



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

Report to Convocation January 28, 2010

Paralegal Standing Committee

Note: the first item was deferred from December Convocation

Committee Members

Paul Dray, Chair
Susan McGrath, Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Glenn Hainey
Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

**Purpose of Report: Decision
Information**

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

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COMMITTEE PROCESS

1. The Committee met on November 11th, 2009. Committee members present were Paul Dray (Chair), Susan McGrath (Vice-Chair), Michelle Haigh, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter and Stephen Parker. Staff members in attendance were Katherine Corrick, Diana Miles, Elliot Spears, Sybila Valdivieso and Julia Bass.
2. The Committee further met on January 14th, 2010. Committee members present were Susan McGrath (Vice-Chair), Marion Boyd, James Caskey, Michelle Haigh (by telephone), Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter and Stephen Parker. Staff members in attendance were Malcolm Heins, Diana Miles, Zeynep Onen, Terry Knott, Roy Thomas, Sheena Weir, Nicole Anthony and Julia Bass.

FOR DECISION

REVIEW OF EXEMPTIONS IN BY-LAW 4

Motion:

3. That Convocation approve the recommendations set out below.
 - a. That the following exemption be ended: *Canadian Society of Professionals in Disability Management*.
 - b. That the following exemptions be amended:
 - i) Acting for a family member, friend or neighbour - that this exemption be divided into two parts, one for immediate family, such as a parent representing a teenage child, and one for 'friends' narrowly limited to two or three occasions in a calendar year.
 - ii) Constituency Assistants - that the by-law should be changed to define the exemption as "Members of the Provincial Parliament and their designated staff".
 - iii) *Ontario Professional Planners Institute*: that this exemption be reformulated to clarify that professional planners and like professionals can appear at local committees of adjustment.
 - c. That the following exemptions be given further consideration, including further consultations with affected parties:
 - i) Single Employer In-house Exemption
 - ii) Legal clinic employees
 - iii) Other profession or occupation, member of accrediting associations:
 - iv) *Human Resources Professionals Association of Ontario*
 - v) *The Board of Canadian Registered Safety Professionals*
 - vi) *Appraisal Institute of Canada*
 - vii) Office of the Worker Adviser and Office of the Employer Adviser
 - viii) Injured Workers Outreach Services (IWOS).

- d. **That the following exemptions be continued:**
 - i) **Law students volunteering in legal clinics;**
 - ii) **Law School student legal services;**
 - iii) **Law Students *pro bono* programmes ;**
 - iv) **Not for profit organizations;**
 - v) **Articling Students and Employed Law students, and**
 - vi) **Trade Unions and persons designated by the Ontario Federation of Labour.**
- e. **The Committee recommends that an exemption be added for paralegal college students on college-approved work placements.**

Background

- 4. The Paralegal Standing Committee established a Working Group to make recommendations regarding the review required by section 33 of By-law 4. Section 33 reads as follows:

Review

33. Not later than May 1, 2009, the Society shall assess the extent to which permitting the individuals mentioned in sections 30, 31 and 32 to provide legal services without a licence is consistent with the function of the Society set out in section 4.1 of the Act and the principles set out in section 4.2 of the Act and determine whether the sections, in whole or in part, should be maintained or revoked.

- 5. The members of the Working Group are, Douglas Lewis, Chair, Marion Boyd, James R. Caskey, Paul Dray, Margaret Louter, Stephen Parker and William Simpson.

General Principles

- 6. On the recommendation of the Working Group, the Committee adopted the following as appropriate standards for licensed paralegals: Licensed paralegals must,
 - a. enter the profession after completing a prescribed course of education or through recognition of an established expertise through the ‘grandparenting’ process;
 - b. conduct themselves in accordance with the *Paralegal Rules of Conduct* established by the Law Society and be subject to discipline if they fail to do so;
 - c. meet expectations regarding continuing legal education;

- d. hold professional malpractice insurance to protect the public, and
 - e. place any trust funds provided by clients in trust accounts and follow the required accounting procedures.
7. The Committee is of the view that any group requesting continued exemption should be considered in light of the above standards.
8. The Committee supports the following general approach for the consideration of the exemptions in the by-law:
- a. The objective should be to reduce the exemptions over time. At the start of the regulatory model, 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.
 - b. There are indications that paralegals in a number of the exempt groups now regret not having applied for ‘grandparenting’. Thus, means for facilitating the admission of exempt persons should be considered as soon as possible.
 - c. If a current exemption is to be ended, consideration must be given to facilitating admission for the persons covered by the exemption, at that time.
 - d. Consideration should also be given to other groups wishing to apply for ‘equivalency’ in similar manner to the justices of the peace, e.g. the Appeal Resolution Officers at the Workplace Safety & Insurance Board.
 - e. Every attempt should be made to reduce the number of persons in the exemptions by negotiation and/or promotion of the advantages of membership.
9. The Paralegal Standing Committee had received briefings on the proceedings of the Working Group at the meetings in September and October, and was aware of the complexity of the issues involved in some of the exemptions. For this reason, the Committee favours proceeding with an Interim Report recommending those changes to the by-law that can currently be recommended.

10. The wording of each exemption from By-law 4 is shown in a text box before the discussion of the exemption.

Stakeholder Discussions

11. To inform discussion of the exemptions in the by-law, the Working Group held meetings with 22 different stakeholder groups on July 15th, 22nd, 23rd and 30th, typically meeting each group for at least an hour. A summary of the meeting schedule and the persons attending are shown in the charts attached at **APPENDIX 1**.
12. The first meeting was with the ministry of the Attorney General ('MAG'). This provided an opportunity to review the progress of paralegal regulation since the submission of the "Two Year Review" earlier this year. The MAG staff were complimentary about the progress with paralegal regulation, and noted that the ministry has virtually ceased to receive any complaints or comments on the topic.
13. With regard to the continuing existence of some exemptions, the ministry thinks it important that the 2004 Report to Convocation be borne in mind – it was expected that there would be exemptions, in fact that was part of the understanding between the Law Society and the government that made the introduction of paralegal regulation possible. There is no disagreement with the idea of some exemptions eventually fading.
14. The Working Group suggested that the ministry could play an important role by limiting its own future recruitment to licensees only. This was taken under consideration.
15. The ministry representatives mentioned that the amendment or removal of any of the exemptions could have significant implications for the government, and asked that the ministry be consulted in advance of such changes. The Working Group regarded this as a reasonable request.
16. The consultations included meetings with representatives of several boards and tribunals. They reported that the introduction of paralegal regulation has significantly improved the

standard of professionalism at their hearings, and a number of tribunals provided copies of cases in which the tribunal had declined to hear from unlicensed persons.

17. In the consideration of the specific exemptions, the comments from all of the stakeholder discussions were taken into account. The exemptions to be reviewed are discussed below in the order in which they appear in By-law 4, with the stakeholder comments grouped in order. The discussion of each exemption includes the recommended approach.

Single Employer In-house Exemption

In-house legal services provider

- | |
|---|
| <ol style="list-style-type: none">1. An individual who,<ol style="list-style-type: none">i. is employed by a single employer that is not a licensee or a licensee firm,ii. provides the legal services only for and on behalf of the employer, andiii. does not provide any legal services to any person other than the employer. |
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18. Comments relevant to this exemption included:
- a. Municipal Property Assessment Corporation (MPAC): MPAC is the body responsible in the first instance for determining the municipal assessment of every property in Ontario. Staff at MPAC also offer an internal first-stage review to property owners who believe the valuation that MPAC has set is too high. In this capacity, they function like a public body and must determine whether persons requesting information or making representations on behalf of home-owners are entitled to deal with them. MPAC will provide information to authorized persons who are not licensed or exempted by the Law Society, but will not discuss assessments with them. In these situations, they will discuss the assessment with the property owner instead.
 - b. Property owners who wish to challenge a valuation must take the matter to the Assessment Review Board. At the ARB, representatives of MPAC can appear without a licence, under the ‘single employer’ in-house exemption. This has caused some concern, as there is a perception of an ‘uneven playing field’ between the taxpayer, who must be represented by a licensed or exempt person, and MPAC, which can send an unlicensed person to appear on the other side. In response, the ARB has revised its Rules of Procedure to create a more level playing field between parties to an appeal.

- c. MPAC strongly opposes removal of the single-employer exemption, and takes the position that there is already satisfactory consumer protection in the form of the MPAC Employees Code of Conduct, internal policies, staff training and specific legislative provisions. Further, removal of the exemption would result in increased costs that would ultimately have to be paid from tax revenue.
- d. There are however apparently about 100 staff members at MPAC who would like the opportunity to become licensed voluntarily.
- e. Prosecutors' Association of Ontario (PAO): The PAO represents 312 prosecutors, of whom 80 are lawyers and 232 are paralegals. 102 of the paralegals are licensed. Forty-two work for the ministry of the attorney general, while the rest work for municipalities. Not all prosecutors in Ontario are members.
- f. Although prosecutors are exempt under the 'single employer' exemption, some prosecutors applied for licences on their own, while others were supported by their employer. The situation varies from municipality to municipality, as some encouraged their staff to become licensed and paid the fees, while others did not.
- g. If the 'single employer' exemption were to be ended, the PAO would regard a further grandparenting opportunity as essential.
- h. While the PAO representatives generally support the continuation of this exemption, a number of municipalities have started to require paralegal licences for any new hires. This suggests that the exemption will wither over time.
- i. Municipal Law Departments Association of Ontario (MLDAO): The MLDAO was represented by staff lawyers from Mississauga, Thunder Bay and Toronto and filed a written submission. Municipal prosecutors are exempt under the single-employer exemption. The MLDAO supports the continuation of the exemption on the grounds that their employees already follow codes of conduct and are insured and well trained. In addition, they would find the ending of the exemption expensive and difficult to afford in the current economic environment.
- j. The Assessment Review Board pointed out that two of the three parties to an ARB hearing (Municipal Property Assessment Corporation and the municipality) are exempted by the 'in-house' provision, and often send one person to act as both representative and witness. Thus the individual tax payer and his or her

representative are the only parties bound by the Law Society *Paralegal Rules of Conduct* prohibiting the dual role of witness and advocate.

- k. Paralegal Organizations: The Working Group met with representatives of three paralegal organizations: the Licensed Paralegal Association of Ontario, the Paralegal Society of Ontario, and the Paralegal Society of Canada. The PSO also submitted written comments, indicating concern about the functioning of a number of the exemptions. Among the chief concerns of the paralegal groups were the need for the application of the *Paralegal Rules of Conduct* and other ethical requirements to exempt prosecutors.
- l. Legal Aid Ontario indicated that they are enthusiastic about paralegal regulation and are looking for ways to best use paralegals. All staff paralegals have been offered assistance towards becoming licensed, and in fact it would have no objection to mandatory licensing other than cost.
- m. In particular, any eventual removal of exemptions should be undertaken in a manner to minimize the impact on those in currently exempted positions. Consideration should be given to further grandparenting windows or sunset clauses (i.e. permitting unlicensed paralegals to stay in their current positions, but requiring a licence if they wish to change jobs). To avoid difficulties, it would be best to avoid any sudden change.
- n. Of the 34 paralegals on Legal Aid Ontario staff, five chose to become licensed. LAO managers see paralegal regulation as the professionalization of their staff and would like to see the paralegal scope of practice expanded. They believe that all large organizations should be thinking in terms of “what is your paralegal plan for the future?”
- o. Landlord & Tenant Board: The Board has concerns about the operation of the ‘single employer’ exemption as it relates to property managers. Property managers can take advantage of the single employer exemption, where the property manager is the ‘landlord’ of a property within the meaning of the *Residential Tenancies Act*. The Act provides:

“landlord” includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, . . . and . . .

(c) a person, . . . who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

- p. The use of the single employer exemption can be within the intention of the exemption where the property manager in fact runs the building, although there are difficult questions of interpretation where related and subsidiary companies are involved. There is also a serious concern that the interaction of the exemption with the *Residential Tenancies Act* creates a loophole that can be used by the unscrupulous. This issue merits further examination.
- q. The Board will exclude representatives that are not licensed or exempt. However, due to the high volume of cases, the Board is not inclined to conduct an inquiry into a person’s claimed exemption, and will simply note the claimed exemption on the record. Board members take the position that it is up to the Law Society to inquire into and enforce non-compliance with the *Law Society Act*. Since the consultations, there have been further discussions between the Landlord & Tenant Board and Law Society staff. The Board is of the view that the Law Society should amend the by-law to clarify the exemption.

Discussion

- 19. The Committee considered whether the continuation of the single-employer in-house exemption was in the public interest. Of particular concern is the situation of vulnerable parties who may face unlicensed, unregulated persons on the other side of various proceedings, such as municipal prosecutions, assessment appeals, accident benefit cases, etc. While the Law Society has taken steps to ask that prosecutors follow the *Paralegal Rules of Conduct*, this is not guaranteed.
- 20. The Committee noted that removal of the exemption would help to protect the public against encountering unlicensed representative in an advocacy setting.

21. While the Committee is of the view that the phasing out of this exemption in the future is desirable, in light of all the comments received, further steps toward voluntary compliance should precede changing the by-law.

Legal clinics: employees and law students

Legal clinics

2. An individual who,
- i. is any one of the following:
 - A. An individual who is enrolled in a degree program at an accredited law school and volunteers in or is completing a clinical education course at a clinic, within the meaning of the *Legal Aid Services Act*, 1998, that is funded by Legal Aid Ontario.
 - B. An individual who is employed by a clinic, within the meaning of the *Legal Aid Services Act*, 1998, that is funded by Legal Aid Ontario,
 - ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

22. Legal Aid Ontario indicated that the 79 community clinics have 135 paralegals, of whom 50 became licensed. Legal Aid Ontario supports the idea of supervised paralegal students being able to work within the P1 scope, and would like to see the creation of a paralegal student clinic of some sort.
23. *Association of Community Legal Clinics of Ontario (ACLCO)*: The clinic representatives support the concept of paralegal regulation and noted that about a third of their paralegal staff, known as Community Legal Workers or CLW's, became licensed voluntarily. However, they argued that the high quality of service provided by the clinics, together with the fact that CLW's are supervised by staff lawyers and covered by clinic insurance, means that there is no consumer protection rationale for ending their exemption. Further, the cost would have to be borne by either Legal Aid Ontario or the individual clinics. This would result in a reduction of services during what is already a difficult time for Legal Aid Ontario.
24. The 79 clinics differ considerably, and a complicating factor is the differing job description of the CLW's – some provide mostly advocacy services, some have

advocacy as part of a broader mandate and some do no advocacy at all, working instead on public education, outreach and community organizing. The ‘CLW’ positions can thus not be considered as a whole, in terms of whether a P1 licence should be required.

25. Further, the unusual recruitment model for the clinics was discussed. Often, clinics recruit specialized staff with many years of experience in, for example, community organizing or trade union work, or with international qualifications such as lawyers and other professionals. The clinics believe it would be unfair to expect such staff members to go back to college. In response, the Committee raised the possibility of discussing a specialized course with one of the community colleges.
26. The clinics would also support the broader use of paralegal students. A number of clinics have made representations to the effect that paralegal students on work placements should be permitted to provide legal services within the P1 scope.
27. Since the consultations, a further letter from the clinic association was received, attached at **APPENDIX 2**.

Discussion

28. The Committee considered the fact that law firm paralegals who appear in court are required to be licensed, and that the situation of clinic paralegals who provide advocacy services is similar. Clinic staff who do not provide advocacy services would not need a licence if they are supervised by a lawyer.
29. With regard to the exemption for clinic employees, while the Committee is of the view that the phasing out of the exemption in the future is desirable, it may be premature to make this mandatory, and further steps toward voluntary compliance should precede changing the by-law. The exemption for law student volunteers in the clinics should remain.
30. The Committee was of the view that a further exemption for paralegal students on college-approved field placements such as at legal clinics was reasonable.

Student legal aid services societies

Student legal aid services societies

3. An individual who,
 - i. is enrolled in a degree program at an accredited law school,
 - ii. volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*,
 - iii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and
 - iv. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.

31. The students who fit under this exemption all work under the direct supervision of a lawyer. The Committee was not made aware of any problems caused by this exemption and is recommending that it continue.

Law Students *pro bono* programmes

Student pro bono programs

- 3.1 An individual who,
 - i. is enrolled in a degree program at an accredited law school,
 - ii. provides the legal services through programs established by Pro Bono Students Canada, and
 - iii. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.

32. The students who fit under this exemption all work under the direct supervision of a lawyer. The Committee was not made aware of any problems caused by this exemption and is recommending that it continue.

Not for profit organizations

Not-for-profit organizations

4. An individual who,
 - i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,
 - ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

33. This exemption covers only those organizations that operate as non-profit community services and have insurance coverage, such as the Human Rights Legal Support Centre. The Committee was not made aware of any problems caused by this exemption and is recommending that it continue.

Acting for a family member, friend or neighbour

Acting for family, friend or neighbour

5. An individual,
- i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services only for and on behalf of a related person, within the meaning of the Income Tax Act (Canada), a friend or a neighbour, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

34. This exemption has been reported to cause a number of problems.
- a. Workplace Safety & Insurance Board (WSIB) & Workplace Safety & Insurance Tribunal (WSIAT): the Board and WSIAT have both requested that the Law Society define the term “occasional,” to clarify the exemption. WSIAT Decision 2268/08I involves a representative identified as Marcel Santos. Mr Santos was not licensed to provide legal services. The only exemption in the *Law Society Act* or by-laws that could apply to him was the "friend" exemption. In the decision, WSIAT Vice-Chair Morris found Mr Santos did not fall within the "friend" exemption. WSIAT records indicated Mr Santos had represented approximately 74 appellants in hearings at the Tribunal, and Mr Santos acknowledged acting in at least 50 appeals. This did not include services he has provided to persons in other matters, including claims at the WSIB. Vice-Chair Morris found that although Mr Santos did not have any particular qualifications to provide legal services, providing legal services was one of his occupations. She concluded:
- For the reasons already stated, it appears to me that Mr. Santos does not fit within the exemption of acting for a friend. In my view, there is an appearance that Mr. Santos is attempting to use the exemption of acting as a friend to circumvent the paralegal regulation. This has the appearance of an abuse of process. In my view, it would bring the administration of justice into disrepute if Mr. Santos were to continue to act in this case. I therefore adjourn this matter to*

permit the worker an opportunity to obtain another representative or to prepare his case if he wishes to proceed unrepresented.

- b. The Ontario Bar Association argued that the “friend’ exemption is open to abuse by unscrupulous persons pretending to be the friend of many parties, and recommended that “occasionally” be defined. It would also be helpful if a ‘collating’ function could be created, at tribunals that have the necessary resources, to track every time a person claims to be a friend, or uses the exemption for “other profession or occupation”.
- c. Landlord & Tenant Board: The board has concerns about the operation of the ‘friend’ exemption.

Discussion

35. In response to the many comments about the ‘family or friend’ exemption, the Committee is of the view that the exemption should be broken up into separate exemptions for ‘family’ on the one hand, and ‘friends’ on the other. ‘Family’ could be defined fairly narrowly, but with recognition that for genuine cases of family need, the number of appearances should not be restricted – e.g. representing an elderly parent or teenage child. On the other hand, the ‘friend’ exemption is obviously open to abuse, since some individuals have appeared at tribunal to represent dozens of ‘friends.’ For these reasons, the exemption for friends should be limited to two or three occasions per year.

Constituency Assistants

Constituency assistants

- 6. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who is any one of the following:
 - A. A member of Parliament or his or her designee,
 - B. A member of Provincial Parliament or his or her designee,
 - C. A member of a council of a municipality or his or her designee, and
 - iii. who provides the legal services for and on behalf of a constituent of the member.

36. The Committee is aware of concerns about this exemption, including issues with the quality of services, and the fact that it can raise conflicts of interest for the staff

involved, especially for the staff of government members arguing against the decisions of government tribunals. However, there are complex issues of parliamentary privilege involved. On balance the Committee was of the view that it should be addressed through consultation and education.

37. To recognize the parliamentary privilege involved, the Committee was of the view that the by-law should be changed to define the exemption as “Members of the Provincial Parliament and their designees” and that further consultation and discussions should be undertaken.

Other profession or occupation, member of accrediting associations

Other profession or occupation

7. An individual,
- i. whose profession or occupation is not the provision of legal services or the practice of law,
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
 - iv. who is a member of,
 - A. the Human Resources Professionals Association of Ontario,
 - B. the Ontario Professional Planners Institute,
 - C. the Board of Canadian Registered Safety Professionals
 - D. the Appraisal Institute of Canada, or
 - E. the Canadian Society of Professionals in Disability Management.

38. The Working Group met with representatives of each of the associations listed in this section of the by-law. In addition, the OBA requested that, if these exemptions are to remain, that they be limited to credentialed members of each organization.

Human Resources Professionals Association of Ontario

- a. Human Resources Professionals Association of Ontario (HRPAO): HRPAO representatives explained that they have 19,000 members, of whom only about 1,000 are independent consultants, as most of their members work for large employers. Of the 1,000 consultants, probably only 150 to 200 provide advocacy services, generally dealing with workers’ compensation or Ontario Disability Support Payments. All independent consultants are required to carry \$2 million of liability insurance.

- b. The HRPAO takes the position that their members are exempted within the ‘normal course’ of their profession by subsection 1(8) of the Act, and further that the ‘normal course’ of the HR profession includes appearances at related tribunals. They referred to a legal opinion they have obtained to that effect.
- c. While at this point the Law Society and the HRPAO disagree, discussions with staff of the HRPAO are continuing.

Discussion

- 39. The Working Group was of the view that an exemption for all 19,000 members of the HRPAO was very broad and noted that, if the relatively small number of HRPAO members providing advocacy services became licensed, the remaining usual activities of the HRPAO members would be covered by the exemption in section 28 paragraph 2:
“a person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.”
- 40. For these reasons, the Committee favours working with the HRPAO to increase the number of their members who are licensed.

Ontario Professional Planners Institute

- a. The Ontario Professional Planners Institute (‘OPPI’) has about 2,145 full members and 3,500 total members. Members’ usual activities focus on land use planning for developers or municipalities, but in connection with this they have historically appeared occasionally at the Ontario Municipal Board, the Assessment Review Board, the Conservation Review Board, Environmental Review Board and municipal bodies, to argue on behalf of clients.
- b. The OPPI indicated that, while a few have historically played an advocacy role at provincial tribunals, one of their main concerns is with the proceedings at local committees of adjustment.
- c. The operation of these committees was discussed in some detail. They are established under section 44 of the Ontario *Planning Act* for the purpose of

deciding whether or not to permit minor variances from municipal zoning by-laws. All their decisions may be appealed to the Ontario Municipal Board.

- d. Committees of Adjustment are designed to be informal, but jurisprudence has tended to bring them under the *Statutory Powers Procedure Act*. Their proceedings are often less formal than provincial tribunals such as the Ontario Municipal Board. Subsection (11) of section 44 provides as follows:

Rules of procedure

(11) In addition to complying with the requirements of this Act, the committee shall comply with such rules of procedure as are prescribed.

- e. Generally, the property owner must hire a planner or architect to advise on the variance from the by-law. Requiring an individual homeowner to hire a lawyer or paralegal as well would arguably be unfairly onerous. The Working Group received correspondence from the legal department of the Town of Oakville arguing that taking part in proceedings at municipal committees of adjustment should not be regarded as the provision of legal service for the purpose of By-law 4. The Assistant Town Solicitor for Oakville, Denise Baker, wrote as follows:
While I have no hesitation in supporting paralegal regulation as it relates to provincial tribunals, provincial boards and provincial agencies that allow for appearances by agents, it is not appropriate for these same regulations to apply to informal municipal committees where there are appeal rights to more formal provincial courts or tribunals.
- f. The Municipal Law Departments Association of Ontario (MLDAO) agrees that planners and architects should be able to appear at local committees of adjustment.
- g. The Ontario Association of Architects (OAA) has argued that the OAA should be added to the list of organizations in paragraph 30 (1) 7 of By-law 4, in the same manner as the planners. The bodies at which the OAA have argued that architects should be able to appear include the Ontario Municipal Board, municipal committees of adjustment, the Conservation Review Board and the Building Code Commission.

- h. However, the discussions with their representatives indicated that, like the planners, their main concern is with local committees of adjustment. If the appearance of architects at local committees of adjustment could be accommodated, most of the OAA members would not have a problem complying with the operation of paralegal regulation. The Working Group was sympathetic to this approach.

Discussion

- 41. The Committee was of the view that the existing partial exemption for the OPPI should be redesigned as a limited exemption to permit planners and other like professionals to assist clients at local committees of adjustment.
- 42. There would be two possible ways of achieving this result:
 - a. Redrafting the exemption to specify that members of the OPPI and OAA are permitted to appear at local committees of adjustment, or
 - b. Providing by by-law that taking part in the meetings of committees of adjustment does not constitute the provision of legal services.
- 43. It could be argued that the second option removes consumer protection for clients at committees of adjustment, as there would be no restriction on who could appear. Conversely, the first option would require accommodating the other regulated professions that currently provide advice at committees of adjustment, such as architects, engineers and surveyors. This may prove more difficult to draft. The Committee was of the view that a by-law amendment to achieve the desired result should be prepared for consideration.

The Board of Canadian Registered Safety Professionals

- 44. The Board of Canadian Registered Safety Professionals (BCRSP) has 3,000 members across Canada. Its primary certification is the Canadian Registered Safety Professional (CRSP) designation.

45. Members of BCRSP work in all areas of occupational health and safety (prevention, education, etc.), and most work in-house for employers, but a proportion have historically handled cases at the Workplace Safety & Insurance Board and WSIAT. On the basis of information provided by WSIAT, it seems likely that this exemption affects a relatively small proportion of the BCRSP membership, but that they are affected by the Workplace Safety & Insurance Board's strict interpretation of the rules governing the release of information. An email from the Chair of the BCRSP is attached at

APPENDIX 3.

46. For these reasons, the Committee favours working with the BCRSP to increase the number of their members who are licensed.

Appraisal Institute of Canada

47. Appraisal Institute of Canada ('AIC'): the AIC is a voluntary professional association founded in 1938. Members carry liability insurance and adhere to a set of Standards, Rules and Ethics.

48. The AIC representatives explained the areas in which their members work and the role they play. Although their primary role is the provision of appraisals to property owners, some appraisers occasionally appear at the Assessment Review Board in connection with the valuation and taxation of a property, although this is apparently relatively rare and affects a minority of the association membership.

49. The exemption for the AIC has caused concern on the part of the Institute of Municipal Assessors ('IMA'), a professional association incorporated by private provincial statute. It is the largest professional association in the field of property assessment with over 900 members, half of which work for Municipal Property Assessment Corporation. As part of a campaign to be granted an exemption by the Law Society, the IMA recently arranged mandatory insurance for their members.

50. For these reasons, the Committee favours working with the AIC to increase the number of their members who are licensed.

Canadian Society of Professionals in Disability Management

51. The Canadian Society of Professionals in Disability Management ('CSPDM') is the Canadian affiliate of an international association of disability professionals. The CSPDM representatives explained in detail the areas in which their members work and the precise role they play. They support injured workers in managing the return to work process after a workplace injury and advocate on behalf of the rights of injured workers. Many of their members are doctors.
52. After further discussion it was agreed with the CSPDM that the exemption was not necessary for them to continue their work.

Office of the Worker Adviser and Office of the Employer Adviser (OWA and OEA)

Office of the Worker Adviser

- (2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:
1. Advise a worker, who is not a member of a trade union, or the worker's survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.
 2. Act on behalf of a worker, who is not a member of a trade union, or the worker's survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Office of the Employer Adviser

- (3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:
1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
 2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

53. These two offices were both established by the ministry of labour pursuant to the Weiler Report, with funding ultimately coming from the Workplace Safety & Insurance Board.
54. The OWA has a staff of 97, of whom 60 to 65 would require a licence in the absence of an exemption. The OEA has a staff of 26, of whom about 19 would require a licence.

Several members of both organizations became licensed voluntarily, about 20 at the OWA and about 8 at the OEA.

55. While the representatives of both offices emphasized the high quality of the services they provide and that they see no public policy rationale for requiring their staff to be licensed, a serious concern at the possible loss of the exemption would be the cost of licensing, which, in the absence of new funding, would cause the loss of staff positions and a concomitant reduction in service.

Injured Workers Groups

"injured workers' group" means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

Injured workers' groups

(4) An individual who volunteers in an injured workers' group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

56. Since the exemption is limited to “injured workers groups funded by the WSIB”, there is only one, umbrella group that fits this description, the “Injured Workers Outreach Services, (IWOS).
57. The IWOS groups were represented by Scott Wilson, the Executive Director of the Kitchener-Waterloo group. Mr Wilson said the current exemption is working well and should continue. Mr Wilson said the current practice is for IWOS representatives to file claims appeals, but not usually to appear on the appeal.
58. The IWOS groups attend training sessions at the Workplace Safety & Insurance Board twice a year and try to provide good quality services, as well as taking part in courses and training locally. Mr Wilson emphasized that most of those they help would have no other source of assistance, and have often been turned away by the Office of the Worker Adviser or their local union for various reasons.

59. The Kitchener Waterloo group is a registered charity but not all IWOS groups are charities as some are informal.
60. The exemption for “injured workers groups funded by the WSIB” has caused problems for injured workers groups that are *not* funded by the Workplace Safety & Insurance Board, which feel that they have been placed at a disadvantage. These groups take the position that there is a critical shortage of help for injured workers.
61. The non-funded groups are members of the Ontario Network of Injured Workers Groups (ONIWG). While the volunteers who offer their services through these groups often limit their role to “peer support”, which the Law Society does not regard as the provision of legal services, there is a concern that the exemption for the ‘IWOS’ groups indicates that an exemption is necessary. In addition, there are now difficulties in obtaining basic information from the Workplace Safety & Insurance Board, as the Board asks anyone assisting a claimant to specify their authorization in terms of a licence or exemption.
62. The Committee is of the view that the concerns of the ONIWG groups could be addressed by working with the Workplace Safety & Insurance Board to develop a protocol or definition of “peer support”. This would not require the granting of an exemption, as the Law Society is of the view that peer support does not constitute the provision of legal services.
63. The Ontario Bar Association (OBA) was represented by staff and by the Chair of the OBA paralegal task force, and two members of the OBA workers’ compensation section. (Some of the comments were offered on behalf of the specific sections rather than the OBA corporately).
64. The OBA representatives submitted that the IWOS exemption has had uneven results, and permits the use of uninsured and unaccountable representatives. The OBA supports the original purpose of the IWOS groups in providing ‘peer support’ which should not be regarded as the provision of legal services. This distinction should be clarified. There is a concern that these groups may shelter paralegal practices where a fee is charged.

65. The Law Society is currently working with the WSIB to clarify the definition of ‘peer support’. If this can be resolved to the satisfaction of all stakeholders, the current exemption could become unnecessary.

Trade Unions and persons designated by the Ontario Federation of Labour

Trade unions

- (2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:
1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.
 2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.
 3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.

66. The Committee was of the view that the exemption for trade unions in the by-law was in keeping with the spirit of the exemption in the *Law Society Act*. While for the most part this exemption has not caused problems, there are isolated reports of trade unions outsourcing paralegal work to unlicensed paralegals, usually former trade union staff members. It was agreed that staff would work with the Ontario Federation of Labour to ensure that the scope of the exemption is followed.

Articling Students and Employed Law students

Student under articles of clerkship

34. (1) A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society.

Other law student

- (2) A law student may, without a licence, provide legal services in Ontario if the law student,
- (a) is employed by a licensee who holds a Class L1 licence, a law firm, a professional corporation described in clause 61.0.1 (c) of the Act, the Government of Canada, the Government of Ontario or a municipal government in Ontario;
 - (b) provides the legal services,
 - (i) where the law student is employed by a licensee, through the licensee's professional business,
 - (ii) where the law student is employed by a law firm, through the law firm,
 - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (c) of the Act, through the professional corporation, or
 - (iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, only for and on behalf of the

Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively; and

- (c) provides the legal services,
 - (i) where the law student is employed by a licensee, under the direct supervision of the licensee,
 - (ii) where the law student is employed by a law firm, under the direct supervision of a licensee who holds a Class L1 licence who is a part of the law firm,
 - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of a licensee who holds a Class L1 licence who practise law as a barrister and solicitor through the professional corporation, or
 - (iv) where the law student is employed by the Government of Canada, the Government of Ontario or a municipal government in Ontario, under the direct supervision of a licensee who holds a Class L1 licence who works for the Government of Canada, the Government of Ontario or the municipal government in Ontario, respectively.

Same

- (3) A law student may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide if the law student,
 - (a) is employed by a licensee who holds a Class P1 licence, a legal services firm or a professional corporation described in clause 61.0.1 (1) (c) of the Act;
 - (b) provides the legal services,
 - (i) where the law student is employed by a licensee, through the licensee's professional business,
 - (ii) where the law student is employed by a legal services firm, through the legal services firm, or
 - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, through the professional corporation; and
 - (c) provides the legal services,
 - (i) where the law student is employed by a licensee, under the direct supervision of the licensee,
 - (ii) where the law student is employed by a legal services firm, under the direct supervision of a licensee who holds a Class P1 licence who is a part of the legal services firm, or
 - (iii) where the law student is employed by a professional corporation described in clause 61.0.1 (1) (c) of the Act, under the direct supervision of,
 - (A) a licensee who holds a Class P1 licence who provides legal services through the professional corporation, or
 - (B) a licensee who holds a Class L1 licence who practises law as a barrister and solicitor through the professional corporation.

Interpretation: "law student"

- (4) For the purposes of subsections (2) and (3), "law student" means an individual who is enrolled in a degree program at an accredited law school.

67. These exemptions cover only those students working under supervision and are not regarded as raising concerns about consumer protection. The Committee is not aware of any problems caused by that these exemptions and recommends they be continued.

Summary Chart

A chart summarizing the Committee's recommendations is attached at **APPENDIX 4**.

Timing

68. A table showing the schedule of the further, five year review of paralegal regulation is attached at **APPENDIX 5**. A further exemptions review could be scheduled to commence on the same date.

EXEMPTIONS WORKING GROUP CONSULTATIONS

Wednesday, July 15, 2009 - Benchers' Dining Room

TIME	ORGANIZATION	ATTENDEES	ISSUES/NOTES
9:30-10:30	Ministry of the Attorney General (MAG)	Sunny Kwon, Policy Counsel, MAG John Twohig, General Counsel, MAG Brent McCurdy, Senior Policy Advisor to the Attorney General	
11:00-12:00	Assessment Review Board (ARB)	Rick Stephenson, Chair Marcie Bourassa, Vice Chair	
2:00-3:00	Workplace Safety and Insurance Board (WSIB) Workplace Safety and Insurance Appeals Tribunal (WSIAT)	Mike Johnston, ED, Reg. Services Div. Slavica Todorovic, ED, Appeals Div. Dan Revington, Gen. Counsel, WSIAT Debbie Dileo, Dir of Appeals Susan Adams, A/ Tribunal Director	
3:30-4:30	Financial Services Commission of Ontario (FSCO)	Asfaw Seife, Director, Dispute Resolution Services Branch	

EXEMPTIONS WORKING GROUP CONSULTATIONS

Wednesday, July 22, 2009 – Upper Barristers' Lounge

9:30-10:30	Human Resource Professionals Association of Ontario (HRPAO)	J. Scott Allinson, Dir, Govt and External Relations Claude Balthazard, Director, HR and Acting Registrar Carmen Delmonico, Pres. Toronto chapter Bill Greenhalgh, Malcolm Heins, LSM CEO	
10:45-11:45	Ontario Professional Planners Institute (OPPI)	Dr. Wayne Caldwell, President Ann Joyner, Chair, Prof. Practice Advisory Marilyn Radman, Chair, Prof. Practice Cttee; Paul Stagl, Chair, Discipline Committee; Ron Keeble, Registrar; Brian Brophey, LL.B., Mgr, Prof. Standards Mary Ann Rangam, Executive Director Ian Lord, Weir Foulds, Counsel	
1:00-1:45	Ontario Association of Architects (OAA)	Kristi Doyle, Director of Policy Paul Roth, Architect	
2:00-2:30	Prosecutors' Association of Ontario (PAO)	Jane Moffat, President Grant Kelly, Mgr of prosecutions, Durham	
2:45-3:15	County & District Law Presidents(CDLPA) Advocates' Society	Randall Bocock, Chair Alex Chyczij, Executive Director (by phone)	
3:30-4:00	Canadian Society of Professionals in Disability Management (CSPDM)	Wolfgang Zimmerman, Exec. Director, Joyce Gravelle	
4:15-4:45	Appraisal Institute of Canada (AIC) (by phone)	Georges Lozano, CEO Robert Patchett, LLB, Prof. Practice Signe Holstein, Exec. Dir, Ontario Dan Brewer, Member Ontario Charles Johnstone, Member	

EXEMPTIONS WORKING GROUP CONSULTATIONS

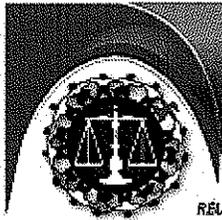
Thursday, July 23, 2009 – Museum Room

TIME	ORGANIZATION	ATTENDEES	ISSUES/NOTES
9:30-10:15	Ontario Network of Injured Workers Groups (ONIWG)	Steve Mantis, Secretary (by teleconference) John McKinnon, Legal Advisor Karl Crevar, Treasurer Peter Page	
10:30-11:15	Office of the Worker Adviser (OWA) Office of the Employer Adviser (OEA)	Kevin M. Brown, Central Client Services Michael Zacks, General Counsel/Director	
11:30-12:30	Municipal Property Assessment Corporation (MPAC)	Mark Doble, Manager, Case Management Karey Lunau, Conway Davis, Counsel to MPAC	
1:45-2:30	Paralegal Society of Ontario (PSO) Licensed Paralegal Assoc. (LPA) Paralegal Society of Canada (PSC)	Chris Surowiak, President, & Rod Walker Robert Burd, President Judi Simms, President	
2:45-3:30	Legal Aid Ontario (LAO)	Bob Ward, CEO David McKillop, VP, Policy and Research	
3:45-4:15	Injured Workers Outreach Services (IWOS)	Scott Wilson, Kitchener Waterloo Group	

EXEMPTIONS WORKING GROUP CONSULTATIONS

THURSDAY JULY 30, 2009 – Upper Barristers' Lounge

	TIME	ORGANIZATION	ATTENDEES	ISSUES/NOTES
14	9:00-9:45	Association of Community Legal Clinics of Ontario (ACLCO)	Lenny Abramowicz, Executive Director Ryan Peck, ED, HIV/AIDS Clinic Jill McNall, Paralegal, HIV/AIDS Clinic	
15	10:00-10:45	Ontario Bar Association (OBA)	Louise Harris, Director, Govt Relations Steve Rosenhek, Chair, Paralegal Section Alec Farquhar, Managing Director, Occupational Health Clinics for Ontario Workers Laura Russell, CEO, CompClaim Inc. (licensed paralegal)	
16	11:00-11:30	Municipal Law Departments Association (MLDA)	Mary Ellen Bench, Mississauga Rosalie A. Evans, Thunder Bay (by phone) Anna Kinastowski, City of Toronto Amanda Ross, City of Toronto	
17	11:45-12:15	Landlord & Tenant Board	Dr. Lilian Ma, Chair Sean Henry, Vice-Chair, Central Region Murray Graham, Vice-Chair, Toronto North Anne Warner, Director, Legal Services Randy Schroeder, Counsel	
18	1:30-2:15	Board of Canadian Registered Safety Professionals (BCRSP)	Jason Lakhan CRSP, Gowlings Heather Harvey CRSP, Board Member	



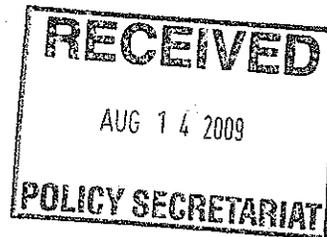
ASSOCIATION OF COMMUNITY LEGAL CLINICS OF ONTARIO
ASSOCIATION DES CLINIQUES JURIDIQUES COMMUNAUTAIRES DE L'ONTARIO

425 Adelaide St. West - 5th Floor | Toronto, Ontario | M5V 3C1
local tel. (416) 847-1414 | other tel. 1-800-555-5555 | fax (416) 597-5821

LINKING POVERTY LAW CLINICS AND THEIR COMMUNITIES THROUGHOUT ONTARIO IN A COMMON VOICE
RÉUNIR LES CLINIQUES JURIDIQUES EN MATIÈRE DE DROIT DES PAUVRES ET LEURS COMMUNAUTÉS EN ONTARIO PAR LE BIAIS D'UNE VOIX COMMUNE

August 10, 2009

The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6



Attention: Exemptions Working Group, c/o Ms. Julia Bass, Policy Counsel

Dear Working Group Members,

Re: Exemptions Working Group Consultation with Community Legal Clinic Employees - Meeting of July 30, 2009

Thank you very much for the opportunity to meet with you regarding the exemption for Community Legal Clinics in By-Law 4 of the *Law Society Act, 1990* (the "Act").¹

As we indicated, we commend the Law Society of Upper Canada (LSUC) for implementing the regulation of paralegals. For many years, we have supported the regulation of unsupervised, uninsured, for-profit paralegals. Working at the front lines, we were all too familiar with the harm done by unscrupulous individuals providing "legal" services. We believe that the regulation of unsupervised, uninsured, for-profit paralegals benefits all Ontarians.

We are also very pleased that there is an exemption for Community Legal Clinics. This exemption recognizes the unique nature of Community Legal Clinics governed by the *Legal Aid Services Act, 1998 (LASA)*. Community Legal Clinics are not-for-profit, fully insured² and are staffed by salaried employees, including LSUC-licensed lawyers. In addition to LSUC obligations, Community Legal Clinics are regulated by and accountable to Legal Aid Ontario under *LASA*. Community Legal Clinics are the principal providers of legal advice and representation related to the basic necessities of income and shelter for some of the most marginalized communities in Ontario. The mandate of Community Legal Clinics includes the provision of legal services to individuals, as well as law reform, public legal education initiatives and community development³.

As you know, the Community Legal Clinic exemption permits Community Legal Clinic employees and Ontario law student volunteers to provide any services that a paralegal may provide.⁴ As we submitted at our meeting, we urge you to maintain the Community Legal Clinic employee exemption and to expand the volunteer exemption.

We request that the Community Legal Clinic employee exemption be maintained because of the unique nature of Community Legal Clinic services. Unlike the work done by unsupervised, uninsured, for-profit paralegals, Community Legal Clinic services are supervised by LSUC licensed lawyers, fully insured, regulated and not-for-profit. Also, as noted above, Community Legal Clinics have a mandate beyond direct legal services.

LSUC's *Rules of Professional Conduct* speak to the supervisory relationship between lawyers and non-lawyers.⁵ Rule 5.01 (2) indicates that a lawyer in a Community Legal Clinic "may permit a non-lawyer to perform tasks assigned and supervised by the lawyer" as long as there is "a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario," and the lawyer "assumes full professional responsibility for the work."⁶ *LASA* makes it clear that legal services can be provided by a person under direct supervision of a lawyer.⁷ We are unaware of a single instance where there has been a problem with legal services provided by a non-lawyer being supervised by a lawyer in a community legal clinic.

It is important to further note that *LASA* mandates comprehensive monitoring of Community Legal Clinics by Legal Aid Ontario, as well as stringent reporting requirements by Community Legal Clinics to Legal Aid Ontario.⁸ This comprehensive monitoring includes an Audit and Evaluation program involving the regular review, by an external reviewer, of the operations and functioning of every Community Legal Clinic. Further, *LASA* mandates the reporting to Legal Aid Ontario of all complaints made to Community Legal Clinics and provides for the creation of a regulation regarding complaints.⁹

Each community clinic is independent, and although most employ Community Legal Workers (CLWs), the role of the CLW varies from clinic to clinic. Some clinics use CLWs primarily as caseworkers, while in other clinics the CLW does limited casework, in addition to community development, public legal education and law reform. In most clinics the CLW does a mixture of casework and non-casework activities. The "community" aspect of the CLW role includes developing and maintaining connections in the clinic's community. Many Community Legal Clinic clients have multiple legal issues and barriers. CLWs assist other staff in serving the whole person and linking the person to other, often non-legal, services and supports.

Removing the clinic exemption and forcing all CLWs who do any casework to take paralegal courses and a paralegal exam would have a negative impact on clinics. Many clinics recruit their CLW's from among the client groups and community activists they work with. These individuals would not be licensed paralegals, nor likely would they be interested in becoming licensed paralegals. However they are highly effective in all aspects of their work as CLW's, ranging from public legal education and community development to case representation under the supervision of a lawyer. Although some clinics would no doubt be pleased to hire a CLW who is a licensed paralegal, others will want the opportunity to continue to hire community activists to do this job.

Moreover the mandatory licensing of CLWs would increase the overall cost of legal aid. Those increased costs will have to be borne by either individual clinics or Legal Aid Ontario, but either way it means reduced resources for the provision of legal aid services to low-income communities.

In addition, we request that the current volunteer exemption for Community Legal Clinics be expanded to include individuals such as paralegal students, non-Ontario law students, and foreign-trained lawyers. As previously indicated, all Community Legal Clinic volunteers are supervised by lawyers and covered by insurance. These individuals play an important role in expanding the reach of community legal clinics in providing access to justice to Ontario's low income communities.

The regulation of unsupervised, uninsured providers of legal services is extremely important. However, Community Legal Clinics are not the problem. As such, it is vital that the Community Legal Clinic exemption be maintained, and ideally, expanded.

Please do not hesitate to contact the ACLCO's executive director, Lenny Abramowicz, if you would like any further information.

Thank you for again for the opportunity to discuss this very important matter with you. We look forward to hearing from you.

Yours truly,

Steven Webster
Co-Chair
steven_webster@sympatico.ca

Ivana Petricone
Co-Chair
petricoi@lao.on.ca

¹ LSUC By-Law 4, *Licensing*, Section 30. states:

30. (1) Subject to subsections (2) and (3), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

...

Legal clinics

2. An individual who,

i. is any one of the following:

A. An individual who is enrolled in a degree program at an accredited law school and volunteers in or is completing a clinical education course at a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario.

B. An individual who is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,

ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

² Property and General Liability; Directors and Officers Liability; and, Professional Liability Insurance.

³ *Memorandums of Understanding and Funding Agreements* between Community Legal Clinics and Legal Aid Ontario define:

"clinic law services" means legal and other services provided under the Act, in clinic law areas, and includes legal representation and advice, community development and organising, law reform, and public legal education

⁴ LSUC By-Law 4, *Licensing*, Section 30. (1) states:

30. (1) Subject to subsections (2) and (3), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

...

⁵ LSUC Rules of Professional Conduct, Rule 5, *Relationship To Students, Employees, And Others*.

⁶ *Ibid*, footnote #3.

⁷ *Legal Aid Services Act, 1998*, section 14(4) states:

Legal services must be provided by lawyers

14. (4) Legal services shall only be provided by a lawyer or a person working under the direct supervision of a lawyer. 1998, c. 26, s. 14 (4).

⁸ The monitoring and reporting sections of the *Legal Aid Services Act, 1998*, state:

Corporation may fund clinic

33. (1) The Corporation may provide funding to a clinic to enable the clinic to provide legal aid services to low-income individuals or disadvantaged communities.

Considerations

(2) In deciding whether to provide funding to a clinic, the Corporation shall consider any matter it considers relevant to the decision, including,

- (a) the legal needs of the individuals or communities that the clinic will serve;
- (b) the cost-effectiveness and efficiency of providing legal aid services through the clinic;
- (c) the past performance of the clinic, if any, in meeting the legal needs of the individuals and communities that it served in a cost-effective and efficient manner.

...

Application for funding

35. (1) An application for funding by a clinic shall be accompanied by information, as requested by the Corporation, respecting the organization, activities, methods of business and financial transactions of the clinic, and such other information that the Corporation may request.

Review

(2) An application for funding by a clinic shall be reviewed by an officer or employee of the Corporation designated by the board of directors of the Corporation.

...

Corporation to monitor clinic

37. (1) The Corporation shall monitor the operation of a clinic funded by it to determine whether the clinic is meeting the Corporation's standards for the operation of clinics, and the Corporation may conduct audits of such clinic, as it considers necessary for that purpose.

Reports to Corporation

(2) A clinic funded by the Corporation shall provide the Corporation, in the form and at the times requested by the Corporation,

- (a) audited financial statements for the funding period;
- (b) a summary of the legal aid services provided by the clinic during the funding period, specifying the number of each type of case or proceeding handled by the clinic;
- (c) a summary of the complaints received by the clinic from individuals who received or were refused legal aid services from the clinic, and from persons affected by the legal aid services provided by the clinic and a description of the disposition of each such complaint;
- (d) any other financial or other information relating to the operation of the clinic that the Corporation may request.

...

Corporation to have access to clinic records

(4) For the purpose of verifying any information provided under clause (2) (b) or (d), the Corporation may require that the clinic provide the board of directors of the Corporation, or any person or persons designated by the board of directors of the Corporation, with access to the premises of the clinic at any reasonable time and to all its books, accounts, financial records, reports, files and documents, but the clinic may withhold any of them that is confidential to any individual to whom the clinic has provided legal aid services, unless the individual consents to such access, or unless the information pertains to the financial eligibility of the individual to receive legal aid services. 1998, c. 26, s. 37.

Direction from Corporation

38. (1) If a clinic fails to comply with this Act or to meet the terms and conditions of its funding, the board of directors of the Corporation may direct the clinic to do anything that the board of directors of the Corporation considers appropriate to ensure that the clinic complies with this Act and the terms and conditions of its funding and, generally, for the more effective operation of the clinic.

...

Duties of clinic board

39. (1) The board of directors of a clinic funded by the Corporation shall ensure that,

- (a) the clinic complies with this Act and the terms and conditions attached to the funding;
- (b) the clinic complies with any direction issued by the board of directors of the Corporation; and
- (c) the clinic meets the operational standards established by the Corporation.

Same

(2) Subject to this Act, the board of directors of a clinic funded by the Corporation shall determine the legal needs of the individuals and communities served or to be served by the clinic and shall ensure that the clinic provides legal aid services in the area of clinic law in accordance with those needs.

Same

(3) The board of directors of a clinic funded by the Corporation shall, on its own initiative or at the request of the clinic committee, advise the clinic committee on matters relevant to the provision of legal aid services by means of clinics.

Non-compliance by clinic

(4) If the board of directors of the Corporation is of the opinion at any time that a clinic funded by the Corporation is not complying with this Act or with the terms and conditions attached to its funding or with a direction issued under section 38 or is not meeting the operational standards established by the Corporation, the board of directors may reduce or suspend the funding of the clinic.

⁹ The *Legal Aid Services Act, 1997*, states:

Corporation to monitor clinic

37. (1) The Corporation shall monitor the operation of a clinic funded by it to determine whether the clinic is meeting the Corporation's standards for the operation of clinics, and the Corporation may conduct audits of such clinic, as it considers necessary for that purpose.

Reports to Corporation

(2) A clinic funded by the Corporation shall provide the Corporation, in the form and at the times requested by the Corporation,

...

(c) a summary of the complaints received by the clinic from individuals who received or were refused legal aid services from the clinic, and from persons affected by the legal aid services provided by the clinic and a description of the disposition of each such complaint.

...

97 (1) Subject to the approval of the Lieutenant Governor in Council, the Corporation may make regulations respecting its administration of the system for providing legal aid services and, without limiting the generality of the foregoing, may make regulations,

...

(s) establishing a process for investigating and resolving complaints made against lawyers and service-providers providing legal aid services.

...

BCRSP EMAIL SEPTEMBER 10, 2009

Julia Bass, MA, LLB
Policy Counsel
Law Society of Upper Canada

Dear Ms Bass:

On behalf of Canadian Registered Safety Professionals (CRSP)[®] providing paralegal services to clients requiring access to Workplace Safety and Insurance Board (WSIB) case files/information, we respectfully request that any changes being considered by the Law Society of Upper Canada (LSUC) to the current exemption status, critical to the work of most CRSP certificate holders, be deferred until such time as the current requirement of the WSIB for an exemption status number for basic requests of information has been resolved and is no longer required.

Sincerely,
BOARD OF CANADIAN REGISTERED SAFETY PROFESSIONALS



Edward J. Miller, BSc, MPA, CRSP
Chair, Governing Board

cc. D. Heather Harvey, RN, COHN-S(R), CRSP, CHRP, Member Governing Board;
Chair, Certification and Examination Committee;
Vice Chair, Foreign Credentials Recognition Committee
Jason Lakhan, CRSP, Gowling Lafleur Henderson LLP

Board of Canadian Registered Safety Professionals
6519B Mississauga Rd
Mississauga, Ontario L5N 1A6

tel: (905) 567-7198
toll free - 1-888-279-2777
fax: (905) 567-7191
pfletcher@bcrsp.ca
www.bcrsp.ca

Accreditations:
ISO 17024:2003 (Personal Certification Body)
ISO 9001:2008 (Quality Management System)

PSC REPORT TO CONVOCATION: SUMMARY OF RECOMMENDATIONS ON EXEMPTIONS

20/01/2010

EXEMPTION OR EXCLUSION BY-LAW 4, PART V:

RECOMMENDATION

Section 30 (1) In-house legal services provider	<ul style="list-style-type: none"> • Further consideration required • Ask for future compliance plans, encourage voluntary licensing
Legal Clinics: employees	<ul style="list-style-type: none"> • Further consideration required • Ask for future compliance plans, encourage voluntary licensing
Legal Clinics: law students	<ul style="list-style-type: none"> • Continue exemption
Law school student legal services	<ul style="list-style-type: none"> • Continue exemption
Law student <i>pro bono</i> programs	<ul style="list-style-type: none"> • Continue exemption
Not for profit organizations	<ul style="list-style-type: none"> • Continue exemption
Acting for family, friend or neighbour	<ul style="list-style-type: none"> • Break into : ‘family’ (broad) and ‘friends’ (narrow) • develop standard form for use by tribunals
Constituency assistants	<ul style="list-style-type: none"> • Re-word the by-law and continue exemption
Other profession or occupation – member of A. Human Resources Professionals Association of Ontario B. Ontario Professional Planners Institute C. Board of Canadian Registered Safety Professionals D. Appraisal Institute of Canada E. Canadian Society of Professionals in Disability Mgmt.	<p>A: Further consideration required, encourage voluntary licensing B: permit work at Committees of adjustment C: Further consideration required, encourage voluntary licensing D: Further consideration required, encourage voluntary licensing E: Remove exemption as unnecessary for their work</p>
Section 31 Office of the Worker Adviser Office of the Employer Adviser	<ul style="list-style-type: none"> • Ask for future compliance plans and encourage voluntary licensing
Injured Workers groups funded by the WSIB	<ul style="list-style-type: none"> • Encourage voluntary licensing
Section 32 (2) trade unions and persons designated by the Ontario Federation of Labour	<ul style="list-style-type: none"> • Continue exemption as consistent with intent of statute
Section 34 Articling Students Employed law students	<ul style="list-style-type: none"> • Continue exemptions
<i>Additional exemption to be added</i>	<ul style="list-style-type: none"> • Add exemption for paralegal students on work placement

APPENDIX 5

PARALEGAL REGULATION - REVIEW SCHEDULE

FIVE-YEAR REVIEW PERIOD STARTS MAY 1, 2007

	JANUARY TO JUNE	JULY TO DECEMBER
2009		EXEMPTIONS REPORT TO CONVOCATION
2010		
2011		
2012	FIVE YEAR REVIEW PERIOD ENDS MAY 1, 2012	LAW SOCIETY TO FILE REPORT BY AUGUST 1, 2012 ATTORNEY GENERAL'S APPOINTEE TO FILE REPORT BY NOVEMBER 1, 2012

AMENDMENT TO PARALEGAL RULES - DUTY TO REPORT TO INSURER

Motion

69. That Convocation approve the following addition to the *Paralegal Rules*:

8.04 (2) A paralegal shall give prompt notice of any circumstance that the paralegal may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Background

70. In September, the Committee approved additions to the list in section 2 of Ontario Regulation 167/07, setting out the types of cases that a single panel member may hear. The Report was submitted to Convocation and approved on September 24.
71. At the time the policy change was discussed, it was noted that there was a difference in the obligations for lawyers and paralegals, in that the lawyers' *Rules of Professional Conduct* contain a requirement to report an incident that may give rise to a claim on a professional liability insurance policy, while the *Paralegal Rules* do not contain such a provision.
72. Although there is no requirement to report in the *Paralegal Rules*, the approved form of insurance for paralegals contains a duty to report. The wording from the currently approved form is attached **APPENDIX 6**.
73. The Committee determined that a comparable provision for the *Paralegal Rules* should be prepared. The proposed wording follows the wording in the lawyers Rules.
74. The complete Rule 8.04, as it would read with this amendment, is attached at **APPENDIX 7**.

APPENDIX 6

REQUIRED WORDING IN ALL PARALEGAL INSURANCE POLICIES

B. NOTICE OF CLAIM:

If during the POLICY PERIOD the INSURED first becomes aware of any CLAIM or circumstances of a WRONGFUL ACT which any reasonable person or INSURED would expect to subsequently give rise to a CLAIM hereunder, the INSURED shall promptly give notice thereof or cause notice to be given to:

Name, address, phone and fax numbers of INSURER

The INSURED shall furnish promptly thereafter to the INSURER all information on the CLAIM which is in the INSURED'S possession or knowledge. If a CLAIM is brought against the INSURED, the INSURED shall promptly forward to the INSURER every demand or originating process received by the INSURED.

C. NOTICE BY THE LAW SOCIETY OF UPPER CANADA:

In the event that any INSURED refuses or fails to comply with these reporting provisions, the Law Society of Upper Canada may, at its sole and absolute discretion, take the place of the other INSUREDS to ensure such compliance or reporting provided that any act of the Law Society of Upper Canada in so complying or reporting on behalf of an INSURED with the requirements of this or any Condition in respect of any one CLAIM, shall not affect the rights of the INSURER to rely upon a breach of this or any other Condition by such INSURED with respect to the CLAIM in question, nor require the Law Society of Upper Canada to perform such substitute compliance or reporting in respect of any other CLAIM.

APPENDIX 7

REVISION TO RULE 8.04 OF THE PARALEGAL RULES – RE DUTY TO REPORT

8.04 Compulsory Errors and Omissions Insurance

Duty to Obtain and Maintain Insurance

8.04 (1) All paralegals practising in Ontario shall obtain and maintain adequate errors and omissions insurance as required by the Law Society.

new (2) A paralegal shall give prompt notice of any circumstance that the paralegal may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

~~(3)~~(2) When a claim of professional negligence is made against a paralegal, he or she shall assist and cooperate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

~~(4)~~(3) In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the paralegal shall pay the balance.

FOR INFORMATION

PRE-PROCEEDING CONSENT RESOLUTION CONFERENCE

75. The Committee met with members of the Professional Regulation Committee (“PRC”) and the Tribunals Committee on November 11th 2009 to discuss a PRC proposal respecting a new consent process for the Society, now referred to as a “Pre-Proceeding Consent Resolution Conference”.
76. Together with PRC and Tribunals, the Committee recommends to Convocation approval of the policy to implement the pre-proceeding consent resolution conference process for a two-year pilot project.
77. The required changes to the *Rules of Practice & Procedure* will be brought forward at a later date.
78. The formal motion and the supporting report are contained in the PRC Report to Convocation.

1/20/2010 7:00 AM