

# Paralegal Regulation in Ontario

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## *Access to Justice Act, 2006*

- *The Law Society Act*, which previously governed lawyers alone, was amended on May 1, 2007, to regulate paralegals.
- The Law Society of Upper Canada became the regulator of the delivery of legal services.
- This was achieved in Ontario by the introduction of a broad definition of the phrase “provision of legal services”. Within this broad definition, the scope of practice for paralegals was to be set out through By-Law under the *Act*.

## History of Paralegal Regulation

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- Efforts to regulate paralegals began in the 1980s.
- In 1987, the Ontario Court of Appeal held that a non-lawyer could represent a client for a fee, wherever an Ontario statute provided that an “agent” could appear.
- In 1990, a report commissioned by the Attorney General of Ontario (the Ianni Report) recommended that paralegals be regulated by an Ontario government Ministry (the Ministry of Consumer & Commercial Relations).

## History of Paralegal Regulation

The following recommendations in the 1990 Ianni report are reflected in the current regulatory model:

- a “good character” requirement;
- a requirement that paralegals pay registration fees to the Law Society;
- Rules of Professional Conduct for paralegals; and
- A two-year community college course, or equivalent.

## History of Paralegal Regulation

- 2000 - Cory Report - Former Supreme Court Justice Peter Cory recommended that paralegals be regulated by a body independent of both the government and the Law Society (the Cory Report).
- 2001 – Discussions In 2001 began involving the Professional Paralegal Association of Ontario, the Law Society of Upper Canada, and various legal organizations.

## History of Paralegal Regulation

2004

- Request from Attorney General that the Law Society assume responsibility for regulating paralegals.
- Establishment of Task Force to develop regulatory framework
- Consultations

## History of Paralegal Regulation – Law Society as regulator of paralegals

- The Task Force adopted the A.G.'s view that it would be more efficient and economical for the Law Society to regulate paralegals, given the Society's experience with the regulation of lawyers, rather than creating a new regulatory body.
- With respect to scope of practice, the Task Force took the view that the appropriate starting point for paralegal regulation was the regulation of persons providing services in currently-permitted areas of law, as defined in legislation and case-law.

## Approach to Regulation

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The Task Force's approach to regulation was based on the following principles:

- public interest
- consumer protection
- enhancing access to justice.
- ensure paralegal competence.
- flexible
- mirror the regulation of lawyers wherever possible

## Approach to Regulation

- Independent paralegals should be licensed by the Law Society, under the supervision of a Standing Committee of Convocation.
- Persons wishing to acquire a licence should take an approved college course, be of good character, and pass a licensing examination.
- Licensed paralegals should be required to follow a code of conduct, carry insurance, and pay into a compensation fund, in the same manner as lawyers.
- Paralegals should also be subject to discipline, including the potential loss of licence after a hearing.

## Guiding Principle – Parallel Regulation

The regulatory framework for paralegals was to be as similar as possible to the framework for lawyers. The provisions are the same in the following areas:

- Practice structures;
- Professional relationships;
- Advertising, competition and restraint of trade;
- Professional conduct, including conflicts of interest;

## Guiding Principle – Parallel Regulation

- Professional liability (the insurance requirement is the same, with the exception that paralegals may purchase insurance on the open market rather than through the Lawyers Professional Indemnity Company, which insures all lawyers);
- Financial management (grandparented applicants were given a transitional period to comply with trust accounting rules);
- Mandatory continuing professional development.

## Statutory Amendments to Implement Paralegal Regulation

The *Law Society Act* now provides that it is a function of the Society to ensure that

- All persons who practise law in Ontario or provide legal services in Ontario must meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- The standards of learning, professional competence and professional conduct in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

## Paralegal Standing Committee

- The 2006 amendments to the *Law Society Act* also established the Paralegal Standing Committee.
- The composition of the Committee is also set out in the *Act*, which provides that the Committee shall consist of 13 persons, of whom five shall be elected benchers licensed to provide legal services in Ontario. (“Benchers” are members of the Board of Directors, and are elected by lawyers and paralegals every four years).
- Three of the members of the Committee are lay benchers, and the remaining five are lawyers.

## Paralegal Rules of Conduct

- The Paralegal Rules of Conduct provide an ethical framework for paralegals who are providing legal services in Ontario.
- Please see <http://www.lsuc.on.ca/paralegal-conduct-rules>
- Some of the areas covered in the Rules include professionalism, a paralegal’s duty to his or her client, advocacy, fees and retainers, obligations to the administration of justice, duties to other professionals, practice management, and responsibilities to the Law Society.

## Exemptions from Paralegal Regulation

The Law Society Act provides that the following four areas are excluded from Law Society jurisdiction:

- 1) Other regulated professions, within the normal course of their work;
- 2) In-house employees preparing documents for their employer;
- 3) Persons acting on their own behalf; and
- 4) Trade union representatives dealing with members' trade union matters.

The Law Society may exempt any other person or class of persons through By-law.

## Grandparenting

## Grandparenting

Special provisions were required for the large number of paralegals already successfully practicing in the authorized scope of practice, who were given a six-month window to apply from May 1 to October 31, 2007.

These applicants had no educational requirements, provided that they had three years of experience.

## Grandparenting

There was also a transitional class of applicant, with a combination of education and experience.

These applicants were subject to other licensing requirements, such as

- being of good character;
- carrying insurance; and
- passing the licensing examination.

## Grandparenting

- Over 2000 applicants applied for licensing. Of these, 1930 took the first-ever licensing examination on January 17, 2008.
- In total, 2230 paralegal licenses were issued under the “grandparenting” program.

## Scope of Practice

- Paralegal scope of practice is set out in Law Society By-Law 4.
- Primary areas of practice include small claims court, traffic and other provincial offences, landlord-tenant and various other matters handled by tribunals and administrative bodies, and minor matters under the Criminal Code

## Paralegals and Access to Justice



### How has Paralegal Regulation Increased Access to Justice in Ontario?

- The Law Society Act amendments referred to earlier required reviews two and five years after the implementation of paralegal regulation.
- The two year review found that the Law Society had successfully implemented all of the recommendations made to Convocation in 2004.
- The five year review (known as the Morris Report) was completed in 2012.
  - focus groups were conducted with members of the public who had used paralegal services, and with paralegals.



## Paralegals and Access to Justice

- As part of the review, the Law Society sought submissions from paralegals, lawyers, legal organizations and members of the public.
- The independent consultant sought as large a sample as possible of Ontarians who had used the services of a paralegal in the last three years.
- The primary services used related to traffic disputes, small claims court matters, landlord and tenant issues, and workers' compensation.

## Paralegals and Access to Justice

Results of the survey indicated a general degree of satisfaction with the paralegal services used.

- 74 percent of clients were satisfied or very satisfied with the services they had received.
- 87 percent would use paralegal service again.
- 68 percent reported that paralegal services were good value for money.
- 71 percent of paralegals surveyed indicated that they believed regulation had been beneficial for them.

## Morris Report – Findings

- The implementation of paralegal regulation has been a success,
- The Law Society continues to be the right choice of regulator for paralegals.
- Successful integration of previously independent practitioners into regulated profession.
- At the time of the review, the first few cohorts of students had graduated from paralegal college programs. The standards of the college programs should be reviewed to make them more rigorous.
- Further work is required by the Law Society in communicating to the public about the services provided by lawyers and paralegals, and the differences between them.
- The categories of persons who are exempt from paralegal regulation continue to pose challenges. The Law Society takes the position that it would be desirable for the number of exemptions from regulation to be reduced over time.

## Current Issues

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- The enhancement of access to justice across Ontario is one element of the 2015-2019 Law Society strategic plan.
- Other issues under consideration are enhancing licensing standards and requirements and their assessment, and ways to improve practice supports for paralegals and provide better mentoring.

## Current Issues

As part of its strategic plan, the Law Society will

- work to ensure that high quality instruction is being offered by accredited institutions that are educating paralegal licensee candidates;
- examine enhancements to the paralegal licensing requirements, including possible additional education and training; and
- explore the expansion of areas of practice and delivery of services by paralegal licensees.

# Questions ?

