



LSUC sets out paralegal regulation plans

Proposal calls for new education requirements and character checks

By Patricia Chisholm
For Law Times

After years of wrangling and months of study by more than half a dozen benchers, Convocation voted overwhelming to adopt recommendations for the Law Society of Upper Canada to regulate paralegals.

Chief among the new proposals is a scheme to regulate matters ranging from education to licensing to a professional insurance fund. A currently unregulated group that is estimated at about 2,000 in Ontario, paralegals typically deal with matters such as traffic offences, wills, and uncontested divorces.

“We have attempted here to present a scheme that is both practicable and quite workable, and we believe it addresses consumer protection, it addresses access to justice, and, we believe, the public interest,” Ottawa’s William J. Simpson, chairman of the paralegal task force, told Convocation.

The recommendations call for new requirements for college programs and character checks, addressing what some members of the justice community view as the uncontrolled growth of legal consultants without proper training or education.

The task force noted that substandard or questionable conduct by paralegals often leaves consumers without recourse. Ontario Attorney General Michael Bryant said he welcomed the new recommendations, which will now be reviewed by the province prior to drafting new legislation. The task force study followed a request made by Bryant last January.

Bryant has stated that he believes that paralegals should be regulated by the law society. (The issue had previously been studied by Ron Ianni, former president of the University of Windsor, and former Supreme Court justice Peter Cory, both of whom recommended regulation.)

The paralegal task force was concluded after consultations around the province, both with the profession and paralegal organizations and contains 22 recommendations, which are intended to serve as a framework for new legislation in the area.

The report was overwhelmingly endorsed by Convocation, although there were a handful of dissenting voices. They ranged from concerns that paralegals would unfairly encroach on the work of lawyers (Gary Gottlieb), to worries that the law society would be “stuck holding the bag” for the funding of paralegal regulation and compensation funds (Robert Topp), to questions about the wisdom of granting general licenses, since it might lead to some paralegals expanding into areas in which they lack expertise (John Campion).

“By inviting the paralegal camel into the law tent, we are, as I have stated, giving them a legitimacy that they do not presently have, and you can rest assured that pretty soon the paralegal camel will do their best to occupy much more of the tent and force out solicitors that have every right to be there,” said Gottlieb.

However, the majority of benchers asserted that such matters can be dealt with, if necessary, during upcoming consultations with the AG’s office.

Potentially bigger problems await in the form of opposition to all or part the new scheme by paralegals themselves. Paul Dray, the only paralegal bencher, stated that he supports most of the recommendations but noted that the new plan is almost impossible to sell because, while paralegals will be regulated by the law society and pay dues to it, they will not be able to join.

“So we’re going to pay dues to a body to regulate us, license us, and if we go through the recommendations, we’re going to have the same standards as lawyers for trust accounts, the same standards of lawyers for conduct, the same standards when it comes to ethics. But when it comes to being a member of this society, we’re not going to be members,” said Dray.

He also suggested that there appears to be a contradiction between some of the matters that paralegals perform now, such as giving legal opinions and drafting and filing documents, and matters that the report seems to conclude should not be performed by paralegals, because they constitute the practice of law.

There were other rumblings about the new scheme. The Professional Paralegal Association of Ontario (PPAO) responded to Convocation by declaring that, while it believes paralegals should be regulated, the law society should not have that authority.

“The law society has engaged in only token consultation with the paralegal community and has recommended that paralegals not be allowed to engage in non-advocacy (solicitors’) type legal work,” said the PPAO in a statement. “The proposal would effectively eliminate cost savings associated with paralegals in these areas and eliminate competition for the legal profession.”

The association also noted that other professions, like architects, chartered accountants, and dentists, do not regulate related groups like interior designers, certified general accountants, and denturists.

At the same time, lawyers and paralegals who work as immigration consultants objected to the report's failure to address the regulation of their field. Last April, the federal government created a new body, the Canadian Society of Immigration Consultants (CSIC), which creates a code of conduct for immigration consultants, including lawyers.

The new body was created by the Department of Citizenship and Immigration and includes malpractice insurance and a compensation fund. The society's scope is limited, however: consultants need only join if they are dealing directly with Citizenship and Immigration.

Lawyers and provincial law societies have objected to the scheme as encroaching on their jurisdiction and handing credentials to consultants who lack the appropriate training and experience to deal with the complexity of immigration law.

Toronto immigration lawyer Sergio Karas, of Karas & Associates, is secretary of the Ontario Bar Association's citizenship and immigration section and a vice-chairman of the International Bar Association. He said he is "very concerned" about CSIC because, while it does not require consultants to have a college or university degree, it puts such consultants on the same level as lawyers who practise immigration law.

"It is quite ridiculous," he said. Many such consultants are active in their own ethnic communities and attract clients by "promising people the moon." Given that they "have people's lives in their hands" they should have a minimum level of education.

There is no shortage of immigration lawyers, he said, and their rates are in the same range as those charged by consultants. Karas also questioned the authority of the federal government to create the society and suggested that the issue could be the subject of a court challenge by provincial law societies.