



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

## **Report to Convocation February 25, 2010**

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### **Paralegal Standing Committee**

#### **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 jointly with the Professional Development & Competence Committee on January 27<sup>th</sup>, 2010. Committee members present were Paul Dray (Chair), Susan McGrath (Vice-Chair), Marion Boyd, James Caskey (by telephone), Seymour Epstein, Paul Henderson, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Diana Miles, Sophia Sperdakos and Julia Bass.
2. The Committee further met jointly with the Professional Development & Competence Committee on February 11<sup>th</sup>, 2010. Committee members present were Paul Dray (Chair), Susan McGrath (Vice-Chair), James Caskey, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Diana Miles, Terry Knott, Elliot Spears, Sophia Sperdakos and Julia Bass.
3. The Committee further met on February 11<sup>th</sup>, 2010. Committee members present were Paul Dray (Chair), Susan McGrath (Vice-Chair), James Caskey, Seymour Epstein, Michelle Haigh, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Diana Miles, Zeynep Onen, Terry Knott, Elliot Spears, Sheena Weir, Arwen Tillman and Julia Bass. For the item on legal expenses insurance, the Committee was joined by Barbara Haynes and Jas Basra of DAS Insurance.

## FOR DECISION

### PROPOSED INTEGRATION OF MEMBERS OF SOME EXEMPTED GROUPS

#### 4. Motion

- a. That Convocation approve in principle the creation of an integration programme to permit members of some of the exempted groups in By-law 4 to apply to become licensed as paralegals, as set out below, and
- b. That Ontario collection agents also be permitted to apply under this programme.

#### Background

5. Discussions during the review of exemptions in 2009 revealed considerable interest in a further opportunity for people in some of the exempt groups to become licensed. Examples would be municipal prosecutors, government employees, and employees of legal clinics and the offices of the worker and employer adviser. (The programme would not be relevant to all of the exempted groups - for example it would not be applicable to articling students and MPP's). An excerpt from By-law 4, setting out the full list of exemptions, is attached at **Appendix 1**.
6. The Committee Report presented at Convocation on January 28<sup>th</sup> set as an objective the reduction of the number of exemptions over time. There were indications that many members of exempted groups regret not having applied during the 'grandparenting' process.
7. The Committee concluded that a further avenue to permit members of some of the exempted groups to become licensed would be appropriate, but that this should be a somewhat more formal process than the grandparenting offered in 2007.

8. If approved by Convocation, implementation of the proposal will require a by-law amendment. The Committee will thus be returning to Convocation with a proposed by-law showing the full details of the programme.
9. There is no reliable method for establishing how many applicants would come forward if offered a further opportunity to become licensed; a rough estimate would be in the region of 400 to 450.

### **Collection Agents**

10. In addition to the interest expressed by members of some of the exempt categories in By-Law 4, the Law Society also received a request for an exemption for Ontario collection agents, attached at **Appendix 2**. The collection agents have been directly affected by the introduction of paralegal licensing, as prior to regulation, some collection agents used to appear in small claims court on behalf of their clients, and many prepared statements of claim, even when the court work was to be undertaken by a lawyer or paralegal.
11. Collection agents are regulated by the Ontario Ministry of Consumer Services. As such, their collection work is deemed not to be “legal services” by subsection 1 (8) of the *Law Society Act*:

**Not practising law or providing legal services**

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

12. However, when licensing was first introduced, there was a lack of clarity about the proper interpretation of the words “in the normal course of carrying on” the occupation of collection agent, specifically whether this could reasonably extend to the drafting of statements of claim. At that time, the Law Society did not take a clear position that the preparation of statements of claim was prohibited as a result of the changes to the *Law Society Act*, since the collection agents were clearly regulated by the Ontario government.

13. In discussions with the Ontario Registrar of Collection Agents, it was since clarified that such drafting is not “in the normal course of” acting as a collection agent. A letter from the Registrar of Collection Agents is attached at **Appendix 3**.
14. The determination that the drafting of pleadings is not part of the normal course of a collection agent’s work produces a *lacuna* in regulation, in that a client with a complaint about this area of work cannot complain to the Registrar and cannot complain to the Law Society. This is not in the public interest and produces a gap in consumer protection.
15. Collection agents who contacted the Law Society during the grandparent ‘window’ in 2007 were told that they were ineligible to apply if they lacked the courtroom advocacy experience that formed part of the required criteria. However, they now find that their drafting work is considered the provision of legal services and can be the subject of a complaint of unauthorized practice.
16. As a result, a number of collection agents are anxious to become licensed. The Committee is of the view that offering them an opportunity to become licensed would be preferable to considering the creation of further exemptions at this stage in the implementation of licensing.
17. While the request from the collection agents could be considered separately, the staff recommendation is that the most efficient and effective approach would be to adopt a new process applicable both to the members of the exempted categories and to the collection agents interested in becoming licensed. It is recommended that this new process be called “Integration of Exempted Paralegals”.
18. Any collection agents who choose to become licensed will be required to provide legal services by means of permitted business structures, which may involve a change of practice since a business corporation such as a collection agency cannot be the vehicle for providing legal services. The Ontario Society of Collection agents has requested

advice as to the best manner to achieve compliance with the rules in this regard, and staff will be meeting with them in the near future.

### **Educational Requirement**

19. To address the varying backgrounds of the potential applicants in the various groups, a key feature of the proposal is the creation of a short educational programme that all applicants would be required to complete successfully before entering the licensing process.
  
20. It is important that such an educational requirement be made as accessible as possible, to applicants from all over Ontario. For this reason, it is recommended that a short modular course be developed and offered by the Law Society and made available on-line for distance learning. This is considered preferable to asking the community colleges to provide the necessary course - the colleges have only just been accredited to offer the normal two year programme, and have not yet been audited to ensure they are meeting Law Society standards. It would thus be onerous for them to develop a further new programme, and they lack the Law Society's experience with distance learning. Having the Law Society deliver the programme guarantees that Law Society standards will be met.
  
21. Since applicants will be required to have three years of experience in their field, they will be assumed to have knowledge in the following areas:
  - a. Operating a small business;
  - b. Client interactions;
  - c. Legal procedure pertinent to paralegal practice;
  - d. Identification and application of pertinent statutory and case law pertinent to paralegal practice;
  - e. File management;
  - f. Communication/writing;
  - g. Legal computer applications.

22. Accordingly, it is recommended that the primary focus of the required educational requirement be ethics, professional responsibility and client service with emphasis on advocacy-related knowledge and the *Paralegal Rules of Conduct*.
23. The proposed course would consist of 15 three-hour modules, with a 20 minute multiple-choice assessment at the end of each module. (All applicants would in addition have to pass the standard licensing examination).
24. Once licensed, the new paralegals would also be subject to random practice audits to assess and assure the assumed skills and other practice requirements.
25. The Law Society may be able to utilize certain components of the existing materials for the Professional Responsibility and Practice course developed for lawyers, which would permit cost savings.

### **Proposed Application Process**

26. The new process would not be open to individual paralegals who chose not to apply in 2007 if they are not members of one of the exempt groups. A number of persons in this situation have been told that their application is out of time, and it would not be fair to go back on these decisions.
27. To take advantage of the process, applicants would have to show that they,
  - a. are a member of one of the eligible groups approved by Convocation;
  - b. have three years of experience, or a combination of three years of experience and education, as of the date of application;
  - c. can provide the required references;
  - d. have or can obtain professional liability insurance, and
  - e. are of good character.
28. It is proposed that there be a 'window' of 12 months during which applicants could apply. The start date would be contingent on the date the required by-law is approved by

Convocation. An extensive communications initiative would be required to draw the attention of all relevant persons to the new opportunity.

29. Once applicants have applied, they would be required to complete the educational course, the licensing examination (with the usual three opportunities to attempt it) and all other requirements by December 31st 2014, at which point the process would be terminated.

### **Good character issues**

30. In contrast to the grandparenting process in 2007, it is proposed to explore the option of requiring applicants to fulfill the “good character” requirement prior to entering the educational phase of the licensing process.

### **Budget**

31. The proposal is that the process should pay for itself by setting the fees at a cost recovery level. However, there would be cash flow implications as the costs would be incurred before the necessary fees are received. The estimated direct cost of the educational requirement is \$350,000 plus the standard allocation of indirect costs. This estimate is based on initially offering the programme in English only.
32. There would also be budget implications for the Professional Regulation Department and the Tribunals Office arising from the additional good character hearings. The proposal was considered by the Finance Committee on February 11<sup>th</sup>.

### **The Committee’s Deliberations**

33. Some applicants may complain that the original ‘grandparents’ were not subject to any educational requirement. However, the Committee is of the view that the proposed process can reasonably be seen as part of the transition from the 2007 grandparent process (no educational requirement) to the post-2014 permanent application process (two year diploma required).

34. The Committee's discussion of the request for further grandparenting from the Ontario Society of Collection Agents indicated that the process adopted for the licensing of collection agents should ensure a proper standard of competence.
35. There may be requests from other groups wishing to use the proposed process. (As discussed above, it will not be available to non-exempt individuals who regret not having applied in 2007). If so, the Committee will return to Convocation with more information on the applicants concerned.
36. The Committee was of the view that the proposal would advance consumer protection and access to justice by addressing a current gap in regulation and increasing the number of licensed, competent paralegals. This would serve to strengthen the paralegal community.

## **BY-LAW 4 – EXCERPT**

### **PART V PROVIDING LEGAL SERVICES WITHOUT A LICENCE**

Interpretation

29. In this Part,

"accredited law school" means a law school in Ontario that is accredited by the Society;

"law firm" means,

- (a) a partnership or other association of licensees each of whom holds a Class L1 licence,
- (b) a professional corporation described in clause 61.0.1 (a) of the Act, or
- (c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence;

"legal services firm" means,

- (a) a partnership or other association of licensees each of whom holds a Class P1 licence,
- (b) a professional corporation described in clause 61.0.1 (b) of the Act, or
- (c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence;

"licensee firm" means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

#### **Providing Class P1 legal services without a licence**

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:

#### **In-house legal services provider**

- 1. An individual who,
  - 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, and
  - iii. does not provide any legal services to any person other than the employer.

#### **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.

#### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

**Individuals intending to apply or who have applied for a Class P1 licence**

8. An individual,
- i. whose profession or occupation, prior to May 1, 2007, was or included the provision of such legal services,
  - ii. who will apply, or has applied, by not later than October 31, 2007, to the Society for a Class P1 licence,
  - iii. who has professional liability insurance 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 holder of a Class L1 licence, and
  - iv. who complies with the Society's rules of professional conduct for licensees who hold a Class P1 licence.

**Time limit on providing Class P1 legal services without a licence**

- (2) The individual mentioned in paragraph 8 of subsection (1) may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide only until,
- (a) if the individual is granted a licence prior to May 1, 2008, the day the individual is granted a licence; or
  - (b) if the individual is not granted a licence prior to May 1, 2008, the later of,
    - (i) April 30, 2008,
    - (ii) the day the individual is granted a licence, and
    - (iii) the effective date of the final decision and order, with respect to the individual's application for a Class P1 licence,
      - (A) of the Hearing Panel, or
      - (B) of the Appeal Panel, if there is an appeal from the decision and order of the Hearing Panel.

**Interpretation**

31. (1) In this section,
- "employer" has the meaning given it in the Workplace Safety and Insurance Act, 1997;
- "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;
- "public servant" has the meaning given it in the Public Service Act;
- "survivor" has the meaning given it in the Workplace Safety and Insurance Act, 1997;

"worker" has the meaning given it in the Workplace Safety and Insurance Act, 1997.

### **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.

### **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.

### **Interpretation**

32. (1) In this section,

"dependants" means each of the following persons who were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member's death or who, but for the member's incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild;

"survivor" means a spouse, child or dependent of a deceased member of a trade union;

"workplace" means,

(a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and

(b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

### **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.

### **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.

### **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.



February 1, 2010

Ms. Julia Bass  
Policy Counsel  
Law Society of Upper Canada  
130 Queen St W  
Toronto, Ontario  
M5H 2N6

Dear Ms. Bass,

Re: Paralegal Licensing / Collection Agencies

As discussed in mid January, OSCA has drafted a proposal for the exemption of Collection Agencies from Paralegal Regulation.

OSCA has put a Paralegal Committee in place to deal with the current issues of concern to our members.

The items presented in this proposal have been discussed and agreed upon by our Board of Directors.

I would like to thank you again for listening to the concerns that our members have about the licensing process.

Please feel free to contact me at (416) 277-8463 or at [bradleyrice@centralcredit.ca](mailto:bradleyrice@centralcredit.ca)

Yours truly

A handwritten signature in blue ink, appearing to read "BRADLEY RICE", is written over a light blue rectangular background.

Bradley Rice  
President  
Ontario Society of Collection Agencies

## **Proposal for the exemption of Collection Agencies from Paralegal Regulation**

We propose that licensed Debt Collection agencies are not captured by the Law Society Act or should be exempted by a Law Society By-law.

"Anyone in Ontario providing legal services requires a license, unless the group or individual is not captured by the Law Society Act or is exempt by a Law Society by-law. The Law Society Act enables the Law Society to make exemptions through by-laws."

We believe this proposal will satisfy any reasonable standard of fairness for both the collection industry and the consumers for which we serve.

### **Description of the Collection Industry.**

A collection agency is an organization that obtains or arranges for payment of money owed to a third party; this could be a person or a company.

Collection Agencies operating in Ontario are required to be licensed and bonded under the Collection Agencies Act.

The Collection Agencies Act sets out a code of ethics for Ontario's collection agencies. Ontario's Ministry of Consumer Services worked with the industry to put this law into place to ensure all collection agencies and their employees adhere to the same set of rules. Through this legislation the public has been provided with detailed information as to the permitted and prohibitive practices of registered collection agencies.

At the time of writing, there are 193 organizations registered under the collection Agencies Act.

The collection of debt facilitates the recovery of hundreds of millions of dollars annually, that are returned to credit grantors. These funds, returned to every strata of business organizations, represent cash that companies can put into developing new products, expanding operations, or even paying their own debts. Business organizations use the services of collection agencies in their business models. In the absence of collection services it is not inconceivable that available credit might be restricted to consumers or increased prices to offset this additional risk. By providing collection services, our member organizations contribute an integral service in maintaining lower prices for all consumers.

Besides boosting business, collection agencies assist public policy by providing similar services to government agencies, at all levels of governance.

In fact, the services provided by collection agencies contribute to such an extent on our nation's financial situation that experts have stated that in the absence of

our members' services, the economy would be in much worse condition.

In addition to the most obvious ways that debt collection helps our economy, it also serves as one of Canada's strongest and most rapidly-growing industries. Third-party collection services employ thousands of Canadians each year, providing a paycheque and a stable work environment for people across the country.

The vast majority of our member's activities do not require the use of the court system. There is though, a segment of our business that requires legal activity through the court system, whether it be the Small Claims or General Court venue. It is in the former court where our member organizations have extensive experience in managing and administering those cases that proceed in this manner.

Collection through the Small Claims court system is acting in the normal course of carrying on our profession. This profession is governed by another Act of the Ontario Legislature, The Collection Agencies Act.

### **Problem Statement**

Changes to the Law Society Act have not fully accounted for the impacts to businesses which avail themselves of the Small Claims Court system in the execution of their regulated business practices.

When these changes were proposed, there was a degree of confusion in our industry due the response received from the Law Society to our industry that collection agencies would be able to continue to use the Small Claims Court system in their normal business practices.

Currently, there continues to exist a level of confusion as to what actions or involvement is permissible to Collection Agencies when utilizing the court system in their normal business activities.

From the LSUC's website at time of writing the following appears under the heading "Do Collection Agencies staff require a license?"

Staff of collection agencies, who work to collect debts owing to clients of their agencies, need a licence to appear in small claims court. Under the Law Society Act, a person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature that regulates specifically the activities of persons engaged in that profession or occupation, does not require a licence. Under the Law Society Act, staff of collection agencies working to collect debts owing to clients of their agencies who do **not** use the small claims

court to do so do not need a licence to carry on that work.

### **Solution**

We believe that a reasonable solution to the problem would be to exempt licensed Collection Agencies from the Law Society Act. This solution would allow licensed Collection Agencies to continue to operate as they have for decades, professionally recovering monies that are rightly owed to the businesses for which we work for.

We propose that the exemption of Collection Agencies be subject to certain restrictions. The restriction would allow Collection Agencies to use the small claims court only for the sole purpose of collecting debts.

Collection agencies have not and do not solicit clients for the purpose of providing legal services. Our involvement in the small claims court process is to bring to completion to a file that has been placed for collection.

### **Justification**

The reasoning behind the request for exemption to be considered takes into account the following points:

1. Collection Agencies' use of the Small Claims Court system is an extension of acting in the normal course of business. This business is governed by another Act of the Legislature, namely The Collection Agencies Act.

Per Section 4 (1) of the Collection Agencies Act "*No person shall carry on the business of a collection agency or act as a collector unless he is registered by the Registrar under this Act.*"

Collection Agencies must adhere to strict government regulations including, but not limited to;

- Trust Account requirements
- Bond requirements
- E/O Insurance
- Investigation of Complaints through the Ministry
- Powers of Inspection by the Ministry

- Financial Statement filing requirements

2. The majority of collection agencies in Ontario are members of OSCA, The Ontario Society of Collection Agencies.

OSCA's mission is to provide a governing body that will provide guidance, support, and education to our business partners as well as provide recommendations and education to perspective agency clients in both the local and national marketplace.

In pursuing this goal we pledge to remain of high integrity and professionalism at all times; build long term rewarding relationships; and to act in the best interest of our membership in pursuing the highest standards of communication and good faith.

OSCA is well underway an accreditation process for its members. We are currently in consultation with Brian Pitkin, The Registrar for Collection Agencies, for guidance.

The accreditation process allows for OSCA to be a standard setting organization.

3. Disallowing Collection Agencies to collect debt through the court system would seriously hinder the collection process.

Paralegals cannot legally collect debt unless they are licensed under the Collection Agencies Act.

If a claim is issued by a paralegal and they are the agent of record, any enforcement attempts would constitute acting as a collector.

Furthermore, when creditors place accounts with a Collection Agency they enter into specific contract for the collection of accounts. Most contracts would not allow for additional parties to be involved, say in the case of a Paralegal acting as agent for the creditor.

With claims being issued across the province in varying jurisdictions, it would be impossible to include a specific Paralegal in a contract for the provision of Collection services.

4. Regulation 103, Section 19, under the Collection Agencies Act, states that No collection agency or collector shall,

*(b) commence legal proceeding with respect to the collection of a debt , or recommend to a creditor that legal proceedings be commenced with respect to the collection of a debt, unless the collection agency or collector first gives notice to*

*the debtor that the collection agency or the collector intends to commence such proceedings or recommend that proceedings be commenced, as the case may be;*

Furthermore, the Ministry of Consumer Services own website states the following, when informing the public about Collection Agencies

“Debts should not be treated lightly. They can result in court action, which could lead to money being taken from your paycheque (garnisheed) or seizure of your assets”

Both the above mentioned regulation and the public information provided by the Ministry of Consumer Services speak to the use of the court system by Collection Agencies.

### **Conclusion**

The use of the court system has been historically a logical and effective course of debt collection since the legal system was formed.

Enforcement through Small Claims Court occurs only when all other methods of collection are exhausted.

Collection Agencies’ use of the court system is for the sole purpose of debt collection. We do not solicit the provision of legal services and our only desired use of the Small Claims Court system is to effect the collection of debt that is legitimately owed, which is done under the guidance and strict regulation of the Collection Agencies Act.

Debt Recovery Regulation Unit

Unité de la réglementation du  
recouvrement des dettes

Consumer Protection Branch  
5775 Yonge Street, Suite 1500  
Toronto ON M7A 2E5  
Tel.: 416 326-8810  
Toll-free: 1 800 889-9768  
Fax: 416 326-8810

Direction de la protection du consommateur  
5775, rue Yonge, bureau 1500  
Toronto ON M7A 2E5  
Tél. : 416 326-6203  
Sans frais : 1 800 889-9768  
Télééc. : 416 326-8810

Registrar of Collection Agencies

18 June 2008

Malcolm Heins, LSM  
Chief Executive Officer  
The Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto ON M5H 2N6

Dear Mr. Heins:

Re: Law Society Administration of Paralegals

Thank you for your letter of June 4, 2008.

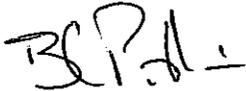
In terms of my dealings with paralegals prior to regulation by the Law Society and in respect of the *Collection Agencies Act*, my position was that a paralegal could make a demand for payment prior to the commencement of an action provided that an action was commenced if payment was not forthcoming without requiring registration under the *Act*. This view was based on section 2 of the *Collection Agencies Act*, which provides that the *Act* does not apply to those acting under the *Courts of Justice Act*. Consistent with this position, paralegals that only pursued debtors where the paralegal had been retained to commence an action were not required to register as collection agencies and therefore not subject to the provisions of the *Collection Agencies Act*. I see nothing that would change this position that results from the regulation of paralegals.

The other situation that existed was that of a collection agency that as part of its service would commence actions, in effect provide paralegal services. While there are some requirements in the *Collection Agencies Act* that require notice before commencing an action, there are no specific provisions that speak to the competence or conduct of the person acting as what we now call a paralegal. Consequently my expectation was that the agency and those it employed would continue to comply with the general requirements of the *Act*. Issues relating to retainer, costs and competence, in my opinion, were not my concern and I would not address them. I don't see that this has changed with the introduction of regulation of paralegals.

Accordingly, I agree that all activities in Small Claims Court conducted by paralegals employed by collection agencies should be regarded as the provision of legal services and regulated by the Law Society. To be clear though, where a complaint involves the handling of trust funds or conduct by the paralegal directed at a debtor that would offend the provisions of the *Collections Agencies Act* I continue to have an interest in the resolution of the complaint.

I trust this is a satisfactory response. If I can be of further assistance please do not hesitate to contact me.

Yours truly

A handwritten signature in black ink, appearing to read "B. Pitkin", with a horizontal line extending to the right.

Brian Pitkin, CD  
Registrar

## **AMENDMENT TO BY-LAW 3 – ELECTION OF COMMITTEE CHAIR**

### **Motion**

- 37. That Convocation approve the amendments to By-Law 3 governing the election of the Chair of the Paralegal Standing Committee, attached at Appendix 4.**

### **Background**

38. In June 2009, Convocation approved the required policies for the conduct of the first paralegal election and the election of the paralegal benchers. However, the Convocation has not yet approved the necessary by-law amendments providing for the election of the Committee Chair.
39. The 2004 Task Force Report to Convocation provided that the Paralegal Standing Committee Chair must be a paralegal licensee and is to be elected by all 13 members of the Paralegal Standing Committee, but did not detail the form of election to be used.
40. The proposed amendments for Convocation's consideration have been prepared following the procedures used for the election of the Treasurer by Convocation, such as use of a secret ballot and the requirement that the successful candidate receive at least 50% of the available votes. (In the case of the Paralegal Standing Committee, this would avoid a situation where a person could be elected chair with only 3 or 4 votes).

## **DRAFT WORDING FOR BY-LAW 3 RE: ELECTION OF COMMITTEE CHAIR**

### **CHAIR**

#### **Definitions**

130.1. (1) In this section and in sections 130.4 to 130.12, “Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of those sections.

#### **Appointment of chair**

130.2. (1) The Committee shall appoint as its chair the member of the Committee whom it elects as chair in accordance with sections 130.3 to 130.12.

#### **Time of appointment**

(2) The Committee shall appoint a chair of the Committee immediately after it elects a chair in accordance with sections 130.3 to 130.12.

#### **Election of chair: time**

- 130.3. (1) There shall be an election of chair by the Committee,
- (a) on the day on which there is an election of benchers licensed to provide legal services under Part I.1 of this By-Law; and
  - (b) on every anniversary of the day mentioned in clause (a), until the next election of benchers licensed to provide legal services under Part I.1 of this By-Law.

#### **Same**

(2) The election of chair by the Committee shall be the first matter of business for the Committee on the day of the election of chair except that, on the day on which there is an election of benchers licensed to provide legal services under Part I.1 of this By-Law, the election of chair shall be the first matter of business for the Committee immediately after the election of benchers.

#### **Elections Officer**

130.4. The election of chair shall be conducted by the Elections Officer.

#### **Who may be candidate**

130.5. (1) Every person who was elected to the Committee under Part VII.1 of this By-Law and took office as a member of the Committee pursuant to that Part may be a candidate in the election of chair if the person is nominated as a candidate in accordance with this section.

**Nomination and consent**

- (2) A candidate in the election of chair must,
  - (a) be nominated by at least one member of the Committee; and
  - (b) consent to the nomination.

**Nomination requirements**

- (3) The nomination of a person as a candidate in the election of chair must,
  - (a) be in writing;
  - (b) be signed by the person being nominated, to indicate his or her consent to the nomination;
  - (c) be signed by the member or members of the Committee nominating the person as a candidate; and
  - (d) be submitted to the Elections Officer by the time specified by the Elections Officer.

**Invalid nomination**

(4) A nomination that does not comply with subsection (3) is invalid and the person who is the subject of the nomination shall not be a candidate in the election of chair.

**Election by acclamation**

130.6. If after the time specified by the Elections Officer for the submission of nominations there is only one candidate in the election of chair, the Elections Officer shall declare that candidate to have been elected the chair.

**Poll**

130.7. (1) If after the time specified by the Elections Officer for the submission of nominations there are two or more candidates in the election of chair, a poll shall be conducted to elect the chair.

**Poll: secret ballot**

(2) A poll to elect the chair shall be conducted by secret ballot.

**Poll: right to vote**

(3) Every person who is a member of the Committee on the day of the election of chair is entitled to vote in the election of chair.

**Procedure for voting: first ballot**

130.8. (1) On the day of the election of chair, each member of the Committee who is in attendance in person at the meeting of the Committee at the time of the first ballot shall receive a first ballot listing the names of all candidates in the election of chair.

**Procedure for voting: second ballot**

(2) If the chair is not elected as a result of the votes cast on the first ballot, each member of the Committee who is in attendance in person at the meeting of the Committee at the time of the second ballot shall receive a second ballot listing the names of the candidates remaining in the election of chair at the time of that ballot.

**Application of subs. (2) to second and further ballots**

(3) Subsection (2) applies to the second ballot and, with necessary modifications, any further ballots in the election of chair.

**Marking ballot**

(4) Each member of the Committee voting on a ballot in the election of chair shall vote for one candidate only on the ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

**Ballot box**

(5) After a member of the Committee voting on a ballot in the election of chair has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Elections Officer, put the ballot into the ballot box.

**Counting votes**

130.9. (1) After all members of the Committee voting on a ballot in the election of chair have voted or declined to vote on the ballot, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

### **Counting votes: application**

(2) Subsection (1) applies to the count of votes on the first ballot in the election of the chair and, with necessary modifications, to the count of votes on the second and any further ballot in the election of chair.

### **Report of results: two candidates**

130.10. (1) If on any ballot in the election of chair there are not more than two candidates, immediately after counting the votes cast for each candidate, the Elections Officer shall report the results to the Committee and shall declare to be elected as chair the candidate who received the larger number of votes.

### **Report of results: three or more candidates**

(2) If on any ballot in the election of chair there are three or more candidates and, after counting the votes, the Elections Officer determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the Elections Officer shall report the results to the Committee and shall declare to have be elected as chair the candidate who received the largest number of votes.

### **Same**

(3) If on any ballot in the election of chair there are three or more candidates and, after counting the votes, the Elections Officer determines that no candidate received more than 50 percent of all votes cast for all candidates, the Elections Officer shall report to the Committee that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect the chair.

### **Further ballot required**

(4) If a further ballot is required under subsection (3), the Elections Officer shall report to the Committee the candidate on the previous ballot who received the least number of votes and that candidate shall be removed as a candidate in the election of chair.

### **Casting tie-breaking vote**

130.11. If at any time an equal number of votes is cast for two candidates and an additional vote would entitle one of the candidates to be declared to be elected as chair, the vice-chair of the Committee shall, in the presence of the Elections Officer, randomly select one of the candidates and cast an additional vote for that candidate.

### **Equal number of votes**

130.12. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election of chair, a poll shall be conducted to select the candidates to remain in the election.

**Secret ballot**

(2) A poll conducted under subsection (1) shall be conducted by secret ballot.

**Right to vote**

(3) Each member of the Committee entitled to vote in the election of chair is entitled to vote in a poll conducted under subsection (1).

**Ballot**

(4) Each member of the Committee entitled to vote in a poll conducted under subsection (1) who is in attendance in person at the meeting of the Committee at the time of the ballot shall receive a ballot listing the names of the candidates who received the equal and least number of votes.

**Marking ballot**

(5) A member of the Committee voting on a ballot in a poll conducted under subsection (1) shall vote for the candidate or candidates, but not for all the candidates, whom he or she wishes to remain in the election of chair and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen.

**Ballot box**

(6) After a member of the Committee voting on a ballot in a poll conducted under subsection (1) has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Elections Officer, put the ballot into the ballot box.

**Counting votes**

(7) After all members of the Committee voting on a ballot in a poll conducted under subsection (1) have voted or declined to vote on a ballot, the Elections Officer shall, in the absence of all persons but in the presence of the vice-chair of the Committee, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.

**Report of results**

(8) Immediately after counting the votes cast for each candidate in a poll conducted under subsection (1), the Elections Officer shall report the results to the Committee.

### **Removal of candidate**

(9) The candidate who receives the least number of votes in a poll conducted under subsection (1) shall be removed as a candidate in the election of chair.

### **Further polls**

(10) If two or more candidates in a poll conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted under subsection (1), for the candidates with the same number of votes, until only one candidate from all the candidates included in the initial poll conducted under subsection (1) is removed as a candidate in the election of chair.

### **Taking office**

130.13. (1) A person appointed as chair shall take office immediately after his or her appointment and shall remain in office until his or her successor takes office.

### **Ceasing to be chair**

(2) Despite subsection (1), a person ceases to be the chair of the Committee if the person ceases to be a member of the Committee.

### **Vacancy in office**

(3) If the chair resigns, is removed from office or for any reason is unable to act during his or her term in office, or if there is for any other reason a vacancy in the office of chair of the Committee, the Committee shall appoint a new chair whom it elects as soon as is practicable.

### **Application of provisions**

(4) Subsection 130.2 and sections 130.4 to 130.12 apply to the appointment and election of chair under subsection (3)

### **Acting chair**

(5) If the chair of the Committee for any reason is temporarily unable to perform the duties or exercise the powers of the chair during his or her term in office, or if there is a vacancy in the office of the chair of the Committee, the vice-chair shall perform the duties and exercise the powers of the chair until,

- (a) the chair is able to perform the duties or exercise the powers of the chair; or
- (b) a new chair is appointed under subsection (3).

## VICE-CHAIR

### **Appointment by Convocation**

130.14. (1) Convocation shall appoint as vice-chair of the Committee a member of the Committee who is,

- (a) an elected bencher who is licensed to practise law in Ontario as a barrister and solicitor; or
- (b) a lay bencher.

### **Term of office**

(2) A person appointed as vice-chair of the Committee shall take office immediately after his or her appointment and shall remain in office until his or her successor takes office.

### **Appointment at pleasure**

(3) Despite subsection (2), the vice-chair of the Committee holds office at the pleasure of Convocation.

### **Vacancy**

(4) If the vice-chair of the Committee for any reason is unable to act, the Treasurer may appoint as vice-chair of the Committee another member who is,

- (a) an elected bencher who is licensed to practise law in Ontario as a barrister and solicitor; or
- (b) a lay bencher.

### **Appointment by Treasurer subject to ratification**

(5) The appointment of a member of the Committee as vice-chair of the Committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

## AMENDMENT TO PARALEGAL RULES - DUTY TO REPORT TO INSURER

### Motion

41. That Convocation approve the deletion of paragraph 3 (13) of the *Paralegal Rules of Conduct*.

### Background

42. 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 approved by Convocation on September 24. At the time the policy change was discussed, there appeared to be 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.
43. The Committee indicated that a comparable provision for the Paralegal Rules should be prepared. Accordingly, wording was developed, to be placed in Rule 8 – Practice Management. It was approved by Convocation in January 2010, as follows:

*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.*

44. In revising a reference version of the rules, it became apparent that similar wording already existed in the rules, under Rule 3 – Duty to Clients, as follows:

*3. (13) A paralegal shall give prompt notice of any circumstances that he or she 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.*

45. Accordingly, one of these versions is redundant. *Part 8 – Practice Management* is a more suitable location for this obligation. The comparable rule in the lawyers' *Rules* is in *Rule 6 – Relationship to the Society and Other Lawyers*, not in *Rule 2 – Relationship to Clients*.

## **FOR INFORMATION**

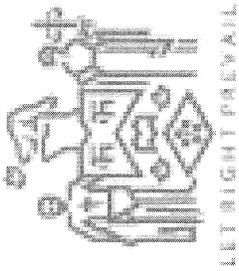
### **PROPOSED AMENDMENT TO RULES RE COMMUNICATIONS**

46. On February 11<sup>th</sup>, the Paralegal Standing Committee considered the proposed changes to the Rules governing communications with represented organizational parties being proposed by the Professional Regulation Committee. The Committee was in agreement with the direction of the proposed changes and supports the Report of the Professional Regulation Committee being submitted to Convocation at **TAB 8**.

### **PRESENTATION ON LEGAL EXPENSE INSURANCE BY DAS CANADA**

47. The Committee received a presentation from DAS Canada on proposals to introduce legal expenses insurance in Canada. Some information on the proposal is attached at **Appendix 5**.

2/17/2010 8:34 AM



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**Presentation to  
Paralegal Standing Committee  
February 11th 2010**

35



**DAS Canada**

## Products and Pricing - DASdrive

DASdrive is designed to give legal protection when disputes arise out of the possession or use of a private motor vehicle. This product is designed and to reflect the different auto regimes in the provinces

Standard legal expense insurance cover with an indemnity limit of \$100,000 to recover costs for:

- Disputes with own insurer regarding fault determination and total loss valuation
- Assistance presenting SABS claims
- Legal Defense with respect to breach of highway traffic laws
- Legal Defense with respect to suspension of Driver's License
- Contract Disputes relating to automobile transactions

*(Includes telephone legal advice)*

# Products and Pricing - DASliving

DASliving is designed to cover legal expenses that could arise from the most common legal problems of an individual or family.

Standard legal expense insurance cover with a limit of indemnity of \$100,000 to pursue costs for:

1. Employment Disputes
2. Contract Disputes
3. Bodily Injury
4. Property Protection
5. Tax Protection
6. Legal Defense
7. Court Attendance

*(Includes telephone legal advice)*

## Legal Advice

Legal Advice will be offered across Canada and this service will be available 8 am to midnight, local time 7 days a week. In emergency situations we will facilitate access to a lawyer 24 hours a day, 7 days a week.

*DASdrive*: any personal automobile-related legal problem

*DASliving*: any personal, non-automobile related, legal or tax problem

*DASbusiness*: any commercial legal or tax problem affect the Insured's business

# Regulation of Paralegals (continued)

## Discussion Points:

- The recent regulation creates a unique opportunity for DAS, lawyers and paralegals.
- To date, we have encouraged our panel firms to seek out paralegals to service aspects of our products and as a result have relationships via them.
- We would like to expand the use of paralegals in our business model and accordingly develop direct relationships.