

January 17, 2006

Anne Gottlieb
Mediation at Work Ltd
202-195 St Clair Ave W
Toronto, ON M4V1P7

Re: Ontario Bill C-14

Dear Ms. Gottlieb,

As Chair of the CBA's National Alternative Dispute Resolution (ADR) Section, I appreciate the OBA ADR Section bringing Ontario Bill C-14 Schedule C to our attention. We share your concerns that the language in Bill C-14 is so broad that it would define legal services to include, among other things, mediation, arbitration and other alternative dispute resolution services (ADR Services).

Our Section is concerned that Bill C-14 Schedule C, as drafted, would have a national impact. It would set an unwelcome precedent for other jurisdictions by suggesting that legislation is necessary to curtail the activities of mediators and other providers of ADR services who, in our view, provide a very valuable public service.

Like the OBA ADR Section, we believe that it would be a mistake for the Bill to bring mediators and other providers of ADR Services under the regulatory regime of the Law Society of Upper Canada, to then license and regulate the services of these individuals, as well as accredit their training and deal with disciplinary matters. This repercussion could be simply remedied by amending the legislation to exempt mediators and other providers of ADR Services from the definition, or alternatively, through a Law Society exclusion of such individuals in its by-laws.

We agree that the primary reason to exclude mediation from the definition is that mediation is neither advocacy, nor the practice of law. Jurisprudence in the U.S. and various legal scholars have supported these distinctions. Also, mediation is a public service that is often used instead of legal options to resolve various community issues, such as in school peer mediation programs, and in the workplace context.

Further, we believe that the public does not need to be further protected from mediators. Most mediators carry insurance, and are governed by Codes of Conduct. If these practices need to be formalized, then we recommend a move toward self-regulation, rather than coming under regulation by the Law Society.

We hope this is helpful as the OBA and its Branch Sections develop a response to the Ontario legislature and the Law Society of Upper Canada. We appreciate your attention to our concerns.

Yours truly,

A handwritten signature in black ink, appearing to read "Richard Weiler". The signature is written in a cursive, flowing style.

Richard Weiler
Chair, National Alternative Dispute Resolution Section

cc. Barry Fisher, OBA ADR Section Co-Chair