

Licensed Paralegal Task Force Report

Benchers

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Purpose: Proposal for developing and regulating alternate legal service providers

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Background

1. The report proposes an approach that differs both from the Task Force’s mandate and from how the topic of alternate legal service providers has been approached to date. The Task Force seeks approval from the Benchers to make the conceptual shift set out in the report. If the Benchers adopt the recommended approach, additional work will be necessary to address some issues that are identified in the report, but not resolved.
2. The Benchers created the Licensed Paralegal Task Force in 2019. Its mandate and terms of reference are to further develop the work of the Alternate Legal Service Provider Working Group that had considered, and consulted on, the possibility of regulation and scope of practice of family law alternate legal service providers in 2018. Specifically, the Task Force was directed to:
 1. *Consider and identify opportunities, in consultation with the profession and others, for the delivery of legal services in areas where there is a substantial unmet legal need and the public would benefit from the provision of those services by licensed paralegals; and*
 2. *If the Task Force identifies areas of legal services where licensed paralegals may meet an unmet legal need:*
 - a) *consider the scope of services that would be appropriate for licensed paralegals to provide in relation to the identified areas of legal services;*
 - b) *consider what education, qualifications, credentials, experience and insurance would be necessary to enable licensed paralegals to deliver legal services in a competent and ethical manner in the identified areas of legal services; and*
 - c) *make recommendations to the Benchers for a regulatory framework that will ensure that licensed paralegals provide legal services in a regulated, competent and ethical manner only in the identified areas of legal services approved by the Law Society.*
3. The Task Force has met through the remainder of 2019 and into 2020. It has reviewed the Law Society’s prior work on alternate legal service providers, including a consideration of the 2018 consultation report and the commentary the Law Society received. It has also analysed the results of a 2020 IPSOS Reid survey of legal needs that updated the Law Society’s 2009 survey.
4. For the reasons set out below, the Task Force recommends an approach that varies from the approach contained in its mandate.

Licensed Paralegal Initiative: Brief Review

5. The licensed paralegal initiative is intended to address, at least in part, the broader access to justice challenge. The Law Society has made a policy decision that licensed paralegals

may help address areas of underserved or unmet legal needs where people are seeking legal services, but are unable to obtain them and has obtained legislative amendments (as yet unproclaimed) through which the policy decision may be implemented.

6. The research and data reviewed by the Task Force, including our 2009 and 2020 Surveys, establish that over any three year period approximately 50% of Canadians will experience a serious, difficult to resolve legal problem.¹ These problems can cluster and cascade into more problems, including economic, social and health problems. For people experiencing these problems, only about 15% get help from lawyers.² In 2009 when the Law Society surveyed legal need, approximately 16% of people sought help from someone other than a lawyer, including paid services, and approximately 70% sought no help.³ In 2020, the number of people seeking help from someone other than a lawyer increased to 27%, the number seeking help from lawyers remained steady at 15%, and the number of people who sought no help declined to 60%.
7. Clearly, therefore, while many people facing a legal problem are getting no legal help, a sizable portion of the population facing a legal problem is getting some legal assistance from someone other than a lawyer (16% in 2009 and 27% in 2020). Some of this may be from persons (like notaries or community legal advocates) who have some ability and qualifications to provide the advice or assistance, but some will undoubtedly be from people who have no demonstrable qualification and who operate under no regulatory structure, which leaves the client vulnerable.
8. The problem faced by the justice system, to which the licensed paralegal initiative directs itself, is that a large portion of the public (a) experience serious, difficult to resolve, legal problems, and want help from a professional, (b) have some money to spend, but (c) are not getting help from lawyers.

Discussion

Setting the Stage: “Top Down” vs. “Grass Roots”

9. British Columbia is not unique when it comes to having an access to justice challenge. Other jurisdictions face the same challenge and have made efforts to examine how legal services may be provided by people who do not have the full training of a lawyer.

¹ Ab Currie, “The Legal Problems of Everyday Life – The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians”, Department of Justice, 2009-05-12; Ab Currie, “Nudging the Paradigm Shift, Everyday Legal Problems in Canada” 2016 CanLIIDocs 352.

² Law Society of BC, IPSOS Reid Surveys 2009 and 2020 confirm these data.

³ The rounding totals are explained in the reports.

10. The Task Force’s examination of other jurisdictions suggests that the consideration of regulation relating to other legal professionals has resulted in two possible approaches: “top down” or “grass roots”
11. The “top down” approach is one in which the regulator defines a category of provider, a scope of practice, and a set of qualifications, credentials and experience in the expectation that there will be an interest in joining that category.
12. An example is Washington State’s Limited License Legal Technicians (“LLLT”) program. The LLLT initiative was driven by the courts (the body ultimately responsible in that state for professional regulation) particularly in response to self-represented litigants in court. The Supreme Court issued a practice rule, which created LLLTs, and the State Bar worked with local universities and colleges to design the training and credentialing requirements. The program was limited to family law, but was intended to be scaled up for other areas of need.
13. The LLLT requirements for licensing were considerable, including an associate level of post-secondary education, completion of ABA approved programs in family law and other basic legal subjects, 3000 hours of practice experience supervised by a lawyer over a three year period, and successful completion of a core education exam and practice area exam.
14. Over the course of the seven years during which the program was in place, only 45 LLLTs were registered and as of early summer there were only 39 active LLLTs.
15. In June, 2020, at the request of the State Bar, the Washington State Courts announced the LLLT program will end. The Chief Justice’s announcement cited the costs of the program and limited participation as the reasons for ending the program.⁴ The Task Force is of the view that the Washington State experience illustrates some of the problems with a top down approach.
16. A “grass roots” approach, on the other hand, is one where the regulator looks to revise or recalibrate its regulatory scope to permit the provision of legal services by providers who may already be providing services.
17. An example of the “grass roots” approach is the evolution of licensed paralegals in Ontario.
18. As a result of the definition of the practise of law in the Ontario *Law Society Act* and various court decisions⁵, by the year 2000 there had developed a fairly robust community of paralegals acting as "agents," who could represent individuals in court in certain

⁴ The board of the LLLT program has recently announced that it will be asking the Court reconsider its decision or at a minimum allow more time for the LLLT candidates to complete the licensing requirements.

⁵ The most significant was *R. v. Lawrie and Pointts Ltd.* (1987), 59 O.R. (2d) 161 (C.A.)

circumstances. Concerns about the scope of practice which paralegals could undertake led to calls for regulation of paralegals and, on the part of the Law Society of Upper Canada, calls for limitations on what matters paralegals could act on in court.⁶

19. Over the next seven years, there were repeated calls for regulation or limitations on the role of paralegals that eventually resulted, on May 1st, 2007, in the extension of the mandate of the Law Society of Ontario to include the regulation of paralegals. The number of paralegals initially registered following 2007 exceeded the estimates of the Law Society of Ontario and today there are over 9,000 paralegal licensees.⁷
20. While the grass roots development of a viable paralegal community in Ontario was the result of factors peculiar to that province, more recently other jurisdictions have taken to implementing changes to foster a grass roots approach to the development of alternate legal service providers that aim to create an environment for the provision of legal services by persons who are not lawyers.
21. The Law Society of Saskatchewan (LSS) created a task team to explore the issues of access to justice, increased consumer options and regulatory reform. As a result of the task team's 2018 report, the LSS expanded the exemptions to the unauthorized practice rules, including identifying a range of services that currently exist and do not pose a threat to the public and therefore no longer need to be "regulated" by the Law Society. The LSS has adopted an incremental approach that is application-based, guided by a set of principles, and takes a flexible and tailored approach to defining the qualifications, scope of practice, and practice controls that would be applicable to each licensee.
22. Utah, Oregon and California are all now looking at revising their regulation of the legal profession to permit alternatives to the delivery of legal service only by lawyers. They are either considering or implementing what is commonly referred to as a regulatory "sandbox" to permit experimentation in the delivery of legal services within the ambit of the practice authority in those states.
23. The Task Force recognizes that the Law Society's entire engagement with the idea of licensed paralegals to this point has been premised on what we have described here as the "top down" approach. The recommendations from the 2013 Legal Service Providers Task Force and the 2014 Legal Services Regulatory Framework Task Force assumed that the appropriate approach was to seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of

⁶ A convenient summary of the evolution can be found in [The Cory Report and the Regulation of Paralegals in Ontario](#)

⁷ As a further example of the "ground up" approach, it was the existing barristers and solicitors of the day in 1869 who came together to form the Law Society and it was the existing bar that prompted the creation of the *Legal Professions Act* in 1884.

law, set the credentialing requirements for such individuals, and regulate their legal practice. The implementation of that recommendation eventually resulted in the as-yet unproclaimed amendments to the *Legal Profession Act* permitting the regulation of licensed paralegals.

24. The Task Force also recognizes that the predecessor to this Task Force, the Alternate Legal Service Providers Working Group, made an attempt to move forward with a “top down” approach relating to the provision of family law legal services by licenced paralegals. It encountered conceptual issues in relation to determining the scope of practice and regulation as well as objections from the bar regarding the overall proposal.
25. However, the Task Force also recognizes that the Law Society has been engaged with the issue of recognizing paralegals as independent legal service providers for many years and that during that time, no “top down” approach has resulted in the existence of any licensed paralegals. The Task Force believes that such an approach must therefore be recognised as having limitations when trying to *create* a cohort of legal service providers and to determine, in a vacuum, what services that cohort should provide and how they should be regulated.
26. The Task Force therefore suggests that a more fruitful approach is to undertake a “grass roots” approach to the issue and, under some supervision, create a space that will let a marketplace develop that might address the unmet or underserved legal needs of the public. It is more likely that the marketplace will identify what these services are before the Law Society is able to do so.
27. In addition, the approach recommended in this report aligns with the Access to Justice BC Triple Aim, which the Benchers adopted in 2018. The Triple Aim seeks to ensure that the user experience is improved, access to justice is enhanced, and there is overall cost efficiency.
28. The Task Force is therefore recommending the creation of a process that will allow service models to develop under general oversight of the Law Society in a manner that allows for creativity and innovation while determining, based on evidence that will be gathered as the market develops, the level of regulation required relative to the risk to the public. The environment in which this process can unfold is increasingly referred to as a regulatory “sandbox.”

A Proposed “Sandbox.”

29. The Utah Implementation Task Force on Regulatory Reform described its regulatory sandbox as a well-established policy tool through which regulators permit new models and services to participate in a market under careful oversight to test the interest, viability, and consumer consequence of the model or service and inform policy development. New legal

practice providers and services have to apply to enter the regulatory sandbox before they will be permitted to offer services in the legal market. The application form sets out a series of criteria that must be met in order for people to be granted admission to the sandbox. The Task Force recommends tailoring a similar, yet British Columbia specific, model of intake. Successful applicants will be able to offer services under careful oversight to ensure there is no demonstrable harm to a person or public.

30. As will be obvious from the description of the regulatory sandbox, there is a necessary connection with s.15 of the *Legal Profession Act* and the exercise of the Law Society’s ability to restrain the unauthorized practice of law. To that end, the Unauthorized Practice Committee has been working to develop a clear statement of policy as to when the Law Society will and will not take steps to respond to allegations and instances of the provision of legal services that may amount to the unauthorized practice of law. The goal is to publish this policy so that individuals and organizations may be able to assist with providing access to some legal services where there is no demonstrable harm to a person or the public. This work aligns with the recommendations of this Task Force.

Populating the Sandbox

Application

31. It is expected that the application form will require basic information about the applicants, the services they intend to provide, the evidence in support of how those services meet the criteria of unmet or underserved legal need,⁸ the skills, experience and knowledge the applicant brings that are relevant to providing those services, as well as certain requirements to adhere the standard ethical obligations that will be developed as part of the regulatory process.

“No action agreements”

32. Individuals who meet the requirements of the application phase will be issued a “no action agreement,” which will set out the terms and conditions on the limited scope of legal services the applicant will be permitted to perform. The letter will also set out conditions for oversight, including reporting requirements and the potential requirement for insurance coverage. The letter will explain that the ability to provide the services is revocable by the Law Society. A no action agreement could be provided to a person, or categories of persons, who meet objective identified, approved criteria for providing particular services.
33. This approach will create a controlled environment, within a “sandbox” structure, through which to test the types of services that may be offered, the degree of regulation may be

⁸ This evidence could be tested against existing data such as the 2009 and 2020 Law Society IPSOS Reid surveys.
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required, and the degree of qualification or background of the provider.

Paralegals

34. The Task Force recognizes that the British Columbia Paralegal Association (BCPA) has, for some time, expressed interest in a more formal recognition of paralegals. A survey by the BCPA prior to the introduction of the amendments to the *Legal Profession Act* indicated that, if paralegals were regulated in a manner similar to Ontario paralegals, a significant majority would choose to practise as a regulated paralegal.
35. There are currently over 800 designated paralegals. Designated paralegals are permitted to provide all legal services, albeit under the supervision of a lawyer. The Law Society assumes that lawyers who have designated a paralegal as a “designated paralegal” have confidence that the paralegal has a significant degree of ability to provide legal services directly to a client. The program proposed in this report might therefore usefully leverage the existence of a group of “designated paralegals” as potential applicants for entry to the regulatory sandbox.
36. One way the Law Society can foster the “grass roots” approach is by providing a pathway for existing paralegals and designated paralegals to engage in providing legal services to the public through inclusion in the regulatory sandbox. The Task Force has come to recognize that this approach is the most viable way to move forward with a licensed paralegal program.
37. A system can eventually be developed by which paralegals who enter the sandbox, and meet identified objectives/criteria for a defined period of time, could eventually apply to the Law Society to become licensed paralegals.

Some further comments on the sandbox

38. Ultimately, the Task Force expects that if paralegals embrace the opportunity to provide legal services within the regulatory sandbox, there will eventually be a qualified cohort of providers within the sandbox that will form the basis for a more structured licensed paralegal regime, based on those actively providing paralegal services. The sandbox could continue to operate with the other individuals who, while not having a path to licensing, will be able to continue to operate under the no action agreement regime.
39. The Task Force recognizes that as the sandbox is developed, discrete matters such as the needed level of regulation will need to be determined. The sandbox will include a spectrum of responses to the access to justice problem, not a single model of service delivery or even potential licence. For some service providers, entry into the sandbox will put them on a path to eventual licensing by the Law Society, while others will operate without a license, but in a limited and discrete area of service. Although the model

recommended below might present as a linear progression, it is not intended to be presented in that fashion, except to the degree that the act of licensing (if it does take place) will be informed by what the Law Society learns from the sandbox.

40. The Task Force also recognizes that even within a relaxed, regulatory sandbox it is important that the people providing legal services adhere to certain essential aspects of the *Code of Conduct for British Columbia*. While not all elements of the *Code* would transfer to people in the sandbox, at a minimum concepts of maintaining client confidences, not acting in a conflict of interest, not providing services in an illegal manner, are all important. The Task Force is of the view that key aspects of the *Code* must be included in the terms of any non-action letter or other contractual document that permits activity within the sandbox, and reinforced in the initial application process. The key will be to identify principles that aim to reduce the risk of harm to the public.

Recommendation

41. The Task Force recommends a “grass roots” approach to advance the licensed paralegal initiative within a regulatory sandbox.
42. The regulatory sandbox would:
- (a) Permit individuals to apply to the Law Society to provide legal advice or services in areas where the Law Society determines it is in the public interest to expand the permitted services, as well as in areas where there the Law Society has assessed that there are no services (or insufficient services) being provided by lawyers;
 - (b) Develop a system of no action agreements to cover categories of legal service providers, and individual-based letters for applicants who wish to provide discrete services based on their skills and knowledge in circumstances where the Law Society has assessed that it is in the public interest to permit the services to be provided in the sandbox; and
 - (c) Eventually provide the basis for the formal recognition of licensed paralegals within the licensed paralegal regime, by way of amendments to the LPA, providing for the types of paralegals who will be able to provide legal services directly to the public in identified areas of need, either working with lawyers or independently.
43. If this proposal is accepted by the Benchers, additional work will be required to detail the administrative and operational implications of overseeing the sandbox. The Task Force is of the view that it is premature to develop those criteria without the Benchers’ endorsement of exploring the framework of a sandbox.
44. In closing, the Task Force observes that the amendments to the *Legal Profession Act* have been in a holding pattern for almost two years, and it is time to move forward with a program of expanded service provision with a path towards licensing. For the reasons

contained in this report, the Task Force recommends the Law Society further develop what we call a grass roots sandbox approach and consult with interested stakeholders for their ideas, comments, and critiques on how best to make that work.