



TAB 7

**Report to Convocation
April 25th, 2013**

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
Susan McGrath, Vice-Chair
Marion Boyd
Robert Burd
Paul Dray
Ross Earnshaw
Robert Evans
Michelle Haigh
Jacqueline Horvat
Dow Marmur
Malcolm M. Mercer
Kenneth Mitchell
Jan Richardson

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
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Progress Report on the Five Year Review of Paralegal Regulation

Proposed Change to the Composition of the Proceedings Authorization Committee

Tribunal Complaints Protocol

Committee Process

1. The Committee met on April 11th, 2013. Committee members present were Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd, Paul Dray, Ross Earnshaw, Robert Evans (by telephone), Michelle Haigh, Jacqueline Horvat, Dow Marmur (by telephone), Kenneth Mitchell and Jan Richardson. Staff members attending were Zeynep Onen, Terry Knott, Jim Varro, Sheena Weir, and Julia Bass.

TAB 7.1

**BY-LAW RESPECTING INSURANCE IN COMBINED LICENSEE
PARTNERSHIPS**

Motion

2. That Convocation approve the amendment to By-law 6 shown at **TAB 7.1.1**

Background

3. On February 28th, Convocation approved a report from the Committee recommending a change to the policy on insurance for paralegals in partnership with lawyers, an arrangement described as ‘Combined Licensee Partnerships’.
4. By-law 6 currently provides:
(1) Unless exempted, every licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by a company licensed to carry on business in the province of Ontario that complies with the following minimum requirements and is otherwise comparable to a policy of professional liability insurance issued by the Lawyers’ Professional Indemnity Company to a licensee who holds a Class L1 licence.
5. The necessary wording to implement the change, which will require paralegals in Combined Licensee Partnerships to purchase insurance coverage from LawPRO, has now been prepared. The proposed motion is shown at **TAB 7.1.1**.

THE LAW SOCIETY OF UPPER CANADA

**BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

**BY-LAW 6
[PROFESSIONAL LIABILITY INSURANCE]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2013

MOVED BY

SECONDED BY

THAT By-Law 6 [Professional Liability Insurance], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008, September 24, 2009, November 24, 2011 and September 27, 2012, be amended as follows:

1. Subsection 12 (1) of By-Law 6 is amended by adding “and subject to subsection (1.1)” after “exempted”.

2. Section 12 of By-Law 6 is amended by adding the following subsection:

Insurance to be maintained under policy issued by the Lawyers’ Professional Indemnity Company

(1.1) A licensee who holds a Class P1 licence and who is a partner in a partnership that includes licensees who hold a Class L1 licence, where the business of the partnership is the practice of law in Ontario or the provision of legal services in Ontario, shall maintain insurance against professional liability under a policy of professional liability insurance issued by Lawyers’ Professional Indemnity Company.

TAB 7.2

FOR INFORMATION

PARALEGAL STANDING COMMITTEE CHAIR

6. Sections 130.1 to 130.13 of By-law 3 provide for the annual election of the Chair of the Paralegal Standing Committee. The by-law requires the election of the Chair to be the first item of business at the meeting one year from the last election. Since the last election was held in April 2012, the election of the Chair was required to be the first item of business at the meeting in April 2013.
7. In accordance with section 130.4 of the by-law, the Director of Policy and Tribunals, Jim Varro, was appointed Elections Officer by the CEO, Robert Lapper. Mr Varro attended the meeting to preside over the election.
8. The By-law further requires that the person elected be appointed Chair.
9. Since there was only one nomination for the position, Ms Cathy Corsetti, Ms Corsetti was declared elected and was therefore re-appointed Chair of the Committee for a further one year term.

REPORT ON PARALEGAL GOVERNANCE

10. The Committee considered, and unanimously approved, the report on paralegal governance to be submitted to Convocation by the Priority Planning Committee.

**PROPOSED CHANGE TO THE COMPOSITION OF
THE PROCEEDINGS AUTHORIZATION COMMITTEE**

11. The Committee approved the report on the change to the composition of the Proceedings Authorization Committee being submitted by the Professional Regulation Committee.

TRIBUNAL COMPLAINTS PROTOCOL

12. The Committee reviewed the Tribunal Complaints Protocol as shown in the report to Convocation from the Professional Regulation Committee.

PROGRESS REPORT ON THE FIVE YEAR REVIEW

13. The Committee is submitting for Convocation's information a brief progress report on matters arising from the Five Year Review of paralegal regulation, shown at **TAB 7.2.1**.

TAB 7.2.1

PROGRESS REPORT ON THE FIVE YEAR REVIEW

14. At Convocation on June 28th 2012, the Law Society delivered to the Attorney General the Five Year Review report required by section 63.1 of the *Law Society Act*. On August 3rd, the Attorney General appointed Mr David Morris of Kingston, Ontario to conduct the further review required by the Act. Mr Morris delivered his report to the Attorney General on November 1st 2012. It is posted on the Attorney General's website at: http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/default.asp.
15. The Paralegal Standing Committee reported receipt of Mr Morris Report to Convocation in November 2012, noting that comments in the report are thoughtful and merit further study, and that Mr Morris had commented that many of his recommendations "are offered in support of initiatives that are already underway".
16. The Committee expressed appreciation for Mr Morris' work and agreed that the recommendations were consistent with positions that the Law Society has taken on the issues. The Committee regarded the report as meriting further study and in January established a Working Group chaired by the Chair of the Paralegal Standing Committee to review the report's recommendations in more detail. Given that it is only 4 months since receipt of the report, some initiatives are still in the preliminary stages.

Contents of the Report

17. Mr Morris' report was complimentary to the work of the Law Society in paralegal regulation, stating "By any objective measure, the introduction [of regulation] has been a remarkable success", "satisfaction levels are also generally high among members of the public," "regulation has elevated the reputation and image of the paralegal sector" and "the Law Society has proven to be the appropriate regulatory authority."
18. Mr Morris' Recommendations are as follows:

Recommendation 1: That the Law Society continues to pursue elimination of exclusions to its regulation that cannot be justified in terms of facilitating access to justice and/or protection of the public interest.

Recommendation 2: That the Law Society Act be amended to provide for proportionally equal representation of lawyers and paralegals in its governance structure.

Recommendation 3: That language in statute that serves to exclude paralegals, when that exclusion cannot be justified in the interest of facilitating access to justice or protecting the public interest, is amended so as to include paralegals.

Recommendation 4: That the Law Society undertakes a comprehensive review of the paralegal training and examination regime, beginning with a re-assessment of the competency profile that is appropriate for the legal services that are permissibly offered by newly-licensed sole practitioners.

Recommendation 5: That the Law Society considers implementation of sub-classes of paralegal licences and/or other forms of accreditation to which, following specialized and substantive training, is attached the right to practice in specific areas of law (e.g. Small Claims Court).

Recommendation 6: That the Law Society undertakes a public education program that raises awareness of the legal services options available to Ontarians and the protection offered its consumers.

Recommendation 7: That the Law Society allocates the necessary resources to actively enforce within the paralegal sector adherence to its standard of professional conduct.

Recommendation 8: That paralegal licensees of the Law Society are required to include a Law Society-authorized description of their licence class (e.g. "Paralegal") and/or subclass in all marketing and communications materials.

Recommendation 9: That paralegals are required at their first meeting with a client to obtain and file on record the client's acknowledgement of disclosure of the scope of the paralegal's services and legal advice. (To note: Ontario Real Estate Association's "Working with a Realtor: The Agency Relationship" might serve as a useful model.)

Recommendation 10: That the Law Society continues to actively pursue opportunities to facilitate greater access to justice through broadening of the scope of permissible paralegal practice, but that such broadening is directly linked to the recommendations above with respect to paralegal education, work experience, and professional conduct.

Recommendation 11: Consistent with Recommendation 5 above, that the Law Society considers implementation of sub-classes of paralegal licences and/or other forms of accreditation to which, following specialized and substantive training, is attached the right to practice in specific areas of law that might currently fall outside of the scope of permissible paralegal practice.

19. These recommendations are discussed in more detail below.

Recommendation 1: *That the Law Society continues to pursue elimination of exclusions to its regulation that cannot be justified in terms of facilitating access to justice and/or protection of the public interest.*

20. Convocation has already approved the principle that the number of exemptions should be reduced over time where possible. The Paralegal Standing Committee conducted an exemptions review in 2009, after which a number of exemptions were removed by Convocation.

21. In November 2012, the Paralegal Standing Committee established a new Working Group on Exemptions to consider further possible reductions. The Working Group has met five times so far, in December, January and February, including three all-day intensive stakeholder consultation sessions. Further consultation sessions are scheduled in the coming weeks. The Working Group is considering the exemptions in the context of the upcoming completion of the Law Society's "Integration Process", which gave exempted persons a favourable opportunity to acquire a Law Society licence.

Recommendation 2: *That the Law Society Act be amended to provide for proportionally equal representation of lawyers and paralegals in its governance structure.*

22. In April, Convocation will be considering a report recommending an increase in the number of elected paralegal benchers from two to five, with the candidates receiving the most votes being elected, as is the case with lawyers. This model supports the principle that all elected paralegals should be benchers, and is not based on proportional representation, but a fairer process and consistency with the Law Society's current governance model

Recommendation 3: *That language in statute that serves to exclude paralegals, when that exclusion cannot be justified in the interest of facilitating access to justice or protecting the public interest, is amended so as to include paralegals.*

23. Mr Morris essentially endorses the recommendations of the Law Society's Five Year Review report, approved by Convocation in June 2012; in the report, the Law Society took a position on the amendment of five statutes:
- a. the *Justices of the Peace Act*;
 - b. the *Commissioners for Taking Affidavits Act*;
 - c. the *Solicitors Act*;
 - d. the *Barristers Act*, and
 - e. the *Juries Act*.
24. With regard to the *Justices of the Peace Act*, the Law Society has recommended since regulation was first introduced that the *Act* should be amended to make paralegals eligible to sit on the Justices of the Peace Appointments Advisory Committee. The Law Society wrote to the ministry to this effect in 2011.
25. The necessary changes to the regulations under the *Commissioners for Taking Affidavits Act* have now been made, and all paralegals will automatically become commissioners, starting in July 2013.
26. With regard to the *Solicitors' Act* the Law Society is already on the record that section 1 should be amended to remove the prohibition on the charging of fees by paralegals, and with regard to the *Barristers' Act*, the Law Society has recommended amendment of the section requiring order of precedence in court by year of call to the bar.
27. With regard to the *Juries Act*, the Law Society has taken the position that it would be reasonable for lawyers and paralegals to be treated the same for the purpose of eligibility for service on juries.
28. In addition to the recommendations already approved, the Law Society continues to give consideration to recommending amendments to the *Insurance Act*, the *Collection Agencies Act* and the *Private Security and Investigative Services Act*.

Recommendation 4: *That the Law Society undertakes a comprehensive review of the paralegal training and examination regime, beginning with a re-assessment of the competency profile that is appropriate for the legal services that are permissibly offered by newly-licensed sole practitioners.*

29. A plan for the strengthening of the model was approved by Convocation in October 2012. The change in the licensing assessment approved by Convocation, and now in development, is a two-part review and revision process. Part one proposes to add substantive and procedural law concepts to the existing licensing examination. This is an expansion of the examination that will be focused at broadly-based substantive and procedural law concepts to ensure that the testing platform has more breadth, while still maintaining standardized, fair, transparent and defensible criteria.
30. Part two will then require that the expanded scope of validated competencies for testing be traced back to the college curricula, and colleges will be required to confirm and or make changes to their learning outcomes to ensure that these new competencies are embedded within their course structures.

Recommendation 5: *That the Law Society considers implementation of sub-classes of paralegal licences and/or other forms of accreditation to which, following specialized and substantive training, is attached the right to practice in specific areas of law (e.g. Small Claims Court).*

31. The Law Society examined the option of limited licensing in detail when the model for paralegal regulation was first being developed. One of the key concerns that arose was the significant extra cost, especially with a relatively small total cohort, since every different licence requires a separate competency analysis, college programme and licensing examination. The Law Society is open to further review of the licensing model at an appropriate time in the future, as the paralegal profession develops and as new information becomes available.

Recommendation 6: *That the Law Society undertakes a public education program that raises awareness of the legal services options available to Ontarians and the protection offered its consumers.*

32. The Law Society welcomes this recommendation, and the Communications Department has already commenced consideration of further possible initiatives to raise the profile of the profession and increase public awareness of paralegal services. The Law Society has a channel on *YouTube* showing a series of videos explaining various areas of the law, called “Your Law”. One of these explains the paralegal profession and the paralegal scope of practice.
33. Several thousand flyers have been distributed to court rooms, duty counsel, legal clinics, and family law information centres explaining how the public can obtain free legal help from paralegals and lawyers through the Law Society Referral Service. The Chair of the Paralegal Standing Committee has appeared on public television to promote the role of paralegals. The Law Society’s brochure that explains the kinds of legal services paralegals provide has been updated and is being reprinted for distribution later this year. Additional initiatives are under consideration.

Recommendation 7: *That the Law Society allocates the necessary resources to actively enforce within the paralegal sector adherence to its standard of professional conduct.*

34. The Law Society regulates professional conduct by responding to complaints and information from practice audits. Resources are allocated based on defined criteria including risk-specific factors focusing on the protection of the public. Resources allocated for paralegals are proportionate to the risks identified, based on the Law Society’s experience with complaints and audits.

Recommendation 8: *That paralegal licensees of the Law Society are required to include a Law Society-authorized description of their licence class (e.g. “Paralegal”) and/or subclass in all marketing and communications materials.*

35. This recommendation is still under consideration.

Recommendation 9: *That paralegals are required at their first meeting with a client to obtain and file on record the client’s acknowledgement of disclosure of the scope of the paralegal’s services and legal advice. (To note: Ontario Real Estate Association’s “Working with a Realtor: The Agency Relationship” might serve as a useful model.)*

36. This recommendation is still under consideration.

Recommendation 10: *That the Law Society continues to actively pursue opportunities to facilitate greater access to justice through broadening of the scope of permissible paralegal practice, but that such broadening is directly linked to the recommendations above with respect to paralegal education, work experience, and professional conduct.*

37. The Law Society regards the strengthening of the licensing process approved by Convocation in October 2012 as the necessary first step in this regard. The report approved at that time commented,

The implementation of a substantive examination regime would appear to be the next step in the evolution of the Law Society's regulation of paralegals and of the paralegal profession itself. As the paralegal profession grows and possibly expands into other areas of practice, it is critical that the standards for entry are made as rigorous and defensible as are proportionately appropriate in the regulatory circumstances to ensure that the public interest is protected and that all stakeholders are assured that the quality of new paralegal licensees is maintained.

38. The Morris report recommendation is consistent with this order of priority.

Recommendation 11: *Consistent with Recommendation 5 above, that the Law Society considers implementation of sub-classes of paralegal licences and/or other forms of accreditation to which, following specialized and substantive training, is attached the right to practice in specific areas of law that might currently fall outside of the scope of permissible paralegal practice.*

39. The Law Society continues to keep possible improvements to the licensing model under review. As discussed above, the current project of strengthening the licensing process is a necessary first step in this regard.

40. One area that has opened up to licensed paralegals *via* further accreditation is the field of immigration and refugee law. Since the Law Society succeeded in obtaining amendments to the federal *Immigration and Refugee Protection Act*, paralegals have been able to appear at the Immigration & Refugee Board. Paralegals who acquire the further accreditation of joining the Immigration Consultants of Canada Regulatory Council, the national regulator of immigration consultants, may provide the full range of immigration and refugee law services.

Next Steps

41. The Working Group and the Paralegal Standing Committee will be continuing the review of the Morris Report recommendations over the coming months.