

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

**THE SOCIETY OF ENERGY PROFESSIONALS, IFPTE LOCAL 160,
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

Respondent

**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***

REPLY AFFIDAVIT OF DANA FISHER

(sworn June 23, 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.

2. I have reviewed the responding records of LAO and the Attorney General for Ontario and state the following in reply.

A. LAO's Reasons for Not Recognizing the Society

3. Robert Ward ("Ward"), the former CEO of LAO, has articulated the reasons for LAO's decision not to recognize the Society at paragraphs 91-95 of his affidavit. Most of these reasons were never communicated to the Society nor the staff lawyers during the course of our lengthy organizing campaign.
4. While LAO's correspondence (Exhibit 49 to my affidavit sworn January 11, 2016) noted the exclusion of lawyers from the *LRA*, and the fact that the Society was a union rather than an employee-created association of lawyers, to my knowledge, the other issues cited in Ward's affidavit were never raised. I would have welcomed the opportunity to discuss and address LAO's concerns as part of a process of meaningful bargaining. However, without being provided with LAO's reasons for refusing to recognize the Society, this was impossible.
5. With respect to Ward's reference to lawyers being excluded from the *LRA*, we were asking that recognition of the Society be outside of that legislative framework. I have reviewed the affidavit of Society President Scott Travers ("Travers") sworn June 21, 2016, and I agree with and adopt his comments at paragraph 5.
6. The second reason given by Ward at paragraph 92 of his affidavit is that the Society did not advise LAO that any of the staff lawyers had become members of the Society who

were subject to the Society's constitutional documents. Ward never sought to discuss this issue with me, or to my knowledge, with anyone from the Committee of staff lawyers involved in the organizing campaign (the "Committee"), or with the Society. I have reviewed the affidavit of Scott Travers sworn June 21, 2016, and I agree with the content set out in paragraphs 6-13 in this regard. I would have been willing to participate in any further negotiated process designed to verify or clarify my desire to be represented by the Society in a process of collective bargaining.

7. Gavin MacKenzie ("MacKenzie"), an expert witness for the Attorney General, and Ward have raised concerns that the representation of lawyers by a trade union not solely composed of lawyers or serving only lawyers may be inappropriate having regard to the professional obligations of lawyers, particularly the obligation of confidentiality. I continue to believe that the Society can appropriately provide excellent quality bargaining representation to the LAO staff lawyers. I am aware that the Society represents a broad range of professional employees, including professional engineers, who like lawyers, are a self-regulated profession who owe professional and ethical duties in the course of carrying out their work. In addition, the Society is affiliated with the IFPTE in the United States, which represents employees in the legal sector, including legal aid lawyers. In fact, as set out in my initial affidavit, one of the reasons the members of the initial Committee selected the Society was its broad experience representing a range of professional employees. In my view, the Society's experience only enhance the quality of representation they will provide and our bargaining position.

8. With respect to the representation of lawyers, and contrary to the suggestions of MacKenzie at pages 5-6 of his report, and Ward at paragraphs 93-94 of his affidavit, I do not believe it would be necessary (or appropriate) for the Society to access confidential client information for the purposes of bargaining. I agree with paragraph 25 of the affidavit of Scott Travers sworn June 21, 2016 in this regard.

9. I do not believe that bargaining representation by the Society poses any meaningful risk that lawyers will violate their duty of confidentiality. I understand that the Society employs a number of staff representatives with expertise in labour relations. I have dealt with some of these individuals, including Omar Latif, Bill Fitzpatrick, Courtney Radic, and Richard Long, in the course of the campaign to establish bargaining rights at LAO. It has never been necessary for me to disclose confidential information to them in the course of the organizing campaign for the purposes of helping the Society's staff representatives to understand the issues staff lawyers are facing in the workplace, and it was never suggested by Society representatives that I should do so. Rather, it has always been possible to discuss workplace issues in general terms. For instance, the staff lawyers and the Society representatives discussed the Lawyer Workforce Service ("LWS") program in general terms, namely the possibility that lawyers would be required to relocate practice areas or geographical areas, and the concerns about the impact such transfers would have on lawyers as a result of their personal circumstances. Similarly, I believe that there would be no difficulty to discussing workplace issues without reference to confidential client information, in order to bargain a collective agreement.

10. I was surprised to read that LAO was concerned about its staff lawyers speaking with non-lawyers at the Society in light of the fact that there are many non-lawyers employed in management and human resources roles at LAO. In his affidavit sworn May 27, 2016, Robert Ward (“Ward”), the former CEO of LAO, has indicated at paragraph 64 that the management of human resources was ultimately his responsibility. During his time at LAO, Ward was not only the CEO, but also our Ethics Commissioner. Ward held this position notwithstanding the fact that he is not a lawyer. Similarly, to my knowledge, the other individuals mentioned at paragraph 64 (Michelle Seguin and Cory Philipzyk-Sambrano) are not lawyers. Furthermore, the current CEO of LAO, David Field, is to my knowledge not a lawyer. While my direct supervisor is a lawyer, I am advised by Ada Chan, a staff lawyer at LAO, that when she worked at LAO’s call centre (CSC), she was directly supervised by a non-lawyer. I am also advised by David Beal, a staff lawyer, that the current deputy supervisor responsible for supervising staff lawyers at the Finch Avenue courthouse is not a lawyer. Presumably, any concerns about the confidentiality of individual client information would apply equally to any non-lawyers on the management side, including human resources staff who would be involved on the management side in collective bargaining.

11. The role of non-lawyers at LAO and their access to confidential client information has in fact been a significant concern to the staff lawyers, who want to protect their professional role and uphold their professional obligations, including the duty of confidentiality. The *Legal Aid Society Act* provides that only lawyers can provide advice, and yet Legal Aid Workers (“LAWs”), some of whom are paralegals but many

of whom are not licenced by the Law Society at all, have been involved in interviewing clients and sureties, as well as occasionally speaking to matters in court. I am currently involved in a paralegal project at my office in order to address and provide clarity to the respective roles of counsel and others working at LAO. I believe that collective bargaining can also have a role to play in clarifying our scope of responsibility and protecting our professional role.

12. As a lawyer licenced by the Law Society of Upper Canada (the “Law Society”), I am governed by the *Rules of Professional Conduct* (the “Rules”). I have read the *Rules* and I am aware that if I have questions about my obligations under the *Rules*, I can contact the Law Society for advice, or I can retain my own counsel to provide me with advice. I am also aware that LAO management (including General Counsel’s Office) is available to consult in the event a lawyer is accused of misconduct. To be clear, I am not suggesting that I am looking for the Society to provide me with guidance with respect to my obligations under the *Rules*. Rather, I am seeking for the Society, as my bargaining agent, to engage in a process of meaningful bargaining with my employer concerning the terms and conditions of my employment, including as they engage my ability to carry out my work while respecting the professional duties I owe as a lawyer. This could include, for instance, ensuring that there are appropriate workspaces for lawyers to carry out their work (such as access to rooms where we can interview clients confidentially). Now shown to me and marked as Exhibit “A” to this affidavit is an excerpt from the collective agreement covering the federal prosecutors, which includes an express provision relating to workspaces for confidential meetings. In addition, a

union could provide protection in the event that a lawyer was disciplined by the employer for refusing to carry out directions of the employer that they believed contravened their professional duties.

13. At paragraph 93 of his affidavit, Ward indicated that he was concerned about negotiated limits on hours of work undermining lawyers' duty to their clients. Duty counsel work fairly regular and predictable hours reflecting the operations of the courthouses where we assist clients of LAO. We are paid a salary reflecting our regular hours of work (7.25 hours of work, 5 days per week) in the same manner as the Assistant Crowns. In practice, both the duty counsel and Crowns usually stay later than these scheduled hours, in order to serve our respective clients in connection with our professional duties. Aside from duty counsel, there are some staff lawyers who act on ongoing matters (such as the lawyers at the Refugee Law Office) and may be required to work longer hours from time to time. In my experience, there is widespread recognition that lawyers' professional obligations take precedence over their scheduled hours, and it is unlikely that any contractual provisions with respect to hours of work would have any negative effect on client service provided by staff lawyers.

14. MacKenzie has commented at pages 6-7 of his report that the representation of lawyers by a union would increase the risk of a conflict of interest because it would add another party to whom the employee owes a duty. MacKenzie has further indicated there would be a "substantial" risk that a unionized LAO staff lawyer would be placed in a conflict of interest where the duty to the client and the duty to the union would conflict. I am not

aware of any “duty” a member would owe to their union that could possibly conflict with their duty to a client. I agree with paragraph 26 of the affidavit of Scott Travers sworn June 21, 2016 in this regard.

15. I also cannot imagine what sort of conflict could exist between a client of legal aid and a union such as the Society. I agree with paragraph 27 of the affidavit of Scott Travers sworn June 21, 2016. LAO regularly uses per diem counsel (including for conflicts, but also for scheduling reasons such as vacations/illness), and in the unlikely event a conflict was identified, this is a mechanism that could be considered to ensure a client was not left without representation. The implementation of a standardized process for the identification of conflicts across LAO is something that would be welcomed by the staff lawyers to assist them in meeting their professional obligations.

16. In his report at page 7, MacKenzie has indicated that professional responsibility issues could be engaged in relation to a strike. I have reviewed with and agree with the contents of paragraphs 28-32 of the affidavit of Scott Travers sworn June 21, 2016. I understand that most collective agreements are freely bargained without the need for strikes or lockouts, and that arbitration is sometimes used as a method of resolving differences in collective bargaining (either because it is mandatory in the case of essential services such as police officers, or because it is used by agreement of the parties).

17. In my particular circumstances, the work of criminal duty counsel at the College Park very rarely involves ongoing matters. Most of the procedures we deal with (such as bail hearings) take place on a single day and involve no ongoing representation. Per diem

counsel can often fill in for absences. There is very little trial work performed by duty counsel. As a result, the concern identified by MacKenzie that lawyers would withdraw their services at an inappropriate juncture of a case is largely inapplicable to the type of work I currently perform. I understand that other legal aid lawyers, for instance those working at the Refugee Law Office, have ongoing files, and would have to ensure that they fulfilled their professional obligations in the event of a strike. I recognize and agree with the principle that lawyers' professional duties supersede their participation in matters such as collective bargaining. In the event there is ever a strike involving the legal aid lawyers, I confirm that I would not neglect my professional obligations.

18. I am aware that lawyers in Ontario have engaged in actions that are analogous to a strike, and to my knowledge, these lawyers were not subject to any complaints or discipline proceedings before the Law Society. In around 2009/2010, members of the Criminal Lawyers Association (private lawyers who were not direct employees of LAO but rather received pay through LAO's certificate program) engaged in a "boycott," refusing to take new legal aid certificates for certain types of cases as a means of putting pressure on LAO to increase the amounts paid for certificates. My understanding is that these lawyers continued to act for clients in respect of their existing certificates but that they did not accept any new certificates relating to cases involving homicides and guns and gangs. In my view, this illustrates that it may be possible for lawyers in Ontario to engage in a job action without compromising their obligations to their clients. In the event that the staff lawyers at LAO ever considered engaging in a strike, a similar balance could be found (continuing to act for existing clients while declining to take on

new clients). Another alternative would be the use of arbitration, which would avoid the need for any withdrawal of services altogether. I am advised by Earl Dumitru (“Dumitru”), the current president of ALOC, that arbitration is used in place of strikes/lockouts for members of ALOC/OCAA to resolve any differences in bargaining.

B. ASDC

19. The Association of Staff Duty Counsel (“ASDC”), referred to in the Ward affidavit at paragraphs 73-77, was not active or in place during my tenure at LAO. I am advised by Pharah Baccus (“Baccus”), a former LAO staff lawyer who was involved in the ASDC, that the ASDC was formed in around 2006 and was active only for approximately one year. During that time, they had one meeting with LAO where they conveyed their concerns and priorities, and they submitted a business plan, to which there was no formal response from LAO. Baccus has advised me that it was her impression that LAO was not very responsive, but did not ignore the ASDC altogether. It was also her impression that LAO listened to what the ASDC had to say, and then did what it wanted, acting on ASDC’s recommendations where they were consistent with management’s priorities and plans. Baccus has advised me that in her view, the ASDC was not a substitute for full collective bargaining.

20. The business plan submitted by ASDC (Exhibit “G” to the Ward affidavit) noted that in 2006, the starting salary of the LAO staff lawyers was \$54,984 compared to Crown Attorneys, who had a starting salary of \$71,700. While Ward has indicated in his affidavit that LAO implemented salary increases at some point subsequent to the receipt

of ASDC's business plan, it is apparent from Exhibit "N" to the Ward affidavit that staff lawyers only reached the starting salary range sought by ASDC in 2006 (\$70,000) in 2014, eight years later, and only after the Society began its campaign to establish bargaining rights in 2013. Paragraph 83 to the Ward affidavit identifies that salary increases began in 2008/2009. In this regard, Exhibit "K" to the Ward affidavit identifies that in 2008, LAO engaged Mercer Consulting to undertake a review of lawyer salaries, which concluded "LAO is falling behind at the minimum salary level for similar public organizations." Exhibit "K" further identified LAO's commitment to ensuring lawyers were paid with reference to target public sector market positions, including MAG. The influence of ASDC on the salary increases identified in Ward's affidavit is therefore unclear.

21. Furthermore, the 2006 recommendations of ASDC concerning lawyers' professional roles remain a concern of the staff lawyers today. In its business plans, ASDC took the position that only lawyers should be involved in interviewing the accused. The involvement of non-lawyers (and non-paralegals) in dealing with clients remains a concern of staff lawyers at LAO today.

22. There has been some apparent progress since 2006 on other matters, particularly with respect to training and access to continuing legal education. However, from speaking with legal aid lawyers around the province, it is my understanding that there is inconsistency in staff lawyers' access to training and continuing legal education between different geographical areas, and across practice areas. I believe that a union

could assist in ensuring standardization in access to training and continuing legal education across LAO.

23. I am not persuaded, based on the information in Ward's affidavit, that LAO was truly committed to engaging in a meaningful process of bargaining with ASDC. I have reviewed the letter of Steven Barrett dated November 13, 2006 included as Exhibit "H" to the affidavit of Ward. From Ward's affidavit, and the information in the letter of December 18, 2006 included as Exhibit "I" to the Ward affidavit, it appears that LAO was unwilling to meet with the ASDC if they sought to have a lawyer represent them at the meeting. ASDC's experience makes me doubt the genuineness of LAO's claim that it is willing to bargain with an association of staff lawyers. There appears to be no adequate reason an association such as ASDC could not engage a labour lawyer to assist them in a process of meaningful bargaining. Based on the experiences of ASDC, even if the staff lawyers in 2013 had attempted to start their own association (instead of selecting the Society as their bargaining representative), I have no confidence that LAO would have actually been willing to engage with us in a process of meaningful bargaining.

24. Ward has asserted at paragraph 96 of his affidavit that LAO was "willing to recognize and negotiate with an association of LAO's staff lawyers." He further explained at paragraph 102 that he was open to meeting with the Committee or any other "employee-based" organization. In my experience as a staff lawyer, LAO has never demonstrated a willingness to recognize and negotiate with a group of its own lawyers. As set out in

my initial affidavit, the duty counsel at my College Park location attempted to address our concerns with management, including relating to workspace issues that affected our professionalism. Rogin was recently able to locate a copy of our letter to LAO setting out our concerns (which I had not retained and was not available to me at the time I swore my initial affidavit in this matter). Copies of the letter and a follow up email from Rogin to our manager are marked collectively as Exhibit "B". Our letter specifically cited the *Rules* and how our workspace problems were impinging on our abilities as lawyers to meet our obligations under the *Rules*. There was never any formal response from management. It is my understanding that my manager made some efforts to secure additional office space for us, but we continue to lack adequate confidential space to meet with clients. There has accordingly been minimal progress in addressing our concerns in the six years since that letter was written. If it were true that LAO was willing to meet and negotiate with a group of its staff lawyers, I would have expected our serious concerns to have been meaningfully addressed, in the form of a meeting or written response, in a timely manner. It was in part because our efforts to deal with our concerns directly with LAO were ineffective that we turned to a well-resourced professional bargaining representative, the Society, for assistance in 2013.

25. The ASDC resulted in little change and no sustainable ongoing voice regarding matters of concern. In 2013, the staff lawyers made an informed choice to work with the Society, a well-resourced union with labour relations expertise working with professionals in the public sector, with the hopes that our efforts would result in an binding (and ongoing) framework for meaningful input into the terms and conditions of our employment.

C. Demographics at LAO

26. In his affidavit at paragraph 103 and 105, Ward has commented on the fact that the Society and the staff lawyers raised the diversity of the LAO lawyers in some of our correspondence.
27. I do not have any official statistical data concerning the gender and racial demographics among the staff lawyers at LAO. Anecdotally, at the College Park location where I work, there is only one male lawyer out of nine (there is also one male floater who sometimes works at our office, out of four floaters). It is my sense from my own experience working as a staff lawyer, and from speaking with staff lawyers at other locations, and from attending various training and social events, that a large proportion of the staff lawyers at LAO are women, racialized minorities, and LGBT. It is also my impression, based on my courtroom experience, that there are more women and racialized lawyers practicing law at LAO than there are as Crowns or in private practice.
28. With respect to the discriminatory impact of LAO's refusal to recognize the Society and enter into a process of collective bargaining, I agree with the content of paragraph 23 of the affidavit of Scott Travers sworn June 21, 2016. In addition, in my view, the fact that many staff lawyers are women and racialized minorities is also relevant to our ability to create and sustain our own association analogous to ALOC and OCAA. We do not have the same resources in terms of time, money, and contacts as lawyers who are mostly male and white.

29. As noted by Ward at paragraph 104, it was communicated to him, as part of our meeting in 2014 (which only took place approximately eleven months after LAO was first advised of the campaign), that it was not possible from a practical perspective for the staff lawyers to form their own association, in part because the majority of the staff lawyers are women. The reality is that to form a new bargaining association, including creating its corporate structure and governance, conducting outreach and effective organization amongst individuals spread across the province, developing and executing a strategy, and sustaining momentum, requires incredible time and resources. While this is not the case for me personally, the reality is that women lawyers often have significant family responsibilities in addition to their careers, and it is not practical for them to establish a bargaining association and keep it running on a sustainable basis. Denying them their choice of independent bargaining agent, and instead insisting that they create a brand-new association from scratch imposes a burden on them that effectively ensures they will not have an effective means of participating in meaningful bargaining on the terms and conditions of their employment.

30. As noted by Ward in his affidavit at paragraphs 109-110, the Pay Equity Commission dismissed an application concerning the staff lawyer position at LAO on a prima facie basis. As reflected in the reasons for the decision set out in Exhibit FF to the Ward affidavit, the Pay Equity Commission did so on the basis that the applicants to that proceeding, who were not represented by a union and accordingly lacked reliable information concerning the demographics of the staff lawyers, had not provided sufficient evidence that the job of staff lawyer was not a gender-neutral job class. In his

affidavit, Ward has explicitly sworn that two-thirds of the staff lawyers are women as of 2015. I am advised by Bill Fitzpatrick, a representative with the Society, that on the basis of this sworn evidence, the Society will be providing support for a fresh pay equity application reflecting the fact that as of 2015, the job of staff lawyer was over 60% women and accordingly was a female job class, not a gender-neutral job class.

D. Relative Compensation and Status of LAO Lawyers

31. I do not agree with the evidence of Richard Chaykowski (“Chaykowski”) to the extent he is suggesting that the compensation of LAO lawyers is equivalent to that of the lawyers employed at Ontario government ministries and Crown Attorneys. The lawyers at LAO are not seeking to organize primarily as a result of dissatisfaction with compensation. Rather, as set out in my initial affidavit, the main concerns relate to protecting and enhancing our professional roles, ensuring high quality service, as well as ensuring transparency and fairness in decision making. Nevertheless, we are aware that as lawyers at LAO, our compensation is lower than that of lawyers working as Crown Attorneys or for Government Ministries, who are represented by OCAA and ALOC, respectively. Furthermore, we do not have the same protections with respect to job security.

32. As set out on the LAO website (and as referenced by Chaykowski on p. 42 of his report), the salary range for LAO staff lawyers for 2015 was \$70,000 to \$115,000, and for 2016 it is \$76,000 to \$115,000. I am advised by Dumitru that the collective agreement covering members of ALOC and OCAA provided a salary range for 2015 of \$80,039-

\$211,553, and that the 2016 rates will be based on the change to the Ontario Industrial Aggregate, which he advised is 2.5%. There is therefore a significant ongoing difference between the incomes of members of OCAA/ALOC and the staff lawyers, particularly for more senior lawyers. Copies of the 2009-2013 collective agreement and a redlined 2013-2017 collective agreement covering members of OCAA and ALOC are marked collectively as Exhibit "C".

33. There are further differences in compensation between the staff lawyers and the lawyers represented by OCAA/ALOC. Staff lawyers at LAO participate in a defined contribution pension plan. I am advised by Dumitru that members of ALOC and OCAA participate in the Public Service Pension Plan, which is a defined benefit pension plan. I understand that in a defined contribution plan, the ultimate benefit depends on the performance of the investments and no fixed amount is guaranteed, in contrast to a defined benefit arrangement, in which there is a specific formula setting the benefit the employee can expect to receive when they retire based on their years of service and earnings. A defined benefit plan, which is provided to the members of ALOC/OCAA, offers those employees superior retirement security compared to the staff lawyers at LAO.

34. At LAO, there are a number of health benefits plans, ranging from basic to deluxe, with employees paying a share of the premiums. A copy of a document summarizing the premiums for the plans as of 2013 is marked as Exhibit "D". The basic plan offers 80% coverage for prescription drugs to an annual maximum of \$2,500. I am advised by

Dumitru that members of ALOC and OCAA have a drug benefits plan with premiums covered entirely by the employer, which provides 90% coverage for prescription drugs (with a \$5 deductible) with no maximum, and that there is catastrophic drug coverage available where the 10% paid by the lawyer exceeds \$10,000 per year. Furthermore, members of ALOC and OCAA have their dental premiums fully covered by the employer, in contrast to LAO, where the employee pays a portion of the premiums. My common law spouse is an Assistant Crown Attorney, and I am covered under his benefits plan. I have chosen to opt out of coverage with LAO and instead to be covered under my spouse's benefits plan because the benefits provided to Crown Attorneys are superior to what LAO offers.

35. I am advised by Dumitru that members of ALOC and OCAA have significant job security protections under their collective agreement, which provides procedures of recall and bumping in the event of layoffs. As far as I am aware, there are no such protections for lawyers at LAO in the event of layoffs. I am further advised by Dumitru that members of ALOC and OCAA have the right to grieve where they are disciplined or terminated without just cause. As far as I am aware, there are no such protections for lawyers at LAO in the event of discipline or termination. As a result, LAO lawyers have less job security compared to lawyers who have been able to access collective bargaining and negotiate protections for job security, namely the members of ALOC and OCAA.

E. LWS

36. I do not agree with Ward's evidence with respect to the LWS process. Contrary to what is set out at paragraph 80 of the Ward affidavit, I was never advised that there would be substantive law training and mentorship networks to facilitate the transitions between practice groups and geographic areas (nor do I see this reflected in Exhibit "K" to Ward's affidavit). My experience was that when LAO proposed to send me to a mixed family-criminal practice in Cobourg, I asked about training and mentorship, and received no substantive response. Furthermore, contrary to what is set out at paragraph 81 of the Ward affidavit, it was not communicated to staff lawyers that geographic relocations would be determined on a case by case basis or that lawyers' personal circumstances would be considered.

F. Public Service Obligations of LAO Lawyers

37. Ward has indicated in his affidavit at paragraph 71 that public service values do not impede the quality of client service by restricting the scope of staff lawyers' speech. He claims that LAO lawyers are free and encouraged to advocate for the interests of their clients, including in relation to policies or legislation they see as causing systemic harm to low-income Ontarians. I do not believe this to be the case. To my knowledge, LAO lawyers have been dissuaded from speaking out against harmful government practices on the basis that we are "public servants." I am advised by Jillian Rogin ("Rogin"), a former staff lawyer who was involved in the Committee during her time at LAO, that LAO told her that she was not permitted to write an article concerning abusive practices of the police during the G20 summit, which she had been asked by a former law

professor to write. She has advised me that she felt unable to fulfil what she saw as her role as defence counsel as a result of LAO's restrictions on her freedom of expression.

G. Exclusion of Lawyers from Collective Bargaining Legislation

38. I understand that lawyers in Ontario are currently excluded from collective bargaining legislation. Now shown to me and marked as Exhibits "E"- "J" are copies of certain historical reports recommending for the removal of the exclusion (NTD Weiler, Woods, Professional Organizations Committee, Staff Study, Swinton, Beatty/Gunderson).

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on June 23, 2016.

Commissioner for taking affidavits

DANA FISHER

THE SOCIETY OF ENERGY
PROFESSIONALS, IFPTE LOCAL 160 et
al.
Applicants

and

LEGAL AID ONTARIO
Respondent

Court File No:

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SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF DANA FISHER
(SWORN JUNE 23, 2016)

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