

Court File No.: CV-15-537113

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE SOCIETY OF ENERGY PROFESSIONALS, IFPTE LOCAL 160, AND
DANA FISHER, DIANE ABBOTT, DAVID BEAL, ALEXANDRA CAMPBELL,
KYLE NOONAN, CAROLINE PRICE, MICHAEL STORY and KENDALL
YAMAGISHI on their own behalf, and on behalf of all of the members of the Society of
Energy Professionals, IFPTE Local 160 who are employed as lawyers at Legal Aid
Ontario**

Applicants

- and -

**LEGAL AID ONTARIO, and THE CROWN IN RIGHT OF ONTARIO
as represented by THE MINISTRY OF THE ATTORNEY GENERAL OF ONTARIO**

Respondents

**APPLICATION UNDER Rules 12.08 and 14.05 of the Ontario *Rules of Civil
Procedure*, ss. 2(d), 24(1) of the *Canadian Charter of Rights and Freedoms*, and s. 52 of
the *Constitution Act, 1982***

**AFFIDAVIT OF DANA FISHER
(sworn January 11, 2016)**

**I, DANA FISHER, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:**

1. I am employed as a staff lawyer with Legal Aid Ontario ("LAO"), and I have been involved in the efforts of The Society of Energy Professionals (the "Society") to organize the LAO lawyers. I have direct knowledge of the matters to which I depose

in this affidavit. Where the information in this affidavit is not based on my direct knowledge, but is based upon information and belief from other sources, I have stated the source of that information and I believe that information to be true.

Background: My Employment Circumstances

2. I have an undergraduate degree in Criminology and Psychology, and prior to attending law school, I worked as a volunteer at the Central Toronto Probation Office, as well as a summer student with the Young Offender Unit of the Ministry Of Community Family and Children's Services. I attended law school at the University of Western Ontario, graduating in 2008. I summered with the Metro West Etobicoke Crown Attorney's Office and articulated with the Crown Law Office – Criminal Law Division, following which I was called to the bar in 2009.
3. I knew that I wanted to work for LAO at the College Park location because I liked the clients and the lawyers who were working there. I volunteered for LAO at the College Park location for approximately six months, helping out around the office, before I was hired as a staff lawyer in 2010. I continue to work as a staff lawyer at the College Park location. Beginning in 2014, I was given an additional title, and am now referred to as a Team Lead. However, I am not part of the management team, and I do not participate in hiring or firing staff. My compensation did not change with the additional title, and I continue to perform the duties of a staff lawyer.

Legal Aid Ontario: Statutory Authority and Governance

4. LAO is a publically funded and publically accountable non-profit corporation which administers the province's legal aid program. LAO was established as a not-for-profit statutory corporation by the *Legal Aid Services Act, 1998* ("LASA"). LAO is subject to the oversight of the Attorney General of Ontario. An excerpt from the *Report of the Legal Aid Review 2008* prepared for the Ministry of the Attorney General by Professor Michael Trebilcock, describing the statutory framework for LAO, is marked as Exhibit "1".
5. LAO is governed by a Board of Directors, who are appointed by the Attorney General. The Chair is chosen jointly by the Attorney General and the Law Society of Upper Canada. The current Chair is John McCamus ("McCamus"). Bob Ward ("Ward") was the CEO until January 1, 2016, when David Field became the new CEO.
6. A copy of the 2014 Memorandum of Understanding between the Ministry of the Attorney General and LAO is marked as Exhibit "2".
7. LAO is a Classified Agency under the Treasury Board/ Management Board of Cabinet Agency Establishment and Accountability Directive, which means that it is established by the government but instead of being part of a ministry, it has been delegated or assigned authority or responsibility for a particular area of government business, public service or service delivery. Furthermore, LAO is an Operational Services Agency under the Treasury Board/ Management Board of Cabinet Agency

Establishment and Accountability Directive, which means it delivers goods or services to the public with no or minimal fees. A copy of the Province of Ontario List of Classified Provincial Agencies dated March 2014 is marked as Exhibit "3".

Lawyers at Legal Aid Ontario

8. Staff lawyers at LAO work in courthouses and offices across Ontario, providing legal advocacy and advice to low-income Ontarians in the fields of criminal, family, and immigration/refugee law, or in some cases provide legal research and advice directly to LAO. LAO's clients are some of the most marginalized people in our province. Many of the clients I have assisted as a staff lawyer at LAO are women, people of colour, new Canadians, First Nations, refugee claimants and those with mental health concerns.
9. Legal Aid criminal duty counsel operate out of courthouses across the province, assisting individuals who do not have private counsel. Duty counsel are assigned to a number of different courts, including the remand court, bail court, plea court, Gladue court, and youth court. Criminal duty counsel also provide representation for clients in specialized courts (such as drug treatment court, and mental health court). In addition to providing on the spot summary legal advice and representation, criminal duty counsel meet and negotiate with the Crown, run bail hearings for clients in custody, prepare guilty pleas and make submissions regarding sentencing.

10. For their part, family duty counsel lawyers provide both advice and representation in court to unrepresented family law litigants. Clients attend at family duty counsel to receive assistance with claims for custody, access, and child support. Everyone who attends at a family law information centre can receive procedural advice. Others that qualify receive more in-depth legal advice about their family law matters. Family duty counsel also assist with Children Aid Society matters.
11. Lawyers also work at the Refugee Law Office, which specializes in immigration and refugee law. Lawyers in this office represent clients at the Immigration and Refugee Board, as well as in the federal court system. These lawyers also acts as duty counsel to immigration detainees held in detention centres across Ontario, providing summary legal advice and representation in detention review hearings.
12. LAO lawyers also work in LAO's provincial head office in downtown Toronto as well as the district offices. These lawyers carry out research work, providing support to legal clinics, duty counsel, and members of the private bar representing clients who are in receipt of legal aid. Some lawyers provide summary legal advice over the telephone. Other lawyers working at LAO help oversee the management of legal aid cases, including setting budgets for trials and appeals that are especially costly and complex. In addition, policy lawyers work on various LAO initiatives, such as improving services to clients suffering from mental illness.
13. I am advised by Society representative Omar Latif that there are approximately 325 staff lawyers employed by LAO. The staff lawyers work out of many offices across

the province. The majority work in the Greater Toronto area. Copies of lists of LAO districts and offices are marked collectively as Exhibit "4".

14. Many staff lawyers at LAO have been subject to a program called Lawyer Workforce Strategy ("LWS"), which was introduced in around May 2009. Copies of early LWS documents are marked collectively as Exhibit "5". Essentially, LWS involved regularly rotating lawyers between different jurisdictions throughout Ontario and between different practice areas. My contract was subject to the LWS program. A copy of my letter of employment dated March 30, 2010 is marked as Exhibit "6."

Representation for Lawyers in the Public Sector in Ontario

15. Currently, under the *Labour Relations Act, 1995*, lawyers are ineligible to unionize because they are excluded from the definition of "employee" pursuant to section 1(3) of the *Labour Relations Act, 1995*. I am advised by counsel for the Society that under prior legislation in effect from 1992-1995, lawyers were not excluded.
16. Despite the unsuccessful efforts of LAO lawyers to collectively bargain with our employer, other lawyers in the public sector in Ontario are represented by bargaining agents. Public sector employers have voluntarily recognized the bargaining agents of lawyers and have entered into framework agreements (civil contracts) governing those relationships. The largest group of lawyers in Ontario whose employer has voluntarily agreed to bargain are the Crown Attorneys and lawyers employed by the Ministry of the Attorney General, who are represented by the Ontario Crown Attorneys

Association ("OCAA") and the Association of Law Officers of the Crown ("ALOC"), respectively. A copy of the current Framework Agreement covering these lawyers is attached as Exhibit "7."

Campaign for Bargaining Rights at LAO

Previous Campaign and Efforts

17. I am advised by a LAO staff lawyer, David Beal ("Beal"), that in or around 2006, a group of LAO lawyers set out to try to address their working conditions and compensation. This group called itself the Association of Staff Duty Counsel and had approximately 50 members. The group collected money from colleagues and hired a labour lawyer to communicate with the employer to identify their issues and complaints, but the process was ultimately unsuccessful, in large measure because lawyers had neither the resources nor expertise or experience to organize on their own without outside support.
18. In addition, for a few years early in my career, I was involved in LAO's Employee Engagement Committee (the "EEC"). The EEC is made up of a number of different types of employees from LAO (including non-lawyers and employees who are represented by unions), as well as a human resources representative, and reports to management. The EEC was not independent from management and was not allowed to take any significant action without management approval. I had hoped to use the EEC as a platform to identify and raise the staff lawyers' concerns with management, but

ultimately I did not find the EEC effective, because it lacked independence or power. I do not believe that groups such as the EEC, which are effectively part of the human resources structure at LAO, will ever be sufficient to provide us with the type of independent representation we are looking for.

Beginning of Current Campaign: Issues at LAO

19. In approximately early 2012, I became involved in discussions with some LAO staff lawyer colleagues regarding the possibility of a renewed campaign to establish collective bargaining rights at LAO. There were many concerns and issues in the workplace that drove the need for organization and representation. The main issues were a lack of support regarding our professional and ethical obligations, a growing concern about the quality of client service, LAO's Lawyer Workforce Strategy, and compensation.

Ethical and Professional Obligations

20. From my experience and discussions with other staff lawyers, many were concerned about how our working conditions affected our professional and ethical obligations as lawyers. We were motivated to seek representation through a professional association in part to help us improve our working conditions so that we could better manage our professional obligations to our clients, and to assist us in navigating the balance between our obligations as lawyers, employees, and public servants.

21. As an example, at the College Park location, we lacked private office spaces in which to have confidential conversations with our clients. I recall that I and the other staff lawyers at my office raised concerns about this. One manager suggested that we procure a white noise machine to muffle the sounds of our conversations, which was not a satisfactory solution to our serious concerns about our ability to provide confidential legal advice. We needed adequate office spaces to carry out our work. This problem has never been adequately addressed. As a result of issues such as this one, which I was unable to resolve adequately on an individual basis, I came to believe that strong collective representation was necessary at LAO.
22. I am also aware of similar concerns about client confidentiality at some courthouses, such as Brampton, where duty counsel lack access to interview rooms to meet with clients, and are required to meet with clients "on the range." This means that they must go into the basement holding facility at the court, where there are clusters of cells along a pathway, each with four to five inmates. Counsel must speak to their client from the pathway, in front of other inmates, and cannot get too close to the bars in case an inmate tries to grab them. The issues of client confidentiality in connection with our job duties and professional responsibilities need to be addressed in a comprehensive and collective manner.
23. We also believed that we needed representation in navigating and balancing our various duties as employed professionals. When we were advised by LAO that we would be subject to various rules applicable to public servants, many of us had

concerns about how to balance our duties as lawyers (loyalty to client) with our duties as employees and public servants (loyalty to the Crown). As lawyers, we believed our overriding duty was to our clients, but I recall being advised by management that we were "public servants first." As an example, we are discouraged from speaking out publicly against government practices we view as oppressive to our clients. As a result, we are hampered in our abilities to bring about systemic changes in the lives of our clients. As another example, LAO introduced referral forms for criminal duty counsel which required staff lawyers to recommend whether clients would receive legal aid certificates. As far as I am aware, staff lawyers were not consulted about this change in advance. Many staff lawyers felt torn between the interests of the clients (who would benefit from receiving certificates) and the interests of LAO.

24. The LWS program was also a concern from a professional competence and ethics standpoint. The LWS program involves rotating lawyers to different practice areas in which they may not have any prior experience. As lawyers, we have an obligation pursuant to the *Rules of Professional Conduct* not to undertake work that we are not competent to do. Family lawyers who rotated into the criminal law practice confided in me that they were concerned about their ability to balance the demands of the employer and ensure high quality client service. These lawyers rotating in were replacing experienced criminal lawyers. The transition was difficult and these lawyers advised me that they believed were not given the support and resources necessary to perform the tasks required. As a result, they advised me they felt demoralized and believed they were a burden to their more experienced colleagues.

25. As a result of concerns like these, many employees wished to have meaningful input into their working conditions as they affected their professional and ethical obligations as lawyers. We believed these issues, which were of fundamental importance to us as employed lawyers, were best addressed collectively through representation by a professional association.

Client Service

26. The staff lawyers at LAO care deeply about the vulnerable individuals we serve and are motivated to ensure strong and appropriate client service tailored to the distinct needs of clients. Many lawyers, including me, believe that LAO failed to adequately consult with staff lawyers concerning issues affecting client service. One of the reasons staff lawyers are interested in organizing is to ensure that we have a strong collective voice to address issues relating to client service in connection with the performance of our duties.
27. For example, in around March 2010, LAO introduced a call centre for clients. I am not aware that there was any prior consultation with the staff lawyers. Several aspects of the call centre were concerning from a client service perspective. We were concerned that applying for legal aid by telephone would be difficult for mentally ill and homeless clients. The call centre was located in Toronto, and we were concerned that the call centre representatives would not have adequate local information concerning court procedures and sentencing ranges, which can vary from city to city and even courthouse to courthouse. We were further concerned that the information delivered

verbally by telephone was potentially confusing to clients, who could be negatively affected by taking action without speaking directly with a lawyer who is able to review their disclosure.

28. Staff lawyers were concerned about consistency across LAO with respect to the working conditions and client service. From speaking with other staff lawyers, anecdotally, it seemed that different service standards and models applied at different court houses and in different jurisdictions, which caused some concern. We felt that professional collective representation would help us ensure more consistent treatment of staff and services to and for clients.
29. The effect of LWS on client service was also a concern. Family, criminal and immigration law are high stakes areas of law where the consequences are extremely serious. There was significant concern among lawyers at LAO that rotations would remove experienced and competent counsel from their practice areas to be replaced by inexperienced lawyers who would be struggling to learn a new practice area, potentially without adequate training. This had the potential to negatively affect client service.
30. We wished to have meaningful input into our working conditions as they affected the client service we provided as lawyers. No formal mechanism existed by which we could provide any input to management regarding these issues. We believed that professional collective representation through a process of good faith negotiations

would help us to be able to more effectively address concerns related to client service with management.

Professional Development and Career Progression

31. Many lawyers, including myself, were concerned about professional development and career progression at LAO, particularly with reference to the LWS program. For many lawyers, the practice area was one of the reasons underlying the decision to join LAO, and a forced removal from that practice area would make our jobs considerably less satisfying and rewarding. There was no guarantee of a return to our preferred practice area. While I was open to expanding my knowledge in other areas to the extent that it would improve my ability to practice criminal law, I did not want to be permanently moved into another practice area.
32. I am advised by another staff lawyer, Haran Aruliah ("Aruliah"), that he spoke with Ward (then CEO of LAO) in around late 2011 or early 2012 regarding the LWS in relation to his career progression. Aruliah indicated he wanted to develop his expertise as a criminal lawyer, rather than acting as a generalist, and Ward responded that LAO might not be the place for him.
33. I was personally affected by the LWS program. In mid-2012, I learned that it was recommended that I would be transferred to a mixed family-criminal position in Cobourg. The proposed rotation was troubling for a number of reasons. Firstly, I had no experience in family law whatsoever, and had not even taken family law while in

law school (although some courses, such as youth law, addressed some family law issues). I was concerned about whether I would have access to guidance from more experienced family law counsel in this new role, and the manager of the LWS was unaware if there would be any other family law staff lawyer besides myself. In addition, I had a longstanding interest in criminal law and hoped to continue to practice in that area. Furthermore, on a personal level, I live in Toronto with my common law spouse, and a forced relocation to Cobourg would have been extremely disruptive to us. I did not have a car or even a driver's license, which would be necessary for a position in a small town such as Cobourg. I reached out the LWS manager with various questions, but LAO did not provide me with any meaningful answers. Ultimately, LAO did not require me to transfer to Cobourg, presumably due to the concerns I raised, and I continued to work at the College Park location. However, I was persuaded from this experience that the staff lawyers needed an effective means to address LWS and other workplace programs that affect our careers. I believe this could be most effectively accomplished through collective representation by an experienced professional association.

34. Finally, staff lawyers are concerned about LAO's hiring practices. There is inconsistency in whether new positions are posted, and positions are sometimes filled without a posting, depriving interested current employees of the opportunity to apply. There are employees who are "permanent" but lack a home position, and are therefore required to interview for each contract. There are also employees who are "on contract" for many years without permanent status, who must also interview for each

contract, and lack meaningful job security. There was significant controversy in 2014 when LAO hired a large number of new calls without postings, as this deprived more senior employees of permanent opportunities. Many existing staff lawyers were unhappy with how this was handled. We hope to achieve a fair and transparent process for job postings through collective bargaining.

Compensation

35. From my personal experience and my discussions with other employees, I know that the primary concern regarding compensation at LAO related to a lack of transparency and fairness in the compensation system. For many years, there were no published salary grids at LAO. Without access to information about salary grids, we were unable to ensure we were receiving fair compensation. In 2011, many staff lawyers' salaries were increased after the identification of an administrative error/oversight, but because the staff lawyers had not been provided with information about the salary grid, they had been unaware that there was any error in the salaries. The absence of transparent salary grids also led to concerns that some employees may unfairly be receiving different salaries for equal work, or that the salaries may not always adequately reflect lawyers' level of experience. I am advised by a former LAO staff lawyer, Jillian Rogin ("Rogin") that in 2011, she made inquiries about discrepancies between her salary and that another recently-hired criminal duty counsel, but that her concern was never resolved.

36. I and the other employees I spoke with at LAO were also aware that we were making significantly less than other lawyers employed in the public sector who were represented by bargaining agents. My rate of pay as a student with the Crown was about the same, if not higher, than my salary as staff lawyer with LAO. Between April 1, 2009 and April 1, 2013, the minimum and maximum salaries for non-management lawyers at LAO remained the same: \$60,601 and \$107,464. Most duty counsel I knew earned salaries in the range of \$60,000 to \$70,000.
37. We hoped that in organizing and bargaining a collective agreement, we could resolve concerns about transparency and fairness in compensation, while bargaining compensation more in line with what other public sector lawyers receive.

Selection of Society

38. I am advised by Rogin that in approximately late 2011, she, along with Haran Aruliah, Simone Bern and Immanuel Lanzaderas ("Lanzaderas") formed an initial campaign committee with the goal of seeking collective bargaining rights for the staff lawyers at LAO. I became involved in these efforts after a few months, in approximately early 2012.
39. During the course of my involvement in the organizing campaign (2012-present), there was never any serious consideration given to attempting to form our own association. I am further advised by Rogin and Lanzaderas that there was no serious consideration given to this option before my involvement in the organizing campaign

(2011-2012). As noted above, the staff lawyers had no resources and no expertise in labour relations or labour law. Moreover, staff lawyers were spread across the province and it did not seem feasible to effectively reach everyone on our own. We had no way of identifying all the staff lawyers and many did not even have telephones in their offices. As full-time employees of LAO, we did not have the time nor the expertise to conduct a long and complicated process like organizing across the province. Moreover, we were all very busy with balancing our professional careers and personal lives, and did not have the capacity to build a new association from the ground up. Finally, we felt that we need the resources of an experienced union/association in order to effectively communicate and bargain against a large government agency such as LAO.

40. Acting as individuals, employees had been powerless to meaningfully address the issues in the workplace set out above. As a result, we were motivated to organize and collectively bargain with the employer. We hoped to achieve what other public sector lawyers in Ontario already had: a collective voice to improve our working conditions and the accountability/ transparency of our employer. Based on the unsuccessful experiences of the previous campaign (the Association of Staff Duty Counsel), we determined that we required an established organization with substantial resources to devote to mounting an organizing campaign.
41. We contacted and interviewed a number of unions and associations regarding their willingness and capacity to help organize the staff lawyers at LAO. I was not directly

involved in most of these discussions, but I was aware of them by virtue of my participation on the initial campaign committee.

42. I am advised by Rogin and Lanzaderas that there were several initial meetings with Richard Long ("Long") and Bill Fitzpatrick of The Society of Energy Professionals (the "Society") over the course of late 2011 to early 2012. I did not personally attend these initial meetings.
43. In addition to the Society, the initial campaign committee also considered and contacted other unions/associations, including the Ontario Crown Attorneys Association ("OCAA"), the Association of Law Officers of the Crown ("ALOC"), the Association of Management, Administrative and Professional Crown Employees of Ontario ("AMAPCEO"), the Canadian Union of Public Employees ("CUPE") and the Ontario Public Service Employees Union ("OPSEU"). We ultimately determined not to proceed with these organizations, either because they were not interested in attempting to expand their existing bargaining rights, they lacked or were unwilling to commit the necessary resources to our organizing campaign, or did not share the same interests.
44. After we had considered these various organizations, and it became clear that the Society was the strongest contender, Lanzaderas organized an online vote among those who were actively involved in the organizing campaign to confirm whether we wished to proceed with the Society. I do not recall whether I actually participated in the online vote, but I recall that the outcome was overwhelmingly positive in favour of

organizing with the Society, and that I agreed with the decision to select the Society. A copy of an email from Lanzaderas relating to the vote and its outcome is marked as Exhibit "8".

45. We selected the Society for a number of reasons. We were interested in finding a competent, well-resourced union that specialized in representing professionals. The Society (or IFPTE) had experience representing professionals, particularly engineers in Ontario and members of the legal profession in the United States. The Society also had experience working with governmental agencies in Ontario. In our judgment, the Society had the experience and resources to help us reach lawyers in all areas of the province. Moreover, the Society was very responsive to our interest in organizing and was willing to commit resources to our efforts. In approximately May 2012, we notified Long that we wished to move forward with the organizing campaign. I first met with the Society's representatives in August 2012.
46. Together with the Society, we worked to set the priorities and strategy for the organizing campaign. We decided that there would be a committee made up solely of LAO staff lawyers (the "Campaign Committee") and that the Society would provide strategic advice and assistance. The initial members of the Committee included Rogin, Lanzaderas, Alexandra Campbell-Yao, Ada Chan, Joseph Murray, Georgette Makhoul, Paul Andre MacLeod, Michael Story, Haran Aruliah, Dana Suvagau, Esther Oh, and me.

47. Over the course of 2012, the Committee and representatives of the Society met several times to review the issues in the workplace and plan a strategy for the campaign. The workplace issues we identified included a need for a collective voice to articulate concerns, a need to protect our professional and ethical obligations, and a need for fairness and transparency around compensation. It was also my hope, which I believe was shared by others on the Committee, that the formation of an association would provide a collective voice for those within LAO to push for a more equitable workplace that was able to more effectively advocate for the rights of the accused and the rights of poor Ontarians.

48. The decision to engage the Society to help with our organizing was described as follows in a brochure we produced as part of the organizing campaign in the fall of 2012:

"Several years ago a number of our colleagues were concerned about their pay and working conditions at Legal Aid Ontario (LAO). After many of us were canvassed, a number of common issues manifested. A hat was passed around and we collected enough money to engage a labour lawyer who conveyed our issues to management. Some concessions were gained as a result of this effort.

More recently, a new committee was struck to seek a more formal approach to representation, one that would speak with authority on behalf of Legal Aid lawyers, on an ongoing basis.

The committee conducted a due diligence search for organizations that specialized in representing various professionals including lawyers.

In the end the committee chose the Society of Energy Professionals (The Society) as the organization best suited to help us organize into a cohesive group and secure formal recognition with The Society as our bargaining agent.

The Society has the desire, reach and resources to service our colleagues across the province. Most importantly they have an excellent reputation for negotiating first class contracts and utilizing mediation/arbitration where possible to resolve disputes.”

49. A copy of the brochure is marked as Exhibit “9” to this affidavit.

Campaign Strategy Overview

50. Our goal was to obtain voluntary recognition and then to negotiate framework and collective agreements.
51. The first phase of our campaign involved internal organizing: developing the Committee, identifying leaders, holding one-on-one and small group meetings with employees, and obtaining evidence of support for the Society as a bargaining agent.
52. The second phase was aimed at encouraging the employer to grant recognition. This was hoped to be accomplished by meeting with our employer, raising the profile of the campaign by securing support from the broader legal community and prominent individuals/groups, engaging the media, holding press conferences, and meeting with government officials.
53. The third phase, once we have obtained recognition, will involve bargaining a framework and collective agreement.

Internal Organizing and Petition

54. Beginning in the fall of 2012, the Committee and representatives of the Society met regularly on an approximately bi-weekly basis to discuss the progress of the campaign

and to plan the campaign strategy. These meetings have continued throughout the organizing campaign.

55. The Committee members made the initial contacts with the employees, and if they were interested, we arranged a second meeting which would also be attended by a representative of the Society. During these meetings, we discussed the key issues at LAO, including LWS, client service, lack of guidance/ support concerning our professional obligations, compensation, lack of consultation in decision-making, and transparency. The meetings allowed the Committee members and the Society to better understand the issues facing the employees.
56. The Society helped us develop a petition to collect signatures of lawyers who wanted to be represented by the Society in their employment at LAO. We decided that there would be two petitions. Anyone who did not wish to share whether they had signed a petition could sign an individual petition, in which case no other LAO employee (other than those on the Committee) would be able to see their signature. We also had a group petition with room for multiple signatures. In early November 2012, we launched the petition. Blank examples of the petitions are marked collectively as Exhibit "10".
57. When I spoke with employees about the campaign, a consistent theme I heard was that employees were happy to have independent representation, because they were concerned that if they raised their concerns with the employer on an individual basis,

they would be perceived as trouble-makers or as disloyal, and that they might face dismissal or that their career progression might be limited as a result.

58. On or about November 12, 2012 we held a meeting at the University of Toronto Graduate Student Union Pub following a LAO training event. Approximately 50 staff lawyers attend to learn about the campaign.

Ongoing Campaigning – Winter/Spring 2013

59. To engage the LAO lawyers and publicize our campaign, we decided to host a public information forum. Copies of a January 3, 2013 letter to the staff lawyers concerning the public information forum and an enclosed flyer are marked collectively as Exhibit “11”.
60. The LWS remained an ongoing concern for many of the LAO lawyers. On January 22, 2013 Coreen Lapointe, LWS manager, emailed all lawyers confirming LAO’s expectations that lawyers would regularly rotate practice areas and geographical areas. A copy of Lapointe’s email is marked as Exhibit “12”. Furthermore, LAO’s description of LWS on its website made no distinction between those hired before and after 2009. A copy of the website printout is marked as Exhibit “13”. Many LAO lawyers were very concerned about these developments, which highlighted the need for an organized, collective voice at LAO.
61. On January 23, 2013, the campaign public information forum took place at the Sheraton Centre in Toronto. The speakers included noted criminal lawyer Clayton

- Ruby, Steven Barrett ("Barrett") (counsel for the Society with respect to the organizing campaign), Committee members, an administrative law judge from the United States affiliated with the IFPTE with experience organizing jurists (Judge Linda Stagno of New York), and Society President-Elect Scott Travers ("Travers"). The event was held after work, and a video of the event was posted on the Committee's website. I recall that the event was very well attended and that I was excited by the good turnout and by the interest shown by attendees.
62. On March 4, 2013, the Committee sent a letter to the LAO lawyers providing a link to the video from the Public Information Forum. The letter indicated that a majority of employees had signed the petition and encouraged employees to sign. A copy of the March 4, 2013 letter is marked as Exhibit "14".
63. In March 2013, the Committee and Society worked to set up a website to keep the staff lawyers up-to-date regarding the campaign efforts. On or about April 1, 2013, the Committee and Society hosted a campaign social at Moxie's restaurant in Toronto following a training event.
64. On April 23, 2013, Barrett wrote to Ward advising that the LAO lawyers were engaged in an organizing campaign for the purpose of seeking to enter into a good faith process of collective bargaining with LAO. The letter also set out our concerns regarding the LWS. A copy of Barrett's letter is marked as Exhibit "15". I am advised by Barrett that he never received a reply to his letter.

65. The Committee wrote a letter to the LAO staff lawyers on April 24, 2013 to advise them that a significant majority had now signed the petition. The letter identified that while LAO had recently implemented a pay increase, it had at the same time lengthened the work day, highlighting the need for organized representation to discuss such issues with the employer. The letter also attached a copy of Barrett's correspondence to Ward regarding LWS. A copy of the April 24, 2013 letter is marked as Exhibit "16".

66. On May 3, 2013, Travers wrote to Ward identifying that the vast majority of LAO staff lawyers had signed the petition. Travers explained that our goal was to secure voluntary recognition, similar to what exists with respect to OCAA and ALOC. Travers further indicated that the Society was prepared to have the petition signatures verified by a third party, and suggested the Hon. Frank Iacobucci. A copy of the May 3, 2013 letter is marked as Exhibit "17".

Ongoing Campaigning Spring/Summer 2013

67. A delegation of LAO lawyers, including several members of the Committee, as well as Travers, visited the LAO head office on May 27, 2013. I was one of the Committee members who participated in the delegation. We spoke with Ward's secretary and attempted, unsuccessfully, to arrange a meeting. We did not even make it past the reception desk. Security escorted us from the office, despite the fact that we were employees of LAO. Travers hand delivered a letter, dated the same day, to Ward's secretary. The letter explained that the Committee and Society felt the need to reach

out with an unscheduled visit because there had been no response to our earlier correspondence, and explained that we continued to hope that Ward would agree to meet with us. A copy of the May 27, 2013 letter is marked as Exhibit "18". Subsequently, Ward sent a brief letter dated May 31, 2013 to Travers indicating that LAO would provide its position on the issues raised in our correspondence in due course. A copy of the May 31, 2013 letter is marked as Exhibit "19".

Ongoing Organizing Summer 2013

FOI Requests

68. I am advised by Society representative Omar Latif ("Latif") that on June 7, 2013, the Society submitted a Freedom of Information request seeking copies of correspondence and reports regarding the LWS. In this regard, the Society took the position that in order to effectively represent members and negotiate with respect to workplace matters, it must have access to information regarding the employer's programs. However, LAO refused to disclose the documents. Copies of relevant correspondence relating to the Freedom of Information Request are marked collectively as Exhibit "20".

69. I am advised by Latif that the Society has made further requests concerning other issues of interest to the lawyers, including LAO expenses, contracts and procurement issues, which LAO has refused to provide. LAO agreed to provide a copy of its salary grid and a copy of Ward's employment agreement.

70. Without status as a bargaining agent, the Society is unable to access all of the information necessary to effectively advocate to improve working conditions. Similarly, individual employees are unable to gain access to the documents necessary to effectively negotiate working conditions at LAO.

Key Events, Meetings and Ongoing LWS Issues

71. Sue McCaffrey (Vice President and General Counsel of LAO) ("McCaffrey") emailed all LAO lawyers on June 18, 2013 announcing a "consultation process" regarding LWS. A copy of McCaffrey's email is marked as Exhibit "21". Although not explicitly set out in the email, it is my understanding that the LWS program was placed on hold pending the consultation process.
72. On June 25, 2013, Rogin emailed McCaffrey seeking an opportunity for the Society and counsel to meet with LAO regarding the LWS. A copy of Rogin's email is marked as Exhibit "22". In response, McCaffrey sent another email to all lawyers on June 26, 2013, clarifying that she only wished to meet with individual lawyers, not the Committee or Society:

"As has been communicated to your legal counsel and the head of the Union, LAO is considering its position with respect to their requests. My e-mail was not, and was not intended to be, a response to the request that LAO meet with the Campaign Co-ordinating Committee, and should not be interpreted as such. While we appreciate that there is some concern with the LWS program, our consultation process is a good faith effort to engage LAO staff lawyers and to receive their comments in a constructive, non-confrontational manner. If there were any confusion over my e-mail, I trust this clarifies LAO's position."

73. A copy of McCaffrey's email of June 26, 2013 is marked as Exhibit "23".
- McCaffrey's email provoked a flurry of responses from the staff lawyers. Several criticized LAO's belated and inadequate efforts at consultation, while making clear that the staff lawyers wished to pursue collective representation through the Society. Copies of these emails are marked collectively as Exhibit "24".
74. It was my view that LAO put LWS "on hold" in order to attempt to persuade employees that they did not need collective representation because management was listening to their concerns. However, I was not persuaded, because our concerns extended beyond LWS. Furthermore, LAO had heard and ignored these same concerns previously. We wanted to ensure an ongoing, meaningful dialogue regarding all workplace issues. The campaign to establish bargaining rights at LAO continued.
75. On June 26, 2013, a group of lawyers, including members of the Committee, leafleted the LAO headquarters to draw attention to the campaign and provide information about our efforts. I participated in this event.
76. I am advised by Rogin that she and another Committee member attended a Liberal Party event in the summer of 2013 where they spoke with the Attorney General regarding the campaign and obtained his agreement to schedule a meeting. At the time, Rogin was an employee of LAO and a member of the Committee.
77. In approximately July 2013, The Committee and Society set up a Facebook page to help keep staff lawyers up to date regarding the progress of the campaign.

78. I am advised by Dana Suvagau that a group of LAO lawyers attended a criminal law conference in Ottawa on July 11, 2013, where they distributed campaign materials and engaged with attendees about the campaign. Copies of the handout they distributed entitled "Seeking Justice," as well as a website update concerning the event, are marked collectively as Exhibit "25". I did not participate in this event.
79. Further to McCaffrey's email correspondence, set out above, LAO scheduled a consultation meeting with the LAO lawyers to take place on or around July 12, 2013 to discuss LWS. Many lawyers refused to attend while LAO continued to decline to meet with the Society, taking the position that there should be "no consultation without representation." I did not attend. I understand there were further such "consultation" meetings, but I did not participate.
80. On July 15, 2013, the Committee wrote to the lawyers concerning recent developments, including with respect to LWS being placed on hold. The letter enclosed a pin for lawyers to wear to show solidarity with the campaign to establish bargaining rights. A copy of the letter is marked as Exhibit "26".
81. On August 12, 2013, McCaffrey emailed all lawyers advising of the creation of a new committee to address the concerns being raised by the lawyers in relation to the LWS issues (the "Management Committee"). A copy of McCaffrey's email is marked as Exhibit "27". My understanding is that the Management Committee was created by LAO to help address some of the concerns that the lawyers were seeking to address

through representation by the Society, but without a process of independent representation and good faith bargaining.

82. LAO solicited staff lawyers to join the Management Committee and then selected the Management Committee's members from those who had indicated an interest. Neither the structure of the Management Committee nor its members were freely chosen by the lawyers, and the Management Committee was not truly independent of LAO. When I looked into the composition of the Management Committee, I learned that approximately half or fewer than half of the Members of the Management Committee were staff lawyers; the rest were made up of supervisory/managerial staff and human resources employees. It was therefore my view that the Management Committee was ultimately controlled by and accountable to management, rather than the staff lawyers.
83. I did not participate on the Management Committee, and it was the position of the Committee that lawyers should not participate because the Management Committee was really a mechanism used by LAO to attempt to avoid real collective bargaining. A committee designed by management, and whose members are not chosen by the lawyers, is inadequate to provide us with truly independent and effective representation. What we want is an independent representation freely chosen by and accountable to us to help address our collective concerns with management. I and others are therefore continuing to seek independent and accountable professional representation through the Society.

84. Lwam Ghebrehariat (a former staff lawyer with LAO) sent an email to McCaffrey and all lawyers on August 13, 2013, asserting our constitutional right to bargain collectively and requesting a meeting between the LAO, the Society and its counsel. A copy of Ghebrehariat's email is marked as Exhibit "28". McCaffrey replied by email to Ghebrehariat on August 15, 2013, indicating that LAO was looking forward to working with the Management Committee (from which the Society was excluded) and continued "direct" communication with its employees. A copy of McCaffrey's email is marked as Exhibit "29".
85. The Committee responded to McCaffrey by letter dated August 16, 2013, condemning its disingenuous consultation process and the employer's refusal to recognize the Society. It was our view that LAO set up the consultation process to give an appearance of listening to employees' concerns in an attempt to convince them there was no need for representation. The Committee wrote,
- "We believe that it is not coincidental that these consultations are being conducted now, four years after the implementation of the LWS. It is common practice by employers during organizing campaigns to give the appearance that senior management is addressing employee concerns when it is in fact an effort to undermine the campaign."
86. The Committee further noted that the organizing campaign was not specific to LWS but rather intended to address all unilateral management decision-making, commenting, "Your responses to our efforts reinforce the need for a collective agreement." The Committee requested that further communications be directed to the lawyers' chosen representatives, namely the Society. The letter was also sent by email.

Copies of the Committee's letter/email are marked as Exhibit "30". However, rather than replying to the Society, as requested, McCaffrey instead replied to the lawyers, repeating the invitation to become involved in the committee established by the employer. Copies of her replies are marked collectively as Exhibit "31".

87. I am advised by Rogin and Committee member Michael Story that on August 8, 2013, they visited members of the LAO Board of Directors at their workplaces to deliver a letter calling on the Board to support the right to collective bargaining. Sample copies of the letters, together with a reply from McCamus, are marked collectively as Exhibit "32". The Committee members were unable to meet with any members of the Board that day. I was not directly involved in this process.
88. The campaign to secure bargaining rights at LAO has received endorsements and support from many leaders in the legal community and society more broadly. Many of the organizations that supported our campaign were women's organizations, which was important to us because many of the staff lawyers are women and we serve many underprivileged female clients. Individuals and organizations that have indicated their support include: Julian Falconer, Clayton Ruby, Lorne Waldman, Professor Camille Cameron, The Building Trades Council, The Ontario Nurses Association, The Ontario Provincial Fire Fighters Association, LEAF, YWCA (Toronto) and Women's Health in Women's Hands. Copies of letters dated July 25, 2013 to LEAF, the Ontario Nurses Association ("ONA") and the Ontario Professional Fire Fighters Association ("OPFFA") confirming their support are marked collectively as Exhibit "33". An

August 23, 2013 letter from Paul Calarco (a prominent criminal defence lawyer) to the Premier is marked as Exhibit "34".

89. I am advised by Rogin and Lanzaderas that they and Travers attended the Premier's Patio Party on August 14, 2013, where they spoke to the Premier and Cabinet members about the campaign. I am further advised by Rogin that at this event, both the Premier and Attorney General offered to meet to further discuss the issues. I did not attend this event.
90. The Society published an open letter to Ward on August 16, 2013 in both the Law Times and the Ontario Reports. A copy of the letter as it appeared in the Ontario Reports is marked as Exhibit "35". LAO did not respond to this letter.
91. During this time, LAO continued to make important organizational changes without consulting the lawyers. For instance, LAO was increasingly using paralegals, and did not consult the staff lawyers about this development, even though it affected our roles. The Law Times published an article regarding this issue on September 8, 2013, a copy of which is marked as Exhibit "36".

Continued Organizing Fall 2013

92. The Committee and Society continued to seek support from community and labour groups. A petition signed by leaders from various private and public sector unions is marked as Exhibit "37". Letters from some of these groups for the period September to December 2013, together with a press release from the Ontario Nurses Association,

are marked collectively as Exhibit "38".

93. We also began to reach out to the Premier's office to secure a meeting, as we wanted the Premier to direct LAO to respect collective bargaining. A copy of an email from Bill Fitzpatrick of the IFPTE to the Premier's assistant dated September 23, 2013 is marked as Exhibit "39".
94. The Society and Committee held a press conference on September 24, 2013 to draw attention to the campaign, followed by a reception. The press conference featured notable leaders in the legal community and from civil society, including Clayton Ruby, Heather McGregor (YWCA Toronto), and Diane O'Reggio (LEAF). These leaders linked the campaign for collective bargaining with the quality of legal services offered to LAO clients. Ruby stated, "The continued denial of LAO lawyers' right to freedom of association and their ability to collectively negotiate workplace conditions has a direct impact upon the quality of service that the poorest members of our province receive." McGregor commented, "We believe that the quality of the legal services provided by Legal Aid Ontario could be improved if those who are on the frontlines have a collective voice."
95. In addition to the community leaders, Rogin spoke about our campaign progress. Copies of our press release and our website update are marked collectively as Exhibit "40". Then Attorney General John Gerretsen attended the event and publicly commented in support of our campaign, saying "They should be compensated

properly and exercise their right to bargain collectively.” Copies of a Toronto Star article regarding the press conference are marked as Exhibit “41”.

96. On September 26, 2013, York University labour law professor David Doorey wrote an entry on his labour blog concerning our campaign. A copy of Professor Doorey’s blog entry is marked as Exhibit “42”. Professor Doorey commented that LAO owes a duty to bargain with us independent from the statutory bargaining system established by the *LRA*:

“The facts are this: legal aid lawyers are excluded from the standard Labour Relations Act in Ontario, the statute that creates the rules around union organizing and collective bargaining [Section 1(3) excludes practicing lawyers]. That means that they can’t just apply for certification and win a legal right to bargain collectively like most employees in Ontario. However, that doesn’t mean that they have no right to collective bargaining. It just means their right to bargain is not governed by the Labour Relations Act. The Supreme Court has ruled in a series of cases that the Charter guarantees a right of workers to form unions without employer interference, and to approach the employer as a collective, and make ‘collective representations’. The employer is then required to engage in ‘a meaningful dialogue’ about the union’s representations. These are the minimum constitutionally required entitlements of workers under Section 2(d). This flows from the SCC decisions in Ontario (AG) v. Fraser and the B.C. Health Services case. Since the Legal Aid employees are government employees, the Charter applies to their employment relationship directly. Therefore, if their employer denies their Charter rights, those employees can bring a Charter application asking a court to order the employer to behave.”

97. We continued to follow up with politicians regarding the campaign. I am advised by Committee member Ada Chan that on September 27, 2013, several Committee members attended the Liberal Provincial Council in Hamilton where they engaged

MPPs and their staff. In addition, several Committee members, including me, spoke to the Toronto and York Region Labour Council about the campaign on October 3, 2013.

98. At the same time, we continued to seek a direct meeting with Ward. On October 3, 2013, Travers again wrote to Ward seeking a meeting. A copy of the letter is marked as Exhibit "43". As far as I am aware, there was no response to this letter.
99. Most of our outreach focussed on building support in the broader legal community. We sought to inform new lawyers (and prospective employees of LAO) about the campaign. In that regard, I am advised by Latif that he and Liu attended the Off-Campus Interviews (OCIs) on October 7, 2013 to speak with law students about the campaign at LAO. A copy of the flyer that they distributed is marked as Exhibit "44". I did not attend this event.
100. The Law Times featured a supportive article about the campaign on October 7, 2013, a copy of which is marked as Exhibit "45". The article noted that judges, Crowns, police and other government lawyers all had some form of collective bargaining rights, while we did not, and highlighted some of the issues of concern to LAO lawyers, such as LWS, training and adequate workspaces.
101. We continued to try to reach out to Board members individually. I am advised by Latif that he and Liu attended at classes taught by LAO Board Member Tim Murphy at the University of Toronto Faculty of Law in October 2013, where they spoke to students

and drew attention to the campaign. A copy of a flyer they handed out is marked as Exhibit "46". I did not participate in this event.

102. A rally took place on October 18, 2013 outside LAO's head office and featured speakers from LEAF, the Ontario Federation of Labour, and Ontario Nurses Association. Approximately 100 individuals attended. Copies of a flyer promoting the rally, the agenda for the rally, as well as press releases relating to the rally are marked collectively as Exhibit "47".

103. On October 18, 2013, Ward wrote to directly to all lawyers at LAO advising them that LAO had rejected the request by the Society for recognition as the bargaining agent on the basis that the Society was a "trade union" and that no group of lawyers had ever been represented by a trade union. Ward distinguished trade unions from the associations that represented Crown lawyers on the basis that such associations "have evolved over time." At the same time, Ward also wrote "LAO wants to work directly with its lawyers to address employment concerns." Ward claimed that LAO was interested in a formalized means through which issues could be addressed, but it was apparent that LAO intended that the lawyers would not be represented by a bargaining agent in this process. Instead, LAO indicated it would be "moving forward with a dedicated group of lawyers interested in working cooperatively on these issues," by which it presumably meant the Management Committee. A copy of the October 18, 2013 letter from Ward to the LAO lawyers is marked as Exhibit "48".

104. Also on October 18, 2013, Ward wrote to Travers refusing to recognize or engage in bargaining with the Society on the basis that lawyers are excluded from the definition of "employee" under the *Labour Relations Act, 1995*, and on the basis that a "trade union" could not represent lawyers, ignoring that the government has an independent duty under s. 2(d) the *Charter* to recognize the association freely chosen by its employees and engage in good faith bargaining with that chosen association, and incorrectly asserting that a trade union was in any way different than the bargaining agents representing Crown Attorneys and lawyers employed at government ministries. A copy of the October 18, 2013 letter from Ward to Travers is marked as Exhibit "49".

105. We continued to reach out to leaders in the government. On or about October 19, 2013, I attended a Leadership Summit for Women along with several other Committee members and Liu, where we distributed campaign materials. Copies of flyers used at that event, and another event from the fall of 2013, are marked collectively as Exhibit "50". At that event, we had an opportunity to speak with the Premier directly regarding the campaign, who indicated she was aware we would soon be meeting with the Attorney General, and that she was hopeful the issue would be resolved.

106. On October 21, 2013, Travers wrote to Ward expressing his disappointment with the position taken by LAO regarding our campaign to establish bargaining rights. Travers noted that it was precisely because we could not organize under the *Labour Relations Act, 1995* that we were seeking to enter into a framework agreement, similar to the

Crown Attorneys and other government lawyers. Furthermore, Travers explained that the Society operates in much the same way as the associations representing the Crown Attorneys and other government lawyers. A copy of Travers' letter is marked as Exhibit "51".

107. Professor Doorey posted a further entry on October 21, 2013, a copy of which is marked as Exhibit "52," in which he commented that LAO's refusal to recognize the Society as a bargaining agent was both surprising as well as probably legally incorrect:

"The employer's response is that since it has no statutory obligation to recognize a union as the representative of its employees, it has no other legal obligation to acknowledge or discuss terms and conditions with its employees' chosen collective association. There's no response to the claim that the Charter requires the employer to bargain with the union, even if the Labour Relations Act does not. The LAO position appears to be that if a group of public sector employees are excluded from the LRA, then the employer can ignore any employee association the workers choose to support. I think that's a surprising position for the LAO to take. I also think it is legally incorrect, given that the Supreme Court of Canada has ruled that a legal regime that makes it impossible for employees to engage in a meaningful dialogue with an employer through an employee association is unconstitutional. Yet that is exactly what the LAO appears to be saying is the result of the exclusion of lawyers from the LRA. So my bet is that the LAO is in violation of the Charter, and would be found to be so if the issue were litigated. That of course assumes that the SCC does not completely rewrite the Section 2(d) jurisprudence (again) in any of the many cases soon to come before it on the scope of freedom of association. Here is the LAO's letter to the Union [Note how the LAO president suggests that the identity of the employees' chosen union is somehow relevant]"

108. The Committee wrote to the LAO lawyers regarding the response from Ward on or about October 24, 2013. The Committee noted that we had chosen to affiliate with the Society because of their experience representing professionals and the provincial reach

of their organization. The Committee further explained the basis for our request for voluntary recognition, as distinct from an application for certification under the *Labour Relations Act, 1995*. A copy of our letter is marked as Exhibit "53".

109. The Law Times published an article concerning our efforts to organize the LAO staff lawyers on October 28, 2013. The article described Ward's recent response and noted that 100 people had attended our most recent rally. A copy of the article is marked as Exhibit "54".
110. I am advised by Barrett that on October 30, 2013 several Society representatives and staff lawyers met with Attorney General Gerretsen on October 30, 2013 in order to urge the government to recognize our bargaining rights. Barrett, Travers, Courtney Radic, Linh Hong Le, Lanzaderas, and Suvagau attended the meeting. Unfortunately, the government did not take any action in response to this meeting.
111. On November 1, 2013, Travers wrote to Premier Wynne indicating he was disappointed by Ward's recent response to our campaign. Travers asked Premier Wynne to direct LAO to uphold the Charter and grant voluntary recognition. A copy of the letter is marked as Exhibit "55".
112. A campaign social took place on November 11, 2013 and featured a guest speaker from the Criminal Lawyers Association. Copies of our campaign update dated November 11, 2013, together with an announcement about the social, are marked collectively as Exhibit "56".

113. At the convention of the Ontario Federation of Labour in around November 2013, which I attended, many labour groups expressed support for our campaign. We printed postcards for interested individuals to mail to Premier Wynne, and over 750 were sent. A copy of a sample postcard is marked as Exhibit "57".
114. On November 12, 2013, Committee members met with NDP Justice Critic Jagmeet Singh regarding the campaign, who had spoken on the floor about the important work done by the LAO staff lawyers in October 2013.
115. While we were primarily engaged in trying to secure bargaining rights, the Committee remained involved in trying to promote other positive change at LAO that would improve client service. In this regard, the Committee put out a press release on November 13, 2013 calling on the federal government to provide increased funding for legal aid. A copy of the press release is marked as Exhibit "58". Similarly, the Committee and the Criminal Lawyers Association later released a joint press release promoting reforms to the legal aid system affecting our clients, such as greater eligibility and increased funding. We also held a press conference to discuss these issues. A copy of the press release is marked as Exhibit "59".
116. A rally with the Ontario Federation of Labour took place on November 27, 2013. Committee members spoke to the rally crowd. A copy of a press release for the rally is marked as Exhibit "60".

117. The Law Times published an editorial by Glenn Kauth in support of our campaign on December 2, 2013. In the editorial, the Law Times urged LAO to relent on its losing battle, suggesting LAO should make its case at the bargaining table rather than denying staff rights enjoyed across the public sector. A copy of the editorial is marked as Exhibit "61".
118. I am advised by Rogin that she had a chance encounter with Attorney General Gerretsen at a retirement dinner in honour of Warren Winkler C.J.O. on or about December 5, 2013, and spoke to him regarding the campaign. Rogin advised me that during this conversation, she told the Attorney General that we were not able to form our own association because we did not have the resources to commit to creating a new organization. Unfortunately, the government did not take any action in response.
119. On December 5, 2013, the Canadian Civil Liberties Association ("CCLA"), of which John McCamus is Chair (he is also the LAO Board Chair), wrote to LAO in support of our campaign. The CCLA took the position that notwithstanding the exclusion of lawyers from the *Labour Relations Act, 1995*, the *Charter* granted us the right to bargain collectively. A copy of the CCLA's letter is marked as Exhibit "62".
120. The Association of Justice Counsel ("AJC"), a bargaining agent representing lawyers in the federal public service, wrote to Ward on December 9, 2013 in order to correct his erroneous statement in his letter of October 18, 2013 that lawyers are not represented by unions in Canada. In fact, the AJC has represented 2700 lawyers

employed by government of Canada since 2006. A copy of the AJC letter is marked as Exhibit "63".

121. In December 2013, LAO announced mandatory meetings concerning compensation. I recall that although LAO characterized these meetings as consultations, in fact, at the meetings, the decision concerning the quantum of our pay was presented as a fait accompli which had already been approved by the LAO Board. While we were happy to receive a pay increase, we wanted to have meaningful input into our compensation as well as other workplace issues.

122. The Committee tried to remain engaged with its members and keep them updated regarding the progress of the campaign. A copy of our December 2013 holiday message to the LAO lawyers is marked as Exhibit "64".

Ongoing Organizing 2014

123. Our organizing campaign continued throughout 2014. I am advised by Rogin that she attended the 40th anniversary celebration of Neighbourhood Legal Services on January 30, 2014, where she had the opportunity to speak to Ward, who advised that he was willing to meet with us to discuss our concerns regarding LAO's refusal to recognize the Society.

124. On January 30, 2014, Premier Wynne wrote to Scott Travers indicating that labour relations matters were between LAO and its staff, effectively telling us that the

Province was not prepared to take action to compel LAO to respect our right to engage in collective bargaining. A copy of Premier Wynne's letter is marked as Exhibit "65".

125. The Committee was undeterred by the positions taken by LAO and the Province. On or about February 20, 2014, I emailed Ward to take him up on his offer to meet with the Committee. A copy of my email exchange with him is marked as Exhibit "66".
126. On March 12, 2014, several lawyers and Committee members (including me) met with Ward, who maintained his position that the LAO would not recognize the Society as the bargaining agent. Ward maintained he would not agree to allow the lawyers to be represented by a "union" as opposed to an independent "association." It was apparent from this meeting that the employer was unwilling to recognize the bargaining agent freely chosen by the employees. It was my view, which I believe was shared by other Committee members, that it was not for the employer to dictate the organization (or the type of organization) that would represent its employees' interests. Rogin advised Ward that it was impractical for the LAO lawyers to set up their own association for the purposes of bargaining with LAO. Lanzaderas emphasized that LAO was denying its lawyers the very service they provide: representation. Despite these efforts, Ward refused to provide any meaningful explanation for LAO's position, stating simply "we made the right decision for our corporate interests." The meeting ended when Ward abruptly got up and left the room. A copy of an update to the members regarding this meeting is marked as Exhibit "67".

127. As a result of this unsuccessful meeting, I was left with the impression that there was no hope that, on our own, the staff lawyers would be able to successfully engage in any meaningful collective bargaining process. Consequently, I became even more convinced that we required professional and experienced representation in our dealings with LAO.
128. An independent association is not feasible in our circumstances, because of the relatively small number of employees at LAO. There are far more Crown Attorneys and lawyers employed directly by the Ministries than there are lawyers at LAO. The staff lawyers at LAO are spread across the Province, making it difficult and costly to reach everyone and organize effectively. The staff lawyers do not always even have office telephone numbers where they can be reached, and it is not easy to figure out who is working where. The employees at LAO simply do not have the resources to create a new association from scratch. Any new association would require significant expenditures for staff and office facilities, as well as for legal counsel to assist with obtaining recognition and engaging in collective bargaining. It was in part for these various reasons that we chose to work with the Society to secure collective bargaining rights, rather than attempt to create our own association from scratch.
129. On March 21, 2014, several Committee members (including me) attended the Liberal AGM, where we engaged with MPPs about the campaign. A few days later, on or about March 24, 2014, Committee members (including me) made telephone calls to members of the LAO Board regarding our ongoing campaign.

130. The Committee and Society organized a wine and cheese reception at Queen's Park on April 2, 2014, which was attended by many MPPs, and we used this opportunity to engage the MPPs about the campaign. I attended this event, along with many other staff lawyers. Our message was that the government should intervene, because LAO is a provincial public agency that is accountable to the government. A copy of the invitation for the event is marked as Exhibit "68".
131. We maintained a multi-pronged strategy of reaching out to Ward, the Board members, and the government, in order to maintain pressure on LAO to recognize our rights. In April 2014, the Committee members attempted to contact the members of the Board. I participated in making calls to Board Member James McNee, but I was unable to reach anyone. Of all the Board members, only McCamus returned a call, through his assistant, who simply advised that we should be directing our efforts to Ward.
132. The AJC wrote a letter in support of our campaign to the new Attorney General, Madeleine Meilleur, a copy of which is marked as Exhibit "69".
133. Throughout this time, we used our website to keep the lawyers at LAO informed of our efforts. Copies of our web postings from April 2014 are marked as Exhibit "70". We also hosted a campaign social at Moxie's restaurant on or about April 24, 2014, where we distributed campaign t-shirts.
134. I am advised by Lanzaderas that on or about April 26, 2014, he had a chance encounter with McCamus at a tennis club, where he indicated that the Committee

wished to make a presentation to the LAO Board of Directors. McCamus replied that the Board did not meet with "stakeholders."

135. On April 29, 2014 several Committee lawyers, including me, attended a reception of the Ontario Women's Liberal Commission where we met with many MPPs and a member of the Premier's staff.

136. I am advised by Rogin that on or about May 15, 2014, some lawyers and Committee members attended the grand opening of the Perth-Davenport Legal Office, where they engaged Ward about the campaign.

137. I am advised by Dana Suvagau that on or about June 25, 2014, she had a chance meeting with Premier Wynne at the World Pride Awards gala. The Premier indicated she was aware of our campaign and hoped it would be resolved soon.

138. On July 22, 2014, Travers and several Committee members (including me) met with the Premier's Justice Advisor regarding the campaign. We urged the government to get involved and ensure that the employees' choice to be represented by an independent bargaining agent was respected. Unfortunately, the government did not take any action in response to this meeting.

139. On August 8, 2014, Ward wrote an email to Lanzaderas, responding to the Committee's letter of August 1, 2014 to a member of the Board, James Yakimovich. In his email, Ward indicated LAO was open to "a more formal mechanism to discuss legal staff and management issues." It was not clear what this mechanism would

involve, but it was apparent that LAO was not willing to enter into a collective bargaining relationship in which the employees would have a united voice and professional representation. A copy of the August 8, 2014 email is marked as Exhibit "71". I was not able to locate a copy of the August 1, 2014 letter.

140. We continued to follow up with the Board members regarding the position LAO had taken in response to our campaign. On August 27, 2014, we wrote to each of the Board members asking for an opportunity to address the Board. A sample copy of this correspondence is marked as Exhibit "72".

141. On September 24, 2014, we received a response from McCamus, who wrote, "we are advised that LAO is acting completely within its legal rights and responsibilities to decline your request to voluntarily recognize the Society of Energy Professionals union as a bargaining agent." McCamus claimed that LAO was willing to discuss "alternative means of addressing employee concerns" but that the Committee was unwilling to participate. A copy of McCamus' letter is marked as Exhibit "73". It is the position of the Committee and Society that LAO has an obligation under the *Charter* to bargain collectively with the organization freely chosen by its employees, and that it is not fulfilling its obligations by insisting on a different organization more to its liking or some other method of "addressing employee concerns" that falls short of allowing employees to bargain on the key issues affecting their employment.

142. The Committee and Society met on October 1, 2014 to review possible further steps to advance the campaign. On October 23, 2014, Travers wrote to the LAO Board on

behalf of the Society and the Committee to express disappointment with McCamus' letter of September 24, 2014. Travers explained that they had hoped to resolve the issue that had been ongoing for two years concerning the right of the LAO lawyers to independently choose who would represent their interests. Travers noted that the LAO lawyers had, through the petition, chosen the Society to represent them, and that the Society was seeking voluntary recognition similar to what exists for Crown Attorneys and Ministry lawyers. Travers further expressed concerns regarding management's preference for a representative other than the Society:

"In the last meeting with Mr. Ward, the Campaign Committee was not able to have any "constructive discussion" with him – regardless of whatever information he may have passed on to you and the Board. The fact remains that Mr. Ward – and the Board, apparently, would remove us from the freedom to choose our workplace representative and association. Mr. Ward's clear preference of a stand-alone association over one chosen by our members speaks volumes about the level of independence and influence this stand-alone association can expect to receive."

143. Travers urged the Board to hear the other side of the argument directly from the Society. Travers advised that the Society was considering a variety of legal options, but it remained the Society's preference for a an amicable and non-confrontational resolution. Travers further quoted from the factum of the CCLA before the Supreme Court in the RCMP case: "The freedom to associate can only be properly protected where the workers' association is chosen freely by them." Copies of Travers' letter dated October 23, 2014 and an update to members regarding the letter are marked collectively as Exhibit "74".

144. McCamus replied to the Society in a tersely-worded letter dated November 5, 2014:

"The Board of Directors has reviewed your correspondence of October 23rd, 2014.

Legal Aid Ontario declines the request that it recognize the Society of Energy Professionals as bargaining agent for Legal Aid Ontario staff lawyers.

Given our respective positions, further communications between us are unnecessary. Accordingly, Legal Aid Ontario will not respond to further communications from the Society of Energy Professionals."

145. A copy of McCamus' November 5, 2014 letter is marked as Exhibit "75" to this affidavit.

146. While LAO had declined to recognize the Society as a bargaining agent, its Management Committee continued to operate. The Management Committee sent an email memorandum to all of the lawyers on November 7, 2014, a copy of which is marked as Exhibit "76". The Management Committee's memorandum indicated that in response to the feedback from the lawyers regarding LWS, management had decided that rotations would be voluntary rather than mandatory. Furthermore, the Management Committee had also addressed, to a certain degree, concerns about salaries. Despite these limited advances, I and others remained of the view that the Management Committee was not ultimately independent from management or accountable to the staff lawyers.

147. In November 2014, the Committee and Society launched a lobbying campaign to engage MPPs directly on the issue of representation for the lawyers at LAO. I, along with Committee members Haran Aruliah, Michael Story, and Ramona Mohammed volunteered to oversee campaigns targeting ridings across the province, and individual

LAO lawyers volunteered to meet with MPPs in the areas they lived or where they served LAO clients.

148. In around November 2014, LAO began to require lawyers to provide input through a program it called "SWOT," which I understood to mean strengths, weaknesses, opportunities and threats. Through this program, LAO purported to seek staff lawyers' input regarding organizational decisions at LAO. My colleagues from the College Park courthouse and I attended a SWOT session relating to a family law clinic. My impression from the session was that LAO had already determined how it wished to proceed, and that we were merely being asked to evaluate a decision that was already a foregone conclusion. Furthermore, I was unable to provide any informed or educated opinion about a family law clinic because I practice a different area of law. I do not know how many SWOT sessions took place or whether the program is ongoing. Like the Management Committee, the SWOT sessions did not provide what we were seeking: organized, collective, independent and effective representation with management on issues of direct concern to the staff lawyers' employment.

149. On December 16, 2014, Travers wrote to Premier Wynne to express concern about the hostile anti-labour sentiment expressed by LAO. In his letter, Travers set out that the Society had received a substantial mandate to represent the interests of the staff lawyers with their employer, and that all of the Society's efforts to engage in a constructive dialogue with LAO had been rebuffed. Travers noted that lawyers desire representation as the government contemplates changes to the legal aid program:

“Further, your government is proposing a number of new initiatives that will enhance and expand the Legal Aid framework. We support these changes of increased accessibility and services to those who need it most. We do however have concerns over how this expansion will be accomplished. As these changes transpire the lawyers feel an even greater need to be represented by the Society to ensure that your government’s plans can be implemented properly to create a positive, productive environment for them and their clients.”

150. A copy of the December 16, 2014 letter is marked as Exhibit “77”.

151. A copy of our newsletter to the LAO lawyers dated December 18, 2014 is marked as Exhibit “78”.

Ongoing Organizing 2015

152. On January 16, 2015, the Supreme Court released its decision in *Mounted Police Association of Ontario v. Canada (Attorney General)* (“MPAO”). The Supreme Court ruled that members of the RCMP have the right to democratically elect to be represented by an independent association of their own choosing in a meaningful process of collective bargaining.

153. A copy of our press release concerning the MPAO decision is marked as Exhibit “79”.

The same day, Travers wrote to Premier Wynne to summarize the decision and assert that the LAO lawyers are entitled to representation of their own choosing, engage in collective bargaining and have an organization that is accountable to their members.

Travers asked the Premier to direct LAO to engage in a meaningful dialogue with the Society. A copy of Travers’ letter of January 16, 2015 is marked as Exhibit “80”. On January 21, 2015, the Premier replied to advise that the Attorney General, or one of

her staff, would provide the Society with a response to the letter. A copy of the Premier's letter is marked as Exhibit "81". I am not aware that any further response was ever received.

154. On January 21, 2015, LAO released a statement through its internal publication, *The Source*, regarding the Supreme Court's decision, a copy of the text of which is marked as Exhibit "82". In the statement, LAO took the following position:

"LAO has offered to meet with staff lawyers to discuss developing a collective bargaining process between LAO and an association of its lawyers, which recognizes the culture and particular workplace issues at LAO. This offer has been declined, with the result that LAO has continued on its own to address issues in the workplace of concern to its lawyers"

155. It is the Committee's position and that of the Society that the continued refusal of LAO to recognize the Society as the democratically independent association freely chosen by the overwhelming majority of LAO lawyers, and to enter into a process of meaningful bargaining with the Society, infringes the rights of the LAO lawyers under s. 2(d) of the *Charter of Rights and Freedoms*. As a governmental employer, LAO is obliged to engage in meaningful collective bargaining with the organization its employees have democratically chosen, namely the Society. It is apparent that LAO is maintaining its refusal to enter into meaningful bargaining with the independent association democratically chosen by its employees. In our view, there is no justification for such an approach, and I am not aware that any justification has ever been offered by LAO. It is my belief and that of the Committee and Society that LAO

has refused to recognize the Society only because it believes that we would be weaker without them.

156. The recent Supreme Court decisions were addressed in an article in the Law Times on January 26, 2015. I was quoted in the article, and expressed my view that the recent decisions supported our position in seeking to establish collective bargaining rights. A copy of the Law Times article is marked as Exhibit "83".
157. Barrett prepared a memorandum concerning the impact of the *MPAO* decision. His memorandum, dated February 2, 2015, was provided to the LAO lawyers in a website update dated February 10, 2015. A copy of the website update is marked as Exhibit "84".
158. Over the first few months of 2015, Committee members met with MPPs across the province to raise awareness about our campaign to secure collective bargaining rights. I met with the MPP for Trinity-Spadina, Han Dong. In the meetings we conveyed the importance of independently chosen representation as the solution to our goal to achieve a collective voice for LAO lawyers to address workplace concerns and client advocacy. The MPPs were largely supportive of our position.
159. Copies of our newsletters to the LAO lawyers dated February 13 and April 29, 2015 are attached collectively as Exhibit "85".
160. The Government is currently conducting a review of the *LRA* through the Changing Workplaces Review (the "Review"). Committee member Kendall Yamagishi

("Yamagishi") who is also an applicant in this application, made written and oral submissions on behalf of the Committee to the Review in which she addressed the situation of the LAO lawyers. A copy of the written submissions is marked as Exhibit "86". In her submissions, Yamagishi noted the changing demographics of lawyers in Ontario, and the need for professional collective representation to address power imbalances. Yamagishi indicated that without access to the mechanisms available under the *LRA*, the staff lawyers and Society had been unable to engage in a process of meaningful bargaining.

161. In addition, former staff member and Committee member Kyle Noonan ("Noonan") made an oral submission to the Review in Hamilton, also addressing the situation of the LAO lawyers. Noonan has advised me that he asked the Review to recommend removing the exclusion of lawyers from the *LRA*. Noonan submitted this was necessary because exclusion from the *LRA* left employees at the mercy of their employer. Noonan stressed that the staff lawyers at LAO were experiencing significant workplace changes and needed the benefit of collective representation that was being denied them. I understand that the Review has not yet been completed.

162. The lawyers at LAO continue to have serious concerns. LWS remains a concern. Recently, LAO announced the hiring of a new Director hired to lead LWS, who will be meeting with the staff lawyers directly, contrary to our wish to discuss these issues through collective representation. An email from McCaffrey dated August 21, 2015 describing the new appointment is marked as Exhibit "87". Moreover, many of us

have concerns about the rapid expansion of services through the use of students and telephone lines. These initiatives will have an impact on our work and the environment under which we operate.

163. Another concern that has arisen recently is the expansion of services by duty counsel. In the past few months, criminal duty counsel have been encouraged to take on trial work. This would represent a major change to our job responsibilities and would also have important implications for client services and access to justice. Many of us are concerned about the time and resources that we will be provided to do this additional work, as well as the effect on our ability to provide the best client service. We are uncertain about what our roles will look like going forward, including if trial work becomes mandatory. We would want a mechanism for consultation and good faith negotiation about any major changes to the scope of our responsibilities.

164. LAO is an organization that gives voice and representation to marginalized people, and its refusal to meet directly with the representative of its own lawyers is both surprising and disappointing. While LAO has taken some steps to address our concerns during the two years we have been fighting for bargaining rights (by placing LWS rotations on hold and increasing pay), they are still blocking our attempt to enter into meaningful dialogue. We are looking for more than band-aid ad hoc solutions. We want an ongoing and respectful relationship of representation allowing for the lawyers to have a collective voice on issues of concern at LAO. Moreover, if we were not excluded from bargaining under collective bargaining legislation, we would have a

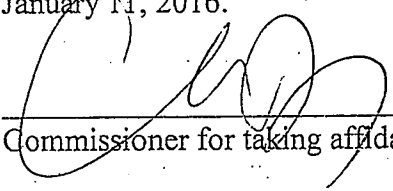
legislative mechanism for the exercise of our constitutional rights, without which it has become clear over the past several years it is simply not possible for us to engage in meaningful collective bargaining.

165. A *Law Times* article detailing the history of our organizing effort, and the current court application, is marked as Exhibit "88".

166. An open letter to the Board of Directors of LAO concerning our campaign and the current court application, which will appear in the January 18, 2016 *Law Times*, is marked as Exhibit "89."

167. I make this affidavit in support of the within application, and for no other or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
January 11, 2016.



Commissioner for taking affidavits



DANA FISHER