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M-23

Standing Committee on the Legislative Assembly

Accelerating Access to Justice Act, 2021

1st Session
42nd Parliament

Thursday 11 March 2021

Chair: Kaleed Rasheed
Clerk: Tonia Grannum

Journal des débats (Hansard)

M-23

Comité permanent de l'Assemblée législative

Loi de 2021 visant à accélérer l'accès à la justice

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Jeudi 11 mars 2021

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Thursday 11 March 2021

Jeudi 11 mars 2021

The committee met at 0902 in room 151 and by video conference.

ACCELERATING ACCESS TO JUSTICE ACT, 2021

LOI DE 2021 VISANT À ACCÉLÉRER L'ACCÈS À LA JUSTICE

Consideration of the following bill:

Bill 245, An Act to amend and repeal various statutes, to revoke various regulations and to enact the Ontario Land Tribunal Act, 2021 / Projet de loi 245, Loi modifiant et abrogeant diverses lois, abrogeant divers règlements et édictant la Loi de 2021 sur le Tribunal ontarien de l'aménagement du territoire.

The Vice-Chair (Mr. Vijay Thanigasalam): Good morning, everyone. I'll call this meeting to order. We are meeting today to conduct public hearings on Bill 245, An Act to amend and repeal various statutes, to revoke various regulations and to enact the Ontario Land Tribunal Act, 2021.

We have MPP Park present in the room. The following members are participating remotely—

Interjections.

The Vice-Chair (Mr. Vijay Thanigasalam): I'll now go directly to the agenda today.

MINISTRY OF THE ATTORNEY GENERAL

The Vice-Chair (Mr. Vijay Thanigasalam): I will now call on the Honourable Doug Downey, MPP, the Attorney General. Minister, you will have 20 minutes for your presentation, followed by 40 minutes of questions divided into two rounds of seven and a half minutes for government members, two rounds of seven and a half minutes for the official opposition members, and two rounds of five minutes for the independent members. Please state your name for Hansard, and you may begin.

Hon. Doug Downey: My name is Doug Downey, the Attorney General. Thank you, Mr. Chair. I'm thrilled to be here with everybody, all my colleagues. I'm pleased to join the committee today to present on a bill that, if passed, would transform the way Ontarians access justice in the courtroom and outside of the courtroom. It's a bill that will improve access to justice for people across the system by modernizing processes, breaking down barriers in the province's courts and tribunals, and breaking down barriers in estates law, family law and child protection sectors. I'll go through some of those in my opening remarks.

When COVID-19 hit our province, we acted decisively to keep people safe, to maintain the administration of justice. I've said it before, and it can't be understated: Along with our justice partners, we achieved breakthroughs and we moved Ontario forward decades in a matter of months. We have transformed the way the system works, and we've transformed the way that the structures interact with each other and the rules that bind them together.

We took action to allow for remote hearings, as we're having today. We rolled out a new online court case search service to open up online public access to information that you previously had to physically line up in a courthouse to see. You used to have to physically go to the courthouse, line up, go to a kiosk and then access the information. Now you can access it on the Web; you can access it daily. It's an access-to-justice and transparency improvement that we've put in place.

We accelerated our work to implement new processes to support the ways of conducting court matters, offering more remote proceedings and providing online methods for filing and interacting with the court. We wanted to reduce the number of people who have to go to a courthouse in person, and we've done that. Those are just a few of the results of the quick action we took to accelerate Ontario's journey toward a more accessible, responsive and resilient justice system. We had to do this and we wanted to do this. When COVID-19 struck, it really gave us the impetus to move forward.

These are solutions to decades-old limitations in the justice system. They required urgent action during COVID-19, as you know, and through this rapid response we saw an opportunity to expand access to justice beyond the justice system's immediate needs. Together with our justice sector partners, we are driving the most groundbreaking upgrades to the justice sector in Ontario's history.

But still, we know that there are elements of the justice system that can be improved to benefit people across Ontario, saving them money and reducing the time they spend waiting for their day in court and the delays that go with that traditionally. That's why we are proposing this legislation. We know there's more that could be done to address barriers to accessing justice in communities across

the province. The proposed Accelerating Access to Justice Act, 2021, builds on the actions taken in the immediate response to COVID-19 and proposes urgent reforms to address delays for Ontarians waiting to resolve legal issues in front of a judge or beyond the courtroom.

Before I continue and discuss the legislation in greater detail, I would want to acknowledge and thank the stakeholders whose input provided the driving force behind so many of the proposals that I'm going to be sharing with you today. These are just some of the groups that stepped forward to give us practical, front-line and great advice. They include: the Ontario Trial Lawyers Association, the Ontario Bar Association, the Federation of Ontario Law Associations and its many regional associations, the Law Society of Ontario, the Ontario Crown Attorneys' Association, the Ontario Paralegal Association, the Canadian Association of Black Lawyers, AJEFO, the working group on access to justice in French, the Office of the Children's Lawyer, the Office of the Public Guardian and Trustee, and many other legal organizations and members of the bar who participated in last year's consultations throughout the year on ways we could modernize estates law and promote diversity and transparency in our provincial judicial appointments system.

I want to start there. I'd like to talk about our judicial vacancies. Ontario's communities, now more than ever, require a strong justice system that works as well as it can to help people resolve their legal matters, with fewer obstacles and delays. This includes addressing the time that Ontarians are waiting for their day in court while judicial vacancies sit unfilled. We need qualified candidates to be appointed faster so that Ontarians will have their matters heard by a judge more quickly and with fewer delays.

Building on the proposals we made back in February 2020, in a process of engagement that began in 2019, the Accelerating Access to Justice Act would, if passed, allow judicial vacancies to be filled more quickly, with greater transparency and efficiency. To provide some context for why these changes are necessary, I want to highlight that currently judges are selected through a recruitment process that can take over a year. This allows these judicial vacancies to multiply. Typically, as few as two names are put forward at a time for the Attorney General's consideration. If another identical vacancy comes up, candidates often have to reapply to be considered for the same vacancy that they just applied for. It sounds nonsensical because it is nonsensical.

These are just a few of the considerable obstacles that cause delays for the people waiting for their day in court and make it more difficult for candidates to participate. That's why we're proposing, in the Accelerating Access to Justice Act, to require the Judicial Appointments Advisory Committee to recommend candidates who were previously recommended for a similar vacancy within the past 12 months; they don't have to start over. We're also proposing to increase the minimum number of candidates the committee presents to the Attorney General from two to six, allowing for a larger list of candidates to be considered for appointment, making for a better pool of candidates.

Before I move on, I want to be clear that the mandatory qualifications set out in legislation will not change. All appointments will still be based on the recommendations of the non-partisan Judicial Appointments Advisory Committee. The Attorney General will not receive the names or identifying information of candidates who were not recommended.

Another major component of the proposed changes in this legislation involves creating greater transparency surrounding the diversity of the judicial candidates who are being considered. We believe that it is necessary to update the system to help Ontario's bench better reflect the vibrant diversity of the province's communities.

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The current process for judicial appointments does not provide any insight into the diversity of who is applying, who is getting interviews, who is getting recommended or who is even interested in the process. By collecting and reviewing these statistics, there will be an opportunity to analyze, improve and promote diversity on our bench from the very beginning of the appointments process. If we don't know how the system is working with regard to diversity, we can't address issues that may be creating systemic barriers. These requirements would help keep us and the appointments committee accountable towards assessing a diverse pool of applications. I think this is a very important change that would help us uphold our standard of excellence when it comes to Ontario's judges and ensure that they more closely reflect the communities they serve.

We're also applying the same measure of accountability to the membership of the committee itself. Currently, the Law Society of Ontario, the Ontario Bar Association and the Federation of Ontario Law Associations appoint their own representatives to the committee. If the Accelerating Access to Justice Act is passed, the Attorney General would appoint the lawyer committee members, selecting from lists of candidates submitted by each organization.

In keeping with our commitment to accessibility, we are also making it easier for prospective candidates to apply by digitizing the application process, cutting down time-consuming paperwork that is prohibitive for lawyers considering applying. The current process means vacancies aren't being filled as quickly as they could and as efficiently as they could. Backlogs are never helpful. We need the court system to be operating at full capacity as much as it can, and we think these changes will help achieve that while maintaining Ontario's gold standard. After three decades, it's time to take a fresh look at Ontario's gold star system and to update to 2021 and beyond.

But now, I'd like to talk about virtual witnessing and modernizing in estates. I'm pleased to discuss the changes proposed in this legislation to make it easier for Ontarians handling wills, estates and other assets. This is a sector that has been left standing still and falling behind for far too long. The stagnation has created barriers for people.

Our government began to take action in this sector in 2019, with the introduction of the Smarter and Stronger

Justice Act. While that bill was moving through the legislative process, COVID-19 came along and created challenges for estates law in particular. I heard stories of people taking extraordinary measures to ensure that wills and powers of attorney could continue to be processed. I heard stories of lawyers and witnesses standing in the yards of testators, watching through windows as wills were signed. These were inventive solutions. They were inventive, but they're not ideal. In 2021, it's not only not ideal, it's not necessary, and it's costly and it's prohibitive.

At that time, we responded quickly, with an accelerated consultation with the estates bar, and introduced an emergency order to allow virtual witnessing of wills as a temporary measure. I'm pleased that we are now, following further consultation, in a position to build on what was originally introduced as an emergency response and put forward a proposal to permanently allow the virtual witnessing of wills and powers of attorney.

We're also proposing additional changes to estates law in the Accelerating Access to Justice Act that would make it easier for Ontarians to make decisions about their wills and estates and other assets. It's not common knowledge that when you get married your will becomes null and void. We heard from estates lawyers that this leaves people vulnerable to predatory marriages. This would repeal the section of the law that revokes a will upon marriage.

Another important change to estates law would be to allow courts to validate wills by adding in what are called "validation provisions." Currently, wills that do not strictly comply with all of the formal provisions might be found invalid and a testator's wishes might not be honoured. Giving the courts the power to validate wills that do not meet all of the technical formal requirements would help to prevent this from happening.

I have to give my sincerest gratitude to the members of the estates bar for their feedback as we work to put forward these proposals. These are important changes that will have a real impact on the people of Ontario. There is still more work to be done, but the changes proposed in this legislation represent yet another step forward in our work to transform the way Ontarians access justice, in the courtroom and beyond.

I also want to briefly touch on the proposed changes in the bill that would allow the Office of the Children's Lawyer to produce reports on specific issues, set out the views of children or produce a report following a more comprehensive investigation. The Office of the Children's Lawyer is an independent law office within the Ministry of the Attorney General that provides legal representation to children and youth across Ontario in court cases.

The office may also, when requested by the court, provide clinical reports for children involved in custody and access disputes. One of these reports is the voice of the child report, which ensures a child's views and preferences are heard as part of a family law proceeding. These reports summarize a child's stated preferences so they can be considered by the parents and the court in determining what is in the best interests of the child. They don't provide recommendations, but they can serve as an important tool in specific types of family law matters. We are now proposing to clarify that these reports can be admitted as evidence in court hearings that deal with the rights of a child.

The Accelerating Access to Justice Act would also allow the office to produce focused reports on narrow issues, like where a child should go to school. Making these reports admissible will provide greater clarity and give children a stronger, more prominent voice in the court process.

Another change in the legislation that would accelerate access to justice for families dealing with legal matters is the proposal to increase the monetary threshold and reduce the number of court appearances families need to make regarding guardianship of their children's property, saving families time and money. Parents and guardians have told us that the monetary threshold for guardianship applications for children's property is too low, putting them in a position to take on legal fees for small amounts of funds.

If passed, the Accelerating Access to Justice Act will amend the threshold so it would apply to money payable to a child under a court order or a court judgment or intestacy without a will. If that amount is under the monetary threshold, these changes would allow a child's money to be paid directly to a parent or guardian to hold on their behalf. Providing parents with access to money owed to their children without an application would give families a less burdensome route to solving their affairs.

Accelerating access to justice means accelerating access to justice for all Ontarians. As a government, we are proud of the impact of changes that we've been able to drive in terms of expanding access to justice in French. This legislation builds on the progress that we've made and will expand access to services for Franco-Ontarians. Currently, there are differences in provincial legislation regarding access to justice in French, including the right to file documents written in French. This Accelerating Access to Justice Act proposes to address these differences for francophones who are accessing the court system. This would guarantee the ability of francophones to file documents in French at all Ontario courthouses and for all matters, including civil and family law.

This bill also includes proposed changes to extend the right to obtain the French translation of documents filed in all courts throughout Ontario, as well as the right to receive the translation of reasons for decisions. These are proposed changes that were recommended by my advisory committee on access to justice in French, and we've engaged with AJEFO as well. Access to justice in French has been a priority for our government. I am pleased to be introducing changes to help further our commitment to making the justice sector more inclusive and accessible for everyone in the province.

Before I conclude, I would like to highlight an important proposed amendment that would help Ontario's land tribunal processes work better and more efficiently for Ontarians. Adjudicative tribunals play a critical role in our justice system, resolving disputes which can significantly impact the lives of the people who use them. Last

July, the government created the Ontario Land Tribunals cluster to bring the Local Planning Appeal Tribunal, the Environmental Review Tribunal, the Board of Negotiation, the Conservation Review Board and the Mining and Lands Tribunal under the leadership of a dedicated executive chair. However, these five land tribunals in the cluster remain separate entities with separate legislative mandates. As it stands, the arrangement worked well; however, land disputes can be complex, and some users currently need to appear before multiple tribunals to resolve their disputes.

With this legislation, we are proposing to consolidate the five tribunals into a single tribunal named the Ontario Land Tribunal. This new arrangement will provide a single intake process and case management system, reducing red tape and simplifying the land tribunal processes.

I do want to stress a few points. The proposed consolidation would not reduce or eliminate hearing or appeal rights before the tribunal. The members of the five land tribunals, including the Environmental Review Tribunal and the Conservation Review Board, would continue as members of the new tribunal when the change takes effect, ensuring that the tribunal expertise is maintained.

I recognize that I'm coming to the end of my allotted speaking time here today. There are other great elements in this bill that I wish I had more time to discuss. I welcome further discussion on the items as we go through the question period today.

I would like to conclude by thanking the members of the committee and all participants for taking the time to consider this legislation. If passed, the Accelerating Access to Justice Act would ensure our justice system is stronger, more resilient and prepared to respond to the needs of people in Ontario as we recover from COVID-19 and beyond. This legislation represents another critical step in providing access to a system that's fast, affordable and responsive, because justice accelerated is justice delivered.

As we have done throughout the process of developing this proposed legislation, I look forward to reviewing the valuable input that you provide. I ask all participants in this committee to consider supporting the Accelerating Access to Justice Act. I look forward to engaging further with Ontarians, our valued partners in the justice sector and the members of this committee on this important legislation. Thank you. Merci. Meegwetch.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you, Minister, for your presentation.

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This round of questions will start with seven and a half minutes for the official opposition, and then seven and a half minutes for the government, and then five minutes for independent members. I'll turn it over to the official opposition members. Ms. Bell.

Ms. Jessica Bell: Thank you, Vice-Chair. Thank you also, Attorney General, for your presentation.

We have received already numerous written submissions from people across Ontario who have some concerns with some elements of the bill. I want to speak specifically about schedule 6 and an issue that was raised by Tribunal Watch, which is a non-partisan group of lawyers and former adjudicators. They were emphatic when they spoke to me, and also in their written submission, that it's important to remember that the tribunals hear more cases in the legal system—they are essentially courts. They are very concerned about the decision to limit the right to an appeal and also to allow an adjudicator to dismiss a hearing in circumstances where there is no reasonable chance of success, but they get to make that decision before they actually hear the evidence. That is pretty concerning.

One issue that they raised that I'd love to hear your take on is the need to ensure that an adjudicator at a hearing is an expert on the subject matter. The law as we see it, as it's written, could allow for cross-appointments, which means that someone who has experience with LPAT issues might be placed on the Environmental Review Tribunal and would have limited experience or understanding of the issues, the history and the law.

What changes or regulations can you bring in or are you open to bringing in to ensure that every single adjudicator has subject matter expertise on the hearing that they're overseeing?

Hon. Doug Downey: I'm going to move back—and MPP Singh will know this as well, as a practising lawyer. I'm going to start with the judicial system and the expertise that judges need in a particular area. When they're appointed as a judge, they may well have been a real estate lawyer who is now hearing a constitutional case. It's about their capacity to do their job.

In terms of tribunals, we've appointed people who really are qualified in their areas. I don't know if you've had a chance to review their bios at all; most of them are posted publicly.

To your earlier concern, or Tribunal Watch's earlier concern: We're not changing the function of the rules around appeals. Nobody is losing any appeal rights. Nobody is losing any ability to have their case heard. We're—

Ms. Jessica Bell: Minister?

Hon. Doug Downey: Yes?

Ms. Jessica Bell: The challenge is that I have so many questions, so I really want to get straight to the point. As the law is currently written, would it allow an adjudicator who hears LPAT hearings to sit on another tribunal?

Hon. Doug Downey: You're asking me if a hearing officer who sits on a land tribunal can sit on the Social Benefits Tribunal?

Ms. Jessica Bell: No, if they could sit on the Environmental Review Tribunal or a tribunal that they had not had a history of sitting on before. That is Tribunal Watch's primary concern, that there could be cross-appointments without an assurance that the adjudicator would have the experience they need to oversee the hearing. Can you provide some assurance of changes to the regulation to ensure that does not happen?

Hon. Doug Downey: Well, I think Tribunal Watch is confused, because currently you can have cross-appointments. There are cross-appointments throughout tribunals in many different sectors, so that's the status quo.

In terms of expertise, Tribunal Watch will see, if they read the legislation, that we're going to have the Ontario Land Tribunal. There will be no cross-appointing. It's going to be one intake, one case management, one hearing body, so that people who are trying to move a matter through or are opposing a matter aren't having to go to two or three different tribunals for the same issue.

Ms. Jessica Bell: I'm happy to send you their written submission. They had a different take on it. They're pretty concerned about the issue of there not being a bar of expertise that is met when an adjudicator hears a specific hearing.

The other issue that they're concerned about—and I notice that you mentioned a lot of organizations that you had done outreach to for some of the judicial changes. But their assessment—and this is something I also agree with—is that there has been no meaningful public consultation on schedule 6.

Could you send us a list of organizations that you consulted with on schedule 6 before you developed this section of Bill 245?

Hon. Doug Downey: I'll say it as bluntly as this: It's been structurally like that for over half a year, and they know that. I feel like I'm talking to Tribunal Watch through you. They know full well that this has been functioning like this. And it's been working very well, except that there's excess red tape and we don't have the efficiencies we're going to have if this passes and we have OLT. Maybe you should give me their number and they can just text me directly, instead of texting you, because I don't think that they're serving you well by giving you half-information.

The land tribunals are going to be more of a one-stop shop for these related issues. Several files come forward in front of people who are very qualified at what they do, very non-partisan, impartial, to move something through a system. Nobody wins when the system is delayed. Nobody wins when you're caught up in bureaucracy and all that sort of stuff. It's bad for everybody, because people won't get to mount their credible arguments and get a rational decision at the end of it. That's what we're solving. We're making sure that the system moves better and coordinates better.

Again, who do we talk to? We talk to people who are in that ecosystem, and Tribunal Watch has been there. They have been very vocal publicly—

Ms. Jessica Bell: Minister, I'll make sure to send you their submission, and they would be happy to have a meeting with you. But you didn't answer my question, if you were going to get me a list of groups that you did outreach to on schedule 6, so I'll make sure to follow up with you on that.

My final question is from George Thomson. He is a former judge and a former Deputy Attorney General for Ontario and the government of Canada. He wrote a submission. I'm not sure if you read it, but he wanted to draw attention to us that the judicial appointment process of appointing judges in Ontario is universally praised as one of the best examples anywhere in the world of a truly independent appointment process. His argument is that if we're going to change it, which you are, that you provide compelling reasons for doing so. The argument that I've heard you say today is that we need greater diversity in the court. He argues that that is a weak argument at best.

My question to you is: There are many ways to achieve diversity in the legal system with appointments. I'm wanting to know, what other models did you consider to achieve diversity before you reached the one that's in Bill 245? What other models did you review?

Hon. Doug Downey: That's a great question. The reality is, George is right: It is a fantastic system and—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. The time is up. My apologies. Now we will move on to the government members. MPP Mitas?

Miss Christina Maria Mitas: Thank you, Attorney General Downey. I know that you began consulting on how to improve Ontario's judicial appointments process over a year ago in an effort to ensure that no one who is waiting for their day in court is also waiting for judges to be appointed in Ontario. Can you share with us why you're so focused on filling judicial vacancies sooner and what the tangible impact would be of the changes that you are proposing for everyday Ontarians who are now waiting for their day in court?

Hon. Doug Downey: Thank you for the question. The judicial appointments process, as I mentioned in the opening remarks, is very long and cumbersome. It's built on a paper-based system, and it does things that aren't logical. There are reasons why a vacancy comes open. The easiest one to manage is when we know somebody is going to retire. We have a sense, because judges tend to retire in the same age range. They communicate with the Chief Justice about that. She then knows that we have a vacancy coming. So that's easier to manage in terms of getting that advertisement out.

But we also have vacancies—and we have two recent examples—where the Superior Court, where the federal government take provincial judges and appoint them federally, and so we lose them immediately and we now have vacancies. Judges do the hearings; judges do the trials. We need to have the bodies available to be able to manage the caseload. So that's the second one. The third one is illness, which of course we can never predict.

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When a vacancy becomes open, we need to be able to move faster. Right now, like I said in the opening, if we had an opening in Toronto and people had applied for it through the cumbersome system that we used to have, and then during that process or even a month after that process we found that somebody who was elevated became ill, the way it's structured now, you can't just go back to that pool that you just reviewed a month before. You have to start all over. That's advertising and that's taking in applications. People have to reapply. That just doesn't make any sense.

We're modernizing it to get, quite frankly, bums in seats and get the matters heard, so that Ontarians can get their matters moving.

The Vice-Chair (Mr. Vijay Thanigasalam): I see MPP Kanapathi.

Mr. Logan Kanapathi: I wanted to commend you for your effort on improving the face of the justice system and ensuring it's reflective of the diversity we see in Ontario. You're a champion. You discussed it in your first reading and second reading. I heard loud and clear constituents in my riding would welcome the opportunity to see the bench better reflect the diversity of our communities.

Minister, can you please share more about how this bill would ensure that judicial appointments become more reflective of Ontario's diversity?

Hon. Doug Downey: Yes, thank you. This ties into the last question that MPP Bell had, in terms of the diversity piece.

Before I was elected, I went through debates for years, as a member of the Ontario Bar Association, as an active member of the law society, about how we move forward, because the status quo is not acceptable, quite frankly. We hear people talk about, as MPP Bell was leading into and Mr. Thomson's comments, "But things are good, things are okay." Well, they're better than other places, but they're not good enough. There are always improvements that can happen.

This is why we took this gold-star system—it really is a gold-star system. When you look around in Commonwealth nations and you look into other systems, we are doing very well. But we can do better, and it starts with measuring. That's why I want to know who is applying. Maybe we're not encouraging and attracting the diversity of the face of Ontario. That may be where the issue is; maybe it's not. Maybe the issue is that for some systemic reason, they're not getting interviews. Maybe it is; maybe it's not. Maybe they're getting interviews and maybe they're getting recommended, and they're not getting picked. Or maybe they're not getting recommended—who knows? But we're going to find out, because we're going to start measuring. Then we know what the dynamic is and we can start to deal with the issue, and take an already excellent system and turn it into a better system, updated for 2021.

I think those who are reluctant to see that kind of change are under the false impression that things are fine, that things are working the way that they should be, when I just think we can do better—and why not? Why wouldn't we trudge ahead and add more diversity to the face of the bench?

The Chair (Mr. Vijay Thanigasalam): Next, MPP Park.

Ms. Lindsey Park: I just did want to clarify. Certainly, Attorney General, in your life before politics, you spent many days in courtrooms. I think anyone who has spent a day in a courtroom in the province of Ontario knows we have a diversity problem on the bench. There aren't enough female candidates and lawyers who are appointed. There aren't enough Black lawyers appointed. There aren't enough broadly visible minorities appointed to the bench, and that needs to change.

I think everyone should be able to acknowledge on this call that we have a problem, and I want to commend you for the steps you're taking to fix it. As you say, we have a good system as a starting point, but we have to continually improve if we want to see change.

I just wondered if you could expand on how this system you're putting forward will help to figure out how we can improve this.

Hon. Doug Downey: Thank you for that. I started talking in response to MPP Kanapathi's question about the candidates, but also we need to change—not necessarily change, but make sure and ensure that the JAAC, the people picking, have diversity within their ranks, to make sure that the candidates are being interviewed by some of the diversity that we have.

That's why I'm asking for three candidates for each of the groups, so that we can make sure that we have a balance in many ways. That will give us a chance beyond the appointments that I have directly—it will allow us to make sure that we maintain a good, solid balance. Because we have to have—we all know this. I think once we explain what we're doing, it makes more sense to people. I would hope that the other MPPs, the other parties, would support this effort to try to create a more diverse bench and create more diversity in those choosing who is on the bench.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. Now we will move on to the independent members for five minutes of questions.

M^me^ Lucille Collard: Good morning, Mr. Downey. It's nice to have you here to answer the questions. I'd just like to pick up on MPP Bell's question—I think you were happy to answer that question—in terms of what kind of model did you look at to get inspired to change the current model, which by some people is considered to be already excellent. I'd like to hear your answer on that.

Hon. Doug Downey: I looked at different models in different countries. I guess I'll back up: I didn't just start looking at this stuff. Back when I was in school, I did a master's in judicial administration, a master's in court systems and public admin, so I've been engaged in this conversation for some time about our judiciary and how we can improve it. Again, when I say "improve it," that doesn't mean that it's bad; it just means that we can do more and do better.

One of the jobs that I had coming out of university—I spent a year as a court registrar. My job was training new judges on how to do what they do: how to do the paperwork, the mechanics of being a judge. I wasn't a lawyer. I hadn't been to law school yet, but I knew the system. That gave me a great opportunity, as a young individual, to come to learn and respect, at the time, the diversity that we had on the bench and where we were headed. The first Indigenous female Superior Court judge was someone I spent a lot of time with. She's now retired. To know that they're just normal people, they are humans—we, as humans, tend to congregate around our own experiences. I just think the system needs to move us beyond that. I think the system needs to encourage us to open pathways and open doors for other people, for other communities.

In terms of where I looked, I looked to France. The French system is very different, where you decide early on

that you're on a judge track versus a lawyer track. I've looked at the English system, of course, the British system, and I've looked across Canada and how they do it federally. I would have to say we have probably the best system in Canada, hands down. I just believe that. But I think we're going to make it better, and I think other provinces, hopefully, will look at what we do. The feds are better on their reporting of diversity statistics. They are better at reporting it because they collect it. We don't do that, so in that sense we're catching up with them.

M^me^ Lucille Collard: Thank you very much for that. I have an important question in regard to a bilingual judge. We know that there is a need to appoint a bilingual judge. I'd like to know how you're going to verify bilingualism of applicants. What is the system that is being contemplated?

Hon. Doug Downey: What a great question. When we have a challenge filling some of those bilingual postings, depending on where we are in the province—obviously, in some areas, it's easier than others. It's up to the committee to make that determination. It's self-declared on the application, and then the committee makes that determination. We don't need to change anything in the statute to do better with that, but I do have some ideas on how we can do that, not just for judges, but for JPs, for tribunal members. Self-declared bilingual people—I think there's a way that we can move towards a more systemic way of testing that, but we're not quite there yet on that. But I'm happy to chat with you more about it as we go.

0940

M^me^ Lucille Collard: Thank you. I'd be happy to help on this important issue.

One of the questions that has been raised is about the changes that are being brought to the JAAC system. So there is an added requirement for the committee to provide to you the list of non-qualified candidates, that this is an added discretion. I'm just wondering, why are we contemplating that? Why would you need to see non-qualified candidates?

Hon. Doug Downey: I'll work backwards on that, just because I'm watching the clock. I am not getting that list anymore. We amended that. We took that out because there was concern that it would lead to me seeing things that I shouldn't see, when the intent was to try and get some data, to try and get some metrics done. All that I will see—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up. The next round of questions of seven and a half minutes will start with the government members. I see MPP Oosterhoff.

Mr. Sam Oosterhoff: Sorry. It was just unmuting. I have the older version of Zoom on there.

Merci beaucoup, monsieur le Président, et aussi au procureur général. My question is about the francophone additions and the importance of ensuring that there is access to justice in French. It's a key priority for so many communities across this province, also here in Niagara. Of course, we want to ensure that Ontario remains a leader when it comes to providing services in French and ensure that there are these supports in place. Could you explain a little bit more about the steps that have been taken and how this will be beneficial for Ontario's francophone populations?

Hon. Doug Downey: It was surprising to me, actually. Again, I have a committee that gives me advice and gives me ideas on French language and francophone access. So it was surprising to me to learn that you, in fact, can't file documents in French at every courthouse in Ontario for civil and family matters. When we dug into that a little bit, we found that not only could you not do the filing, you couldn't necessarily get the order translated. You'd have to do it yourself. You'd have to get your own translation. That just doesn't strike me as the kind of public service that we would have in the Ontario of today.

The change that we made was to get counter service at every courthouse in Ontario in the language of your choice among our official languages. The next piece is in terms of getting that translation. That should not be a burden. It shouldn't be a barrier for one party. We made that commitment and we've made that change, that we can now provide the translation. We will pay for that, as a government. We're not trying to say that it has to be done this way or that way. We'll provide that service.

Again, it's one of those I just can't—I was shocked. After all these years—especially the Liberals, in the last 15 years, didn't address it. I want to say it's a small thing, but it's not necessarily a small thing, depending on where you are. My sensitivity to trying to advance and start fixing some of these things that had been neglected—I mean, the whole justice system was neglected for decades, just absolutely neglected. Francophone access to parts of our system was just unaddressed. I don't know if they weren't raised by previous governments, like if they were raised and ignored or if they just weren't raised at all. It really boggles the mind.

So these are a couple of, I'm going to say, small steps, because there is more to do. But these are important things to do to get the boxes checked and get that done.

Mr. Sam Oosterhoff: Absolutely. Perhaps you could speak about some of the organizations that you worked with, with regard to this. I understand it has been driven largely by the francophones, for the francophones, as they say, which is incredibly important. Could you talk about that?

Hon. Doug Downey: Yes. AJEFO is a strong partner for us to talk to. But the advisory committee itself is really important. They meet regularly, and I met with them not that long ago to hear what their priorities were as we were developing this legislation. It was really helpful, under the guidance of the chair of one of the justices in Ontario. He's a real advocate and a strong voice to help organize that committee and give us good advice.

Of course, when we consult, we consult with the other organizations, so whether it be OBA or FOLA. FOLA, the Federation of Ontario Law Associations, is set up with chapters, like the Simcoe county chapter or the Ottawa group. Within those chapters, they have individuals who have opinions, and we gather that as well to cross-check.

Quite frankly, we got no negatives at all. Nobody said, "No, you shouldn't be doing this." Again, it's almost an obvious thing that our government should be doing, and it's the kind of thing that we're looking for. We're trying to do as much of this as possible.

Mr. Sam Oosterhoff: Thank you very much. I believe that MPP McDonell had a question.

The Vice-Chair (Mr. Vijay Thanigasalam): MPP McDonell?

Mr. Jim McDonell: Thank you, Minister. It really is timely, as I think you mentioned, that we see some of these changes coming forth. COVID-19 has taught us a lot of lessons about what can be done. It is very likely that we probably wouldn't have been able to move ahead on some of these initiatives if we didn't have the wherewithal to try to experiment on some of these virtual items. Now that they've worked out so well, there's that initiative to make them permanent. Maybe you could just expand a little bit on that and some of the lessons we've learned.

Hon. Doug Downey: Some of the things that we were doing was back in Bill 161, back in December 2019, when we introduced that bill; things like virtual commissioning. There were pieces that we were trying to move. But then when COVID hit, it just exacerbated all of the problems that had been left unattended to in the justice system, and then it was all hands on deck. When we look back in time, this is going to be one of the areas that was able to advance because of COVID. It will be the silver lining to a very tough time for people, because it broke down barriers and opened up doors for us to be able to drive through and make change in record time.

That's why I say we changed the system and brought it forward decades in months. It took a focus and a resolve. I have to say, I thank my team, under the leadership of Joseph Hillier, my chief of staff, and Amanda Iarusso, my director of policy, and Jesse in communications. We all tucked in and just got at it, and we found the same willingness on the judicial side with the judges and with the bar. The Ontario Bar Association took up training of hundreds and hundreds of people for Zoom, back before—I don't know if you were on Zoom before we got into COVID. Well, now courts are operating entirely on Zoom; tens of thousands of cases and hearings happening. So it's a really exciting time to be able to make positive change, and that's what this bill is. It's the next evolution. It's the next step in accelerating access to justice on a lot of fronts. That's why there's so much in it.

Mr. Jim McDonell: Yes, and just a couple of points: I know, talking to some local Cornwall police and OPP, they talked about the issues around remand and driving from our area to Ottawa with two police officers to pick up somebody who is incarcerated in Ottawa at the detention centre and then driving them down to Cornwall, sitting in court, and then having to drive them back. Some days, they run out of time and they have to go back the next day. So it's a complete waste of time.

Just quickly, a lawyer who works for legal aid—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies. The time is up.

Next we'll move on to the official opposition for seven and a half minutes. MPP Bourgouin?

0950

M. Guy Bourgouin: Bonjour, monsieur le Procureur général. Je voulais vous demander une question. Quand je vous ai entendu dire que vous étiez étonné de voir qu'on ne pouvait pas déposer des documents en français, je peux vous dire que moi, ça ne m'a pas surpris. Quand ça vient aux services en français quand ça vient au système judiciaire, c'est pitoyable pour la province.

La première question que je vais vous demander : allez-vous remplacer le juge bilingue à Sault Ste. Marie qui est—comme vous le savez, Sault Ste. Marie, c'est une région désignée et on est protégé par la Loi sur les services en français. Allez-vous le remplacer, oui ou non?

Hon. Doug Downey: I'm going to recap what I believe your question was. It has to do with the bilingual judge in Sault Ste. Marie and the Algoma district? That's the focus?

Mr. Guy Bourgouin: Yes. Will you replace him according to the law on French language services and also because it's a designated francophone area?

Hon. Doug Downey: Thank you for the question. Obviously this was raised in the House the other day, in terms of a judge got transferred from one district to another and it created a void, where you're saying that we're now not complying with our baseline obligations.

The movement of judges, the transfer of judges: When a judge is appointed, they're told, informally or formally, "You will not move for five years. That's where you're going to be." That's just sort of the unwritten rule that the Chief Justice has laid out. She makes the decisions on the appointment of judges, where they are and how long they're there. If we're going to have a need for a bilingual judge, she will, in her letter to me, identify that we need a posting for that.

The honest truth is that it's not within my control to deploy the judges, but I will raise it with her. I was supposed to chat with her yesterday.

Mr. Guy Bourgouin: Minister, I understand they've all got to be appointed and they can appoint as many English judges as they want, but at the end of the day, it is your responsibility to make sure that we have the services in French where there's a designated area and according to la Loi sur les services en français.

Again, will you make sure that we do get a bilingual judge, so we get the services in French in Algoma, not in Sudbury? Not in Sudbury, because that is not what it is; we're supposed to be protected, and our services too.

Hon. Doug Downey: I hear you. I hear your frustration. I cannot make the Chief Justice do things, but I can raise with her the gap in service. I will have that conversation—that I can do—but I cannot, because of judicial independence, make her move judges around.

Mr. Guy Bourgouin: I just want to move on to my next question, just to show the services that we live with in Ontario for francophones. Translation is another issue. Will you improve the translation?

We've asked questions about a woman who could not testify in French for une agression sexuelle. She could not even testify, and then the time elapsed, and then, of course, it was thrown out. She couldn't even testify. Will you improve the services in French? It's fine to give documents, but we should get services in French when it comes to translation, so we can testify in our own language and have bilingual judges who will listen to us. Will you do that, yes or no? That, by the way, was in the same riding: Algoma–Manitoulin.

Hon. Doug Downey: Well, I'd have to know the specifics of why that system failed. Of course, we're not going to intentionally deploy deficient translators. I don't know—was it a lack of service or was it poor service?

Mr. Guy Bourgouin: It was a lack of translators, and this is not unique to Sault Ste. Marie. It's the same thing in Thunder Bay: People cannot get their day in court. They have to wait longer. In some cases in Kapuskasing, for family courts, they have to wait 16 months, when anglophones only wait six months.

Will you make sure that we have the proper translation people, or more people to translate when we do translations in French, so that we can have the same services? "Équivalent" in French means "the same." Will you as the Attorney General make sure that we have equivalent services in French?

Hon. Doug Downey: I absolutely agree with the goal. If you give me any examples where it's not working on an ongoing basis—keep feeding them to me—we will work to level that field to make it equal.

Mr. Guy Bourgouin: I will pass to Gurratan.

The Vice-Chair (Mr. Vijay Thanigasalam): MPP Singh.

Mr. Gurratan Singh: Since I am on an older version of Zoom, can you leave me unmuted? Just because we lose a lot of time in the muting and unmuting.

Thank you so much for your comments, Attorney General. I'm going to quote an article from the Toronto Star. The headline is, "Ford Government Says It's Changing Judicial Appointments to Promote Diversity. Racialized Lawyers Accuse It of 'Power Grab.'" In this article, they make reference to Nader Hasan from the Canadian Muslim Lawyers Association; they make reference to Raphael from the Canadian Association of Black Lawyers and also to the South Asian Bar Association. Resoundingly, all three groups say that this is not a change in the JAAC to create diversity. Instead, it is a "power grab" to create a more partisan system of judge selection. What are your comments on that?

Hon. Doug Downey: It's unfortunate that they're attributing motive when we've talked with several of the organizations to explain why we're doing what we're doing. If it was about doing something different, I can tell you that the tools would have been very different. How measuring diversity can possibly lead to a power grab I don't understand. Imputing a motive of that when the bare face of it shows that we're trying to advance the system—I can tell you the Ryerson LPP program, the law practice program—

Mr. Gurratan Singh: Just to add in, Attorney General, on that specific point, Raphael Tachie actually wrote in the article, "It's challenging to read something that says, 'We're doing this to increase the diversity of the judiciary,' when the equity-seeking groups didn't ask for it." It also mentions that this is the gold standard for judge selection. Why open yourself to any criticism that this is going to create a more partisan system of judge selection? Why do that in a system which is globally recognized as one of the best systems of judge selection in the world?

Hon. Doug Downey: Well, the answer to that is simple: It's because it's the right thing to do. It's the right thing to do because we need to measure what we're doing to be able to effect change. Why open myself to criticism? Because I believe it's the right thing. Conservatives actually do things when others just talk about them. This is something that you're going to see will manifest change on an already excellent system to make it even better.

Mr. Gurratan Singh: Nader Hasan wrote, "We see this as a power grab dressed up in the very thin veneer of purported diversity. Our view is that diversity and excellence are best preserved by maintaining the independence and integrity of the current process." You're seeing racialized lawyers very clearly saying to you, Attorney General, that they don't buy this. The position—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up. Next we'll move on to the independent members for five minutes.

M^me^ Lucille Collard: A couple of short questions regarding the changes to the JAAC: In subsection 43(11), it says that the information provided by applicants is kept confidential "except as authorized by the chair." I'm just wondering what kind of scenario is being considered. In what case would the chair disclose confidential information, and to who?

Hon. Doug Downey: What we tried to do there is codify what's actually happening currently under the rules. So it's not a change; it's just creating some transparency as to how this would operate. It would be in the chair's discretion. It would not be something I would wade into, but it may be that there's a request for information from a third party to say, "We're doing a study on who is getting appointed, and so we'd like to have some assistance with data," and that kind of stuff. But it doesn't change in terms of confidentiality of individuals' names. There's still protection on that type of piece. I think the committee would talk about it. I think the chair would have to deliberate on what's appropriate and what's not. But we're trying to codify something that's already there.

I've heard back from several people, including George Thomson, indirectly, who was mentioned by MPP Bell, and some people who are saying, "Here's a scenario that I might be concerned about." I think that may bear some more conversation by the committee about how that section may work or how we might be able to tighten it up.

M^me^ Lucille Collard: Thank you. Just another quick question: One other provision also provides for the Attorney General to recommend another criterion than the one that the JAAC has already identified. Is that the intention?

And is there a mechanism to make sure that this added criteria by the Attorney General would be made public?

Hon. Doug Downey: I would be public. I've been very public about saying that I want to see judges who come to me to have some computer competency, for instance. I want them to think about that. Why not ask that question when they're interviewing people?

I particularly want judges who are connected to a community, who have some community service, who have some interconnectivity. Whatever that community is, it doesn't matter to me, but I want them to have some connection to the people they're going to be serving.

I also want them to have an understanding of victims. It doesn't matter, again, whether they're coming from the private bar side or the crown side, but that they have a fundamental understanding of victims and the needs of victims, and how to manage and assist people in the system as we move through.

I'm very open about the kinds of things I'm looking for. I think it only makes sense for the committee to hear—when I'm ultimately picking the individual, they may as well hear what it is I'm looking for. I think the transparency actually obligates me to be upfront and honest about that.

M^me^ Lucille Collard: And just one quick question about that: Some of the changes you're proposing is to try to address the vacancy in our courts. What is the current rate of vacancies in courts in Ontario?

Hon. Doug Downey: I don't know if I can—we've just sent for several to the committee. I'm not going to say where, but several have just been requested for the committee to deal with. We're running at about a dozen—well, more than that now. I'm going to say between 10 and 15 are vacant right now. That's a lot of judges. In some areas, we're running with one judge where we used to have two, and it's starting to cause trouble.

M^me^ Lucille Collard: Okay. One of the criticisms I've heard as well is that the Attorney General or the government appoints a majority of the committee members on the JAAC. How do you respond to that? Because there is an appearance—and you know that judicial independence or government interference needs to be actual and perceived—that now the government has more control over the process: What do you say to that?

Hon. Doug Downey: It's an advisory committee. They're independent and they advise me who is qualified. So it only makes sense that I would appoint people who are going to advise me.

But there are people on the committee whom I do not appoint. The three judges on the committee are two by the Chief Justice, one by the judge association. And then three of the spots are from the association sending lists of three to pick to make sure that we have balance.

They advise who is recommended, and then ultimately it's up to me to recommend to cabinet who, among those recommended, should sit on the bench.

The Vice-Chair (Mr. Vijay Thanigasalam): Seeing the time, this committee now stands in recess until 1 p.m.

The committee recessed from 1003 to 1308.

The Vice-Chair (Mr. Vijay Thanigasalam): Good afternoon, everyone. I'll call this meeting to order. We are continuing public hearings on Bill 245, An Act to amend and repeal various statutes, to revoke various regulations and to enact the Ontario Land Tribunal Act, 2021.

Presenters have been grouped in threes for each one-hour time slot. Each presenter will have seven minutes for their presentation. After we have heard from all three presenters, we will have 39 minutes of questioning divided into two rounds of seven and half minutes for the government members, two rounds of seven and a half minutes for the official opposition and two rounds of five minutes for the independent members.

SOCIETY OF TRUST AND ESTATE PRACTITIONERS CANADA

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

MR. ROBERT GIBSON

The Vice-Chair (Mr. Vijay Thanigasalam): I would like to welcome Paul Taylor from the Society of Trust and Estate Practitioners Canada and Ramani Nadarajah from the Canadian Environmental Law Association. Also, I would like to welcome Robert Gibson.

We are going to start with Paul Taylor, the chair of the Society of Trust and Estate Practitioners Canada. You have been allotted seven minutes for your presentation.

Mr. Paul Taylor: Thank you, Mr. Chair. Thank you for the ability to speak to this committee. I'm here to represent the Ontario members of the Society of Trust and Estate Practitioners. STEP is a worldwide organization of trust, legal, accounting, financial planning and insurance professionals, with over 20,000 members worldwide, including 3,000 in Canada. I'm chair of STEP Ottawa and as such a member of the national board. I'm also deputy chair of our national conference committee and an editorial board member of our quarterly publication, called STEP Inside. In my day job, I'm a partner at Borden Ladner Gervais, and I practise in this area.

My focus today is on some of the changes in Bill 245 to estate and incapacity legislation. While we believe that a more thorough review of our estates statutes is required, we're pleased to see legislation move forward on some of the outstanding issues facing our profession.

First, the bill proposes to make witnessing wills and powers of attorney through audiovisual technology permanent. While some of our members are enthusiastic supporters of this change, we are a cautious bunch and we do have some concerns about the risks associated with remote witnessing, many of which cannot be fully dealt with even when adhering to best practices. We cannot be fully certain as to who else is in the room. My practice, when in person, is to always exclude anyone other than the testator from the room. We just can't be certain of this when we're doing it on video, and vulnerable individuals will be more reliant on family and friends making arrange-

ments to sign documents. This reduces privacy and increases the risk of financial abuse. The legislation should contemplate these issues and deal with them.

Second, the majority of our membership is of the view that repealing the provisions revoking a will on marriage is a step in the right direction towards protecting vulnerable people against predatory marriage. In respect to the bill itself, there is concern surrounding the lack of transition rules. When similar changes were made in Alberta and in British Columbia, transition rules were put in place clarifying that if a will had previously been revoked through a provision, it would remain revoked and would only be revived with a new will. We recommend that you consider what would occur to existing wills that have been revoked and make this clear in the legislation.

Third, on the whole, our membership is supportive of the change to treat separated spouses in the same manner as divorced spouses in respect of gifts in a will and appointment as executor. Many spouses who separate and go on to live separate lives nonetheless do not obtain a formal divorce. We do, however, recommend that you consider whether similar provisions should be considered in the Substitute Decisions Act, as the proposed change makes it more likely that a separated person will not get to revising their planning documents right away. Nonetheless, it's not likely that a person would desire to have their separated spouse make health care and financial decisions for them while they're incapable.

Fourth, the majority of our membership is supportive of adopting a validating provision, which is also referred to as substantial compliance. This allows the courts to revive or alter a will where a testator's intent is clear. While it's possible that some litigation may result from this, we have seen numerous circumstances where an error in a will has led to significant litigation, even where the testator's intention is very clear. This change would allow those issues to be dealt with on a simple application, and this balances the need for certainty provided by formal requirements with ensuring the intention of the testator is respected.

Fifth, as a result of the proposed changes to the Children's Law Reform Act, payments could be made directly to the parent of a minor child where the child inherits on an intestacy. Note that this is the child's money, not the parent's. The implications should be reviewed. In particular, we recommend consultation with the Office of the Children's Lawyer. While making this change does simplify matters, making it so you don't require a guardianship application or to pay funds into court, there is significant potential for the funds to be misused by the parent, and there's little or no oversight on the transfer.

There are also a few items we'd like to discuss that are not currently in the bill, but should be considered as amendments. First, in numerous other provinces, substitute decision-makers have the ability to make beneficiary designations on registered plans where an existing plan is being transferred or converted. We strongly recommend that a similar change be made here, as noted in our submissions. Currently, if an incapable person has an RRSP and they turn 71 and therefore have to convert to an RRIF, and they're incapable, so they can't make the change themselves, or if an attorney changes financial institutions to consolidate assets, those beneficiary designations do not carry through. This is clearly contrary to what the wishes of the incapable person are, and it provides the opportunity for significant financial abuse.

Second, a recent Superior Court decision, Calmusky v. Calmusky, introduces unnecessary and significant uncertainty with respect to the validity of beneficiary designations. The government has received numerous submissions on this point, and it's recommended that it take this opportunity now to amend this bill and deal with the problem. We've included submissions on this.

Finally, cases like Calmusky and instances where benefit-free designations, joint accounts and other planning are used to take advantage of vulnerable people and even those who are just simply trying to do what's best for their family would be significantly reduced if the estate administration tax, known as probate fees, was eliminated and a simple filing fee were required for probate.

"Probate" should not be a bad word. It provides certainty to estates, to families and to third parties. It allows them to know they're dealing with a valid will and the appropriate individuals represent the estate. However, too many individuals contort themselves to avoid paying this tax. It somehow manages to both be ineffective at raising funds for public goods—it's slightly more than one tenth of 1% of government revenues—but at the same time, it significantly distorts the behaviour of the public in a very negative way.

Even with recent changes, this tax is, in effect, regressive. For those with significant assets, there are various common planning tools available that result in the tax not being applicable. Those who you refer to as working families or the middle class are the ones who bear the brunt of this tax. This is clearly not the way forward, and we recommend that it be eliminated.

I'd like to close by thanking you once again for the opportunity to present. I can assure you that STEP will work hard to ensure our members are kept—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; your time is up.

Next we have Ramani Nadarajah from the Canadian Environmental Law Association. You have been allotted seven minutes for your presentation. Please unmute yourself.

Ms. Ramani Nadarajah: Thank you, Mr. Chair. My name is Ramani Nadarajah. I'm counsel with the Canada Environmental Law Association, a legal aid clinic specializing in environmental law. I'd like to thank the committee for the opportunity to make this presentation on Bill 245, Accelerating Access to Justice Act, 2021.

CELA's analysis of the bill has been confined to schedule 6 and schedule 10. As we note in our written brief, which was submitted to the committee, we are very concerned about the impact the bill will have on access to justice for our client communities throughout Ontario. Although our brief outlines numerous concerns with the bill, I've proposed to highlight only five, due to time constraints.

Our first concern is the potential loss of expertise that will result from the proposal to amalgamate five tribunals into a single body that will be known as the Ontario Land Tribunal. It's important to note that each of these five tribunals have very different statutory mandates and their members are highly specialized in terms of their expertise. However, as a result of the amalgamation, a tribunal member with little or no environmental experience will be able to preside over cases that would only have been heard by a member of the Environmental Review Tribunal. The amalgamation will thus result in a considerable loss of institutional expertise, which has been a foundational principle of the administrative justice system since its inception.

Secondly, we are also concerned about the limits to judicially review or appeal certain decisions by the tribunal. Subsection 13(4) of schedule 6 of the bill states that unless the tribunal's failure to comply with the rules causes "a substantial wrong that affects the final disposition of a proceeding," it cannot be judicially reviewed or appealed. This section of the bill insulates the tribunal from oversight or supervision by the courts, where its actions or inactions have caused a substantial wrong to a party. As such, it undermines the tribunal's accountability to the public and the requirement that it operate in accordance to the rule of law.

Thirdly, we are very concerned about the loss of public participation rights. Section 17 of schedule 6 of the bill states that a non-party can make submissions to the tribunal in writing only. This is extremely troubling, given that tribunals such as the Environmental Review Tribunal and the Local Planning Appeal Tribunal deal with matters that have much broader impacts on the public. These tribunals make decisions about whether a subdivision should be built, whether to grant a permit for groundwater extraction by a water-bottling company, where to locate a waste disposal site and whether a company that's discharging toxic emissions should be granted a licence. These decisions have profound implications for Ontarians.

Public trust and confidence in the outcome of a hearing is enhanced if members of the public can voice their concerns directly to a tribunal. It gives the person the assurance that they have been heard and offers tribunal members the opportunity to ask questions and clarify issues in disputes. Oral submissions also allow a tribunal member to resolve any confusion or address any gaps in information. This would not occur if submissions are restricted to writing only.

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CELA is also very concerned about section 19 in schedule 6 of the bill. This section gives the tribunal broad discretion to dismiss a case, either on its own initiative or on the motion brought by a party. Under the current rules, before the Environmental Review Tribunal, for example, a tribunal can only dismiss a proceeding on jurisdictional grounds.

A party can also seek to have a proceeding dismissed, but again this is on very narrow prescribed grounds. However, under the bill, a hearing can be dismissed at a very early stage if it has no reasonable prospect of success. The new test for dismissal is worded very broadly. Consequently, CELA is very concerned that hearings may be abruptly and unfairly terminated at a very early stage prior to any evidence being brought.

Finally, I want to deal with schedule 10 of the bill. Schedule 10 of the bill precludes appeals to the minister from decisions made under environmental legislation. The existence of ministerial appeal rights provides a very important safeguard since appeals from the Environmental Review Tribunal decisions to Divisional Court can only be made on questions of law. Schedule 10 will undermine public access to justice, because it will no longer be possible to appeal decisions on questions of fact and policy.

For all these reasons, we recommend that both schedule 6 and schedule 10 be withdrawn from Bill 245. Those are all my submissions, subject to any questions.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. Next we have Robert Gibson. You have been allotted seven minutes for your presentation. You may begin.

Mr. Robert Gibson: Thank you for allowing me to speak at this committee. I'm here because I have concerns about changes that impact environmental law.

I know that Dr. Bullard in the US, known as the father of environmental justice, has found that hazardous sites like landfills and incinerators were more often located in predominantly Black neighbourhoods, and a lot of cases involve marginalized communities that the tribunal might face. Ecojustice has an article pointing out environmental racism in the Canadian context, such as the Chemical Valley in Sarnia which is impacting the First Nation there and mercury contamination in the English-Wabigoon River. In addition to this, different First Nations have cultural traditions and relations which could be negatively impacted by environmental harms.

I bring up the fact that BIPOC individuals are impacted the most by environmental pollution because schedule 6 combines multiple environmental tribunals which include specific environmental expertise that could be lost with the combination of multiple tribunals. This is also an argument that the Canadian law association made in more detail.

Schedule 10 is problematic because it may take away the public's right to appeal decisions. Often, government legislation has been made after lawsuits have been launched or minister's zoning orders have been used so that people cannot access environmental courts at all. This bill does not address that. I do not feel that that is accountable or transparent, which were both mentioned in the throne speech.

Under section 38(1) of the Environmental Bill of Rights, it says, "Any person resident in Ontario may seek leave to appeal from a decision whether or not to implement a proposal for a class I or II instrument of which notice is required to be given under section 22...." Some of these changes impact the rights to appeal.

There should be reforms in this area, which I do not feel are included in this bill, to reduce the cost of going to court.

Section 17 of schedule 6 is especially problematic: "Except as may be provided or under this ... act, a person who is not a party to a proceeding may make submissions to the Tribunal with respect to the proceeding in writing only." This does not allow for cross-examination and limits expertise valuable in a lot of environmental decisions.

Subsection 19(c)(1) is problematic, because it defeats the whole purpose of going to court. It's unknown whether or not you're going to win the case if it's dismissed before evidence is presented.

There are serious systematic issues impacting the BIPOC populations because of cost.

The Canadian Environmental Law Association says, "Schedules 6 and 10 of Bill 245 were introduced in the Ontario Legislature without any pre-consultation with CELA, our client communities, or other environmental stakeholders." This is concerning, because the government of Ontario has a history of not consulting with the public on environmental issues, and this is not included in the Environmental Registry the last time I looked. Ministerial zoning orders would skip this entire process.

I believe that the natural environment should have standing in environmental law. They have been in New Zealand and those recent—above all in Quebec, people are talking about having environmental protection, and they're too often taken for granted.

And subsection 15(1) of the Environmental Bill of Rights says, "If a minister considers that a proposal under consideration in his or her ministry for a policy or act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented."

I believe that there are significant impacts to the environment, because these deal with environmental decisions.

Another section, section 5 of schedule 6, says one member counts towards quorum. I don't know any other situation where only one member counts towards quorum. You can't make a good decision with just yourself.

I'll conclude with: The speech from the throne called the government "for the people." If people are not consulted on the Environmental Registry and—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies. The time is up. Thank you for the presentation.

Now we'll move into questioning. This round of questions will start with the government members for seven and a half minutes, and then the official opposition for seven and a half minutes, and then independent members for five minutes.

Government members, you may begin. MPP Kanapathi?

Mr. Logan Kanapathi: Thank you to all the presenters. My question is to Paul Taylor from the STEP organization. Thank you, Mr. Taylor, for being here and making your deputation. I understand there have been numerous opportunities for the estate bar to engage with the Attorney General and his team over the last years on various estates topics, from the value of the small estate to the probate application process to [*inaudible*] to the Succession Law Reform Act and others. I understand that these opportunities have come by way of consultation, lectures by the Attorney General, fireside chats and the round tables he has participated in with the estate bar.

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Can you please share whether you had a chance to consult with the Attorney General on the changes in Bill 245 and your involvement in that process?

Mr. Paul Taylor: Thank you for the question. We had two opportunities to consult. We consulted in August. We were provided about a week to consult on some items on the small estates and some other questions, and then we were given the opportunity to speak, I guess, to provide a quick, very short statement in respect of some draft legislation. But this is the first opportunity we've had to see the bill in its entirety and all of the provisions.

Mr. Logan Kanapathi: Our Attorney General and the government have made significant progress in the past year modernizing the Ontario justice sector, making it easier, faster, as you have mentioned, and more affordable for people to resolve their legal issues and interact with the justice system. Can you please share which of these efforts you have found to be most helpful for your members, your practice and your clients?

Mr. Paul Taylor: Certainly I think the summer consultation was the most helpful, as it was a chance for us to reach out to our members and ask them questions on a lot of these topics. As many of these things are, I suppose, it was quite a brief timeline, but it was a chance, at least, to get our members' input on this. So I think that was probably the best opportunity we had to consult, in August.

Mr. Logan Kanapathi: Thank you.

The Vice-Chair (Mr. Vijay Thanigasalam): Next we have MPP Park.

Ms. Lindsey Park: Thank you for your thoughtful submission on the topic of some of the estate changes in this legislation. Perhaps you can clarify, because I think you said some things were kind of going in the right direction and you'd like to see some tweaks in the bill; maybe you can just reiterate for the committee what your submission is. Is it that you'd like to see some things added? Is there anything actually in print in the bill that you would like to see removed? Or is it simply clarification, and broadly you're comfortable with the direction?

Mr. Paul Taylor: Thanks. That's a good question. I think that on the whole we're pleased that these changes are being made. It has been quite some time since estate law in Ontario has really been revisited. As I mentioned at the very beginning, it likely at some point will be worthwhile to do a broader revision, like they've done in BC and Alberta, and take a step back and look at the whole picture, but on the whole I think we're happy these changes are being made.

I think the key issues we were looking at in terms of what might be tweaked would be whether there can be

more guidance on the audiovisual technology forefront and whether we could get some sort of a transition provision in, in respect of the revocation on marriage. There are very similar provisions in the BC and Alberta acts, and they have that legislation; good legislation is worth borrowing from.

Then, I think the other item that's in the legislation is the issue of—we just want to make sure that the Office of the Children's Lawyer has been involved in the discussions on making payments directly to a parent, because on its face it seems like a really good change. I've had files where we've had a deceased parent and we had to go to court and pay the money into court. It's a whole big process, and the surviving parent really would just look after the money for the kid. But there are some instances where the parents shouldn't be looking after the money for the kid. This is the child's money. It's not money that is going to the parent.

The other two items that I think could be amendments that would not be overly onerous would be, like in BC and other jurisdictions, adding something in the Substitute Decisions Act or the Succession Law Reform Act to allow substitute decision-makers to carry forward beneficiary designations. It really is a big issue. I've seen it on files that I've had for individuals and I've seen it on files that I've had for financial institutions. Nobody on either side knows what to do with this, because it's clear what the intention is, but the law doesn't give you the leeway to carry those forward.

The final one is on Calmusky, which the estates bar, I think, is not particularly pleased with, because it really does open up what should be a very clear thing, which is making a beneficiary designation go to the person you leave it to. What Calmusky does is question that. That's something that we would hope could be included since these things are on the table here.

Ms. Lindsey Park: Is there more time, Chair?

The Vice-Chair (Mr. Vijay Thanigasalam): There is one minute and 12 seconds.

Ms. Lindsey Park: Okay, very good. Maybe if you could rank, because there are lots of good suggestions you've made in what you've said, what you see as most urgent.

Mr. Paul Taylor: Probably the Calmusky issue is, to me, the most urgent and the most pressing, because this is going to lead to a lot of uncertainty. Then I think I would probably go with the substitute decision-maker issue as second.

The others, like I said, are tweaks. It will be unfortunate, but probably case law or guidance from the law society or something could steer us. But these two issues really do need clarity, and that's clarity that I think only you can provide.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. We have 10 seconds left, so now we will move to the official opposition. You have seven and a half minutes for your questions. You may begin, MPP Bell.

Please unmute yourself, MPP Bell. Try again.

Interjection.

The Vice-Chair (Mr. Vijay Thanigasalam): My apologies; we couldn't hear MPP Bell. There must be some technical errors. We'll go to MPP Singh and then we'll come back to MPP Bell. MPP Singh?

Mr. Gurratan Singh: No problem. Whenever MPP Bell is able to get her unmuting to work, she's more than welcome to join in.

My question is to Ramani. You have discussed some of the issues in access to justice. Can you expand on that a little bit? What are the main barriers to access to justice and how they relate to this bill?

Just waiting for Ramani—there we go.

Ms. Ramani Nadarajah: Access to justice is basically the opportunity for the public to have access to tribunals and the court. There are multiple layers to it. It's not just being able to physically go to the administrative tribunals and court and present your case, but it's also things like ensuring that they have a voice, that they are able to make presentations to the tribunal, that the proceedings are done in a manner that really doesn't favour a particular sectoral party.

Mr. Gurratan Singh: How does this bill limit access to justice?

Ms. Ramani Nadarajah: It does that in multiple ways, as I pointed out. First of all, the bill restricts the rights of participants to make oral submissions for the hearings. They will no longer be allowed to do that. For example, if a proponent decides to build a waste disposal site and neighbours in that community wanted to come and express their concerns verbally to the tribunal, they're not going to be able to do that anymore. They can only do that in writing.

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Mr. Gurratan Singh: Your comments are in relation to—and if you don't know the specific schedule, it's not a problem. Is this schedule 6 or schedule 10 you're talking about specifically?

Ms. Ramani Nadarajah: I'm talking specifically here about schedule 6. Schedule 10 only deals with removing appeals to the minister. The rest of my comments which were made all deal with schedule 6.

Mr. Gurratan Singh: How do you feel about how the motion to dismiss hearings negatively impacts access to justice?

Ms. Ramani Nadarajah: That also certainly has huge implications to access to justice, because it basically allows the tribunal, on its own initiative or on a motion brought by a party, to dismiss a case even before the evidence has been heard. The likelihood is that the proponents or parties who are very well-resourced are the ones that most likely are going to bring this kind of motion against citizens' groups or individuals who have brought a case to—

Mr. Gurratan Singh: This would be the circumstance where a big developer has a lot of money, and a neighbour doesn't like a project coming forward and they go to the tribunal, expecting to have a tribunal that functions easily, but instead they're met with a motion funded by a large developer who can just ask for the entire motion to be

dismissed. That proponent would then be bogged down in that motion, correct?

Ms. Ramani Nadarajah: That kind of scenario is very likely to happen, and that's the concern. The concern, of course, is that the tribunal is going to be dismissing the hearing at a very early stage of the hearing, prior to any evidence having been heard. This is very different from the rules that existed before. Previously, the tribunal could only dismiss a case on very narrow jurisdictional grounds—

Mr. Gurratan Singh: Would you say that it's almost contradictory to the very name of this bill, which is called the Accelerating Access to Justice Act, but the actual changes being put forward are actually going to be limiting access to justice? Is that fair to say?

Ms. Ramani Nadarajah: Well, having done a very thorough review of schedule 6 and schedule 10, our position is that the bill, in fact, will erode access to justice.

Mr. Gurratan Singh: The majority of people interact with the justice system through tribunals; is that correct?

Ms. Ramani Nadarajah: That's correct. Most cases are heard before tribunals, and they provide a very expeditious, efficient and cost-effective way to hear many matters that otherwise would have to be heard by the court.

Mr. Gurratan Singh: If I can just be kept unmuted—I'm still on an older version of Zoom, and I haven't been updated.

The Vice-Chair (Mr. Vijay Thanigasalam): Yes.

Mr. Gurratan Singh: Tribunals are supposed to be faster, more efficient and have greater expertise; is that correct?

Ms. Ramani Nadarajah: As I mentioned in my submission, that is actually a foundational principle in terms of why we have the administrative justice system. Tribunals are expected to have expertise, and the courts give deference to tribunal decisions because of this expertise that we assume they have.

Mr. Gurratan Singh: But the changes being put forward are not going to make it faster, because they're going to have this motion to dismiss, which will actually bog down the system. Is that fair to say?

Ms. Ramani Nadarajah: Yes, the motions to dismiss are not necessarily going to—I think what you're going to see happen is that parties are going to prepare affidavit evidence and affidavit materials, and the motions will be heard at a preliminary stage. This could very well, I think, make hearings more acrimonious and may in fact lengthen the proceedings as opposed to making it faster.

Mr. Gurratan Singh: Instead of bringing these changes, why not just properly fund tribunals and make sure that they have the appropriate amount of adjudicators to deal with all the cases?

Ms. Ramani Nadarajah: That has certainly been a recommendation by bodies such as Tribunal Watch, which has expressed concerns about the fact that currently administrative tribunals have lost a number of members. For example, the Environment Review Tribunal has lost a third of its members in the past two years. It's not just the Environmental Review Tribunal; I think that's tribunals across the board. There has been, certainly, a significant decrease in the number of members.

Mr. Gurratan Singh: In addition, we know that there's going to be a lack of expertise. I know the government has made this reference to the fact that a judge will come from any background and hear any matter, but tribunals are supposed to be more specific and have more expertise and knowledge for the specific issue. That's why we have tribunals in the first place. Is that fair to say?

Ms. Ramani Nadarajah: Yes, and that's a concern, that the amalgamation of five tribunals with very different statutory mandates and very different objectives—now, as a result of amalgamation, you will lose expertise, because you will have a situation, for example, where a member who used to hear expropriation matters dealing with land compensation is now going to be hearing environmental cases or cases that were previously dealt with by the land use planning tribunal.

Mr. Gurratan Singh: Would you say that these changes benefit developers more than anyone?

Ms. Ramani Nadarajah: I can say that certainly the proposed changes will not help low-income communities, citizens' groups and the general public. I think the changes, from our assessment of them, will probably help those who are well resourced.

Mr. Gurratan Singh: And ultimately it will result in a situation in which developers have greater tools at their disposal to challenge people who are actually trying to hold them to account.

Ms. Ramani Nadarajah: The proposed changes, as I said, will probably be beneficial to—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Next we'll move on to the independent members for five minutes.

M^me^ Lucille Collard: Thank you to the witnesses for taking the time to prepare materials and to appear before us this afternoon. There are very important changes that are coming forward. I know that a lot of these changes are reflective of what we've learned through the pandemic and maybe the necessity to go more electronically.

My first question is for Mr. Taylor. You've mentioned something that I think is of importance. It's a concern about having remote witnessing and the uncertainty around who might be present in the room, some undue influence. I just want to know, do you have in mind any specific amendment that would be helpful? Or do you have examples from maybe other jurisdictions on how this could be framed better to make sure we don't run into the kind of problems that you alluded to?

Mr. Paul Taylor: Thank you for the question. One of the issues that I think we've run up against here is this is really treading new ground, particularly in Canada. I think, on the whole, our members are supportive of moving forward with it. I think the key—what we're concerned about—is, how do you balance these things?

Unfortunately, I can't point to anything in particular that we would change about the legislation because there really just aren't that many comparators right now. We

don't have the benefit of case law to give us some direction on what courts will be looking at. I think we do have some direction from the law society and from our insurer.

It will be interesting to see over the coming years how some things develop, such as, how is this used? Will there be video recordings? Will there not? I think that's an issue that a lot of lawyers debate, whether this should be recorded or not. The standard practice if you're meeting with someone to do a will is, if I were here in this room, we would not record it, because the person is here and that's not our practice. I know it is for some lawyers, but it's not generally a practice.

But how does that transfer over? As an example, Quebec was one of the first jurisdictions to open this up to their notaries. They had a mandate in terms of what technology had to be used so that it was secure. They also had a mandate in respect of the fact that it was not allowed to be recorded, which is somewhat different from what our insurer here said in Ontario, which was, "We think you should." A lot of practitioners I've spoken with are of the view, which I'll call the Quebec view, that it shouldn't be, because in the normal course you wouldn't. It really does just open the door for every time a will is going to be challenged, somebody would be asking for a copy of the recording.

We really are treading new ground here. What I would say is that I don't have anything that I would look at right now as an amendment, but I certainly think that the committee and the AG's office should be monitoring this and monitoring the case law that comes out of it, and in two or three years really having a look at the legislation again to see how it needs to be changed. Unfortunately, we're learning while doing.

Certainly, in the course of the pandemic, I would say 90% of my will signings are witnessed remotely, and it's been very helpful. But in those cases where there is concern, there's more of an opportunity here, I think, for someone to sneak in and take advantage of a vulnerable person.

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M^me^ Lucille Collard: Okay. Thank you. That is very helpful.

Mr. Paul Taylor: Thanks.

M^me^ Lucille Collard: Ms. Nadarajah from CELA, I have a question regarding the proportion of cases that need to be heard by different tribunals on the same issue. I'm referring to the reason the minister has given to amalgamate the tribunals: to try to avoid the waste of time and the necessity for people to appear before different tribunals on the same issue. I wasn't able to get any information about what proportion of cases that—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies. The time is up. Thank you to all the presenters.

Interjection.

The Vice-Chair (Mr. Vijay Thanigasalam): Oh, the second round. My apologies. We will now move on to the second round. We will start this second round with the official opposition first. They have seven and a half minutes. I'll pass it to the official opposition. MPP Bell?

Ms. Jessica Bell: Hi. I'm assuming it's working now, which is great. Thank you, Robert, for the thumbs-up. I appreciate it.

Thank you to all the presenters for coming in and sharing your expertise and concerns with us. My questions are directed to Ramani Nadarajah from CELA. I just want to clarify a few things. I've read your submission and it seems like the main asks you have are to withdraw schedules 6 and 10. Is that correct?

Ms. Ramani Nadarajah: That is correct, yes.

Ms. Jessica Bell: Okay, good. I also wanted to ask you your opinion on a few other issues or concerns that we have with the bill. One is that some organizations, including Tribunal Watch—and I also see this in your submission—are concerned about the loss of expertise and potential bad decision-making that could result by amalgamating tribunals and allowing adjudicators with expertise in one tribunal, like the LPAT, to for all intents and purposes be able to sit on other tribunals, like the Environmental Review Tribunal, and potentially oversee matters where they've got limited expertise. Have you any regulations or amendments that would limit adjudicators to just hearing matters that they were experts in? Have you given some thought to that?

Ms. Ramani Nadarajah: We would be certainly very supportive of any amendments to the bill which would limit tribunal members—restrict them to hearing matters only in relation to cases that are within their area of expertise. But I think the fundamental reason why the government is proposing to amalgamate is to ensure that tribunal members who, for example, were dealing with expropriation matters can now be allowed to hear Environmental Review Tribunal cases. That was the whole rationale for the amalgamation.

Currently, the tribunals—I don't know if you're aware—exist in a cluster, so they effectively work as a cluster, but members who only have expertise in certain matters are restricted to hearing that particular matter. So the Environmental Review Tribunal members only hear environmental cases. While we would support that amendment, I think that that was not the rationale for why the government introduced schedule 6.

Ms. Jessica Bell: Okay, that's good to know. The other question I had was: The Attorney General spoke earlier about the number of organizations that he had done outreach to and that the ministry had done outreach to, to develop this bill. But I'm also hearing from primarily groups that are involved in land use planning decisions and environmental groups that they were not consulted. When did you first hear about this bill?

Ms. Ramani Nadarajah: I heard about the bill after it had been introduced in the Legislature. There was no consultation with environmental groups or with the general public in terms of schedule 6 and schedule 10. That is a matter of concern, which we mentioned in our brief. Our position is also that the bill should have been placed on the Environmental Registry of Ontario so that Ontarians, the general public, would have an opportunity to review the contents of this bill and provide their

comments, because the bill will have very significant implications for the environmental decision-making process.

Ms. Jessica Bell: Thank you for raising that. That was actually another question I had. Do you think that this bill is still in violation of the Environmental Bill of Rights?

Ms. Ramani Nadarajah: It's our position the bill should have been placed on the Environmental Registry of Ontario in accordance with the requirements of the Environmental Bill of Rights.

Ms. Jessica Bell: Okay. I think this is my final question, and it's around the Local Planning Appeal Support Centre. It is a centre which existed in previous legislation that was introduced by the previous government to allow more lay people, everyday citizens, to understand how the tribunal process and the LPAT process work, because it is very confusing to people who are new to it. Would you be in support of an amendment to return the Local Planning Appeal Support Centre to Ontario and to have an amendment introduced into this bill?

Ms. Ramani Nadarajah: Absolutely. We actually mentioned that in our brief. That was another decision that was made by the government that, in fact, will erode access to justice. That was the termination of an LPAT support centre, which was to help the public navigate around the complex land use planning system that we have here in Ontario.

I should note, however, that decision was made last year, so it doesn't directly flow from this particular bill. But we would certainly be in support of ensuring that that support centre be restored.

Ms. Jessica Bell: Okay. Thank you. Those are my questions. I appreciate it.

The Vice-Chair (Mr. Vijay Thanigasalam): MPP Singh.

Mr. Gurratan Singh: How much time do we have left?

The Vice-Chair (Mr. Vijay Thanigasalam): Two minutes and 25 seconds.

Mr. Gurratan Singh: Thank you very much.

Ramani, I want to go back to this issue about the notice and consultation requirements under the EBR. I believe it's schedule 6 or 10—schedule 10; yes, it's schedule 10. Can you expand on that a little bit?

Ms. Ramani Nadarajah: Schedule 10 basically deals with eliminating rights of appeal to the minister under certain—

Mr. Gurratan Singh: Let me explain my point. I don't know if this was covered or not; I may have missed it. Some have argued that because schedule 10 is taking out fundamental rights that we have with relation to how we can challenge the minister's development projects, as a matter of fact, it should have actually brought in the consultation and notice requirements under the EBR. Have you heard this?

Ms. Ramani Nadarajah: That's our position, that both schedule 6 and schedule 10 should have been placed on the Environmental Registry of Ontario, pursuant to the Environmental Bill of Rights.

Mr. Gurratan Singh: Okay. Very good—or very bad, actually, I should say. It's very good that we agree on the fact that it should have been given that kind of awareness.

What are past situations in which that notice and consultation was given?

Ms. Ramani Nadarajah: Can you repeat that question?

Mr. Gurratan Singh: When has the government, in the past—this government or previous governments—properly used notice and consultation requirements?

Ms. Ramani Nadarajah: I mean, that's done routinely. Any time legislation is going to have impact on the environmental decision-making process, governments in the past have consistently placed that legislation or regulations on the Environmental Registry to give Ontarians an opportunity to review that—

Mr. Gurratan Singh: I don't mean to interrupt you; it's just because I have very limited time left. It's very likely that this could have been done in a manner that breached the EBR and it could ultimately be held to be done improperly. It might be challenged accordingly in the courts. Is that fair to say?

Ms. Ramani Nadarajah: I'm not going to give a legal opinion on that—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. Sorry; my apologies. The time is up. We'll move on to government members. I see MPP McDonell.

Mr. Jim McDonell: My question would be for the Canadian Environmental Law Association. Schedule 10 of Bill 245 would remove provisions and various statutes that currently allow parties to appeal final decisions of the Environmental Review Tribunal and the Mining and Lands Tribunal to the minister in question.

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The question becomes, then, if there have been numerous opportunities for the estates bar to engage the Attorney General and his team over the past year or so on various estate topics, from the value of small estates to probate application processes to legislative changes to succession law reform and others. I understand that these opportunities have gone by the way of consultation led by the Attorney General, fireside chats and round tables, and he has participated with the estates bar. Can you please share whether you've had a chance to consult with the Attorney General on the changes to Bill 245 and your involvement?

Ms. Ramani Nadarajah: Well, my organization has had no prior consultation on this bill and, to the best of my knowledge, nor have other environmental organizations. So I think if there has been consultation that has been done on Bill 245, it has been very selective.

Mr. Jim McDonell: Okay. The Attorney General has made significant progress in the past year modernizing the justice sector, making it easier, faster and more affordable for people to resolve their legal issues and interact with the justice system. Could you share which of these efforts you've found to be the most helpful with your members, practices and clients?

Ms. Ramani Nadarajah: If you've read my brief, I think I raised a lot of concerns about the fact that schedule

6 and schedule 10 of Bill 245 in fact erode access to justice and undermine public confidence. In response to an earlier question by MPP Bell, I talked about the fact that the LPAT support centre was terminated, which was intended to provide assistance to Ontarians, to the public, to navigate the land use planning system.

In our brief, we also raised concerns about the fact that the fees for LPAT to file an appeal have been increased threefold, which, again, is another measure that we see as reducing access to justice. To file an appeal before LPAT now costs, I think, over $1,000. It went up from $300 to over $1,000, which is a threefold increase. For the average Ontarian, that's going to make it much more difficult in terms of accessing justice.

These measures, along with Bill 245, in our opinion—having reviewed that bill, it's our analysis that the bill in fact will erode access to justice for Ontarians.

The Vice-Chair (Mr. Vijay Thanigasalam): MPP Park?

Ms. Lindsey Park: Thank you for presenting on behalf of CELA. I did want to understand a bit better your concerns about schedule 10, because I find them to be unfounded. Schedule 10 would remove provisions in the various statutes that currently allow parties to appeal final decisions of the Environmental Review Tribunal and the Mining and Lands Tribunal to a minister on a question other than a question of law, and that's under a bunch of different pieces of legislation: the Environmental Protection Act, the Mining Act, the Nutrient Management Act, the Ontario Water Resources Act, the Pesticides Act, the Safe Drinking Water Act, the Toxics Reduction Act.

In my view, the removal of appeals to a minister would support the independence and integrity of the administrative justice system by ensuring that decisions are made by independent, expert decision-makers. My question is, do you believe that having an impartial tribunal with expert adjudicators making a decision on a matter is somehow less fair than having a minister unilaterally make a decision that could be political?

Ms. Ramani Nadarajah: Well, I mean, that's a fairly loaded question. With respect to tribunals, there have been a lot of concerns about the whole appointment process and whether that really in fact ensures independence, but I'm going to leave that issue aside to deal specifically with why we are concerned about schedule 10.

I think I should point out that from my experience, appeals to the ministers tend to be quite rare. They're not done often, but they do provide a really important safety valve, a safety mechanism, because the right of appeal to Divisional Court is restricted to simply a question of law. Questions of fact or questions of policy cannot be appealed to Divisional Court, and sometimes the tribunals do get it wrong on matters of fact.

And so, currently, if a tribunal actually gets the facts wrong or ignores an important policy, there is no opportunity to have recourse through the courts. The only recourse that would exist would be to the minister, so I think this safety valve mechanism is really quite integral. It's a right that's exercised very rarely, but I do think it provides an important backstop.

Ms. Lindsey Park: My final question will be to Mr. Taylor. You had just mentioned drawing on some of the learnings from BC and Alberta, specifically when you were referencing the transition provisions with the Succession Law Reform Act changes. Is there anything else you would draw on from BC or Alberta that comes to mind? I just wanted to give you a chance to add any additional comments.

Mr. Paul Taylor: I appreciate that. I think really the biggest thing that I would draw from their experiences is that they did do that step back, that 10,000-foot view of how the estate and incapacity legislation works and sort of reframed it through their legislation.

I don't know that I would support all of the changes that were made in those jurisdictions. For example, the wills variation in BC is probably further than I would go, but I would have to consult with our membership on whether they agree with that. The thing that I would take from their experiences is that that kind of wholesale look at the legislation is probably overdue here in Ontario. That, I think, is what I would take from them.

Otherwise, I think I mentioned on the transition provision that the BC Power of Attorney Act has some good provisions in respect of dealing with the beneficiary designations. I think it's there and it's also in their wills and estates act, WESA. That's a useful one.

The BC legislation also deals with—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Now we'll move on to the independent members. You may begin.

M^me^ Lucille Collard: Just following up on my question to Ms. Nadarajah: I don't know if you had a chance to think about the answer, but my question in a nutshell was, is it very current for litigants to have to appear before several tribunals on the same issue?

Ms. Ramani Nadarajah: I think that was the rationale given in the government's press release as to why schedule 6 was necessary to amalgamate all these tribunals, so that if a proponent was required to have multiple hearings, then it could be done by one tribunal.

I should point out that we already have a statute in place in Ontario—it's known as the Consolidated Hearings Act—which allows the proponent to request, if multiple hearings are required, to have them consolidated and heard by one tribunal. We already have a statute that addresses that very issue, so the government's rationale on this, I think, is really not justified.

M^me^ Lucille Collard: Okay. You also spoke, in your brief, about the lack of criteria for deciding when a hearing could proceed electronically. Could you maybe enlighten us and give us some examples of cases where it would not be appropriate to proceed electronically?

Ms. Ramani Nadarajah: If you have a case where it involves a narrow legal issue and the parties are simply making legal submissions, then it may be appropriate to have a matter heard expeditiously through an electronic hearing. But very often with hearings before LPAT and the Environmental Review Tribunal, these are very lengthy

hearings which involve numerous experts and very conflicting evidence. In those kinds of instances, I really don't think the hearing process should be done electronically. It should be done in person. There is a concern we have that there are really no criteria established as to when an electronic hearing would be appropriate.

M^me^ Lucille Collard: Thank you. Maybe my last question to Mr. Gibson: You've raised some important arguments and some concerns about the current bill. I guess you appear as an individual, not necessarily representing any organization. I was just wondering where your interest or expertise or experience comes from, and your interest in appearing before the committee.

Mr. Robert Gibson: I am an individual; that is correct. I studied environmental science and studies at Trent University, and I host a radio program through Trent Radio on environmental issues. I found out about this because I was sent an email by the opposition a few days ago. I was commenting on minister's zoning orders.

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M^me^ Lucille Collard: Okay. I'm good with this. I don't have any further questions, Mr. Chair.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you to all the presenters, the committee members and staff. Now, we're going to move on to the next set of speakers.

I see MPP Bouma has joined. MPP Bouma, can you please confirm that you are present and that you are the honourable MPP, and can you also confirm whether you're currently in Ontario?

Mr. Will Bouma: Yes, Chair. Thank you very much. I am indeed in Ontario. This is MPP Bouma. I am in Toronto, in my office in the Whitney Block.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

WILLFUL

FEDERATION OF URBAN NEIGHBOURHOODS (ONTARIO)

MR. BARRY CORBIN

The Vice-Chair (Mr. Vijay Thanigasalam): Now, I will invite Erin Bury, chief executive officer from Willful. You have been allotted seven minutes for your presentation. You may begin.

Ms. Erin Bury: Thank you very much, Chair. Hi, everyone. Thank you for the opportunity to present today. My name is Erin Bury, and I'm the co-founder and CEO at Willful, an Ontario-based small business. Our online platform helps Ontarians create a will and power of attorney documents online. We work with estate lawyers in each province, and since launching in 2017, we've helped over 20,000 people in eight provinces.

I stand before you today to represent the voice of the consumer and to highlight the imperative to further modernize estates law in Ontario. My husband and I founded our company four years ago after losing a loved one unexpectedly. Losing a loved one brought end-of-life planning to the forefront of our minds, but when we looked into creating a will, we found that it was an expensive process that involved in-person appointments and lots of paper. Our mission at Willful is to improve access to justice for Ontarians who need a will, by removing the barriers of cost, convenience and complexity.

Despite being an online platform, though, we're limited by the Succession Law Reform Act's limitations on signing, storing or witnessing a will digitally. When COVID-19 hit, it became immediately apparent that completing a will while respecting social distancing and quarantine measures was virtually impossible. We had dozens of customers reaching out and asking how they should print their documents at home without a printer, and more importantly, how they could get together with witnesses outside their bubble. After hearing from so many concerned customers, we were glad to see the Attorney General implement the virtual witnessing emergency order. But our optimism was dashed as we realized how convoluted the order was in practice.

The virtual witnessing order allows people to get on a video conference with their witnesses, but the signatures still have to be on paper, which means printing multiple copies of the will and storing multiple copies that were signed in counterpart to validate the document. The order also requires one of the witnesses to be a lawyer or paralegal, which is not a requirement for in-person witnessing. This means that if you've used a will kit or an online platform, you now have to pay out of pocket to have your will executed. Faced with this convoluted and potentially costly process, many consumers scrapped that idea and went with the in-person witnessing, which is the exact opposite effect that the order should have had.

Bill 245 proposes to extend this emergency order in the long term, but it doesn't address the issues with the original order, namely that virtual witnessing is confusing and difficult without being paired with electronic signatures, and most of the folks we speak with defer to in-person witnessing with folks outside their bubble.

Disappointingly, Bill 245 is also silent on the other much-needed elements of modernization in estates law: electronic signatures and online storage of wills. It's all the more disappointing knowing that the Attorney General was presented with two sets of draft legislation from the legal community: one from the Uniform Law Conference of Canada and one from two Ontario estate lawyers, Patrick Hartford from legal tech company NoticeConnect and Lena Koke, the founder of Axess Law. Both pieces of draft legislation were created in consultation with Canada's top estate lawyers and law school professors. They were thoughtful, and they considered valid concerns about how to ensure security and reduce the challenges associated with paper wills, like fraud and undue influence.

We already have a model for digital wills in the US, where in states like Nevada and Florida they have had thousands of residents execute digital wills. Here in Canada, British Columbia's Bill 21 received royal assent in the summer of 2020, and it's expected to come into effect shortly. It will allow residents to sign a will electronically, store it online and undertake virtual witnessing.

If we have models for this in the US, and in BC here at home, and we have draft legislation tabled by the country's top estate law experts, and we have a global pandemic that is necessitating the adoption of more digital tools, why is none of that reflected in Bill 245? Ontario has a chance to be a thought leader here in how to empower more citizens to draft wills through more accessible digital processes. The Ontario government is investing millions in broadband connectivity, yet this bill does not seem to reflect this prioritization of digital.

The risk to not implementing digital will legislation is that consumers are likely executing wills incorrectly every day. We commissioned research with Angus Reid in 2020 and found 84% of Ontarians believe it's legal to sign a will online, and 92% think it's legal to store a will online. Every day, I talk to customers asking if they can DocuSign their wills, and for every person I say no to, I know there are others who are not asking the question; they're just doing it anyway. Is that what we want? Millions of wills that tie up our court system because our laws couldn't adapt to match consumer expectations?

Committee, we can buy a house online in Ontario, file our taxes online and do any number of high-value transactions, but wills are stuck in a paper-based world, largely because there has been no impetus to change. Lawyers are used to dealing with paper-based processes and can be slow to adopt technology, and consumers have just accepted it as the status quo.

There are, of course, valid concerns about digital will legislation, but the fact is that fraud and undue influence exist with paper wills. So do lost wills, since it's very easy to lose or rip up a paper copy of a will. Governing bodies like the Law Society of Ontario or the Ontario Bar Association often use these arguments to oppose change, instead of working to come up with solutions that add a level of security you just don't get with paper wills.

In closing, we have an opportunity here to go from a laggard to a leader by implementing digital will legislation that improves access to justice for all Ontarians and reflects a will creation process in the year 2021, not 1992. Soon, consumers will demand it.

On behalf of the Ontarians I speak with daily who are looking for affordable, accessible and digital-first options to create their will, I call on the committee to expand the scope of Bill 245 to include electronic signatures on wills and the ability to store a will online. I also request that the requirement for a lawyer to be one of the two witnesses when undertaking virtual witnessing be removed, as it only adds more barriers to creating a will.

Thank you so much for your time.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Next we have Geoff Kettel, president of the Federation of Urban Neighbourhoods (Ontario). Geoff, you may begin.

Mr. Geoff Kettel: Thank you, committee Chair. My name is Geoff Kettel, and I am president of the Federation of Urban Neighbourhoods (Ontario). I will be speaking about schedule 6, the Ontario Land Tribunal Act, and only that schedule.

The Federation of Urban Neighbourhoods, or FUN, is a province-wide, volunteer-based umbrella organization of community and neighbourhood associations. We promote awareness of urban issues, undertake projects to improve the quality of life of residents of urban settings, maintain a resource base of information, share expertise and represent the common interests of member organizations before private and public bodies such as this, and encourage citizens to actively engage in and become informed about community and civic affairs.

Residents' associations, which involve both property owners and tenants, are frequently engaged in hearings before the Local Planning Appeal Tribunal, the Conservation Review Board and, occasionally, the Board of Negotiation under the Expropriations Act, which are the subjects of this schedule.

Some relevant personal background: Besides FUN, I'm also co-president of the Leaside Residents Association and co-chair of the Federation of North Toronto Residents' Associations, FoNTRA. These are incorporated, not-for-profit, volunteer-based boards. FoNTRA and FUN are both federations representing groups of residents' associations in their respective areas. FoNTRA represents 30 residents' associations in midtown Toronto, north Toronto and North York, and FUN represents urban communities across the province.

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I have personal experience with planning tribunals, and I have appeared at the former Ontario Municipal Board, the Conservation Review Board, the Local Planning Appeal Tribunal and the Toronto Local Appeal Body, and have been accredited as an expert witness by the OMB and TLAB on several occasions.

In the proposed legislation, schedule 6 enacts the Ontario Land Tribunal Act, 2021. The new act, if passed, would amalgamate five existing tribunals into one—the Board of Negotiation under the Expropriations Act; the Conservation Review Board, which deals with cultural heritage matters; the Environmental Review Tribunal, which deals with numerous environmental statutes; the Local Planning Appeal Tribunal, which deals with appeals under the Planning Act; and the Mining and Lands Tribunal, which deals with the Mining Act—and continue them as one tribunal, the Ontario Land Tribunal. The act provides for the composition of the tribunal, sets out its jurisdiction and powers, and specifies the practices and procedures that apply with respect to proceedings before it.

Our concerns are divided into substantive concerns, the procedural concerns and the contextual concerns.

The substantive concerns: Our major concern with the amalgamation of five tribunals into one, each of which dealing with specialized areas of law and practice, is the potential loss of appreciation and sensitivity to the cases dealt with by these individual tribunals. Each tribunal requires adjudicators who have specialized expertise in the subject matter of the appeals that they hear and in the

interpretation of their home statutes, in addition to adjudicative expertise. The more specialized the tribunal's jurisdiction, the more this would be an issue.

For example, for hearings before the Conservation Review Board, under the Ontario Heritage Act, you knew you would be heard by someone who was familiar with and had appreciation for built heritage, and expertise in interpreting the Ontario Heritage Act. The subject matter knowledge and appreciation and expertise in interpretation of the home statute will be impossible to meet with such a wide span of subject legislation to be concerned with.

Given the diversity of statutes and subject matter over which the new Ontario Land Tribunal would have jurisdiction to hear appeals, it may be difficult to make the case that members of this tribunal, who are arguably intended to be generalists dealing with a number of statutes, will develop expertise in interpreting such an array of home statutes.

At the same time, we are unaware of the rationale for this change. One presumes it would be "efficiency," but values like effectiveness, fairness and objectivity are key considerations for residents. We believe that the flexibility introduced by the Consolidated Hearings Act was an appropriate and responsible move, but not full consolidation of all these tribunals.

Procedural concerns: The important legislation is being introduced as part of an omnibus justice bill comprising disparate topics, and without consultation other than this standing committee review process. The government has provided no information on the intended purpose for schedule 6 of the bill, its likely impact on decision-making and Ontario's land resources heritage and the environment, and on good planning generally. So why the haste? Why not go through a proper consultation process?

Thirdly, contextual concerns: Residents' associations are increasingly concerned that this legislation is only one of a number of changes to legislation, rolling-out of plans and other approvals such as minister's zoning orders that are changing the landscape for planning in Ontario, overriding municipal governments, and which appear to benefit developers, not residents.

These include changing city of Toronto wards in the middle of an election; returning final decision-making powers, not just recommendations, to LPAT; cancellation of the Local Planning Appeal Support Centre; stripping conservation authorities of powers; overriding the city-of-Toronto-approved TOcore and Midtown in Focus plans; implementing a whole new orbital system of highways north of Toronto, the GTA West 413 and the Holland Marsh Bradford bypass; mushrooming use of MZOs; and, most recently and most egregiously, making the provincial policy statement not apply to MZOs; and retroactively, Bill 257.

In summary, we respectfully request that the committee recommend to the Legislature that it halt passage of schedule 6 of Bill 245 and return to a proper process of consultation, engagement and transparency.

Respectfully submitted by myself and the executive of the Federation of Urban Neighbourhoods. Thank you.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Before we move on to the next speaker, I see that MPP Hassan has joined. MPP Hassan, can you please confirm that you are present and that you are currently in Ontario?

Mr. Faisal Hassan: This is Faisal Hassan, MPP for York South–Weston. I'm right here in York South–Weston, in Toronto, Ontario.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Our next presenter is Barry Corbin. You have been allotted seven minutes for your presentation. You may begin.

Mr. Barry Corbin: Good afternoon. Thank you for allowing me to present my comments to the standing committee.

My written submissions that you may already have seen address several issues with schedules 8 and 9 of Bill 245, but I'm going to use the time available for me to confine my remarks to just one of those issues; namely, the signing of wills and powers of attorney in counterpart. My view is that signing in counterparts should not be made a permanent feature of the estate-planning landscape.

I should correct one provision in my submission, an error: The ability to sign wills and powers of attorney in counterparts was introduced by a separate emergency order made on April 22 of last year, 15 days after the first emergency order that was made that allowed for remote witnessing.

In my understanding, this counterparts idea was put forward by one law firm in Toronto after the first emergency order was made, prompting the second emergency order. Now it has shown up in Bill 245, threatening to become a permanent part of the law of Ontario.

I have seen no groundswell of support, to date, over the idea of signing wills or powers of attorney in counterparts. Indeed, I have seen the opposite: namely, a strong antipathy towards the idea expressed by many estate lawyers. Few lawyers I have spoken to have chosen to take advantage of this feature, and even those who have done so have frequently expressed the intention, as soon as possible, to arrange for each of their clients who has signed a will or a power of attorney in counterparts to re-sign a single document.

One of the main concerns that lawyers have over counterparts, particularly in the case of wills, is a practical one: namely, things that happen after the will-signing is over. A big issue is what constitutes the will that was signed in counterparts. You can't follow the same practice as is used in commercial agreements that are signed in counterparts: namely, taking one fully signed counterpart and adding signature pages only from each of the other signed counterparts. I have heard a contrary view expressed by some estates lawyers. But it's very clear from the language of Bill 245 as to what constitutes the will: "Identical copies of the will in counterpart ... shall together constitute the will."

I would also point out that the emergency order, and now Bill 245, states that two counterparts are identical

even if there is a minor, non-substantive difference in layout or format.

If you have all but the signing pages from only one counterpart, how do you know the counterparts are identical?

If you want to make a notarial copy of a 20-page will after it was signed in counterparts, you have to make a copy of all 60 pages. The same is true when you want to submit the will for probate: All 60 of those pages have to be submitted, and all 60 of those pages have to be included in a notice sent to every residuary beneficiary. And unless an electronic court certificate is used, that means the court staff have to affix the court's seal to all 60 pages. And pity the estates lawyer who gets the court certificate and has to make a half-dozen notarial copies to be sent to banks, brokerages, tax accountants, real estate lawyers and the like, having to affix his or her notarial seal to more than 360 pages and, no doubt, charging the client for the extra time required.

The only argument in favour of allowing signings in counterparts was that it eliminated the gap in time between two separate meetings for virtual witnessing—the first one where the will-maker signs while the two witnesses watch, and the second after the will has been sent to the witnesses where the will-maker watches the witnesses sign—the worry being what happens if the will-maker dies or becomes mentally incapacitated during that gap, preventing all the witnessing formalities from being completed. Now, if you're dealing with a power of attorney, the death doesn't matter because a premature death would mean the powers of attorney wouldn't be affected anyway.

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Whether you think that the intervening death before witnesses can sign is a real risk or a fanciful one, my point is that this concern will be eliminated when you introduce proposed subsection 21.1(1) of the Succession Law Reform Act. It will introduce into Ontario law the ability of a court to pronounce a will to be valid even if the witnessing formalities have not been complied with. It means that if the will-maker dies before the document has been circulated to the witnesses for signature, the court can declare the will to be valid nonetheless as long as the court is satisfied that the document that wasn't properly executed sets out the testamentary intentions of the deceased. This evidence should not be difficult to produce, because in order to use remote witnessing—and this is true whether you have signing in counterparts or signing a single document—one of the witnesses must be a licensee of the Law Society of Ontario and would, in almost every case, be the very lawyer who met with the client and drafted the will and would therefore be in a position to provide the evidence necessary to establish the requisite testamentary intention of the deceased person.

I'll say, by the way, that this judicial authority to validate a continuing power of attorney or a power of attorney for personal care, despite not complying with the witnessing requirements in the statute, is already present in the Substitute Decisions Act, so we don't need counterpart capability or powers of attorney at all. You might ask, why not make the signed-using-counterpart permanent just on the basis that it can't hurt? I'll simply invite you to read the article that accompanied my submission. It sets out a number of fact scenarios which can be expected over time to arise and cause more headaches for the courts and litigants.

As I have said in my formal submissions, signing of wills and powers of attorney in counterparts is a solution in search of a problem. I would urge the members of the committee to put forward an amendment to delete those proposed provisions for the Succession Law Reform Act, with one caveat, and from the Substitute Decisions Act. The caveat relating to the Succession Law Reform Act is that this judicial authority to validate a will that doesn't comply with formalities will come into effect not on the enactment of Bill 245 but only on a later date that will be proclaimed by the Lieutenant Governor, and it can't be before January 1, 2022. What I'm proposing is the amendment that the ability to make wills in counterpart cease to be permitted as of the date on which proposed section 21.1 of the Succession Law Reform Act comes into force.

Thank you for your attention. I'd be pleased to answer questions.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you for your presentation.

We will now move into questions. This round of questions will start with the government members for seven and a half minutes. MPP Bouma.

Mr. Will Bouma: Thank you, Chair. Through you, I'd like to thank Mr. Corbin for being with us today.

Mr. Corbin, I was just wondering—over the past year, we've heard from countless Ontarians seeking to get their end-of-life affairs in order in extraordinary circumstances. We've heard many stories of people exchanging documents from their car windows or through the window of a hospital, or even outside while socially distanced in a driveway as they attempted to get crucial documents like wills and powers of attorney executed. These stories were one of the driving factors behind our government introducing the ability to witness wills and powers of attorney virtually. Can you share any similar stories from your practice to provide this committee some insights as to how these changes have helped and will continue to help your clients get their affairs in order during the COVID-19 pandemic and beyond?

Mr. Barry Corbin: Thank you. All I can tell you is, in my experience during the COVID pandemic, I have had many clients for whom I've prepared wills. Lawyers were declared an essential service, so we didn't have to close our offices. I have invited clients to come down to meet with me. At my office, we've got all sorts of disinfecting procedures. Everybody is wearing masks. In a number of cases, they have declined, some because they are up in cottage country and are not planning to come back to Toronto for that. I remember at least one said they were looking after an elderly mother with a compromised health situation and they simply didn't want to take a risk on meeting with me, as I might be asymptomatic and transmit

the disease to them. I can tell you that remote witnessing, certainly during the pandemic, has been very beneficial.

By the way, I have never had a will signed in counterparts.

Mr. Will Bouma: I appreciate that. Thank you very much for that response.

I also understand, and as you had mentioned, there have been numerous opportunities for the estates bar to engage with the Attorney General and his team over the past year or so on various estates topics, from the value of a small estate to probate application processes to legislative changes to the Succession Law Reform Act and others. I understand that these opportunities have come by way of consultation letters by the Attorney General or fireside chats and round tables that he has participated in with the estates bar. Can you please share whether you've had a chance to consult with the Attorney General on the changes in Bill 245 and your involvement in that process?

Mr. Barry Corbin: I was one of a number of participants in one of the round tables or group Zoom meetings to talk about some of these proposals. There was a very forthright, back-and-forth discussion with the Attorney General about the issues that were involved. I know a lot of thought went into developing Bill 245 in the form that it is right now, and despite my misgivings about some aspects of it, it was an excellent process.

I have to say that it has been extremely refreshing to have an Attorney General who is interested in this area of practice. I have always said to people, for decades before, this is a practice area that moves glacially, if at all. So it's been really invigorating—I guess that's a good word for it—to have this government paying close attention to these practice areas and moving forward in some of the ways that you talked about.

Mr. Will Bouma: Right on, and thank you for that response also.

I know from my personal interactions with the Attorney General—I'm no lawyer, but even just people I know in the legal community have been so impressed with the work that our Attorney General's office and his parliamentary assistant have been doing.

I just ask further, if I could—Bill 245 makes a number of amendments to the Succession Law Reform Act on spousal preferential share: section 16 on will revocation on marriage, section 17 on revoking request to separated spouses, as well as provisions to allow the court to validate wills where there are technical deficiencies. Would you care to expand on any of these changes, if you could, that take place in Bill 245?

Mr. Barry Corbin: Upon the last one, I will say—and I think I join a lot of lawyers—that having the court have the ability to fix a will, or to declare a will that's been valid where the formalities haven't been complied with, is a long overdue provision. It has been in several other provincial statutes for a number of years. It would certainly prevent some of the tragedies where the court is in a position of saying, "I wish I could do something on this but I can't because the law doesn't allow it." For certain that is a welcome addition.

In terms of the changes that changes in marital status can have, this was something I really would probably defer to matrimonial lawyers about. One thing is certainly true—and I know that Professor Oosterhoff may be presenting to the committee perhaps tomorrow on predatory marriages, which have always been a problem in Ontario, and this change that says "marriage will not revoke a will" is a welcome one.

The area that I'm least certain about the benefits of is separation and whether that should put people in the same position as having been divorced—a separation under certain circumstances. In my written submissions, I make a couple of comments about it. I don't have a strong point of view about that. I know only that it's going to have the potential to create more litigation such as, "Well, were A and B really separated at the time that the person died?", because there is often an issue about whether they were separated, and if so, when they separated. I can see lots of litigation coming out of that, but beyond that, I won't comment further.

Mr. Will Bouma: I appreciate that.

If I could, Mr. Chair, do you know how much time I have left?

The Vice-Chair (Mr. Vijay Thanigasalam): You have one minute and 15 seconds.

Mr. Will Bouma: Okay, so I'll use every second.

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Mr. Corbin, I really appreciate your responses this afternoon. Thank you so much for being with us.

Our Attorney General and government have made significant progress in the past year modernizing Ontario's justice sector, making it easier, faster and more affordable for people to resolve their legal issues and interact with the justice system. Can you please share which of these efforts you've found to be most helpful in your practice and for your clients?

Mr. Barry Corbin: I would say the virtual signatures during the pandemic have been the most helpful. Many of the others, I think, are too new for me to be able to share any experiences with you about it—oh, pardon me; with one exception, and that is electronic court certificates. I am impressed that they are now allowed, since October 6. To what extent the Attorney General had input there, I'm not entirely sure—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Next, we'll move on to the official opposition for seven and a half minutes. MPP Bell.

Ms. Jessica Bell: Mr. Corbin and Ms. Bury, thank you so much for giving your insight and expertise on the will process. Given the issues in my riding, I am going to speak mostly to Mr. Kettel around schedule 6 and schedule 10, so my apologies.

Geoff, it's nice to see you again. I have a few questions to ask you about your experience with the Local Planning Appeal Tribunal and your concerns with schedule 6 and schedule 10. The first one is, if we introduced an amendment to return the Local Planning Appeal Support Centre, which existed approximately two years ago, is that something you and your association would support?

Mr. Geoff Kettel: Yes, it certainly is.

Ms. Jessica Bell: That's good to hear.

The second thing I want to ask you is, if you had a magic wand and you could change the Local Planning Appeal Tribunal in a way that you and the associations you're a part of see fit, what would you do?

Mr. Geoff Kettel: I'd go back to the previous situation, where it made recommendations to the municipality. You're dealing with mature municipalities like the city of Toronto. They're being dictated to on individual parcels of land, and it's really inappropriate. If there's a sober second thought which the LPAT would provide, that still can be appreciated by the municipality to make their decision, but to be overridden by LPAT is too much.

Ms. Jessica Bell: And that would be when the previous government brought in the changes to the Local Planning Appeal Tribunal, but we didn't really get a lot of chances to try them out.

Mr. Geoff Kettel: That's correct. There was only a small period of time then.

Ms. Jessica Bell: I have a question around what development issues you're concerned about in your area and how you believe development in your area should proceed.

Mr. Geoff Kettel: In our area—I'm in midtown Toronto—we've faced, increasingly, provincial override; for example, the Midtown in Focus plan, which was passed by city council, with height limits at a certain level, from Bayview across to Avenue Road and Davisville up to Eglinton. Unfortunately, when it went to the province—it had to be approved by the province—they made changes to the plan to increase heights on buildings without further planning information or advice.

We're also concerned in Toronto about minister's zoning orders right now. The foundry is a notable case, but there are other ones that we suspect could be happening. Again, it's appropriate that the city of Toronto make decisions on what happens with respect to a parcel of land. The city is quite aware of affordable housing policies and so on. It just needs support from the province with the funding for those affordable units to make sure we can increase the supply. It needs public money to come into that, to make that work. Those are a couple of examples, anyway.

Ms. Jessica Bell: One clarifying question I had is around the height limits on buildings in your area. It would be good if you could send me any submission you had around that matter after these committee hearings, just so I have a better understanding.

Mr. Geoff Kettel: Sure.

Ms. Jessica Bell: There are all my questions. Geoff, it's nice to see you again. Thank you so much for your time.

Mr. Geoff Kettel: You're welcome.

The Vice-Chair (Mr. Vijay Thanigasalam): We have three minutes and 25 seconds left for the official opposition. Are there any other questions? I see MPP Hassan.

Mr. Faisal Hassan: I would like to thank you for your presentation this afternoon. I see that there are challenges with regard to schedule 10 and schedule 6 that Mr. Kettel has also talked about a bit. I would like to ask you if you could elaborate on the danger and the difficulties about these schedules and the harm they would have on communities like mine in York–South Weston and across the province. Geoff?

The Vice-Chair (Mr. Vijay Thanigasalam): Who is this question for?

Mr. Faisal Hassan: To Geoff Kettel.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Mr. Faisal Hassan: You talked about the problems of schedule 6 that have impacted communities. Would you like to elaborate—

Mr. Geoff Kettel: Well, the issue here is the amalgamation of the five tribunals. As I've described, the loss of expertise and the need for specialized expertise in dealing with issues under the various acts, whether it's the Planning Act or the Ontario Heritage Act or the Expropriations Act—they have home statutes which are very complicated, and the members of those tribunals do develop an expertise in those areas. It would be nigh impossible for one tribunal to have people come up to that level of proficiency across a whole bundle of different pieces of legislation. That is the overriding concern.

Mr. Faisal Hassan: Very good. The official opposition also had concerns that my colleague Jessica Bell from University–Rosedale talked about as well. I know that we're having a crisis in terms of housing in Toronto, and this began early on in 1994, when the federal government simply said that they have no responsibility in terms of housing issues at all and downloaded it onto provincial governments. You talked about the need for public financing for support for affordable units and affordable housing. Could you talk about the importance of that and making sure that we have housing as a human right? Because we have a responsibility to look after members of our community.

Mr. Geoff Kettel: It's just based on my 10 or 12 years of experience in dealing with Toronto, observing council, observing housing programs and previously being involved in not-for-profit housing. I'm very, very aware that although there are lots of calls to increase the number of units, get more built and so on, it doesn't seem that there is a spinoff effect in terms of affordability. It seems to me, based on just watching it over the years, that there really has to be some subsidy or some ability to zone the land for—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies; the time is up.

Now, we will move on to the independent members: five minutes.

M^me^ Lucille Collard: Thank you to the witnesses this afternoon, Mr. Corbin, Ms. Bury and Mr. Kettel, for taking the time to prepare for this and sharing your views for the committee. It's very important work that we're doing together.

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My questions are more to the wills, estates and the proposed change. Ms. Bury, I guess I would like you to

react to Mr. Corbin's presentation. He's coming from a different direction, so I'd like to hear from you on this.

Ms. Erin Bury: Absolutely. Well, Mr. Corbin is one of the most well-respected estate lawyers in the province, and I absolutely respect where he's coming from as a lawyer. I believe I do come at it from a different perspective, which is from the perspective of the consumer. I should be very clear: I'm not advocating for lawyers to not be involved in the process of creating a will if that's the route that consumers choose to take.

But in my opinion, the Succession Law Reform Act in its existence has always allowed for consumers to create wills without the aid of a lawyer: holographic wills that can be written on a piece of paper, platforms like ours, will kits. So I'm not advocating that lawyers are to be replaced; I think they play an important role for those with complex estates or for anyone who wants to seek out legal advice. I think it's just optionality that can provide more accessibility to people, and some of the changes like the virtual witnessing emergency order don't account for the consumers who have decided to take those alternative routes. By requiring that one of those witnesses is a licensee of the Law Society of Ontario, it means that we're limiting the choices that Ontarians have. That's really what I'm advocating for.

I actually completely agree with Mr. Corbin that signing wills in counterpart is dangerous. I think it means there will be lost copies in the mail. There will be folks who don't understand they have to store all of the copies. Pages will get mixed up—not to mention the millions of trees that Mr. Corbin outlined will be killed by having to print 60 pages times 10 or 20.

I would say—and I don't think that Mr. Corbin is agreeing with me here—that digital signatures would actually eliminate all of these problems, because if we could virtually witness a will, with a lawyer involved or not, you actually cut out the need to do counterpart copies of the will by inherently removing the need for physical signatures.

I know, as Mr. Corbin said, that the pace of change is definitely slower. As a consumer who is able to do all of these processes in every other aspect of my life, I've come to expect a certain level of digitization for the processes that I see in my everyday, and I don't think that we're seeing that in the progress of change in estates law.

But I completely agree with Mr. Corbin that signing wills in counterpart is actually very confusing and will lead to problems down the line.

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

Mr. Corbin, it seems that the changes that are proposed right now neither address your concern nor the concerns of Ms. Bury. It seems to be a halfway solution that doesn't address each of your concerns. Mr. Corbin, what do you think about what Ms. Bury is proposing in terms of allowing for electronic wills, given that we would allow electronic signatures and also the online storage and remove the requirements of adding somebody as a witness who is a lawyer or somebody who's a licensee? Why do you see that being a problem?

Mr. Barry Corbin: I'm not saying, particularly with regard to having one of the witnesses be a licensee of the law society—I don't know who was putting that forward. I haven't heard people talk about that as being an important feature, so I don't necessarily disagree with Ms. Bury's view on that point.

I think the issue about digital signatures—and she's quite right: Lawyers, and particularly estates lawyers, are resistant to change. My only comment on that next step is that I think it requires a little bit more study. I understand that some very thoughtful submissions and draft legislation were sent into the Ministry of the Attorney General to look at it. I'm a little concerned about taking that giant step right now.

On the other hand, it really depends on who is pushing the buttons. If the Ministry of the Attorney General decided that Ms. Bury's views and those of others who support her view are appropriate, I just would want to be sure that it has been well-thought-out, all the pros and cons. I certainly understand consumer preference is important. Beyond that, I don't think I have any comment.

M^me^ Lucille Collard: Yes, thank you—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies. The time is up.

Now we'll move on to the second round of questions. We'll start with the official opposition for seven and a half minutes.

Mr. Gurratan Singh: Back to Geoff: I just want to talk more about how the issue of this bill would impact development and, specifically, impact communities that have issues with local community development.

Mr. Geoff Kettel: It seems to us that by amalgamating the tribunals, as I've said, you're going to have a reduction in the amount of expertise available and a lack of understanding and appreciation of the specifics related to the legislation they're dealing with. From a resident perspective, from local people's perspective, they need the tribunal to understand the legislation, which is designed to make better decisions. If you remove, as it were, the distance away by—everything is amalgamated, having somebody show up who doesn't have a background in the area—it's all potential. We don't know, right?

We haven't been given any explanation of why this is being done. There has been no explanation and no consultation on how this fits into the bigger picture. What's the game plan here? Why do it?

Mr. Gurratan Singh: When we talk about the motion to dismiss—would that impact the ability of the people to access justice?

Mr. Geoff Kettel: The motion to dismiss—I'm going to have to ask for clarification. Certainly, in terms of the—

Mr. Gurratan Singh: Just to clarify: Under schedule 6, it's my understanding that they've introduced the ability for people to put forward motions to dismiss matters that are before the tribunal. Many people have provided evidence that this could limit access to justice. If it's an area that you're not familiar with—I don't know if I have it wrong or not.

But in general, what are the other impacts towards access to justice that this could have?

Mr. Geoff Kettel: Certainly, one of the unintended effects of the consolidation would be to make the tribunal farther away, as it were, from the people, requiring more planners, more paid people, more lawyers. All these planning appeals get to be extremely expensive. Therefore, the balance of power—it's David and Goliath there, the developers that have the resources to hire the Bay Street lawyers and so on. It just becomes much more difficult for the regular folks in towns and cities to mount any kind of opposition at the hearing. My sense is that that concern will be exacerbated by amalgamating the tribunals.

Most people don't even know what a motion to dismiss is. You're going to have to hire a lawyer to even—and we've experienced it in Toronto, with the Toronto Local Appeal Body. Basically, it's built for lawyers. It's all more forms—response to the response to the motion, this kind of stuff. It gets more and more complicated, more and more difficult for regular people to deal with. I suspect that they'll end up with more and more forms that are designed in a very generic way, without accommodating the needs of the particular piece of legislation.

The Vice-Chair (Mr. Vijay Thanigasalam): Does anybody else from the official opposition have any questions? MPP Hassan.

Mr. Faisal Hassan: How many minutes do we have left?

The Vice-Chair (Mr. Vijay Thanigasalam): You have three minutes and six seconds.

Mr. Faisal Hassan: Thank you very much. I will be quick so I can give my colleague Jessica—to ask another follow-up.

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I know in my community here in York South–Weston—and this can be answered by all the three presenters as well, whoever wants it. I know that access to justice is also fundamental to our court systems, and if a majority of the members of our community cannot have a representative and there's no way for them to have that representation at the court, this will have more impact. This bill, Bill 245, also erodes that access to justice. Could you explain the need for access to justice and the importance of government providing a representation of the courts and the importance of that? Maybe Geoff could start here.

Mr. Geoff Kettel: The province is providing an appeal process, which in my experience tends to often be used by the developer rather than by the residents. In other words, if the city has made a decision, then it gets appealed by the residents to the LPAT, and the residents generally don't have the resources to be able to hire the planners and the lawyers to the extent that the private sector has the ability to do so, and to be able to write it off there as a cost of doing business. The residents don't have that ability to write off those costs, so right from the start it is an unfair situation.

We're just concerned that that imbalance is present right now to an unknown amount, but it could tend to exacerbate that imbalance by amalgamating the tribunals, making them that much more concerned with process on legality and having adjudicators who are less familiar with the issues at hand and therefore less sympathetic to the on-the-ground situation, less understanding, more bureaucratic and perhaps more political as well. We don't know.

Mr. Faisal Hassan: Very good. Chair, how many minutes do you have left?

The Vice-Chair (Mr. Vijay Thanigasalam): Thirty-five seconds.

Mr. Faisal Hassan: Oh, 35 seconds? Well, I guess there isn't much to start a round of questions again. But I thank you for answering those questions, Geoff.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you.

Now we'll move on to the government members. You have seven and a half minutes. MPP Skelly.

Ms. Donna Skelly: Good afternoon, everyone. I'd like to begin with Erin. I want to start by saying I have no background in law, so the questions I'm asking you come from a person who knows nothing about estate planning other than having a will.

I may have misheard you, but early on, did you not say that some—or maybe you can clarify. You did say that holographic wills are legal. What type of a will, then, would not be considered illegal by the courts?

Ms. Erin Bury: For a will to meet the requirements of the Succession Law Reform Act, there are a couple of ways to do it: The first is a holographic will which has to be entirely in your handwriting and signed only by you, the testator. That's the only type of will that does not require any witnesses to be present or sign the will itself. The challenge with holographic wills, as I'm sure Mr. Corbin would echo, is that they typically are not comprehensive. They are, "I give everything to so-and-so." But they often do not appoint executors. They don't appoint guardians for children. They don't include backups for those roles.

The other type of will is the traditional type of will that may be drafted by a lawyer or may be drafted using a platform like ours. That usually has a mechanical process involved—it's typed on a computer—and it must be signed by the testator in the presence of two witnesses who are not beneficiaries of the will. If they are, their gift could be invalidated, as they're meant to be impartial in their role as a witness.

So if someone during COVID was creating a holographic will, that is really the only type of will that they could create without having to get together with people or virtually witness a will.

Ms. Donna Skelly: Can you tell me a little bit more about Willful and how it differs from a traditional practice and, I assume, Mr. Corbin's practice? For the will I had drawn up, I went into a lawyer's office and had it drawn up for me. So what do you provide? What type of service?

Ms. Erin Bury: It's a great question. The main difference is that we are not entering a lawyer-client relationship with the consumer. It's very similar to TurboTax, but for estate planning. So for Canadians or Ontarians who have

simple situations and who do not want to receive legal advice or enter into that lawyer-client relationship, they can essentially use our online platform to guide them through questions, and their answers are pulled into a PDF of their will.

We worked with estate lawyers in Guelph and Ottawa to draft all of the legal content itself. They're on contract with us to notify us of legislative changes—although we also keep on top of those, as you can tell—and to make changes to those documents and improvements over time. Essentially, what you're not getting with Willful is the consultation of someone like Mr. Corbin, who can give you specific legal advice on your situation. What you are getting is a document that is much more affordable.

For people with simple solutions—I think a lot of people are intimidated by lawyers in general, not just because of cost, but because of the appointments and the questionnaires that are sent and the legalese that can sometimes be a little bit overwhelming. So it's an easy entry point for folks who may outgrow our platform at some point in the future and work with someone like Mr. Corbin, or our platform may be sufficient for them.

Ms. Donna Skelly: What about storing wills? Where do you store a will? Can it be stored as an electronic file or does it have to be in print version, hard copy?

Ms. Erin Bury: It's an excellent question. The answer is, it's only legal to store a physical copy of the will at present, all across Canada. There is nowhere in Canada that allows you to store a digital file. The challenge with that is—if you're creating a will with someone like Mr. Corbin, it's a little bit easier because he can store it in his fireproof filing cabinets and it's all centralized and your family can call him. But if you're undertaking writing a holographic will, buying a will kit from Staples or using a platform like ours, the onus is on you as the consumer to be storing that in a safe place; and not only that, but to tell your executor and your family where the will is. So there are a lot of challenges with lost wills, wills destroyed in things like house fires or floods, and more importantly, families just not knowing where a will is. When Aretha Franklin passed away, her family found a handwritten will in the couch cushions a year after her passing because she had not actually told her family about it.

It's one of those situations where I think online storage would solve a lot of these issues: impossible to destroy, ability to easily share. I know that security is a concern there, and to Mr. Corbin's point, I really appreciated the idea that we don't want to be hasty. We want to make sure that there are protections in place and steps to make sure that we're not just doing these things willy-nilly. But right now, the onus is on the consumer to store that physical copy.

Ms. Donna Skelly: I'm going to ask you some questions in a minute about electronic signatures, but Mr. Corbin, can you speak to storing wills and what you think of where we have to move, in terms of an evolution of estate planning?

Mr. Barry Corbin: There are several options now. Some lawyers, by the way, don't accept wills to store. They don't want the aggravation that goes with it. I haven't gotten there yet, and so some clients will do that with me. Others will have safe deposit boxes.

There is a facility that's not well known, and that is, currently, for $26, you can deposit your will with the local court office, the local estates office, leave it with them and go visit it whenever you want. That way, you know it's secure. It's not accessible to anybody to snoop and see what your will says. I honestly don't know many people take advantage of that opportunity to store the wills in these depositories in the various court offices around the province.

Ms. Donna Skelly: Ms. Bury, the service that you offer: Is that available in other provinces?

Ms. Erin Bury: Yes. We're currently live in eight provinces. We just launched in Quebec last week. Interestingly enough, Quebec is the only province that has a mandatory will registry, which obviously makes it a lot easier for families to find wills after someone passes.

Ms. Donna Skelly: I'm going to throw it out to both Ms. Bury and Mr. Corbin: What do we do about electronic signatures and potential fraud and influencing people to sign under duress? How do we protect against that? Any ideas? Either one of you can jump in.

Interjections.

Ms. Erin Bury: Mr. Corbin, you go ahead, please.

Mr. Barry Corbin: Well, it is an issue—it's always present—about the possibility of undue influence. Part of the lawyer's responsibility when the lawyer is involved is to satisfy himself or herself that the instructions that are being given are being given freely and without any coercion from, let's say, an adult child who is looking after the parent and says, "If you don't make the will leaving everything to me, I'm kicking you out of this house." It's an issue that you're always contending with. If you remove lawyers from that equation, then clearly there is, I would say, a heightened danger of that being there. I'm not saying that having a lawyer involved will guarantee that there won't be undue influence at play, but I think that's a safer—

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you. My apologies. The time is up.

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Next, we'll move on to the independent members for five minutes.

M^me^ Lucille Collard: I have a question further to both of your presentations, Mr. Corbin and Ms. Bury. Currently, schedule 8 allows for the use of technology for the creation of a will, but not in a satisfactory manner to be efficient enough. There is also some reluctance to actually allow the electronic creation of a will. So it looks like that section needs some amendments, in any event. Would you agree that it would be beneficial for consumers and the public, or people in general, to be provided the option to do one or the other?

Ms. Erin Bury: I strongly believe that optionality is key. Our research shows, and it's well documented, that 57% of Canadian adults don't have a will. That's a staggering number—about 16 million Canadians today.

We're in the middle of the biggest wealth transfer in history, so it's going to be more crucial than ever for people to have solid estate plans in place. Choice is the name of the game: choice to write it on a piece of paper; choice to visit someone like Mr. Corbin; choice to use a platform like ours; and hopefully, choice to get together, with a paper copy, with your witnesses, if you so choose and feel comfortable with it, or choice to execute a will electronically, because that's where your comfort level sits.

Mme Lucille Collard: Mr. Corbin, do you agree that the option is a good way to go forward?

Mr. Barry Corbin: I think if sufficient thought goes into that exercise, then it may well be an idea whose time, if it hasn't come already, is not far off.

Mme Lucille Collard: A lot of these more modern ways of doing things are being introduced in legislation. I think the government needs to do it carefully, but at the same time evaluate itself, as we go to learn from the experience, and be able to have the checks and balances that are required to make sure that it doesn't lead to unwanted results, and to make sure that we allow ourselves to make some adjustments as we go to make it as efficient as possible.

I want to thank you all for your time this afternoon. I appreciate your comments.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you to all the presenters.

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

DURHAM COMMUNITY LEGAL CLINIC/CANADIAN COUNCIL OF MUSLIM WOMEN

FEDERATION OF ONTARIO LAW ASSOCIATIONS

The Vice-Chair (Mr. Vijay Thanigasalam): We'll move on to the next set of presenters.

We have Carol Wilding, president and chief executive officer of the Chartered Professional Accountants of Ontario. You are allotted with seven minutes for your presentation. You may begin.

Ms. Carol Wilding: Thank you, Mr. Chair, and thank you, committee, for the opportunity to present today. I am Carol Wilding, president and CEO of the Chartered Professional Accountants of Ontario. CPA Ontario is the qualifying and regulatory body of nearly 95,000 chartered professional accountants and over 22,000 students from across Ontario. It's important to know that our organization protects the public interest by ensuring that our members, students and firms meet the highest standards of integrity and expertise.

I'm here today to speak in support of the changes being proposed to the Public Accounting Act as part of Bill 245, the Accelerating Access to Justice Act, that would reduce the unnecessary regulatory burden, maintain the highest standards of public accounting and, finally, complete unification of Ontario's public accounting profession.

A multi-step process of unifying the accounting profession began in 2014 when Ontario's three legacy accounting bodies, which were regulating three different designations, functionally unified into the Chartered Professional Accountants of Ontario, moving credentialing and regulating to one designation known as the CPA. This functional unification was enshrined into law on May 17, 2017, when the new Chartered Professional Accountants of Ontario Act was proclaimed. That was the necessary legal step that brought three regulators with three separate credentials together as one regulatory body, regulating one credential.

The unification process has achieved regulatory efficiency and benefited the profession and the public by creating a single strong, well-resourced accounting regulator to uphold the high standards by which CPAs are regulated in Ontario. Unification has also been essential to reducing consumer confusion and strengthening public protection.

The Public Accountants Council, or PAC, is a body that's mandated to ensure that public accounting in Ontario is carried out in accordance with internationally respected accounting standards. It was established prior to unification when there were three accounting bodies. The PAC oversaw these bodies in their capacity to license and govern the activities of their members as licensed public accountants. PAC exercised this oversight through the creation and maintenance of the public accounting standards. These standards acted as a framework that the three bodies had to meet in order to be authorized to license their members as public accountants and govern their activities accordingly.

As a result of unification, the PAC's oversight responsibilities have been simplified, as there is now one designation body, CPA Ontario. While the PAC is currently responsible for the oversight of public accounting standards, the regulatory framework set out by the standards is implemented by CPA Ontario who is responsible for issuing and revoking public accounting licences, enforcing regulatory obligation for licensed public accountants and responding to any consumer complaints. And so retaining the PAC following both functional unification in 2014 and legal unification in 2017 has maintained a layer of unnecessary regulatory burden over the accounting profession in Ontario that does not provide any enhanced public protection.

Under the proposed changes, CPA Ontario would now be responsible for ensuring that public accounting standards continue to meet or exceed international standards, and that public accounting is practised in accordance with these internationally respected standards. This commonsense change to transfer the responsibilities of the PAC to CPA Ontario will achieve a more streamlined and efficient regulatory structure for public accounting. Importantly, it will also align the regulatory framework for public accountants in Ontario with those already in place across the country.

Absorbing the PAC responsibilities will save CPA Ontario, our members and, ultimately, the public $1.4 million per year in costs related to operating the PAC, and allows us to reinvest that money into the profession. Let me be very clear that this reduction in unnecessary regulatory burden will be done without having any impact on how public accountants are regulated. CPA Ontario will continue to maintain the high regulatory standards of the accounting profession in this province, and the Attorney General will continue to have oversight of public accounting regulations and final authority over changes to the public accounting standards in Ontario.

I would also like to stress to the committee that these changes contain no new restrictions on the permitted use of foreign accounting designations in Ontario, nor do they prevent anyone in the province from providing the currently permitted general accounting and bookkeeping services. Ontario's accounting profession is an open profession. Accountants with designations in good standing from approximately 20 professional accounting bodies in 16 international jurisdictions are accepted as CPAs through mutual recognition agreements or memoranda of understanding. In addition, CPA Ontario grants advanced-level standing for entry to the profession to members of 175 accounting bodies in 130 countries that are members of the International Federation of Accountants.

In closing, I would like to thank the Attorney General for proposing this common-sense change that would remove the final layer of unnecessary regulatory burden for the accounting profession, maintain the high standards of public accounting and finally complete unification of the accounting profession. We encourage all members of the Legislature to support this amendment to the Public Accounting Act as part of Bill 245.

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The Vice-Chair (Mr. Vijay Thanigasalam): Thank you for your presentation.

We have presenters from the Durham Community Legal Clinic. We have Lavinia Inbar and Sabrine Azraq. You may begin. You have seven minutes allotted for your presentation.

Ms. Lavinia Inbar: Thank you. Good afternoon. Thank you for the opportunity to participate in today's consultations. My name is Lavinia Inbar. I'm a staff lawyer at the Durham Community Legal Clinic. With me is Sabrine Azraq, national legal services coordinator for the Canadian Council of Muslim Women. Ms. Azraq is a volunteer with our organization and is a resident of Durham region. We are a joint delegation. Our comments will be limited to certain parts of schedules 8 and 9, which pertain to the Substitute Decisions Act and the Succession Law Reform Act.

The SDA lets you name a person to be your power of attorney for personal care. This person would be able to make decisions about your health care, housing and other aspects of your personal life, such as meals and clothing, if you become mentally incapable of making these decisions. Chances are that you want a say in who will be the person who will make decisions of such an intimate nature when you are incapable of doing so yourself.

The creation of this important document requires witnesses, but the list of eligible witnesses excludes a person's spouse, partner or child. In other words, the people with whom you are probably socially isolating, and who are the only people you can be with in person, are not eligible to be witnesses. The amendments allow for remote witnessing of these important legal documents, which are useful for everyone but are particularly important for some of the most vulnerable members of our community: low-income people, the disabled and the elderly.

Similar witnessing requirements exist for wills under the Succession Law Reform Act. The amendments in schedule 9 add a provision for audiovisual communication technology. Our position regarding the remote witnessing of wills would be similar to that regarding powers of attorney.

The Durham Community Legal Clinic has been working with seniors in Durham region for years, providing free services such as the drafting of wills and powers of attorney. As such, we have specific insight into the difficulties that low-income seniors face in obtaining legal assistance in Ontario. The changes will significantly help the majority of clients that the clinic serves, but some seniors do not have access to the Internet or technology that would even allow them to utilize virtual signing and witnessing.

Our executive director, Omar Ha-Redeye, described how, immediately prior to the pandemic, our clinic was doing education sessions for seniors on wills and powers of attorney in Port Perry, in Scugog township. Although these homes were only about 25 kilometres from our main office in Oshawa, it would have taken well over an hour for these seniors to travel there by public transit.

Bill 245 would certainly remove the need for travel, but it should not also be permitted to prevent our clinic's [*inaudible*] reach into our very large community. Durham region is approximately 2,500 square kilometres. As well, we travel outside our offices to serve the many low-income Durham residents, particularly in the rural areas, who cannot afford or sometimes cannot even access the Internet: "Access to justice cannot be defined by access to the Internet alone," said Ha-Redeye. A vibrant legal system still recognizes the need for many of our services to still be situated in the communities that we serve.

Durham Community Legal Clinic supports the amendments in sections 8 and 9 of Bill 245, which would provide significantly more flexibility in terms of how we provide these services in Durham region, with the reminder that this remains a small change in the broader needs of the legal system.

And now I share my time with Sabrine Azraq, national legal services coordinator for the Canadian Council of Muslim Women, who is a Durham resident and a volunteer with our clinic. Ms. Azraq brings comments on behalf of the Canadian Council of Muslim Women.

Ms. Sabrine Azraq: Thank you. The views provided represent those of the Canadian Council of Muslim Women, the premier organization for Canadian Muslim women facing family law predicaments and domestic

abuse and those who are seeking legal assistance, resources and guidance.

CCMW launched the first-ever legal services coordination pilot program geared specifically to Muslim women in Canada, with the intention of providing culturally appropriate legal services coordination for those seeking legal advice and counsel on family law issues. This project stems from a lack of culturally appropriate and knowledgeable legal services to address the specific needs of Canadian Muslim women.

As the national legal services coordinator, I work with dozens of Muslim women in Canada who face significant barriers in access to justice. Financial, cultural and language barriers make it difficult for the majority of our clients to obtain legal services financially, access legal clinics physically, and to make sense of the legal resources and services that may be available to them.

Our clients in suburban areas such as the Durham region are facing a significant gap in access to legal services and practitioners who are culturally sensitive and attuned to their specific needs. During times of family separation, clients may feel particularly alienated. Those in areas such as the Durham region may be particularly vulnerable to the gap in accessing justice. Many are pressured into navigating their family law issues, such as developing their wills, alone and without independent legal advice. Thank you.

The Vice-Chair (Mr. Vijay Thanigasalam): Next, we have William Woodward from the Federation of Ontario Law Associations. You have been allotted seven minutes for your presentation. You may begin.

Mr. William Woodward: Good afternoon, Chair, Vice-Chair and members of the Standing Committee on the Legislative Assembly. Thank you for providing the Federation of Ontario Law Associations, or FOLA, as we are more commonly known, with this opportunity to present today. We were previously known and referenced in the Courts of Justice Act as the County and District Law Presidents' Association. My name is William Woodward. I am the chair of FOLA and a partner at Dyer Brown law firm in London, Ontario.

By way of background: FOLA's membership is composed of the presidents of the 46 law associations, plus the Toronto Lawyers Association, represented in every judicial district in Ontario. Those local law associations collectively represent nearly 12,000 lawyers, who practise at private law firms across the province. These lawyers are on the front lines of our justice system.

FOLA appreciates how much work has gone into the drafting of this legislation, and we thank the minister and his staff for providing opportunities to us for input. If I may, however, I would like to share with you some comments regarding some aspects of the bill. Family law is, unfortunately, a growth area, and has been significantly impacted by COVID-19. We have been consulted through the process, and our members are very supportive of the proposed changes to the Children's Law Reform Act. We also support the remote commissioning of documents, which has become a necessity in our present pandemic situation.

In considering the proposed changes to the Courts of Justice Act, and in particular the changes to the Judicial Appointments Advisory Committee and the appointment process, we do have some concerns.

The development of the JAAC and the current process for appointments was developed to ensure that the very best candidates with the highest professional qualifications would be considered for an appointment. In part, these changes provided for a strong sense of transparency and largely eliminated political partisanship in the process. The JAAC has worked tirelessly to ensure the quality of our appointments, and that is reflected in the quality of the bench which serves this province. In addition, it continues to work towards promoting diversity on the bench, reflective of the society that we live in.

What I have been trying to understand is what purpose the proposed changes are intended to address. To my knowledge, the committee has functioned well, and I am of the view that if it's not broken, don't try to fix it.

It has been suggested that some of these changes will allow for vacancies to be filled more expeditiously. At the federal level, I can see how many vacancies exist in each province across the country every month. I have looked and cannot find a comparable list at the provincial level, other than for current vacancies for which applications are being received. Anecdotally, it does not appear that vacancies are being left open for any significant period of time.

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We do not take a position on increasing the number of recommended candidates from two to six, but we do have some concerns with the optics of a request for a further list of six, bearing in mind the extensive vetting and interviewing process which occurs before the JAAC would make its recommendations. In addition, requesting multiple lists has the appearance of shopping for a particular candidate as opposed to selecting from the very best. If the legislation is to proceed as drafted, we would suggest that some form of reporting be provided to indicate on how many occasions requests for additional lists of candidates have been made, to maintain the integrity and transparency of the process and to maintain public confidence.

Another potential danger in allowing multiple lists is the burden being placed upon the JAAC itself. I would expect that they receive many applications for appointments in larger metropolitan areas, but the pool of candidates for more regional jurisdictions may be smaller. The most recent report I could find on the government website dates back to 2017, when 143 new applications were received. The requests for additional lists will create an additional burden on the committee and also potentially create further delays in appointments.

I would also like to speak to you about the composition of the committee. FOLA, the law society and the OBA currently have the privilege of appointing one lawyer each to the committee. The act specifically provides that in the appointment of members, the importance of reflecting Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized. Once again, to my knowledge, there has not been

an issue raised regarding the quality, ability or commitment of the members appointed by the law association or that consideration has not been given to the diversity encouraged by the act. In addition, the Attorney General appoints seven lay members to this committee of 13, which presumably provides a greater flexibility to address the diversity needs.

It is unclear why this legislation proposes to have our organization, as well as the OBA and the law society, submit three names so that the Attorney General can make a selection. We are concerned that this strikes at the independence of the committee and potentially allows for a greater degree of influence over the composition of the committee beyond what already exists. I believe we have a provincial court bench which is composed of the very best of our profession, and the proposed changes do not appear to improve upon the existing process and may be viewed as allowing for some level of politics to enter into this independent process.

I thank you for the time to appear before you today. If there are any questions, I'd be pleased to answer them.

The Vice-Chair (Mr. Vijay Thanigasalam): Thank you for your presentation.

We will now move to questioning. This round of questions will start with the government for seven and a half minutes. MPP Oosterhoff?

Mr. Sam Oosterhoff: I appreciate all the presenters for coming before the committee today, and I want to thank them for their contributions.

My questions today are going to be focused on CPAs and some of the changes that have been made under that particular area within the legislation. I'm just wondering if I can be walked through some of the necessities for these changes. I know that the CPAO has been consulted with regard to these changes, and it's important that that happens.

I know as well that it's important that we recognize there are different areas in accounting, and I know the intent of the legislation and the legal piece of it are going to ensure that other organizations are still able to maintain their regulatory authority over their members—the RPA, for example.

But I'm wondering if the CPAO could speak a little bit about what this does to align Ontario's regulatory framework with other provinces across Canada and why that's important.

The Vice-Chair (Mr. Vijay Thanigasalam): Who is this question to?

Mr. Sam Oosterhoff: To Carol.

Ms. Carol Wilding: Thank you. Can you just repeat the last part of the question? Why it's important?

Mr. Sam Oosterhoff: Yes, why it's important that we see this alignment with other provinces and territories and why that's something that matters for people who are perhaps asking you for certification of their accounting or governance of their accounting. Could you speak a little bit to what that looks like and the change—how that will be reflective of what's happening in other parts of the country?

Ms. Carol Wilding: Effectively, removing Public Accountants Council, or PAC, oversight over CPA Ontario relative to public accounting regulation and standards, but by us absorbing it—so they're not removing it—puts the accounting profession in Ontario in line with all jurisdictions across the country. It eliminates what we would say is an unnecessary layer of regulatory burden that isn't required anymore, as a result of unifying three designations in three bodies. There was a time when PAC needed to serve that function, and that became simplified with unification functionally and then legally in 2017. So this regulatory layer is no longer required. CPA Ontario absorbs those functions. The minister retains oversight over public accounting regulation, and also government does over all the approvals to any changes in public accounting standards.

Mr. Sam Oosterhoff: If I was someone who didn't really know the difference between all the different councils and the CPA and the RPA and this PA and that PA, and all I saw was that the council was being dissolved and it looked like there was an oversight body that was being removed, and I was concerned about this because I obviously want to make sure that my accountant has good oversight—could you speak to that concern and why that's not a concern that needs to be worried about?

Ms. Carol Wilding: What unification achieved was having one single, well-resourced regulator, which is CPA Ontario. Our powers come from the government. It's important that Ontarians know what body is providing oversight and regulation and ensuring that the professional accountants, CPAs, are acting in accordance with what they're required to do under our code of conduct, under continuing professional development. So it takes away the confusion for the public in terms of oversight for professional accountants, for CPAs.

If other bodies, other accounting designations from international bodies—they can utilize their designation in Ontario. We have mutual recognition agreements and MOUs with a number of different bodies—in fact, 16 international jurisdictions, 20 professional accounting bodies. If those other bodies would like their members to be able to use the designation in Ontario, then they can come in through an MOU or an MRA. We also have an agreement through IFAC, the International Federation of Accountants—through accountants coming in, international accountants there. If they choose to use or would like to use—there is a process in place where we ensure that anybody with a designation coming into Ontario needs to make sure that it's assessed for equivalency, because all of this is about ensuring that we protect the public. That's our mandate, and it's important that Ontarians know they have recourse through the regulator that has oversight and regulates accountants in Ontario. It doesn't prevent anybody who uses general bookkeeping services from continuing to do that. And for other designated accountants who would like to come in and use those designations, there are many avenues that already exist, and none of those are changing, in terms of those accountants wanting to come in and become CPAs and utilize their designation in Ontario.

Mr. Sam Oosterhoff: That would, of course, mean that other designations like APAs or RPAs don't fall under that particular designation, so you wouldn't have the oversight over them, right?

Ms. Carol Wilding: We do not have oversight over other designations, no.

Mr. Sam Oosterhoff: To go back to the council, then: How did that work when it came to the conversations between CPAO and the council—to come to this place where there's this absorption?

Ms. Carol Wilding: It was discussions that were ongoing, since unification, with the Public Accountants Council. They have been actively engaged with stakeholders, including CPA Ontario, since unification, given that there were three legacy bodies and three legacy designations. As I said, there was a need for PAC to be there to ensure that the three bodies were practising public accounting in accordance with the same standards.

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But now that you've only got one designated body, CPA Ontario, there really was no longer a need for that to be in place. It didn't make sense. That was part of the simplification and the benefits of unification: getting rid of consumer confusion and also having a single regulator.

In doing that, PAC has had ongoing conversations. PAC's chair, Gavin Tighe, is aligned with the proposals that are here today. He has expressed that to CPA Ontario. He has expressed that as well to the government, to say that they are very much aligned with this, because, as you've heard, it will put us on the same footing here in Ontario as we are with other jurisdictions across the country, and importantly, it will see $1.5 million that is paid by CPA Ontario members, who are ultimately Ontarians and the public. That money will be saved and reinvested into the profession.

So it has been a thoughtful, considered discussion amongst the stakeholders and amongst PAC, who are very much in agreement to bring in this recommendation, and it has also been very extensive consultation with the government.

Mr. Sam Oosterhoff: How do you get to that one point—

The Acting Chair (Ms. Donna Skelly): Thank you, folks. We're out of time, MPP Oosterhoff. Sorry about that. Thank you.

Now we're moving to the official opposition. Who would like to speak? MPP Singh.

Mr. Gurratan Singh: My question is for William. Now, it's fair to say that the JAAC is the gold standard for judge selection, quite frankly, in North America or the world. Is that fair to say?

Mr. William Woodward: I think that our bench is extremely well-respected and well-positioned in terms of its stature, certainly, across the country and beyond our borders.

Mr. Gurratan Singh: I do have the updated version of Zoom. It's not letting me unmute myself. I have some background noise I'm cognizant of.

Back to my questions, though: There's really no reason for changes to be brought forward to the JAAC. The JAAC is one of the best, currently, in the world.

Mr. William Woodward: I think it operates very well. I've never heard any criticism of the JAAC. As I said, the candidates who are being put forward for the Attorney General's consideration are top-notch individuals, typically well-known within their communities and very well-respected and well-received once they are appointed.

Interruption.

Mr. Gurratan Singh: That's just my daughter making some noise in the background, just so you're aware of why there's some noise in the background like that.

An article came forward recently from the Toronto Star. The Toronto Star has said that racialized lawyers came out, and they said that the government is putting it forward that they're trying to increase diversity in the bench, and that's why they're bringing these changes forward. But this article describes the Muslim lawyers association, the Black lawyers association and the South Asian lawyers association, who all say these changes aren't really necessary and that it's actually a front for a power grab from the government, where they can hold undue influence in the selection of judges. What would you have to say to that?

Mr. William Woodward: Well, I really can't speak for those associations. But as I said earlier in my submissions, the Attorney General appoints seven of the 13 members, and they're lay members, so that allows for a greater flexibility to address diversity, gender and other issues that should be taken into consideration by the appointments committee. Certainly we, as well as, I would expect, the law society and the OBA, consider that in terms of the people we are allowed to appoint the committee.

Of course, we are seeing the bench change with our population and communities and more people from different cultural backgrounds joining the profession of law and reaching a standing where they can be considered for a judicial appointment, so I don't really see that that addresses the problem. Those issues are being addressed.

Mr. Gurratan Singh: I'm not going to ask you to comment on the position that these organizations have already taken, but I'd like to get your thoughts on their position, just to make that distinction.

The Muslim lawyers association said—and this is one of the quotes from the Toronto Star—"We see this as a power grab dressed up in the very thin veneer of purported diversity. Our view is that diversity and excellence are best preserved by maintaining the independence and integrity of the current process." Would you agree with this position?

Mr. William Woodward: Yes, I agree that the independence of the committee and the integrity of their process is very important. I don't see that some of these changes address that, and quite frankly have never heard of any issues being raised on that front, and so the—

Mr. Gurratan Singh: Further to that, Raphael Tachie—and I apologize for the pronunciation—the president of the Canadian Association of Black Lawyers, says, "It's challenging to read something that says, 'We're

doing this to increase the diversity of the judiciary,' when equity-seeking groups didn't ask for it." What are your thoughts about his quote?

Mr. William Woodward: Well, as I said earlier, I wasn't aware of any complaint. I would have expected that groups like CABL, like RODA would have been seeking an opportunity to raise issues if one existed. I agree with their view that there doesn't seem to be a problem here.

Mr. Gurratan Singh: The last quote I'm asking you to consider is from a member of the South Asian Bar Association. His quote is "for a partisan or patronage appointment—some sort of appointment based not on the selection criteria"—sorry, I'll just give you some background. The total paragraph says he "argues that allowing the Attorney General more choice in who to appoint to the bench leaves room 'for a partisan or patronage appointment—some sort of appointment based not on the selection criteria or on who is the best fit for the job, but for other reasons.'" Would you agree with that position the individual has taken?

Mr. William Woodward: I think I tried to address that in my comments regarding multiple lists of candidates, that it gives off perhaps the aura that some shopping is being done for a particular candidate, as opposed to the top recommendations of the JAAC which are put forward to the Attorney General for his or her consideration at any given time.

Mr. Gurratan Singh: So it's fair to say that there's really no diversity position. There's nothing that furthers diversity by bringing these purported changes to the JAAC system.

Mr. William Woodward: Nothing that I have seen that specifically addresses that, beyond what is already contained in the legislation that we're supposed to be considering.

Mr. Gurratan Singh: The issues of diversity are real ones, but they're being addressed right now through a process that also maintains the independence and the integrity of the system, correct?

Mr. William Woodward: That is correct.

Mr. Gurratan Singh: So to truly address diversity would probably be to—what ways could the Attorney General or the AG's office have brought in further diversity, working alongside the different organizations that are part of the JAAC, but not bring in any questions around the independence or integrity of the JAAC?

Mr. William Woodward: As I said, the Attorney General has seven appointments to the committee and so it's open to him or her at any given time. They have a lot more flexibility in addressing those issues. For instance, if they wanted to have a member of the South Asian community, as an example, on the committee, it's certainly open to the Attorney General to do that.

Mr. Gurratan Singh: So it's fair to say that there are many other ways that the Attorney General could have addressed issues of diversity, instead of what is being put forward, currently, through this bill?

Mr. William Woodward: Yes, I agree with that.

Mr. Gurratan Singh: And further to that, this suggestion being put forward does open up a lot of questions—

The Acting Chair (Ms. Donna Skelly): MPP Singh, unfortunately, that's your time. We'll have to move on to the independent members. MPP Collard?

M^me^ Lucille Collard: Thank you to the presenters and for your comments, which are very helpful. To the Durham Community Legal Clinic, I just have a question or two. You've spoken to the eligibility of witnesses that actually exclude close ones, that that would be something we'd want to be allowed. Would one of your recommendations be to change that requirement to not make it so stringent on the eligibility of a witness being a member or a licensee of the law society?

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Ms. Lavinia Inbar: No, the reason for those restrictions on witnesses come out of hundreds of years of common law, and they're there for good reasons, so changing the eligibility of witnesses is not the answer. Changing the categories of witnesses who could be eligible is not the answer.

We support the virtual option because it doesn't change very much of the law. It's always tricky to change the law. It doesn't change the law very much, but it provides more accessibility.

M^me^ Lucille Collard: I think you also explained that you support the technology to be accessible, because it may help, but that it shouldn't be an obligation, because for certain people, it's better to proceed the old-fashioned way, which is what we currently have. So would you be in favour of having the system being optional—whether people would want to proceed with the technology or just the old-fashioned way?

Ms. Lavinia Inbar: Precisely. It should be an option. It would allow for greater flexibility.

M^me^ Lucille Collard: Thank you. I just wanted to clarify that.

A quick question to Mr. Woodward: You explained and put out all the arguments regarding the importance of maintaining judicial independence and the way that the changes that are being brought forward are actually moving away from independence and moving closer to government interference.

Could you explain for the layperson, who may not totally grasp the importance of judicial independence, how harmful it is to our judicial system to have government interference, and whether it's perceived or actual—because it's an important principle, as well. People need to understand that even if the minister says, "Well, it's not what I am doing. It's just a tool," the perception is actually just as important. Could you speak to that briefly?

Mr. William Woodward: It's not so much an issue of judicial independence, but of the independence of the committee that makes the recommendations to the minister for appointments. To avoid what is described as a political patronage appointment, the committee was formed with a sense of independence to go out and vet the very best applicants for any judicial appointment. That vetting

process is quite extensive, because it's not only reviewing the application; it's calling the references and conducting interviews with the references. There are also informal inquiries. If someone in the London area, for instance, applied for a judicial appointment and they practised in the same area as I do or where we may have crossed paths, I might get a telephone call, informally, from a committee member just to inquire about that individual and their suitability to sit on the bench.

So this whole process is very important and, as a result of the structure that has been developed over the last many years, we see the benefit in the judges who are sitting in our courtrooms every day. It's not that someone is appointed because they were best friends or neighbours with somebody with some influence in the government; these people are being extensively vetted and, as I said, they are the top of the profession, which is one of the criteria—

The Acting Chair (Ms. Donna Skelly): Thank you, sir. We have run out of time.

We will now move to the second round of questions. We will begin with the official opposition. You have seven and a half minutes. MPP Hassan.

Mr. Faisal Hassan: Thank you to the presenters for joining us this afternoon.

I would like to direct my question to Lavinia Inbar and Sabrine Azraq. I know that you talked about the importance of protecting the most vulnerable members of our community such as seniors, disabled folks and low-income people, and also the importance of access to justice. Could you elaborate? Why is that important? Lavinia first.

Ms. Lavinia Inbar: Thank you. Access to justice is fundamental to a free and democratic society. People need to be able to exercise all their rights and be able to access the law and the services, so it's fundamental. Access to justice is fundamental, and for the most vulnerable members of our society, sometimes that access for them can be tenuous for various reasons. Sometimes it's distance, sometimes it's language, sometimes it's disability—myriad reasons. No one should be left behind. That's the bottom line.

Mr. Faisal Hassan: Thank you very much. I know that Sabrine Azraq also talked about the importance for culturally appropriate services. I know that the government has, in the 2019 budget, also cut the legal services supports, which is also impacting access to justice. Could you talk about the importance of access to justice and also the fundamental question of everybody having access to the justice system? And if this schedule 9 doesn't address culturally appropriate services, whether it is financial or otherwise, why is this important?

Ms. Sabrine Azraq: Yes, definitely. Thank you. I don't think the question is why access to justice is important. I think we all know that that is very necessary for all Canadians. I think the question is, what are the barriers that are inhibiting that access to justice, and who are the marginalized communities that we are speaking of? I know specifically within Muslim communities, accessing justice, particularly within family law issues, is very nuanced and complex. That is why it's extremely important and necessary for culturally appropriate lawyers or legal services to be made available to them.

The Canadian Muslim women who are clientele within the Canadian Council of Muslim Women, many of them come forward and they have issues where they are trying to navigate not only between accessing Canadian family law, but understanding Canadian family law in relation to the Muslim family law of their home country. So for that reason, any lawyer who doesn't have that cultural competency in understanding those nuances would not be able to provide them with the advice and the counsel that is needed for them to access justice here in Canada.

Mr. Faisal Hassan: Very good. I know that you pointed out very clearly the importance of access to justice is a key fundamental of the rights of citizens. In this bill now, Bill 245, both of you—I think Sabrine could start. What recommendations or amendments would you like to put forward that will actually enhance access to justice?

Ms. Sabrine Azraq: Thank you for that question. I'm actually going to pass it to Lavinia, if you would like to start.

Ms. Lavinia Inbar: Thank you. Well, we support the virtual witnessing and signing [*inaudible*] from schedules 8 and 9, and those are the only schedules that we're commenting on. We think that those amendments enhance access to justice, because people who otherwise could not [*inaudible*] or could not have powers of attorney and wills, which are all very important documents, now might be able to. So in a small way, it enhances access to justice.

Mr. Faisal Hassan: Sabrine, would you expand on that or include any comment?

Ms. Sabrine Azraq: I concur with her statement.

Mr. Faisal Hassan: Very good. Thank you.

Chair, how many minutes do I have left?

The Acting Chair (Ms. Donna Skelly): You have two minutes and 30 seconds.

Mr. Faisal Hassan: Very good. I know that you mentioned also that signing virtually is also a barrier for some seniors, because they might not have Internet access; they might not have online ability to actually complete that. If we are asking seniors to do these kinds of things through virtual, this will also limit and create barriers for them to access justice. Why is that the case?

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Ms. Lavinia Inbar: We don't want to create more barriers. Some people don't have access to Internet. Many seniors are very, very good on the Internet [*inaudible*]. It's not just a seniors' issue.

The amendments allow, or we hope they allow, flexibility, where those who don't want virtual signing and witnessing and have the ability to travel [*inaudible*]. As a clinic, as much as possible, we travel to people who cannot, but our resources are limited. We're a small, shoestring-budget agency, but we go to [*inaudible*], and people come to us when they can. There are some people who may not be able to come to us. We hope to be able to, with these amendments [*inaudible*] everybody—so not just virtually but other ways, as well.

Mr. Faisal Hassan: Very good point. That's very important. If we are creating further barriers to members of our community [*inaudible*] virtually or culturally appropriate lack of services or access to justice—it really hinders the access-to-justice system.

Is there anything you would like to include in order to make sure this committee adopts this amendment?

Ms. Lavinia Inbar: I have no further comments. We support the amendments as they stand.

The Acting Chair (Ms. Donna Skelly): Thank you, and that is our time. It ended on a perfect note.

I understand that MPP Sandhu has just joined us. MPP Sandhu, can you please confirm that you are indeed the honourable member and that you are in Ontario?

Mr. Amarjot Sandhu: This is Amarjot Sandhu. I am calling in from Brampton, Ontario.

The Acting Chair (Ms. Donna Skelly): Thank you.

We're now going to move on to the government side. You have seven and a half minutes. MPP Mitas.

Miss Christina Maria Mitas: My question is for the Durham Community Legal Clinic. First, I'd like to start by thanking you for the example from Scugog. I know that my friend and colleague from Durham appreciates hearing how the work that we're doing at Queen's Park is making a difference for her constituents on the ground. Thank you for that and for going into how you support enhancing access to justice.

MPP Hassan said that we don't want to hinder access, and I agree with him wholeheartedly, as I know all of my colleagues do. I'm glad you see that we are enhancing access.

Our Attorney General and our government have made significant progress in the past year in modernizing Ontario's justice sector. We're trying to make it easier, faster and more affordable for people to resolve their legal issues and to interact with the justice system to make it more equitable.

Can you please share which of these efforts you have found to be most helpful for your clinic and clients, especially taking into consideration that you said you're on a shoestring budget and modernization is very helpful to an agency such as yours?

Ms. Lavinia Inbar: We've been, like everybody else, improvising a lot in the [*inaudible*] with social distancing. When the restrictions were lifted, many tribunals and the courts went virtual, and we had to adjust, and that has been good and bad. Regardless of what our opinion is of the [*inaudible*], it will be the future. Many tribunals have signalled that they are going virtual, and we're adjusting. We have to stay modern, able to meet these realities. We're just being realistic about the current situation.

Miss Christina Maria Mitas: Thank you for your answer.

I will pass on the rest of my time to my colleague MPP Jim McDonell.

Mr. Jim McDonell: Okay. Thank you for that. My question also goes to Lavinia. I know that the legislation currently requires a will or POA to be physically signed and witnessed by two people in person, with signatures on the same document. COVID-19 made this difficult to observe safely, and in response to the need for physical distancing, the government made an emergency order that allows wills and POAs to be virtually witnessed during the emergency period, with one witness being a lawyer or paralegal, and for those who are witnessing virtually to be able to sign separate, identical copies instead of the same physical document.

I guess I'd go back to a personal instance where my dad—he had cancer in his last year. Trying to finish off his will, we had a local lawyer who seemed somewhat more interested in catching up—although we made three visits; I remember my mom talking about it. The trouble was that his will that was in place had three witnesses, but they had all passed away, so it needed to be updated. Through those three meetings, he never got it updated, and of course he was in the hospital, so it created a problem; although the nature of the will didn't change very much.

My question is, with the success of allowing remote commissioning of documents, as well as the virtual witnessing of wills and powers of attorney, are there other changes you'd like to see to continue modernizing the justice system, or other services you'd like online with the appropriate safeguards in place? In a case like this, it certainly would've made it a lot easier in the final days to make those approvals.

Ms. Lavinia Inbar: The law moves slowly, and the law of wills moves slowly. That law is very, very old, and for good reason, so I think that in making changes, we should proceed cautiously, in very small steps at a time.

The changes, the amendments, in Bill 245 are small steps, and we'll see how it goes, but I would not want to make wholesale changes to our wills regime—because it's a very old, time-tested one—without a lot of scrutiny. People who know more about it than me could better weigh in on this, but I think where we are now is a good small step forward. We'll see how it goes from there, but I have no suggestions for large changes at this time. I wouldn't be qualified to make that kind of suggestion.

Mr. Jim McDonell: Now, in the case of the virtual wills, have you had the opportunity to utilize that, or do you see that as too big a step to take?

Ms. Lavinia Inbar: We have not yet had virtual wills through our clinic. We have a very, very small wills practice, so we haven't had direct experience with virtual wills.

Mr. Jim McDonell: I know that through the debate, a local lawyer had talked about how, in his later years of practising, he was working more with legal aid. He talked about the benefits of some of the changes that came about and the fact that he could see or hear or work with many more clients than he could in the past, because of the idea that you could do things virtually. I guess the public was getting a lot better bang for their buck for his time being put in. He could see many more clients and solve a lot more issues.

Have you experienced any of the benefits from some of the changes we made that were one-time or temporary, but now we're looking at making permanent?

Ms. Lavinia Inbar: Definitely. I used to be on the road a lot, travelling from court to court. A lot of times when you're in court, you're there to do something relatively straightforward, but you just did 400 kilometres, because it's a big province, to do that. So the changes where these kinds of routine things can be done more virtually and it's not required to have bodies physically there all the time—I think it's better; less carbon footprint. And whether you agree or not, it's probably going to be the future whether we like it or not.

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The Acting Chair (Ms. Donna Skelly): With that, we're going to have to move to the independent members. MPP Collard? There you go.

M^me^ Lucille Collard: I don't have any further questions for the witness, thank you.

The Acting Chair (Ms. Donna Skelly): Thank you to the presenters.

CUNNINGHAM SWAN CARTY LITTLE AND BONHAM LLP

ASSEMBLÉE DE LA FRANCOPHONIE DE L'ONTARIO

DEMOCRACY WATCH

The Acting Chair (Ms. Donna Skelly): We are now going to move to our 4 o'clock presenters, beginning with Mr. Fleming, who is just joining now. We will begin. Mr. Fleming, if you could state your name for the record. You will have seven minutes for your presentation.

Mr. Paul Fleming: Good afternoon. My name is Paul Fleming. I'm a barrister at Cunningham Swan in Kingston, Ontario. Madam Chair, would you like me to commence?

The Acting Chair (Ms. Donna Skelly): Please go ahead.

Mr. Paul Fleming: Thank you. Good afternoon. My name is Paul Fleming, as I said. I'm a partner at Cunningham Swan, which is a wonderful law firm in Kingston, Ontario, which has been providing legal advice to our community for 125 years. I practise exclusively in the area of estate, trust and capacity litigation. I do not engage in any estate planning.

At the outset, I would like to extend sincere thanks to all committee members here present today for your invitation to be here, and for the opportunity to speak to you about proposed changes to estates law in Ontario under the new and exciting Bill 245, the Accelerating Access to Justice Act, 2021.

I also take this opportunity to thank each of you for your efforts to date. There has been rapid change in our legal system during this age of COVID. My perception is that through it all, Her Majesty's courts, members of government and Ontario's politicians have rallied together in extraordinary ways to ensure that access to justice has been sustained, and indeed, as we are now seeing, improved for the benefit of all citizens of Ontario.

My comments to you today are made sincerely and from the perspective of a fellow who is immersed in this sort of stuff every day. With hope of being useful to you, I intend to confine my remarks to matters touching on potentially contentious issues only. So, for example, I will not be addressing in any way issues arising out of proposed legislation involving virtual will and power of attorney signings.

I turn first to the changes to the Children's Law Reform Act, which would see an increase in the monetary threshold of funds that can be received by parents on behalf of their children, and expanding the circumstances in which parents can directly manage their children's finances. This is a very welcome change and long overdue. However, my comment here is that I believe the threshold amount should be set even higher, to $50,000, so that it could be that much more effective. A higher amount would create a wider umbrella but would still be reasonable. Nowadays, parents routinely control this much and more, quite frankly, in the way of RESPs for their children, and this is done really without incident every day.

At the moment I currently have two cases involving parents who are in the process of undertaking expensive guardianship applications for their children to deal with funds in excess of $100,000 in each instance. I can tell you that uncontested guardianships generally cost in a range of $8,000 to $15,000, depending on the complexity of circumstances. There is no doubt that they are time-consuming and expensive, and yet, really, if this were not enough, these sorts of guardianship applications have always seemed to me to be illogical when looked at through the lens that, practically speaking, parents already possess many legal rights and dominion over their children. Nonetheless, they are asked to obtain a court order and another layer of legality. The fact is most guardianship applications are commenced and orders issued because a situation has arisen where there is no one with the authority to make legal decisions about property or personal care for the incapable person. That is not the case here, where parents have all kinds of existing legal authority bestowed upon them by law.

I would take Bill 245 even further and suggest some sort of framework that would permit doing away with the need for guardianship applications in these circumstances altogether. For example, I propose to you that a mandatory legal requirement for parents to put in place a trust agreement, in a form mandated by regulation even, prior to receiving funds belonging to their children could be equally effective and would be less expensive and less intrusive. Parents would acquire all of the fiduciary duties established in the world of trust law to act in the best interests of their children and to manage and account for the funds belonging to that child, without the need to resort to costly guardianship appointments. There could even be some sort of provision added to the trust requiring a form of passing of accounts over a set time frame.

I turn next to the proposal in Bill 245 that there be no revocation of a will subsequent to a new marriage. One of the purposes of this amendment is to protect vulnerable persons from predatory marriage. This is a very welcome change to the law. This change is important because it will

have the effect of shielding assets of a person at the outset of a new marriage that may have occurred as a result of predatory actions by one of the parties to the union. The problem up to now has been that once a predatory party to a new marriage has entitlement to the assets of the new spouse, there is precious little common-law traction to defend against the actions of the exploited partner.

Unscrupulous opportunists too often get away with preying upon those older adults with diminished reasoning ability, purely for financial profit. We know this. The overriding problem with such marriages today is that they are not easily challenged. The current standards or factors to be applied for determining the requisite capacity to marry are anything but rigorous. In short, the bar is set very low for the required capacity to marry, and the court will often find that capacity exists, even in the most obvious cases of exploitation. Exploitive marriages withstand challenges because the common law simply has not kept pace with the reality of the current property rights legislative regime, so in the absence of clear legislation defining the requisite mental capacity to marry—

The Acting Chair (Ms. Donna Skelly): I'm sorry, but we've run out of time. We're going to move to the next presenter, l'Assemblée de la francophonie de l'Ontario. If you could please state your name for the record, you have seven minutes, beginning now. Go ahead, and you will have to unmute yourself.

Mr. Peter Hominuk: Peter Hominuk, directeur général—executive director of l'Assemblée. But it's Carol Jolin, our chair, who is going to be speaking.

Mr. Carol Jolin: Can you hear me?

The Acting Chair (Ms. Donna Skelly): Yes.

Mr. Carol Jolin: Okay, excellent.

The Acting Chair (Ms. Donna Skelly): Go ahead.

M. Carol Jolin: Merci, madame la Présidente. J'aimerais d'abord vous remercier d'avoir invité l'Assemblée de la francophonie de l'Ontario à venir témoigner dans le cadre de vos travaux sur le projet de loi 245, la Loi de 2021 visant à accélérer l'accès à la justice. Je tiens aussi à souligner que je suis aujourd'hui accompagné par le directeur général de l'AFO, Peter Hominuk, et de notre analyste politique, Bryan Michaud.

Part of my presentation will be in English, et une partie sera en français.

Access to justice is a cornerstone of society. In Ontario, the francophone community has long called for a review of the Courts of Justice Act to ensure that francophones have fair access to justice in both official languages. These calls increased at the end of last year, following a disturbing incident. Last December, it was reported that a sexual assault case in Sault Ste. Marie ended in a mistrial because there was no interpreter for an alleged victim's testimony. Therefore, we are pleased to see that the government is proposing real changes to eliminate barriers to access to justice in French in Ontario.

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À cet égard, nous accueillons chaleureusement les propositions contenues dans le projet de loi, en particulier celle de l'annexe 3. Le droit de déposer des documents en français, peu importe la nature du dossier, devant les tribunaux de la province représente un important pas vers un accès équitable à la justice dans les deux langues officielles. En plus, le droit de demander la traduction d'une décision judiciaire dans une instance bilingue ne sera plus dépendant de la langue parlée par les parties adverses. Nous avons alors devant nous un projet de loi qui permettrait à toute personne d'avoir le droit de déposer des documents en français, nonobstant l'accord ou non des autres parties au dossier.

A bill that would establish the right to submit documents in French, regardless of whether the other parties to the case agree or not—l'AFO is pleased with these changes. We are aware that the Association des juristes d'expression française de l'Ontario will say the same tomorrow morning.

Nous saluons aussi les modifications visant la sélection des juges. Nous tenons particulièrement à souligner l'obligation du Comité consultatif sur les nominations à la magistrature d'inclure dans son rapport annuel des statistiques qui incluent la capacité de parler français des candidats et s'ils s'identifient comme membre d'une communauté francophone. De cette manière, le processus de nomination sera à la fois plus transparent, et nous espérons que cela mènera à davantage de nominations de juges bilingues.

L'AFO tient aussi à souligner les réformes contenues dans l'annexe 9 du projet de loi 245, qui modifient des dispositions de la Loi portant réforme du droit des successions. Plus précisément, nous saluons l'ajout de technologies de communication audiovisuelle, permettant d'accélérer le processus de règlement de testament.

Ça fait des années que les Franco-Ontariennes et les Franco-Ontariens demandent à ce que l'accès à la justice en français soit possible partout dans la province. Ainsi, l'abolition des régions désignées par la Loi sur les tribunaux judiciaires est un premier pas pour atteindre l'équité de l'accès aux services gouvernementaux.

We also believe that the contents of this bill could provide inspiration to the government of Ontario for the reform of the French Language Services Act.

En ce moment, les districts désignés existent en vertu de la Loi sur les tribunaux judiciaires et ne concordent pas avec les régions désignées en vertu de la Loi sur les services en français. This could result in a situation where parties to a bilingual trial with French-language documents must attend in a courthouse where French-language services are not available; the opposite could happen as well. In its current form, the French Language Services Act continues to limit access to French-language services in courthouses. That means there is no guarantee that counter services incidental to bilingual trials can be provided in French. Therefore, it is essential to reform the French Language Services Act so that it applies to the same service areas defined by Bill 245 for the Courts of Justice Act.

Nous avons d'ailleurs grandement confiance en la ministre des Affaires francophones et son équipe de respecter l'important engagement qu'elle a pris de

moderniser la Loi sur les services en français dans le cadre du présent mandat.

Je remercie les membres du comité pour leur écoute et leur considération.

The Acting Chair (Ms. Donna Skelly): Thank you. We will now move to our next presenter, from Democracy Watch, Duff Conacher. You have seven minutes. Please say your name for the record. We will begin the clock when you start speaking.

Mr. Duff Conacher: Thank you very much to the committee for this opportunity to speak on Bill 245. I am not going to speak on all aspects of the bill, in part because it is an omnibus bill and Democracy Watch is not concerned with addressing every aspect of the bill. But I would just like to say that, generally, Democracy Watch's position is against omnibus bills because they force members of the Legislature to decide whether to vote for things they may favour in a bill even though they may oppose other aspects of the bill. It is simply bad practice to be introducing a bill that changes so many different parts of legislation in so many different ways at one time.

The part of Bill 245 that Democracy Watch is commenting on are the changes in schedule 3 to the Courts of Justice Act. We are very concerned, as are many other associations of lawyers in Ontario, about these changes to the Judicial Appointments Advisory Committee—essentially, the repeal of section 43 of the Courts of Justice Act and replacement with a new section.

The two changes that concern us the most are the increase in the number of members of the Judicial Appointments Advisory Committee the Attorney General appoints—an increase from seven to 10 of the 13 total members—and the increase in the number of candidates the committee will be required to send to the Attorney General—an increase from two or more to six or more, with the Attorney General continuing to have the power to reject the list of six or more and request a new list. These two changes will politicize the appointment of judges in Ontario, opening up the appointment process to patronage and cronyism, which will undermine the public's confidence in the independence and impartiality of the courts. Democracy Watch's position is that the changes will make Ontario's system for appointing judges unconstitutional, as it will violate the constitutional principle that guarantees the independence of courts and will also violate the public's charter right to impartial courts and judges.

Last November, Democracy Watch filed a case in federal court, challenging the federal government system of appointing judges, because it is also open to political interference and violates the constitutional principle of judicial independence and the public's charter right to impartial courts and justices. The Ontario changes in Bill 245 to the Courts of Justice Act essentially change the Ontario system to match the federal system. Again, Democracy Watch's position is that the system is unconstitutional, and that's why we are challenging it in court.

If Bill 245 is enacted in its current form, Democracy Watch will also file a court case challenging the constitutionality of the new judicial appointments system that will be created by Bill 245.

These are dangerously unethical changes that will make the system open to patronage and cronyism. The current appointments system is not ideal, but it is not ideal in that the Attorney General already has too much control over the members of the committee and too much discretion in terms of rejecting recommended candidates the committee sends to the Attorney General, again and again, as many times as the Attorney General wants, for whatever reason, including political reasons. The system should be changed to decrease the control that the Attorney General has over the appointment process, not increase it, as Bill 245 proposes.

Democracy Watch's submission, which has been distributed to the committee members, sets out six recommended changes to decrease the control that the Attorney General has over the committee and the appointment process overall, including over the promotion of judges to Chief Justice, Associate Chief Justice and regional judge in the regions of Ontario. Democracy Watch is also challenging, in its federal case, the promotions system, which allows the federal Minister of Justice to make promotions solely, without any check on that power at all.

In Manitoba and British Columbia, the Attorney General chooses a minority of the members of the advisory committee. In Quebec, in the UK and in Ontario's current system, the committees only submit one to three candidates for each open judge position, and the minister is required to choose from that short list. The UK goes even further, where the committee only submits one candidate, and if the minister rejects that candidate, they must explain, in writing, to the committee the reasons for rejecting them. All of these systems have flaws in one way or another.

The six recommendations Democracy Watch is setting out would:

—remove the Attorney General from choosing any members of the committee;

—have the committee only send a short list to the Attorney General of one or two candidates, but preferably, only one;

—prohibit the Attorney General—or preferably, a multi-party committee made up of MPPs—to review that candidate, and only be allowed to reject one of the candidates submitted by the committee; and

—remove the Attorney General from making the promotions of judges to those Chief Justice and other positions.

The independence of the judiciary is entirely important in our democracy, to ensure a rule of law and fair law enforcement. The changes Bill 245 is proposing will undermine the rule of law, democratic good government and the public's confidence in the impartiality and independence of the judiciary. For this reason, we call on the committee to amend the bill and not send it back to the Legislature without those amendments. But if the bill goes through as is, as I mentioned, Democracy Watch will challenge those changes in court.

Thank you very much. I welcome your questions.

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The Acting Chair (Ms. Donna Skelly): Thank you, Mr. Conacher. We will now go to our first round of questions, beginning with the official opposition. You have seven and a half minutes. MPP Bourgouin, you can begin this round.

M. Guy Bourgouin: Bonjour. Ma question est pour l'Assemblée de la francophonie de l'Ontario : Carol. Ma première question—puis bonjour Carol, puis Peter, puis Bryan. Ça ne fait pas longtemps qu'on s'est parlé.

Ma première question, parce qu'on n'a pas grand temps, c'est : le projet de loi permet de déposer des documents en français et d'élargir tous les tribunaux partout en Ontario. Selon vous, si le gouvernement peut en faire autant pour un dépôt de documents en cour, croyez-vous qu'il est temps de moderniser la Loi sur les services en français et de désigner toute la province?

M. Peter Hominuk: Je pense qu'on a perdu M. Jolin. Est-ce qu'on pourrait essayer de régler le problème? Je pense qu'il n'est plus là.

Puis, monsieur Bourgouin, je pense que vous allez être obligé de répéter votre question quand il revient—vraiment désolé.

Mr. Guy Bourgouin: Chair, am I losing time here? If somebody needs to answer, I'll just pose another question; technical difficulties.

The Acting Chair (Ms. Donna Skelly): Does somebody else want to answer that question?

M. Guy Bourgouin: Y a-t-il quelqu'un qui peut répondre à cette question-là?

M. Bryan Michaud: He seems to be back. Peter, est-ce que tu veux y aller?

M. Peter Hominuk: Je n'ai pas compris toute la question. Carol, as-tu entendu—

M. Bryan Michaud: Carol est de retour.

M. Carol Jolin: Oui, OK. J'ai eu un petit problème technique.

Merci, Guy, pour la question. Dans le document qu'on a déposé, en vue de la modernisation de la Loi sur les services en français, ce qu'on demande c'est qu'on n'ait pas 26 régions désignées mais qu'on en ait une, une grande qui englobe tout l'Ontario. J'espère que, dans le travail que la ministre va faire avec son équipe, on pourra parvenir justement à une désignation pour toute la province de l'Ontario. Ça faciliterait drôlement les choses, et ça irait dans la voie que le système de justice veut aller aujourd'hui, en fait, des services en français.

M. Guy Bourgouin: Merci, Carol. Ma deuxième question, c'est : tout récemment, on a appris qu'on avait appointé un juge unilingue, comme tu le sais, dans le district d'Algoma, puis que le procureur général a par la suite indiqué qu'il s'agit d'un transfert et c'est donc la juridiction de la juge en chef Maisonneuve. Ce matin, j'ai posé la question encore, puis il m'a répondu de la même façon.

Croyez-vous que cette décision aura un impact négatif sur l'accès aux services de justice en français dans la région d'Algoma?

M. Carol Jolin: Merci pour la question. C'est une question importante. Aussitôt qu'on a été mis au courant de cette situation, on a communiqué avec l'Association des juristes d'expression française de l'Ontario. C'est cette organisation-là justement qui a pris charge du dossier et qui va faire les suivis appropriés. L'Assemblée de la francophonie va évidemment toujours être en appui, mais c'est l'AJEFO qui va piloter ce dossier-là pour, je dirais, résoudre cette situation.

M. Guy Bourgouin: Penses-tu qu'il va y avoir un manque de services pour les francophones d'Algoma?

M. Carol Jolin: C'est une partie—

M. Guy Bourgouin: Si ça reste comme c'est là, si ça reste qu'on n'a pas de juges francophones.

M. Carol Jolin: Nous autres, on a discuté avec l'AJEFO, puis on demande au gouvernement de réexaminer cette situation. C'est la position de l'AJEFO, parce que c'est très important, particulièrement dans cette région-là où il y a beaucoup de francophones, que les gens aient accès à des services de justice en français.

M. Guy Bourgouin: Comme tu as dit—parce que moi aussi, j'ai eu la chance de parler avec l'AJEFO. D'après l'interprétation d'un ancien juge à la retraite à Sudbury, puis aussi de l'AJEFO, l'Association des juristes d'expression française de l'Ontario, la nomination d'un juge unilingue à Algoma et le transfert du seul poste bilingue de la région de Sudbury contrevient à l'article 126 de la Loi sur les tribunaux judiciaires et à l'article 5 de la Loi sur les services en français. Le district d'Algoma est également assujetti à la loi.

Croyez-vous que le procureur général devrait intervenir?

M. Carol Jolin: Je vais dire que je ne suis pas tellement affairé dans tout l'aspect légal, à savoir quels sont les pouvoirs à ce niveau-là. Mais demain matin vous allez avoir l'AJEFO qui va comparaître devant vous autres et puis qui va se faire un plaisir de répondre sur le plan légal à cette question.

M. Guy Bourgouin: Mais sûrement l'AFO a une opinion là-dessus pour dire : « Écoute, je crois qu'à quelque part les francophones ont besoin de ces services. »

M. Carol Jolin: On est d'accord que les francophones ont besoin de ce service. C'est un service essentiel pour cette grande communauté francophone qu'on retrouve dans cette région, d'avoir accès à la justice dans les deux langues. Donc, ça, c'est un but qui est important.

Maintenant, tout l'aspect de qui a le pouvoir dans ça, je vais laisser ça à mes collègues de l'AJEFO.

M. Guy Bourgouin: Sur la question des fameux projets pilotes qu'ils ont fait—l'ancien gouvernement en a fait un à Ottawa. Les conservateurs en ont fait un à Sudbury, puis aussi ils viennent d'en annoncer un à North Bay. Croyez-vous que les projets pilotes assurent l'accès à la justice en français de façon équitable et sans délai, comme prévu par la loi?

M. Carol Jolin: Je ne suis pas au courant à savoir s'ils sont capables de desservir les gens dans des délais qui sont équitables, mais je sais que les projets pilotes, partout où ils ont été instaurés, fonctionnent bien. On a reçu de bons

commentaires à cet effet-là. Les gens sont contents de pouvoir justement se [*inaudible*] dans leur langue, être servis en français. Moi, ce que j'espère, c'est qu'on passe des projets pilotes à vraiment mettre cette situation-là partout en Ontario.

M. Guy Bourgouin: Si les projets pilotes marchent, il me semble que c'est la moindre des choses que le reste de la province et le reste des Franco-Ontariens devraient avoir les mêmes services.

M. Carol Jolin: J'espère que c'est dans cette direction qu'on s'en va, parce que les projets pilotes ont fait leur preuve. Il est temps qu'on fasse en sorte qu'on soit capable de donner ces services partout en province. C'est certainement un objectif qu'on a.

M. Guy Bourgouin: Pour les personnes de Sault Ste. Marie ou de la région de Dubreuilville puis tout l'Algoma, d'avoir enlevé le seul juge bilingue, ça veut dire qu'ils vont desservir—ce que la province nous propose, ils nous disent que Sudbury va desservir la population. Croyez-vous encore que—je te repose la même question un peu. Ce qu'on entend de la communauté franco-ontarienne, c'est que nous, on va payer le prix pour ça, parce que selon la Loi sur les services en français, il est supposé d'avoir un juge désigné francophone à Sudbury parce que c'est une région désignée. Supportez-vous cette position-là?

M. Carol Jolin: Le projet de loi parle justement d'étendre ça, donc de se retrouver qu'il y ait 37 régions et puis que les services soient là. Donc c'est—

The Acting Chair (Ms. Donna Skelly): I'm sorry, but that is your time. We will now be going to the government side. You have seven and a half minutes, beginning with MPP Oosterhoff.

M. Sam Oosterhoff: Bonjour, Peter et Carol et [*inaudible*]. Merci pour votre présentation cet après-midi aussi. Comme chaque fois, je m'excuse pour mon français. Tu sais que je suis francophile, mais je ne suis pas vraiment francophone.

C'est un plaisir d'entendre votre petit discours. Mais j'ai quelques questions—et une question, je suppose, qui est pour l'avenir : quand tu considères l'avenir de l'accès à la justice en français avec les changements dans ce projet de loi, quels sont les changements en personne pour vos membres avec ces changements?

M. Carol Jolin: Ça fait partie de—est-ce que tu m'entends, Sam? OK, bon. Merci pour la question. Ton français s'améliore à chaque fois qu'on se voit. Continue; ça va bien.

Pour ça, notre objectif, nous autres, c'est certain qu'au niveau de la réforme de la Loi sur les services en français et puis ce projet de loi, au niveau de la justice, c'est d'avoir l'accès à des services en français. Notre objectif, c'est d'avoir des services en français partout en province. C'est extrêmement important pour notre communauté.

C'est faux de croire que tout le monde en Ontario est parfaitement bilingue et est capable de se débrouiller dans des documents légaux pour aller parler dans un système de justice. Les gens veulent être capables de pouvoir s'exprimer dans leur langue, dans la langue qui leur est la plus facile. Dans bien des cas en Ontario, c'est le français. Je pense que c'est un bon geste du gouvernement de s'en aller dans cette direction-là avec le projet de loi 245. J'espère que ça va pouvoir avancer rapidement et qu'on pourra implanter ces changements le plus rapidement possible.

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M. Sam Oosterhoff: Merci beaucoup. Une autre question : tu comprends que ce projet de loi fait aussi quelques changements pour le JAAC, le « Judicial Appointments Advisory Committee », au processus pour cet « advisory committee ». Un changement est que le comité doit aussi publier la diversité des personnes qui appliquent pour les appointements différents. Par exemple, s'il y a une femme francophone qui a été suggérée par ce groupe, c'est public. Je pense que c'est important pour la diversité de notre système de justice. Est-ce que tu penses que c'est important aussi?

M. Carol Jolin: Très important, parce que c'est important que les gens voient et que les gens soient au courant, justement, de ces personnes qui sont capables de donner les services en français, comme à titre de juge. Moi, personnellement, si on me demandait de nommer des juges francophones en province, j'ai crainte que, malheureusement, je n'en connais pas beaucoup. Mais qu'on puisse faire en sorte d'identifier concrètement ces personnes, hommes ou femmes, et que ça soit identifié justement qu'ils peuvent travailler en français, et qu'ils vont même identifier qu'ils proviennent d'une communauté francophone, c'est encore davantage. Je pense que ça peut inspirer justement des jeunes à vouloir s'en aller dans cette direction-là, parce qu'on a besoin de plus de juges francophones.

M. Sam Oosterhoff: Absolument. Peut-être que c'est de la répétition, mais avez-vous d'autres idées pour l'amélioration de notre secteur de justice ici en Ontario?

M. Carol Jolin: Ça, je vais te dire, je vais dévier la question à mes collègues que vous allez voir demain matin de l'AJEFO. Eux autres ont sûrement une liste d'idées qui sont disponibles pour vous autres, et ça va leur faire plaisir de la partager.

M. Sam Oosterhoff: D'accord. Ce sont toutes mes questions cet après-midi. Merci beaucoup.

M. Carol Jolin: Merci.

The Acting Chair (Ms. Donna Skelly): MPP Park.

Ms. Lindsey Park: I'll ask a question on the topic of the estates section of the legislation to our presenter. My question is specifically around the amendments to the Succession Law Reform Act, on the spousal preferential share—section 16, on will revocation on marriage; section 17, on revoking bequests to separated spouses—as well as provisions to allow the court to validate wills where there are technical deficiencies.

In your practice at Cunningham Swan, have you—I know your practice is solely litigation, so I won't act ask about virtual wills and that sort of thing.

Can you share your perspective on any of these changes and how they would affect your litigation practice, or litigation more broadly?

Mr. Paul Fleming: I was going to address some of these things, but I was woefully off in my timing, for which I apologize.

With respect to the whole issue of doing away with formal validity of wills, I am a big believer now, having reflected on this, that the courts have always had the power, the jurisdiction, the authority to decide whether or not they were going to approve a will for probate and acknowledge it as being valid. Although this raises the risk of potentially further litigation, I think that the courts have been well equipped over the years with the common law and the statutory framework to make decisions in law and in evidence and facts about whether a will should be upheld or not. I can tell you that certainly in my experience over the years, I have seen many families who have been left, unfortunately, with beneficiaries who cannot take a bequest, simply because a will, although it was reasonable and logical—

The Acting Chair (Ms. Donna Skelly): I'm sorry, Mr. Fleming. That is our time. We will be moving now to the independent member. MPP Collard, you have five minutes.

M^me^ Lucille Collard: Thank you, Mr. Conacher from Democracy Watch and Mr. Fleming, for your presentations.

Bonjour, Carol, Bryan puis Peter. C'est un plaisir de vous avoir aujourd'hui. Je pense qu'il y a une belle avancée qui se fait au niveau de ce projet de loi au niveau des services en français. Je pense qu'on doit continuer d'encourager le gouvernement à aller dans cette bonne direction-là.

J'ai vraiment seulement une question pour vous : est-ce que vous voyez que c'est suffisant de mettre dans la loi qu'on va pouvoir avoir accès à des traductions des décisions et des documents, puis qu'on va pouvoir déposer des documents en français? Est-ce que ça va atteindre notre objectif de rendre les services disponibles pour les francophones, ou est-ce qu'il y a un petit bout peut-être qui devrait être contemplé?

M. Carol Jolin: C'est un pas dans la bonne direction. Les services en français, les francophones en ont besoin partout en province, et puis c'est là où il faut aller. Il y a sûrement encore du travail à faire. Ça va être à implanter graduellement, mais c'est un pas important, cette augmentation des services-là.

Ça doit être complémenté par la modernisation de la Loi sur les services en français, par rapport aux régions désignées, pour que ces services soient partout en Ontario, parce qu'on a des francophones partout en Ontario et tous nos francophones ont le droit de recevoir ces services dans leur langue.

M^me^ Lucille Collard: Est-ce qu'on doit être concerné, par contre, si on dépose des documents en français parce qu'on veut être entendu par un juge bilingue? Est-ce qu'on doit s'assurer qu'il y a un juge bilingue qui va être disponible pour entendre la cause dans un temps qui est raisonnable? Parce qu'on sait que si ça prend trop de temps, c'est équivalent à un déni de justice.

M. Carol Jolin: C'est sûr que ça prend des juges partout. Avec la possibilité, premièrement, que les juges soient identifiés comme faisant partie de la communauté francophone—et il y a du travail à faire pour recruter davantage de juges francophones pour que les gens aient accès à la justice dans des délais qui sont raisonnables, parce que ça ne serait pas normal d'étirer des situations en justice parce qu'on manque de juges francophones. Donc, il y a du travail de recrutement à faire, et puis il faut en former.

Ce que je vois dans la ligne de ce projet de loi, c'est qu'il y a une intention de le faire, parce que ça ne donne rien d'avoir un projet comme ça si on n'a pas vraiment une intention ferme de s'assurer de former des juges pour être capable de donner ces services partout.

M^me^ Lucille Collard: Puis avec cette intention, également, j'imagine que tu es d'accord si je dis qu'il faut des ressources aussi, que ça soit au niveau de la traduction—alors c'est important d'avoir des ressources financières, puis des personnes qui vont être capables de faire la traduction puis de fournir ces traductions en temps opportun.

M. Carol Jolin: Je pense que c'est plus une question de fournir les ressources, parce que je crois qu'on a des traducteurs et des traductrices partout en Ontario qui sont prêts à travailler. Il s'agit d'avoir les ressources pour pouvoir le faire, et puis j'espère qu'on s'en va dans cette direction-là.

M^me^ Lucille Collard: OK, merci.

Monsieur Conacher, just a small question for you regarding the JAAC. You've identified a lot of concerns that have been repeated over what we've heard over the last—well, this day and then over the last few weeks. There are some who are positioning the fact that the Law Society, the Ontario Bar Association and the federation are providing three names from which the AG will select—that in effect, there's less partisanship because the minister would just select one of the three. You said that the minister would select 10 members out of the 13. What do you say to that?

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Mr. Duff Conacher: Well, the Attorney General currently selects seven of the 13, and the Law Society, the Ontario Bar Association and the federation choose three—one each. Now, they're going to have to put forward nominees, and that gives more discretion to the Attorney General to choose from amongst the three nominees that they put forward. That means the Attorney General ends up appointing 10 of the 13. That's a move in the wrong direction. The Attorney General should not be appointing any of the members of this committee. The way it should be done is there should be a multi-partisan committee made up of MPPs from all parties that chooses the lay members. The Law Society, the bar and the federation should continue to choose their three, the Chief Justice their one and the judicial council their one and/or have a public—

The Acting Chair (Ms. Donna Skelly): Thank you, Mr. Conacher. That is our time. We're going to move on

to the second round of questioning, beginning with the government side: MPP Kanapathi.

Mr. Logan Kanapathi: Thank you to all the presenters. Thank you for all the presentations. My question is to Paul Fleming. Hold on for a second; I will turn on my video. Okay. Thank you.

Our Attorney General and government have made significant progress in the past year, modernizing the Ontario justice sector to make it easier, faster and more affordable for people to resolve their legal issues and interact with the justice system. Can you please share which of these efforts you have found to be more helpful for your members and their practices? This question is to Mr. Paul Fleming.

Mr. Paul Fleming: Thank you very much, Mr. Kanapathi. I can certainly say unequivocally that the bar has been exceptionally impressed with the efforts of the Ministry of the Attorney General on behalf of the bar and on behalf of ensuring Ontarians have access to justice.

I think the greatest thing to come out of this pandemic with respect to court services is that we've moved everything online and that we now have a capability of running electronic trials, electronic discoveries, filing documents. Although it's not a full, seamless, one-size-fits-all yet, we're getting there. We have a two-stage filing process. These are changes that were glacial in the making over the last 15 years, but the pandemic has really inspired the government, court services and lawyers to get on board.

So the great story in the pandemic—really, there are a few, in spite of all the bad things—is that access to justice, from my perspective, has increased exponentially for Ontarians within the context of court services, and that is a great, great story. Those are my submissions.

The Acting Chair (Ms. Donna Skelly): Thank you. MPP Park.

Ms. Lindsey Park: Excellent. I know we got cut off when I was asking you questions in the last round, so maybe we'll go back to the topic we were talking about. I understand this is the first major reform on estates in a long, long time, and so there are going to be different views on what the path forward is.

I want to just share with you—this is a contrary view from a litigator that they shared with me on the topic that you were speaking about, on the validity of wills and this ability given to the courts. This one litigator said:

"The bill also contemplates a mechanism to allow the wishes of a testator to be fulfilled, notwithstanding inconsistency with certain formal requirements. One particular matter with which my office was involved comes to mind when thinking of this issue: The deceased had died while writing what he had intended to be a holograph will benefiting his fiancée. The court found the document was not a will, because the deceased's signature appeared at the top of the document rather than after the dispositive provisions, and the judge lacked the jurisdiction to admit the document to probate because of Ontario's strict compliance regime. A great-aunt from whom the deceased had been estranged inherited his estate as a result. Allowing substantial compliance in a controlled case-by-case basis will prevent this type of injustice."

That's just one perspective and one example, but I know you were speaking about that aspect of the bill, so I wanted to give you a chance to play devil's advocate, if you will.

Mr. Paul Fleming: I actually believe in that. I think this is a great amendment, because these results can cause enormous hardship and grief to would-be beneficiaries and can certainly lead to a loss of faith and belief in the system of justice. Consequently, I believe that any legislation which equips the court with the tools to—really, the way I see it—make mountains into molehills is a very, very effective initiative.

We spend lots of days in the courts arguing over whether wills are valid or not. The courts, as I was saying earlier, are equipped to do that. We have law and methods and manners of testing the evidence and testing the documents and testing the facts. Although one could say that there's a potential propensity for increased litigation over the formal validity issue, I think the bigger picture here is that—there are always exceptions to these rules, but generally speaking, when these formal validity things come up, it's usually a missing signature; it used to be the odd initial not on a page or a missed date. These things can all be cured; the courts have the ability to do that. I think the benefits outweigh the potential harm.

The bottom line is, at the end of the day, most will challenges don't stem from these formal inquiries about the validity of wills. They stem from: Did the deceased have the capacity to execute the will at the time that they did? That's usually where the battle line is drawn.

I hope that answers your question.

Ms. Lindsey Park: I'm not sure how much time we have left.

The Acting Chair (Ms. Donna Skelly): One minute and 24 seconds.

Ms. Lindsey Park: As we move into this world where virtual witnessing of wills is allowed—you obviously see it when things go wrong on the litigation side. Do you have any parting words of wisdom on how we can make sure the proper safeguards are in place?

Mr. Paul Fleming: That's a very good question. I'm not an estates solicitor, so out of great humility, I tend to defer to the solicitors who will have ample commentary on that.

My only concern, practically, would be to ensure that all the safeguards are put in place for ensuring that there's no undue influence in the room. You can do that with video cameras. There are all kinds of things one can do that we actually do employ now.

That's about all I'll say, Ms. Park, on that. I hope you'll understand; please forgive me.

The Acting Chair (Ms. Donna Skelly): We will now move to the official opposition. You have seven and a half minutes. MPP Bourgouin, you may begin.

M. Guy Bourgouin: Merci. Mes questions sont encore pour l'AFO, pour M. Jolin ou Peter ou qui veut répondre.

Écoute, je reconnais que de déposer des documents en français, c'est un atout. C'est un bon pas dans la bonne direction.

Mais c'est quand on entend plusieurs avocats qui travaillent en français dans les régions désignées, comme Toronto, Thunder Bay, Timmins, Prescott et Russell—ils m'ont fait part de leur désaccord par rapport aux résultats des projets pilotes des services de santé en français, tous concluant que l'accès est déficient, faute de délais. Ils demandent une procédure et une meilleure pratique. Le manque de francophones, que ce soit des juges, Carol, ou des interprètes—ou même du manque de francophones dans le comité des affaires francophones, puis dans les comités de sélection.

J'aimerais avoir ton impression sur ce qu'on se fait dire, ce que je viens juste d'énumérer. Croyez-vous que ce projet de loi va adresser un des problèmes systémiques? Puis si cela adresse une partie, comment est-ce qu'on pourrait—nous autres, le comité—amener des recommandations pour améliorer le problème systémique qu'on voit, que ce soit le manque d'interprètes—tu nous as parlé dans ton allocution de la dame qui n'a pas pu témoigner en français, puis qui a été rejetée sans témoigner à cause du délai d'interprètes. J'aimerais vous entendre là-dessus, si c'est possible.

1700

M. Carol Jolin: Merci pour la question. Le gouvernement de l'Ontario a la responsabilité de respecter les francophones en s'assurant qu'il y a des services de qualité dans toutes les régions. Le projet de loi est un pas en avant, mais il faut s'assurer qu'on a des gens pour donner ces services. Le gouvernement de l'Ontario a une responsabilité de s'assurer qu'il y a des gens qui sont là pour donner les services et de former des gens pour être capable—on parlait de juges à un certain point, de s'assurer qu'on a des juges pour être capable d'entendre les causes. Donc, il y a énormément de travail à faire, mais le gouvernement a cette responsabilité-là de donner les services.

On parle de la modernisation de la Loi sur les services en français aussi dans cette ligne-là pour justement améliorer les services.

Donc, qu'on aille du côté de voir les changements qu'on est en train de faire au niveau de la loi, c'est excellent, mais il faut s'assurer, lorsqu'on va la mettre en action, qu'il y ait des gens qui soient là pour donner les services à tous les francophones en province, parce que des francophones, il y en a partout en province. Il faut s'assurer qu'ils ont les services auxquels ils ont droit, et des services équitables et dans des délais raisonnables.

M. Guy Bourgouin: Avec ce qui se passe comme c'est là avec Sault Ste. Marie, puis la question du juge bilingue puis avec l'annexe 3 que le procureur ne va pas recommander ou va rejeter certains candidats—j'aimerais vous entendre là-dessus, parce qu'on a des services de la langue française qui se disent des services adéquats. On a du langage qui nous dit qu'on est supposé avoir des services francophones équitables à ceux des anglophones. Ça ne vous fait pas peur un peu qu'on se ramasse dans une autre situation comme ça, si le procureur général ne fait pas ce qu'il est supposé faire pour au moins protéger les juges bilingues pour donner les services francophones en Ontario?

M. Carol Jolin: Il faut qu'il aille dans cette direction-là. Je ne connais pas la machine de la justice. Je pense que ça va être une bonne question pour mes collègues de l'AJEFO demain matin qui, eux, vont être à même de pouvoir voir, un, les lacunes qui existent présentement dans la livraison des services et qui vont pouvoir amener des éléments de solution pour qu'on ne se retrouve pas avec des délais qu'on a retrouvés.

Et de ça, je pense que c'est important qu'il y ait un—on a besoin d'un cadre d'imputabilité pour la justice en français. C'est beau, le travail qu'on est en train de faire présentement, au niveau des lois. Maintenant c'est une fois qu'on va travailler à la mise en œuvre, qu'il faut s'assurer qu'on fasse la mise en oeuvre et également qu'on ait un cadre pour dire : « Est-ce que ça fonctionne? » Puis là où ça ne fonctionne pas, on a du travail à faire, et ça, c'est la responsabilité du gouvernement de l'Ontario.

M. Guy Bourgouin: Écoute, je sais qu'on a souvent des discussions quand ça vient aux services en français, moi puis toi. Pour terminer, j'aimerais te donner l'opportunité, parce que—pour revenir un petit peu à ma première question, pour la modernisation de la Loi sur les services en français puis aussi ce qui se passe avec tout ça, nos services juridiques. S'il y a de quoi que tu peux passer au comité, pour qu'on fasse certain qu'on ne manque pas de quoi pour donner des services à la communauté francophone, je te cède la parole.

M. Carol Jolin: Il y a deux choses dans ça. Premièrement, c'est le travail qu'on est en train de faire avec la modernisation de la Loi sur les services en français. La ministre Mulroney a réitéré à plusieurs occasions que c'est dans son mandat et qu'elle entend le faire à l'intérieur d'ici la prochaine élection.

Toi, Guy, tu as déposé un projet de modernisation de la Loi sur les services en français. Les francophones veulent des services aussi bons que ceux de la majorité. La modernisation de la LSF, c'est la plus grande occasion que le gouvernement a de démontrer son respect et sa volonté de faire la différence à ce niveau-là. On est des citoyens à part égale, et puis on veut s'assurer—c'est notre travail, nous autres à l'AFO, de revendiquer pour qu'on puisse avoir des services équitables et équivalents à ce qui est fait pour la majorité.

Donc, dans ce sens-là, c'est certain qu'on va continuer dans cette voie, que ce soit sur le plan juridique puis les services en français en général ou la réforme qui est en train de se faire au niveau des services de santé. Ce sont tous des dossiers qui sont importants pour l'AFO et dans lesquels on va continuer d'oeuvrer.

M. Guy Bourgouin: De ma part, premièrement, je vous remercie pour le travail que l'AFO fait, parce que, veux, veux pas, vous mettez à l'avant-plan beaucoup de choses qui font avancer les dossiers, que ce soit sur les services de la langue française ou bien donc sur ce dont on parle aujourd'hui, les services juridiques.

Mais s'il y a de quoi qu'on doit apprendre de ça—puis j'aimerais t'entendre—c'est qu'on ne vive pas une autre situation comme celle dont tu as parlé dans ta première allocution, qu'une femme témoigne pour une agression sexuelle puis qu'elle n'a pas été capable de témoigner. J'aimerais juste t'entendre là-dessus encore, pour ton opinion là-dessus.

M. Carol Jolin: Ça, c'est une situation qui est inacceptable. Il faut faire en sorte que, justement, des situations comme ça ne se reproduisent pas, qu'on ait un—

The Acting Chair (Ms. Donna Skelly): Thank you, gentlemen. That is our time. We will now move to the independent member. MPP Collard, your time begins now.

Mme Lucille Collard: Juste une question, Carol, concernant le comité de sélection des candidats pour les postes de juge : il y a eu une proposition qu'on devrait peut-être considérer de faire une vérification de la capacité bilingue des candidats qui se présentent, parce que le JAAC, le comité, n'a peut-être pas la possibilité de faire cette évaluation, et les candidats s'autodéclarent bilingues ou pas. Est-ce que c'est quelque chose que vous avez entendu de la part de la communauté, que ce soit à Ottawa ou ailleurs, au niveau de la capacité des juges qui se seraient désignés bilingues?

M. Carol Jolin: On n'a pas eu d'échos à cet effet-là, mais nos collègues de l'AJEFO sont probablement en meilleure position pour parler de ça, parce que c'est leur pain et leur beurre. Mais c'est important, évidemment, que les—il y a déjà une pénurie pour trouver des juges, donc on a besoin de stratégies. On a besoin d'un plan de formation pour s'assurer justement qu'on a davantage de juges qui soient capables d'entendre les causes en français et de faire le travail pour la francophonie, et ce, partout en Ontario.

Donc, il y a énormément de travail à faire dans la mise en oeuvre de ce qu'on entend aujourd'hui dans le projet de loi. C'est un point important. Il faut se retrousser les manches puis s'assurer d'être capable de recruter des gens pour le travail.

Mme Lucille Collard: Excellent. Merci beaucoup.

I just have one last question for Democracy Watch, Mr. Conacher, if you're still there. There is a proposition that to address the concern with having the list of six candidates that the minister can return and request another list, it would be sufficient for the JAAC to publish in the annual report when the minister has returned the lists and requested a new one. Does that, in your view, address the concern?

Mr. Duff Conacher: No, not at all. The Supreme Court of Canada, in several cases, has articulated that part of the constitutional principle of judicial independence is that the public must have confidence in the appearance of independence and the appearance of impartiality of the judiciary. As the old saying goes—lots of people know it as "justice needs to be seen to be done"; the actual wording is justice must "manifestly and undoubtedly be seen to be done."

Even allowing a longlist of six to go up once to the Attorney General, allows too much discretion, especially when the Attorney General is choosing 10 of the 13 members of the JAAC. It will be an unconstitutional system. It matches the federal system. Democracy Watch is challenging the federal system in court for being unconstitutional, for violating judicial independence in the Charter of Rights, and we will do the same if Bill 245 passes, allowing a long list to be put forward by a committee where the Attorney General appoints 10 of the 13 members.

Mme Lucille Collard: Where is that litigation at, with the federal?

Mr. Duff Conacher: It is proceeding through the federal courts on the regular schedule, where we have filed our affidavit and the Attorney General has filed its affidavit. We will next be filing our legal arguments, and the Attorney General will, and then we will receive a court date after that.

Mme Lucille Collard: Okay, so no court date yet. Thank you very much for the supplementary information.

No more questions, Madam Chair.

The Acting Chair (Ms. Donna Skelly): Thank you, MPP Collard, and thank you all for your presentation.

MR. MICHAEL LESAGE

GRANGE COMMUNITY ASSOCIATION

The Acting Chair (Ms. Donna Skelly): We will now move on to Michael Lesage. Mr. Lesage, you will have seven minutes for your presentation. Please begin by stating your name for the record, and then your time will begin right after that.

1710

Mr. Michael Lesage: Thank you. Michael Lesage. Thank you for having me this afternoon. I'm picking up a lot of echo on my end; I'm hoping it's not happening on yours.

The Chair (Ms. Donna Skelly): It is not. It is clear here.

Mr. Michael Lesage: I'm a litigation lawyer who previously practised in the US. I'm also a bencher with the Law Society of Ontario.

I'm concerned that Bill 245 does not go nearly far enough to modernize the Ontario court system, which is increasingly failing to serve the people of Ontario. For instance, we have civil trial times that are about on par with Pakistan and are far, far behind the courts in the US or UK. We likely have the worst civil trial times in Canada, although the Attorney General's office doesn't actually track that or many other useful statistics. We have overall poor system performance, despite having some very able judges.

Family law in Ontario is an unmitigated disaster, with 60% to 70% of participants struggling, self-represented, through a very unfriendly court system that's far too complex for most lawyers, let alone the general public, to navigate.

Prior to COVID, our court system was an 18th-century embarrassment. Paper documents were brought to court in horse and carriage as they could not be filed electronically, and they could not be mailed as anything mailed to the courts was simply mailed back as MAG staff and court staff were incentivized and encouraged to reject documents for any reason or no reason at all, requiring documents to be submitted and resubmitted and submitted again—a huge waste of time and expense. It simply raised the cost of litigation and made the court system less accessible to the people. That has improved greatly since COVID with electronic filing, but as things get back to a new normal, court staff are again rejecting documents with increasing frequency for any reason or no reason at all, which should be discouraged. This bill does nothing to address that.

Next, while we have many [*inaudible*] judges in Ontario, we force them and the public to work through a system which is truly fair only to the greatest among us, meaning it's unfair to most Ontario residents. In the family context, this elaborate [*inaudible*] involves elaborate time-intensive procedures that only the wealthy can afford. In most family law cases, for instance, it should not take 50 to 100 hours of lawyer time per party to decide upon custody, access, child support, household support and division of property.

Likewise, the bill does nothing to address the largely unworkable civil rules of procedure, which seem designed to bog everyone down in procedural squabbles rather than the resolution of the underlying disputes. Again, these are good judges, but we tie them up on pointless questions, like deciding early in the case which documents are relevant or need to be produced. Then we insist upon the use of expensive hired-gun experts for everything and wonder why our court system doesn't work. Again, this bill does nothing to address that. It doesn't even provide for Google to be used by the courts. How can you have a modern court system when the greatest source of knowledge and information in human history remains off limits?

Next, the bill does nothing to reform the Ministry of the Attorney General, doubtless one of the poorest-performing ministries in Canada over the last several decades. While Doug Downey is making great strides, where in the bill does it make it easier for him to fire senior leadership when they fail to perform? He can't fix our system alone.

Finally, if you're really serious about modernizing the courts, where is the feedback mechanism? Why isn't the Ministry of the Attorney General required to collect useful statistics, like the courts in New York state with their Excellence Initiative, which sets standards and goals? For instance, in New York state, minor criminal offences are typically resolved in 90 days, while more serious crimes are resolved in six months. Civil cases in New York are typically resolved within two years. In Ontario, meanwhile, many accused criminals are released without trial as the system simply can't process them within a reasonable time, while one of the primary means to resolve civil disputes is through the natural death of one of the parties while they wait for trial.

If the system is not going to be provided with additional resources, then we must start to use the existing resources more efficiently and effectively. So why doesn't this bill, for instance, require our courts to be benchmarked against competing jurisdictions like New York state, where the courts literally run circles around ours?

Admittedly, part of the problem with the Ontario court system is that the Law Society has not been forceful enough in pushing access to justice and court modernization, or in pushing the Ministry of the Attorney General to clean up its act. In my role as a bencher, I will do what I can to change that. Thank you.

The Acting Chair (Ms. Donna Skelly): Thank you, Mr. Lesage.

We will now go to our next presenter, from the Grange Community Association, Mr. Allen. Please state your name for the record. You will have seven minutes. Your time begins now.

Mr. Max Allen: Unmuting is the biggest problem. Hello?

The Acting Chair (Ms. Donna Skelly): We can hear you.

Mr. Max Allen: You can? That's good.

My name is Max Allen. I am the vice-president for planning and development of the Grange Community Association in Toronto. The Grange is the local residents' association for the area just south and west of Queen's Park, where some of you are today.

I'm going to give you four suggestions about schedule 6 of Bill 245. That's the section about the LPAT, the Local Planning Appeal Tribunal, which used to be called the OMB, the Ontario Municipal Board. Our association has taken part in, believe it or not, 58 LPAT and OMB hearings, so I speak from direct experience rather than abstract theory.

I suggest the committee and the Legislature do four things. First, about paragraph 13(1)(e) of schedule 6: Change the procedure so that if it's necessary to designate one person to speak for a group, or a group of groups, the LPAT not do this designating but have the group choose their own spokesperson.

Second, about paragraph 18(3)(b): Delete the section entirely. It's about giving the LPAT power to limit examination and cross-examination for any reason the tribunal considers fair and appropriate. It's unnecessary. The first part of that paragraph limits the power of the tribunal to do that for all matters relevant to the issues. You don't need it in twice.

Third—and this is not set out in any section or paragraph now, and I can't tell you how to draft the language—please don't require that intervening parties like us "shelter"—that's the word—under an issue already listed by the main parties. This was required by the short-lived Wynne government's LPAT rules of process and procedure, and it's very difficult. It assumes that the local city legal department or a developer knows about or has all of the interests of local residents in mind and comes up

with all the issues themselves. We need to be able to put our own issues before the appeal tribunal. In our experience, this isn't the case now, and requiring sheltering under existing issues can miss important considerations.

Fourth—and again, the language of a solution is not clear to me; I can tell you what the problem certainly is, but I don't know how to solve it. Local residents' groups, at least in Toronto, are systematically excluded from what's called site plan negotiations, which are held behind closed doors. The contested development typically goes through three stages of approval: an official plan amendment, a zoning bylaw amendment and then site plan approval where the actual size, shape and materials of the new development are decided.

We're not asking for veto power, but local residents need a presumptive voice in that third site-plan phase, and only the Legislature can give it to us. Please do so in the interests of efficiency and fairness.

As a postscript, I want to disagree with the Canadian Environmental Law Association, who you heard a little while ago. We think the Local Planning Appeal Support Centre should not be restored, at least in its previous form, and this is based on our experience with it. We agree with the Canadian Environmental Law Association that Bill 245 should include criteria about when LPAT electronic hearings are appropriate; some things can be handled fine online, and some things can't.

1720

Finally, don't limit non-expert members from hearing all cases. Decisions are supposed to be made on the solidity of expert evidence, not on the background of the members hearing the case. Hearing judges—that is, the LPAT members—don't need specialized professional expertise, and they don't need to know everything about everything. What they need to know is the legislation and some case law, and they can be and are trained in this by the LPAT.

The three-member rail corridor LPAT panel—I've just been through eight weeks of an LPAT hearing about the rail corridor park; it just finished eight weeks of evidence. The panel was a lawyer who was not a municipal lawyer, a former chief administrative officer of Pickering and a professional mediator. None of them was a structural engineer, and the hearing worked fine. I don't agree with the idea that combining the personnel of five or six previous specialties is a bad idea. It's okay.

So, four things: (1) change 13(1)(e) about who can speak for groups, (2) delete 18(3)(b) entirely, (3) reconsider sheltering and (4) open the site plan process to local residents. I'd be delighted if the committee had questions. That's everything I have to say now. Thanks very much.

The Acting Chair (Ms. Donna Skelly): Thank you, Mr. Allen.

We will now move to questioning, beginning with the government side. You have seven and a half minutes. MPP Park, you may begin.

Ms. Lindsey Park: I'll direct my round of questions to Mr. Lesage—and I hope I'm saying that right. You can correct me if I'm getting it wrong.

Mr. Michael Lesage: Yes.

Ms. Lindsey Park: And congratulations on being elected a bencher. The work you're doing at the Law Society is necessary, in partnership with the work that, as you rightly suggested, the Ministry of the Attorney General and the courts are doing during this time. Different than other ministries of government, the Ministry of the Attorney General doesn't operate in isolation. There are these critical justice partners, like the Law Society and like the courts, that really have to all function together. One often can't make a decision without the others being at the table, and so thank you for your work.

I know there have been lots of important discussions at the Law Society among benchers on how to best respond to things like what obligation there should be to pay fees and meet the usual deadlines that lawyers have to meet as part of their annual obligations during this time when so many things have been uncertain and changing, so thank you for the work you do every day.

I really liked your submission and the point you made around the importance of transparency in data collection. Some would say that if you can't measure it, you can't manage it, so I agree in principle with that submission, and I think we have to continue to move in that direction of measuring how the court system is doing. Thank you for your thoughtful submissions.

One of the things we've put in the bill as part of our modernization of judicial appointments—as you may already know, in the judicial appointments application, it's up to an applicant if they want to disclose what background they're from, what gender they are and that sort of thing. We're proposing that the JAAC, which evaluates the appointments, have to share annually what the background has been of the people who have applied, so we can try and figure out, is the issue that we don't have enough diverse candidates applying, or is the issue that not enough diverse, qualified candidates are getting interviewed and considered? We really don't know the answer to that question today because we don't even have the statistics. So that's one example that's in this bill.

I wondered if you have other specific examples of statistics that you think the government—whether it's the Ministry of the Attorney General, the law society or the courts—ought to be collecting.

Mr. Michael Lesage: There are a lot of very basic statistics. The most basic is, what type [*inaudible*] types of cases, how long are they languishing in our system? We could essentially bring in [*inaudible*] from New York state, and he could give us their whole program and probably improve our court system another [*inaudible*] years, just by [*inaudible*]. So this isn't like our disastrous attempts to create our own online filing system over the last 20 years that completely failed. We can just borrow what is working in New York state and take it to Ontario.

In the civil area, where I practise, the most important thing is shortening the time from the claim getting filed to the claim getting resolved or going to trial. Currently, that's probably between seven to 10 years. But we don't even track that data. It varies hugely between courts. In

some of the smaller centres, maybe it happens in four years or five years. If you're in Toronto or Newmarket, probably two of the worst courts in the world, cases get lost and you get a 13-, 14-, 17-year trial in the event [*inaudible*]. What are we really doing other than throwing money into a toilet or into a well?

So if we're not going to throw a huge amount of money at the system so that we can continue to operate this medieval system, we should certainly be looking at, what are we hoping to get out of it and how do we do that in a more efficient way with the resources we have?

Ms. Lindsey Park: That's a good point. I think part of the hurdle right now is, all that data isn't necessarily owned by the Ministry of Attorney General because of the independence of the judiciary. But I appreciate the thought and the aim, and I agree with you that we need to do better in that way.

On your point, I want to touch on—it's often, I think you said, seven to 10 years. But in the average civil case, if a client walks in my office before getting elected, they don't realize, often, and so you have to say, as the lawyer, "If this goes to trial"—from when they walked in your office, it could be five to 10 years. That's not uncommon. For any non-lawyer I speak to, and even me, as a young lawyer, it's appalling that it takes that long to resolve things in our system. So one thing we're really working hard on—and there's a lot of work left to do, but we've tried to make progress during the pandemic—is finding ways to reduce delays in the justice system.

I wondered if you had any tangible ideas you wanted to share with the committee on things you'd like to see our government do to reduce delays in the justice system.

The Acting Chair (Ms. Donna Skelly): You have 40 seconds.

Mr. Michael Lesage: Excellent question. I can do a case in arbitration in about a third of the time in court, because it's just much more efficient. There are very few evidentiary challenges, and witness [*inaudible*] comes in by affidavit, so it's really just cross-examination—same judges. We could easily handle three times as many cases. So that would be the biggest possible change.

1730

The Acting Chair (Ms. Donna Skelly): Thank you. We will now move to the official opposition. You have seven and a half minutes. MPP Bell?

Ms. Jessica Bell: Hi. Thank you so much, Max Allen. Thanks for coming in here and sharing your opinion on Bill 245. It's nice to see you.

I have a few questions around schedule 6 and some of the very detailed and specific recommendations you gave—thank you. The first question I have is just around the Local Planning Appeal Support Centre. What are your concerns about it?

Mr. Max Allen: It didn't work.

Ms. Jessica Bell: Why didn't it work?

Mr. Max Allen: Because I knew more about the process than they did. It didn't work because they felt, as far as I could tell, that they were burdened with an impossible job, that is, they had to act sort of as counsel to me, but also as an independent advice body. They were not allowed by the legislation to act as advocates, either in the tribunal system or outside of it, for me. What they did was read me what the legislation was, and that wasn't helpful.

I don't know what the answer to it is, but I think the structure of it in the past was wrong. They were nice, but not very helpful. The chair or the president or whatever she was called of the support centre wrote a final report when the centre was closed down. I commend that to you, because they realized they were in trouble, too.

Ms. Jessica Bell: Okay. I appreciate that. The other question I had is, if you could reform the Local Planning Appeal Tribunal, how would you do it?

Mr. Max Allen: You're going to hate this answer.

Ms. Jessica Bell: No, I'm not. I'm really genuinely interested.

Mr. Max Allen: Okay. I want to tell everybody that you're my hero for your behaviour yesterday in the COVID committee hearings. Your questions were terrific, and this is a terrific question, too.

The answer I would give to you is, aside from the four things I said about the legislation, I'd leave it pretty much alone. My colleagues in the residents' association business don't like the LPAT, I think, because sometimes we lose. Sometimes I'm on the side of the city, sometimes I'm on the side of the developer, and most often I'm somewhere in between.

But as far as the process goes, it's like asking, how would I reform the court system? It doesn't have an answer. Making it go faster would be a good idea, but the LPAT is trying to do that now. They have a backup in their pipeline of 16,000 applications for development that involve 16,000 housing units. That's a lot, but they can't do everything at once. I think they're doing a pretty good job.

Interjection.

Mr. Max Allen: You're muted.

Ms. Jessica Bell: Thank you. Is there anything else that you think would be useful for me to know about your perspective in regard to how development is proceeding in your neighbourhood?

Mr. Max Allen: Yes. I'm the chief pessimism officer of all of Toronto. I think the pandemic has already turned the world upside down. It beats me how we're going to get it turned right side up.

At the moment, if you look at Condo Life, for example, you'll see that the developers have pretty much stopped advertising new residential buildings to the public. Maybe they'll start again, but I think the future is in real trouble, and making big decisions about development in Toronto now is foolish. I recommend waiting.

How does this impact Bill 245? I've suggested two changes to the bill and two things that ought to be looked at but that I don't have a solution to. Aside from that, it seems okay to me.

Ms. Jessica Bell: Max, I really appreciate you taking the time and sharing your insight into this. I'm assuming that you've given a written submission as well. I believe you have.

Mr. Max Allen: I haven't, but I will. I'll email it in.

Ms. Jessica Bell: I appreciate it. I think you still have some time, and you can also send it to our office if there isn't. But I believe there is.

Mr. Max Allen: Sure.

Ms. Jessica Bell: I appreciate you coming in today and sharing your concerns.

The Acting Chair (Ms. Donna Skelly): Thank you. You have two minutes left.

Ms. Jessica Bell: I don't need any more time.

The Acting Chair (Ms. Donna Skelly): Thank you. Before we go to the independent member, somebody joined us by phone. Who might that be?

Mr. Amarjot Sandhu: Hi, Madam Chair. This is Amarjot Sandhu. Sorry, I had an unstable connection on my phone, so I'm joining by phone now.

The Acting Chair (Ms. Donna Skelly): Okay. Thank you, MPP.

We will now go to the independent member. MPP Collard, are you on the line?

Interjection.

The Acting Chair (Ms. Donna Skelly): She had to leave? Then we shall be going back to the government side. I believe it's MPP McDonell.

Interjection.

The Acting Chair (Ms. Donna Skelly): MPP Oosterhoff. There you go.

Mr. Sam Oosterhoff: Hi.

The Acting Chair (Ms. Donna Skelly): Go ahead, MPP Oosterhoff.

Mr. Sam Oosterhoff: Sorry about that. You mentioned MPP McDonell. I mixed it up there a little bit. I think MPP McDonell was going to go first. I did have a couple of questions, but I'll let MPP McDonell—

The Acting Chair (Ms. Donna Skelly): MPP McDonell?

Mr. Jim McDonell: Yes. Can you hear me now? I just had trouble unmuting.

The Acting Chair (Ms. Donna Skelly): Yes. Go ahead.

Mr. Jim McDonell: It's interesting to talk about LPAT. My background is from municipal politics. I certainly, many times, had to resolve on the OMB back then. It was always a question whether—I would see a lot of cases being started up just because people wanted to delay, or hopefully somebody would go away. It was unfortunate, sometimes, to see them abused, but I always believed in needing a referee. I think that councils sometimes make decisions that aren't maybe in the best interest of the community, just because it's political. It's important to have a group that's there that can make a decision based on the laws and the needs of the community, maybe at a higher level.

You talked about—I know we're talking about amalgamating some of these boards and the way they run. You don't always have to have a resident expert on every board. What you really need is somebody to make sure there's a fair hearing. Maybe you could elaborate on that, because you've had some experience, I guess, with OMB and now with LPAT. What are your feelings on that?

Mr. Max Allen: I want you to know that many of my colleagues in residents' associations across Toronto, which is where I am, want to hang me from the nearest tree for saying this, because the LPAT is a very handy target for Toronto politicians to try to beat up on, and we've had years of it. This is done mostly, in my experience, by people who haven't been to a hearing. Journalists do the same thing: They take what amounts to a press release from somebody who is critical of the LPAT and say, "You see? They're taking our responsibility away from us and putting it in the hands of some stranger." You might as well say that the criminal justice system is all wrong because it has judges.

My experience with the LPAT has been that sometimes I lose. I don't want to win every case at the LPAT. That's unreasonable. I don't think that the people that I think are the bad guys should always lose. I go into a hearing—I think the same way the members do—to hear the evidence. I said this: Would I require particular expertise in, for example, swamps to be on the bench in front of me in the person of a member who knows a lot about environmental matters? I would not, any more than I would expect a judge in a child abuse case to know a lot about how it works. Judges are often confronted with new cases. Every case is different.

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Listen, what the LPAT needs is decent records that are searchable. That's something I would change. If you want to know how a case about something or in a particular place turned out, good luck finding it. Mr. Lesage suggested that, in a different context, searchable records—he didn't use that word—would be a great idea. I think that's the case in planning appeals also.

Mr. Jim McDonell: I'll turn it over to MPP Oosterhoff.

Mr. Sam Oosterhoff: I want to thank you for taking the time to come to appear before this committee. I think there has been a lot of different dialogue that we heard today about various aspects of this legislation. I guess my question, Max, would also be with regard to some of the other areas in this particular legislation. Do you think that there are things that will still be helpful for people when it comes to being able to access justice in a more expeditious fashion?

I know you've come to specifically speak about those areas, but I'm sure you've been watching some of the debate. I heard yesterday you were watching, as you mentioned, the COVID-19 examination as well, so clearly, you're someone who has been kept up to speed on what's going on in this area. I wanted to get your opinion. I know you're coming to speak to a particular area of the bill, but as someone who has been watching some of this, what's your perspective when it comes to being able to ensure that people are able to access a more digitized system—one that's more inclusive and one that ensures that people are able to be responded to in a timely fashion?

Mr. Max Allen: There sure has been a lot about wills, hasn't there? I learned an enormous amount just by watching today. I can tell you two things that I know from

my own experience that I think are generalizable to other parts of Bill 245. One of them is that there are some human procedures that should be in person and not online. The way to tell which is which is, if the issue is contentious between two parties who want to argue, that should be in person, because body language, the ability to have lunch with people you're at a hearing with, all of those human interactions—

Interruption.

Mr. Max Allen: That's my dog—all of those human interaction things require people being in one another's presence. There are lots of things that don't require it, and the digitization of the world has to be done carefully.

Since I'm not an expert in the other sections, I can't give you examples, but the philosophy holds across the board, it seems to me: If there's a fight, it should be in person. If there's a discussion or going through a list or deciding on an agenda or things that—we've all had this experience. You've been online here—

The Acting Chair (Ms. Donna Skelly): Mr. Allen, I'm sorry. I have to cut you off there.

I see MPP Bell. I don't know if MPP Singh is still with us, but there is time now. Would you like to—oh, there he is. Would either one of you like to finish up? You have seven and a half minutes.

Ms. Jessica Bell: I don't have any additional questions, but I do want to ask Max Allen if you want to finish your response to MPP Oosterhoff.

The Acting Chair (Ms. Donna Skelly): Mr. Allen, continue.

Mr. Max Allen: Right. I came pretty much to the end of the sentence, but let me summarize it: There are some things that are good online, and I bet you that some things having to do with wills are really more efficient, effective and everything electronically, and there are some things that you've got to be in the same room with people for, in order to get—you could have a fight online, but to resolve that fight, you'd better be in the presence of one another.

Ms. Jessica Bell: I just want to say thank you so much for coming in and speaking, and please make sure to send me your specific four changes, either through this process or directly to me.

The Acting Chair (Ms. Donna Skelly): MPP Singh, did you want to speak?

Interjection.

The Acting Chair (Ms. Donna Skelly): You're on mute. We can't hear you, MPP Singh. We can't hear you. Okay.

Thank you, Mr. Allen. Thank you, Mr. Lesage. And thank you all, to the presenters, the committee members and staff. That concludes our business for today. A reminder that the deadline for written submissions on Bill 245 is 7 p.m. this Friday, March 12, 2021, and the deadline for filing amendments to Bill 245 is 5 p.m. Wednesday, March 17, 2021.

Again, thank you, everyone. The committee is now adjourned until 9 a.m. tomorrow, Friday, March 12, 2021, when we will continue hearings on Bill 245.

The committee adjourned at 1746.

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