



Law Society
of Ontario

Barreau
de l'Ontario

Tab 1.2

Paralegal Standing Committee

Response to Motion at the 2021 Annual General Meeting

November 26, 2021

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Motion

The Paralegal Standing Committee (the “Committee”) recommends that Convocation approve the following recommendations in response to the motion made at the 2021 annual general meeting in accordance with s. 42(1)(b) of By-Law 2:

- With respect to the first part of motion on exemptions from paralegal licensure, the Committee understands the importance and timeliness of this issue and will continue to review the exemptions. The Committee will establish a working group to study the exemptions and to consult with impacted stakeholders, including the provincial government, with a view to reducing the exemptions where appropriate.
- With respect to the second part of the motion on complaints of unauthorized practice, Professional Regulation will continue to prosecute complaints of unauthorized practice as per its protocols and in a manner consistent with the Law Society’s mandate.

Context

On March 18, 2021, the Law Society received a motion for its 2021 annual general meeting (“AGM”). The motion was filed by James Moak, and co-signed by ten members of the Law Society, in accordance with s. 16(1) of By-Law 2.¹

The motion called for the following:

1. That sections 30(1) (in-house legal services provider), 30(2) (legal clinics), 30(3) (not-for-profit organizations), 30(4) (acting for friend or neighbour), 30(5) (acting for family), 30(6) (member of provincial parliament) and 30(7) (other profession or occupation) be revoked from By-Law 4 in order to end these exemptions from the paralegal licensure.
2. That the Law Society fully address all complaints of unauthorized practices in a timely and forthright manner immediately and use all sections of the *Law Society Act* to ensure the public is protected.

At the AGM on May 12, 2021, the motion was amended at the request of Mr. Moak to remove section 30(2) (legal clinics) from the list of exemptions to be revoked. The amended motion is attached as **Tab 1.2.1**.

¹ Section 16 (1) of By-Law 2 reads as follows:

16. (1) Subject to subsection (2), a motion to be made at a meeting shall be,
(a) in writing and signed by exactly ten members, none of whose licence is suspended at the time of signature; and
(b) delivered to the secretary at least forty days prior to the day fixed for the meeting.

The motion carried by a vote of 197 in favour and 32 against. The motion is not binding on Convocation. In accordance with s. 42 of By-Law 2, Convocation has six months to consider the motion from the date of the AGM:

- 42(1) All motions carried at a meeting of members shall be,
- (a) communicated to Convocation at its first regular meeting after the meeting of members; and
 - (b) considered by Convocation within six months of the meeting of members.

Discussion

A. Exemptions from Paralegal Licensure

Following the AGM, a review of paralegal regulation in Ontario and the history of exemptions was undertaken, including the basis for the creation of licensing exemptions, past reviews and refinements of the licensing exemptions, previous policy decisions of Convocation and the position of the provincial government. After thorough consideration of the motion, the consensus of the Committee was to continue to review the exemptions with a view to reduce them where appropriate. A separate working group will be established to complete a comprehensive analysis of the licensing exemptions and consult with impacted parties, stakeholders, and the government, in order to assess the appropriateness of each exemption.

The Committee's recommended approach is consistent with previous decisions of Convocation, the principles of the 2004 Report of the Task Force on Paralegal Regulation and the *Access to Justice Act*:

- Paralegal regulation was developed to achieve the dual objectives of access to justice and consumer protection, as evidenced by the 2004 Report of the Task Force on Paralegal Regulation and the *Access to Justice Act*.
- Exemptions and exclusions from paralegal licensure for certain categories of persons were always intended to be part of the regulatory regime. The regulatory framework was designed with a broad definition of legal services to allow the Law Society to regulate the delivery of all legal services in order to facilitate effective oversight of the profession. Exemptions were then put in place for legal services that were not necessary or appropriate to regulate.
- At the beginning of paralegal regulation, it was recognized that it was not ideal to have so many exemptions, but their accommodation was a reality of an introduction of a new licensing regime.
- Since the outset of paralegal regulation, Convocation has reduced the number of exemptions where appropriate. This is in keeping with Convocation's direction to

eliminate exemptions over time and primarily through consultations and negotiation with relevant stakeholders.²

- While Convocation's position has been to reduce the number of exemptions over time, there are some exemptions that are likely to be permanent such as exemptions for family, friends and neighbours. The appropriateness of each exemptions needs to be assessed before further action is taken.

This approach has resulted in the elimination of seven exemptions and the further refinement of six exemptions in a manner that continues to facilitate access to justice while protecting the public.

Since the outset of paralegal regulation in 2007, the following exemptions have been eliminated by Convocation:

- Ontario Professional Planners Institute
- Board of Canadian Registered Safety Professionals
- Appraisal Institute of Canada
- Canadian Society of Professionals in Disability Management
- Injured Workers groups funded by the WSIB
- Office of the Worker Adviser (ending as of January 1, 2022)
- Office of the Employer Adviser (ending as of January 1, 2022)

Since 2007, the following exemptions have been refined by Convocation:

- Acting for friend or neighbour
- Acting for family
- Member of Provincial Parliament
- Human Resources Professionals Association of Ontario
- Trade unions and persons designated by the Ontario Federation of Labour
- Provision of legal services by students

B. Unauthorized Practice

The second part of the motion addresses the prosecution of complaints of unauthorized practice. Prosecutions are independent of the Law Society's policy function and are not conducted at the direction of Convocation. The prosecution of unauthorized practice is conducted by the Law Society's Professional Regulation division. Professional Regulation is aware of the motion and the concerns raised at the AGM. It will continue to prosecute complaints of unauthorized practice as per its protocols and in a manner consistent with the Law Society's mandate to regulate the lawyers and paralegals of Ontario in the public interest.

On the specific issues of unauthorized practice raised at the AGM, the Law Society met with Tribunals Ontario representatives. The Landlord and Tenant Board (LTB) takes steps

² Report to Convocation from the Paralegal Standing Committee, "Report to Convocation" (June 29, 2010).

to ensure that representatives are entitled to appear, including confirming representatives' eligibility at the outset of hearings to ensure they meet the criteria outlined above, and asking further probing questions where a representative is not licensed.

While the LTB asserts that its existing processes and adjudicators are sufficient to minimize any potential problems with unlicensed representatives, the LTB and Tribunals Ontario have committed to undertake a comprehensive review of its forms to ensure clarity and consistency across all administrative tribunals in Ontario; to review their Interpretation Bulletins and provide additional education and training on the issue of unlicensed representatives to tribunal members and staff at the LTB. The education and training components will eventually be extended to all administrative tribunals across Ontario.

Background on Exemptions

C. Paralegal Regulation in Ontario

The Law Society began regulating paralegals in 2007. The *Access to Justice Act* (Bill 14) made amendments to the *Law Society Act* to expand the mandate of the Law Society to regulate paralegals in the public interest.

In 2004, then-Attorney General of Ontario, the Honourable Michael Bryant, asked the Law Society to regulate paralegals in Ontario.³ The position of the Attorney General was that the regulation of paralegals would increase access to justice by giving consumers a choice in the qualified legal services they use, while providing a regulatory framework to protect the public.⁴ In response, Convocation voted in principle to accept this responsibility and authorized the Treasurer to establish a Task Force on Paralegal Regulation (the "Task Force") to develop a detailed proposal for the regulation of paralegals in collaboration with the Ministry of the Attorney General.

On September 23, 2004, Convocation adopted the Task Force's final report which outlined a regulatory framework for the regulation of paralegals.⁵ Recommendation 13 of the Task Force's report spoke to the scope of the activities to be regulated by the Law Society:

"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."⁶

The Task Force noted that the rationale for paralegal regulation was based on the need for consumer protection and access to justice, particularly in the case of vulnerable clients. It

³ Report to Convocation from the Paralegal Standing Committee, "Report of the Task Force on Paralegal Regulation" (May 28, 2004) at 4.

⁴ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess, No 11 (27 Oct 2005) at 494 (Michael A. Brown).

⁵ Report to Convocation from the Paralegal Standing Committee, "Report of the Task Force on Paralegal Regulation" (September 23, 2004) at 1. [Report of the Task Force]

⁶ *Ibid* at 29.

recommended that the model not be broader than was necessary to achieve these objectives. The Task Force made the following observations:

“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”⁷

The Task Force established three initial categories of persons under the regulatory framework⁸:

- 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.
- 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.

The Task Force’s final report set the groundwork for the legislative scheme in the *Access to Justice Act*.

D. Review of Exemptions

From the outset of regulation, the Law Society has reduced the number exemptions over time where appropriate.

In April 2009, the Committee established the Exemptions Working Group (“Working Group”), chaired by Bencher Doug Lewis, to conduct a review of the licensing exemptions in By-Law 4. The Working Group consulted with 22 stakeholders, including the Ministry of the Attorney General.

⁷ Report of the Task Force, *supra* note 5 at 14.

⁸ *Ibid* at 16.

On January 28, 2010, the Working Group presented its report to Convocation, which included recommendations to reduce and refine certain by-law exemptions. The report outlined the following approach for reviewing exemptions:

- The objective should be to reduce the exemptions over time. At the beginning of paralegal regulation, it was recognized that it was not ideal to have so many exemptions, but their accommodation was a reality of an introduction of a new licensing regime.
- Every attempt should be made to reduce the number of persons in the exemptions by negotiation and/or promoting of the advantages of being licensed.
- If an exemption is to be ended, consideration must be given to facilitating admission for the persons covered by the exemption, at that time.

The Working Group noted that while phasing out exemptions was desirable, further steps toward voluntary compliance and licensing should precede any changes to the by-law. Convocation approved Working Group's recommendations and approved in principle the policy to reduce the number of exemptions where appropriate.

In November 2012, following the five-year review of paralegal regulation, a further review of licensing exemptions was conducted by a working group chaired by Paul Dray that was established by the Committee, which resulted in a further reduction of exemptions.

Since then, the Law Society has engaged in discussions and negotiations with impacted parties and stakeholders, resulting in the further reduction of licensing exemptions. Most recently, Convocation approved a motion in February 2020 to end exemptions for injured workers' groups, and in May 2021 to end exemptions for employees of the Office of the Worker Adviser and the Office of the Employer Adviser as of January 1, 2022. Discussions with key stakeholders are continuing with respect to the exemptions.

**MOTION AS AMENDED – CARRIED AT THE LSO ANNUAL GENERAL MEETING
MAY 12, 2021**

WHEREAS the Law Society of Ontario (LSO) has the duty to serve the public trust and act in a way that protects the public and to operate in a timely, open and efficient manner.

WHEREAS By-Law 4 of the Law Society of Upper Canada (LSUC) was made and came into force on May 1, 2007, the same date paralegals first became regulated by LSUC in accordance with the Law Society Act.

WHEREAS a number of exemptions as to who can provide legal services as a paralegal were incorporated into the legislation that established the right of paralegals to provide legal services in 2007.

WHEREAS thirteen years have elapsed since paralegals were licensed and regulated.

WHEREAS the LSO and the former LSUC have been informed of many violations of the Law Society Act and accompanying bylaws and have done nothing to address these egregious violations since 2007.

WHEREAS the general public has and is being exposed to unlicensed people providing legal services who are not insured or trained to do so.

WHEREAS as unlicensed people who provide legal services have been deemed incompetent by the Court.

WHEREAS this issue has been squarely in front of LSO and the former LSUC and nothing has been done to remove the various exemption thereby protecting the public.

WHEREAS there are no exemptions as to who may practice as a Lawyer thereby creating a discriminatory class (Paralegal) under the Law Society Act.

WHEREAS eliminating exemptions would ensure that the public is being served and protected by people licenced to provide legal services or practice law with corresponding continued training, insurance, and accountability.

THEREFORE BE IT RESOLVED:

1. THAT PART V OF BY-LAW 4 - PROVIDING LEGAL SERVICES WITHOUT A LICENCE BE AMENDED AS FOLLOWS:

A. Sections 30.1, 30.3, 30.4, 30.5, 30.6 30.7, be revoked in their entirety forthwith.

2. That the administration of the LSO be instructed to fully address all complaints of unauthorized practices in a timely and forthright manner immediately and they are to use all Sections of the Law Society Act not just injunctions to ensure the public is protected.