

CONSULTATION PAPER: EXPANDING THE CLASSES OF LEGAL SERVICE PROVIDERS IN SASKATCHEWAN

SECTION I: BACKGROUND

1. The project

The Ministry of Justice and the Law Society are exploring possibilities for allowing non-lawyers to provide some legal services in Saskatchewan. The possibilities include:

- expanding the scope of paralegals working under the supervision of lawyers;
- relaxing the restrictions on other types of professionals who provide services akin to legal services; and
- creating a new class of legal service technicians who would be permitted to provide some legal services independently after undergoing training and assessment.

The project's overall goal is to provide greater access to legal services for Saskatchewan citizens.

2. Consultation process

The Law Society and the Ministry have been holding informal discussions with individual paralegals and their associations to better understand the current market. In particular, we are gathering information about the current environment, including how many non-lawyers are working in any legal capacity or are delivering some kind of informal legal service in Saskatchewan.

This document is the first step in the formal consultation process. It is being distributed to stakeholders for their consideration before completing the accompanying survey respecting the scope of practice for non-lawyer legal service providers. We hope to engage the courts, the profession in general, Crown corporations, Saskatchewan Trial Lawyers Association, Collaborative Law, Canadian Bar Association, Pro Bono Law, Public Legal Education Association, CLASSIC, Legal Aid, tribunals, community based organizations, notaries, paralegals, the public, insurance brokers, financial institutions, financial planners, and estate planners.

The Ministry and the Law Society will also conduct direct consultations with stakeholder groups to enable substantive conversations to occur.

A Task Force made up of representatives of affected stakeholders will be constituted to review the results of the survey and the direct consultations and develop recommendations regarding:

- the classes of legal service providers to be established, if any;
- the approach to regulation of those service providers;
- the scope of practice of those service providers; and
- proposed amendments to *The Legal Profession Act, 1990* to implement those recommendations.

There is much the Task Force needs to know from all stakeholders before it can propose a well-constructed regulatory approach for consideration by the Benchers of the Law Society and the Ministry. This consultation document is designed to initiate that process.

3. Reasons for the project

a) Access to justice

Access to justice/legal services is one of the most important issues affecting the legal system today. Many individuals say they are either: 1) unable to afford a lawyer; 2) unable to find a lawyer who practices in remote locations around the province; or 3) unable to find a lawyer who is competent or willing to practice in the required area of law. In some cases individuals facing legal problems may need to self-represent.

Many prominent national organizations have written reports on the issue of access to justice, and many of these reports encourage those in the legal profession to look at expanding the scope of legal service providers in each province.

In “Reaching Equal Justice: an invitation to envision and act,” the Canadian Bar Association has suggested a holistic, team approach to the delivery of legal services using lawyers, paralegals and other types of service providers – both of legal services and other types of services.

In “Access to Civil & Family Justice - A Roadmap for Change,” the National Action Committee on Access to Justice in Civil and Family Matters led by the Honourable Mr. Justice Thomas Cromwell has called for modernization and expansion of the legal services sector, including:

- increased opportunities for paralegal services;
- increased legal information services by lawyers and qualified non-lawyers; and
- programs that match unmet legal needs with unmet legal markets

Finally, Dr. Julie MacFarlane of the University of Windsor has conducted extensive research on self-represented litigants in Canada. In her report, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants,” she reports that the most consistently cited reason for self-representation was the inability to afford, to retain, or to continue to retain legal counsel. She also explains that in several cases, paralegal work with appropriate restrictions could greatly benefit self-represented litigants in light of the public need for less costly legal services.

These reports also encourage the legal profession to put the public first. The Law Society and the Ministry share a common interest in improving access to justice to the benefit of the public.

b) More consumer choice

Not all legal services need to be provided by a lawyer. There is a spectrum of services that need to be provided. On one end of the spectrum is routine commoditized legal work while on the other is high-level strategic advice. At present, many legal assistants routinely complete significant work on real estate, wills and estates, corporate and family law matters. With appropriate training and regulation, the scope of their services to the public could be expanded.

In many other professions, the customer is permitted to choose the level of services required. The consumer can choose the amount of risk they wish to undertake to acquire the services they need. The average person is extremely disadvantaged in facing the legal system; someone with training and experience to help could be of significant value. At present, many individuals who find themselves unable to afford or retain a lawyer attempt to deal with their legal issue on

their own, often with great difficulty. Having some assistance from a legal technician or paralegal would be better than going it alone.

c) Effective regulation of legal services

Due to the issues described above, the Ministry and the Law Society acknowledge that change is necessary, and that being proactive will result in the best possible outcome for the Saskatchewan public, the legal profession and other service providers. If we do not engage with these changes, those issues are likely to be resolved by courts, legislatures, and the marketplace in ways that might not consider stakeholder interests and concerns.

SECTION III: PROPOSED APPROACH

Unlike lawyers, whose scope of practice includes all legal services, any new class of legal service provider would likely have a clear delineation of the scope of permitted activities.

Recommendations regarding the details of any proposed licensing and regulatory schemes would be developed by the Task Force following consultation.

The main focus of this stage of consultation is the scope of practice for potential new categories of service providers. In order to assist stakeholders in identifying an appropriate scope, the following section provides an overview of the scope of practice of non-lawyer legal service providers in other jurisdictions.

SECTION IV: LEGAL SERVICE PROVIDERS IN OTHER JURISDICTIONS

While Saskatchewan's legal services market has unique characteristics, other jurisdictions provide useful examples of various ways additional categories of service providers might function.

a) Ontario

The Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2007. Although the educational requirements differ, paralegals are subject to all of the same regulatory requirements as lawyers in Ontario.

Licensed paralegals may represent someone in small claims court matters, traffic and other provincial offences, landlord-tenant and other matters handled by tribunals and administrative bodies, and minor matters under the *Criminal Code*. Paralegals are not permitted to appear in Family Court. Within the course of authorized proceedings, a licensed paralegal may:

- give legal advice concerning legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding;
- draft or assist with drafting documents for use in a proceeding; and
- negotiate on behalf of a person who is a party to a proceeding.

Any other legal services, such as drafting wills or handling real estate transactions or estates, must be provided under the supervision of a lawyer.

b) B.C.

Currently, British Columbia has a Society of Notaries Public which regulates notaries in the province who are permitted to provide certain legal services. In addition to traditional notarial services, notaries in B.C. can prepare and execute a host of legal documents, including powers of attorney, advanced health care directives, affidavits, instruments relating to property and commercial transactions, and wills or other testamentary instruments. The Law Society of B.C. has concluded that it is in the public interest to have one consistent regulatory standard for all legal service providers in the province. As a result of several years of examining that objective, the Law Society of B.C. and the Society of Notaries Public of B.C. have agreed that the latter will be subsumed into the Law Society's regulatory regime.

While lawyers and notaries will remain distinct categories of legal service providers, the Law Society of B.C. has also decided to pursue the establishment of a new class of non-lawyer legal service providers to provide certain legal services, subject to regulation by the Law Society. The proposed new class would be called "certified paralegals," and would be permitted to handle preparatory and out-of-court settlement work related to family law matters, advocate for clients before administrative tribunals, traffic court and small claims court and conduct mediations.

In January 2013, the Law Society of B.C. adopted new rules to expand the scope of "designated paralegals," which must be supervised by a lawyer. In any area of law where a supervising lawyer deems a designated paralegal competent, the paralegal is now permitted to give legal advice to clients. Designated paralegals may also make limited courtroom appearances to deal with uncontested procedural family law matters and some contested matters and accept undertakings. A lawyer may only supervise a maximum of two designated paralegals. The B.C. Provincial and Supreme Courts granted designated paralegals a limited right of audience in family law matters for the duration of the two-year pilot project.

c) Washington State

The Washington Supreme Court created a new class of service providers, called Limited License Legal Technicians (LLLTs), in 2012. Washington distinguishes between LLLTs and paralegals. LLLTs are authorized to engage in the limited practice of law in approved practice areas of law without the supervision of a lawyer but cannot represent clients in court proceedings or negotiation. Paralegals are employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and perform specifically delegated substantive law-related work for which a lawyer is responsible. The State also created Limited Practice Officers (LPOs), who are lay persons authorized to assist with documents in the sale of property, closing a loan, or extending credit after. LPO's must take and exam to become certified by the Washington Supreme Court.

d) New York State

In February of 2014, New York State launched a "Court Navigator" Program to assist unrepresented litigants during court appearances in landlord-tenant and consumer debt cases. Specially trained non-lawyers, called Court Navigators, provide general information, written materials, and one-on-one assistance to eligible unrepresented litigants under the supervision of not-for-profit service providers approved by the Court. In addition, Court Navigators provide moral support to litigants, help them access and complete court forms, assist them with keeping

paperwork in order, in accessing interpreters and other services, and otherwise explaining the courtroom process.

Court Navigators are also permitted to accompany unrepresented litigants into the courtroom in some courts and while they cannot address the court on their own, they are able to respond to factual questions asked by the judge. The Court Navigators are college students, law students and other persons deemed appropriate by the Program. Court Navigators do not give legal advice or get involved in negotiations or settlement conferences, nor do they give out legal information unless they have the approval of the Chief Administrative Judge of the Courts.

e) Utah

In December of 2015, the Utah Supreme Court signalled that it will allow licensed paralegal practitioners (LPP) to help clients navigate the legal system, though the new professionals won't be allowed to appear in court. LPPs will be able to help clients fill out legal forms, prepare settlements and represent them in mediated negotiations in the areas of family law, eviction and debt collection. The Utah State Bar will oversee licensing and discipline of LPPs, but the educational requirements and scope of practice have not yet been determined.

f) Others

Other commonwealth countries, such as England, Scotland, Ireland, Australia and New Zealand have multiple-licensing legal professions. All of these countries distinguish between barristers and solicitors. In Australia, New Zealand, Scotland and Ireland, licensed conveyancers make up a third category. Scotland also has solicitor-advocates which are regulated by the solicitor's regulatory body. Finally, in addition to barristers, solicitors and conveyancers, England and Wales has five other categories of licensees, all of whom are independently regulated, including patent attorneys, trade mark attorneys, costs lawyers and notaries. Each profession has a set of reserved legal activities (some overlap), set out by the *Legal Services Act 2007*.