



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

Report to Convocation November 25, 2010

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
Glenn Hainey
Douglas Lewis
Kenneth Mitchell
Baljit Sikand

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
Julia Bass 416 947 5228**

TABLE OF CONTENTS

For Decision

Amendment to Rule 4.02 (3) of the *Paralegal Rules of Conduct*..... **TAB A**

For Information**TAB B**

Bill C-35: Submission to the House of Commons Standing Committee

COMMITTEE PROCESS

1. The Committee met on November 11th, 2010. Committee members present were Cathy Corsetti (Chair), William Simpson, Vice-Chair, Marion Boyd, Robert Burd, Paul Dray, Seymour Epstein, Michelle Haigh, Glenn Hainey, Douglas Lewis, and Kenneth Mitchell. Bencher Susan McGrath also attended. Staff members in attendance were Zeynep Onen, Diana Miles, Roy Thomas, Sheena Weir, Sophie Galipeau and Julia Bass.

FOR DECISION

AMENDMENT TO RULE 4.02 (3) OF THE PARALEGAL RULES

Motion

2. That Convocation approve the amendment to Rule 4.02 (3) of the Paralegal Rules of Conduct shown at paragraph 5.

Issue

3. The Professional Regulation Committee is presenting proposed changes to the lawyers' *Rules of Professional Conduct* governing communications with represented corporations and organizations.
4. The review by the Professional Regulation Committee involved a call for input on the proposed amendments. Paralegal organizations and paralegals were also consulted as to their views on the proposal for analogous changes to the *Paralegal Rules* to ensure they remain consistent with the lawyers' Rules. Comments from paralegals were taken into account when the draft was prepared.
5. As the rules for both lawyers and paralegals on this issue should continue to be the same, the proposed new wording of the *Paralegal Rules* is as follows:

Rule 4.02

(3) *A paralegal retained to act on a matter involving a corporation or organization that is represented by a legal practitioner in respect of that matter shall not, without the legal practitioner's consent or unless otherwise authorized or required by law, communicate, facilitate communication with or deal with a person*

(a) *who is a director or officer, or another person who is authorized to act on behalf of the corporation or organization,*

(b) *who is likely involved in decision-making for the corporation or organization or who provides advice in relation to the particular matter,*

(c) *whose act or omission may be binding on or imputed to the corporation or organization for the purposes of its liability, or*

(d) *who supervises, directs or regularly consults with the legal practitioner and who makes decisions based on the legal practitioner's advice.*

(3.1) If a person described in subrule (9) (a), (b), (c) or (d) is represented in the matter by a legal practitioner, the consent of the legal practitioner is sufficient to allow a paralegal to communicate, facilitate communication with or deal with the person.

(3.2) In subrule (9), “organization” includes a partnership, limited partnership, association, union, fund, trust, co-operative, unincorporated association, sole proprietorship and a government department, agency, or regulatory body.

The Committee’s Deliberations

6. The Committee considered the proposed wording and recommends that it be adopted.

FOR INFORMATION

BILL C-35 RESPECTING IMMIGRATION CONSULTANTS

7. On June 8th 2010, the Minister of Immigration, Jason Kenney, introduced Bill C-35, with the objective of improving the regulation of immigration consultants and specifically to reform, or replace, the Canadian Society of Immigration Consultants, (CSIC). On November 1st 2010, the Law Society presented the submission shown at **Appendix 1** to the House of Commons Standing Committee on Citizenship and Immigration.

11/17/2010 7:29 AM



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Submission to the Standing Committee on Citizenship and Immigration

November 1, 2010

For information contact:

Malcolm Heins, Chief Executive Officer (416) 947-3309

Sheena Weir, Manager, Government Relations (416) 947-3338

Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N6

1. Bonjour, thank you, Mr Tilson. My name is Laurie Pawlitza and I am the Treasurer of the Law Society of Upper Canada. I am accompanied today by our Chief Executive Officer, Malcolm Heins and our Manager of Government Relations, Sheena Weir. May I start by saying that we welcome the government's interest and action in introducing Bill C-35, *An Act to amend the Immigration and Refugee Protection Act*.
2. We are here today to request that you consider an amendment to the bill, to accommodate the paralegal licensees of the Law Society of Upper Canada.
3. The Law Society of Upper Canada, founded in 1797, is Canada's oldest regulating authority. The Law Society is created by the *Law Society Act*, an Ontario statute and is responsible for the regulation of legal service providers in Ontario in the public interest. Today, the Law Society licenses forty two thousand lawyers and over three thousand paralegals. Our primary functions are governing the requirements for entry to either of these professions, and the professional regulation and, where necessary, discipline of our members. (I note that the functions of a Law Society can be contrasted with those of a Bar Association, such as the Canadian Bar Association. Bar Associations lobby in their members' interest and put forward the view of the profession on issues of the day – they have no regulatory mandate and are not statutorily required to operate in the public interest).
4. As some members of the Committee may recall, the Law Society appeared at the committee hearings on the regulation of immigration consultants in April 2008. At that time, we discussed some of the problems that we perceived, and indeed which were generally perceived, with the attempted regulation of immigration consultants when the Canadian Society of Immigration Consultants was established. I will touch on some of the points we made at that time, before commenting on Bill C-35 and our views of a principled, public interest approach to regulation of those practising this field.

5. CSIC was the creation of Citizenship and Immigration Canada, even though it is a private corporation. Citizenship and Immigration amended the Immigration and Refugee Protection Regulations to provide that only CSIC members, together with lawyers regulated by Canadian law societies or notaries regulated by the *Chambre des Notaires*, can represent individuals in immigration proceedings before the Immigration and Refugee Appeal Board. This mandate means that not all aspects of the client relationship are covered.
6. We congratulate the Minister on moving forward with legislation addressing the urgent need to improve consumer protection in this area. Bill C-35 is aimed at increasing the regulatory powers of CSIC (or of another regulator, if responsibility is transferred to a body other than CSIC).
7. Section 91 would prohibit unauthorized persons from advising a person in connection with a proceeding or application under the Act. The objective of this new provision is welcome.

Paralegal Regulation at the Law Society of Upper Canada

8. I would now like to discuss the regulatory model developed in the Law Society of Upper Canada's recent introduction of paralegal regulation. It is our submission that, given the comprehensive regulatory model that I will set out for you, Bill C-35 should be amended to recognize holders of a paralegal licence from the Law Society of Upper Canada as legitimate providers of legal services in the field of immigration consulting.
9. The Law Society's model of paralegal regulation has been in operation for over two years, with great success. This new initiative was developed by the Law Society in collaboration with the government of Ontario to address a glaring need – proper consumer protection from unlicensed, unregulated and, in some instances, incompetent or criminal paralegals.

10. There are now over 3,000 licensed paralegals in Ontario. The Law Society has worked hard over the last decade to develop this successful regulatory model, including the holding of public consultation meetings all over Ontario to ensure that the needs of the public were understood and addressed. It may be helpful to you to review some of the main features of this important new regulatory initiative.

Legislative Authority

The *Law Society Act* was amended by the *Access to Justice Act* of 2006, giving the Law Society authority to regulate all legal services in Ontario. Key to this initiative was the inclusion on the statute of a definition of the ‘provision of legal services’. This gives the Law Society jurisdiction over all legal activities, such as the provision of advice, opinions and the preparation of documents, not only the provision of advocacy services.

11. Under these new provisions, the Law Society started a ‘grandparenting’ programme in 2007 and issued the first of the new ‘P1’ paralegal licences in 2008. To apply as a ‘grandparent’, a person was required to,
 - a. have a minimum of three years full time experience,
 - b. be of good character,
 - c. carry insurance, and
 - d. provide at least three references from approved categories of persons.

Scope of Practice

12. The permitted scope of practice for Ontario paralegals is set out in the Law Society’s By-law 4, and is limited to the provision of advocacy services in,
 - a. Small Claims Court,
 - b. the Ontario Court of Justice on *Provincial Offences Act* matters,
 - c. summary conviction matters under the *Criminal Code*,
 - d. provincial and federal tribunals, and
 - e. claims under sections 280, 280.1, 282, 283 or 284 of the *Insurance Act*.
13. Work on immigration matters fits well with this scope of practice, and in fact some of our current licensees provide legal services on immigration matters in addition to other

areas. At present, they are required to be members of both the Law Society and CSIC, which is unnecessary. A number of our licensees have raised this duplication with us.

Educational Accreditation

14. The start-up phase of paralegal licensing was accompanied by development of a definition of appropriate paralegal competencies, leading to the creation of accredited paralegal courses at community colleges. There are now 21 approved programmes at 18 accredited colleges. After the close of the grandparenting phase, only graduates of colleges accredited by the Law Society are able to apply for entry to the paralegal licensing process.

Good character

15. Persons applying for a paralegal licence are subject to the same requirement to be of “good character” as are lawyers in Ontario. The introduction of our system of paralegal regulation has included the denial of licences to a number of unscrupulous and unqualified operators formerly active in this area. This has been of benefit to judges, tribunal members and justices of the peace, who have noted the improvement in the quality of persons appearing before them. This is an important aspect of the consumer protection provided by paralegal regulation.

Competence

16. All licensed paralegals have passed a licensing examination and are required to abide by *Paralegal Rules of Conduct*. These rules provide, among other things, that licensed paralegals may not accept files for which they lack the necessary knowledge and skills.
17. Our Professional Development & Competence Department conducted extensive research into the necessary competencies for the provision of paralegal services, and has developed twofold competency criteria:

- a. a competency profile that directs the establishment of the paralegal college programmes and is very extensive (23 pages of very detailed requirements) and
 - b. a separate competency profile for the licensing examinations that focuses on professional responsibility, ethics, practice management and procedural matters - all of which use practice situations to relay the testing questions in context.

18. Paralegals are required to maintain a trust account if they hold client funds, and are subject to audits of their books and records, including any records of accounts in which client funds are held. If they exhibit problems in their competency, they may be subject to a review of their practice and an order to remedy the lack of competency. Starting in January 2011, all licensed paralegals must take 12 hours of Continuing Professional Development per year, of which 3 hours must be in the area of professional responsibility, ethics and practice management including client service. In addition, paralegals can avail themselves of our many practice management support services.

Professional Regulation

19. Any client, member of the public or fellow licensee may complain to the Law Society if they have concerns about a paralegal's professional misconduct, competence or capacity to practise law and the Law Society will investigate. Paralegals are subject to the same regulatory processes as lawyers, leading where appropriate to discipline and licence revocation. This effective regulatory approach is designed to protect the public interest.

Insurance and compensation

20. All paralegals are required to carry professional liability insurance, in a form approved by the Law Society, with a minimum of \$1m. per claim and \$2m. annual aggregate. This protects consumers who may be harmed by the negligence of a paralegal. In addition, the Law Society operates a Compensation Fund to which all paralegals contribute, which is used to compensate any clients who have suffered a loss due to paralegal dishonesty.

Report to the Attorney General

21. The *Law Society Act* required us to present a report to the Attorney General of Ontario on the completion of two years of paralegal regulation, presented on March 31st 2009. A copy is enclosed for your information. It indicates that the original programme design for paralegal regulation was faithfully and successfully implemented by the Law Society.

Public Interest

22. Given the Law Society's proven track record, we believe this effective system of paralegal licensing should be recognized for the purposes of immigration work. We believe that the Law Society paralegal licensing regime provides effective consumer protection in the public interest. We accordingly respectfully submit that Bill C-35 should be amended to permit the provision of immigration consulting services by paralegals licensed by the Law Society of Upper Canada, as is already the case for lawyers. We would be happy to help with suggestions for possible drafting.
23. Thank you very much for your attention; I would be pleased to answer any questions you may have.