in the act, and the answer of the judge is always, "We don't have a predomination requirement, so I don't have to worry about that. There is commonality here. It will move the case forward. Let's get on with that and deal with the individual later."

The problem with this bill, and it's really important that everybody fully comprehend this, is that they now will have that argument. That will be in the act. They will say that you, the legislator, told the court to focus on this and to really sweat those individual issues. So in Elliot Lake, you're going to hear about Madam so-and-so whose arm was broken and missed two weeks of work, and you're going to hear about Mr. Brown whose skull was crushed. "You can't possibly have these cases heard in the same trial, Your Honour, because we need to look at the medical records. We need to see the prior history. So-and-So suffered trauma. Well, guess what? We need to see their psychological history. We need to find out if this person has ever been consulted for any sort of pre-existing trauma." That will be the focus.

Right now, it is exactly as you say it is and it should be, which is: "Listen, the roof collapsed. Let's focus on that, shall we?" It's going to reverse that. I can tell you that this is a gift to defendants and to insurers, who have been trying to make this argument all the way through with little traction.

Mr. Will Bouma: If I can continue then, Mr. Chair.

So you don't have any specific example where a requirement of predominance has defeated a class action that could just make that real for me here. You're using a theoretical. We know that any cases that have been launched in class action will continue under the old regime with this bill.

What I'm looking for is to make that story real, if this was an American thing, a case where the issue of predominance has defeated a legitimate class action.

Mr. David Sterns: We don't have a predomination test, so there's no example that I can give you. But the best example that I can give you is the case of the legionnaires' disease in the nursing home, where the court actually referred to all the individual issues that would need to be decided, but then said, "We don't have a predomination test; therefore, let's focus on what is common."

I would cite to you respectfully that that case, which is a direct parallel to the long-term-care problems that we're facing now, is as close as you're going to get to an acknowledgement that a predomination test, had it been in the law at that time, would have doomed that case to failure.

The Chair (Mr. Roman Baber): Thank you very much. The government is out of time for this round of

questioning. However, they will have another round subsequent to the next round by the NDP.

I recognize Mr. Yarde.

Mr. Kevin Yarde: Thank you, Chair. I appreciate it. I also want to thank David Sterns for his comments and educating the government on understanding that no two individuals experience harm in the same way.

Let me ask you two questions: Do you think the system is broken and needs to be changed? And why do you think the government is putting forth these changes? You might even want to take your lawyer's hat off for the second question.

Mr. David Sterns: The system works. In fact, I think the system is a shining example of access to justice by individuals. It's not perfect. There have been some dumb cases that have been brought—probably myself included. You learn fast. Paying costs is not a lot of fun and you move on. You really try to zero in on the cases that have the most merit and that benefit the most people. Do I think the system is perfect? No. But is it broken? No, far from it. In fact, I think it's a good example internationally for how to implement a class action regime.

As far as why it's being introduced, I can only tell you that this really was a request of big business—American big business and the Canadian bank lobby. It's right in their submissions to the law commission. The law commission considered them and rejected them, and this government is going against the recommendation of that expert panel in order to grant the request of the American chamber of commerce and the Canadian Bankers Association.

The Chair (Mr. Roman Baber): I would suggest that the deponent is not bound by some of the decorum expected from members, and so I will allow that statement. Members are expected not to—the issue here is not imputation of motive, but also not calling government into disrepute, so while I appreciate the sentiment of the witness, I kindly ask him to exercise discretion.

Mr. Gurratan Singh: Point of order, Chair.

The Chair (Mr. Roman Baber): Mr. Singh has a point of order.

1150

Mr. Gurratan Singh: Point of order, Chair: I don't think it's appropriate for us to limit the testimony of any witnesses. I believe that your comments right now made to a member of the committee would be different than to any witness. This is a free and open committee hearing, and no witness should be prevented from providing their full and open testimony.

Further, your comments are taking away from the official opposition's time slot, and I'm asking that this time be re-added to our current time slot.

The Chair (Mr. Roman Baber): I will accept the second submission and will re-add the time, and this is despite the fact that I would respectfully disagree with your first submission. I did not limit the testimony of the deponent. I suggest that we should not infringe on the lines of courtesy and decorum by imputing motive to the government, something that would not be permitted by members but something that is technically allowed by deponents. However, as a fellow member of the bar, Mr. Sterns understands courtesy, and I believe that he exercised courtesy. That is not in question. I'm simply suggesting that we should recognize those lines.

I don't believe that a point of order is necessary. However, I do take your submission to mind that this is not a member of the committee. I will re-add the time. I will now come back to NDP questions. I believe that Mr. Yarde had the floor.

Mr. Kevin Yarde: Thank you, Mr. Sterns, for your comments. I really appreciate your comments.

I want to ask Mr. Jody Brown: On Bill 161, we did hear from the government side stating that it doesn't stop redress; there are other legal avenues for an individual to go if certification is not met. Would you say that someone, say, in a long-term-care setting, someone who's on, I guess, a low income or—yes, say, an elderly person who's on a fixed income. Is it possible for them to go through these other avenues in terms of the cost, and does it seem like it is realistic for something like that to take place?

Mr. Jody Brown: No. There have been reports for years now about the inaccessibility of our civil justice system due to its cost, which makes access to what I'll call normal individual proceedings out of reach for the middle class and, quite frankly, out of reach for some people in much higher income brackets.

The beauty of the current regime is that it's an opt-out regime. That means that if there's someone in a class who thinks, "You know what? I've got a better case on my own. I've got the means to pursue it and I want to do that," they can opt out and go pursue their own individual case, if they so choose. That's the beauty: The current regime is based on choice. You can have a class action or you can get out of it.

The amendments to the act, by limiting class action, eliminate that choice. It provides less choice to Ontario residents in how they wish to access the courts, and that's the concern. There should be more choice and more options for people. That's my response.

The Chair (Mr. Roman Baber): Mr. Singh?

Mr. Gurratan Singh: We have about a minute and 20 seconds left, so, very briefly, my question to Johanna Macdonald is as follows: Would you agree that the removal of "access to justice" and the removal of "low-income" and the narrowed definition for the area of practice that is prescribed in Bill 161 with respect to legal aid would negatively impact Black, racialized and Indigenous Ontarians? As well, women who are victims of violence: It would negatively impact them and their ability to access justice—with about 30 seconds remaining.

Ms. Johanna Macdonald: Thank you for the question.

Yes, I do agree with the statements. The act currently, as written, will negatively affect most equity-seeking groups and low-income communities in Ontario, particularly around the element of the lack of accountability, so the lack of the provision of the services. It's pulling back that commitment, and that's what the committee should reinstitute in the act.

The Chair (Mr. Roman Baber): Thank you. Seeing that by order of the House we're limited to sit to the noon

hour, the last two rounds will be split equally between both parties for two minutes each.

I'll recognize the government next for two minutes. MPP Park.

Ms. Lindsey Park: I did just want to add a point of clarification. The Attorney General and myself did a number of consultations with class action stakeholders on the proposals that were developed and put into this piece of legislation. I must say, if there were any Americans present at that consultation, they must have been ghosts because they certainly weren't there in person.

On the Elliot Lake example that was presented, the examples I heard of what the individual issues would be were examples of damages like a crushed skull or, because of an injury, needing to take time off work, and lost wages and mental distress.

I will clarify: Section 6 of the Class Proceedings Act says that individual damages are not a barrier to certification, and we will not be changing that element of the legislation.

Because I'm limited in time, I will move on to the Parkdale legal clinic. Thank you for joining us here today. I did want to go back to some of your comments, which were helpful, about the need to specifically recognize access to justice for low-income Ontarians in the legislation. Would you be able to speak to that and why it's so important that that's in the bill?

Ms. Johanna Macdonald: Thank you for the question. I believe I'll respond on behalf of Parkdale.

The framing in the written briefs by the Canadian Environmental Law Association, the law professors and the association for legal clinics does speak about the framing of the importance of access to justice for low-income Ontarians and the statutory interpretation of those services; in particular, when thinking about the communities that they represent—

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

Ms. Johanna Macdonald: —and the very basic element of access points. Removing this from the act in fact removes the government's commitment to those groups of people. So we're asking the committee to particularly place this back in the act because this is the intended commitment for our legal aid services.

The Chair (Mr. Roman Baber): Back to the official opposition: Mr. Singh?

Mr. Gurratan Singh: My question is for you, Mr. Sterns. I believe MPP Park did not actually have a question; she was mainly disagreeing with your position. Just to clarify, once again, for the record: Is it fair to say that the influences and changes to the class action regime that's presented in Bill 161 is in fact something that is clearly at the behest and at the lobbying of the Canadian banks and American interests? And further, would you agree with the position that these changes do limit people's ability to use class action as a recourse for access to justice?

The Chair (Mr. Roman Baber): I don't mean to limit the witness's time. Also, I can't abridge an order of the House; we have about a minute left. I would propose a sensible resolution to this. I do see that Mr. Sterns raised his hand as you were asking the question; I may have been incorrect. I don't want to stifle your question, but I would permit the witness to respond. Perhaps he wanted to respond to Ms. Park. I need to think about this a little bit, but your question may be out of order. So in order for us not to take upon this time, I would permit to offer the witness to conclude, should you agree with me.

Mr. Gurratan Singh: Should I agree with you? Or are you asking—

The Chair (Mr. Roman Baber): Should you agree with me. If you agree with me, we'll proceed under that course of action.

Mr. Gurratan Singh: To continue our conversation past the 12 p.m. hour?

The Chair (Mr. Roman Baber): No, to allow Mr. Sterns to be heard, because he asked to be heard, instead of us litigating the objection.

Mr. Gurratan Singh: Of course.

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

Mr. David Sterns: Thank you. I don't want to overstep and I do respect the protocol. I wasn't aware of it. If I did overstep it, I'm sorry.

In any event, will this bill limit access to justice by vulnerable people? Absolutely, that's what it is intended to do. If that was not the intention, those two sections should be removed. It's as simple as that. Putting them in and then having the government say, "Well, that's not really what we intended and it really shouldn't impact cases where there are injuries"—I'm glad to hear that, but then it just leaves me scratching my head as to what's the reason why you would put that in.

As far as the second part goes, I'll try to be a little more delicate in my answer. This has been on the wish list of big business and banks forever, and the government has granted them this wish. That's all I can say, and I hope I'm not out of order.

The Chair (Mr. Roman Baber): All right. On that, we'll have to conclude the panel for this morning. I'm grateful to everyone for their submissions.

I also want to leave you with the fact that I do not believe that any witness violated any decorum of the committee, so I'm grateful to you, Mr. Sterns. From time to time, myself and Mr. Singh disagree, and that's absolutely okay as well.

I see Mr. Yarde may have a point of order.

Mr. Kevin Yarde: Yes, I have a point of order. For the next group coming in, can we give them at least a two-minute warning when their time is up? I know this current group had maybe a 10 or 15 second warning, and it sort of cut them off. So if we could do that for the next group?

The Chair (Mr. Roman Baber): Look, what you're really asking is a matter of Chair's discretion. Sometimes I do give a minute warning; sometimes I do give a two-minute warning. I tend to favour courtesy to the witnesses and try not to interrupt them mid-sentence. However, I will be more mindful of the fact that I should alert witnesses with more notice of the fact that their time is coming short.

Mr. Kevin Yarde: Thank you.

The Chair (Mr. Roman Baber): Okay, we have to wrap up under the order of the House. The committee is adjourned. We will resume at 1 o'clock.

The committee recessed from 1200 to 1301.

The Chair (Mr. Roman Baber): Good afternoon, everyone. The committee will come to order. We are here to resume hearings on Bill 161, An Act to enact the Legal Aid Services Act, 2019 and to make various amendments to other Acts dealing with the courts and other justice matters.

COMMUNITY LEGAL AID AND LEGAL ASSISTANCE OF WINDSOR

REXDALE COMMUNITY LEGAL CLINIC

DOWNSVIEW COMMUNITY LEGAL SERVICES

The Chair (Mr. Roman Baber): I understand that our next three presenters are already online. Is that correct? Okay.

Welcome, everyone. We're going to proceed in the format agreed upon by the subcommittee, which is that we'll hear from three presenters at a time. We'll commence with opening statements by each of the presenters to the tune of seven minutes each, followed by questioning from both recognized parties and the independent member.

I would like to welcome Community Legal Aid and Legal Assistance of Windsor, Rexdale Community Legal Clinic, and Downsview Community Legal Services.

I'd like to invite Community Legal Aid and Legal Assistance of Windsor. I understand that we have Marion Overholt, executive director, with us.

Ms. Marion Overholt: Yes.

The Chair (Mr. Roman Baber): Wonderful. I invite you to make your initial submission of seven minutes, commencing with stating your name for the record, please.

Ms. Marion Overholt: My name is Marion Overholt. I'm the executive director of Community Legal Aid and Legal Assistance of Windsor. Good afternoon. My two clinics—Community Legal Aid, a student legal aid services society clinic; and Legal Assistance of Windsor, a community legal clinic—have been serving Windsor and Essex county residents for over 45 years.

We are co-located in downtown Windsor and offer the following legal and social work services: representation in summary conviction offences and provincial offences; family law advice; landlord/tenant; employment law, including wrongful dismissal; employment standards; employment insurance; academic integrity; immigration and refugee law; public benefits law, including Ontario Works and Ontario Disability Support Program; criminal injury compensation; Indigenous justice advocacy; and anti-human-trafficking advocacy and support.

I am also a member of the advisory committee on mental health to the Legal Aid Ontario board of directors, and I teach first-year law students in the access-to-justice course.

I am deeply appreciative of the opportunity to present to you today. My presentation will focus on three points: (1) the lack of reference in the legislation to SLASS clinics; (2) the role of community legal clinics as a bridge between government and community; and (3) risk management and the rule of law.

My first point: There is no reference to SLASS clinics within the proposed legislation. Currently, there are seven SLASS clinics in the province, and they are a partnership between Legal Aid Ontario and the faculties of law at seven universities. These programs allow thousands of law students to give back to their communities by volunteering their time, receiving academic credit, and working under the close supervision of lawyers. They promote professional responsibility, and the students develop an understanding and awareness of real-world legal problems, hone their legal skills, and develop a lifelong dedication to community service.

The existing legislation has the SLASS clinics embedded in the suite of services; the proposed legislation does not.. That should be adjusted.

My second point: the role of community legal clinics as a bridge between government and communities. All of us present in this hearing today, the members of this committee and the presenters in this hour, all share a commitment to public service. Throughout my 32 years of work at the clinic, I have worked with municipal councils and provincial and federal governments to help them understand and address the needs of low-income and marginalized communities in Windsor and Essex county. We provide both individual and systemic advocacy.

In 2007, when Windsor entered the recession a year ahead of everyone else, we worked with the provincial government to design employment assistance programs and training opportunities with our local education centres to prevent the otherwise inevitable slide to unemployment and dependence on government programs. At the same time, we worked with our local municipality to create a workforce centre that would serve the needs of employers and employees by adapting to our ever-changing workplace. This is an example of us using our knowledge of the local community to identify gaps and to collaborate to ensure that the government's support is both an efficient and effective use of public funds.

Similarly, in 2002, we formed a WEFiGHT committee of local agencies to address the rising occurrence of human trafficking in our community. We developed protocols and training materials. Our clinic as a lead agency has provided countless hours of training to police, community agencies, crown attorneys, and we've been consulted by both provincial and national governments in the development of their program initiatives.

My clinic is currently funded by the Ministry of Children and Youth Services to provide services for anti-human trafficking support and advocacy to use and adopt in Windsor and Essex county. We recognize that in order for you to do your job as government, we need to share our knowledge of our communities and raise the voices of those who are overlooked and misunderstood so that we

can improve the lives of our communities and your constituents.

Both these initiatives occurred because our clinic is engaged in the community and can rapidly respond to emerging needs. We support the recommendation of negotiation with community legal clinics and ask you to strengthen the language of this act to preserve responsible exercise of clinic autonomy.

My third point is about risk management and the rule of law. As politicians, it is when you are creating legislation that your words matter the most. The language that you use in this act can have unintended consequences. We are living in a time when COVID-19 has disrupted our lives. You have felt the worry and frustration of your constituents seeking greater intervention and support. At the same time, we have also experienced grief and outrage at the offences witnessed in Canada and the United States. I know racism has been devastating for communities, particularly our racialized communities.

Maintaining a rule of law and recognizing the importance of providing all people with access to justice is critical. Your words matter. Don't assume that it is sufficient to delegate responsibility for the provision of legal services to a centralized institution. It is too important of an issue.

We welcome the opportunity to modernize legal aid and the administration of justice. We are your willing partners and have demonstrated a track record of efficient advocacy. At the end of the day, it is about the people we serve and protecting their place and their ability to fully participate and contribute to our community's well-being. Thank you.

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

Next, I would like to invite Yodit Edemariam from Rexdale for your seven-minute submission. Please begin by stating your name for the record.

Ms. Yodit Edemariam: Our board member Italica Battiston is going to speak first on behalf of our clinic.

The Chair (Mr. Roman Baber): Okay. If they'd be so kind to provide their name for the record and spell it as well.

1310

Ms. Italica Battiston: Thank you very much. Good afternoon, Mr. Chair and committee members. I would like to start by giving a very short, and I mean short, history of the clinic I represent, which also highlights some of the issues being discussed today.

My name is Italica Battiston. I am a board member of the Rexdale Community Legal Clinic, but previously I worked at the clinic for 42 years as a community legal worker. I also lived in Rexdale for 30 years. Back in 1976, I was hired by the Rexdale Community Information Directory, known as CID, to do outreach in the community, and I did so, basically going into the community and the riding offices of the MPs and MPPs as that is where the constituents went for help.

The outreach highlighted the need for access to legal services. With that in mind, Ernestine van Marle, our executive director and a force to be reckoned with, applied for and received funding for our clinic. We worked with all the riding assistants, both provincial and federal, across all party lines. In fact, we even had some riding assistants [*inaudible*]. One long-standing member, Mary Harker, who passed away four years ago, was a riding assistant of the Premier's father when he was our MPP—

Failure of sound system.

The Chair (Mr. Roman Baber): Unfortunately, your connection appears to be slow and you're frozen. Okay, now you are back.

Ms. Battiston? Ms. Battiston? Will you please—

Ms. Italica Battiston: Yes, I apologize. I don't know what happened.

The Chair (Mr. Roman Baber): That's okay. May I recommend that you turn off your video. That will increase your speed and enable us to hear you fully. At the left bottom of your screen, there should be a video button. I recommend that you hit that.

Ms. Italica Battiston: Okay. Oh, dear Lord. I apologize.

The Chair (Mr. Roman Baber): That's okay. We'll figure out—

Ms. Italica Battiston: Can you hear me now?

The Chair (Mr. Roman Baber): Yes, we can hear you. Go ahead, and we'll give you a little bit more time. Please proceed, with five minutes remaining.

Ms. Italica Battiston: Okay. I don't know why this has happened.

The Chair (Mr. Roman Baber): Just keep going. Don't worry.

Ms. Italica Battiston: Okay. I won't be very long, I promise. I don't want to take time from Yodit.

What I was trying to say is that it's the board members who represent the community and the constituents, that we've had great and dedicated members, as outlined earlier—lawyers, community members, past clients, accountants all dedicated to the work of the clinic.

I briefly want to discuss the whole issue of access to justice. One of the things that I learned in my many years is that the [*inaudible*] programs, benefits, call it what you will, come with many rules and regulations that often cause problems. Many a time, a constituent would come in with a letter advising of being terminated for some reason. A simple phone call would often clarify that. That saves time, money and lots of heartache. A simple misunderstanding can lead to a cut-off of assistance. Nonpayment of rent would lead to that—eviction, all for naught. We are there, and we need to be there for our disadvantaged community and constituents.

Clinics are in the community. They were started by community members who saw a need. Our clinic has changed through the years, as have all clinics. We change with the needs of the [*inaudible*] in Rexdale, originally Italian, then South American, then West Indian, East Indian, Somali and now Syrian. It is the work we do.

There was a time when our lawyers spent most of their time in Family Court. Then Legal Aid Ontario took up the

work and we moved on to where we needed to be: immigration, landlord/tenant, social assistance. We change with the needs of the community. We are there, we are attuned to the community and we have to have that ability to continue doing that.

Thank you, and now to Yodit.

The Chair (Mr. Roman Baber): Yodit, with about three minutes remaining.

Ms. Yodit Edemariam: Thank you. Good afternoon. My name is Yodit Edemariam, and I'm the director of legal services at the Rexdale Community Legal Clinic in north Etobicoke. Thank you for the opportunity.

In addition to confirming our support for the positions outlined by the ACLCO, the purposes of my comments today are twofold: one, to emphasize the indispensable need for a broad definition of "clinic law services" that is driven by the evolving needs of client communities and, secondly, to explain that independent legal clinics are in the best position to be responsive to those needs. By explaining some examples of the services we provide, I hope to show how important these concepts are to ensuring access to justice.

Our assistance can range anywhere from providing summary advice all the way to representation in complex tribunal and court proceedings. All of this work is deeply rooted in and responsive to community needs. For instance, we have a strong referral relationship with local politicians and partner agencies. Our housing casework means creating and maintaining relationships with local agencies such as Rent Bank. We've recently seen the direct impact of public legal education provided at an apartment building where some landlords have been threatening unlawful evictions and illegal rent increases. The impact of such work highlights the need to have an independent board of directors that encourages our law reform efforts.

In our social assistance practice, we can often intervene with local OW or ODSP workers to avoid lengthy and costly litigation.

Our employment work, shared with two other west-end clinics, is a direct response to the needs of the community, and it continues to evolve. Most recently, this has meant extensive public legal education about COVID-19-related employment benefits.

Our immigration practice is a perfect example of the importance of keeping the definition of clinic law broad. We proudly serve newcomers and their families in Rexdale and provide cost-effective services so that immigrants can reunite with their families, improving mental health and increasing the possibility of meaningful resettlement.

Our collaborations with an LAO family law team as well as the PAID ID program also respond to community need and are also cost-effective.

Finally, I highlight a recent partnership with a local women's shelter, Ernestine's, to provide reciprocal on-site intake. Such efforts mean simple and dignified access to services.

It was in defence of all of this work and in honour of the client communities we serve that our independent board of directors decided to appeal our 2019 funding cut. The appeal's positive outcome shows that a mechanism by which clinics can question funding decisions is deeply important to communities.

In conclusion, we underscore that the words "low-income Ontarians" and "disadvantaged communities" do not refer to theoretical or disembodied concepts; these groups are comprised of the very real, engaged and resilient individuals served by legal clinics who also happen to be your constituents. We ask that you please keep such community members at the centre of all of your Bill 161 deliberations. One way to do this is to ensure the continued work of independent local legal clinics that are responsive to the diverse and evolving legal needs of the clients they serve.

The Chair (Mr. Roman Baber): Thank you so much, Yodit.

Finally, for purposes of disclosure, to welcome a constituent—Downsview Community Legal Services clinic director Grace Pluchino, and Kyle Warwick. Welcome. Grace or Kyle, I invite you to commence your seven-minute submissions by stating your name for the record.

Ms. Grace Pluchino: It's Grace. I'll go first.

Good afternoon. My name is Grace Pluchino. I am a community legal worker at Downsview Community Legal Services and have been part of Ontario's legal clinics for over 35 years.

Legal clinics are special. It is an entire system that has developed an international world-class reputation rooted in the Legal Aid Services Act of 1998. It must be said that the clinics are embodied in a system, but each one of us stands uniquely apart in the very communities that we serve.

For approximately a 45-year time frame, legal clinics have proven to promote access to justice by means of high-quality legal services for low-income Ontarians and disadvantaged communities. I'm hoping that my presentation to you today can demonstrate how a legal clinic does promote access to justice through providing high-quality legal services.

We at Downsview, or me, as a staff member of Downsview—enable to assess, understand and deploy clinic resources to resolve the crisis matter for the client. I must say "crisis matter" because, to be honest, no one comes through our front doors when they are happy. Our door opens and welcomes the client in crisis, and we are there to assess the legal matter and all the secondary crisis issues in order to provide a holistic approach to problem solving.

1320

I told you that legal clinics are special. They have withstood the test of time in Ontario. We have worked with all Ontario governments through the years, and we have worked closely with them to ensure seamless referrals from MPP offices to the legal clinic. Downsview has offered legal information training sessions to constituency offices, and the offer has been welcomed by constituency staff. Downsview has four MPP offices located in our geographical boundaries. There has been and continues to be a reciprocal agreement to work together to serve the constituent or our client.

Legal clinics are made up of lawyers and community legal workers. The CLW title has allowed the individual clinic to employ a staff to proudly hold that title. The staff member would come with the qualifications, the skill set important to that community. The Ontario legal aid clinic is special because the organizational makeup is a marriage of the law and the community legal work needed in that community, in that moment, to provide a holistic approach to legal problem-solving. At Downsview Community Legal Services, we understand the legal provision that has been bestowed on us through the Legal Aid Services Act to determine in our community the services that we provide for the community that we serve.

In 1985, at the onset of the opening of Downsview Community Legal Services, I was hired for my cultural understanding, language skill of speaking Italian, and the skill set of doing social service work in the realm of providing legal services. The community was, at that time, made up of an Italian population, with workers working with heavy machinery. As a community legal worker, I took on workers' compensation cases, and did that work for approximately 10 years. What that would have meant at that time is taking a case all the way through from opening a file to actual representation.

The community evolved, and Downsview took its cue to make appropriate changes to again determine the new legal services that would be required for the changing demographics. Fast-forward to 2020: A recent environmental scan told us that the community had once again evolved. We are currently situated in a mix of a Korean, Filipino, Russian community at the top end of our geographical boundary, and a Caribbean, Somali, Ethiopian community at the south end of Downsview's catchment. Having the ability, the directive to determine legal services that are imperative in real time does make an impact on how efficiently and effectively services can be provided and problems can be solved.

The Ontario legal clinic system is a gem that is handed to each incoming government to protect and care for. We commend this government for including reference to independent community legal clinics in Bill 161, and we appreciate the AG's support for the work clinics do. However, we are concerned that the current drafting of the bill will actually undermine the ability of the clinics to do that great work.

I am respectfully submitting that the bill needs to clarify that it is the clinics—it is me, in my small part of the world, and not a central office—that determines and sets the legal services for our communities. Thank you.

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

Kyle, with two minutes remaining.

Mr. Kyle Warwick: Okay, so with two minutes remaining, I'll try to be pretty efficient.

Thank you so much, members and Mr. Chair, for giving us the opportunity to speak today. I'll just speak briefly from my experience in the clinic system. It's a different one than that of Grace and Italica, who have been in the system for many, many years and have seen a particular clinic evolve in the services and the focuses that it provides.

My experience, actually, is a bit different in that I originally am from Vancouver, BC. I came to Toronto for law school, and right off the bat, I fell in love with the clinic system and had the chance to work at Osgoode Hall's clinic, known as CLASP. Throughout law school and in my articles, I had a chance to work at the Community Legal Clinic of York region, West Toronto Community Legal Services, and the Workers' Health and Safety Legal Clinic. In each of these cases, I think it was very clear that these organizations, right away, had nuanced and very granular understandings of the communities that they served. It was very clear when I was working in York region. People understood there that both the demographic makeup, the particular services required, all of those things were fundamentally different than in a community like west Toronto, close to the urban core of Toronto.

Anywhere you go in this province, you can comfortably be assured that a legal clinic will do their best to provide low-income people with certain fundamentals in terms of eviction prevention, income maintenance and just basically ensuring that people have some ability to pay the bills and some ability to put a roof over their head. But beyond that, there is an immense degree of flexibility—and I'm just speaking from the experience of clinics in the greater Toronto area. That diversity is even further when you look at clinics like Marion's in Windsor; when you look at clinics in heavily francophone portions of the province; when you look at clinics in rural regions, northern regions; when you look at the ethnocultural clinics that we're so fortunate to have. Each of those clinics has a board of directors that is composed of people from the community that they serve. It's excellent that we have that structure preserved in the bill.

But I do believe one of the key functions of a board is to ensure that they can set the priorities for the clinic, because despite the absolute best efforts of Legal Aid Ontario, I do believe that it is not possible for an office in downtown Toronto to have the same ability to react quickly, in virtually real time, and to adjust the services accordingly.

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

Before we move on to questioning, Grace, I want to welcome you. I want to tell you that when I walked back in from lunch, it was a little warm in the room, so I took off my jacket, and then I looked at the schedule and I saw that Downsview is next, so I put my jacket back on, and then I realized that you're appearing by phone.

Ms. Grace Pluchino: I'm sorry.

The Chair (Mr. Roman Baber): So we'll commence with five and a half minutes of questioning by the official opposition. I recognize Mr. Yarde.

Mr. Kevin Yarde: Thank you, Mr. Chair. Don't feel bad; I'm not wearing my jacket. Maybe I will for the next session.

First of all, I want to thank all the witnesses for their opening statements; in particular; Marion Overholt; for highlighting the times that we're in. Of course, a lot of

people are marching, not just here in Canada but in the States and around the world.

That being said, my question is for Yodit. If this bill passes, do you think that the focus of access to justice will be changed to value for money? And if that happens, will it reduce the areas of law that clinics work in, eliminating, for instance, focus on crucial issues like discrimination and human rights?

Ms. Yodit Edemariam: Thank you for that question. If I may clarify, are you wondering about the possible impact on communities?

Mr. Kevin Yarde: Yes, that's correct.

Ms. Yodit Edemariam: I think that, as Marion also said, removing some of these words is not a small thing, that words matter. Thank you so much for that question.

At the Rexdale Community Legal Clinic, we serve a highly diverse community, and it is resilient, and, as I said, diverse. They know their needs. When words like "disadvantaged communities" or "low-income Ontarians" or "access to justice" are removed from the bill, that is a message, and we do worry, certainly, about the impact of those protections and the possible impact of an unequal playing field, especially during these unprecedented times.

Mr. Kevin Yarde: And could you speak to the cost ratio, in terms of the savings that we have using legal clinics?

Ms. Yodit Edemariam: Absolutely. It's one of the things we're most proud of, actually. We provide incredible value for money, if you want to put it like that. One example would be our law reform work. So if we can do public legal education sessions for a group of tenants, for example, instead of responding case by case, that is a cost savings. Legal clinics are particularly positioned in very nuanced areas of law that many lawyers do not practise in, and we're able to respond within the community to do that. So law reform is one way; public legal education—yes, those are a couple of the ways that we do provide cost-effective services.

1330

We also are extremely accountable. We do quarterly reports to Legal Aid Ontario. We are not afraid to open our books to Legal Aid Ontario, to the government. We know where every dollar goes, and we know that all of that money is spent on direct client service. Even our administrative positions that might be traditionally office managers or law clerks—even myself, as the director of legal services: I'm not just in a management role. I just did a hearing this morning, actually. All of us provide direct client service, so there is really nothing to trim, and the need is only greater and greater as time goes on.

Mr. Kevin Yarde: My next question is for Marion.

The government, of course, is making these amendments, making these changes, to the bill because they believe that it's broken, that it needs fixing. In your opinion, the system as it stands right now—do you believe that it is broken and that it needs to be fixed?

Ms. Marion Overholt: Thank you for the question.

I think, right now, the government's initiative is in looking in all areas—there's modernization legislation pending in many areas. I think what we have to consider when we look to modernizing legislation is finding out: What are the key pillars that have to be maintained? If we believe in the rule of law and we believe that citizens need to have access to justice—so not only accessing the courtroom and lawyers and community legal aid certificates, but looking at access to how legislation is developed and the whole process of community consultation—I think, when you look at the community legal clinic sector, it isn't broken; it is a model not only for other provinces but around the world of how to effectively engage your community and provide individual and systemic advocacy. So while we recognize and support the Attorney General in the desire to modernize services, we need in this legislation to protect those pillars to ensure that that access, particularly to disadvantaged and marginalized communities, is preserved, because otherwise we're undermining the whole fabric of our community and the way we're able to work together.

As I alluded to earlier, there are some very serious issues in our communities that we need to be able to address. Certainly, the economic impacts of COVID-19 are going to be felt in a far-reaching manner. So we need to have clinics unfettered to be able to respond to those needs, to bring community together and to articulate how to go forward. So we need those kinds of protections in this legislation.

The Chair (Mr. Roman Baber): Thank you. Before we proceed back to the government for questions, I understand that MPP Mamakwa has joined.

Sol, good afternoon. We need to confirm that that is in fact you, so would you be so kind as to confirm that that is you and tell us where you are in Ontario?

Mr. Sol Mamakwa: Hi. Good afternoon, everyone. I'm just here for a couple of sessions. I'm here in Thunder Bay. This is in fact Sol Mamakwa, yes.

The Chair (Mr. Roman Baber): Wonderful. Well, thank you again.

We'll now go to the government, with five and half minutes. I'll recognize MPP Tangri.

Mrs. Nina Tangri: Good afternoon, everyone. I'd like to thank all of you for joining us here today.

My question is for Ms. Overholt. The approach taken in the new legal aid legislation was to provide legal aid greater flexibility to set rules on how it operates, including how it engages service providers. This outcomes-based approach is meant to be less prescriptive and bureaucratic than the current framework and make it less cumbersome for service providers and users alike to access. What are your thoughts on allowing the Legislative Assembly of Ontario to make rules and streamline all of these processes?

Ms. Marion Overholt: These are my concerns. A few years ago, there was an expansion of legal aid services, and about six months later, there was a dramatic contraction of those very same services, particularly in the certificate system. So what we saw was this expansion and contraction, without any real focus on what the impact was in the individual communities.

So if we want to think about, how do we have an outcome-based system, when you look at the current

planning that's done by community legal clinics, that's exactly what we're engaged in—outcome-based results. As we do our strategic planning each year, we look at and define what those outcomes are in relation back to Legal Aid Ontario's strategic plan. With my own clinic, for instance, you've seen the expansion of Indigenous justice advocacy, recognizing that component in Legal Aid Ontario's strategic plan, recognizing the importance of providing services to our Indigenous communities.

In terms of when we think of outcome gathering being a priority, that's being achieved now in the community legal clinic system, and it is done in a way that's accountable not only to the government, to Legal Aid as an arm's-length agency, but also to our community. So I think it's important to have that balance. That's why we're making the submissions that we are.

Mrs. Nina Tangri: Just to follow through on that: Some of the stakeholders emphasized the importance that the process Legal Aid Ontario undertakes to determine how to provide legal aid services in the area of poverty law—to be transparent and based on credible data, but from all stakeholders. In your opinion, would you be in favour of ensuring that Legal Aid Ontario be required to consider information it receives, as I said, from all relevant stakeholders in making these decisions?

Ms. Marion Overholt: I think a broad consultation process is important. As I mentioned at the outset, I sit on the advisory committee to the legal aid board of directors on mental health law. When you look at the composition of that advisory board, it has lawyers who are involved in providing services with regard to the Consent and Capacity Board, lawyers doing criminal law work, clinical lawyers, representatives of hospitals that specialize in mental health services—so there is a cross-section, and we're all able to speak to how this area of law is impacted by legal aid services and what the needs are.

It's important to go and ask for input from a broad sector of stakeholders, but I also think it's important to recognize the expertise of certain stakeholders. The submission of the community legal clinics when it comes to poverty law is to recognize our expertise and the way that we engage our community and are accountable to our community with regard to poverty services. That expertise needs to be recognized in this legislation.

Mrs. Nina Tangri: How much time do I have?

The Chair (Mr. Roman Baber): A minute left, Ms. Tangri.

Mrs. Nina Tangri: Very quickly, just to follow through that—just to embellish a little bit more on what types of information stakeholders could provide to Legal Aid Ontario that could help us assist in making these determinations. If you can just expand on what you spoke on earlier.

Ms. Marion Overholt: Well, I think when you look at the types of information—for my community, it has one of the highest rates of children living in poverty. It's also incredibly diverse in terms of ethnicities and race. So when legal aid looks at what kinds of services are needed, what kinds of legal services are needed, they need to look at those kinds of compositions of community, but also know what those emerging issues are.

For instance, in my community, my clinic right now is engaged with the South West Detention Centre because there is a need to address the housing needs, the need for income maintenance for people who are being discharged from that institution. As the footprint of Legal Aid Ontario in our community, our clinic is able to do that.

1340

The way our system is working now is, we gather that information, as the local expert on poverty within our community, and then in our funding application and in our outcome-based strategic planning, we provide that information so that Legal Aid Ontario has the security of knowledge that the information that is before them is not only relevant to each community, but is being prioritized and actioned in an accountable and efficient way.

The Chair (Mr. Roman Baber): Thank you. We will now proceed with four minutes to the independent member.

M^me^ Lucille Collard: I want to start just by thanking you all for your contribution to the work of this committee and sharing your views on the impact of those changes—specifically, on the impact of the changes proposed to the legal services act. I will ask my question to Yodit, but others can chime in if there is time for this.

I want to know if you're concerned that these changes might reduce the scope of services that you are able to provide with your clinic in your community. I want to hear about what the impact will be on the work of your clinic in the communities, if you can speak to that.

Ms. Yodit Edemariam: Thank you very much for that question. You've actually highlighted one of our central concerns with the bill as currently drafted.

We are in strong favour of broadly defined clinic law services. What we have tried to do in our presentation today, both between the board member and myself, is to show you that over 42 years and a bit longer, we have responded to community needs.

What legal clinics and what Rexdale Community Legal Clinic did 40 years ago is not the same as what we do now, and that has come from the boards of directors responding to community and client needs. Even as an individual working in clinics, where I learn the most is from my clients. We talked a little bit about the current situation; I learn about systemic racism all the time directly from my clients. These are issues that then filter to the board, and we respond to that. We evolve our employment work; we make sure to provide family law services. That's actually another way we are cost-effective, is by co-locating with the family law team from LAO.

We're really proud to provide immigration services that the private bar isn't always able to do. We can provide free services. If you come into a local legal clinic, we can do a quick call to immigration that could cost the client a lot of money. A lot of lawyers aren't going to get involved in something like that. We can really help in those very small situations, and then also can assist clients going to Federal Court, to Divisional Court. These places are difficult

places to go for anyone, but for clients who face disability, mental health issues or being marginalized for other reasons such as race, the costs and the barriers are prohibitive.

We reiterate that one of the strongest things we want to say today is that local boards of directors keep us accountable. They keep me accountable as management. They keep that connection to the community. With all due respect, that definition cannot be restricted and it cannot come from an office downtown.

Mme Lucille Collard: Thank you for that. Is there any time for someone else to chime in?

The Chair (Mr. Roman Baber): There's 50 seconds.

Mme Lucille Collard: Kyle, would you like to contribute to the answer?

Mr. Kyle Warwick: Certainly. I'd be happy to contribute very briefly just to emphasize that I think it's excellent and it's crucial that the legislation as drafted already does establish that the clinic boards will continue to exist and will continue to have a role, but we do need to look in comparison to what was in the Legal Aid Services Act, 1998, when that role was prescribed in a very particular way and that the responsibility of the boards was quite tangible and quite immediate as a result. It's not necessarily—I think the bottom line is—

The Chair (Mr. Roman Baber): I apologize, Kyle. Unfortunately—

Mr. Kyle Warwick: —whatever wording is used to accomplish it—

Failure of sound system.

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

Mr. Kyle Warwick: Sorry. I think—

The Chair (Mr. Roman Baber): You cut out, but also, unfortunately, you ran out of time. Can you hear me, Kyle?

Mr. Kyle Warwick: Oh, sorry there. Sorry about that. I think I might have gone over my time, but I'm just going to say: The bottom line is, we think the role of the community boards is important. As lawyers in the system, we see it and it shapes what we do and it keeps us rooted in the community. They don't let us forget that that's who we're serving.

The Chair (Mr. Roman Baber): Thank you. We'll now proceed with five and a half minutes for the official opposition. I invite any member of the official opposition to indicate their willingness to ask questions. Any questions by the official opposition?

Seeing none, we'll move back to the government side. Any questions by the government side?

Interjection.

The Chair (Mr. Roman Baber): I apologize to everyone. I'm just going to take a minute. Please mute me.

Interjections.

The Chair (Mr. Roman Baber): Back on. I'm told by the Clerk that at the time I was asking the official opposition whether they want to pose questions and did not hear an answer, I was actually muted. So I will open the floor up again to the official opposition for five and a half minutes of questions. I believe it's Mr. Singh.

Mr. Gurratan Singh: Thank you very much, Chair. I'm going to ask a question and then I'm going to ask for a response—a very brief response because I only have five minutes—from each of you.

My question is as follows: Would you agree with this following statement, that the removal of "access to justice" and "low-income" from the purposes section of the proposed legislation and the narrow definition of the areas of practice would negatively impact Black Ontarians, racialized Ontarians, Indigenous Ontarians and women who are victims of violence and who are trying to access justice to address that violence? Would it negatively impact these communities' ability to access justice?

If each of you could respond very quickly, starting with Kyle—or whoever gets unmuted.

Mr. Kyle Warwick: Yes. I believe that there is a possibility that that inadvertently may occur with the current wording and that the ability to have a broad definition of poverty law ensures that the clinics can tailor their services, particularly to vulnerable communities, including Black, Indigenous and other racialized communities.

Mr. Gurratan Singh: Just because I have limited—

Mr. Kyle Warwick: Okay, yes.

Mr. Gurratan Singh: We just have a little bit of time—whoever gets unmuted next.

Ms. Marion Overholt: Yes, I agree, absolutely. That's why we're supporting the position of the Association of Community Legal Clinics, because when you look at who is marginalized in our community and who experiences poverty, it's exactly the people that you mentioned, and all of us—the legislators and clinics—have a duty to provide access to justice for those people.

Ms. Yodit Edemariam: Thank you so much for that question.

I think, as we've been hearing from a lot of the movements that are happening in the US and Canada, it really is a time to listen, to look internally, to look at laws, to look at the ways in which we are responding not only to some Ontarians but to every Ontarian, who, again, are your constituents. We are concerned about narrowing the definition of poverty law for some of the reasons that I've already stated and the importance of something that is community-based. We learn from clients, and their very real experiences are vital. There is no other way to really respond appropriately.

Thank you for that question.

The Chair (Mr. Roman Baber): Thank you very much. With just under three minutes remaining.

Mr. Gurratan Singh: I'll focus my questions, then, right now to Marion. There are modernization aspects outlined in this piece of legislation. Would you agree that the potential negatives and the impacts to access to justice would outweigh the positives of modernization as currently outlined in the bill?

1350

Ms. Marion Overholt: Yes, I'm very concerned about this legislation, and I would agree with that statement because I think that, as I said before, the community legal sector is working. The community [*inaudible*] clinics,

what we're doing with the SLASS clinics, is effective representation. To put that all at risk, particularly at this point in time, looking at all the factors that are influencing our communities now, is just too great of a gamble. I don't think it's a prudent thing to do.

Mr. Gurratan Singh: I would ask the same question to Yodit: Would you believe that the negatives in this legislation outweigh the positives of the modernization?

Ms. Yodit Edemariam: First of all, thank you for that. I also want to highlight that clinics are not afraid of modernization. In the last three months, even within my clinic—I wish you could see the excitement when we're able to sign a PDF document or our participation in Zoom. We've pivoted to do public legal education virtually. We're not afraid of modernization.

However, as I said in my opening statement, the centre of all of that has to be client communities, and the responses have to be driven by client communities, and responses that are locally based. To answer your question: Modernization with that in mind as a central concern could be wonderful, but we just don't know enough about what the word "modernization" means, to be overhauling this legislation for the idea of modernization without understanding the details.

The Chair (Mr. Roman Baber): There are 20 seconds remaining, Mr. Singh.

Mr. Gurratan Singh: Kyle, if you would just answer that question very quickly with 20 seconds left.

Mr. Kyle Warwick: Thank you, Mr. Singh. I don't have too much to add. I think Yodit hit it right on the head there. It's no secret that the justice system is antiquated in a number of ways and that modernization is overdue.

I think that at clinics, one of our advantages is that we are nimble and close to the ground so we can do those things. But we need to make sure that in doing these modernizations, we don't lose focus, particularly on some of the most vulnerable groups that can sometimes have structural barriers to participating. That's going to be the crucial thing—making sure that this modernization is not at the expense of protecting and advocating and uplifting those groups. I think that that can be done, but I think that there do need to be some amendments to the legislation for us to get there.

The Chair (Mr. Roman Baber): Thank you. We're now going back to the government for five and a half minutes. Mr. Gill.

Mr. Parm Gill: Thank you, Mr. Chair. I also want to thank our panellists for appearing before the committee. I've got a couple of questions for the Rexdale Community Legal Clinic, if possible.

When new legislation was being drafted, we heard from many stakeholders about the importance of maintaining in the definition of community legal clinic reference to clinics' boards of directors, and that it be comprised of members of the community or communities the board serves. Can you speak to why this is important for community legal clinics in Ontario?

Ms. Yodit Edemariam: Thank you for that question.

I think the main importance is that as a community legal clinic using public funds, we are accountable not only to the public but to the communities we serve. For example, on the Rexdale Community Legal Clinic's board, we have to—actually, the bylaws require representation of people who live and/or work in the community. It's part of an accountability to make sure that we are providing the services that we should be providing, that are appropriate and responsive, and that can modernize, that can change and that can respond. And it's deeply important that it comes from people who are on the ground.

The reverse of that is that our staff attends monthly board meetings and report on the work that they're doing. We do case reports. We talk about legal education we're doing. So the board also learns about the community directly from staff and clients. I don't know how that could happen unless there is a board that is independent and community-based.

Mr. Parm Gill: Would you say the current proposed definition is overly restrictive in that it potentially prohibits qualified people who have strong ties to a community where the clinic operates from joining that clinic's board?

Ms. Yodit Edemariam: If I could ask for clarification, do you mean in Bill 161 or as currently—

Mr. Parm Gill: Currently.

Ms. Yodit Edemariam: And whether the rules around participation are too restrictive?

Mr. Parm Gill: Yes, do you feel that the definition is overly restrictive in terms of prohibiting qualified people who have strong ties in the community where the clinics operate from joining the clinic's board?

Ms. Yodit Edemariam: What I can say is that these processes, again, have to be responsive—

The Chair (Mr. Roman Baber): I apologize to cut you off. Mr. Bouma has a point of order.

Mr. Will Bouma: I'm just wondering, Mr. Chair—I'm looking at the names on the screen and I see five opposition members.

The Chair (Mr. Roman Baber): Yes, you're seeing correctly, Mr. Bouma. As per the rules, any member of the Legislature is allowed to sit on committee and to ask questions; however, those that are not permanent members of the committee or who have not been properly substituted for the hearings of the committee are not allowed to vote or to move any business. However, we still need to run through the protocol of properly admitting them into the meeting, which is what I intended to do after the government finished its questions.

Mr. Will Bouma: I apologize for the interruption.

The Chair (Mr. Roman Baber): That's okay. I think, while at it—I do see that you asked for an opportunity to ask some questions. I note that Mr. Nicholls also expressed—okay; he's waiving that off. So Mr. Bouma, we will get to you as quickly as we can.

In the meantime, Mr. West, welcome to our proceeding. Okay. Now you're—

Mr. Jamie West: Thank you—

The Chair (Mr. Roman Baber): MPP West, we just have to confirm that it's indeed yourself. Would you be so kind to do that, and tell us where you are in Ontario?

Mr. Jamie West: Jamie West. I'm in my office in Sudbury.

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

Back to the government: MPP Gill, for another minute and five seconds, please.

Mr. Parm Gill: If we could just get Yodit to finish off her answer—

Ms. Yodit Edemariam: So just to quickly finish off, we do appreciate the government's efforts in recognizing local boards of directors. I think you raise an interesting point. I think one of the ways in which clinics do remain nimble and responsive is that we do want to look at our bylaws and want to make sure they're responsive and fair to the communities and accountable to the communities we serve. Different clinics have different bylaws, but you raise a very important point about representation and accountability. Thank you.

The Chair (Mr. Roman Baber): Thank you very much. With eight seconds remaining, I'm inclined to speak out the remaining eight seconds and head over back to the opposition for five and a half minutes of questions. Mr. Yarde.

Mr. Kevin Yarde: Thank you, Mr. Chair. My question is for Yodit. I'm just curious to know: In your clinic, how have the most recent cuts to legal aid affected your operations?

1400

Ms. Yodit Edemariam: Thank you for that question.

What happened with our cut, which was initially at the amount of about 10%, is that we faced some very difficult decisions—not decisions as difficult as some other clinics had to make, such as some of the specialty clinics and Parkdale Community Legal Services—but the previous director retired early. We had staff had taking voluntary pay cuts and staff taking voluntary unpaid time.

What I would like to report, again, is that in terms of value for money, I was part of writing our funding application this year, and I looked back at the work that our staff have done during this very difficult year. I really proudly report that we've managed somehow to provide continued service, but it was not easy. We had diminished capacity, and as I said, all of the people at our clinic—whether they're administration roles, whether it's me, whether it's an office manager, we all provide direct client service. So we definitely felt that, continuing into the future, it was not sustainable.

But again, I want to highlight what's now missing from Bill 161, which was the ability of our clinic and some others to go through an appeal process with Legal Aid Ontario. It was great. It meant that we could meet with the clinic committee and really tell them, again, from the community perspective, from being on the ground, what this cut meant to the clients we served.

The Chair (Mr. Roman Baber): Three minutes and 20 seconds remaining.

Mr. Kevin Yarde: The same question for you, Grace: The most recent cutbacks to legal aid—how did they affect your clinic in the Downsview area?

Ms. Grace Pluchino: Thank you very, very much. Actually, that question is near and dear to my heart. As we've functioned as a legal clinic and we've grown and we've watched the need grow larger and larger—when we first started in 1985, the corner of Wilson Heights and Sheppard was mostly farmland, to the point where we would go and pick up our clients from Wilson station to bring them over to the office for an appointment. As there was an increase in demand of services, we were able to provide that.

The one area that grew as well was the Lawrence Heights community. In there, we basically set up a satellite office. We were proud of ourselves for being able to take our services into the community and actually be a part of the community. That makes a difference as well, in the sense of when you're making the decisions of the kinds of services that you're providing.

When the cuts hit, where we had a spot in Lawrence Heights, we gave that up, so from actually being there five days a week and noticing the increase in work that we were doing there—because, of course, it's all statistical and we keep that information—we had to drop down to three days a week, and there has been conversation about whether we could be there at all. So that was something that was very important to us but had been cut back.

As for our staffing, we lost two of our staff members. But like Yodit—this is the most interesting thing—people who work at legal clinics are pretty amazing all the way around, and so we continued to do the work that was necessary. It was back-breaking, I have to say. We put in more hours, but we were still able to manage giving the service that was required of us. So it was devastating.

Mr. Kevin Yarde: I'm not sure how much time I have left, but I'm going to ask you the same question. Of course, the government is putting through these changes to Bill 161 because they feel that the system is broken. Do you feel, as it is right now, that the system is broken?

The Chair (Mr. Roman Baber): Grace, try to conclude in 30 seconds.

Ms. Grace Pluchino: That the system is broken? I'm sorry—because there was a recording that was going on. You're asking me if I feel that the—

Mr. Kevin Yarde: —that the legal aid system needs fixing.

Ms. Grace Pluchino: The legal aid system—it's interesting that you ask it that way, because when I see it in my 35 years, it's a system that works well. Does it need tweaks here and there just because? Yes. And it's wonderful to look at it through fresh eyes, to look at what things we can do new and that we can be innovative and be able to provide better service. But is it broken? I wouldn't say that. I can still walk into the legal aid office and be able to feel the gratitude of the clients, that they know that we're there. So we must be doing something right if we've been around for 42 years.

Does it need modernization in certain ways? There are all kinds of conversations that can be had. I don't believe, though, that it's broken.

The Chair (Mr. Roman Baber): Thank you very much. We'll now conclude this round of questioning with the government for five and half minutes. Mr. Nicholls.

Mr. Rick Nicholls: Again, welcome, and I thank everyone for attending today. I'm going to focus my questions to the Downsview Community Legal Services, so you can decide who would like to take these particular questions.

I'm going to start off by talking about the approach that has been taken in the new legal aid legislation, which is to provide legal aid with greater flexibility to set rules on how it operates, including how it engages service providers. Now this outcome-based approach is meant to be less prescriptive and bureaucratic than the current framework and make it less cumbersome for service providers and users alike to access.

My question is, what are your thoughts on allowing legal aid to make rules and streamline these processes?

Mr. Kyle Warwick: I guess I'll take that first, and then Grace is very much welcome, of course, to add, if necessary.

I think that the general notion of ensuring that outcomes are the focus, that we are less prescriptive and less bureaucratic is a goal that we're behind. I think that the concern that the Association of the Community Legal Clinics of Ontario and many clinics, including ours, have is that certain aspects of the legislation might not be tailored quite in the way that would best serve that.

One respect where that's pretty clear—not to beat the dead horse—is the individual clinic boards being able to make the priorities and the case criteria for their particular clinics. If the boards continue to exist but they don't have that power, that power will go somewhere, and where it will go, by default, is to the head office of Legal Aid Ontario, staffed by laudable and admirable people, but people who are in offices downtown.

Most of my family lives in Ridgetown, in Chatham-Kent. I know that the distance and the nuances that come from that downtown Toronto perspective aren't always able to translate in quite the same way with the Chatham-Kent Legal Clinic, for instance. Even within the GTA, that kind of thing is very much the case as well. So I think that the role of the independent boards is important.

In terms of allowing a less prescriptive definition for legal aid as the umbrella organization, I think the one thing there is that less prescriptive is important, but we should continue to have certain things specified, and that includes within poverty law emphasizing vulnerable communities and disadvantaged Ontarians because I think that, philosophically, those groups are why we have the legal aid system and the clinic system that we do have.

What constitutes a disadvantaged group absolutely can change over time, and we've seen that in Downsview as the demographics of our community have evolved. But keeping in mind that that's ultimately what our bottom line is should be something that's reflected in the legislation.

The Chair (Mr. Roman Baber): With a minute and 40 remaining.

Ms. Grace Pluchino: I don't have anything to add.

Mr. Rick Nicholls: All right. May I continue?

The Chair (Mr. Roman Baber): Yes, Mr. Nicholls.

Mr. Rick Nicholls: Thank you very much, Chair. Just as an aside, Mr. Warwick: I grew up on Warwick Drive in Chatham, so there might be a family connection there somewhere; I'm not sure.

1410

The next question I'd like to ask: Some stakeholders have emphasized the importance that the process Legal Aid Ontario undertakes to determine how to provide legal aid services in the area of poverty law—to be transparent and based on credible data from all stakeholders. Would you be in favour of ensuring that Legal Aid Ontario be required to consider information that it receives from all relevant stakeholders in making these decisions? I know that I didn't specify who I would like to answer that, so either Grace, you may answer that, or Kyle. Go for it.

Ms. Grace Pluchino: Kyle, I'm going to leave that to you as well.

The Chair (Mr. Roman Baber): Kyle, with 25 seconds, please.

Mr. Kyle Warwick: Okay. So my thoughts, very briefly, are that I think that getting inputs from all of the stakeholders is absolutely crucial and important, but I do think that certain stakeholders have a particularly strong knowledge of or, in a lot of cases, lived experience with these issues. In the way that the balance is struck, we want to make sure that stakeholders' community groups that have that direct experience—that we continue to particularly listen to those stakeholders.

The Chair (Mr. Roman Baber): That concludes our first panel for the afternoon. Thank you, everyone. Thank you, again, Marion, Yodit, Grace, Kyle. We look forward to seeing you again.

ONTARIO NETWORK OF INJURED WORKERS GROUPS, THUNDER BAY
NISHNAWBE-ASKI LEGAL SERVICES CORP.
ABORIGINAL LEGAL SERVICES CLINIC

The Chair (Mr. Roman Baber): Welcome, everyone. We'll now proceed to the second panel of the afternoon. We're here to continue hearings on Bill 161, An Act to enact the Legal Aid Services Act, 2019 and to make various amendments to other Acts dealing with the courts and other justice matters.

Our next deponents are the Ontario Network of Injured Workers Groups, Thunder Bay; the Nishnawbe-Aski Legal Services Corp.; and the Aboriginal Legal Services Clinic. I would invite each of the organizations to make an initial presentation of seven minutes, followed by questions from both recognized parties and the independent member.

We'll commence with Willy Noiles, executive vice-president of the Ontario Network of Injured Workers

Groups, Thunder Bay. Mr. Noiles, would you please begin your testimony with stating your name for the record?

Mr. Willy Noiles: Yes. Good afternoon, Chair Baber. I'm Willy Noiles, executive vice-president of the Ontario Network of Injured Workers Groups

The Chair (Mr. Roman Baber): Good afternoon.

Mr. Willy Noiles: Thank you. We want to thank the committee for giving us a chance to present this afternoon.

ONIWG was formed in 1991, and it's the umbrella political organization for about 25 injured workers' support groups across the province—from Thunder Bay, where president Janet Paterson resides in the north, to Niagara, down here in the south, where I reside. We have a group in Ottawa in the east, two groups in the Windsor area in the west, and groups in various areas across the province.

Our first area of concern is the changing of language as to what legal aid is. In schedule 1 of the current Legal Aid Services Act, it states, "The purpose of this act is to promote access to justice throughout Ontario for low-income individuals." In schedule 13, it states, "The corporation shall provide legal aid services in the areas of criminal law, family law, clinic law and mental health law."

But in schedule 16, on page 54 of the proposed bill, schedule 1 states, "The purpose of this act is to facilitate the establishment of a flexible and sustainable legal aid system that provides effective and high-quality legal aid services throughout Ontario in a client-focused and accountable manner while ensuring value for money." On page 54 in schedule 4, the bill states, "The corporation may, subject to the regulations, provide ... legal aid services."

Why does the bill remove "access to justice ... for low-income individuals"? As far as I can see, the bill does not envision removing financial qualifications to receive services, so why remove who legal aid was designed for? But more worrisome is the changing of "shall provide legal aid" to "may provide." Call us cynical, but "may" and "shall" have completely different meanings. We are worried that this provides an out for government to stop funding legal aid.

Is the government planning to turn legal aid into a fee-for-service corporation? In schedule 2 of the existing act, a legal clinic is defined as an independent community organization that "provides legal aid services to the community it serves on a basis other than fee for service." On page 58 of this proposed Bill 161, section 13 says that if someone receives any money in a manner for which they received legal aid services, the cost of the legal aid services shall be deducted and paid to LAO. So if a legal clinic helps someone get workers' compensation or social assistance, does this mean that that individual has to give their money to legal aid?

Why bring fee-for-service into legal aid when only the very poor qualify in the first place? For the vast majority of injured workers, by the time they get any money from the Workplace Safety and Insurance Board, WSIB, they've already lost their home and exhausted any savings they may have had. Expecting them to now remit what they have been able to get from WSIB simply adds a lot of salt to the wound.

We have always advised injured workers to save any back-money a legal clinic worker has won for them for their post-65 years, when WSIB no long provides any kind of income. We've worked with injured workers who didn't qualify for legal aid and had to hire a private paralegal or lawyer, and to a one, they're always disappointed by what they have left after the legal fees have been paid. The result is, they're still looking at long-term poverty. We thought legal aid was supposed to be different.

I worry this will only convince a wronged injured worker that it simply isn't worth the time—because the wait for an appeal to the tribunal can take up to a decade—or the money to pursue their case. Although they may regret that decision down the road, what you can be sure of is that there will be a bitter individual who thinks government is useless, so why bother caring about politics or voting?

As a past chair and vice-chair of the former Niagara North Community Legal Clinic, the biggest concern with this bill is the proposed loss of community control. Section 39(2) of the current legislation states that a board of a clinic "shall determine the legal needs of the individuals and communities served or to be served by the clinic and shall ensure that the clinic provides legal aid services in the area of clinic law in accordance with those needs." But on page 53, section 16, schedule 6, Bill 161 proposes that LAO will now determine the legal needs of individuals and communities for legal aid services.

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

Mr. Willy Noiles: They need only to "have regard" for the community determinations of its legal needs. From the agent-worker perspective, their legal problems arise through decisions made by government agencies, so imagine how they'll view another government agency telling their trusted legal clinic what they'll now be concentrating on. From a clinic perspective, I can tell you that this will make it even harder to convince members of the community to sit on a community legal aid board. Most boards strive to include one or two legal professionals from outside the clinic to sit on their boards. These people often have busy lives to begin with. So if the power to direct the clinic as to what areas the staff is going to focus on is going to be determined by some bureaucrat in downtown Toronto who's probably never set foot in that community instead of this legal board, many are going to ask: What else is there to do on this board?

1420

When I served on Niagara North's board about a decade ago—

The Chair (Mr. Roman Baber): I'm terribly sorry, Mr. Noiles. You ran out of time about 45 seconds ago. I'm sure you'll be able to incorporate the balance of your submissions in questions.

We'll proceed with the Nishnawbe-Aski Legal Services Corp. We have Jim Beardy, chair, Irene Linklater,

Danielle Wood, Derek Fox and Mahogany McGuire. I invite you to begin your seven-minute submission by stating your name for the record first.

Is it Mr. Beardy?

Mr. Jim Beardy: Good afternoon. Waajiiye. My name is Jim Beardy, and I'm a member of the Muskrat Dam First Nation, and chair of Nishnawbe-Aski Legal Services Corp. board of directors.

The Chair (Mr. Roman Baber): Good afternoon, and welcome.

Mr. Jim Beardy: It is an honour to present today and on behalf of the board of directors, who represent the 49 member First Nations of Treaty 9 and Treaty 5 within Nishnawbe Aski territory.

The focus of my presentation is Bill 161, specifically schedules 15 and 16, the proposed Legal Aid Services Act. The areas of concern in our review of schedules 15 and 16 are as follows.

The lack of consultation with the Nishnawbe Aski Nation and the Nishnawbe-Aski Legal Services Corp. on the planning and drafting of the proposed new Legal Aid Services Act, 2020: At no time was NAN or Nishnawbe-Aski Legal Services informed of a plan to develop a new Legal Aid Services Act. We only became aware of it by a verbal statement made in the early fall of 2019 by an LAO senior representative. NAN and Nishnawbe-Aski Legal Services had not been advised of this initiative nor invited to participate.

To use the words of the Honourable Frank Iacobucci in his report, First Nations Representation on Ontario Juries, in February 2013, the same applies to this case: "But it is also regrettably the fact that the justice system generally as applied to First Nations peoples, particularly in the north, is quite frankly in a crisis. If we continue the status quo we will aggravate what is already a serious situation, and any hope of true reconciliation between First Nations and" Ontario people "generally will vanish. Put more directly, the time for talk is over, what is desperately needed is action."

Our recommendation is that schedules 15 and 16 be removed from Bill 161 and tabled, and that any development of the Legal Aid Services Act must be in full consultation with NAN and Nishnawbe-Aski Legal Services Corp. to demonstrate a genuine commitment by the government of Ontario to achieve a true, meaningful reconciliation with First Nations people.

Our concerns about the LAO board, the composition, the election of directors and the duties of the board: The main concern for NAN and Nishnawbe-Aski Legal Services Corp. is that the new board of directors of Legal Aid Ontario no longer provides for the protection of the representation of the geographic diversity of the province. Our recommendation is to expand the role of the LAO board and heighten the need for substantive NAN and Nishnawbe-Aski Legal Services Corp. representation and engagement, a permanency that is based on the geographic diversity across the northern region of Ontario, which is the Nishnawbe Aski territory.

Our third concern is the diminished role of Aboriginal corporations and Indigenous legal aid providers. It raises further questions of trust, transparency and accountability. The changes in schedule 6 serve to create an extensive autonomous authority to be held by LAO and leaves the decision-making to LAO to develop policies at its discretion. The primary purpose is focused on value for money as opposed to access to justice. The broad powers to be held by LAO will impact the eligible areas of service, how service provisions will be determined, particularly with the removal of the regional approach, including eligibility of legal aid services. These elements for NAN Nishnawbe-Aski Legal Services raise more concerns on the question of trust, transparency and accountability.

In 1988, the chiefs of the Nishnawbe Aski Nation selected a mixed legal services model with two tracks. With support from LAO, the Ministry of the Attorney General and the Department of Justice, the model utilized the Western justice court system and seeks reform to addressing the legal service needs of the Nishnawbe Aski Nation people in parallel with the traditional justice systems of NAN people. In coexistence to re-establishing our justice systems, we had our own systems of justice that we wished to re-establish more formally.

Nishnawbe-Aski Legal Services has been functioning in this interim capacity for 20 years and wishes to move forward in partnership with the province of Ontario. It will also require the involvement of the federal government in its plan for action for justice for Nishnawbe-Aski Legal Services Corp. to have its own legal services institution. Our recommendation is that the government of Ontario come to engage with NAN Nishnawbe-Aski Legal Services for the creation of an independent First Nation legal services institution with direct funding from Treasury Board for the new First Nation legal services institution to service Nishnawbe Aski's members and the communities.

Our final concern is the MOU between LAO and Nishnawbe-Aski Legal Services to replace the one between LAO and Nishnawbe-Aski Legal Services of November 9, 2004. On November 19, 2018, an assembly resolution instructed that Nishnawbe-Aski Legal Services Corp. and LAO engage in a formal negotiation to renew the MOU. Nishnawbe-Aski Legal Services submitted proposed amendments for a renewed MOU and was advised that the LAO legal department agreed and would review, and a response will follow. One year later, in the fall of 2019, LAO representatives advised the Nishnawbe-Aski Legal Services Corp. board that the MOU is on hold, since there is a new Legal Aid Services Act to be announced, and that will govern the scope and authority of a new MOU.

The Chair (Mr. Roman Baber): Thirty seconds left.

Mr. Jim Beardy: Not only was the MOU placed on hold, but LAO made administrative changes that eliminated the positions of directors from area offices, and informed Nishnawbe-Aski Legal Services Corp. that area directors no longer exist. The formal authority of this position has now been reduced by LAO and has taken away the authority once held by these positions for NAN Nishnawbe-Aski Legal Services Corp.

Our recommendation is that in their process of the development of a Nishnawbe-Aski First Nation legal services constitution, enter into formal renegotiation for a renewed MOU with NAN Nishnawbe-Aski Legal Services Corp. that would, in good faith, negotiate to ensure adequate funding, which includes operational costs being increased—

The Chair (Mr. Roman Baber): I'm terribly sorry. Please conclude.

Mr. Jim Beardy: I'm done. Thank you.

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

We'll conclude the presentation round with the Aboriginal Legal Services Clinic. We have Christa Big Canoe and Emily Hill. May I please invite you to make seven minutes of your initial statement, starting with stating your name for the record?

Ms. Christa Big Canoe: Christa Big Canoe, the legal advocacy director of Aboriginal Legal Services. Good afternoon. Aaniin. Boozhoo.

Thank you for having Aboriginal Legal Services before the standing committee today. I will be speaking on behalf of Aboriginal Legal Services, but with me is Emily Hill, our senior staff lawyer. She is an integral part of our team because she provides direct client services, like our other staff lawyers and community legal workers, to our clients before many tribunals and appeal courts as legal counsel for families and inquests, and in delivery of services through various programs.

The committee members will note that we have written submissions that we have uploaded into the system and that we support many of the submissions of many of the community clinics and community legal service providers that have already spoken before you or put in submissions.

For 30 years, Aboriginal Legal Services, also known as ALS, has been a leader in developing innovative legal services to meet the unique needs of Indigenous people engaged with the legal system. We are here today to provide a brief history or overview of ALS, and make some points to ensure that legal aid services in Ontario are able to meet the needs of Indigenous communities.

1430

ALS came into existence to address gaps in the justice system and in legal aid services. We provide culturally relevant and sound representation to Indigenous people. We continue to solve the gaps that clients experience. ALS has never waited for funding to provide services that are needed, and we didn't wait to be acknowledged as an Aboriginal legal service corporation to become a one-stop shop for Indigenous people.

Our written submissions lay out our service areas and programs. We deliver services well beyond those described in section 4 of schedule 16 of Bill 161. We create solutions, because time and time again, the legal system has failed Indigenous people, whether we're talking about the crisis of overrepresentation in the prison system, the tens of thousands of Indigenous children in foster care, the failure to protect Indigenous women, girls, transgender and two-spirit people from violence, or the increased rates of homelessness and entrenched poverty.

Indigenous people need services that are designed within their community and that understand who they are and where they come from. We have had success in the last 30 years delivering these services because our board is mostly Indigenous, our staff are mostly Indigenous and our services recognize the integral, important aspects of Indigenous culture in the work we do every day. We provide services to Indigenous people and communities. We meet clients where they're at, and can do so because, as an Indigenous organization, we understand and have the shared history and contemporary experiences that our clients have.

Within the bill, you'll notice the term "Indigenous legal services organization," or ILSO, and you've heard me refer to the fact that we're an Aboriginal legal services corporation. That change from "Aboriginal" to "Indigenous" is a modernization of terms, and we don't take any issue with that. What we do want to make clear is that our submission is to boost legislative protection for all ILSOs, and not only our organization. As you've just heard from NAN Legal Services, it's about ensuring that legal services can flourish and deliver the best services to their Indigenous communities, and also to provide the most appropriate legal aid services, as defined by our agencies for our communities.

The major points that we would like to present are that ILSOs require definitions separate from other models, that Bill 161 be amended to require Legal Aid Ontario to recognize that ILSOs are the best model to provide services to Aboriginal people and that we require LAO to fund us to do just that.

There are current limitations within LASA, the current act and the bill. That includes the fact that ILSO's ability to provide services to Indigenous communities continues to have a gap in that we can't provide, for example, better criminal or family law representation, from ALS's perspective, because of the way things are defined within the act.

I'd like to give you a real example of that. Right now, we have violence against Indigenous women: In this country, it is a crisis. A woman who walks into our office who has had domestic violence or intimate partner violence may lose her housing after the violence she's experienced, and we can help her, as a clinic, with the housing, with income support. Our office can actually also help with victim support, both in the courtroom and through other programming. But for example, we can't help her with her family legal issues, child welfare or any of the areas that it is really important to have specific Indigenous legal expertise in. We're in the best position to provide those services, but can't.

The need for services for Indigenous people has been more than demonstrated, even on LAO's own statistics. The barrier to provide mixed services because of the legislation and who can practise in certain areas of law is not providing solutions to the crisis in the justice system or Indigenous people's experiences of racism and discrimination.

Removing the little protection that was afforded in LASA under the new bill in funding to ILSO by replacing the language in the act from "shall" to "may" is problematic. We are not saying that there are not good private bar lawyers or amazing clinics out there; there are. However, ILSOs are in the best position systemically, with legal knowledge of unique rights to provide the best services.

Ontario community legal clinics have been held up as an example of legal innovation and leadership. Bill 161 provides an opportunity for Ontario to show the same innovation and leadership, by enshrining the vital role of Indigenous legal service organizations in legislation. Therefore, our direct recommendation, which is included in our written submission, is that ILSO be removed from clause 5(2)(b) and that a definition of ILSO is provided. We suggest that it falls under the same area, and we specifically recommend that the definition include the following criteria:

—all ILSO are directed, led and operated by Indigenous boards and councils;

—ILSO provide services to individuals and communities; and

—ILSO will primarily provide services with Indigenous staff, professionals, partners and allies representative of their community.

We also believe and recommend that a further statement specific to ILSO be put into place much like that that exists for the private bar and clinic services under subsections 5(4) and 5(5). What we're recommending—as I said in our written—is that the ILSO are distinct service providers and that the corporation should consider our best place to provide not only the most competent, culturally relevant and safe services to Indigenous people in a community, but that they must be able to employ mixed service models and not be limited to practice areas because that doesn't allow them to serve the unique Indigenous legal rights and needs of their clients.

And just finally, that the ILSO are accountable to the corporation but that they are accountable to their boards or councils, and most importantly—

The Chair (Mr. Roman Baber): I'm sorry—

Ms. Christa Big Canoe: —they are accountable to the Indigenous people and communities they serve. Meegwetch. Thank you.

The Chair (Mr. Roman Baber): You're welcome. I apologize for interrupting you. Unfortunately, you ran out of time.

Okay. We'll proceed with five and a half minutes of questioning by the government. I recognize Ms. Wai.

Mrs. Daisy Wai: Thank you, Chair, and let me welcome all those who have come here and joined our meeting and are speaking on behalf of their specific group.

I just want to reiterate: The Attorney General has been very public in his support of the important work that we do for the legal clinics for Ontarians who are faced with a variety of legal needs, but at the same time, we also see that there is a need to modernize and improve on the legal system. The Auditor General's 2018 annual report has already stated that. As well, some stakeholders, including the Association of Community Legal Clinics of Ontario and others, have also been expressing the need for having it be modernized.

I would like to ask—actually, whoever wants to speak to this is good too—if you see the need for modernizing the legal system that is in front of us, and what would you be suggesting on how we can improve this?

The Chair (Mr. Roman Baber): MPP Wai, you'll need to direct your question to a specific person, unless—yes, a show of hands would be good. I believe that was Emily Hill.

Mrs. Daisy Wai: Yes, I welcome anyone to answer me.

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

Ms. Emily Hill: I believe it was Ms. Big Canoe.

Ms. Christa Big Canoe: Thank you, MPP Wai. I think that is a really important question. Is there a need to modernize? I think, absolutely. When we systemically look at the legal aid system, we see the need to modernize because our world is modernizing.

One of the things I want to point out is that ALS had made submissions in 1998 in relation to LASA before it came into place. At the time, we offered a model that was different than the service that was put in. Of course, that's not what happened in the legislation, nor is it what has happened. One of my points about delivering service, regardless of whether we were recognized as an Aboriginal legal service corporation or not is the fact that we provide mixed services. We don't just look strictly at what is in LASA; we rely on other funders. We found ways to provide culturally relevant issues. On our staff, we not only have lawyers and paralegals; we have social workers; we have case workers. We take a different approach. Our model actually has been working very effectively for over 22 years.

Interestingly, in the Auditor General's report—I believe it's at page 289—recommendation 14 talks about coming and working with clinics and other folks about the models. Like Chief Beardy has explained, they haven't really looked very deeply at Indigenous models or the service provider models. Our model has been providing satisfactory and great services in a number of areas, so maybe it's time we actually start looking at the Indigenous community because the Indigenous community is placed to represent itself best and find its solutions best. Because of a lack of funding or because of lack of recognition, we have had to find workarounds and create strategic mechanisms so that we could provide best services.

1440

Is there a need to modernize? Yes. But we can't just be held back by a lack of funding or what have you. We have to use our own innovation, and I would suggest that what legal aid is now looking to do, which is hubs, looking towards hubs, we have already been doing for 22 years. Maybe the government does need to talk a little more to the Indigenous legal service corporations.

Mrs. Daisy Wai: Thank you. This is why we have sessions like this, so that we can communicate. But we still see a great need for modernization to this system as we see

the improvements that are needed. Especially during this quite challenging time when we face COVID-19, there are different things that we need to improve on in order to make it work well.

May I see if there is any other show of hands for your comments, please?

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

Mrs. Daisy Wai: Okay. Then I will pass. I guess everybody sees the need to modernize this system. That's why we're here. That's why we're improving on what we see that needs improvement.

The Chair (Mr. Roman Baber): With 55 seconds remaining for the government. Seeing none in this round, we'll kick it over to the official opposition for five and a half minutes. MPP Mamakwa.

Mr. Sol Mamakwa: Thank you for the presentation. I've got a specific question, perhaps to NAN, Nishnawbe-Aski Legal Services, and I'll direct my question to Derek Fox and perhaps ALS as well. I know the systems that we talk about, whether it's the police system, whether it's the legal help that people require, the court system and also the prison system—we call this the justice system, and we call this the justice committee.

Would you agree with me, I guess, if I said, just because of what happens to our communities, Indigenous communities—it treats them sometimes in a very inhumane way, whereby the number of people that we see and that the court system, the jail system—sometimes there's injustice. Is it fair to say that we need to say that it's not justice, it's actually injustice? That's one piece. Would you agree with me that it is actually injustice? It's not modernization that we need; we need humanity back into the system—humanization. Would you agree with that?

And then also, I know that the justice or injustice systems that we have have never been impartial structures for Indigenous people. What tools or things does your organization need to improve access for real justice, to improve the wellness and the health of our communities and First Nation communities and not to maintain a status quo?

Mr. Derek Fox: Thank you, Sol Mamakwa, for your question. First of all, the injustice that you speak of, or the justice, it starts from systemic racism. I've been watching these comments from leaders across the country talking about, "There's no systemic racism." These are people of non-colour stating this, and it's absolutely impossible to state that there's no systemic racism when you have experienced it all of your life.

So speaking as a NAN leader, I'm responsible for 49 First Nations, many of them remote. We have the Kenora Jail, the Thunder Bay jail, who have a huge population of incarcerated First Nations people, many of them from NAN. So when you talk about the injustice, the humanization and the tools that are needed, we need a total reform, total overhaul.

NAN has jurisdiction and inherent rights in the north. We have a treaty agreement with both Canada and Ontario. First of all, I think that Ontario and Canada both need to acknowledge that there's a treaty there, that there's jurisdiction that belongs to the First Nations people of Nishnawbe Aski Nation. That would be a start. It would rest with the people. It would belong with the people in which change could happen, and it would be their vision. It would be their voice, and that would be a start.

The Chair (Mr. Roman Baber): MPP Mamakwa?

Mr. Sol Mamakwa: The same question towards Christa Big Canoe.

The Chair (Mr. Roman Baber): Thank you—with a minute and 20 seconds remaining.

Ms. Christa Big Canoe: Chi meegwetch, MPP Mamakwa. I think you raised a legitimate concern of all of our clients and a number of our staff members.

As Indigenous legal service providers, we live the reality of Indigenous people. One of the things that we do to arm staff and to arm ourselves is—it's really important to foster Indigenous talent to do the legal services for Indigenous people. It's a whole process of training. It also requires us to become trauma-informed and be aware of vicarious trauma. These types of issues impact our staff, so we need to have the stuff in place to deal with that.

In terms of tools and resources—keeping mind of the time we have—we have a diversion program that takes youth and adults out of the criminal justice process. We also have Giiwedin Anang, which is child welfare, much like NAN Legal Services has—a program that is designed for families.

There was never a cost-benefit analysis done to see how much we actually save the justice system and the courts and other lawyers for the processes that are put into place and are meaningful to our community members, so if we had more resources and tools, we'd be able to do better diversions. We'd be able to support those families, and if we could do criminal and family law—because we can't in our current model—then we would be in a position to assist people in a much better way so they could seek justice.

I know I'm almost out of time—but on a very high-level basis, we do test-case litigation on all of the issues that you mentioned.

The Chair (Mr. Roman Baber): Thank you. The opposition time has expired. I do note that another presenter did raise their hand, and perhaps in the future one of the committee members will attempt to accommodate her. In the meantime, it's time for the independent member, with four minutes of questions.

M^me^ Lucille Collard: I'll address my question to Christa Big Canoe and Mr. Fox, if there's time. I guess my question is two-pronged. Could you elaborate on how Indigenous legal services organizations respond to the specific and distinct needs of Ontarians in Indigenous communities, and comment on how confident you are that a central legal aid board would be addressing the needs should the Legal Aid Services Act be passed as presented in Bill 161? Are you confident that such a board would be able to address those needs?

Ms. Christa Big Canoe: Thank you, MPP Collard, for the question. With 100% honesty, no. Has LAO progressed? Do they have an Indigenous member on their

board? Absolutely. In many ways, they have enhanced services over the years as they relate to Indigenous people. However, the way that you've presented the question, I don't have the confidence because there are so many unique needs.

LAO themselves recognize that legal service providers and lawyers need to have unique and qualified and comprehensive understanding of the law as it applies to Indigenous people. Although they continue to try through their own justice strategy to put out information and ensure cultural competency, they're not there yet, whereas Indigenous legal service corporations are always there because we're Indigenous and because we understand the core issues. We have the ability to meet people, as I had said earlier, where they're at.

On their statistics alone, Legal Aid Ontario issues 15% to 20% of their legal aid certificates for people who self-identify as Indigenous. A lot of that goes out to the private bar and a lot of it goes out—and we unfortunately hear time and time again certain parts of Canadian criminal law aren't being practised properly, that there's not an awareness, or that legal aid themselves recognize because of the way that they allow lawyers to do the work, it's sort of a back-end approach to ensuring that they're qualified.

1450

That wouldn't be an issue if Indigenous legal service corporations had more to say and had the ability at their boards or their councils to determine the work that is being done and that would be the most effective. Additionally, the national inquiry's final report, the Truth and Reconciliation Commission—these are all large reports that have already identified that an Indigenous community is in the best place to provide solutions, cultural competency and safety. It's well documented and well-known.

I don't know if Mr. Fox also wanted to add.

The Chair (Mr. Roman Baber): Mr. Fox, in a minute and 15 seconds?

Mr. Derek Fox: Thank you for your question, MPP. Also, we do not have any confidence in essential legal aid.

I just want to say a stat here. Last year, in 2019-20, 5.6% of the NAN population was issued a certificate, versus the provincial average of less than 1%—0.7% was issued a certificate. If NAN members' involvement with the justice system was at the same rate as the provincial average, only 350 NAN members would have needed a certificate. The number was 2,827, so NAN issues more certificates than any other northern legal aid area office. Thank you.

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

Mr. Rick Nicholls: I've got a question that I'd like addressed by both the Nishnawbe-Aski Legal Services as well as the Aboriginal Legal Services, but I'd like to get your individual perspectives on this.

I'll start with the Nishnawbe legal services. The government's proposal to marriage solemnization recognizes that permanently established Indigenous groups should be able to designate individuals in their communities to solemnize marriages. Our government is taking action and responding to a resolution passed by the Chiefs of Ontario in June 2018 asking for this change. Can you please speak more to how this government's proposal moves forward with reconciliation efforts?

The Chair (Mr. Roman Baber): Mr. Beardy?

Mr. Jim Beardy: I don't have a concrete response. I'd like to direct that question towards staff. Maybe our executive could respond.

Ms. Irene Linklater: Meegwetch for the question. You're proposing that one small step towards reconciliation is measured by the permissive application of having solemnization of marriages to First Nations as having authority to that particular area of law? That's such a minor area that it's almost—it's just too minimal. What we're talking about here with respect to justice is broad-scale and looking at the entirety of the justice system—if I'm not understanding your question accurately.

The creation and the establishment of the current mandate of Nishnawbe-Aski Legal Services is to look at a creative community-based justice system that addresses law reform matters and that they are culturally appropriate and sensitive to our unique values, customs and traditions with respect to Nishnawbe-Aski Nation's laws, languages, traditions, cultures and ceremonies, which is the foundation of our understanding of where justice is to reconciliation within people, within the offender and those that are harmed, and looking at it from a restorative justice lens. Simply having an application of being able to solemnize marriages doesn't quite move the measure that far. There has to be much more work that needs to be done to look at the restorative justice work that is so important. Meegwetch.

Mr. Rick Nicholls: Thanks very much, Irene. I guess, again, my concern is the fact that we're trying to move step by step—one small step for man, one big step for mankind. And in this case, with the Indigenous communities as well, this was something that the government had been taking action on and was responding to a resolution that the Chiefs of Ontario passed back in June a couple of years ago. They're asking for the change. So are you suggesting that we remove that from the bill?

Ms. Irene Linklater: What we're suggesting is that there be a real, wholesale consultation of the entirety of schedules 15 and 16 for full and complete consultation. Inserting small bits and pieces is not in itself sufficient consultation and is not appropriate consultation. Leaving aside the decision of the chiefs—I'm not opposed to the decision of the chiefs, but to insert that question as a narrow application as to whether or not the needle has moved on reconciliation is very minimal.

So the case that we're presenting is that there has to be an absolute overhaul of the entirety of the legal aid services system when it comes to the application to Indigenous people, in particular in Nishnawbe Aski Nation territory, that needs to take us out of that system so that we have our own First Nations institution for legal service provision to our people.

Mr. Rick Nicholls: You may think that it's negligible, but we're trying to move one small step at a time here to,

in fact, show that, "Listen, we want to move the needle that you talked about." We understand that the community pushed very hard for this, as well—again, marriage solemnization that would establish Indigenous groups to be able to designate individuals in their communities to solemnize marriages.

Maybe I can go back to the other Nishnawbe—

The Chair (Mr. Roman Baber): With 10 seconds remaining, Mr. Nicholls, unfortunately, your time is almost up.

Mr. Rick Nicholls: That's fine, then. I will concede and allow you to move on, Mr. Chair.

The Chair (Mr. Roman Baber): Thank you, Mr. Nicholls. We'll now proceed with five and a half minutes of questions by the official opposition. I'll recognize MPP Morrison.

Ms. Suze Morrison: Thank you so much. My question goes first to Christa Big Canoe. Thank you for being here. I want to explore a little bit more the comments that you made earlier about the unique areas of law that you're specifically situated and best able to address as an Indigenous legal services organization. Can you expand on that a little bit more so that the other committee members really understand why Indigenous law is so unique and why the provision of legal services within that area of law is maybe not best situated within the bar?

Ms. Christa Big Canoe: Yes. Thank you for the question, MPP Morrison.

Absolutely, starting right from the Constitution down—so the Constitution in Canada has a provision that specifies that Indigenous people have unique rights, but it applies in many other areas too.

A really good concrete example is in child welfare. In Ontario, under the family law services act, there's a provision that requires that the court or decision-maker take into account Indigenous background when taking into account the best interests of the child. This is not always accessed or realized by legal professionals representing Indigenous people. It's also not often recognized, necessarily, by courts. Again, we have seen incremental or step-by-step improvements, but that is not addressing the crisis of over-apprehension of Indigenous children and youth in Ontario and across the country. That's one example.

In criminal justice, there are a number of provisions as well. There are the Gladue considerations, but there are also considerations around Aboriginal victimization and what needs to be taken into account—the high over-representation of Aboriginal people or Indigenous people as victims as well.

Having the unique knowledge—so for example, the federal government has passed a bill in relation to child welfare as well that returns some of the autonomy and inherent rights back to the First Nations communities. It's already rolled out, and as it's going in courts across the country and in Ontario, there's little recognition that there has been a change or that certain things have to be considered. If we don't actually advocate and provide competent legal services that include Indigenous people's rights in the processes, then we not only don't move the needle, but we don't have the opportunity to give the best representation to Indigenous people who, as a result of being disadvantaged both by poverty and in law, will never achieve substantive equality or the ability to level the playing field for such a disadvantaged community that has such a high legal need, unless we actually utilize and understand the law in the most confident way, much like the Aboriginal and Indigenous legal services corporations do.

1500

Ms. Suze Morrison: Thank you so much. Do you think, in your opinion, this bill improves access to justice for Indigenous people in Ontario, or do you think it makes it worse?

Ms. Christa Big Canoe: I think it makes it worse. I think it makes it worse, because it has taken the one little thing that LASA currently has, which is recognition to fund Aboriginal legal service corporations, and has removed that. It's now lumped Indigenous legal service organizations into a term under "community legal organizations"—which are very important and valuable; I'm not saying they're not. But it fails to recognize the unique Indigenous legal needs, as well as rights—human rights and Indigenous rights—of Indigenous people.

Actually, if you ask me, it takes a step backwards. It's now removed the one protection that was previously afforded, which was to fund Aboriginal legal services corporations, and now it's a "may fund" issue. So no, in its current state, it's not going to help. It's going to increase problems around access to justice and receiving justice for Indigenous people.

Ms. Suze Morrison: And do you think that the ability for communities to solemnize marriage licences is worth that giant step backwards in access to justice?

Ms. Christa Big Canoe: No, and it's a part of the overall bill; it's not a part that falls under what we're most concerned about, which is schedules 15 and 16 and LASA. Is one step important? Yes. But one step can happen—is an incremental step important? I guess it always is, but we're talking about a time period when we have had reports—national inquiries, for example—that have recognized a host of needs and legal needs, referring to a whole bunch of other reports. We're at a point where the courts in this country deem Aboriginal overrepresentation and child apprehension at a crisis level, and that violence is at a crisis level.

Quite frankly, in my community, chiefs have often been able to do marriages anyway. Traditionally, in our traditional context and ceremony, we don't require solemnization, so it's such a small issue. Is it helpful? Maybe, for those who want it, and I'm not disagreeing with whatever the chiefs put forward. If we can move things forward incrementally, that's great; we need to make real change. We need to make real improvement. We need to achieve substantive equality, not little one-offs.

Ms. Suze Morrison: Could you briefly outline how your organization was impacted by the recent 30% cut to legal aid across Ontario last year?

The Chair (Mr. Roman Baber): If you could please do so in 20 seconds or so.

Ms. Christa Big Canoe: So we actually fared okay in comparison to some other clinics. We have a fairly small body of our entire staff—our staff is more than 70 people, but only seven of those 70 people are funded directly for clinic services, so we rely on a lot of other funders. But it does have an impact. We already carry large caseloads, and if we lose some of the resources or if money is clawed back, or if we're told specifically what pockets we can use, then we don't get to decide what are the best services, nor can we provide the robust services we want to, both to individuals and to address systemic issues like racism and discrimination.

The Chair (Mr. Roman Baber): Thank you. We'll now move back to the government side for five and a half minutes, beginning with MPP Park.

Ms. Lindsey Park: Before I hand the question period over to my colleague Mr. Bouma, I'm going to just get some clarification on your evidence. You mentioned that Indigenous legal service organizations fall within "community legal organization" definitions within the act. That's not how I read the bill in front of us, so I just wanted to get clarification and read the section to you. It says specifically:

"(2) The corporation may provide legal aid services by ...

"(b) authorizing, in accordance with the rules, lawyers, law firms, community legal organizations, Indigenous legal services organizations, student legal services organizations or other persons or entities"—which is very broad—"to provide the services as service providers."

I just wanted clarification on what you saw as missing from that.

Ms. Christa Big Canoe: Right. So I assume you're citing from 5(4), subsection 6, which—

Ms. Lindsey Park: It's 5, subsection (2).

Ms. Christa Big Canoe: Subsection (2)? And sorry, what is the next part of the provision?

Ms. Lindsey Park: That's the end of the provision.

Ms. Christa Big Canoe: So you're just looking at subsection 5(2)(b), which lists Indigenous legal service corporations. If you look at 5(2) and if you look at 5(1) specifically and you go up, you'll see a subtitle that says "Same," and then it clarifies that, under (2). So when they refer to legal clinics or community legal clinics, it's seen as "Same," or within that category. What we are suggesting, and what our evidence is—and if you look at the written submissions as well, you'll see some pinpoints to the thing. What we're suggesting is that it requires an independent definition and should not fall under "Same" as a community legal clinic or community legal service, which is the first part of that provision; that it actually needs to have a distinct definition, and that that definition has to be more fulsome than just capturing the words "Indigenous legal service organization." That's what our written recommendations and my oral recommendations were on: the criteria that should be included.

Ms. Lindsey Park: Okay, thank you. I'll pass it over to Mr. Bouma.

The Chair (Mr. Roman Baber): Mr. Bouma, with just under three minutes remaining.

Mr. Will Bouma: I find myself in an interesting position. While I'd just like to start by thanking all the presenters for being here today—it's so excellent to learn so much more—I guess that's the way I wanted to go with my question also. I represent Brantford and Brant but then I also represent the Six Nations of the Grand River and the Mississaugas of the Credit. I think one of the best parts about the opportunity that I've had coming into this from my place is to be able to learn so much about different cultures and the application of things—and I was really struck by that—in family and children services, which I won't get into.

I was hoping that you might be able to describe to me some of the fundamental differences, in layman's terms, because the previous subsection stuff goes a little bit over my head.

And getting a little bit off topic from the bill, but just to inform me, and for me to be able to learn, what are some of the fundamental differences in justice from an Indigenous perspective that just aren't properly viewed in English common law—if you could just briefly speak on that.

I'm going to start with Danielle Wood because she has been sitting patiently and hasn't had the opportunity to say anything—if she has anything to add; not to put any pressure on—then anyone else can take it from there, too, for my time.

Ms. Danielle Wood: Great. Thank you so much. Justice in Nishnawbe Aski Nation territory is black and white from the justice that you might see and you might know in your regions.

This bill removes the regional approach that protects our communities and our peoples. There is no guarantee that there will be any regional representation on the board. We have historically operated as an area office. By virtue of that, we've had certain discretions in issuing legal aid certificates and legal aid services to our community members. That has been lost.

When you travel to a First Nation community, you're not going to see any law firm sign on the corner. Folks who work—they have to pay for their lawyers to fly in by airplane for court. They meet with their lawyers once every three months or maybe once every six months. On these days, there can be 100 people who are dealt with. The court parties arrive at 9 a.m. and they're out of there by 3. It's not justice being served.

Unfortunately, in this new, proposed modernization, there are no guarantees of exactly how those issues will be addressed. Nishnawbe-Aski Legal Services has been looking after our legal aid certificate program, after our communities and after our fly-in courts for—we're celebrating our 30th year this year. Legal aid doesn't have the experience, the knowledge or the understanding in this. There has been no consultation with us. There has been no transparency on any of this.

1510

The Chair (Mr. Roman Baber): Seeing that Mr. Bouma is out of time, I kindly ask that you conclude.

Ms. Danielle Wood: Okay. Our folks are over-incarcerated. Our northern jails are at 70% Indigenous. We are at a crisis.

Handing this over to what could be a board composed of entirely people from Toronto without—the president of LAO, his first time in Thunder Bay, Ontario, which isn't Fort Severn, was in December of last year. There are no guarantees that we will have effective representation and effective reconciliation in order to deal with the issues that impact us.

The Chair (Mr. Roman Baber): Thank you very much. We'll go back to conclude this panel with a round by the official opposition, with five and a half minutes left.

I understand that MPP Jamie West is going to join the discussion. Welcome, Jamie.

Mr. Jamie West: Thank you, Chair. I want to begin by thanking all of the participants.

I just want to say, I wish the government would consider longer deputations than these seven-minute chunks that we've had. We really deserve more time to better understand and learn from all of you. It really limits our ability to ask questions and understand. I know my region fairly well; I don't know yours or the workplaces you're from as well as you do. Earlier, Irene Linklater said something about the need for full, concrete consultations. I really agree with that sentiment. There's a lot we can learn. There's a lot of things we can do a lot better by listening to other people.

I have a whole bunch of questions for all of you. Unfortunately, because we're limited for time, I'm going to direct my question towards Will Noiles from the Ontario Network of Injured Workers Groups.

Mr. Noiles, you were cut off before you reached the end of your statement. I just want to give you the opportunity to finish your statement, if you'd like.

Mr. Willy Noiles: I was just going to say that the one problem we faced at the Niagara North board when I was there was that we already had power moves by the LAO at the time that led to board members resigning, because they felt, "What's the point of being here if the LAO is going to make all of these decisions for us?" That's what I'm concerned about, going forward. If you have anonymous people in downtown Toronto, who have probably never set foot in Beamsville or Lincoln, they're not going to have an understanding of the needs in that community.

With that kind of thing, I'm afraid this is going to end community involvement in community legal clinics. That would be a real shame, because that's the beauty of the community legal clinics—that they have those community boards. Thank you.

Mr. Jamie West: The next one: You talked about ONIWG being formed in 1991, that they represent 25 injured worker networks. So that's 29 years of history. I think it would be good for all of us as MPPs to fully understand what happens when a worker gets injured and tries to access WSIB—a typical story.

Mr. Willy Noiles: Usually what happens is they try to deal with WSIB on their own, and that usually doesn't work. So their next step is they will usually go to their MPP's office, because they figure that since it's a government agency, their MPP can do something about it. But unfortunately, because a case can take so long and because of the complexity of WSIB, most MPPs don't deal with it, and I can understand why.

Their next step then is usually to a community legal clinic. By this point, they're already beaten down and they've lost most of what they have. And most of the community legal clinics specializing in workers' compensation, what they find is that a lot of their first meeting is spent trying to convince that person that they are not from the government, that they're independent and that they have the injured worker's best interests at heart. Because unfortunately, by this point, the worker has developed a real cynicism towards government, and that may not be fair, but that usually ends up being how they feel.

So that's why it takes a long time to establish that trust, and once that trust is there, that injured worker is usually going to support that clinic to the nth degree. We saw that back last summer when there were the cuts that were going on. The injured workers from those clinics were happy to stand up and support those community legal clinics.

The Chair (Mr. Roman Baber): Seconds remaining.

Mr. Jamie West: Just with seconds remaining, do you believe that the changes in Bill 161 will limit access to legal aid for injured workers?

Mr. Willy Noiles: I do, because of the fear about this fee-for-service aspect, because many injured workers are going to look at that and go, "It's not worth it. I'm going to spend 10 years, and I may get a few dollars and then LAO's going to take it. What's the point?" I don't want to see any injured worker not fighting for what is ultimately their right to have under the workers' compensation system.

Thank you for that question.

The Chair (Mr. Roman Baber): Thank you very much, MPP West. This concludes the presentation by this panel. I want to thank you sincerely for your excellent testimony, all of you.

By way of a reminder, if you have any additional written submissions that you want to make, the deadline of the committee is 6 p.m. this Friday. I'm grateful to all of you, and we'll take a minute to say goodbye to the 2 p.m. panel. Thank you.

INDUSTRIAL ACCIDENT VICTIMS' GROUP OF ONTARIO
280 WELLESLEY TENANTS ASSOCIATION
SISKINDS LLP

The Chair (Mr. Roman Baber): Welcome. It's the 3 p.m. panel. Hearings on Bill 161 continue. We have the Industrial Accident Victims' Group of Ontario, 280 Wellesley Tenants Association and Siskinds LLP to provide us with some submissions.

I invite the Industrial Accident Victims' Group of Ontario. I believe that we have Vasanthi Venkatesh to

make an initial presentation of seven minutes, commencing by stating your name for the record.

Ms. Vasanthi Venkatesh: Good afternoon, and thank you for having me. My name is Vasanthi Venkatesh. I'm the chair of the board of directors of the Industrial Accident Victims' Group of Ontario legal clinic, or IAVGO, as I will refer to it from now on.

IAVGO is a specialty legal clinic that serves injured workers across all of Ontario in workers' compensation and human rights claims. The clinic's work has helped thousands of injured and disabled workers across Ontario to access medical treatment, wage-loss benefits and workplace accommodation, so that they can maintain their livelihoods and continue to provide for themselves and their families and continue to play a vital role in the economy. We also run a student legal clinic that helps train the next generation of lawyers.

I have been the chair of IAVGO's board of directors for the past six years and have been affiliated with IAVGO in some capacity or other since 2005.

I am going to be addressing schedules 15 and 16 of Bill 161 that diminish clinic governance and independence; specifically, the omission of the sections setting out the powers and duties of clinic boards, which is section 39 of the 1998 Legal Aid Services Act, and the new subsection 5(1) of the new bill, which defines clinic boards. I will also address briefly the removal of the reconsideration process for challenging LAO funding decisions, which is section 36 of the 1998 act.

1520

IAVGO was formed as a legal aid clinic in 1975. We work with workers who are often racialized, precarious and dealing with complex physical and mental disabilities. IAVGO has been able to successfully represent clients because of the trust and confidence that has been cultivated through years of work in under-represented injured-worker communities across Ontario. We have served hundreds of workers outside the GTA, including in locations roughly 200 kilometres north of Thunder Bay.

Legal clinics and their front-line advocates know what the communities need. Because of the relationship between the communities and the clinic board and between the board and the clinic, IAVGO is empowered to be responsive to our communities quickly and effectively. For example, the current coronavirus crisis has acutely hit migrant farm workers and personal care workers. As of earlier this week, media and public health are reporting outbreaks at 20 farms and greenhouses across Ontario, with over 450 workers testing positive for the virus.

IAVGO is the only legal clinic that has a long-established history of representation of migrant workers and has the trust of this isolated and vulnerable farm-worker community across Ontario.

Within a week's time, IAVGO developed a framework for addressing COVID-19-related cases, recommended guidelines to Ontario's workers' compensation board—that's the WSIB—to have them deal with cases, met with the ministries of labour and health as well as with local hospitals, put together a comprehensive and expedited intake process for legal advice on COVID-19, and co-ordinated with and assisted other specialty clinics and other clinics in dealing with claims. The staff organized public legal education forums and distributed materials in the community through non-traditional channels like WhatsApp because that's the only thing that they could access.

All of this was possible only because of the current governance structure, where IAVGO is accountable to the communities it serves, and because the clinic board has supported and advised IAVGO through these very difficult times.

IAVGO and its board are well placed to determine the legal needs of its communities and relies on the authority entrenched in the current legislation to act on those needs. IAVGO runs injured workers' support groups that have a number of disadvantaged workers in the GTA, Brampton and Mississauga, as well as all over Ontario, who are able to tell IAVGO what their problems are, what the systemic issues are and how their employment issues intersect with their race, gender, disability and health. This helps IAVGO strategize the representation and make that representation more efficient, which in turn saves resources and time for both the workers and the WSIB in the legal process. Cases that would take decades get results in months because IAVGO is able to show WSIB the changes that need to be done for an efficient and effective workers' compensation system.

Section 39 of the current act provides that clinic boards shall determine the legal needs of the communities served by the clinic and shall ensure that the clinic provides legal aid services in clinic law. There is no provision under the new bill that sets out this important role of clinic boards and the importance of community-driven governance of clinics. This is a problem.

The clinic and its community advocates on the clinic boards see nuanced patterns in legal needs, where a large bureaucratic organization like Legal Aid Ontario does not have the expertise or the community connections to respond. The clinic needs to maintain its entire tool kit of possible strategies in any case and to maintain the ability to respond expeditiously, but with oversight of the clinic community board.

Any new legislation needs to ensure that it is the community that determines the needs of the community. These changes in the bill have the potential to cost the government more money in the long run as it increases the red tape to implement any operational and strategic changes.

Clinics operate on a shoestring budget and are able to respond to demand for their services in creative ways and create cost savings to LAO, the government, as well as administrative boards where these cases are litigated. At the same time, the community governance ensures access to justice for people who have fallen through the cracks.

The current bill also removes the reconsideration process for funding positions. The process allowed us and the injured-worker communities to have a direct conversation with LAO and actually present the ground realities of the

cuts to LAO. Without this process, the only recourse will be the courts, which changes the relationship between LAO and the clinics and between LAO and the communities that the clinics serve. The repeal removes the obligation to have this conversation and instead makes it an adversarial process that will only increase costs for the clinic as well as for LAO and the government, and has serious implications for access to justice for injured workers.

These changes, along with removal of the phrase "access to justice" in the entire bill, the narrow definitions of clinic and poverty law, and the removal of the obligation on LAO to provide services to disadvantaged, marginalized clients, will significantly hinder IAVGO's clients in all of Ontario to obtain access to justice and will inflict irreparable harm on the clinics and the communities it serves.

We endorse ACLCO's written submissions and their registered objections to the remaining sections of the Legal Aid Services Act in our submissions. Thank you.

The Chair (Mr. Roman Baber): Thank you very much, Ms. Venkatesh, for your submissions. We'll have a chance to ask you questions subsequent to the conclusion of the other two.

Next, I'd like to invite 280 Wellesley Tenants Association. You have seven minutes. Please commence by stating your name for the record.

Ms. Danielle Szlawieniec-Haw: Hi. My name is Danielle Szlawieniec-Haw. I'm a member of the board of the 280 Wellesley Tenants Association. Our presenter today, Jason Morgan, another board member, got called into work at the last minute, so he has asked me to appear to present his statements and ensure that it's heard. I'm going to give you his pre-recorded statement so you can hear from him.

Are you able to see the statement up on the screen? Perfect. So I'll play Jason's statement.

Mr. Jason Morgan: Good afternoon. My name is Jason Morgan, and I am a member of the 280 Wellesley Tenants Association, an association of those most impacted by the stronger and smarter justice bill.

I am being told that research was done in order to create this bill. This seems funny to me. While I understand I'm actually supposed to be expecting questions from you, just the title of the bill, once understood, makes certain questions unavoidable for me, such as: How do you make justice stronger or smarter by cutting legal aid for the most vulnerable communities? How is this stronger or smarter justice?

How do you make justice stronger or smarter by allowing bureaucrats to determine how much funding should be distributed for a member of the financially oppressed? How does this make justice stronger or smarter for them?

How do you make justice stronger or smarter by allowing the law association of Ontario to determine if—if—a legal aid clinic should be funded in the community of the most vulnerable, especially when they don't live in that community? How does that make justice stronger or smarter?

How do you make justice stronger or smarter by removing safeguards that hold the government accountable for creating legal aid opportunities for those who are victimized by power and money? Where is their stronger or smarter justice?

You can't answer these questions. You won't even try. Because you know this bill isn't about making stronger or smarter justice; it's about continuing to make justice a pay-for-play system. It's about punching down at the people who need justice the most, because you can.

In a time of emergency, when Black lives are supposed to matter, you prove again who really matters. With this bill, you prove who really matters and who you really work for: the powerful and the corrupt. That is who this bill is for. It's a gift to those with power and money enough to afford your services. Instead of justice for the Black and brown, for the financially oppressed, instead they get the final boot to the back of their neck. You can call this smarter and stronger justice, but we all know better.

1530

Ms. Danielle Szlawieniec-Haw: If there are questions for us today, I'm here to note them down and will pass them along to Jason. He will provide written submissions by the deadline tomorrow. Thank you.

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

We'll proceed to hear from Siskinds LLP. Welcome, Daniel. Please begin your seven-minute submissions by stating your name for the record.

Mr. Daniel Bach: Thanks for having me. My name is Daniel Bach. I help ordinary Ontarians access our courts through class actions.

Bill 161, schedule 4, introduces a predomination and superiority test for class action certification. That test is bad for Ontarians, bad for Ontario's finances and bad for Ontario's justice system. In my practice, I represent people who have been harmed in mass tragedies; cases about medical devices implanted in seniors, for example. These are the sorts of cases that Bill 161 will likely keep out of court.

In my brief time, I would like to make three main points about Bill 161's class action reforms.

First, this government, if Bill 161 passes, will be keeping our most vulnerable out of court. Let me give you a clear and pressing example, one I know you've heard from other people. If Bill 161 is law, our most vulnerable citizens, seniors in long-term-care homes overrun with COVID-19, will not be able to use class actions to get justice. I know that the Premier, just like the rest of us, is shocked by what happened in certain of this province's LTC homes, like the Holland Christian Homes Grace Manor in Mississauga–Streetsville or the Downsview long-term-care centre in York Centre. We all need to make sure that people can get access to justice when they are harmed in these homes, and Bill 161's predomination requirement stops that.

You have all seen that our seniors, like those in the Canadian Association of Retired Persons, share these

concerns. We owe it to them to make sure that these changes are not made.

To be clear, this is not just about long-term-care homes. This same predomination and superiority provision will make cases about institutional abuse, like this country's shameful history of residential schools, or systemic racism and gender discrimination harder to bring. In the United States, for example, predomination bars gender discrimination cases, because the individual issues about what happened to each particular woman denied promotions there at Walmart outweighed the common issues of the company's systemic gender discrimination. These are not hypothetical concerns. The Law Commission of Ontario has made clear that this is the result of Bill 161 in its letter of January 22, 2020.

Let me be clear: This is not about frivolous cases. It's much worse than that. It will keep meritorious cases out of court. I think we should all reject the idea that our seniors and their families are denied justice. We should all reject a system that makes our seniors worse off than seniors in other provinces; for example, Alberta. Who does this help? It helps companies like Sienna Senior Living, and they know it. We all saw what was reported, those comments from their executive, calling grieving families "bloodsucking class action lawsuit people." That's the first point.

The second point is that Bill 161 will cost the system money. Pharmaceutical and medical device class actions, cases about bad pacemakers or bad drugs, return millions of dollars to OHIP. Why is that? It's because the law requires that class actions, when resolved, pay the subrogated claims of provincial health insurers, like OHIP. Bill 161 may make those cases harder to bring in Ontario and will mean that OHIP will get less of that money. Again, other provinces will be better off. They will get these funds, and our health care system will not. The notion that this government would make it harder for OHIP to recover funds in this fiscal environment is concerning.

Third, Bill 161 will slow down the courts for everyone, which just causes more red tape. If we can't have class actions in these sorts of mass tragedies, only some of those people will be able to continue their cases individually, to be able to afford to do it individually. People who live in long-term-care homes and their families likely will not be able to because the damages for a victim of systemic negligence in this province are fairly low. Cases like residential schools can be brought individually, but that just means we will overrun the court system with thousands of individual cases, and our courts can't handle that pressure. We all know that our courts are already slow and we need to do a lot to speed up the process. Adding more cases will not make that better; it just undermines the judicial economy goal of class actions.

To be clear, these are problems that only Ontarians will feel, because this would be well outside of the mainstream of the other provinces of Canada and become the most stringent law in Canada. Bill 161 will create a situation where, for example, an Ontarian with a defective pacemaker will not get access to justice, but an Albertan with a defective pacemaker will. It will create a situation where OHIP will not recover funds in subrogated claims, but Alberta health will. That's not sound fiscal policy, it's not sound public policy and it's not fair to our friends and neighbours.

I know we're all trying to do the best for the people and our justice system. That is why, to remedy these issues, schedule 4, section 7(2) of Bill 161, which adds subsection 1.1 to section 5 of the Class Proceedings Act, should be removed.

Thank you for your time. I'd be happy to answer any questions you have.

The Chair (Mr. Roman Baber): Thank you very much, Mr. Bach. For the benefit of other MPPs, MPP Collard has departed the committee room.

Interjection.

The Chair (Mr. Roman Baber): I apologize. We'll proceed with questions. I believe the rotation dictates that the official opposition begins. MPP Morrison.

Ms. Suze Morrison: I'd like to direct my first question to Mr. Bach. Can you say, in your opinion, that the harms caused by this bill will reduce access to justice for folks particularly in class action lawsuits, and if the good that the government has proposed within this bill is worth the damages that will be caused by it?

Mr. Daniel Bach: Thank you for the question.

In my opinion, this will limit access to justice for Ontarians through class actions—not all class actions; particularly types of class actions that deal with physical injuries. That's why the long-term-care situation is so pressing and extant. The good that this bill will do—and there are a lot of reforms to the class proceedings statute in the bill that are supported by the bar, by the bench, by the Law Commission of Ontario—will be outdone if we're going to deny people access to the courts on a mass basis when they need to be there. So I agree with you.

Ms. Suze Morrison: Thank you so much. I'd like to direct a question to Danielle from the tenants' association. Can you speak to the impact that this bill will have on tenants perhaps seeking support from local legal aid clinics?

Ms. Danielle Szlawieniec-Haw: Sure. Just noting that, compared to many members of our board, I carry a lot of privilege in this area, so I'm happy to answer briefly now, but I'd also like to pass that to Jason and to our other board members, and then they'll provide written submissions by tomorrow.

What I can say is that we are in the middle of an action against our landlord that involves half of the units in our building, so that's over 200 different units. Obviously, it has been delayed because of COVID-19, but that is being done in a relationship with Neighbourhood Legal Services, so no one has had to pay. That was the biggest question and the question we got the most often when our board was starting this: "Do I have to pay? If I have to pay, I can't do it."

In our building, if the ability to go to a clinic was gone, there would be tenants I know of who would have been evicted in the last 18 months, who would have had major

health issues with their units that they could not get resolved.

1540

As Jason said, this would take away the ability for tenants in a situation where they cannot afford a personal lawyer—a private lawyer—in many cases to make sure that their housing is stable, to make sure that their housing is safe and to get any remedy if there is a problem with the landlord like what we are facing, where we have elevators falling, we have people's ceilings falling on them, we have unsafe balconies, and we have bedbugs and mice and roaches and all kinds of issues.

I've lived here for seven years now, and in seven years almost nothing has changed. In the last 18 months, almost everything around the way that management deals with tenants has changed, and that's because we've been able to launch a legal action because we have access to clinics and because of the organizing that's being done. But our organization would become a lot more toothless if we didn't have access to legal clinics.

Just to reiterate what Jason said, I think it's very important as well that, before anything gets passed, there be consultation with the communities it affects the most, including tenants in neighbourhoods like St. James Town; including members of the LGBTQ community, which I am a part of; individuals with disabilities, which I am one of; and especially people of colour and especially Black and Indigenous Ontarians. I don't think that has been done and I don't think the true impact this bill is going to have has been explored enough.

Ms. Suze Morrison: Thank you. Would you say that this bill would impact the ability of Black, Indigenous, queer, trans, disabled folks and people in poverty to access justice equally and fairly?

Ms. Danielle Szlawieniec-Haw: One hundred per cent. I think that the idea that corporations and even some government bodies are always going to treat everyone fairly without any kind of system to remedy that when they don't, we know isn't true. We know that there is systemic racism and homophobia and transphobia and ableism and sexism; we see that all the time. Often, if you don't have some ability to say, "We are going to launch a class action," or, "We have a lawyer we're working with," you can, until you're blue in the face, ask for somebody to behave differently, to treat people better, or to make housing safer, but if there is nothing beyond just, "Please, will you do this?", they don't. We see that over and over again.

Yes, we're trying to change that now and those efforts are great, but we have seen, just on the level of housing with our tenants' association, that it does not happen until there is organizing and until there is some kind of impact where you can say, "If this is not done, if this doesn't change, we will do X, Y, Z."

With us, if our landlord was going to change, we wouldn't have a Landlord and Tenant Board case that involves half our building, because the issues would have been resolved when we mentioned them. They weren't, and they haven't—

The Chair (Mr. Roman Baber): If you would be so kind as to conclude the answer.

Ms. Danielle Szlawieniec-Haw: Sure. I think we know that that happens around policing, housing, health care—every area. We need these legal protections. We need legal clinics.

The Chair (Mr. Roman Baber): The time for the opposition in this round has expired. We will move on to the government side for five and a half minutes, with MPP Gill.

Mr. Parm Gill: Thank you, Mr. Chair, and I once again want to thank all the presenters for appearing before the committee. This is all important stuff.

I'm going to ask questions to Vasanthi, if that's all right.

Over the last 15 years, funding for legal aid in Ontario has increased significantly, with no improvement in outcomes, really. Past consultations 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 client needs.

Don't 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 has affected the justice sector?

Ms. Vasanthi Venkatesh: Yes, we do need modernization. The fact that the justice system hasn't worked for communities across Ontario is something that legal clinics have been saying for several years, and they have been at the forefront of presenting those cases before various government agencies and various actors. As you saw with the response dealing with the coronavirus, the COVID-19 pandemic, that IAVGO did, though, the modernization is already being done. In fact, the way they responded within a week to a challenge that most departments in the government have not been able to deal with sufficiently shows the nimbleness with which they are able to improvise and modernize.

So yes, there is a problem with the justice system. The problem with the justice system, though, is not because of the way legal aid clinics have been functioning. The problem is that the clinics need more independence, and in fact the nimbleness and the power to be able to respond to our community's needs when there's a change in circumstances, which in the last 10 years is happening at regular levels—changes in the economy, changes in crises that are affecting us on a regular basis. All of this has made IAVGO change over the years. I have seen it with my own eyes. IAVGO's own and all the other workers' clinics as well—their successes have been as a result of the years that they have put into these communities, the way they respond to community needs and the involvement of the community in the clinics.

So a modernization where the community is not involved is no modernization at all. It's just entrenching the systemic problems that already exist, without any way for

the communities to provide feedback on how the systemic changes have to be dealt with now.

The Chair (Mr. Roman Baber): Two minutes and 10 seconds remaining.

Mr. Parm Gill: Thank you. Just to follow up, updating how legal aid works with a service provider to provide these vital services in order to address a changing justice sector is one of our government's objectives. Can you please speak to how modernizing legal aid is important to supporting how your organization delivers justice services in Ontario and to delivering justice services right across this province?

Ms. Vasanthi Venkatesh: We have been involved in the initiatives from the LAO over the past few years, and having some conversations about modernization is not enough. But yes, the clinics want change. They're changing themselves, and they want support for the changes that they want to make. That can only happen with the involvement of the clinics in the modernization process and the involvement of the communities in the modernization process.

Do we need to have modernization? Yes. We can see with all of these communities that you've just heard in the last few minutes the problems of access to justice that they're facing and the need for changes in the legal system. But that has to come from a conversation, not from the top down; in fact, from the absolute bottom up. Without that, no modernization and no changes can be successful for a justice system.

Mr. Parm Gill: Thank you.

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

With 30 seconds remaining, I propose that we turn it over to the official opposition. Mr. Yarde.

Mr. Kevin Yarde: I'm going to continue along the same line with Vasanthi.

It seems like this government is hooked on the phrase "modernization." It's sort of like a catchphrase for them. My question to you—because they keep talking about the modernization of the legal system—would you say that the legal aid system is broken? That's what they say. Would you say it's broken and that it needs to be fixed?

Ms. Vasanthi Venkatesh: There are some aspects of the legal aid system which actually have Ontario at the foremost, I would say, in all of North America in the way legal aid is provided to communities. That's just been historically true. You can see, in the history of the legal aid system from the 1970s and the ways in which the boards have worked with the clinics and provided services, that the legal aid system needs improvement. To say that it is broken would be an extreme, because that would mean that the legal clinics are broken, the legal aid certificate system is broken, the support for class actions is broken, and that's not true. There's room for improvement, and we need improvement. There's no question about it, but that has to come with access to justice front and centre, with community government front and centre. That is what modern modernization is about.

1550

The modernization we are hearing about: I'm not exactly sure what it means, but it seems to be some version of change. The communities are not sure what it means. The legal clinics are not sure what it means. What do we even understand by the term anymore? It's becoming hollow without the input of the communities and the clinics.

Mr. Kevin Yarde: My next question is for Daniel Bach, and I want to talk a little bit on the class action reforms that this government is looking to do. They mention that if someone doesn't get the certification—if the certification doesn't go through, there are other legal avenues for them to pursue.

Let's take a case of the long-term-care home. You brought that up not too long ago. If somebody does not get certification under the class action reforms, how feasible would it be, say, for someone living on a fixed income to be able to bring forth a challenge?

Mr. Daniel Bach: That's a great question. If a class action is not certified, then people can bring individual actions. The problem with individual actions is that you need to hire a lawyer. In this province, there are basically two ways you can hire a lawyer. You can hire a lawyer by the hour. If you're on a non-fixed income and you make a fair amount of money, what a lawyer costs will shock you pretty quickly. So if you're paying by the hour, it's very unlikely that most people will go to court, and that leaves aside how client-consuming litigation is.

The other way that we finance litigation in this province is on contingency. That's why there are certain cases, like systemic sexual abuse, that will be brought individually, but a long-term-care case won't be, and that's because in this province the damages that are available when an elderly person dies or is severely injured are not big in an absolute sense. I think people have an idea about those damages because they understand from America, where damages are far higher. It will be very difficult to find a lawyer to take those cases on contingency.

If we don't have these cases as class actions, if we can't suck a bunch of them together into one big action, those cases will never be brought at all. That's why this predomination and superiority test is going to bar access to justice for people who don't deserve it.

The Chair (Mr. Roman Baber): A minute and a half to go, Mr. Yarde.

Mr. Kevin Yarde: My final question will be for Danielle.

Of course, I saw the video earlier from the gentleman. I could sense his frustration and his fears and concerns and his trust towards the legal system. Would you say that the majority of people who go to legal aid are marginalized, Black or Indigenous people and that those are the ones who are going to end up falling through the cracks if this bill passes?

Ms. Danielle Szlawieniec-Haw: Yes. That was Jason Morgan. Again, he and the other members of our board are also going to weigh in.

Yes, 100%. I think we know that there is so much systemic discrimination and oppression in our society, and we know that many communities are not getting proper access to health care, are not getting paid equally and are

not getting the same advancement opportunities. As Mr. Bach has said, a lawyer is extremely expensive, and the same communities that face systemic discrimination in general in our society are going to be the same communities that find it harder to hire a lawyer. If there is not access to legal clinics and things like that, then those are the people who are going to fall through the cracks.

I just want to say that I 100% agree that yes, there are problems with Legal Aid Ontario. There are problems with legal clinics. We see systemic racism and oppression and discrimination even in some of the encounters we've had with legal clinics. They're not perfect, but I 100% agree that any change needs to come with speaking to the communities, starting with the communities who face the most systemic oppression in the justice system, including Black communities, Indigenous communities and the LGBTQ+ communities.

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

Mr. Kevin Yarde: Thank you.

The Chair (Mr. Roman Baber): We'll now proceed back to the government with five and a half minutes. Mr. Bouma.

Mr. Will Bouma: Thank you, Mr. Chair. Through you, I would like to just have a couple of questions for Mr. Bach. I was intrigued by his testimony. He did state that with the issue of predominance and superiority—he went into the long-term-care homes and they won't receive justice, that residential school survivors would not have received justice, defective pacemakers. We heard this morning about tainted blood and a bunch of other issues.

I was wondering if you could explain—because I didn't catch that in your testimony—exactly how that predominance issue would do that. If so, could you also give a definitive example of a case, a valid case, that was removed, where people did not have access to justice because of a predominance issue? I suppose you would have to go to the American environment for that, because it doesn't exist here yet.

Mr. Daniel Bach: Thanks for the question. I'll take it in reverse order, if that's okay.

The American environment is where I'll go, and the case I'm going to mention is a case called Walmart v. Dukes. It's a 2011 decision of the Supreme Court of the United States. In that case, the Supreme Court held that 1.5 million women who worked for Walmart could not bring a class action because of systemic gender discrimination, and the reason was predominance. What the Supreme Court said is that each woman's interaction with her manager was an individual issue, each woman's work history was an individual issue, and those individual issues overwhelm the common issue, which is whether or not Walmart had a policy of excluding women from promotion. That's an example of a case, which I think I know that you think should get into court, being denied on predominance grounds.

Now, you asked about the long-term-care homes; let me give you an example of that. The class action in a long-term-care home will allege systemic negligence on the part of the home operator. But what happened to each individual person—my grandmother in one room; your grandfather in another room—will have individual aspects. Did an orderly not change PPE before going to your grandfather's room? Did an orderly forget to deliver meals into my grandmother's room? Those are what we call individual issues.

Right now, we would litigate all the systemic negligence and then deal with the individual issues at the end. But if this government passes Bill 161, the defence lawyers that get hired by these care homes will say, "No, no, there are too many individual issues," just like Walmart and Dukes, and my grandmother won't get access to justice—well, God forbid my grandmother in this situation and God forbid your grandfather in this situation, but they wouldn't have access to justice.

So that's the concern, and the US example is the perfect example. I think Walmart v. Dukes, a relatively recent case on predominance, is the case that matters. Just in case, if you're going to ask about the merits of that case, we don't know because it never got to a merits determination. Maybe Walmart didn't do anything wrong; maybe they did. But those plaintiffs, those 1.5 million women, were denied access to justice on the starting line, and that's not fair.

Mr. Will Bouma: Thank you. I was wondering—

Interjection.

Mr. Will Bouma: Sorry. Do I still have time?

The Chair (Mr. Roman Baber): Two minutes and 30 seconds.

Mr. Will Bouma: Excellent. Thank you, Mr. Chair.

Great answer; I wouldn't expect anything less from someone from Siskinds. I know when I was on county council, we had some interactions with your law firm there, working for us at the county of Brant, so thank you for that.

If we go to those long-term-care examples, I was wondering if you could explain then why claims like breach of fiduciary duty, breach of contract, punitive damages, lack of infection control etc. wouldn't be allowed under our proposed amendments?

Mr. Daniel Bach: That's a great question, and I thank you for your compliment of our municipal lawyers, who indeed are the best municipal lawyers working in southwest Ontario.

The reason is that the court will not look at each of those claims individually. It will add up the individual issues and it will add up the common issues, and it will see which predominates—or at least that's what gets done in the United States. While plaintiffs' lawyers will no doubt say, "Look at all these common issues," what a judge will do is they will probably—that's what they do in the States—look at the individual issues, look at all the common issues, and will find the individual issues predominate.

1600

I'll give you another US example. In Canada, we can do litigation about medical device failures—bad pacemaker leads or defective transvaginal mesh or pharmaceuticals, where a given pharmaceutical, let's say, causes

heart disease or something like that. In the United States, those cases cannot be brought as class actions. In fact, the United States has an entirely different procedure called an MDL procedure to deal with those sorts of cases. But what this government is trying to do with Bill 161 is that it's getting rid of class actions without putting in place an MDL procedure. That means these cases are just not going to get heard, and that's the risk.

So I think you framed the question, sir, in the way that a plaintiff's lawyer would frame it, but a defence lawyer is going to say: "What happened on a systemic basis with breach of contract or breach of fiduciary duty doesn't tell you anything about Daniel's grandmother sitting in that room and whether or not the orderly didn't change before getting there, or whether or not she was a smoker or had pneumonia that made her particularly susceptible to COVID-19." They're going to point to those individual issues to deny someone like my grandmother access to justice. That's the concern.

The Chair (Mr. Roman Baber): Thank you very much. We will now proceed back to the official opposition with five and a half minutes. Mr. Singh.

Mr. Gurratan Singh: My question is to Daniel.

Daniel, there's a lot of discussion about how the government often puts forward criticisms to Bill 161 with respect to the changes to class action powers by saying that it actually won't result in people being able to come together and enact class actions. They often state that the situation in Canada versus America is different as there is a lack of jurisprudence in Canada because this legislation has yet to be applied. Can you give a little bit more insight into why that lack of jurisprudence does exist in Canada because the bill has yet to be applied? I'm just trying to get clarity so we can give a little bit greater understanding to why experts are saying that it's going to have such a negative impact on people's right to class actions. Was I clear in the question? I think I jumped a little bit back and forth.

Mr. Daniel Bach: No, you were super clear.

The first thing I would say is, if people are telling this committee that these changes aren't going to make a difference, then we should just not waste the ink and make the changes. Clearly, the changes are designed to accomplish something, and if we look to the US experience, as I have tried to explain, we see what those changes are.

It's true that Canada and the United States are different countries, and have different legal systems and different legal traditions. But our judges will apply the law as written, and they will look to try to interpret what the law is asking them to do. That's why in my submissions, sir, I explained that this would make us an outlier in Canada. There are other provinces, including the western provinces, who have adopted the uniform law. That has some aspects of predomination built into it, but not the US model. So if the government is looking to follow a well-trod path in Canada, that model exists and could be adopted. That's not what the government is seeking to do with Bill 161. Introducing US-style predomination just means that hard-working Ontarians are not going to get access to our courts, and that's not fair.

Mr. Gurratan Singh: So it's fair to say, just for the record, that the suggestions that are being put forward by the current government towards class actions in Bill 161 are—and just give me a yes or a no to this—are unprecedented within Canada right now?

Mr. Daniel Bach: Yes, this would make us a significant outlier compared to other provinces—unprecedented.

Mr. Gurratan Singh: And further, it is likely, given the Canadian context and the way that this law is drafted, that experts are saying, across the board, that this will limit people's right to access class actions?

Mr. Daniel Bach: Yes, and the people who wrote the class action documents, the Law Commission of Ontario, said exactly that in their January 22, 2020, letter, which says explicitly that this will cause problems.

Mr. Gurratan Singh: And further, when we look at what jurisprudence we can look to when we look at how this law has been applied in an American context, we have a variety of examples that state that the use of predominance has resulted in everyday folks being unable to use class actions as a means to get justice through this legal avenue.

Mr. Daniel Bach: Indisputably, that is correct.

Mr. Gurratan Singh: So then it's fair to say that, given all of this in context and given the fact that because this law has not been applied yet in Canada—we don't have jurisprudence right now in Ontario to turn to because it's a new set of laws—it's fair to say that, on every measurable level, this piece of legislation will negatively impact Ontarians' ability to use class actions?

Mr. Daniel Bach: Yes, it will negatively impact Ontarians' ability to use class actions, especially in cases when they suffer physical injuries.

Mr. Gurratan Singh: This will very clearly, then, once and for all answer the question being put forth by the government numerous times throughout committee discussions today that this is a different context, it's not applicable. Given what knowledge we have, this is what we know: This will negatively impact Ontarians in being able to use class actions.

Mr. Daniel Bach: Yes, and you don't have to ask me. You can ask the Supreme Court of the United States. They told us that answer in 2011.

Mr. Gurratan Singh: Fantastic—

Mr. Daniel Bach: Well, it's not fantastic, but we'll see what we can do about it.

Mr. Gurratan Singh: Sorry, it's terrible, but thank you for answering the question, is what I meant to say.

Given the last few minutes, or whatever time is allocated, can you really just explain briefly how important class actions are to accessing justice for Ontarians and why it's such a cornerstone of holding government and big business accountable?

Mr. Daniel Bach: There are lots of important examples you've heard about: residential school cases, tainted blood etc. But let me give you a—

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

Mr. Daniel Bach: Let me give you an example quickly, then: a medical device case or a pharmaceutical case. If you decide that you want to sue a giant pharmaceutical company, they hire the very best lawyers they can find, and those lawyers are excellent. If you're going up against them by yourself, you are really at a disadvantage, and if you can band together with other patients, you're okay. That's what a class action affords Ontarians, and that's why predomination will hurt Ontarians.

The Chair (Mr. Roman Baber): Thank you, Mr. Bach. We're going to move back to the government to conclude with five and a half minutes.

Interjection.

The Chair (Mr. Roman Baber): No further questions by the government, I understand. Okay.

I'd like to thank our panel today. As a reminder, in particular to 280 Wellesley St. Tenants Association, the written submission deadline is 6 p.m. on Friday. Otherwise, I want to thank you for all of your submissions and wish you a good day.

I just want to inform the members of the committee that unfortunately we are running a little bit behind today. We're hopefully going to make it up. We have some ways to make it up without compromising any testimony time. But I do want to alert you earlier, in terms of fairness: Should we require an additional five to 10 minutes at the end, we don't have an ability to sit past 6 o'clock. So then what I will propose to do, and what I will most likely do, is, I will eliminate the last round of questioning from both the PCs and the NDP at the end of the last 5 o'clock panel. That's assuming that we're under 10 minutes late in total. That would probably be the fairest way to deal with it. So that's by way of notice.

Let's proceed with the next panel.

PUBLIC INTEREST ADVOCACY CENTRE
CRIMINAL LAWYERS' ASSOCIATION
RENFREW COUNTY LEGAL CLINIC

The Chair (Mr. Roman Baber): Welcome, everybody. We're here for the 4 o'clock panel of the justice committee hearings on Bill 161. We're welcoming the Public Interest Advocacy Centre, with John Lawford; Criminal Lawyers' Association legal aid committee, Louis Strezos; and Renfrew County Legal Clinic, with Amy Scholten, its executive director. Welcome.

I invite each organization to commence their submissions, seven minutes in total, followed by questions from both the government and the official opposition in three consecutive rounds.

1610

We'll begin with the Public Interest Advocacy Centre. Mr. Lawford, if you would please begin your seven minutes of submissions, beginning with stating your name for the record.

Mr. John Lawford: Thank you, Chair. My name is John Lawford. I'm the executive director and general counsel of the Public Interest Advocacy Centre. We're a national non-profit that does work in consumer protection. In particular, we work in regulatory boards most of the time, including the CRTC, Ontario Energy Board and others.

Thank you for the invitation. We're here today to talk quite specifically about Bill 161 and the fourth schedule, talking about the Class Proceedings Act amendments. I've heard other presenters speak on both of the issues of predominance and superiority. I'm going to restrict my comments at this time to superiority because that most affects consumer class actions.

We're talking about the amendments to 5(1.1). I just wanted to start by saying that the new element of superiority, we believe, is harmful to Ontarians in their role as consumers in the economy because it potentially gives defendant companies a low-cost and effective method of actually avoiding an otherwise meritorious class action. If they offer minimal compensation—that is, the companies, either a coupon or a gift card, perhaps even an apology—they may well be able to settle a claim at a value far less than a judge would after a class action was certified and proceeded to trial or settlement. Our concern is this will incentivize defendants to offer alternative methods of compensation and bar certification and avoid liability. In effect, it makes the companies their own judge to mete out their own resolution.

The underpinning for that opinion is that consumer actions, as far as we can see in the market, are the only practical way for consumers to vindicate their rights for small amounts—as we've already heard, car parts, bread pricing, ticket sales—small items that wouldn't be worth even going to Small Claims Court for.

The other concern we have, as I stated, is that the principle of deterrence of bad behaviour in the market won't really work if the remedy that's given to consumers is not more expensive than the conduct in the first place. If we follow that through—we may have a difference of opinion on that with some other members who don't see that that will be a problem or want to try it out in the future, but we were concerned this was contrary to the law commission's recommendation on this explicit point.

Elsewhere in the bill, some of the law commission suggestions for the changes to the Class Proceedings Act were adopted or slightly changed. In this case, we're 180 degrees different from what was proposed by the law commission. That gave us some concern because they had looked at it in detail. Our concern is that this benefits only the defendant side of the scale.

In the United States—this is where this test comes from—there are a number of differences with their class actions. Class actions there actually have some discovery before they get to this stage of certification so there is more evidence for the judge to look at. They don't have a system of costs, which I think Mr. Sterns spoke about, where if you're the plaintiff's counsel and you lose, you've got to pay for the defendants. That means the firm has to pay for the unsuccessful certification.

Lastly, in the United States, they have jury trials. The juries tend to award much larger amounts of damages than have ever been awarded in Canadian class actions.

So if you start down this path towards Americanizing the class actions system in Ontario, I believe you'll end up at the US system and, sure, maybe the defendant-friendly part of it will come through in this particular round. But as the night follows the day, I think you'll get the plaintiff-friendly provisions coming in and Americanizing our system in the future.

Lastly, I just want to talk a little bit about the actual drafting of the superiority section. Just to get all lawyerly on you, we're talking about wording like: The alternative has to be "superior to all reasonably available means of determining the entitlement of the class members to relief...." This means that defendants can point, as I said, to gift cards or voluntary systems, to regulatory systems that may not provide actual compensation to consumers as an alternative. All of those possible semi-resolutions for consumers have to be eliminated, if you will, by the plaintiff.

Our experience in working in this area of consumer protection is that we get better results for consumers when there is a regulatory sanction as well as a monetary sanction through class actions. We consider this to be a pursuit of what I call full justice. Full justice isn't just the compensation for the consumer, but you also want to stop the particular defendant and the industry in general from repeating the same conduct, and it's usually price-fixing. If there is only one side of it, so we lose the compensation part because nothing is superior to other methods, then consumers will receive only the regulatory result or perhaps the company-selected coupon as their only remedy.

In conclusion, I would just say that the wording itself of this provision leaves that possibility open. We think that it will leave consumers, if it stays in this particular bill, in a unique position in Canada where Ontario consumers are actually less protected than those in other provinces.

Thank you very much for your attention.

The Chair (Mr. Roman Baber): Thank you very much. We'll now proceed with the Criminal Lawyers' Association. Would you be so kind to state your name for the record as you begin your seven-minute submissions.

Mr. Louis Strezos: Good afternoon and thank you. It's Louis Strezos for the Criminal Lawyers' Association.

The Chair (Mr. Roman Baber): Welcome.

Mr. Louis Strezos: I am the chair of the Criminal Lawyers' Association legal aid committee. I wanted to start the presentation today on behalf of the Criminal Lawyers' Association noting that our membership is some 1,500 strong. We are the single largest provider of legal services to Legal Aid Ontario. We service the population of Ontario, low-income Ontarians who cannot afford legal services. Our membership is committed to justice through providing services to Legal Aid Ontario, and there are approximately 1,500 members.

I wanted to start with a historical promise that was made—everybody can see this on the screen, I hope. On March 29, 1967, a previous Conservative government, led by Premier Leslie Frost, made an important promise to the people of Ontario. The justice system was unfair; it was skewed against the poor. This was recognized by a small group of lawyers very committed to justice, who devoted their pro bono time. But on March 29, 1967, the kernel and foundation of legal aid under the Conservative government of the Premier of the day came into being. It was an important promise, and you will see that the promise was an important one for low-income Ontarians who could not afford legal services. The province of Ontario under Premier Frost guaranteed that they will not be denied legal rights because of lack of money. That was an enduring promise.

In fact—going to the next slide—in various incarnations, the Legal Aid Services Act that this current act is intended to replace embodied two important promises. The purpose of the existing act is to promote access to justice throughout Ontario for low-income individuals by means of high-quality legal services in a cost-effective and efficient manner—again, we see, to low-income individuals throughout Ontario. And the promise that was made in 1967 was that the private bar would step up. We would be the service providers. We would subsidize through our offices. We would pay our bills. We would rent our offices. Nobody had to pay for that. We helped subsidize the legal plan. And because of that promise made in 1967 by the private bar, in 1998, when LASA was enacted in its prior incarnations of it, there was recognition that the private bar was the foundation for the provision of legal services in the area of criminal law and family law.

1620

The second promise that was embodied was that that made it into the legislation. You'll see the second promise in my PowerPoint, that the "corporation shall"—I've highlighted those, and I'll get to my next slide in a moment—"provide legal services in the areas of criminal law, family law, clinic law and mental health law": mandatory policy statutorily required.

The method by which this would happen and has happened, to great success and commitment through our membership, was that the corporation shall provide legal services in the areas of criminal law—having regard to the fact that the private bar is the foundation for the provision of legal services.

Those were the true promises that not only continued from 1967 to 1998 but to today. The new bill will change that. There is a change of priorities. The new Bill 161 makes no mention of low-income Ontarians. Its focus, understandably and respectfully, is correct. Cost-effective legal services are important—high-quality legal services, but there is a change of priorities. There is no mention of low-income Ontarians in the current act; it has been removed, and as I believe a prior speaker has mentioned, when courts look at this, somebody is going to interpret legislative intent.

This played out to the second promise. Legal aid, in terms of providing legal services, is only to have regard to the foundational role of private practice lawyers in providing those areas of law, that being criminal law. With respect, I am concerned, if I just might be so blunt to say, that our services are going to be relegated to the dustbin of

history, recognizing our foundational role but abrogating our future role.

The second promise that has changed in priorities by the government is, it is no longer mandatory under the Legal Aid Services Act to provide services, and there are nine enumerated grounds. To be brief, we have three reasons, on behalf of the CLA, that we do not support the change from "shall" to "may."

The statutory promise for low-income Ontarians has been removed. Legal Aid Ontario—not accountable to the electorate—will have to determine what services will be provided, unless ordered by the court or legal aid has determined that an accused person's charter rights should be infringed without counsel. I want to make an important point here: That's a lower standard than what currently exists under the existing legislation.

Third, it's a fundamental policy shift in judicare that has existed for 53 years where the private bar has delivered services so that Ontarians could have counsel of choice.

The Chair (Mr. Roman Baber): Mr. Strezos, unfortunately you're out of time. However, I recommend that you try and integrate the conclusion of your presentation during question-and-answer period. I apologize.

Mr. Louis Strezos: Thank you.

The Chair (Mr. Roman Baber): We'll proceed with the Renfrew County Legal Clinic.

Ms. Amy Scholten: Hello. Can you see me?

The Chair (Mr. Roman Baber): Yes, we can see and we can hear you, Ms. Scholten. Welcome. I invite you to make seven minutes of submissions and begin by saying your name for the record.

Ms. Amy Scholten: My name is Amy Scholten. I'm the executive director of the Renfrew County Legal Clinic. I'm very happy to be presenting before you today about the particular needs that rural clinics have and are looking to have addressed by Bill 161.

Renfrew county is the largest county in Ontario. It's made up of 17 communities. It's over 7,400 square kilometres, and it takes about three hours to drive from one end of it to the other. It stretches from the west tip of Ottawa to the northern tip of Algonquin Park.

We have a volunteer board of directors that is representative of our large geographic area as well as the different and special needs within Renfrew county for our clients. Just to give you a couple of examples, we have a retired military helicopter pilot, as we have Petawawa within our catchment area; we have a retired manager from Atomic Energy of Canada; and we have a community health transportation provider, because transportation is a very large concern in Renfrew county.

What I'd like to speak to you about today in particular is section 6 under Bill 161, schedule 16. Section 6 states that only legal aid determines the legal needs of individuals and communities. legal aid is to have regard to determinations by community legal clinics' other legal needs, but ultimately the responsibility is with legal aid as to what the needs of rural Ontario residents—and in particular Renfrew county—will be.

Currently, with the legislation that we're operating under, our local clinic board, which is accountable to our local community, determines the legal needs of Renfrew county and is responsible for ensuring access to services to meet those needs. Our duties for the board are enshrined in the existing legislation, and ultimately legal aid oversees our clinic board.

The existing legislation is embedded in the idea of community. The community model is what makes our board accountable to our local communities as well as to legal aid. It ensures that the actual needs of our clients are being met. Our priorities are set by our community. Maintaining that community base is integral to the efficient and effective service that rural clinics provide to our residents.

Our concern is that the definition of poverty law is too restrictive, and it excludes areas of law that we have been previously practising under. We practise in seniors' law. This came about as a result of a needs assessment that we did over four years ago that found that a growing population of seniors within Renfrew county was not able to access the legal resources that they needed—for example, to get wills because they're low-income, powers of attorney, and deal with issues in retirement homes and long-term-care facilities etc.

As a result of the funding that we were able to access, we've been able to meet those needs, and we've been able to expand the service beyond Renfrew county into other neighbouring geographic regions so that other seniors can also access the services they need, even though they're low-income and not able to afford the resources of a private lawyer.

We've also made sure that we address the rural Indigenous needs within our catchment area, which are different than urban Indigenous needs, because they face particular barriers when challenging rent increases as a result of a loss or reduction of the subsidy. We've addressed transportation benefit issues so that clients can access mental health services and actually be productive citizens within our society.

We're requesting that the definition of poverty law be expanded so that it is not restricting and limiting our board's ability to meet the legal needs within our catchment area. The disadvantaged communities and low-income communities within Renfrew county are different and their needs are different. If legal aid is the one that's determining the services to be delivered, we are quite concerned that our needs, which are different than urban needs, will no longer be addressed.

The primary difference we find as a rural clinic is the issue of access. That often amounts to the issue of access to transportation—whether clients are able to come to us or whether we're needing to travel out into our community so that we can meet with them in order to be able to provide the legal services that they need. They don't have the benefit of public transportation. They also often don't have the benefit of having a cellphone or having cellphone coverage.

We're very appreciative of the government's recognition of the need to invest in reliable broadband Internet

coverage and cell service, but that's going to take time to implement. In the meantime, we're having to deal with telephone hearings where clients don't have access to a cellphone. They're having to then figure out how to travel to another location where there is reliable service access, if they can find a phone.

1630

The lack of service is a problem in our county. Our community board is embedded and accountable to the community of Renfrew county. They ensure that the unique needs of the individuals and our community are being met. I have three asks, and that's why I'm here today:

I ask that you amend the legislation so that the boards can determine poverty law services that are needed;

I'm asking for inclusion of "access to justice," "low-income" and "disadvantaged communities" in the purpose clause; and

I'm asking that the definition of poverty law be inclusive, so that clinic boards are not restricted from being able to provide the services that we're currently providing and unforeseen community needs that will arise in the future. Thank you.

The Chair (Mr. Roman Baber): Thank you very much. We'll move on to questioning. We'll begin with the government. MPP Tangri.

Mrs. Nina Tangri: Thank you very much. I'd like to thank all of you for joining us this afternoon.

My question is directed at Mr. Lawford. We were very pleased that Don Mercer from the Consumers Council of Canada endorsed the parts of the class action legislation that promoted consumer protection.

We all know that it can often take years for class actions to work their way through our court system. One of the proposed amendments includes allowing cases to be dismissed for delay where no meaningful steps have been taken. Could you please describe, with reference to your experiences on the ground, how this amendment will help the court system and litigants alike?

Mr. John Lawford: I agree with you that some cases do drag on far too long. I do not do class actions at our centre, but we have in the past spoken to both plaintiff-side and defendant-side class action lawyers. Some of those delays are in preliminary skirmish motions that unfortunately, as you say, drag it out before certification so much that the result for consumers is long forgotten by the time it gets to it.

We looked at the report and we were generally in agreement with moving things along and that that amendment didn't bother us. Justice delayed is justice denied at a certain point, but on the other hand we are mindful of the fact that if you have a strategy of ragging the puck forever and getting out of liability, that's also a problem.

Mrs. Nina Tangri: Thank you. One thing that I have been hearing about from my constituents who have been involved in a class action is often the lack of transparency and communication from their lawyers. The Attorney General has proposed measures to ensure that people who are in a class action have more information and better notice about how they can collect their compensation if the case settles or if the plaintiff is successful.

Could you elaborate a little bit more about what this means for injured Ontarians who are part of this class action, and how plaintiffs' lawyers should employ these new requirements?

Mr. John Lawford: I'd like to say firstly that I seen a marked improvement in the class action plaintiff bar, the web pages they set up and the staff that they have to provide support for consumers. I believe that they were affected by the review of the law commission on this and they're moving in the right direction.

I agree with you: Too many consumers don't claim their settlements if there are any steps to take. A lot of the time money will go out to cy pres or to other places which should have been claimed, and that defeats a large measure of the justice coming out of it.

We look forward to the amendments on that issue, and we're also hoping that the firms continue their good transparency and communication through their websites and having actual staff to talk to people.

Mrs. Nina Tangri: How much time do I have, Chair?

The Chair (Mr. Roman Baber): Ms. Tangri, you have another two minutes and 15 seconds.

Mrs. Nina Tangri: Thank you. Finally, one of the Attorney General's proposed amendments to the Class Proceedings Act includes rules on carriage motions. That's when class counsel compete to be the lawyers of record.

I also understand that an organization like the one you belong to may not be in favour of a more stringent system for carriage motions, but stakeholders have called for these types of disputes to be resolved in a faster and more predictable manner.

Can you provide examples of circumstances that necessitated the law commission to make this type of recommendation in the first place?

Mr. John Lawford: Ontario has a system where, for the lack of a better term, it is kind of a beauty contest between which firm can better control the litigation, and that does lead to some unseemliness between plaintiffs' firms. We would have hoped that they would decide, for example, not to appeal when they lose that type of motion. It's very unseemly to have one firm appealing another firm that won after all that effort.

Quebec has a first-to-file rule, which has its own problems, with people running to the door and pushing over each other. But if we're going to maintain the system, then yes, some changes to the carriage motion problem would benefit consumers. Having the firms fight it out is just needless delay. I have seen some firms now combining into two or three groups. I think that's a positive development too, and perhaps some of that can help alleviate the problem.

The Chair (Mr. Roman Baber): Thank you very much. We're now going to proceed to the official opposition. Mr. Singh?

Mr. Gurratan Singh: Thank you so much. My question is going to be for Mr. Strezos. We only have five and a half minutes, so if you can keep your answers as short as

possible so that I can get through as much content as possible.

Would you agree with the following statement: that the exclusion of "access to justice," "low-income" and "disadvantaged communities" from the purposes section and the narrowing of the practice areas within legal aid that are being proposed in Bill 161 would actually negatively impact Black Ontarians, racialized Ontarians, Indigenous Ontarians and women who are in violent situations from accessing justice?

Mr. Louis Strezos: I don't know why the government took those words out, so the short answer is: I'm at a loss to see why low-income and disadvantaged members of the community are removed. One can only think that when litigation ensues, those disadvantaged members, when a court looks to the wording and purpose, should litigation arise around the purpose of the act, have been read out of that legislation.

Mr. Gurratan Singh: You would agree that that would negatively impact their ability to access justice?

Mr. Louis Strezos: In circumstances, yes, I believe so, because the purpose of the act has changed.

Mr. Gurratan Singh: Secondly, having been a past member of the Criminal Lawyers' Association, I'm very aware that, in Ontario, we have a very robust system where people can access the counsel of their choice through a legal aid certificate, which is very different than the public defender model that we see in America. Do you have concerns that the changes being put forward could weaken people's ability to access a lawyer of their choice and shift us further towards an American model?

Mr. Louis Strezos: Yes.

Mr. Gurratan Singh: Can you expand on the failures of the public defender model and the strengths of our model—and we have about three minutes left.

Mr. Louis Strezos: If you look at the American model—we all watched Making a Murderer. If you look at what happened to Brendan Dassey in the United States with a public defender, there was a travesty of justice.

Fortunately, because of the promise that was made in 1967, we have had, in my respectful view, one of the finest delivery-of-service models in the world on criminal law services. The greats of the bar—Eddie Greenspan, whose office I happen to be sitting in at the moment, Marc Rosenberg and Mike Moldaver—it has been a tremendously successful project, and I'm concerned that with the change in the legislation and its movement away from the foundation of the private bar and other delivery means, we are going to reduce access to justice.

Mr. Gurratan Singh: And particularly, just for those who may not be fully aware of the situation—the model right now allows people of any income level to use a legal aid certificate to get, often, some of the most experienced lawyers in the province. Is that fair to say?

Mr. Louis Strezos: Correct. If you meet current financial eligibility, you can access lawyers of 30, 35 or 40 years—the most experienced counsel. In fact, many of our prominent members of the bar continue to accept legal aid, whether it's at trials or on appeals. We support the flexibility under certain provisions of section 46, but that is the promise and our membership has stood up for over 53 years to do exactly that.

Mr. Gurratan Singh: And this actually has a dual function, where people who are needing to access justice can get the lawyer of their choice, and lawyers are able to properly serve those in need while being properly remunerated at the same time. Is that fair to say?

1640

Mr. Louis Strezos: It's fair to say—other than the proper remuneration. I was there when the boycott happened in 2009. I was first chair implementing the post-MOU world. There is no money from the government in terms of will, respectfully, to pay for criminal lawyers. I get it; we get it. We understand that.

That's why we support the flexibility to work with legal aid and to advocate with government to make sure that the fluctuations in funding, and the difficult political decisions the government makes—for example, next year there will be a $70-million shortfall because of law foundation grant funding, because of interest rates. Respectfully, we need to work with government to make sure that we don't lurch from legal aid crisis to legal aid crisis. Our membership has not seen any increase in five years, notwithstanding huge, complex changes in the criminal law that have increased costs and made it more complicated.

Mr. Gurratan Singh: Thank you very much. I agree with that point. There is an issue of funding there, for sure. But what I was mainly saying: Compared to the American model, can you just quickly describe, in about 30 seconds that you have left, the weaknesses of the public defending model and how that is so different from the model we have now?

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

Mr. Louis Strezos: Sure. The short answer is this: Lawyers who do legal aid subsidize the system. We're not expected to live wholly off of the legal aid system. As a result, we have a private practice; we maintain offices. The public defenders are underpaid and overworked, based on volume, in a system that is completely different than ours. I would be very troubled if we moved to that system.

The Chair (Mr. Roman Baber): Thank you very much. We are going to move back to the government side, with Mr. Gill.

Mr. Parm Gill: Thank you, Mr. Chair. I also want to thank, once again, our panellists for appearing before the committee.

My question is for Louis from CLA. I'm just going to continue along the lines of Mr. Singh. The Attorney General has been very public in his strong support of the important work 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 a 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's communities. Can you tell us why it is important to have that critical role continue to be recognized in legislation?

Mr. Louis Strezos: The reason why that occurs is because the Ministry of the Attorney General also prosecutes. We need to recognize that the private bar is the best mechanism to ensure that the rights and interests of accused in Ontario are protected.

It is our long historical and rich tradition, starting with Premier Frost, that the private bar was recognized as the foundation of the delivery of services. But we have continued as being that foundation—and you've heard my submissions and it's in my PowerPoint. I'm not clear on the change in the language—and I hope at the end of the day, member Gill, that it's really just legislative drafting, and there's really no change in commitment from the government. I believe this government is committed to the private bar delivering services and counsel of choice. That's my belief.

Mr. Parm Gill: Thank you for that answer.

We've also mandated that Legal Aid Ontario must prepare and submit to the Attorney General for approval a consultation plan that details how legal aid will consult with stakeholders who might be impacted by these rules. Can you provide your thoughts on how these consultations should take place and whether different types of rules should warrant different types of consultations?

Mr. Louis Strezos: Let me be very clear: We had a successful memorandum of understanding. Given that legal aid now has determined fees, tariffs, hours and the rest of it, this legislation makes it all the more important that we have robust consultation, active engagement with legal aid—I'm going to share the screen now—in terms of the flexibility that legal aid has been given so that we could also have a biannual tariff review mechanism to ensure a private defence bar. So we need robust consultation. On certain levels, there are going to be practice issues, accountability, but at the end of the day, the government can approve or disapprove of the tariff rates and hours approved by legal aid under the current bill.

So we look forward. This legislation—the CLA supports the flexibility that this government has given to Legal Aid Ontario so that we can work with them, but the linchpin to that is a memorandum of understanding. The government spends about $110 million to $115 million on criminal law services. Forgive me for saying this: It makes no sense that we don't have some agreement on how that's going to work. It's $110 million where liberty and rights are at stake. We look forward to working with the government, MAG, treasury and legal aid on exactly that, member Gill.

Mr. Parm Gill: Thank you. Just a quick follow-up: The new rule-making authority will also provide Legal Aid Ontario the flexibility it needs to structure how it engages private bar lawyers to provide key family and criminal law services. How will this flexibility allow you to better provide your services to eligible Ontarians?

Mr. Louis Strezos: I'll give you an example. There has been a sea change of legislation in which third-party interest under the Criminal Code has been recognized, and complainants in various proceedings now have standing rights. All of this legislation is changing and increasing complexity. So we need to recognize that as the federal government functionally downloads more work to criminal lawyers, increasing complexity, the rules need to be flexible to respond to those changes in a way that our lawyers, my membership, the defence lawyers who do the work to keep the system fair and balanced, can respond to those changes in a timely way. The province, of course, does not have control over changes to Criminal Code amendments. We need to be flexible in responding to that, and the problem is that the old regulation that's been there since 1999 hasn't caught up.

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

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

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

My question is for Amy Scholten. You spoke at length during your original submission about poverty law and how it's too restrictive right now. Would you say, with Bill 161 as it is and with the changes that they're looking to put forward, that it seriously limits a legal clinic's ability to work with and take guidance from their communities? In other words, in terms of poverty law work and systemic reform, it also endangers their funding. If you can maybe expand a little bit about that.

Ms. Amy Scholten: Yes. It's really important, and that's one of the reasons why I'm here. The bill, as it's drafted right now—we are quite concerned that the focus will be on urban centres and not rural communities. Right now, the clinic model has clinics embedded throughout the province of Ontario, so whether you're living in Renfrew or whether you're living in Ottawa, you can still get clinic law services. Our concern is with the definition of poverty law—that the choice of what services are going to be provided in particular areas of law are going to seriously endanger our community, in terms of the receipt of services that they have now. We want to ensure that, in the future, the services that we're providing continue to be provided and that future legal needs are going to continue to be met. The way the legislation is drafted now, we're concerned that we won't be able to do that in the future.

Mr. Kevin Yarde: With Bill 161, it looks like the government is changing legal aid's focus from access to justice to value for money. That seems to be the goal here.

If it's passed, would you say that it would reduce the areas of law that different clinics throughout Ontario could work in; say, for instance, the eliminating of focus on crucial issues like discrimination and human rights?

1650

Ms. Amy Scholten: Yes, absolutely. My concern with the existing definition is that "human rights," specifically, has been taken out of the definition of poverty law services, and that is a key fundamental area of practice for my clinic and for many others.

In rural Ontario, we're dealing with different issues. The example I gave you earlier was rural Indigenous peoples who are tenants; their access to justice is very different and they have barriers. We were able to bring a

test case forward and succeed in ensuring that they were able to access the legal system in a way that otherwise they wouldn't be able to. That's not an issue that comes up in urban centres.

Mr. Kevin Yarde: Can you speak to how the government's funding cuts affected your clinic, or your clinics, in Renfrew county?

Ms. Amy Scholten: Our clinic in Renfrew county is one clinic, and then we have multiple satellite offices. So we have to travel and spend quite a bit of time meeting with our clients in order to be able to provide them the services that we offer.

The funding cuts that we received, unfortunately, were retroactive funding cuts and put us in danger of being no longer able to provide the services for seniors, for example—the program that we were running. We were successful and able to get that funding back, but we still had a shortfall of almost $16,000, which had a direct critical effect on our budget. So we had to look at how we could streamline and become even more efficient, retroactively, with that budget cut. Fortunately, we had some staffing changes so we were able to do that in the interim. In the long term, I'm not sure how we're going to absorb that type of cut.

Mr. Kevin Yarde: Okay. The government has said that the way the legal aid system is set up right now, it is broken, that it needs fixing. I also hear people say, "If it ain't broke, don't fix it." Of course, that was from Thomas Bertram Lance; he was part of the Jimmy Carter administration back in 1977.

Do you feel that the system—if they start playing around with it, it's just going to make it worse?

Ms. Amy Scholten: I think that there are problems with the existing system, but I think that there are a lot of benefits with the existing system. What this legislation does is, it doesn't allow for the benefits to continue. It shifts the focus away from the community and the community model to a bureaucratic model, where somebody who has no idea about the legal needs in a rural community is making the decision about service delivery. That's a concern that I think is quite alarming.

The Chair (Mr. Roman Baber): Thank you very much. With eight seconds to go, we'll revert back to the government's final round of questioning, with MPP Wai.

Mrs. Daisy Wai: Thank you, everybody, for coming in and meeting with us and for making your presentations today.

I'd like to direct my question to Mr. John Lawford. Now, when the new legislation was being drafted, we heard from many stakeholders on the importance of maintaining in the definition of community legal clinic reference to a clinic's board of directors and that it be comprised of members in the community so that they will serve the community. Can you speak to why it is so important for the community legal clinics in Ontario?

Mr. John Lawford: I don't think I'm the best person to speak to that, Ms. Wai. I will say that the community legal clinics I've dealt with have unique challenges, as in Renfrew. The people there know those, and it's hard for folks who don't come from there to help.

Mrs. Daisy Wai: Okay. Then can I ask Amy to add on to this?

Ms. Amy Scholten: Yes, thank you. I think that it is imperative that the legal needs be determined by people who are from the community. That's why it is so important that our board composition, which are volunteer members of our community, is made up of those with the skill set, made up of those with the background and the expertise, as well as the geographic regions within our community, so that they can better represent our clients and their communities. Without that, there is no way to determine the legal needs and whether those services are being delivered. So that community model is fundamental to the success and to the efficiency of legal clinics.

Mrs. Daisy Wai: I can understand the importance of having the community involved, but there should be other areas where some of the board members can also display the good qualities, the skill sets, that might not be in the community setting at this point. Will you be open to have others join the board?

Ms. Amy Scholten: We are open to always having others join us on the board. We make sure that in our county, in Renfrew county, we have a wide variety of clinic background for board members on our clinic board. Our board is active in recruiting board members with different perspectives and different values, as well as from different groups within the community. As a result, because we are so embedded into the community, we have a really good working relationship with the criminal bar association, for example, who we rely upon to give us free legal advice when our cases intersect, or a bankruptcy lawyer that we call to give us free legal advice when an issue that we're dealing with intersects with bankruptcy law. That is fundamental to helping us provide the services that we're providing and to stretch the dollars that we have, because they are limited.

Mrs. Daisy Wai: That's great, but when you set up the board, do you start it off with a skill metrics and then go around and look for the people who fit into those skills, or you just invite somebody that you would prefer to join those boards?

Ms. Amy Scholten: Usually, what happens is that the board member who's leaving, because they have particular skill sets, would then find—and we've advertised in the paper; we've had people come to our annual general meeting and apply, and there's been a competitive process to be on our board, so it's quite a robust system. We've looked to the legislation and the duties that the board is responsible for to ensure that the skill sets are met, to ensure that we have at least one lawyer on our board, to ensure that we have one banker or somebody with accounting experience on the board so that they can be the treasurer, to ensure that we have a former client on the board, and ensure that we have all the different areas that need to be satisfied, whether that's a mental health worker, whether that's a transportation provider, so that it's not only the geographic regions that we're representing but

also the particular skill sets and knowledge base that are needed for the board to be productive and to actually be able to elicit the information that the clinic needs to meet the services that are being demanded.

Mrs. Daisy Wai: Thank you.

Mr. Strezos, do you have anything else to add on this?

Mr. Louis Strezos: No.

Mrs. Daisy Wai: That's all I have for my questions, then. Thank you Mr. Chair.

The Chair (Mr. Roman Baber): With 45 seconds remaining for the government, I'm inclined to suggest that we turn it over to the opposition. Mr. Singh?

Mr. Gurratan Singh: My question is to Amy, to start off with. Very similar to the question I asked earlier to Mr. Strezos: Would you agree with the statement that the removal of "access to justice" and "low-income" and "disadvantaged communities" from the purposes section, as proposed in Bill 161, in addition to the narrowing of practice areas within legal aid, would disadvantage and negatively impact Black Ontarians, racialized Ontarians, Indigenous Ontarians and women in violent situations? Would you agree with that, Amy?

Ms. Amy Scholten: Yes, I agree with that.

Mr. Gurratan Singh: I see Mr. Strezos raised his hand. I don't know if he had a point to add to that?

Mr. Louis Strezos: I do. I just wanted to add, given the over-policing and overrepresentation, it could exacerbate the problem. I do agree; I just wanted to make that point.

Mr. Gurratan Singh: That's actually my second question. Specifically in the current context, where we're seeing a rise of opposition to systemic anti-Black racism, could these changes further exacerbate the situation and increase further inequity for Black Ontarians in Ontario if these changes come through? Just quick answers from yourself, Mr. Strezos, and yourself, Ms. Scholten.

Mr. Louis Strezos: I believe that legal aid is committed to justice, but the problem is, they're going to have to make very difficult decisions—

Ms. Amy Scholten: My answer is, yes, I do think that it would have an absolutely negative impact.

Mr. Gurratan Singh: Very good. I think Mr. Strezos got cut off a bit early. If you have something to add to that point.

1700

Mr. Louis Strezos: I agree with Amy. I got cut off for some reason.

Mr. Gurratan Singh: Further to talking about the impacts of even the current cuts that are being kept in place by Bill 161—Amy, how has your legal aid clinic been negatively impacted by those cuts?

Ms. Amy Scholten: The effect has been a reduction in the amount of travelling outside into our catchment area. We've had to seriously limit travelling to the satellite offices and meeting with the clients in the outlying communities because of the extensive costs of travel. We have the benefit of having most of our providers provide us with free space to meet with our clients. The municipalities within our region and organizations are very supportive, so we often don't pay for the space that we use. But we still have to pay for the travel costs.

Mr. Gurratan Singh: Back to Mr. Strezos: There's often a conversation that funding legal aid appropriately actually helps save money, because you have clients who are represented by counsel who are able to navigate a situation better. There's less chance of appeal because there is a better case representation. We've heard a variety of stats come out, but in your capacity and your involvement with the CLA, what are your thoughts on saving society money by investing in legal aid?

Mr. Louis Strezos: A hundred per cent; there's no doubt that investing in a fair trial and investing in access to justice saves money in the long term. There is no doubt about it. Wrongful convictions don't happen; there are less self-represented accused navigating the system. It reduces the burden on the judiciary, and it reduces the burden, ultimately, on legal aid when judges start issuing orders for funding. So it's a great social investment. There are lots of studies. The CLA has done this. We're prepared to share them.

Mr. Gurratan Singh: I think Amy has a response. At the same time, Chair, how much time do we have left in this portion?

The Chair (Mr. Roman Baber): One minute and 20 seconds.

Mr. Gurratan Singh: Amy, if you're going to respond, I have one more question as a follow-up, so we'll get your response and then I'll ask one more question to Mr. Strezos.

Ms. Amy Scholten: Okay. I just wanted to point out that studies have shown that there are $6 saved for every $1 spent on legal aid.

Mr. Gurratan Singh: Okay. Lastly, to Mr. Strezos, very quickly, is it fair to say that even the crown would prefer that both sides of the legal system benefit from a properly funded system? The crown prefers to work with lawyers who are properly prepared and have the access and resources to properly present their cases, just like a criminal defence lawyer would rather deal with a crown who is properly prepared and funded. Is that fair to say?

Mr. Louis Strezos: That's not only fair to say, that's essential to a fair system. Crown attorneys support that. In fact, they always have, and I believe my colleagues at the crown attorneys association would as well. I have no doubt about that. It's essential. It's critical.

Mr. Gurratan Singh: Thank you both for your contributions and for your comments today, and to everyone else on the panel.

The Chair (Mr. Roman Baber): Thank you very much. I'd like to thank Public Interest Advocacy Centre, the Criminal Lawyers' Association and Renfrew County Legal Clinic for their participation today and for contributing to our discussion in these hearings. Thank you very much, and we'll wish you a good day. As a reminder, the deadline for written submissions is tomorrow at 6 p.m.

The next panel has already arrived. If we could please say goodbye to our 4 p.m. panel and welcome our 5 p.m. panel.

NORTHWEST COMMUNITY LEGAL CLINIC

SUDBURY COMMUNITY LEGAL CLINIC

FOREMAN AND CO. LLP

The Chair (Mr. Roman Baber): Welcome, everyone. The justice committee hearings on Bill 161 continue with our last panel for the day. I'd like to propose to members, barring any objections, that instead of 5.5-minute increments, we do five-minute increments by way of questioning, just to give us a little bit of safety.

We will begin with initial submissions from each of the entities appearing before us, seven minutes each, followed by three rounds of questioning from each of the recognized parties and one from the independent.

We want to welcome from the Northwest Community Legal Clinic, Trudy McCormick; Bob Argue, board member with the Sudbury Community Legal Clinic, and Monique Woolnough, as well; and also, we're going to welcome Jonathan Foreman from Foreman and Co. LLP.

We'll begin with submissions from the Northwest Community Legal Clinic. Trudy, if you would be so kind to begin your seven-minute submission by stating your name for the record.

Ms. Trudy McCormick: Thank you. My name is Trudy McCormick, and I'm the executive director of the Northwest Community Legal Clinic.

Thank you, Mr. Chair and committee members, for the opportunity to speak to you regarding Bill 161. I know you've had a very long day, and I hope to lighten it by sharing with you some of the things that we're really proud of from our community legal clinic.

First, I acknowledge that I'm speaking to you from Treaty 3 territory and that the land on which I live and work is the traditional territory of the Anishinaabe, in which the Métis also share history. I make this acknowledgement to speak the truth of our history, to respect our roles as treaty peoples, to reconcile with each other over past injustices and to commit to a more collaborative relationship that will lead our peoples into a better future.

I'm taking you to the far end of the province from my last colleague. The Northwest Community Legal Clinic is a general service clinic serving the residents of the Rainy River and Kenora districts. We are at the western edge of the province and we're far enough away from the greater Toronto area that we're in the central time zone, so we're an hour earlier than everyone else on this Zoom meeting today.

We have three offices, in Atikokan, Fort Frances and Kenora, and cover a geography the size of France. At least 50% of our clients are Indigenous, although Indigenous peoples constitute approximately 25% of our regional population.

Atikokan is known as having been a mining town until the late 1970s. Since that time it's had a resource-based economy, with the ups and downs that brings. We're one of the few services remaining in the community, as demonstrated by the fact that over 80% of our initial client contacts in Atikokan are walk-in clients.

The primary services we provide there are consumer and debt issues and supports in accessing government programs and services. Food security is a serious issue in this small town, and we work with our partners there to support our food bank and other initiatives.

Our board chairperson is from Atikokan. She works at the local crisis and women's shelter.

In Fort Frances, approximately 50% of our initial client contacts are walk-ins. The rest come from community partners and some by telephone.

Fort Frances lost its main employer when the pulp and paper mill closed a few years ago. It has a mix of tourism, as we're right on the US border, farming and now a gold mine to support our economy. Over half our casework is in housing law since the mine opened and created huge pressure on our rental accommodation. There have been almost no new rentals built in Fort Frances in over 30 years.

We work with community partners, our local United Native Friendship Centre and Treaty 3 First Nations on housing, food security and, especially, diversity initiatives.

Our board members from Fort Frances are a retired native court worker who still volunteers at our local jail, a former bank manager who is now the executive director of our chamber of commerce, a local radio announcer, and a lawyer and MBA who sits on municipal council and is co-chair of Borderland Pride.

In Kenora, again, approximately 50% of our initial client contacts are walk-ins. The rest are by a mixture of referrals from community partners and telephone contact.

Tourism is huge to the economy, especially since the pulp and other mills in Kenora also closed. Housing and mental health and addiction supports are crisis issues in Kenora, to the point that they've been highlighted in national media.

In Kenora, we work with the health unit, the friendship centre, Canadian Mental Health Association, Treaty 3 First Nations and other partners with a focus on housing and on a program called Making Kenora Home.

Our board members from Kenora are a lead with the Canadian Mental Health Association peer support program, a retired teacher who sits on the school board and a teacher who is very active with the OSSTF.

Annually, our board and staff come together and discuss our annual report, demographics and statistics, looking at the trends in our region, the work the clinic is doing and forecasting the needs for the coming year. We consult with both community partners and clients in that process. We then submit a funding application to Legal Aid Ontario coming out of that. Following that submission, we report quarterly and annually to Legal Aid Ontario and to our communities.

From our clinic, we want to clearly support the submission of the Association of Community Legal Clinics of Ontario. Our clinic wants to focus on the issue of local determination of needs and services. Hopefully, from my description, you can see that despite our vast geography, the clinic board and staff are truly embedded in our

communities and uniquely placed to assess need and set direction for services in our clinic.

1710

Within our catchment area, there are different services being provided just in our three different communities and offices. While we have solid knowledge of need in our communities, we can't presume to know what the needs would be in downtown Toronto or in Windsor or in Kingston. Just as the Premier has acknowledged the regional differences throughout the province with provincial reopening plans, we feel strongly that local determination of needs and services is an important way to acknowledge and work with the diversity of circumstances and legal needs throughout the province.

Clinics are a cost-effective way to deliver services in our communities, with the ability to pivot as the need changes. We work through our clinic's processes and can make changes to our service delivery, and do make them, without waiting for a central bureaucracy to approve the change. We also don't waste time learning skills that wouldn't be helpful to our clients, and that would happen if all clinics would be required to deliver exactly the same services.

To be able to respond to immediate needs in our community, clinics need to have the authority to determine what services should be delivered there. We're happy to work with Legal Aid Ontario in modernizing the funding relationship and agreements, while maintaining the crucial local community needs assessment and service determination that makes clinics work so well. Thank you.

The Chair (Mr. Roman Baber): Thank you so much, Ms. McCormick. We'll proceed with the Sudbury Community Legal Clinic. Either Bob or Monique, I invite you to make your seven minutes of submissions, and please begin by stating your name for the record.

Mr. Bob Argue: It's Bob Argue, Sudbury Community Legal Clinic.

Ms. Monique Woolnough: And Monique Woolnough, executive director of the Sudbury Community Legal Clinic. Go ahead, Bob.

Mr. Bob Argue: I've served five years on the Elliot Lake community legal clinic board and six on the Sudbury board. I just want to use two examples from my time at Elliot Lake to essentially follow up on Trudy's comments.

Elliot Lake is a retirement community, so naturally, there's a very high proportion of seniors. We were able to respond to the needs of that group, I think, rather effectively. Our executive director, three or more times a year, would conduct courses on seniors and the law, which introduced seniors to their rights under the law, to the importance of wills, powers of attorney—a highly effective outreach program.

The second activity that our [*inaudible*]—I think this illustrates the need for clinics as community organizers. Given the large proportion of seniors, there was also a considerable tendency for telephone, online and door-to-door scam artists. When it became apparent that this was a problem, our executive director was able, within a few weeks, to organize the equivalent of a Better Business Bureau to essentially head a very large portion of this off at the root.

Clinics are able to respond to specific legal needs so long as they're rooted in the community. If our clinics are to lose those roots, then they will no longer be responding to those needs.

I will now turn it over to Monique.

Ms. Monique Woolnough: Thank you. Thank you for having us. I'm here not only as the director of the Sudbury Community Legal Clinic, but as someone who has spent the last 10 years working in the clinic system, first as a student at Parkdale Community Legal Services, then four years at the Kinna-aweya Legal Clinic in Thunder Bay, and a year managing six collaborative projects between the 11 northern region clinics, which stretched from Manitoba all the way up to the James Bay coast, east to Quebec and south to Parry Sound and Muskoka.

As other clinics have shared, we have grave concerns with the discretionary language in Bill 161, which leaves the ultimate power to determine our service delivery model in a centralized bureaucracy in Toronto, instead of in our community-rooted board of directors. I'm going to give you some examples of the importance of our boards. We also endorse the submissions made by Association of Community Legal Clinics of Ontario, as well as the presentations by Aboriginal Legal Services with regard to Indigenous legal service organizations, and echo NAN's concerns about the lack of consultation with Indigenous people in the process leading up to this bill.

So the city of Greater Sudbury is home to one of the largest social housing projects north of the GTA. One of our staff lawyers and community legal workers attended monthly meetings of a tenant group in that social housing project to address common issues around privacy, maintenance and repair issues and other problems with their landlord. Before COVID-19 hit, they were in the process of planning a one- or two-day conference with social housing tenants from across the city to address these systemic issues in their housing.

Instead of answering hundreds of calls about the same issue, this is just one example of how we use our limited resources in the most efficient way possible. In addition, one of our board members has resided in social housing for quite a long time and so is able to bring that lived experience to our decision-making as a clinic.

Our board has approved the creation of an Indigenous justice coordinator position as part of our efforts to meet our treaty obligations and calls to action in the Truth and Reconciliation Commission.

Comme nous sommes dans le district de Sudbury, les services en français sont une de nos spécialités. Dans la ville du grand Sudbury, 27 % des gens sont francophones de première langue, et ce pourcentage grimpe jusqu'à 47 % à St. Charles, une petite ville dans le sud de notre district où nous visitons chaque mois dans les circonstances normales. Dix sur 13 de nos employés sont complètement bilingues. Le public peut compter sur le fait qu'il y aura toujours un francophone au téléphone ou au bureau quand ils nous contactent pour des services, et ils

peuvent compter sur le service en français du début jusqu'à la conclusion de leur cause.

Non seulement est-ce qu'on fournit les services en français dans notre district, mais depuis 2009, on approvisionne aussi les régions du nord et du centre de l'Ontario, où les cliniques juridiques locales n'ont pas la capacité de desservir en français. Récemment, cela a inclus la représentation d'une personne dans le district de Parry Sound, qui s'est ultimement qualifiée pour le Programme ontarien de support aux personnes handicapées suite à une audience au Tribunal de l'aide sociale, et aussi on desservi où un locataire dans un parc de maisons mobiles dans le district d'Algoma, le propriétaire chargeait un loyer illégal pendant plusieurs années.

We are also host to the Advocacy North for elders and seniors program, a program which was funded through the new investments in Legal Aid Ontario and provides public legal education, summary advice and representation to seniors and elders throughout the northern region on issues that particularly impact seniors, such as health care consent and decision-making, capacity issues and elder abuse. I note that this is one of the areas of law that would be at risk with the more restrictive definition of poverty law that is in the proposed bill.

This program is an excellent example of 11 community legal clinic boards working together to share the resources of one lawyer across an enormous territory. This program, along with Advocacy North for workers and Advocacy North for injured workers, which was unfortunately cut as a result of last year's budget cuts, has increased the number of clients served and the areas of law in which they're served across the northern region. Thank you.

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

We're going to move forward with Jonathan Foreman of Foreman and Co. Please commence your seven-minute address with stating your name for the record.

Mr. Jonathan Foreman: My name is Jon Foreman. I'm a partner and founder of the law firm Foreman and Co. I want to say thank you to the Chair and to the committee members for allowing me to provide submissions to the committee today.

I'm a lawyer who practises exclusively in the field of class action litigation. Overwhelmingly, my focus is on the plaintiff side of that work. As an example, I've acted for consumers, payday loan borrowers, insurance policyholders, shareholders, retirees, pensioners, employees, copyright holders in musical works, victims of price-fixing, among other things. I've also taught class actions to upper-year law students as an adjunct faculty member at the Western University faculty of law for five years. I've acted as counsel in class action trials. I've also had the good fortune to appear in class action cases before appeal courts, including the Supreme Court of Canada. Finally, for our purposes today, I was a member of the technical and [*inaudible*] subcommittee of the Ontario Law Reform Commission, mainly because of some long-running statistical research that my team and I have conducted since 2011 regarding class action trial activity across Canada.

Bill 161 contains some very significant changes in our world; specifically, it's the changes to the preferable procedure test to introduce the predominance and superiority requirements. I asked for the opportunity to appear today to address those proposed changes specifically.

1720

I want to start by urging the committee to assess that part of the bill through the following lens [*inaudible*]. Ask yourself the question: In this bill, who gains power or rights under it, and why? I want to say to you that from our perspective, this bill—

The Chair (Mr. Roman Baber): I'm sorry, Mr. Foreman. I apologize for interrupting you. We're having a little bit of difficulty hearing you, and you also froze when you posed the question. I want to be fair to you and give you an opportunity to make a good submission, so would you maybe increase the volume and come a little closer, if you can? I would recommend that you start over from asking us the "following question."

Mr. Jonathan Foreman: Thank you very much, Mr. Chair. I hope this is better.

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

Mr. Jonathan Foreman: I want to begin by urging the committee to assess this bill through the following lens of my two particular questions. The first is, who benefits under this bill, and the second is, who gains power or rights under this bill, and why?

My main submission to you is, this bill represents a material deviation from well-established Canadian [*inaudible*]. It imports US concepts that are demonstrably adverse to access to justice. The fact is, in answering my questions, this bill reduces and complicates the rights of people who need to access an independent justice system to resolve their legal problems. The corollary is that this bill also gives power to the alleged wrongdoer at the direct expense of the claimant. That power generally goes to powerful corporations who already have inherent economic and other advantages in our legal system.

And so what's the justification for the bill? The first point to raise is, there has been no demand for this type of reform to the Ontario legal system and class actions. For example, there has been no call from our judiciary to enact reform of this kind, and the fact is, there is very broad opposition to these proposed changes.

Turning to the law reform commission report, that is the most thorough, bipartisan, empirical and objective review that has been undertaken on this topic. You all have the law reform commission report. That commission convened a committee comprised of a retired appeal justice, a number of defence lawyers, a number of plaintiff lawyers and leading academic professionals from Ontario and from out-of-province. In its report, the law reform commission rejected the concept of the preferable procedure elements that are proposed in Bill 161, and I would refer you to page 47 of the report where the committee rejects the importation of US federal Rule 23.

Then the question is, who has asked for this bill? Who wants it? As far as we can tell by tracing the submissions that were made to the law reform commission, a US interest group, major banks, and major life insurers are seeking

this type of reform, and so the people and companies that are imploring you to make these changes—these are not entities that will have a problem accessing the legal system. But the problem we have is that they're asking you to block access to the legal system for others. Please keep that perspective and don't lose it as you assess this bill.

I wish to make an illustration using a real-life example that's playing out before our eyes right now. That example shows us some of the problems with this bill. Long-term-care homes are in the headlines every day. Significant legal issues are emerging daily. Elderly, vulnerable people and their families are the victims here. We're seeing deaths, physical injuries, allegations of abuse, substandard care and more. This problem is affecting thousands of Ontario citizens right now. These people and people who face analogous circumstances deserve the best options that our legal system can offer them to deal with their claims.

But instead, this bill is going to hurt people like this. This bill strikes a blow against their legal rights—in particular, it's the predomination defences that are in this proposed bill. Those defences give defendants an enormous new advantage against those types of claims. Through Bill 161, there is a textbook defence to defeat the certification motion that is emerging for those cases.

I urge you to recognize that this problem isn't limited to long-term-care cases, either. There are other, equally important problems that are going to, now and in the future, reflect similar attributes. Examples would be pharmaceutical injury cases, medical device cases and similar matters—cases that occur frequently in Canada. They're important cases, and if anything, they require our laws to do more for them, not less. Now, unfortunately, this bill casts these types of claims into a very difficult category. It will compromise these claims on the same basis as I've described, primarily predomination. The defendants in those cases will now have the opportunity to slow that kind of litigation down and even to strike class action claims over the predominance issues that are raised by the bill, at a minimum.

More broadly, let me illustrate how that will happen. The bill introduces two new evidence requirements, two significant hurdles for the plaintiff to clear—

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

Mr. Jonathan Foreman: Thank you, Mr. Chair—superiority and predominance. There will be uncertainty in application and interpretation of those requirements. Heavy appeal activity will follow. This is a genuine question about the quality of the evidence that will be required, and I expect there will be lots of expert evidence that's necessary.

Moving to superiority quickly, before I finish: This is a genuine rule of law question, driving [*inaudible*] into an arbitration-type scheme that defendants may begin to raise.

So I want to urge this committee to be aware of the fact that there are very significant questions that come out of these changes. I want to urge this committee to be aware of those problems and to reject the proposed changes in the bill.

The Chair (Mr. Roman Baber): Thank you, Mr. Foreman. We'll proceed with five-minute rounds of questioning, beginning with the opposition. Mr. Yarde?

Mr. Kevin Yarde: I'm going to continue with Jonathan Foreman, along the same lines of your submission regarding class action. I want you to continue finishing your [*inaudible*]—if you want to continue finishing what you were just saying there.

Mr. Jonathan Foreman: Thank you very much. The point I was getting at there is that the predomination requirement adds a whole other dimension to the problems that we see in this bill. Predomination is the question of whether individual issues in class actions outweigh common issues. The high-water-mark example is the residential schools litigation case. Initially, the case was not certified under Ontario law, under our existing legislation, until the Court of Appeal took hold of the case and recognized that it was important to certify a case on that subject matter. I just want this committee to sit and imagine a situation where we did not have that case and where the settlement didn't occur and where the reconciliation that followed from it didn't occur. That is what's at stake through these questions in the bill.

Turning to the superiority requirement, quickly: The concern I have is that this will invite defendants to bring alternative systems into the class action scheme on the basis that they are superior to class actions. The primary concern would be arbitration-type schemes. This is the rule of law issue that I was hinting at a moment ago. The idea there is that defendants will opt their customers, clients, whatever the case may be, out of our justice system into some private scheme on the basis that they wish to make an argument that the arbitration scheme they've assembled is superior to class actions. The US legal system is currently tied up in knots on the very same issue, because they have a superiority requirement in their statute.

Another point I'd like to add is that I read and I hear that the purpose of this legislation is to streamline and speed up class actions. As a practitioner in this space, I want to tell you that that is an impossibility on the basis that this bill is written. One does not add new and more onerous requirements to an already onerous legal system and expect faster or more efficient results. It's truly impossible. These new rules will complicate and slow down cases for a very long time. As you can see, I predict this bill will eventually cut out many of the most important cases in our legal system entirely. What I'll say on that is, if the objective here is to speed up class action files, the answer to that is also found in the law commission report. There is a section entitled "Culture Shift" at page 51 of the report. In my submission, by far the most effective way to move cases is to create a standardized case management system so that our judiciary and the parties have a consistent road map to follow that sets out the expectations and moves every kind of case along without compromising the rights of the parties.

Mr. Kevin Yarde: Thank you, Mr. Foreman. If I could get you within, say, 45 seconds to a minute—the government says that if certification is not met, there are other

avenues that a litigant can go to. How feasible would that be for, say, a long-term-care-home senior who is on a fixed income to challenge through the courts in other ways, if it's not going to be through a class action?

Mr. Jonathan Foreman: Thank you for the question.

The fact of the matter is that our legal system is functionally inaccessible to individual litigants in cases like that. It may be possible, if there is a very significant injury, for a contingency fee practitioner, for example, to take the matter on, but the overwhelming likelihood is that those cases do not have the economic heft to make their way through our legal system, and the result is that the system is functionally inaccessible for those clients.

1730

Mr. Kevin Yarde: Thank you.

The Chair (Mr. Roman Baber): With 57 seconds left, Mr. Yarde.

Mr. Kevin Yarde: Okay. I'll give this question to either Bob or Monique, regarding consultation. You mentioned that there has been a lack of consultation with NAN leading up to this bill. How important is it to have that consultation? And what do you think is going to be the result with the lack of that consultation?

Ms. Monique Woolnough: Thank you for that question.

I was listening earlier to NAN's submissions about how this was last-minute news to them that this bill is being passed, even though they're a treaty partner and they provide legal services as a nation to their own members. That failure to include them from the beginning of this process and the speed with which this bill has moved forward without consultation with NAN, and with other Indigenous communities and also with stakeholders in the community legal clinic system and more broadly, is reflected in the fact that, for example, Indigenous legal service providers are not defined separately in the bill and the fact that the poverty law definition is much more restrictive. It shows in what the language is right now—that lack of consultation.

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

We will proceed with government questions. MPP Park.

Ms. Lindsey Park: My questions are, to start off with, to the Northwest Community Legal Clinic. First of all, I want to thank you for the work you do to serve low-income Ontarians in Kenora and Rainy River. I wanted to just speak specifically about a couple of submissions you made, which I thought were quite helpful.

You talked about the importance of your board members really understanding the community and being from the community you serve. Specifically, as we were drafting this legislation, we heard from many stakeholders about the importance of maintaining in that definition of community legal clinic a reference to the clinic's boards of directors and that it be comprised of members of the community or communities that the board serves. Obviously, it would be plural in your case—Kenora and Rainy River, multiple communities. I just wondered if you could speak to that.

Ms. Trudy McCormick: Thank you for that question.

It is critical. The one thing that I would add to the statement you made is that it's important that they either be a part of that community or have a significant connection to that community, especially when we look at the fact that we have specialty clinics that serve large geographic areas. We need to be able to take into account people who would have connection to and a special knowledge of the circumstances and the needs of a community that we serve. I find my own board of directors being very embedded in our communities is invaluable in their advice to the clinic.

Ms. Lindsey Park: Excellent. I just wanted to get your perspective specifically on if you think the current proposed definition is overly restrictive in that it in some way potentially prohibits qualified people who have strong ties to a community or, in your words, are embedded in the community where a clinic operates from joining that clinic's board.

Ms. Trudy McCormick: Thank you. There would be an impact on many communities if the bill remains restrictive—if it says that folks have to be specifically from that community, because I know that, for example, there are people on different boards of directors who, as I say, are legal experts in the area or have an interest in the subject matter.

For example, you heard earlier from the injured workers' group. Sometimes those folks will be on a board of directors that they have knowledge of while not specifically being part of the community. It's very important to clinics provincially that that definition be broadened.

Ms. Lindsey Park: Thank you. I'll just speak to a related issue. The Attorney General and myself, as parliamentary assistant, have been clear about the foundational role that legal clinics play in the services delivered by Legal Aid Ontario. That foundational role is referenced right in the bill—saying that legal aid must have regard to it when it considers decisions with respect to providing legal services in Ontario communities.

Can you tell me why, from your perspective, it's important to have that critical role continue to be recognized in legislation?

Ms. Trudy McCormick: Certainly. We very much appreciate the support that the Attorney General has given us and the kind things that he has said and that the important role of community clinics is acknowledged within the legislation.

However, there are some real concerns about the way it's acknowledged. We've lived with the last piece of legislation for 20 years. Our concern is that if the ability to determine services and needs assessment is taken away from the community boards and given to Legal Aid Ontario, at some point someone else might make decisions that limit our ability to provide the services that our community needs.

If, because of the current COVID-19 crisis, for example, there was a determination made bureaucratically that seniors-home law was very important and that all clinics must practise in this area, that would mean our clinic wouldn't be able to provide some of the services that

our communities need because, for example, we don't have the care homes that they do in other communities. It's our concern that at some point, a decision could be made by a central bureaucracy in Toronto that would stop our clinic from truly serving the needs in our communities.

The Chair (Mr. Roman Baber): Thank you very much. That concludes the time for government questions.

Before we move on to the independent member, I'm wondering, Mr. Singh and Mr. Gill, if we would be able to convene a quick subcommittee meeting at 6 p.m. tonight, as long as Mr. Singh is good.

Mr. Gurratan Singh: I'm good.

Mr. Parm Gill: Works with me, Mr. Chair.

The Chair (Mr. Roman Baber): Thank you. Because we're going to have a technology challenge here, what I'm going to do is I'm simply going to conference the two of you from my cellphone. Is that okay?

Mr. Parm Gill: Yes, I'm good.

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

We'll now move on to the independent member. We have adjusted our schedule a little bit, so operationally it would work out to about three minutes of questions.

M^me^ Lucille Collard: I usually don't go over my time, so that's fine. Merci, monsieur le Président.

Ma question va être pour Monique Woolnough. Je voudrais vous remercier d'avoir fait une partie de votre témoignage en français. Ça me permet de vous poser une question en français, puis de justement reconnaître l'importance des services en français. Je connais assez de personnes de Sudbury pour savoir que les services que vous donnez sont une partie importante de votre travail, puis que ça répond à un besoin réel de la communauté francophone.

Alors moi, je voudrais savoir si vous êtes préoccupée par certains des changements qui sont présentés dans le projet de loi 161 et si ça va avoir un impact négatif sur votre capacité de justement livrer les services de façon efficace, pour la communauté francophone, bien sûr, mais pour la communauté en général. Alors j'aimerais vous entendre sur vos préoccupations par rapport aux changements qui sont proposés.

M^me^ Monique Woolnough: Merci pour la question. Comme Trudy a mentionné, on est reconnaissant es que le gouvernement reconnaît notre rôle, mais on a des peurs très réelles que, de la façon que la loi est écrite, les pouvoirs de prendre les décisions vont ultimement être dans une bureaucratie qui siège à Toronto.

Je note que dans l'acte courant puis dans la loi proposée, il n'y a pas de « requirements » que le comité d'administration de l'Aide juridique Ontario lui-même soit représentatif des communautés qu'il dessert—non seulement les francophones, mais les communautés autochtones, les communautés noires. Il n'y a pas de garantie que ces communautés-là seront représentées dans le comité qui prendra les décisions ultimes sur quels services on délivre.

1740

On vous a donné des exemples, et les autres cliniques vous ont donné des exemples, de comment on est très flexible et on peut agir très vite parce qu'on est vraiment relié à nos communautés locales. On sait qui sont les autres organisations qui desservent les francophones puis les autres personnes dans notre région.

Par exemple, quand la pandémie a commencé, ça nous a pris seulement deux semaines pour établir un partenariat avec le YMCA pour s'assurer que les gens qui n'ont pas accès au téléphone ni à des ordinateurs, ce qui est très commun dans notre communauté, pourraient quand même nous appeler, même si on travaille à la maison. Ils pourraient accéder à nous s'ils ne peuvent pas utiliser un téléphone mais peuvent utiliser un ordinateur. Merci.

M^me^ Lucille Collard: Merci beaucoup.

The Chair (Mr. Roman Baber): Thank you very much. We'll now proceed back to the official opposition with Mr. Singh.

Mr. Gurratan Singh: My question is to Mr. Jonathan Foreman.

You made reference in your comments earlier about the different interest groups that benefit from the changes to the class action act—it's in the changes to class actions, and you specifically noted US interest groups. Is there any specific indication of US interest groups involved in lobbying or involved in any sort of work, in terms of pushing forward this kind of policy here in Ontario?

Mr. Jonathan Foreman: Thank you for the question.

It's in the context of the Ontario Law Reform Commission report process. You're able to view every submission made by any stakeholder at the time there were calls for submissions for that particular report. And yes, it's the US Chamber of Commerce that you will see making submissions, wherein they're inviting our reform commission to consider bringing the US federal Rule 23 up north into Canada, which is effectively this predominance and superiority requirement embedded into the certification test.

Mr. Gurratan Singh: Further to that, is there any indication of what their reasoning was or why they thought that was appropriate in the Canadian context? And as briefly as possible; I have another question for you afterwards. I'm being mindful of the time as well.

Mr. Jonathan Foreman: Thank you. I can't speak for what goes through the minds of a party making a submission of that type. My understanding is that they [*inaudible*] those rules to be far more favourable to defence-side interests, and their wish is that the Canadian marketplace—in which I believe many members of the US Chamber of Commerce operate. They would like that the US, or defendants, have a great deal more success in defending class actions.

Mr. Gurratan Singh: So it's fair to say that despite being two different countries, economic interest is shared, because for those American companies it would effectively be beneficial to them to have this kind of law implemented in Ontario.

Mr. Jonathan Foreman: Effectively, yes, and beyond that, I can say that I present on legal conferences that are

international in nature with American lawyers involved, and I was part of a conference where it was said that trends in Canada are a source of concern for American law. European law tends to be more consistent with Canadian law as well. So there are concerns in the United States among practitioners there that if a country like Canada thinks that a certain process or protocol is appropriate, that it could make its way into the United States.

Mr. Gurratan Singh: Further on that same line of questioning, my understanding, based on your testimony today—you described how, because of the contentious nature of the changes to the class action protocol right now, it opens up the door for greater appeals. And whenever we have appeals, we know then it's left to the courts to interpret and provide a ruling.

I think it's fair to say that legislation is always less expensive, less of a cost to the taxpayer when it's thoughtfully made and results in less appeals. Having a divisive kind of legislation could ultimately create less access to justice and a greater cost to Ontarians. Is that accurate?

Mr. Jonathan Foreman: Thank you for the question.

There's no question that this bill will attract very divisive and vigorous appeal activity that will create uncertainty in the legal system for a long time, and that will have exactly the result that you've described, which is parties spending an awful lot of money litigating. There will be delay as appeal decisions are weighted, and in many cases, related cases that are not the subject matter of the appeal will also be delayed as they await the outcome on another case. It's a very common practice in class actions that there is a significant appeal, for example, to the Supreme Court of Canada that many similar cases will effectively be stayed as they await the outcome of that case.

Mr. Gurratan Singh: So it's fair to say, then, just in summary, that the changes being proposed by the government right now will provide less access to justice and will be in the interest of big business in America, will result in appeals and, ultimately, a greater cost to Ontarians?

Mr. Jonathan Foreman: Thank you for the question.

You are absolutely correct. In my view, those things are a certainty.

Mr. Gurratan Singh: Further to that, the role that class actions provide—and I think you touched on this very interestingly in the fact that it is a tool of people who don't have access to resources to access justice. People who have all the money available to them—large corporations, incredibly wealthy individuals—have the resources to push forward their claims. But regular folks, folks who are struggling and in precarious situations, don't have that same access to resources. Is that fair to say?

The Chair (Mr. Roman Baber): Yes or no, maybe. I apologize. I have to interrupt. We're out of time for this particular round. We went a little over, and we still have three more rounds to complete. I invite you to ask your question again when we come back to the opposition.

Back to the government for five minutes, please. Mr. Nicholls.

Mr. Rick Nicholls: I'm going to address my questions to the Sudbury Community Legal Clinic.

The Attorney General has been very public in his strong support of the important work that legal clinics do for Ontarians who face a variety of legal needs. Now, in the new Legal Aid Services Act, 2019, we recognize 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's communities.

Can you tell us why it's important to have that critical role continue to be recognized in legislation?

Ms. Monique Woolnough: I'm happy to speak to that. To elaborate on my earlier comments, with respect, the legislation does not say that legal aid must follow the direction of the clinics; it says they can have regard to our foundational role and that they may provide services through the delivery of community services. That's significant change that doesn't enshrine or protect us in the work that we're doing and that doesn't leave the ultimate decision-making authority in our community boards. Certainly, we're grateful that the Attorney General has recognized that role, but if the law says something different and creates discretion, then it's up to the whims of leadership and the bureaucracy in Toronto at legal aid or of whatever government of the day that could do away with us fairly quickly.

Mr. Rick Nicholls: Thank you. Mr. Argue, would you have anything to add to that? I take silence as a no.

Mr. Bob Argue: Yes, it is.

Mr. Rick Nicholls: Okay. Well, look, I have a follow-up question. Maybe we'll get you to chime in on that one.

The Attorney General has also been firm in his commitment to ensuring that Legal Aid Ontario will continue to focus on providing access to justice to low-income Ontarians, and we've heard from some stakeholders that the new legislation should specifically refer to these principles. Can you comment on your perspective of the need to include these concepts in the legislation itself?

Mr. Bob Argue: If you don't include the concepts in the legislation itself, you're left with far too much discretionary power. We've had our battles in the past with Legal Aid Ontario, I must say—friendly battles. We have to have explicitly in the legislation that we are to provide justice for low-income Ontarians. There should be nothing permissive in there at all, from my point of view.

Mr. Rick Nicholls: Thank you. Monique, would you have anything to add to that one?

Ms. Monique Woolnough: I would just add that, as you mentioned, the purpose clause of this proposed bill does not include the phrases "access to justice" nor "low-income individuals," and without that there's a presumption that the legislation intended to remove those words from the legislation as it exists now, and that could have very dangerous consequences.

1750

Mr. Rick Nicholls: Okay. How much time do I have left, Chair?

The Chair (Mr. Roman Baber): About a minute and 20 seconds.

Mr. Rick Nicholls: All right. Again, back to our friends from Sudbury Community Legal Clinic: When the new

legislation was being drafted, we heard from many stakeholders about the importance of maintaining in the definition of "community legal clinic" reference to a clinic's board of directors and that it be comprised of members of the community or the community the board serves. Can you speak as to why this is so important for community legal clinics in Ontario?

Mr. Bob Argue: As somebody with long experience on boards, it's crucial. The needs of each community are quite different. When I was in Elliot Lake, what we were responding to was primarily the needs of seniors and of local low-income people.

Sudbury is a much more diverse community. We respond to the needs of a much larger low-income population, our homeless population, a large public housing population, a sizable francophone population, a large Indigenous population—a much different kind of situation. The matters which the board is concerned with here are much different than those in Elliot Lake and vice versa. There's no way you can operate these clinics on a centralized model. We have to have boards which are responsive and responsible to the local needs.

The Chair (Mr. Roman Baber): Thank you very much. We're going to proceed with our last round, which is going to be three and a half minutes to each of the recognized parties. We'll begin with the official opposition. I believe Mr. Singh had his hand up.

Mr. Gurratan Singh: As I had stated earlier, when it comes to limitations to class actions, they ultimately don't have the same impact upon the wealthy, because either wealthy companies or wealthy individuals have the resources to take their matters to court, and it's largely a tool used by those who have a lack of resources to access justice. Is that fair to say, Mr. Foreman?

Mr. Jonathan Foreman: Thank you for the question. The answer is absolutely—

Mr. Gurratan Singh: And further, when we look at Canada, the Law Commission of Ontario provided their scathing report on Bill 161. They articulated that very prominent Canadian cases, like Walkerton or the Indian residential school system, would actually not be able to be litigated in the same way in a class action had this law been applied retroactively. Is that fair to say?

Mr. Jonathan Foreman: Yes, there's no question. I actually acted on the Walkerton case as an articling student. It's where I cut my teeth. I can appreciate the issues in that case, but there are major predominance questions there that would have jeopardized the capability of that case to be certified. And I want to urge this committee to recognize that there are other Walkertons in our future. We're in the midst of a public health pandemic. There are very significant mass health questions existing today. To be honest, my sincere view is that this bill is exactly the wrong move at this time.

Mr. Gurratan Singh: Thank you very much, Mr. Foreman. I'm going to turn my questions over to Monique Woolnough right now.

Is it fair to say that the removal of "access to justice," "low-income" and "disadvantaged communities" and, in addition the narrowing of the practice fields that are being proposed for legal aid right now would ultimately have a negative impact upon Black Ontarians, Indigenous Ontarians, racialized Ontarians and women who are subject to domestic violence, and their ability to access justice?

The Chair (Mr. Roman Baber): With a minute and 20 seconds remaining.

Ms. Monique Woolnough: The answer is, absolutely, yes. As I mentioned earlier, our current bill and the proposed bill do not have a requirement that legal aid's board be representative of the communities they serve, be they Indigenous communities, Black communities, women survivors of domestic violence, and so adding discretion into the bill and removing the reference to access to justice for low-income individuals would create far too much discretion for those communities' needs not to be meaningfully addressed.

Mr. Gurratan Singh: Now very quickly, just to end it off, I'm going to ask both Monique and Jonathan for your answers on this. Is it fair to say that the negatives in this bill outweigh the positives of modernization? As it is written right now, it would actually set Ontario back with respect to access to justice? Jonathan first, then Monique.

Mr. Jonathan Foreman: Thank you for the question.

Certainly from the class action perspective, there's no question that this bill reduces access to justice for ordinary Ontarians.

Ms. Monique Woolnough: Yes, it certainly reduces those protections. Thanks.

The Chair (Mr. Roman Baber): Okay. Mr. Singh, with 15 seconds remaining, I ask that you consider yielding your time.

Mr. Gurratan Singh: Being mindful of the time, thank you so much for your time today.

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

Back to the government for three and a half minutes, please. Mr. Bouma?

Mr. Will Bouma: Thank you, Mr. Chair. Through you, I would like to just ask a few questions of Mr. Foreman.

Mr. Foreman, you got me thinking earlier—and if you ask my wife, trust me, that's quite an accomplishment. But you asked the question of who loses and who gains, and that made me think of who might lose. So if you'd be willing to share with us—have you done any analysis of how much your personal business would be impacted if these changes went through in Bill 161?

Mr. Jonathan Foreman: Thank you for the question.

No, I haven't performed any such analysis.

Mr. Will Bouma: That's fine. I was just curious, because I know—well, with COVID-19 too, I'm an optometrist by training, and my clinic has been shut for the last three months and is just starting to open again now.

Would you say that it would be beneficial for more meritorious cases to be able to make it through the system in a more timely fashion?

Mr. Jonathan Foreman: How do you define "meritorious"?

Mr. Will Bouma: What's interesting: I was looking at some statistics, and I'm under the impression that because it's relatively easy to certify in the province of Ontario a class action—75% of cases brought forward are certified. However, less than 50% actually see any benefit coming through for people. That means that, in a certain sense, there are too many cases that get certified that lead to no benefit for the plaintiffs whatsoever. I guess what I'm wondering is, if you made the restrictions slightly tighter on the ability for a case to go forward, to try to eliminate some of those cases that would never see a benefit anyway, would that allow the other cases to go forward quicker through the court system?

Mr. Jonathan Foreman: The first point I would say in response is that I'm aware of all of the statistics you're referencing. I'm the one who produced the trial statistics that you're referring to.

Here's what I'd like you to understand about our system: If a certification motion fails, the case effectively fails; it does not proceed. It will never be assessed on its merits. That's a crucial consideration because any person who wishes to file an action outside of a class action, be it a Small Claims Court action or a Superior Court action, has the right to take their case to trial, whether it's a good case or a bad case. Win or lose, they have the right to take their case to trial. A case that is not certified does not have that right. The certification question is not [*inaudible*] deserves to win at trial or not.

Remember the residential schools case I referred to was not certified at first instance; it failed at first instance. Does that mean that that [*inaudible*]? Of course it doesn't. So what I want to illustrate for you is, you're mixing apples and oranges by asking whether a case should be certified and whether it should be [*inaudible*] at trial. Every case deserves a shot to be assessed on its merits.

When it comes to whether or not a case should be certified, it has to satisfy a five-part test—not an easy test to meet. You indicated at the outset that you thought it was relatively easy. You have to stand in the shoes of the people who seek to certify cases to understand what is actually involved and how onerous the test already—very, very significant questions come up in virtually every certification motion. They're very, very difficult to prosecute, and they take a lot of time. So there's nothing easy about it, is the long and short of it.

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

I'm grateful to the four panellists for your submissions. Thank you for contributing to the conversation and allowing this committee to understand the issues better. With that, we're going to say goodbye to our presenters. Thank you again.

Mr. Gill and Mr. Singh, research has to be present on the subcommittee call, so you should be in receipt of a dial-in number. I ask that we dial in as soon as we get off this call. Is that okay by you?

Mr. Gurratan Singh: Yes. The number has been emailed to us?

The Chair (Mr. Roman Baber): Yes.

Mr. Parm Gill: Yes, it works. I got it.

Mr. Gurratan Singh: I must have gotten it. I'll call right now.

The Chair (Mr. Roman Baber): Okay. So we'll call in a few minutes.

Members, thank you very much. I ask that tomorrow we regroup again at a quarter to 10 in the morning. Thank you so much. It's been a long day, and I'm grateful to all of you.

We're adjourned till tomorrow at 10 a.m.

The committee adjourned at 1800.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Roman Baber (York Centre / York-Centre PC)

Vice-Chair / Vice-Présidente
Ms. Effie J. Triantafilopoulos (Oakville North–Burlington / Oakville-Nord–Burlington PC)

Mr. Roman Baber (York Centre / York-Centre PC)
Mr. Will Bouma (Brantford–Brant PC)
M^{me} Lucille Collard (Ottawa–Vanier L)
Mr. Parm Gill (Milton PC)
Ms. Natalia Kusendova (Mississauga Centre / Mississauga-Centre PC)
Ms. Suze Morrison (Toronto Centre / Toronto-Centre ND)
Ms. Lindsey Park (Durham PC)
Mr. Gurratan Singh (Brampton East / Brampton-Est ND)
Mrs. Nina Tangri (Mississauga–Streetsville PC)
Ms. Effie J. Triantafilopoulos (Oakville North–Burlington / Oakville-Nord–Burlington PC)
Mr. Kevin Yarde (Brampton North / Brampton-Nord ND)

Substitutions / Membres remplaçants
Mr. Rick Nicholls (Chatham-Kent–Leamington PC)
Mrs. Daisy Wai (Richmond Hill PC)

Also taking part / Autres participants et participantes
Mr. Sol Mamakwa (Kiiwetinoong ND)
Mr. Jamie West (Sudbury ND)

Clerk / Greffier
Mr. Christopher Tyrell

Staff / Personnel
Ms. Heather Conklin, research officer,
Research Services