



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Task Force on Paralegal Regulation September 23, 2004

Report to Convocation

Purpose of Report: Decision

Prepared by the Policy Secretariat

OVERVIEW OF ISSUE
PARALEGAL REGULATION: PROPOSED APPROACH

Request to Convocation

1. **That Convocation approve the regulatory approach and recommendations set out in this Report for submission to the Attorney General.**

Summary of the Issue

2. On January 22, 2004, Convocation authorized the Treasurer to establish a task force to develop a detailed proposal for the regulation of paralegals in collaboration with the Ministry of the Attorney General.
3. On April 22, 2004, the Task Force submitted a proposed approach to paralegal regulation to Convocation. Convocation authorized the Task Force to consult with stakeholders on this approach and to return with a more detailed proposal prepared in light of the consultations.
4. The Task Force consulted with stakeholders from April to August 2004 and held an information session on September 14 to receive feedback from benchers on the proposal.
5. The Task Force now submits this report to Convocation for its approval.

THE REPORT

Terms of Reference/Task Force Process

6. The Treasurer established the Task Force on February 10, 2004. The members are: William Simpson (Chair), Marion Boyd, James Caskey, Paul Dray, Allan Gotlib, Julian Porter, Alan G. Silverstein and Bonnie Warkentin.
7. In addition to the consultations discussed below, the Task Force met on July 27 and September 2, 2004.
8. The Task Force is reporting on the following matter:

For Decision

- Proposed Approach to the Regulation of Paralegals in Ontario

PARALEGAL REGULATION: PROPOSED APPROACH

9. On January 22, 2004, the Attorney General attended Convocation and requested that the Law Society assume responsibility for regulating paralegals. In response, Convocation authorized the Treasurer to establish a task force to develop a detailed proposal for the regulation of paralegals in collaboration with the Ministry of the Attorney General.
10. The Treasurer established the Task Force on February 10, 2004. On April 22, 2004, the Task Force submitted a proposed approach to paralegal regulation to Convocation. Convocation authorized the Task Force to consult with stakeholders on this approach and to return with a more detailed proposal prepared in light of the consultations.
11. The Task Force consulted with stakeholders from April to August 2004 and has developed an approach to paralegal regulation that is set out in the report.

12. While the Law Society has not always accepted paralegals as part of the legal services landscape, the broader acceptance that paralegals have achieved in recent years has made it possible for the Law Society to develop a proposal in response to the Attorney General's request.
13. In May, the Task Force widely circulated a Consultation Paper entitled *Regulating Paralegals: a Proposed Approach* ('the Consultation Paper') setting out the preliminary approach developed by the Task Force. (**Appendix 1**) This approach drew upon, but did not in all cases follow, the document prepared in 2002 in conjunction with legal and paralegal organizations, known as 'the Framework Document.' (The Framework Document was prepared as a result of a previous Attorney General's attempts to address this issue).
14. The current Attorney General is seeking a proposal that, to the extent possible, commands support from the Law Society, the profession and other stakeholders.
15. The most optimistic timing for the initiative would see a bill introduced late this year. To meet this deadline, consultations took place throughout the summer. The Law Society consulted with more than 50 organizations and groups, including the profession, legal and paralegal organizations, the courts, government, community and private colleges, adjudicative tribunals and other interested parties. A list of the organizations and groups consulted is attached at **Appendix 2**.
16. The detailed consultations have enabled the Task Force to develop the approach further to take into account a number of issues raised during the consultations.
17. While final control over the content of the legislation and overall regulatory model remains with the ministry, given the Law Society's regulatory expertise it is anticipated that the Law Society's recommendations will be carefully considered, provided they meet

the purpose of the government's initiative, which is regulation of paralegals in the public interest to ensure consumer protection and access to justice.

OVERVIEW OF TASK FORCE'S APPROACH

18. The Task Force undertook this task at the request of the Attorney General and in the public interest. Recommendations in this report are based on the public interest.
19. In the view of the Task Force, previous attempts to regulate paralegals have failed principally because of the inability to achieve a consensus of interested parties on the issues of,
 - a. the regulatory model, and
 - b. the scope of paralegal activities.

Regulatory Model

20. The Attorney General asked the Law Society to accept responsibility for regulating paralegals. Until very recently, this would not have been practical. As set out later in this report, the legal profession, for the most part, now accepts that regulated paralegals may provide services in certain areas.
21. The Law Society is a regulatory body with over 200 years of experience governing barristers and solicitors in the public interest. The additional duties of regulating paralegals in the public interest can be accomplished more efficiently and economically by the Law Society than by creating any new regulatory body.
22. As there is now considerable support for the Law Society as regulator of paralegals, it is the belief of the Task Force that the choice of the Law Society resolves the first of the major two issues, i.e. the regulatory model.

Scope of Paralegal Activities

23. The Task Force heard representations from various groups requesting changes in the law to restrict or expand the current legitimate activities of paralegals.
24. Lawyers and legal organizations are seeking restrictions of paralegal activities in a number of areas, including the Financial Services Commission of Ontario, Workplace Safety and Insurance Board, and agents in Summary Conviction Court under the *Criminal Code*.
25. Some paralegals, on the other hand, are seeking an expansion of paralegal activities including the ability to do appeals in the Superior Court of Ontario and Divisional Court of Ontario, and to do many of the activities now restricted to solicitors.
26. The Task Force takes the position that the request from the Attorney General to regulate paralegals is best accomplished if it accepts the current law respecting paralegal activities and does not make the regulation of paralegals dependent on a number of substantive law changes. If a number of changes were to be proposed, there is little doubt that the regulation of legitimate paralegals would be postponed indefinitely.
27. While those who oppose regulation may feel this is desirable, it is contrary to the request of the Attorney General, the vast majority of lawyers and legitimate paralegals who want paralegal regulation at this time. Most importantly, further delay is not in the public interest.

WRITTEN SUBMISSIONS

28. The Task Force received 68 written submissions from legal and paralegal groups, colleges, legal clinics, individuals and other parties. These are reproduced in a bound volume distributed under separate cover (except for those for which a written consent to publish was not obtained).

CONSULTATIONS WITH THE LEGAL PROFESSION

29. Consultations with the legal profession took place in Toronto, and in the following other locations, organized by the County and District Law Presidents' Association (CDLPA):
 - a. Thunder Bay
 - b. London
 - c. Windsor
 - d. Ottawa
 - e. Hamilton
 - f. Orangeville
 - g. Kitchener
 - h. Kingston
 - i. North Bay

30. In addition, members of the Task Force attended the Ontario Bar Association Governing Council meeting on June 18, 2004, at which a resolution endorsing the Consultation Paper was passed unanimously, subject to provisos concerning the definition of the practice of law, the obtaining of funding, the development of an appropriate practical work experience programme and the limitation of Small Claims Court practice to existing areas.

31. The Task Force noted a significant change in the views of the profession since the last consultations in 2002. While some lawyers do not accept that paralegals should be recognized and regulated, this now appears to be a minority view.

32. The profession's response to the Consultation Paper was on the whole favourable, throughout the province. Among the themes consistently raised were the following:
 - a. The need for paralegal regulation;
 - b. The Law Society is the appropriate regulator;

- c. The need for a definition of the practice of law, similar to those in other provinces; the Ontario Bar Association emphasized this point;
- d. Agreement with the proposal to limit paralegal practice to areas that are currently lawful;
- e. The need for effective enforcement against unauthorized practice;
- f. The need for the same “good character” requirements that apply to lawyers.

CONSULTATIONS WITH PARALEGALS

- 33. The Task Force expressed a willingness to meet with any paralegal group wishing to make submissions.

- 34. On April 3, 2004, members of the Task Force, accompanied by benchers from the Ottawa area, attended the Annual General Meeting of the Paralegal Society of Ontario in Ottawa. (This was after the Attorney General’s speech to Convocation but prior to the publication of the Consultation Paper). After a presentation from the Law Society representatives, there was a general discussion from the floor, during which several paralegal members expressed support for Law Society regulation of paralegals. No unfavourable comments were made about Law Society regulation.

- 35. On July 12, 2004, members of the Task Force attended a public forum organized by the Canadian Association of Paralegals (CAP) in conjunction with the executive of the Professional Paralegal Association of Ontario (PPAO). (CAP was until recently known as the Canadian Association of Legal Assistants and most but not all of CAP’s members are supervised by lawyers). There were both supervised and independent paralegals in attendance.

- 36. The forum heard the following points:
 - a. Supervised paralegals should have the right to apply for grandparented status and to be licensed;

- b. The Law Society of British Columbia has considered and rejected a proposal for the certification of paralegals;
 - c. In Alberta, paralegals are moving towards registration under the *Professional and Occupational Associations Registration Act*, R.S.A. 2000;
 - d. There are few independent paralegals outside Ontario, and most work in areas of federal jurisdiction.
37. Letters were read out from organizations in other provinces:
- a. John Kim of the British Columbia Association of Legal Assistants wrote that his association recognizes the need for paralegal regulation and regards the Law Society as the appropriate regulator.
 - b. Roger A. O'Donnell of the Alberta Association of Professional Paralegals wrote that his organization enthusiastically endorses the Task Force's proposed approach.
38. On behalf of CAP, Patricia Tunstall made the following submissions:
- a. The model should include educational requirements and a licensing examination;
 - b. A six month period of apprenticeship with a lawyer should be required;
 - c. There should permanently be at least one paralegal benchers;
 - d. Paralegals should be subject to regular audits;
 - e. Annual reporting should be required, including listing of continuing education;
 - f. Standards for supervised paralegals should also be developed, including a disciplinary process.
39. These points are amplified in CAP's written submission.
40. Other points from the floor included,
- a. Paralegals should be permitted in Family Court as there are too many unrepresented parties;

- b. There should be a target date for adding further areas in which paralegals can practise;
 - c. A required six-month apprenticeship is not too long;
 - d. Five years is too long to require as a qualification to apply for grandparented status;
 - e. Many students have paid large sums for private courses that will not be recognized;
 - f. The Law Society should have insisted that the government pay for paralegal regulation;
 - g. Solicitors' work should be included; if this would take five years to achieve, the proposal should wait for this;
 - h. The government should have been present at the consultations;
 - i. Too many paralegals now doing solicitors' work would be put out of work by this approach;
 - j. Paralegals should be self-regulating, like the health professions.
41. On July 22, the Task Force met with the PPAO and representatives of the association's constituent organizations. The PPAO indicated that they had commissioned Professor Frederick H. Zemans of Osgoode Hall Law School to prepare a paper updating the Cory Report and commenting on the other outstanding issues, to be completed by mid-August.
42. The Task Force received Professor Zemans' report on August 30.
43. The following are among the key points of Professor Zemans' report:
- a. The appropriate body to regulate paralegals is an independent agency modelled on Legal Aid Ontario, to be called Paralegals Ontario;
 - b. Within three years the majority of members of the governing body should be paralegals;

- c. All paralegals should be required to obtain both a general licence and a specialized licence in one of nine areas of practice;
- d. A new statutory offence of ‘providing services outside the scope of one’s licence’ should be created in preference to the introduction of a wide-ranging definition of the practice of law;
- e. Permitted areas of advocacy work for paralegals should include some areas of family law and the first level of appeals;
- f. Paralegals should be permitted to practise in areas of solicitors’ work such as real estate, wills and incorporations.

COMPARISON WITH THE TASK FORCE’S APPROACH

- 44. There are a number of areas of commonality or general agreement between Professor Zemans’ and the Task Force’s approach, including,
 - a. the general nature of the educational requirements;
 - b. the unsuitability of most criminal law as an area of paralegal practice;
 - c. a requirement that applicants seeking grandparented status have worked three of the last five years as a paralegal;
 - d. provisions regarding good character and a Code of Conduct;
 - e. errors and omissions insurance and a compensation fund; and
 - f. composition of disciplinary panels.

- 45. However, there are important areas of difference, including,
 - a. rejection of the Law Society as the appropriate body to regulate paralegals;
 - b. the recommendation that paralegals be permitted to undertake many areas of solicitors’ work, and in fact that there should be no areas of work restricted to lawyers unless a specific need for such a restriction can be demonstrated on a case by case basis, and
 - c. commendation of the approach the federal government has taken to the regulation of immigration consultants.

COMMENTS OF THE TASK FORCE

46. The primary recommendation of Professor Zemans' report is that the Law Society is not the appropriate body to regulate paralegals. This is contrary to the Attorney General's request, which was the origin of this initiative.
47. The regulatory body proposed by Professor Zemans, modelled on Legal Aid Ontario, would be prohibitively expensive, as would the proposed licensing model.

CONSULTATIONS WITH THE EDUCATIONAL SECTOR

48. The Task Force consulted with the Ministry of Training, Colleges and Universities, the community college sector and some of the private career colleges.
49. The Consultation Paper was favourably received by community colleges currently offering courses in paralegal advocacy – these courses are typically called 'Court and Tribunal Agent.' Some of these courses would probably need little modification to meet the Law Society's requirements.
50. The community colleges raised a number of points including the following:
 - a. The colleges would be willing to work with the Law Society to bring their courses up to the required standard;
 - b. The length of the course should be specified in terms of content and hours of instruction rather than years of study, as some accelerated courses are offered;
 - c. The colleges were not enthusiastic about the idea of limiting paralegal licences to specific areas of practice, as their courses would be difficult to design for each limited area;
 - d. The requirement of a paid 'mentoring' or apprenticeship period would not be fair to students as it is too difficult to find paid placements. The current system of unpaid 'field placements' is preferable and should continue to be part of the required courses (field placements provide four to six weeks of work experience

in legal offices arranged and supervised by the colleges, and are integrated into the college programme), and

- e. The colleges would be pleased to work with the Law Society to develop the necessary competencies for the licensing examinations, and to administer and invigilate the examinations.
51. The private career colleges consulted had other concerns about the proposal. The courses at these private colleges vary widely.
 52. The Ministry of Training, Colleges and Universities (MTCU) does not approve the curricula of college courses. This makes it important that the regulator approve the standards of the college courses.
 53. MTCU also opposed any requirement of a period of paid mentoring or co-op placement. Field placements are supervised by the school, while paid placements are not. This can create liability issues. In addition, when students are paid it can complicate their eligibility for student assistance.

CONSULTATIONS WITH TRIBUNALS

54. The tribunals were generally in favour of the proposal, although their experience with paralegals varies widely. Some have had no problems with agents; these are generally either tribunals dealing with highly technical subject matter, or those where little money is at stake. For other tribunals, such as the Financial Services Commission and the Workplace Safety and Insurance Appeals Tribunal, paralegals are a major issue.
55. To assist the Law Society in its assessment of applicants for grandparented status, the tribunals would be prepared to disclose to the Law Society whether a person had appeared before them over a specified period, but would be reluctant to otherwise comment on the suitability of the applicant, in order to avoid any appearance of bias.

CONSULTATIONS WITH THE JUDICIARY

56. The Task Force met with judges from all levels of court in Ontario. The judges welcomed the initiative of the Law Society and the Attorney General in moving to regulate paralegals. Concerns were expressed about the suitability of paralegals defending summary conviction cases, given the seriousness of a criminal conviction and the complexity of the proceedings

THE NEED FOR PARALEGAL REGULATION

57. The Task Force reviewed the history of attempts at paralegal regulation in Ontario, dating back at least 15 years, and includes major reports by Professor Ronald Ianni (1990) and Justice Peter Cory (2000). Despite two government reports and a number of judicial decisions, paralegal regulation has not been achieved.

58. In August 1999 the Ontario Court of Appeal commented as follows in the case of *R. v. Romanowicz*:

A person who decides to sell t-shirts on the sidewalk needs a license and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person's liberty and livelihood are at stake invites miscarriages of justice. Nor are *de facto* attempts to regulate the appearance of agents on a case-by-case basis likely to prevent miscarriages of justice.

59. This unsatisfactory situation has led to a number of partial solutions. In 2003, the Financial Services Commission of Ontario (FSCO) created a web site listing of persons authorized to represent claimants at FSCO, referred to as 'Statutory Accident Benefits Representatives.' FSCO has been clear that this does not constitute 'regulation.' The main requirements for being placed on the FSCO list are having insurance and not having been convicted of certain criminal offences. There are also procedures for removing a person from the list.

60. In addition, the federal government introduced requirements for immigration consultants, although this is also not a full regulatory scheme. This is discussed in more detail later in this report.
61. The Task Force heard of many problems with the current situation. For example, the Task Force was told about a woman with limited English language skills who was injured in a car accident in which she lost her hand. A paralegal settled the case for \$47,000 of which he took half. Fortunately, a lawyer was later able to reopen the case.
62. At present, when problems such as these arise, members of the public have no recourse to a regulatory body to resolve their complaints. When problems arise in the provision of services by lawyers, the public can look to the Law Society to address their concerns.
63. Some participants also told the Task Force of paralegals providing a useful service to the public in, for example, defending highway traffic offences. These persons are unfairly linked in the public's mind with the unscrupulous or incompetent paralegals.
64. The consultation meetings confirmed that a regulatory solution to these problems is long overdue.

TASK FORCE RECOMMENDATIONS

GENERAL APPROACH

65. The Task Force is of the view that the appropriate starting point for paralegal regulation is the regulation of persons providing services in currently permitted areas of law as defined in legislation and case law.
66. The Task Force's approach to regulation is based on the following principles:
 - a. The Framework Document is an appropriate starting point;
 - b. The approach should reflect the current definition of the "unauthorized practice of law" as set out in the jurisprudence;
 - c. The approach must be in the public interest, providing consumer protection and enhancing access to justice;
 - d. The approach must ensure paralegal competence;
 - e. The approach should be as uncomplicated as possible to achieve the desired result;
 - f. If appropriate, the regulatory approach can be phased in over time;
 - g. The regulation of paralegals should mirror the regulation of lawyers wherever possible, to avoid confusion and duplication.
67. The objective is to permit the Law Society to regulate the delivery of all legal services. This will require a broad definition of the practice of law. Exemptions can then be created for those whom it is not necessary or appropriate for the Law Society to regulate.
68. Many of the details that remain to be settled need not be embodied in the legislation, and can be developed for inclusion in the regulations and by-laws, simultaneously with the progress of the legislative framework.

OVERVIEW OF REGULATORY MODEL

69. The approach set out in this report would require independent paralegals to be licensed by the Law Society, under the supervision of a Standing Committee of Convocation with lay benchers and an equal number of elected benchers and paralegal members.
70. Persons wishing to acquire a licence must take an approved college course, be of good character, and pass a Law Society licensing examination.
71. Licensed paralegals would be required to follow a Code of Conduct, carry insurance, and pay into a compensation fund, in the same manner as lawyers.
72. They would be subject to discipline, including the possible loss of their licence after a hearing. These concepts are elaborated below.

SCOPE OF PRACTICE

73. The Task Force is of the view that existing areas of practice as defined in legislation and case law represent the appropriate scope of practice for paralegals and that only persons providing services in areas currently authorized by law should be regulated.
74. This would involve focusing on advocacy work, which has a number of advantages:
 - a. There is a better consensus on what constitutes advocacy work;
 - b. The impetus behind public concern about paralegals has primarily been in the advocacy field, including at the Financial Services Commission of Ontario;
 - c. The Framework Document's view of solicitor's work required a concept called an "Affiliation Agreement." This concept would be difficult to implement and impossible to enforce;
 - d. From an 'access to justice' perspective, there are advocacy areas where it is difficult to obtain the services of lawyer, but there is a lack of evidence that solicitors are difficult to obtain for wills and real estate transactions. Further,

there is little evidence that paralegals provide these services at a more reasonable rate than lawyers;

- e. Advocacy work is usually conducted in a more public arena in the presence of a neutral third party, which provides a better possibility of monitoring and evaluating the programme;
 - f. Non-lawyers currently providing solicitor-type services are engaging in the unauthorized practice of law in violation of the *Law Society Act*.
75. The Task Force heard compelling accounts of bad results in the provision of solicitors' work by paralegals, particularly in family and estates work. A number of lawyers described a lucrative practice area in attempting to remedy problems created by unqualified service providers. Unfortunately, the problems created cannot always be remedied, as for example in the case of a divorcing spouse who had signed away all rights to a future pension.
76. The Task Force is of the view that the case for expanding the scope of paralegal practice to include solicitors' work has not been made out, that to do so would not enhance access to justice, and would be contrary to the public interest.
77. The profession was generally supportive of the approach put forward by the Task Force, although some lawyers still have difficulty accepting licensed paralegals as a permanent feature of the landscape.
78. Some submissions, including the County of Carleton Law Association's, proposed limiting the scope of paralegal work under the *Provincial Offences Act* to exclude complex environmental and health and safety cases.
79. The Family Lawyers' Association and the Advocates' Society made strong representations that family law should be excluded from the scope of paralegal activities.

It was noted that judges generally exclude non-lawyers from Family Court under Rule 4 of the Family Law Rules, which provides that a non-lawyer may only appear by prior permission of the court.

80. In some areas, duty counsel is now available in family court. In other cases, parties in family court choose to be unrepresented. Nevertheless, the number of unrepresented parties in family law cases is a concern. While representation by agents is not an appropriate solution to this problem, the Task Force believes the Law Society should engage the Attorney General, Legal Aid Ontario and other stakeholders to consider other strategies to address the access to justice aspects of this problem.
81. Strong views were submitted on both sides of the issue of practice before FSCO. The Ontario Trial Lawyers' Association submitted detailed proposals for the restriction of paralegal work before FSCO.
82. The paper prepared by Professor Zemans recommended a wide expansion of the areas of law open to non-lawyers.
83. A number of submissions suggested that a precise definition of 'mediation' should be developed, if mediation work is to be exempted from regulation. For example, the practice of family law mediation should not include the drafting of legally enforceable separation agreements.
84. While many submissions advocated changes in the law on the permissible scope of practice in both directions, the Task Force does not recommend any changes at this time. In the view of the Task Force such changes complicate the model and would significantly delay, and perhaps prevent, the implementation of any regulatory model.

Recommendation One

85. It is recommended that the scope of practice for paralegals be the currently permitted areas of practice, as set out in legislation and case law. This would include the following:
- a. **Small Claims Court: all matters in Small Claims Court, including being recognized by the Court for the purposes of costs.**
 - b. **The Ontario Court of Justice: all matters under the *Provincial Offences Act*.**
 - c. **Tribunals: all matters before provincial boards, agencies and tribunals that allow for appearances by agents.**
 - d. **Ontario Court of Justice: appeals under the *Provincial Offences Act*. Currently, section 109 of the *Provincial Offences Act* authorizes agents to appear on appeals.**

DEFINITION OF THE PRACTICE OF LAW

86. To enable the Law Society to assume a broader jurisdiction, it is necessary to have a definition of the practice of law, something that already exists in several other Canadian provinces, as well as in the U.S.
87. At the consultations, several examples of existing definitions in use in other jurisdictions were distributed. These were generally favourably received. The County and District Law Presidents' Association submitted a draft of their own, which was broadly similar to one of the examples distributed.
88. The Task Force examined a number of versions of the definition. The Task Force came to the conclusion that the best approach to achieving the desired result would be to define "the provision of legal services." The proposed wording is attached at **Appendix 3**.
89. The wording in this draft reflects an approach that assumes that the Law Society will regulate the provision of all legal services in Ontario. It defines the provision of legal services broadly and assumes that every person who engages in any activity contained in the definition is providing legal services. The approach distinguishes between lawyers and paralegals by granting to each a different class of licence and by assuming that only

lawyers practise law and can be said to practise law. Under this approach, a lawyer would be licensed as a barrister and solicitor and would be entitled to practise law in Ontario. A paralegal would be licensed to provide legal services, that is, to engage in one or more of the activities that are contained in the definition of the provision of legal services. Only lawyers would be members of the Law Society.

90. The Government of Ontario's legislative counsel makes the final decisions on the wording in legislation.

Recommendation Two

- 91. The definition of the provision of legal services attached at Appendix 3 be incorporated in the legislation.**

ENFORCEMENT

92. To prohibit the provision of unauthorized paralegal services as well as the unauthorized practice of law, it will be important to provide for effective enforcement measures. It is recommended that the *Law Society Act* give the Law Society the power to obtain injunctive relief in addition to the power to prosecute. This would permit the Law Society to obtain an injunction in a civil court with a civil burden of proof against a person engaged in unauthorized activities, without first having to prosecute the person and obtain a conviction (The *Law Society Act* already provides for injunctive relief in the case of disbarred lawyers).
93. It is also recommended that the legislation provide for a 'presumption of irreparable harm.' This would reduce the evidence necessary to obtain an injunction. This would greatly facilitate the prevention of the unauthorized provision of both legal and paralegal services.

Recommendation Three

- 94. It is recommended that the *Law Society Act* be amended to provide for injunctive relief with the presumption of irreparable harm.**

LICENSING REQUIREMENTS

95. All applicants for a licence must,
- a. be of good character;
 - b. successfully complete an educational programme approved by the Law Society; and
 - c. pass a licensing examination set by the Law Society.
96. These requirements are expanded upon below.

GOOD CHARACTER REQUIREMENT

97. Consultations confirmed the Task Force's view that the good character requirement for paralegals should be the same as that for lawyers. This will be applicable to both new entrants and to applicants for grandparented status.

Recommendation Four

- 98. The good character requirement should be the same for paralegals as it is for lawyers.**

EDUCATIONAL REQUIREMENTS

99. The Consultation Paper proposed a requirement of a "two year community college diploma." Throughout the consultation process, the Task Force learned that this requirement is too restrictive. Some colleges offer an accelerated one-year intensive programme of study. Furthermore, the use of the term "community college" excludes private career colleges, and it is the view of the Task Force that these colleges should be given the opportunity to offer programmes that meet the required standards.

Recommendation Five

- 100. Applicants will be required to have successfully completed a college programme approved by the Law Society.**

EQUIVALENCIES

101. It will be appropriate to evaluate some other equivalencies, e.g. LL.B. without completion of call, LL.B. from another province, LL.B. from another country, two years of law school, etc. It may not be appropriate to require persons with these qualifications to complete the same college courses as a recent high school graduate.
102. Acceptable ‘equivalency’ could possibly include certain forms of work experience, as well as educational experience, or some combination of the two. It was, for example, submitted that a police officer with ten years of experience in traffic court should be granted advanced standing in the advocacy component of the educational programme. Some retired justices of the peace would also be interested in being granted advanced standing. (This would not constitute ‘grandparenting’ as it would be a permanent feature of the licensing model, not limited to the start-up phase.)
103. The Task Force is of the view that the establishment of these equivalencies or credit for previous experience should be the responsibility of the colleges offering the approved programmes, subject to approval by the Law Society. The colleges currently assess applicants on their existing credits from other educational institutions and often grant advanced standing.

Recommendation Six

- 104. It is recommended that the colleges offering the approved programmes conduct the assessment of equivalencies, subject to approval by the Law Society.**

FIELD PLACEMENTS

105. The Task Force is of the view that a period of practical experience in a workplace setting is an essential part of the necessary educational process. However, consultations with both the community colleges and private colleges identified difficulties with a six-month ‘mentoring’ requirement (as proposed in the Framework Document). If such a mentoring period were unpaid, it would represent a hardship for students. If the mentoring period were paid employment, there would be a concern about the shortage of available paying positions. Requiring students to obtain a paid position could be seen as creating a barrier to entry if these are in fact impossible to obtain.
106. The private colleges would prefer not to have any compulsory work experience requirement as part of the approved course. The African Canadian Legal Clinic expressed concerns about any compulsory period of paid mentoring, as there might be particular difficulties for equity-seeking groups in obtaining placements.
107. The current practice of the community colleges of integrating a shorter phase of unpaid ‘field placement’ into the college programme is regarded as a better approach to providing practical exposure to work situations.

Recommendation Seven

- 108. Law Society approved college programmes must include an approved period of ‘field placement’ to provide students with workplace experience.**

LICENSING EXAMINATIONS

109. The Law Society will prepare licensing examinations after an appropriate evaluation of the necessary competencies for the role of licensed paralegal. It may be more convenient for students if the colleges offering the approved courses administer and invigilate the examinations. The colleges have expressed their willingness to assist in this regard.

110. Proficiency in English or French will be a requirement. The Task Force is of the view that this can best be addressed by including language proficiency in the design of the licensing examinations, rather than by setting separate language examinations.

Recommendation Eight

- 111. The Law Society should set licensing examinations that all applicants for a licence will be required to pass.**

GRANDPARENTING

112. ‘Grandparenting’ is the process whereby persons without the required college diploma can apply for a licence on the basis of their previous work experience. Paralegals applying for grandparented status must still be of good character and successfully complete the licensing examination, but may be licensed without a college diploma. The Task Force is of the view that ‘grandparenting’ is appropriate when phasing in a licensing process.
113. For the first few years, there will be a heavy workload involved in the assessment of existing paralegals applying to be ‘grandparented.’ This will have budget implications.
114. The Consultation Paper proposed that eligibility for grandparented status be granted to persons who have worked five of the last seven years as a paralegal. However, a number of submissions suggested that five years is too onerous a requirement for grandparented status.
115. TriOs College submitted that the required number of years of experience should include experience as an employed paralegal, not only independent experience.
116. The Task Force agrees with this submission and is of the view that employed paralegals working in areas covered by the proposed scope of practice should be encouraged to

apply for a licence. This would mean, for example, that a by-law prosecution officer for a municipality would be eligible for grandparented status.

Recommendation Nine

117. Applicants should be eligible for grandparented status if they have worked as paralegals in areas covered by the proposed scope of practice described above, either independently or in employed positions, for three of the last five years, except where the person requires accommodation under one of the grounds in the *Ontario Human Rights Code*, in which case the requirement should be three years within the last seven.

118. The Consultation Paper proposed that applicants seeking grandparented status be given two years within which to apply. A number of submissions suggested that this would leave the public unprotected for too long. The Hamilton Law Association suggested six months would be reasonable. The Task Force is of the view that this would be acceptable, as all persons working in this field in Ontario would be likely to have heard about the introduction of regulation by that time. Further, it is anticipated that a public awareness programme will be undertaken. The assessment of the applications for grandparented status will take longer than the six-month application period.

Recommendation Ten

119. Applicants seeking grandparented status should be given six months to apply, from the coming into force of the relevant sections of the legislation.

120. As suggested in the submission from the Ontario Human Rights Commission, the years of experience a paralegal applying for grandparented status relies upon should be subject to quality control, in the form of at least two references from tribunals or other relevant reputable referees that the person is a suitable candidate to take the licensing examination. Other forms of evidence of successful practice may also be appropriate.

Recommendation Eleven

- 121. Applicants for grandparented status should be required to submit at least two references, and conform to other criteria to be developed.**

GENERAL OR LIMITED LICENCE

122. The Task Force consulted on two possible models for paralegal licences, general and limited licences. A general licence would permit the licensee to practise in any of the areas approved for paralegal activity, while a limited licence would set out a specific area of practice, such as Small Claims Court or Provincial Offences Court, and limit the person's work to that area. Strongly held opinions were heard on both sides of the issue of general versus limited licences.

Arguments for General Licence

123. General licensing is consistent with the position the Law Society has taken on the reform of the Bar Admission Course arising from the Task Force on the Continuum of Legal Education. That Task Force recommended that the Bar Admission Course focus on lawyering skills and a commitment to lifetime continuing education. Lawyers called to the bar have a professional responsibility to take on only work they are competent to undertake.
124. The colleges generally took the position that they should teach generic advocacy skills, as students do not know the area of law in which they will be working (the vast majority of college graduates seek full time employment under lawyer supervision when leaving, as only a very few intend to open an independent practice). It could also create difficulties setting a reasonable class size for each specialty.
125. Only a few tribunals offer enough work to support a full-time practice. Tribunals often change their mandates, and some in fact are created or abolished over time as government policies change.

126. Some tribunals consulted were hesitant about limited licences as they are concerned about the extra workload potentially involved in designing licensing requirements.
127. There would be extra work and considerable extra cost involved in creating a number of specialized examinations. Examination preparation will be one of the largest expenditures involved in introducing paralegal regulation, and the total cost would be multiplied by the number of different licences created. The approach suggested by Professor Zemans would require ten different examinations to be created, probably several times a year. This would be prohibitively expensive.
128. A system of limited licences could be difficult to enforce. Clients would have to verify that their agent is licensed for the specific area of work involved. This would require a more extensive public awareness campaign.
129. Limited licences might give the appearance of restricting access to paralegal work.

Arguments for Limited Licence

130. Many independent paralegals in fact confine their practices to a limited number of areas, for example, *Highway Traffic Act* offences or Small Claims Court.
131. If there is only one category of licence, the requirements may have to be set at too high a level for some areas of practice, which could restrict access.
132. A general licence may encourage licence holders to go beyond their area of expertise. The submission from the Equity Advisory Group suggests that vulnerable clients would be at risk of being misled by licensees offering to provide services outside their area of expertise.

133. A number of the provincial tribunals take the position that their jurisdiction is uniquely complex. In fact the Financial Services Commission of Ontario (FSCO) and the Workplace Safety and Insurance Board are provincial tribunals where paralegals are extensively involved in cases worth tens of thousands of dollars or more. However, all areas of advocacy can present difficult and complex cases. For example, the *Provincial Offences Act* covers environmental and occupational safety cases in which persons' health and safety are often at stake.
134. On balance, the Task Force is of the view that it would be reasonable to start by creating one general licence, and to consider the establishment of further categories if it is appropriate, as the regulatory model develops.

Recommendation Twelve

- 135. One general licence should be established initially, but the legislation should be designed to permit the creation of further categories in future, should it be determined that this is appropriate in the public interest.**

PERSONS TO BE REGULATED

136. The objective of the regulatory model is to provide both consumer protection and access to justice, especially for vulnerable clients. At the same time, the model should not be broader than is necessary to achieve these objectives.
137. Throughout the consultations, there were representations about who should be included in or excluded from the regulatory model. There is no disagreement that independent paralegals representing clients for a fee before courts and tribunals should be regulated, while law clerks and other persons providing services to lawyers should be exempted, as should family members or friends representing a person free of charge. There are also good reasons for excluding union stewards and corporate human resources representatives appearing at labour arbitrations, who represent sophisticated clients in a

specialized area. However, the Task Force heard extensive representations about other groups.

138. Particularly detailed submissions were received from the Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA), requesting that they be exempted. These agencies of the Ministry of Labour provide free representation in Workers' Compensation claims to injured workers and small employers respectively. They have a large complement of paralegal advocates (in the case of the OWA, 46 paralegals). They make the following points:
- a. Their staff members are already accountable, falling under the *Public Service Act* (including the oath of secrecy), conflict of interest policies, the *Freedom of Information and Protection of Privacy Act*, an internal complaints process, Ministry of Labour policies, and the Ombudsman complaint process;
 - b. As an agency of the Ontario government, there are assets available to satisfy any judgment against them;
 - c. All services are provided free of charge to the client, so that there are no issues of overcharging;
 - d. There is a staff-training programme at both offices;
 - e. These offices, already subject to budget constraints with no reduction in workload, would have to absorb the cost of the licensing fees for their staff.
139. Taken together, these reasons constitute a strong case for exemption of the OWA and OEA from the regulatory model. Several of the same reasons apply to a broad range of employed paralegals, such as municipal prosecutors, community legal workers at clinics, insurance company staff, etc.
140. The rationale for paralegal regulation is based on the need for consumer protection, particularly in the case of vulnerable clients. The problem areas do not generally involve salaried, in-house paralegals.

141. Reducing the potential numbers of licensees by exempting employed paralegals reduces the funding base for the model.
142. The representatives of SOAR (the Society of Ontario Adjudicators and Regulators) generally favoured an approach whereby tribunals could apply to be exempted. It was submitted that there are many boards and tribunals in Ontario where problems with agents are rare, often where there is little money at stake in their decisions.
143. Employed paralegals and some supervised law clerks might choose to acquire a licence voluntarily, if they have the necessary qualifications. This would permit them to take advantage of the grandparenting provisions. (The representatives of the Office of the Worker and Employer Advisers mentioned that some of their staff might be interested in voluntary licensing).
144. If an employed paralegal were considering setting up a private business in the future, it may be advantageous for the employed paralegal to acquire a licence during the time permitted for applications for grandparented status.
145. Among specific exemptions requested in the submissions were,
 - a. All those providing services for no fee
 - b. Aboriginal Court Workers
 - c. Workers at Legal Aid funded clinics, including those where no lawyer is on staff
 - d. Trade union employees (not only in arbitrations)
 - e. Volunteer Special Education Advocates
 - f. Adult Protective Service Workers
 - g. Victim Service Workers
 - h. Employees of the Office of Child & Family Service Advocacy
 - i. Employees of the John Howard and Elizabeth Fry Societies

146. The Institute of Law Clerks of Ontario (ILCO) submitted that ILCO should be recognized as the formal regulator of law clerks. (Law Clerks are skilled office workers who work under the supervision of lawyer, often completing extensive work on files such as corporate and real estate transactions). If there is to be regulation of paralegals, ILCO favours formal recognition for law clerks. However, owing to the scope of practice proposed for licensed paralegals, it may be difficult to include some law clerks even on a voluntary basis, if they focus exclusively on solicitors' work.
147. In the view of the Task Force, law clerks are already regulated because lawyers supervise them. They are covered by the lawyer's insurance and the supervising lawyer is responsible for their conduct and competence. Lawyers who fail to adequately supervise their law clerks are in breach of the Rules of Professional Conduct. For these reasons, the Task Force did not consider further regulation of law clerks at this time. Those law clerks providing advocacy services would be eligible to apply for a licence.
148. The need for other exemptions may become apparent, and it will be important to provide a mechanism to add other exemptions by-law.
149. The Task Force was aware of the challenge involved in bringing a large number of persons into a system of regulation in a short period of time. For that reason, it makes sense to start with the areas where most of the problems have occurred.
150. The Task Force is proposing a model with initially, three categories of persons:
- a. Licensees, who will be authorized to provide prescribed advocacy services for a fee, so long as they hold a valid licence;
 - b. Those providing the same services as those in paragraph (a), but without charging a fee to the public, such as
 - i. Family members or friends acting free of charge;

- ii. In-house, salaried non-lawyer advocates, such as municipal prosecutors, community legal workers, insurance company representatives, etc., regardless of whether they are supervised by a lawyer. They will not be required to hold a licence, but will be encouraged to obtain a licence so that they would be entitled to move to private practice at a later date. (Their scope of practice would be limited in the same way as those in category (a), except for files that are supervised by a lawyer).
 - c. Persons providing services under the supervision of a lawyer, such as law clerks, legal assistants, etc., and those working for independent service providers whose only clients are law firms. (This model does not change their situation, although some persons in this category may be interested in acquiring a licence voluntarily).
151. It may in time be appropriate to exempt other persons. A mechanism is therefore required for considering the suitability of other applications for exemption, based on consumer protection and access to justice.

Recommendation Thirteen

- 152. As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.**

FEDERAL PROVINCIAL ISSUES

153. The regulation of paralegals raises some complex constitutional issues. A number of the areas where paralegals are particularly active, such as the defence of summary conviction offences under the *Criminal Code*, and Immigration and Refugee matters, fall under federal jurisdiction. Since the *Criminal Code* provides that an accused person may be represented by an agent (meaning a non-lawyer) in certain cases, a provision of the *Law*

Society Act could not *per se* contradict this. However, this does not mean that a licensing requirement would necessarily be *ultra vires*.

154. The federal government recently enacted new regulations under the *Immigration and Refugee Protection Act* to regulate paralegals working as immigration consultants. There are a number of aspects of this scheme that concern the Law Society, including whether the scheme will ultimately be effective. The African Canadian Legal Clinic and the Iranian Canadian Lawyers Association both submitted that the proposed regulatory model for paralegals should apply to immigration consultants. Otherwise immigrants, who are often particularly vulnerable clients, would lack proper protection. The Task Force finds this persuasive.

155. The leading constitutional case in this area is *Law Society of British Columbia v. Mangat*, decided by the Supreme Court of Canada in 2001. This case dealt with an immigration consultant. The Supreme Court held as follows:
 - a. There is no obligation on the federal government to regulate agents, although it may be desirable;
 - b. To the extent that the federal government does not address the matter, provinces can regulate “in accordance with their own powers”;
 - c. There will be an “operational conflict” if provincial legislation displaces the purpose of Parliament; and
 - d. The test is “whether operation of the provincial Act is compatible with the federal legislative purpose.”

156. A number of judges and lawyers submitted that the issue of agents appearing on *Criminal Code* matters should be revisited. The Criminal Lawyers’ Association, the Defence Counsel Association of Ottawa, and many judges would prefer to see agents excluded from the criminal courts altogether, because of the serious implications of a criminal conviction and the complexity of criminal trials.

157. The Ontario Crown Attorneys' Association made strong representations in support of this point. Members of the Association are often put in a difficult position when dealing with agents, and explained that defendants are better off unrepresented. These comments carry particular weight, as on this point the Crown Attorneys are impartial.
158. The paper submitted by Professor Zemans on behalf of the PPAO recommended limiting the offences on which an agent can appear to a very short list of the less serious summary conviction offences.
159. Changing these provisions would require an amendment to the *Criminal Code*. In the absence of a change of this nature, it could be argued that regulating paralegals in criminal court might lend their presence legitimacy. However, if other areas of paralegal activity are regulated and the criminal courts are not, unscrupulous operators who have been excluded from, for example, provincial tribunals, might gravitate towards the criminal courts.
160. The Task Force is of the view that the licensing requirements logically apply to the federal sphere, as there would be no frustration of the purpose of the federal legislation.

Recommendation Fourteen

- 161. To provide consumer protection, the licensing requirement should apply to persons working in areas of federal jurisdiction.**

LEGISLATIVE DESIGN

162. The principle behind the legislative design should be to provide flexibility by placing the minimum of detail in the *Law Society Act* itself, with most detail in regulations or in Law Society by-laws. Law Society by-laws would give the greatest flexibility, as Convocation could amend them as required. This may be particularly relevant given the likelihood of

unforeseen issues arising in an entirely new regulatory regime and the possibility, mentioned above, that some parts of the model may be phased in over time.

163. Among the new provisions required in the Act itself will be,
- a. A definition of the provision of legal services;
 - b. Stronger provisions for the prosecution of the unauthorized practice of law, including the authority to obtain an injunction prior to a conviction;
 - c. Provisions for disciplining paralegals (to parallel those for lawyers), including investigation, confidentiality and third party information, and provisions for misconduct and ‘conduct unbecoming’;
 - d. Provisions for hearings into competence and capacity; and
 - e. By-law-making authority to,
 - i. issue licences to persons who are to be permitted to provide services in the prescribed areas; and
 - ii. provide for exemptions.
164. The legislative design and system of governance should provide a framework for the review of the necessary competencies for paralegal practice and any adjustment to the permitted scope of practice that may be appropriate in the future.

Recommendation Fifteen

- 165. It is recommended that the legislation be designed to achieve flexibility by placing the minimum of detail in the *Law Society Act* itself, with most detail in regulations or in Law Society by-laws.**

NOMENCLATURE

166. The preferred terminology is ‘licensed’ rather than ‘accredited.’ Accreditation suggests a voluntary system, such as Specialist Certification or the Law Clerk certification granted by the Institute of Law Clerks of Ontario, while a licence is a compulsory requirement, as

in a driver's licence. The obtaining of a licence will be compulsory for the prescribed persons in the prescribed areas of work.

167. The Task Force heard a number of comments about the use of the term "paralegal," which could be regarded as confusing and carrying negative connotations. It was also felt that it does not best describe the actual functions that the licensees will perform. In most cases, legislation permitting non-lawyers to appear uses the word "agent."
168. The Task Force considered other names for paralegals, such as "agent," and "court and tribunal agent" but rejected them for a number of reasons. Firstly, the public has come to recognize the name "paralegal," and to change it may lead to further confusion in the legal services marketplace. Secondly, paralegals have chosen to call themselves by the name "paralegal," and the right to self-name should not be interfered with absent a compelling reason to do so in the public interest.
169. In the view of the Task Force, the legislative drafting should use generic language, such as 'persons licensed to provide services' or 'licensees,' while more specific language should be used in the by-laws and regulations.

Recommendation Sixteen

- 170. Licensed paralegals should be described as, "Licensed pursuant to the laws of Ontario."**

GOVERNANCE

171. The Consultation Paper set out a model for paralegal governance, involving a Standing Committee of Convocation that would develop policies on paralegal regulation and submit them to Convocation for approval in the same way as other Law Society committees. Unlike other committees, however, it is proposed that Convocation could not at the first instance substitute its own decision for that of the committee, but could send

the matter back to the Standing Committee for further consideration. Only on the second consideration could Convocation substitute its own decision.

172. The composition of the Standing Committee would be,
 - a. five paralegals, to be elected from all licensed paralegals (until the first election, the five licensed paralegals would be appointed by the Attorney General);
 - b. five elected benchers appointed by Convocation on the recommendation of the Treasurer, and
 - c. three lay benchers, appointed by Convocation on the recommendation of the Treasurer, for a total of thirteen members.

173. All members of the Standing Committee would be under an obligation to act in the public interest.

174. The Chair of the Committee would always be a paralegal. The Task Force proposes that all thirteen members of the committee choose the chair. The vice-chair would be an elected lawyer bencher or a lay bencher.

175. The Task Force further proposes that two of the paralegal members of the committee sit as full members of Convocation; these two persons would be chosen by eight members of the committee, the five paralegals and the three benchers. The committee chair would also be a member of Convocation, but would not have a vote (unless he or she is one of the two persons chosen as described).

176. The mandate of the Standing Committee would include,
 - a. Licensing and educational requirements
 - b. Code of Conduct
 - c. Licensing Fees
 - d. Rules of Incorporation

- e. Rules for Advertising
 - f. Trust Account Rules
 - g. Complaints, Investigation, Hearing and Appeal Processes
 - h. Insurance
 - i. Compensation fund
 - j. Continuing Education
 - k. Reporting Requirements
177. Consultation with the legal profession indicated general acceptance of the proposed governance model. This represents a change in the view of the profession since the discussions on this topic of 2002, when there was more opposition to the acceptance of a legitimate role for paralegals and to the proposal that the Law Society should be the regulator.
178. The report by Professor Zemans on behalf of the PPAO takes the position that the Law Society has a conflict of interest in regulating paralegals. Justice Cory suggested that the appropriate body to regulate paralegals would be independent of both the provincial government and the Law Society, but that self-government would not be feasible in the short to medium term. He wrote, “Eventually, perhaps, after ten years, the paralegals will become self-governing. This should not occur until the institution is well established and has the confidence of the public and the provincial government.”
179. However, the Cory model, requiring a new, separate body to regulate paralegals would inevitably be more expensive than the modest increase in the scope of the Law Society’s activities required to include paralegal regulation, given the existing expertise and experience the Law Society has in regulatory functions. A new body would also take much longer to become effective, given the work involved in a start-up operation.

180. The Law Society already has a mandate to govern in the public interest, not in the interest of lawyers. The public interest must be the primary consideration in paralegal regulation as well.

Recommendation Seventeen

181. It is recommended that the governance model set out above be adopted.

PROFESSIONAL REGULATION

182. The regulatory model for paralegals should follow as closely as possible the current regulatory model for lawyers. This will require development of,

- a. Rules of Professional Conduct
- b. Structures for proceedings authorization and review of complaints
- c. Rules of Practice and Procedure
- d. A unique identifying licence number like the membership number lawyers have.

183. Paralegals should be subject to the same confidentiality rule as lawyers. This would require paralegals to hold in strict confidence all information concerning the business and affairs of clients acquired in the course of the professional relationship, subject to some very limited exceptions. This would mean that such information could not be disclosed except on the order of a judge.

184. The ethical rule on confidentiality, however, must be distinguished from the evidentiary rule of solicitor-client privilege concerning oral or documentary communications passing between the client and the lawyer. As it is a matter of law, the question of whether privilege attaches to communications between a paralegal and his or her client is not a matter for rules of professional conduct for paralegals.

185. Some submissions proposed specific rules of professional conduct for paralegals. For example, the Task Force heard many complaints about misleading or unsuitable

advertising by paralegals. The Lincoln County Law Association proposed that there should be special advertising rules for paralegals. While the Task Force recognizes that there have been problems with paralegal advertising, the existing Rules of Professional Conduct address the issue of advertising in a comprehensive, non-specific manner and the Task Force is of the view that this would be sufficient to address the problem.

186. The appropriate three-person hearing panel for conduct, capacity and competence hearings would be one paralegal appointed by the Standing Committee, one lawyer bencher and one lay bencher.
187. The appeal panel for paralegal cases would be two paralegals appointed by the Standing Committee, two lawyer benchers and one lay bencher.

Recommendation Eighteen

- 188. It is recommended that the model for the professional regulation of paralegals should follow that currently in place for lawyers.**

FEES CHARGED BY PARALEGALS

189. Participants at the consultation meetings frequently identified problems with the fees paralegals charge, especially unconscionable contingency fees in the context of FSCO and the Workplace Safety and Insurance Board. Members of the public should have recourse to a mechanism to review unreasonable fees. The Task Force is of the view that the same process for disputing lawyers' fees should be applied to paralegal fees also.
190. While some submissions suggested that paralegals should not be permitted to charge contingency fees, this would be inconsistent with the government's recently adopted regulations for lawyers.

191. Licensed paralegals should be required to maintain trust accounts for retainers and any other funds received in trust. Some paralegals submitted that the use of a trust account is cumbersome in a practice involving many small cases and would not be necessary if a paralegal undertakes to submit all invoices in arrears. However, the Task Force does not regard exceptions to the requirement of a trust account to be in the public interest.

Recommendation Nineteen

- 192. It is recommended that,**
- a. the same process used for reviewing legal fees be applied to paralegal fees;**
 - b. contingency fees not be prohibited outright but that the rules governing contingency fees for lawyers should apply to paralegals also; and**
 - c. licensed paralegals be required to maintain trust accounts for retainers and any other funds received in trust, and comply with requirements for record keeping and handling of money similar to those of lawyers.**

INSURANCE AND COMPENSATION FUND

193. Obtaining professional errors and omissions insurance for paralegals is not expected to present difficulties. At present, ENCON Group Inc. insures the SABS representatives who appear at FSCO and manages an insurance programme under arrangements with the PPAO and the Paralegal Society of Ontario (PSO), voluntary organizations of paralegals. However, since membership in these organizations and the obtaining of insurance (except for the SABS representatives) are currently voluntary, it may be that those currently insured are lower-risk than some of those who would only apply when insurance becomes mandatory.
194. The number of paralegals currently insured by ENCON is about 350.
195. ENCON has confirmed that they would be able to insure a larger number of paralegals when insurance becomes mandatory. When the Quebec Order of Engineers made

insurance mandatory for Quebec engineers, ENCON was able to insure 1,800 additional engineers in a short period of time, without difficulty. ENCON would be prepared to provide the Law Society with notice of cancellation of insurance for all policyholders.

196. LAWPRO has also indicated an ability to offer coverage to paralegals on a separate actuarial basis from lawyers. The Task Force considered whether there should be a choice of insurance provider, or whether LAWPRO should be made the required sole provider. On balance, the Task Force recommends that paralegal insurance remain in the existing private market, since the existing arrangements seem to be satisfactory, and there is not a compelling reason to require this to change.
197. Some paralegals submitted that they have a cost advantage over lawyers as a result of not carrying insurance. However, for the public to be left unprotected by a lack of insurance is not in the public interest.

Recommendation Twenty

198. Licensed paralegals should be required to maintain \$1million errors and omissions insurance coverage.

199. Since insurance will not protect clients from the fraudulent actions of their representatives, paralegals should also be required to pay into a compensation fund in the same manner as lawyers.

Recommendation Twenty-One

200. A paralegal compensation fund shall be established, to which paralegals will be required to contribute.

SELF-FUNDING MODEL

201. While ideally paralegal regulation will be self-funding on the same model as lawyers, this may take time:
- a. The Law Society's infrastructure is supported by fees from over 30,000 lawyers. The number of paralegals to be licensed is not known, but is believed to be in the hundreds or low thousands. Initially, there may be only a few hundred applicants for licensing.
 - b. Bar admission examinations are prepared for a predictable cohort of about 1,300 law school graduates every year, who currently pay \$4,400 for the course and examinations. The number of potential applicants for paralegal examinations is not known but may be only a few hundred at first.
 - c. There will be additional enforcement costs in dealing with those who are ineligible for a licence, to prevent the unauthorized provision of paralegal services as well as the unauthorized practice of law.
 - d. Implementation will require a public education and awareness campaign.
 - e. Fees for paralegals must be set at a reasonable level.
202. Taken together this makes it critical that there be up-front funding assistance from the government until self-funding is achieved.
203. The approximate costs of establishing the regulatory model have been calculated, under reasonable assumptions (including an estimated amount for the prosecution of paralegals who fail to obtain a licence), as follows:
- | | |
|-------------------------|------------------------|
| Start-up costs: | \$3.3 million |
| Annual operating costs: | \$1.2 million per year |

Recommendation Twenty-Two

204. It is recommended that,

- a. the model be designed to be self-funding; and**
- b. until the model is self-funding, the province should provide the funding to create and maintain the regulatory model, including funding for the prosecution of those who fail to obtain a licence.**

NEXT STEPS

205. If Convocation approves this approach and the included recommendations, they will be submitted to the Attorney General for his consideration as the basis of a legislative scheme.

SUMMARY OF RECOMMENDATIONS

Recommendation One (paragraph 85)

It is recommended that the scope of practice for paralegals be the currently permitted areas of practice, as set out in legislation and case law. This would include the following:

- a. Small Claims Court: all matters in Small Claims Court, including being recognized by the Court for the purposes of costs.**
- b. The Ontario Court of Justice: all matters under the *Provincial Offences Act*.**
- c. Tribunals: all matters before provincial boards, agencies and tribunals that allow for appearances by agents.**
- d. Ontario Court of Justice: appeals under the *Provincial Offences Act*. Currently, section 109 of the *Provincial Offences Act* authorizes agents to appear on appeals.**

Recommendation Two (paragraph 91)

The definition of the provision of legal services attached at Appendix 3 be incorporated in the legislation.

Recommendation Three (paragraph 94)

It is recommended that the *Law Society Act* be amended to provide for injunctive relief with the presumption of irreparable harm.

Recommendation Four (paragraph 98)

The good character requirement should be the same for paralegals as it is for lawyers.

Recommendation Five (paragraph 100)

Applicants will be required to have successfully completed a college programme approved by the Law Society.

Recommendation Six (paragraph 104)

It is recommended that the colleges offering the approved programmes conduct the assessment of equivalencies, subject to approval by the Law Society.

Recommendation Seven (paragraph 108)

Law Society approved college programmes must include an approved period of ‘field placement’ to provide students with workplace experience.

Recommendation Eight (paragraph 111)

The Law Society should set licensing examinations that all applicants for a licence will be required to pass.

Recommendation Nine (paragraph 117)

Applicants should be eligible for grandparented status if they have worked as paralegals in areas covered by the proposed scope of practice described above, either independently or in employed positions, for three of the last five years, except where the person requires accommodation under one of the grounds in the *Ontario Human Rights Code*, in which case the requirement should be three years within the last seven.

Recommendation Ten (paragraph 119)

Applicants seeking grandparented status should be given six months to apply, from the coming into force of the relevant sections of the legislation.

Recommendation Eleven (paragraph 121)

Applicants for grandparented status should be required to submit at least two references, and conform to other criteria to be developed.

Recommendation Twelve (paragraph 135)

One general licence should be established initially, but the legislation should be designed to permit the creation of further categories in future, should it be determined that this is appropriate in the public interest.

Recommendation Thirteen (paragraph 152)

As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.

Recommendation Fourteen (paragraph 161)

To provide consumer protection, the licensing requirement should apply to persons working in areas of federal jurisdiction.

Recommendation Fifteen (paragraph 165)

It is recommended that the legislation be designed to achieve flexibility by placing the minimum of detail in the *Law Society Act* itself, with most detail in regulations or in Law Society by-laws.

Recommendation Sixteen (paragraph 170)

Licensed paralegals should be described as, “Licensed pursuant to the laws of Ontario.”

Recommendation Seventeen (paragraph 181)

It is recommended that the governance model set out above be adopted.

Recommendation Eighteen (paragraph 188)

It is recommended that the model for the professional regulation of paralegals should follow that currently in place for lawyers.

Recommendation Nineteen (paragraph 192)

It is recommended that,

- a. the same process used for reviewing legal fees be applied to paralegal fees;
- b. contingency fees not be prohibited outright but that the rules governing contingency fees for lawyers should apply to paralegals also; and
- c. licensed paralegals be required to maintain trust accounts for retainers and any other funds received in trust, and comply with requirements for record keeping and handling of money similar to those of lawyers.

Recommendation Twenty (paragraph 198)

Licensed paralegals should be required to maintain \$1million errors and omissions insurance coverage.

Recommendation Twenty-One (paragraph 200)

A paralegal compensation fund shall be established, to which paralegals will be required to contribute.

Recommendation Twenty-Two (paragraph 204)

It is recommended that,

- a. the model be designed to be self-funding; and**
- b. until the model is self-funding, the province should provide the funding to create and maintain the regulatory model, including funding for the prosecution of those who fail to obtain a licence.**



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Regulating Paralegals: *A Proposed Approach*

A CONSULTATION PAPER

The Law Society Task Force on Paralegal Regulation

May 2004

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I. Paralegals Remain Unregulated

IN ONTARIO, PARALEGALS PROVIDE THE PUBLIC WITH A considerable range of services, including representing individuals in Small Claims Court, before administrative tribunals and in Ontario's criminal courts – all without regulation or standardized accreditation. While the majority of paralegals may be honest and hard working, they are currently allowed to conduct business without educational standards, liability insurance, or a code of conduct, and they are not accountable to any governing organization for their professional activities. Law Society research has shown that the majority of the public is unaware that paralegals are unregulated. Unlike lawyers, there is no regulatory authority to ensure that paralegals are competent to serve the public, thereby placing the public at risk. When something goes wrong, the consumer is not protected.

It is generally recognized that paralegals can play a useful access-to-justice role in Ontario by providing assistance to individuals who, for various reasons, are unable or unwilling to hire a lawyer. However, increased access to justice is not sustainable until and unless paralegals are, like lawyers, governed by a regulatory body mandated to govern in the public interest. The majority of paralegals believe they should be regulated. Successive Ontario governments have recognized the desirability of developing a scheme of paralegal regulation. Paralegal organizations, consumer groups and legal organizations including the Law Society of Upper Canada have repeatedly endorsed the necessity of regulating paralegals. Nonetheless, paralegals remain unregulated. ❖

II. Brief History of Paralegal Regulation

For more than fifteen years, attempts to develop a regulatory framework for paralegals have failed. In August 1999 the Ontario Court of Appeal commented in the case of *R. v. Romanowicz*:

“A person who decides to sell t-shirts on the sidewalk needs a licence and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person’s liberty and livelihood are at stake invites miscarriages of justice. Nor are *de facto* attempts to regulate the appearance of agents on a case-by-case basis likely to prevent miscarriages of justice”.

In the fall of 1999, then Attorney General James Flaherty appointed the Honourable Peter de C. Cory to study paralegal activities. In May 2000, Justice Cory released his report (the ‘Cory Report’).

In the spring of 2001, David Young succeeded James Flaherty as the Attorney General and indicated an interest in developing a regulatory framework based on consensus between the legal and paralegal communities. In a letter dated October 31, 2001, Mr Young said, “the government remains committed to protecting consumers who use the services of paralegals.” Mediation was proposed but deferred in favour of a process designed to develop consensus among the legal stakeholders.

In July 2001, representatives of legal organizations (the Advocates’ Society, the County and District Law Presidents’ Association, the Law Society of Upper Canada, the Metropolitan Toronto Lawyers Association and the Ontario Bar Association) formed a

Working Group and contacted a paralegal organization, the Professional Paralegal Association of Ontario (PPAO) that represents several paralegal organizations: the Paralegal Society of Ontario, the Institute of Agents at Court and the Ontario Searchers of Record.

Members of the Working Group and representatives of the PPAO agreed on many principles underlying a proposed framework, embodied in a document circulated in April 2002 entitled *A Consultation Document on a Proposed Regulatory Framework*, often referred to as ‘the Consultation Document’ or ‘the Framework’. It was hoped that this would lead to action on the issue but again, this did not occur. However, many aspects of the 2002 Consultation Document form the basis for the present proposed regulatory approach and consultation document. ❖

III. Where We Are Today

On January 22nd, 2004, the current Attorney General of Ontario, the Honourable Michael Bryant, attended a meeting of the Law Society of Upper Canada's ruling board of governors (Convocation), to advise that he regarded the regulation of paralegals as necessary, and that the Law Society is the appropriate authority to do it. He requested that the Law Society agree to take on this responsibility, and that it propose a regulatory structure for that purpose. In response, Convocation voted in principle to accept this responsibility and authorized the Treasurer of the Law Society to establish a working group to develop a detailed proposal for the regulation of paralegals in collaboration with the Ministry of the Attorney General.

The ministry has indicated that the Attorney General is expecting the Law Society to consult with the profession and other stakeholders, including legal and paralegal organizations, the courts, community colleges, adjudicative tribunals and other interested parties.

On April 22, 2004, the Task Force presented Convocation with a preliminary regulatory approach. Convocation was not asked to approve the approach, but to authorize the Task Force to commence stakeholder consultations, using the proposed approach as a starting point and developing further details during the consultations. In response, Convocation authorized the Task Force to proceed with the consultations using the proposed regulatory approach as the starting point. ❖

IV. This Consultation Document

This document is the first step in the Law Society's consultation process. It is being distributed to all affected stakeholders for their consideration.

Following its distribution, the Task Force will conduct direct consultations with stakeholder groups to enable substantive conversations to occur. A facilitator will engage stakeholder groups in extensive discussions to determine the implications of the Task

Force's proposed approach and to formulate further levels of detail where required. There is much the Task Force needs to know from all stakeholders before it can present a well-constructed regulatory approach to Convocation and the Ministry of the Attorney General. This consultation document is designed to initiate that process. ❖

V. Proposed Approach to Paralegal Regulation

Overview

The following regulatory approach for paralegals is constructed to achieve several objectives:

1. Improved consumer protection and access to justice;
2. Improved and enhanced paralegal competence by instituting a standardized licensing and accreditation system;
3. Avoidance of jurisdictional confusion and unnecessary cost by regulating paralegals in a manner that mirrors regulation of lawyers; and
4. Preservation of the Law Society's role to govern the profession in the public interest and maintain the profession's independence, by asserting the jurisdiction of the Law Society over all services specified in the *Law Society Act* and by better enabling the Law Society to prevent the unauthorized practice of law.

To achieve these objectives, the basic components of paralegal regulation are as follows:

1. Clear delineation of the scope of permitted activities.
2. A licensing process for paralegals that will generally consist of:
 - a. A diploma from an accredited community college, after at least two years of study;
 - b. Grand parenting provisions;
 - c. Law Society licensing examinations;
 - d. Good character requirement; and
3. A governance structure, standards and processes for paralegals that mirror those for lawyers.

Scope of Professional Activities

The Task Force recommends that paralegals be authorized to conduct advocacy work in the following areas:

1. **Small Claims Court:** an accredited paralegal would be authorized to handle all matters in Small Claims Court and be recognized by the Court for the purposes of costs.
2. **The Ontario Court of Justice:** an accredited paralegal would be authorized to act with respect to all matters under the *Provincial Offences Act*.
3. **Tribunals:** an accredited paralegal could appear in all matters before provincial boards, agencies and tribunals that allow for appearances by agents. Boards may have specific requirements that may be incorporated into the licensing examination.
4. **Ontario Court of Justice:** appeals under the *Provincial Offences Act*. Currently, section 109 of the *Provincial Offences Act* authorizes agents to appear on appeals.

Given that several areas of advocacy work are already explicitly open to paralegals, and that there is a reasonable consensus on what constitutes advocacy work, it logically follows that paralegals should be authorized to continue working in this field. In addition, recent public concern about paralegals has focused on their engagement in the advocacy field, indicating a need for a priority response. From an access-to-justice perspective, there are advocacy areas where it can be difficult to obtain the services of a lawyer, such as Landlord and Tenant cases and Small Claims Court – demonstrating a clear requirement to meet public demand. Finally, advocacy work is conducted in a public arena in the presence of a neutral third party, thereby enabling effective monitoring and evaluation of the regulatory process.

The Task Force considered the recent creation of a paralegal registry by the Financial Services Commission of Ontario (FSCO). Due to the complexity of matters before FSCO, the Task Force is of the view that the public interest requires that accredited paralegals appearing at FSCO be limited to cases involving the monetary amount that can be claimed in Small Claims Court. Further consultation on this matter is required.

The Task Force recommends that paralegals not be authorized to conduct solicitors' work, primarily because there is no evidence that there is a scarcity of solicitors to provide services such as wills and real estate transactions. Further, there is no evidence that paralegals could provide these services at a more reasonable rate than lawyers. Non-lawyers currently providing solicitor-type services are engaging in the unauthorized practice of law in violation of the *Law Society Act*. The 2002 Consultation Document proposed an arrangement whereby a paralegal could perform solicitors' work in affiliation with a solicitor. The Task Force is concerned that this concept would be difficult to enforce and therefore further study is required. However, the proposed regulatory approach can be designed so that the scope of practice can be adjusted in the future if appropriate.

Further consultation with the legal profession, paralegals, the courts and tribunals will help to further clarify opportunities and issues associated with paralegals' scope of work as proposed.

Exemption from Regulation

Within the broad scope of activities to be regulated, the Task Force recommends that a general exemption from regulation be extended to a variety of individuals, including but not limited to: persons working under the supervision of a lawyer, such as law clerks and paralegals in law firms, legal clinics and student clinics; union representatives appearing in labour arbitrations; mediators; bankruptcy trustees; insurance brokers, and others.

The following criteria are recommended for establishing exemptions:

1. Whether there are vulnerable clients in need of consumer protection;
2. Whether the persons concerned are already adequately regulated by another professional body; and
3. Whether there is a strong policy rationale for exemption.

Further consultation is required to determine a comprehensive list of exempted parties.

Advocacy Work Under Federal Jurisdiction

The regulation of paralegals raises some complex federal–provincial issues. For example, a number of the areas where paralegals are particularly active, such as summary conviction offences under the *Criminal Code* and Immigration and Refugee matters, fall under federal jurisdiction.

The federal government recently enacted new regulations under the *Immigration and Refugee Protection Act* imposing new requirements on paralegals working as immigration consultants. There are a number of aspects of this scheme that are problematic for the Law Society, including the apparent intention to regulate persons supervised by lawyers in law firms. Further consultation and study is required

VI. Licensing and Accreditation

<i>Licensing Requirements</i>	<p>The recommended licence requirements for paralegals are:</p> <ol style="list-style-type: none"> 1. A two-year diploma from an accredited community college; 2. Successful completion of a Law Society Licensing examination; and 3. Good character.
<i>Grandparent Provisions</i>	<p>The Task Force recommends an initial grandparent process whereby paralegals who have worked for five of the last seven years in their proposed area of work, could be excused from the accredited college program requirement. They would, however, be required to take the Law Society licensing examination and to be of good character. Applicants for grandparenting must apply within two years of the regulatory requirements coming into force, or as otherwise set by the regulatory authority, with an affidavit regarding their work experience. Applicants would be restricted to individuals. Corporations or franchises would not qualify.</p>
<i>Paralegal Licences</i>	<ul style="list-style-type: none"> • A license would only be granted to an individual - corporations or franchises will not qualify. • Accredited paralegals would become Commissioners of Oaths within their designated areas. • Given that accredited paralegals will be privy to confidential client information, the regulatory approach must ensure that accredited paralegals cannot be required to divulge confidential information, unless a judge orders it disclosed in the interests of the administration of justice. <p>The Task Force has considered two options for paralegal licences – either a general or a limited licence. Limited licences would authorize paralegals to handle cases pertaining to particular areas, such as cases under the Highway Traffic Act, or appearances before FSCO. An individual could be permitted to apply for more than one limited licence. A general licence would pertain to the full range of permissible advocacy areas. Limited licences would entail separate licence examinations. Further consultation is required on this matter.</p>
<i>Good Character</i>	<p>Lawyers are required to be of good character. It is recommended that this requirement also apply to paralegals.</p>
<i>Accreditation</i>	<p>Currently a wide variety of training programs are offered for student-paralegals, ranging from individual courses run by private schools to two, three and four-year programs offered by various community colleges. The Task Force intends to host extensive consultations with the education sector, including the Ministry of Training Colleges and Universities, to develop a standardized, transparent and rigorous set of professional standards for paralegal accreditation. The Task Force does not recommend that the Law Society prepare courses for</p>

paralegals, rather it will collaborate with the education sector to set clear competence and accreditation standards. Further consultation is required.

Mentoring is another area that requires stakeholder discussion. Previous proposals suggested that students be required to work under the supervision of a lawyer or accredited paralegal for a period of six months as part of their training program. The Task Force has identified some issues associated with this approach:

1. A mentoring period would be difficult to implement unless it is incorporated into a college program;
2. Finding Articling positions for law students presents a challenge, and finding additional placements for paralegals will increase the challenge.
3. The requirement that students “observe” the operation of a Tribunal is another suggested activity that may be difficult to enforce.

It may turn out that a kind of college co-op program could provide students with “real-life” training, but further consultation needs to take place on this subject.

VII. Governance Structure

Paralegal Standing Committee of Convocation

The Task Force recommends that a Paralegal Standing Committee of Convocation be mandated to govern and regulate paralegals in the public interest. The mandate of the Standing Committee would include, among other matters, policy development on the following:

1. Code of conduct
2. Licensing fees
3. Rules of incorporation
4. Books and records/trust accounts
5. Hearing and appeal processes for conduct, capacity, and competence matters
6. Insurance
7. Compensation fund
8. Continuing education

The Standing Committee should be composed of an equal number of paralegals and elected benchers, plus two or more lay benchers, e.g. five paralegals, five elected benchers and three lay benchers. At first, the Attorney General would appoint the five paralegals to the Standing Committee, with recommendations from the paralegals. Subsequently, they would be elected by all accredited paralegals.

At all times, a paralegal would either be the chair or the vice-chair of the Standing Committee. An elected benchler would also be either the chair or the vice-chair of the Standing Committee. The chair and vice-chair would both have the right to attend Convocation and address Convocation on Standing Committee matters. The Task Force also recommends that two of the paralegals on the Standing Committee should become members of Convocation.

As with other Standing Committees, the recommendations of the Standing Committee would be subject to ratification by Convocation. Unlike other committees, however, Convocation would not be authorized to substitute its decision for a decision of the Standing Committee but could send a matter back to the Standing Committee for reconsideration on the first hearing of the matter. On the subsequent hearing of the matter, Convocation may substitute its decision for that of the Standing Committee.

The Standing Committee would develop detailed rules pertaining to day-to-day regulation. Further consultation with the profession and paralegals is required.

Code of Conduct

The Law Society's *Rules of Professional Conduct* would apply to accredited paralegals, with necessary modifications.

Licensing Fees

Ideally, paralegal regulation would be self-funding on the same model as lawyers. However, annual fees from over 30,000 lawyers support the Law Society's infrastructure. Every year, bar admission examinations are prepared for a predictable cohort of approximately 1,200 law school graduates who pay \$4,000 for the course and examinations. The number of potential paralegals to be accredited is not known but is estimated to be in the low thousands. The initial number of applicants for paralegal examinations is expected to be rather low. Given that fees for paralegals must be set at a reasonable level, it is critical that funding assistance be provided by the Ontario government, at least for the first few years, to cover the cost of regulating paralegals until self-funding is achieved. This must include funding for appropriate enforcement measures.

Rules of Incorporation

Accredited paralegals could incorporate as long as the accredited individual paralegal remains personally liable, in a manner similar to lawyers.

Books and Records/Trust Accounts

Accredited paralegals would be required to maintain trust accounts restricted to retainers.

Hearing and Appeal Processes

Accredited paralegals will be subject to the same disciplinary processes and penalties as lawyers, with the necessary modifications. Cases involving paralegal conduct, capacity or competence would be heard in the first instance by a panel of three persons: a lawyer benchler, an accredited paralegal and a lay benchler. The paralegal may be represented by a

lawyer or by an accredited paralegal. The appeal process would be modelled on that for lawyers, with the necessary modifications.

Insurance Paralegals will be required to have errors and omissions insurance at a set level.

Compensation Fund Paralegals will contribute to a compensation fund similar to that for lawyers.

Continuing Education The Standing Committee would recommend continuing education requirements for accredited paralegals.

VIII. Ongoing Work

The Task Force's regulatory approach as set out in this consultation paper is intended to stimulate discussion within the legal profession, paralegals and all affected stakeholder groups. The Task Force's objective is to formulate an approach that Convocation and the Attorney General can use as a basis to implement a successful scheme of paralegal regulation.

Following distribution of this document to stakeholders, a facilitator will meet with selected groups to obtain detailed information that will assist the Task Force to complete its job of designing a workable regulatory approach for paralegals. Participation by the profession, paralegals and all stakeholders will greatly assist the Task Force and will be gratefully received.

All comments should be directed to:
Paralegal Task Force

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Ce document est aussi disponible en français

List of Groups Consulted

Aboriginal Legal Services Toronto
Advocates' Society
AJEFO
Association of Community Legal Clinics
Canadian Association of Paralegals
The Honourable R. Roy McMurtry, Chief Justice of Ontario
The Honourable Brian W. Lennox, Chief Justice, Ontario Court of Justice
The Honourable J. David Wake, Associate Chief Justice, Ontario Court of Justice
The Honourable Brian Weagant, Ontario Court of Justice
Circle of Chairs – SOAR
County and District Law Presidents' Association
County of Carleton Law Association
Criminal Lawyers' Association
Dufferin Law Association
Durham College
Elgin Law Association
ENCON
Equity Advisory Group
Essex Law Association
Family Lawyers' Association
Financial Services Commission of Ontario
Frontenac Law Association
Halton Law Association
Hamilton Law Association
Humber College
Huron Law Association
Institute of Agents in Court
Institute of Law Clerks of Ontario
Kent Law Association
Lanark Law Association
LAWPRO
Leeds/Grenville Law Association
Loyalist College
Middlesex Law Association
Ministry of Colleges and Universities - Ontario
Ministry of Labour – Ontario - Office of the Worker Adviser & Employer Adviser
Nipissing Law Association
Ontario Association of Career Colleges
Ontario Association of Crown Attorneys
Ontario Association of Professional Searchers of Records
Ontario Bar Association
Ontario Rental Housing Tribunal
Ontario Trial Lawyers' Association
Ontario Workplace Safety Insurance Board

Oxford Law Association
Paralegal Society of Canada
Paralegal Society of Ontario
Perth Law Association
Prescott/Russell Law Association
Professional Paralegal Association of Ontario
Sir Sandford Fleming College
Seneca College
Sheridan College
Stormont/Dundas/Glengarry Law Association
Thunder Bay Law Association
Toronto Lawyers' Association
TriOS College
Waterloo Law Association
Welland Law Association
Wellington Law Association

APPENDIX 3

PROPOSED DEFINITION OF THE PROVISION OF LEGAL SERVICES

1. (1) In this Act,

...

“licencee” means a member or a person licensed under this Act to provide legal services;

“member” means a person licensed under this Act to practise law in Ontario as a barrister and solicitor;

... .

1.1 (1) In this section and in section 1.2, “adjudicative body” means any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person’s interests, legal rights or legal responsibilities, including,

- (a) a federal or provincial court;
- (b) a tribunal established under an Act of Parliament or under an Act of the Legislature in Ontario;
- (c) a commission or board appointed under an Act of Parliament or under an Act of the Legislature in Ontario to conduct an inquiry or inquest;
- (d) a legislative body; and
- (e) an arbitrator.

(2) A person provides legal services in Ontario if the person engages in conduct that involves the application of legal principles and judgment with regard to the circumstances or objectives of a person.

(3) Without limiting the generality of subsection (2), a person provides legal services in Ontario if the person engages in any of the following conduct:

- 1. Gives to a person advice or counsel with respect to the person’s legal interests, rights or responsibilities or the legal interests, rights or responsibilities of another person.
- 2. Selects, drafts, completes or revises,

- i. a document that affects a person's interests in or rights to or in real or personal property, including family property;
 - ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person;
 - iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other business entity, including a document that relates to the formation, organization, reorganization, registration, dissolution or winding up of a sole proprietorship, corporation, partnership or other business entity;
 - iv. a document that relates to a matter under the Bankruptcy and Insolvency Act (Canada);
 - v. a document that relates to the custody or access of children;
 - vi. a document that affects the legal interests, rights or responsibilities of a person, other than the interests, rights and responsibilities referred to in sub-paragraphs i to iv; and
 - vii. a document for use in a proceeding before an adjudicative body.
3. Represents a person in a proceeding before an adjudicative body, including determining what documents to serve and file on or with whom, when, where and how, conducting examinations for discovery and engaging in any other conduct necessary to the conduct of the proceeding.
 4. Negotiates the legal interests, rights or responsibilities of a person.

1.2 (1) No person, other than a licensee whose licence under this Act is not suspended, shall practise law in Ontario or provide legal services in Ontario.

(2) No person, other than a licensee whose licence under this Act is not suspended, shall hold themselves out as or represent themselves to be a person who may practise law in Ontario or provide legal services in Ontario.

(3) Despite subsection (1), a licensee shall not practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence under this Act.

(4) Despite subsection (2), a licensee shall not hold themselves out as or represent themselves to be a person who may practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence under this Act.

(5) Subsections (1) and (3) do not prohibit a person from providing legal services in Ontario as specified by the by-laws.

1.3 (1) Every person who contravenes section 1.2 is guilty of an offence and on conviction is liable to a fine of,

- (a) not more than \$25,000 for a first offence; and
- (a) not more than \$50,000 for a second or subsequent offence.

(2) Every person who gives legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws is guilty of an offence and on conviction is liable to a fine of,

- (a) not more than \$25,000 for a first offence; and
- (b) not more than \$50,000 for a second or subsequent offence.

(3) The court that convicts a person of an offence under this section may prescribe as a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.

(4) The court that convicts a person of an offence under this section may prescribe as a condition of a probation order that the person is prohibited from contravening section 1.2 or from giving legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

(5) Despite the provisions of any other Act, the court that convicts a person of an offence under this section may order costs towards fees and expenses reasonably incurred by the prosecutor in the proceeding to be paid by the person to the prosecutor.

(6) A certified copy of an order for costs made under subsection (5) may be filed in the Superior Court of Justice by the prosecutor and on filing shall be deemed to be an order of that court for the purposes of enforcement.

(7) All fines payable pursuant to this section as a result of a prosecution by or on behalf of the Society belong to the Society.

(8) A proceeding shall not be commenced in respect of an offence under this section after two years after the date on which the offence was, or is alleged to have been, committed.

1.4 (1) The Society may apply to the Superior Court of Justice for an order prohibiting a person from contravening section 1.2 or from giving legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

(2) The court may make an order under subsection (1) if it is satisfied that the person is contravening or has contravened section 1.2 or is giving or has given legal advice or counsel respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

(3) An order may be made under subsection (1) whether or not the person has been prosecuted for or convicted of an offence under section 1.2.

(4) Any person may apply to the Superior Court of Justice for an order varying or discharging an order made under subsection (1).