



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Report to Convocation April 28, 2011

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
William Simpson, Vice-Chair
Marion Boyd
Robert Burd
James R. Caskey
Paul Dray
Seymour Epstein
Michelle Haigh
Douglas Lewis
Susan McGrath
Kenneth Mitchell
Baljit Sikand
Alan Silverstein

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Committee met on April 7th, 2011. Committee members present were Cathy Corsetti (Chair), William Simpson (Vice-Chair), Marion Boyd, Robert Burd, James Caskey (by telephone), Paul Dray, Seymour Epstein, Michelle Haigh, Doug Lewis, Susan McGrath, Ken Mitchell and Alan Silverstein. Staff members in attendance were Zeynep Onen, Roy Thomas, Terry Knott, Jim Varro, Elliot Spears, Naomi Bussin, Sophie Galipeau, Marisha Roman and Julia Bass.

FOR DECISION

AMENDMENT TO BY-LAW 4: EDUCATIONAL EQUIVALENCY

Motion

- 2. That By-law 4 be amended as shown at Appendix 1, to provide for educational equivalency for members of adjudicative tribunals with five years of full time work experience.**

Issue

3. On February 24th, Convocation approved in principle the Committee's recommendation that persons with five years of full-time work experience as adjudicators on certain Ontario tribunals should be given education equivalency for their experience, for the purpose of the paralegal licensing requirements.
4. The necessary wording to effect this change to By-law 4 has now been prepared, and is attached for Convocation's consideration. A bilingual version of the amendments will be distributed at Convocation.

The Committee's Deliberations

5. The Committee approved the draft and recommends it to Convocation.

THE LAW SOCIETY OF UPPER CANADA

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

**BY-LAW 4
[LICENSING]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 28, 2011

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010 and October 28, 2010, be further amended as follows:

1. **Clause 13 (2) (d) of the By-Law is amended by deleting “or” at the end.**

2. **Clause 13 (2) (e) of the By-Law is amended by deleting the period at the end and substituting “; or”.**

3. **Subsection 13 (2) of the By-Law is amended by adding the following clause:**
 - (f) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of a member of one or more of the following entities:
 - (i) Agriculture, Food and Rural Affairs Appeal Tribunal,
 - (ii) Animal Care Review Board,
 - (iii) Assessment Review Board,
 - (iv) Board of negotiation continued under subsection 27 (1) of the *Expropriations Act*,
 - (v) Board of negotiation established under subsection 172 (5) of the *Environmental Protection Act*,

- (vi) Building Code Commission,
- (vii) Child and Family Services Review Board,
- (viii) Chiropody Review Committee,
- (ix) Consent and Capacity Board,
- (x) Conservation Review Board,
- (xi) Criminal Injuries Compensation Board,
- (xii) Crown Employees Grievance Settlement Board,
- (xiii) Custody Review Board,
- (xiv) Dentistry Review Committee,
- (xv) Environmental Review Tribunal,
- (xvi) Fire Safety Commission,
- (xvii) Health Professions Appeal and Review Board,
- (xviii) Health Services Appeal and Review Board,
- (xix) Human Rights Tribunal of Ontario,
- (xx) Landlord and Tenant Board,
- (xxi) Licence Appeal Tribunal,
- (xxii) Medical Eligibility Committee formed under subsection 7 (1) of the *Health Insurance Act*,
- (xxiii) Normal Farm Practices Protection Board,
- (xxiv) Ontario Civilian Police Commission,
- (xxv) Ontario Labour Relations Board,
- (xxvi) Ontario Municipal Board,
- (xxvii) Ontario Parole Board,

- (xxviii) Ontario Review Board,
- (xxix) Ontario Special Education Tribunal (English),
- (xxx) Ontario Special Education Tribunal (French),
- (xxxi) Optometry Review Committee,
- (xxxii) Pay Equity Hearings Tribunal,
- (xxxiii) Physician Payment Review Board,
- (xxxiv) Public Service Grievance Board,
- (xxxv) Social Benefits Tribunal,
- (xxxvi) Workplace Safety and Insurance Appeals Tribunal.

4. Subsection 13 (2.1) of the By-Law is amended by adding “except clause (2) (f),” after “For the purposes of subsection (2),”.

AMENDMENTS TO RULE 3.02 OF THE PARALEGAL RULES - TRUST ACCOUNTS

Motion

6. That Convocation approve the amendments to Rule 3.02 of the *Paralegal Rules of Conduct* shown in paragraph 10, below.

Background

7. On February 24th, Convocation approved in principle recommendations from the Paralegal Standing Committee and the Professional Regulation Committee that the provisions governing trust accounts should be strengthened. Implementing the changes will require amendments to By-law 9, the *Paralegal Rules*, and the Paralegal Guidelines.

By-law 9

8. The necessary amendments to By-Law 9 govern both lawyers and paralegals, and will be presented to Convocation by the Professional Regulation Committee. These amendments were approved by the Paralegal Standing Committee at the April meeting.

Paralegal Rules

9. Rule 3.02 (3) currently reads as follows:

3.02 ADVISING CLIENTS

...

Dishonesty, Fraud, etc. by Client

(3) A paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct when advising a client and he or she shall not instruct the client on how to violate the law and avoid punishment.

10. The necessary changes to the *Paralegal Rules*, to reformat subrule (3) and add subrules (3.1) and (3.2), have now been prepared by the Law Society's outside consultant; the proposed Rule now reads as follows:

Rule 3.02 ADVISING CLIENTS
Dishonesty, Fraud etc. by Client

...

- (3) When acting for a client, a paralegal shall not
- (a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct; or
 - (b) advise the client on how to violate the law and avoid punishment.

(3.1) When retained by a client, a paralegal shall make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation.

(3.2) A paralegal shall not use his or her trust account for purposes not related to the provision of legal services.

Paralegal Guidelines

11. The necessary wording for the change to Guideline 7 of the *Paralegal Guidelines* has been prepared and is shown below for Convocation's information:

2. ~~Before accepting a retainer or during a retainer, if a paralegal has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the paralegal should make reasonable inquiries to obtain information about the client and about the purpose of the retainer.~~ The requirement in subrule (3.1) is especially important where a paralegal has suspicions or doubts about whether he or she might be assisting a client in crime or fraud. For example, if a paralegal is consulted by a prospective client who requests the paralegal to deposit an amount of cash into the paralegal's trust account but is vague about the purpose of the retainer, the paralegal has an obligation to make further inquiries about the retainer. (The paralegal should also have regard to the provisions of By-Law 9 regarding cash transactions). The paralegal should make a record of the results of these inquiries.
3. A client or another person may attempt to use a paralegal's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. These situations highlight the fact that when handling trust funds, it is important for a paralegal to be aware of his or her obligations under the Rules and the Law Society's By-laws regulating the handling of trust funds.

LAW SOCIETY AWARDS

Motion

- 12. That the Treasurer appoint a Working Group to develop appropriate criteria for the creation of a Law Society Paralegal Professional Achievement Award.**

Background

13. Over the more than 200 years when the Law Society only regulated lawyers, a number of ways of recognizing outstanding professional achievement were developed. These include,
- a. the Law Society Medal;
 - b. the Honorary Doctor of Laws;
 - c. the Lincoln Alexander Award, created in 2002, for commitment to the public interest and the pursuit of community service, and
 - d. the Laura Legge Award, created in 2007, for women lawyers who have exemplified leadership in the profession.
14. Now that the Law Society has assumed the responsibility for regulating paralegals, it is appropriate to consider whether there should also be an award recognizing outstanding achievement by paralegals.

The Committee's Deliberations

15. Since the regulated paralegal profession has only existed in its current form for a few years, rather than revisit the criteria for the existing Law Society Medal or other awards, it is appropriate to develop an award based on different criteria, emphasizing adherence to best practices and contributions to the development of the new profession.
16. It would be appropriate that the words "Law Society" appear in the title of the award. There are a number of options as to the details of such an award; accordingly the Committee favoured asking the Treasurer to establish a working group to develop appropriate criteria for a Law Society Paralegal Professional Achievement Award, recognizing a licensed paralegal who has made an outstanding contribution to the development of the profession.

LICENSING EXAMINATIONS PROCESS

Motion

17. That Convocation approve the following proposal respecting Law Society of Upper Canada licensing examinations:
- a. to qualify for a Class P1 licence, candidates would have three years from the time of registering with the Law Society as licensing candidates to pass the licensing examinations and would be limited in the number of total attempts they would have to pass the licensing examinations;
 - b. Initially, candidates would only have a total of three attempts to pass the licensing examinations. However, there would a “right”, for candidates who failed the licensing examinations after three attempts, to seek a waiver of the “three attempt rule”, from the Director, Professional Development and Competence.
 - c. A request for a waiver could only be made once, and the Director, Professional Development and Competence could only permit one further attempt at the licensing examinations.
 - d. Candidates who fail the licensing examinations after three attempts and do not seek permission to make a fourth attempt, candidates who fail the licensing examinations after three attempts and are not permitted by the Director, Professional Development and Competence to make a fourth attempt or candidates who fail the licensing examinations after four attempts would have their registration with the Law Society cancelled.
 - e. Thereafter, such (now former) licensing candidates would be permitted to re-register with the Law Society only after a year had passed (from the time registration was cancelled) and only after demonstrating to the Director, Professional Development and Competence a change in circumstances.
18. That Convocation direct the amendment of Law Society by-laws to reflect the proposal in paragraph 17, such proposed amendments to be provided to Convocation for approval.

Background

19. The Committee considered the matter reported by the Professional Development and Competence Committee concerning the number of times an applicant for a Law Society licence is permitted to take a licensing examination, shown at **TAB 7**.

20. While the licensing process for paralegals is relatively new, meaning that there has not been the same experience with candidates taking the licensing examination up to nine times, it is appropriate for the policy to be the same for both lawyers and paralegals.

The Committee's Deliberations

21. Accordingly, the Committee was of the view that the same policy should be adopted for paralegal applicants.

FOR INFORMATION

ELECTION OF PARALEGAL STANDING COMMITTEE CHAIR

22. By-law 3 provides for the annual election of the Chair of the Paralegal Standing Committee in sections 130.1 to 130.13, and requires the election of the Chair to be the first item of business at the meeting one year from the last election. Since the first election was held in April 2010, the election of the Chair was required to be the first item of business at the meeting in April 2011.
23. In accordance with the provisions of By-law 3, the Committee elected Ms Cathy Corsetti as Chair of the Paralegal Standing Committee.

BILL C-35, AMENDING IMMIGRATION AND REFUGEE PROTECTION ACT

24. Bill C-35, *An Act to amend the Immigration and Refugee Protection Act*, received Royal Assent on March 23rd, 2011. The Act will authorize paralegals licensed by the Law Society to appear at the Immigration and Refugee Appeal Board without having to become a member of any other body. The Act comes into effect on a date to be proclaimed. The government has also announced plans for a new regulatory body in this field, to be called the Immigration Consultants of Canada Regulatory Council, to be in existence by this summer. The press release and legislative summary are at **Appendix 2**.

PROHIBITION ON REPRESENTATION OF LICENSEES

25. Subsequent to the deliberations of the Professional Regulation Committee and the Tribunals Committee, the Committee approved the proposal that there be an express prohibition on all members of the Law Society Hearing and Appeal Panels from representing licensees who are the subject of an investigation by the Law Society.

LAW COMMISSION REPORT ON THE PROVINCIAL OFFENCES ACT

26. The Committee approved the proposal from the Access to Justice Committee to request Convocation's approval to make a submission to the Law Commission of Ontario regarding its report on the *Provincial Offences Act*.

EXPANSION OF THE LAWYER REFERRAL SERVICE

27. The Committee was briefed by the Director of Client Services on the processes associated with a possible expansion of the Law Society's Lawyer Referral Service to include paralegals.

QUARTERLY REPORT ON PROFESSIONAL REGULATION

28. The Director of Professional Regulation presented the Quarterly Report from her department for the first quarter of 2011.

Legislation Targeting Crooked Immigration Consultants Receives Royal Assent

Wed Mar 23 2011, 5:10pm ET OTTAWA, ONTARIO -- Marketwire

Citizenship, Immigration and Multiculturalism Minister Jason Kenney welcomed today the final passage of legislation to crack down on crooked immigration consultants. Bill C-35, originally introduced as the *Cracking Down on Crooked Consultants Act*, has now received Royal Assent and is expected to come into force in the coming months. "Once in force, this legislation will make it an offence for anyone other than an authorized immigration consultant, lawyer, other representative or authorized entity to conduct business at any stage of an application or proceeding," said Minister Kenney. "We are targeting undeclared "ghost" consultants as well as other unscrupulous immigration representatives who are engaging in unacceptable activity." The Act strengthens the rules governing those who charge a fee for immigration advice or representation; closes certain loopholes; increases penalties for unauthorized representation; and allows for more government oversight in order to improve the way in which immigration consultants are regulated.

"Crooked immigration consultants pose a threat not only to their victims, but also to the integrity of our immigration system," said Minister Kenney. "This new legislation will help us protect people wanting to immigrate to or stay in Canada, as well as the integrity of Canada's immigration system." In response to issues raised by stakeholders and members of the House of Commons Standing Committee on Citizenship and Immigration, amendments to the Bill were made during the Committee's study of Bill C-35. Among key amendments are measures to: -- Double maximum fines for the offence of providing unauthorized immigration advice from \$50,000 to \$100,000 and summary convictions from \$10,000 to \$20,000; -- Amend the offence provision to capture both direct and indirect representation and advice; and -- Recognize paralegals regulated by a Law Society as being exempted from prohibition on providing representation and advice. Once in force, the Act will impose penalties on unauthorized representatives who provide, or offer to provide, advice or representation for a fee, at any stage of an immigration application or proceeding. This includes the period before a proceeding begins or an application is submitted. In addition, the legislation authorizes the disclosure of information on the ethical or professional conduct of an immigration consultant to those responsible for governing or investigating that conduct. Bill C-35 received Royal Assent this afternoon after it was approved in the Senate on March 21, 2011. It was unanimously adopted at third reading in the House of Commons on December 7, 2010, after being introduced on June 8th. This process is part of a broader strategy to protect people wanting to immigrate to or stay in Canada from immigration fraud. Minister Kenney raised the issue of immigration consultant fraud in meetings with officials in China, India and the Philippines last fall and more recently in Pakistan. He has urged those governments to protect their citizens from exploitation and abuse by crooked immigration consultants.

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FOR FURTHER INFORMATION PLEASE CONTACT:

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BILL C-35 LEGISLATIVE SUMMARY

This enactment amends the *Immigration and Refugee Protection Act* to change the manner of regulating third parties in immigration processes. Among other things it

(a) creates a new offence by extending the prohibition against representing or advising persons for consideration — or offering to do so — to all stages in connection with a proceeding or application under that Act, including before a proceeding has been commenced or an application has been made, and provides for penalties in case of contravention;

(b) exempts from the prohibition

(i) members of a provincial law society or notaries of the *Chambre des notaires du Québec*, and students-at-law acting under their supervision,

(ii) any other members of a provincial law society or the *Chambre des notaires du Québec*, including a paralegal,

(iii) members of a body designated by the Minister of Citizenship and Immigration, and

(iv) entities, and persons acting on the entities' behalf, acting in accordance with an agreement or arrangement with Her Majesty in right of Canada;

(c) extends the time for instituting certain proceedings by way of summary conviction from six months to 10 years;

(d) gives the Minister of Citizenship and Immigration the power to make transitional regulations in relation to the designation or revocation by the Minister of a body;

(e) provides for oversight by that Minister of a designated body through regulations requiring the body to provide information to allow the Minister to determine whether it governs its members in the public interest; and

(f) facilitates information sharing with regulatory bodies regarding the professional and ethical conduct of their members.