

**Submission to the Standing Committee
on the Legislative Assembly**

considering

Bill 245, *Accelerating Access to Justice Act, 2021*

Introduction:

Chair Rasheed and Members of the Committee:

My name is John Creelman. I am a retired Justice of the Peace with 15 years of service, 6 of which were as Regional Senior Justice of the Peace in the Central West Judicial District.

I currently work as a Law Society of Ontario licensed paralegal in Ontario Court of Justice Case Management (Set Date) Courts. In addition, I serve as Deputy Mayor of the Town of Mono. My resume can be found at <https://www.johncreelman.com/resume>

My comments on Bill 245, the *Accelerating Access to Justice Act, 2021* are specific to proposed amendments to the *Barristers Act* and the lost opportunity to correct serious issues that currently flow from that Act. The proposed amendments simply perpetuate the exclusionary privilege inherent in this Act.

Background:

The *Barristers Act* is legislation dating from the mid 1800's, a time when lawyers were exclusively male, almost all white and very much part of a strict legal hierarchy.

That hierarchy is enshrined in the 1873 version of the *Barristers Act* and it remains in principle and purpose unchanged from that time.

The Problem:

The *Barristers Act* determines the priority of lawyers' cases appearing in courts as follows:

1. The Attorney General of Canada and its representatives (Federal);
2. The Minister of Justice and its representatives (Provincial);
3. Queen's Counsel
4. All others by the year of their call to the Bar.

This order of precedent is an archaic absurdity for a number of reasons:

In reality the Crown Attorney 'calls the list' in our courts. They usually do so from in-court or on-line signup lists.

Never in my 15 years experience of presiding in Ontario Court of Justice Case Management (Set Date) Courts did I witness a Crown canvas the court for the presence of Federal Ministers of Justice or Provincial Attorneys General past or present or Queen's Counsel, an appointment that ceased in Ontario 36 years ago.

I never witnessed any attempt to deal with matters based on a call to the Bar date although I gather it may happen in some courts. More commonly, it was simple deference given to older or more 'senior' counsel.

So what's wrong with trying to order the work of the courts? Nothing, but surly not in this way...

For one thing, because it's a *Barristers Act*, no mention is made of the paralegals who increasingly play a pivotal role in OCJ Case Management Courts let alone the self represented litigants who also appear in those courts and patiently wait their turn to be addressed.

The groundbreaking *Access to Justice Act 2006* was passed in part to bring paralegals under the supervision of the Law Society of Ontario as full and equal members as 'providers of legal services'.

A host of legislation was amended to recognize this reality and the role providers of legal services other than lawyers play in our courts.

Those acts include the following:

- Law Society Act*
- Provincial Offences Act*
- Courts of Justice Act*
- Statutory Powers Procedures Act*
- Commissioners for Taking Affidavits Act*
- Notaries Act*

All of this reinforced the fact that paralegals, from the standpoint of jurisdiction, have *equal standing with lawyers in OCJ Case Management Courts* with only one example, that being electing

on behalf of an accused on trial before differing levels of court in indictable matters. Yet untouched and unexamined was the *Barristers Act*, probably one of the more consequential Acts affecting paralegals.

A compelling article by Sean Robichaud titled ***The Barristers Act in Ontario has to go***, February 26, 2016 (<https://robichaudlaw.ca/the-barristers-act-has-to-go/>) states the following:

‘As the Court, or Crown prioritizes matters on a docket list, it leaves women, indigenous people, and racialized lawyers sitting waiting while older white men all move to the front of the line for no reason other than their seniority that is inherently skewed to their advantage.’

Mr. Robichaud goes on to write:

‘To further aggravate such frustration, the priority has nothing to do with when lawyers arrive to the courtroom. Therefore, a relatively recent call could (and routinely does) sit for hours on end waiting for their matter to be called, only to have a senior lawyer stroll in and bump the cue. That same lawyer can stroll in and out of any court and bump themselves to any list as other (less senior) lawyers wait patiently for their turn that is perpetually pushed downwards as a result of this nonsensical rule.’

While may be not always be as cut and dry as Robichaud suggests, there are still court jurisdictions that take the *Barristers Act* seriously and certainly all are influenced by it.

For example Crown Attorneys and by extension, Case Management Courts all across Ontario are now relying on a web based signup form circulated by the *Criminal Law Association*.

Not surprisingly these are designed to favour lawyers and some even have one column for lawyers and another for paralegals and (law) students!

Example - https://cla365admin-my.sharepoint.com/:x:/g/personal/cla_cla365admin_onmicrosoft_com/EXm79JPQPD9JqTmUYcdckZ0BeiYVkStoQuTlItzU8J0JUw?rtime=VkYshtPk2Eg

Again, the invidious influence of this ancient and outdated legislation is alive and well in our courts.

What the amendment actually does:

The *Barristers Act* would be amended to add reference to a current or former Attorney General for Ontario and to remove the reference to the Solicitor General of Canada.

Left in place is the hierarchy discussed above and provision that current and past office holders i.e. Justice Ministers, Attorneys General do not need to comply with the *Law Society Act* or any of the regulations or rules of the Society as to admission, examinations, payment of fees or otherwise.

Am I readings this correctly? No annual fees or compliance with mandatory continuing education that is required of *all* members of the Law Society? A free pass? Is this correct?

Maybe it's time to consider something more than simple tinkering with the *Barristers Act*.

The *Legislation Act 2006* states the following under Section 4,

Duty, obsolete Acts:

‘The Chief Legislative Counsel shall, from time to time, provide to the Attorney General a list of Acts, or any parts, portions or sections of Acts, that have been rendered obsolete by events or the passage of time.’ 2006, c. 21, Sched. F, s. 4.

It’s time!

Thank you for consideration of my submission

Friday March 12, 2021