

# Bill 14, Access to Justice Act: Does it Apply to You?



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As you may recall from previous issues of Perspective, Bill 14, the Access to Justice Act, was introduced in the legislature in October 2005. It was an omnibus Bill which contained, among other things, amendments to the Law Society Act for the purpose of regulating paralegals under the Law Society of Upper Canada. In February 2006, the College wrote to the Honourable Michael Bryant, Attorney General for Ontario, in order to express concern regarding the broad definition of legal services contained within the proposed legislation. The College identified the many types of functions performed by members of the College which would appear to fall within the proposed definition of “providing legal services.” Some of the examples identified by the College included: social workers who work with children in a number of settings including family counselling, child welfare proceedings and custody and access or investigations on behalf of the Office of the Children’s Lawyer. The letter also identified social workers who provide mediation services or alternative dispute resolution (ADR), as well as social workers who act as evaluators under the Health Care Consent Act and assessors under the Substitute Decisions Act. The College noted that this list was not intended to be exhaustive but rather illustrative of some examples where the roles of social workers and social service workers could intersect with the proposed definition of “providing legal services”.

The College was very pleased when the final draft of Bill 14 included a further amendment to the Law Society Act, s. 1 (8), which deems “a person who is acting in the normal course of carrying on a profession...governed by another Act of the Legislature...that regulates specifically the activities of persons engaged in that profession...” **not to be practising law or providing legal services.** Bill 14

received Royal Assent on October 19, 2006 and the amendments to the Law Society Act were proclaimed on May 1, 2007.

Recently, the College has learned from some members that they have been advised that the Law Society takes the position that representing clients before tribunals (s. 1 (6) 3) ... does not fall within the “normal course” of the social work (or social service work) professions. However, it is these OCSWSSW members’ contention that they are practising within the “normal course” of carrying out the social work profession as they are providing “social work advocacy services” to the clients they are representing.

College representatives met with the Law Society of Upper Canada to clarify this matter. The Law Society of Upper Canada takes the position that the **following falls within the definition of providing legal services and does not fall within the normal course of carrying on the social work or social service work professions:**

- Representing a client<sup>1</sup> before a court, tribunal, board or other adjudicative body that makes a decision that directly affects the client’s rights.
- Representation would include one or more of the following: marshalling of evidence; provision of legal advice; presentation of evidence; preparation of witnesses for testifying before the court/tribunal/board/adjudicative body; cross examination of witnesses; and advancing legal arguments.

The Law Society of Upper Canada takes the position that the following **does not fall within the definition of**

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**practising law or providing legal services** as defined in the Law Society Act:

- Mediation services: the Law Society of Upper Canada is of the opinion that mediation is not practising law or providing legal services because a mediator is acting as a neutral third party who is not representing the interests of any of the parties to the mediation.
- “A person who is acting in the normal course of carrying on a profession...governed by another Act of the Legislature...that regulates specifically the activities of persons engaged in that profession...” (Law Society Act s. 1(8)).

The Law Society of Upper Canada has provided the following exemption, among others, to the requirement for a person to obtain a licence to provide legal services as defined in the Law Society Act:

- An individual who, i. is employed by a single employer that is not a licensee or a licensee firm, ii. provides the legal services only for and on behalf of the employer, and iii. does not provide any legal services to any person other than the employer. (By-Law 4, S.30(1)1.).
- This exemption is intended to cover those individuals who may be providing legal services on behalf of their employer (e.g. Children’s Aid Societies). The rationale for this exemption is that the “client” whom the individual is representing is essentially the individual’s employer and not a potentially vulnerable client. The individual is accountable to the employer for the legal services provided and any vulnerable party involved has recourse against the employer.

The College is now attempting to gauge the impact of this matter on College members and the clients they serve. Therefore if you represent clients before a court, tribunal board or other adjudicative body that makes a decision

that directly affects the client’s rights, please contact the College so that we can gather further information.



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*1. Note: A social worker who, for example, appears before the Ontario Consent and Capacity Board because a person has applied to that Board for a review of that social worker’s finding (made as an evaluator under the Health Care Consent Act), that the person is incapable with respect to his or her admission to a care facility, would not be considered to be representing a client before that Board. The social worker appears before that Board as a party to the proceeding, and on his or her own behalf and would not, therefore, be considered to be practising law or providing legal services.*