THE REGULATION OF PARALEGALS IN ONTARIO: INCREASED ACCESS TO JUSTICE?

Lisa Danielle Trabucco

A DISSERTATION SUBMITTED TO
THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

Graduate Program in Law

Osgoode Hall Law School
York University
Toronto, Ontario

October 2020

Abstract

The legal profession throughout most of Canada enjoys the privilege of self-regulation and a (purported) monopoly over legal practice. In Ontario, the Law Society must regulate so as to facilitate access to justice and protect the public interest. Critics argue that self-regulation is anti-competitive – it allows the profession to control the market for legal services, increasing the cost of services and restricting access to them – and serves professional interests over the public interest. The Ontario government introduced paralegal regulation to enhance access to justice. Regulation would increase consumer choice and the competence and affordability of non-lawyer legal service providers. The Law Society agreed to regulate paralegals in the public interest. After decades of discord between lawyers and non-lawyers, paralegal regulation was implemented in 2006. Many were opposed to lawyers regulating competitors. For some, it was akin to having the fox watch over the chickens. It also confounded *self*-regulation – the legal profession now regulating itself *and others*. Paralegals are licensed to provide legal services directly to the public independent of lawyers but they are regulated *by* lawyers. The Law Society has declared paralegal regulation a success and itself the right choice of regulator. This dissertation explores whether paralegal regulation has increased access to justice, as the government promised and Law Society claims. It examines the history of the legal profession and Law Society in Ontario and the events leading to paralegal regulation. Using both market control and the cultural history of the legal profession as theoretical underpinnings, and through the lens of access to justice, this dissertation analyzes the Law Society's exercise of regulatory authority over paralegals and undertakes empirical research of paralegal representatives at the Workplace Safety and Insurance Appeals Tribunal. This dissertation concludes that paralegal regulation has done little to increase access to justice and that self-regulation and the Law Society's manner of regulating are barriers to increased access to justice.

Dedication

This work is dedicated, with love and gratitude, to

my parents, Betty (Schankula) and the late Danny Trabucco

and

my spouse, Robyn Fosbury, the wind beneath my wings.

Acknowledgements

Thank you to my co-supervisors, Harry Arthurs and Faisal Bhabha, and to Philip Girard and Sonia Lawrence, for your wisdom, insight, guidance, and encouragement throughout this academic adventure.

Thank you, also, to Thaddeus Hwong for introducing me to data analysis and for your invaluable guidance with that aspect of my research.

I also wish to acknowledge and thank the members of my examination committee, Adam Dodek, Amanda Glasbeek, and John McCamus, for your interest in this work and for raising further issues for my future research.

To all, your generosity of time and expertise is much appreciated – more than words can adequately express.

Table of Contents

List of Tables

CHAPTER 1:
INTRODUCTION

I. BACKGROUND AND AIMS OF STUDY

In March, 1986, Ontario's Attorney General Ian Scott had this to say about lawyers and the state of legal services:

> *The legal profession has created an all-or-nothing situation, where the client either gets Cadillac service with a lawyer or goes on foot by himself, when in truth Buick service with a paralegal might be entirely adequate and far better than what he will do on his own.*[1]

Within months, Ontario's first attempt at a paralegal regulatory scheme[2] was introduced in the legislature. It was touted as meeting the government's obligation to the people "to enshrine their right to competent, affordable access to the justice system."[3] It would be twenty years before paralegal regulation in Ontario would be implemented – the first in North America and the only example in Canada still – to license non-lawyers who provide legal services independently. Unregulated non-lawyers, though, have been providing a range of legal services in the province from the late 1700s, since before the Law Society was established. The circumstances that led to the implementation of paralegal regulation in 2006 and the Law Society's expanded governance role as

[1] "Bill 42, An Act to Regulate the Activities of Paralegal Agents, 1986", 2nd Reading, Ontario, Legislative Assembly, *Official Reports of Debates (Hansard)*, 33-2, No 40 (26 June 1986) (Terrence O'Connor) [Bill 42 Hansard]. Bill 42 was introduced as a Private Member's Bill on 22 May 1986. Terence O'Connor, MPP, in introducing Bill 42, referred to this comment of A-G Scott published in the *Globe & Mail* (22 March 1986) and acknowledged by AG Scott who was in the legislature at the time of O'Connor's introduction of Bill 42.

[2] Bill 42, *An Act to Regulate the Activities of Paralegal Agents, 1986*, 2nd Sess, 33rd Leg, Ontario, 1986 (first reading 22 May 1986).

[3] Bill 42 Hansard, *supra* note 1.

the regulator of paralegals must be viewed and are best understood within the legal profession's historical, cultural, and political contexts.

Canada's legal profession, as an ideal at least, is associated with status, prestige, specialized knowledge and expertise, and throughout its history, has enjoyed the privilege of self-regulation and a monopoly over legal services.[4] But Canada's legal profession is not homogenous.

While the Canadian legal profession "clings strongly to the notion that all its members engage in a common activity, share common attitudes, pursue common interests, and participate equally in the common enterprise of delivering legal services to the public," the reality is that, within the profession, there is clear division of labour, clientele, and rewards.[5] Lawyers are divided into sub-groups by speciality, education, status, wealth, interests, and priorities.[6] The legal profession is more accurately a collection of professions that have little in common in terms of economic interests, intellectual activity, or professional culture.[7] Evidence of the lack of unity lies in the historical distinction between barristers and solicitors.

[4] Quebec is an exception. The legal professions in that province are not strictly self-regulating as they are elsewhere in Canada. See Chapter 4, Part III. A. for discussion of Quebec's regulatory scheme governing the professions.

[5] Harry W Arthurs, Richard Weisman & Frederick H Zemans, "Canadian Lawyers – A Peculiar Professionalism" in Richard L Abel & Philip SC Lewis, eds, *Lawyers in Society: The Common Law World* (Oakland, CA: University of California Press, 1988) 123 at 151, 163 [Arthurs, Weisman & Zemans].

[6] Ontario Civil Legal Needs Project, *The Geography of Civil Legal Services in Ontario* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, November 2011) at 37-38, online (pdf): *LSO* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/g/geography_of_civil_legal_services_final_report_en_nov_18_2011.pdf>; See also Arthurs, Weisman & Zemans, *supra* note 5 at 151, 163.

[7] David AA Stager & Harry W Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990) at 327 [Stager & Arthurs].

The province of Upper Canada in 1797 created the Law Society of Upper Canada (LSUC) when it granted lawyers the authority to form themselves into a society and self-regulate to secure for the profession a learned and honourable body and assist the people of Ontario as required.[8] Self-regulation gives the profession authority to govern itself, inevitably in its own professional interests, and also in the public interest. When the LSUC was established, lay practitioners were already providing legal services and the Law Society tolerated them, largely because they practiced in areas unserved or under-served by lawyers. Where such practice was permitted by statute, or not prohibited, there was little lawyers could do. But at the same time, the Law Society claimed for its members a monopoly over legal services and sought to insulate lawyers from competition. By the late 1800s, the Law Society had the authority to prosecute non-lawyers for unauthorized practice, the argument for which is protection of the public from incompetent and unscrupulous legal service providers. Difficulty lay in the lack of a clear definition of the *practice of law* – it was assumed that what lawyers did, the services they provided, constituted the practice of law and such activity was therefore the reserve of lawyers. The matter was particularly distressing to lawyers when non-lawyers charged a fee for their services and further complicated by statutory authority for some types of non-lawyer practice. Such authority limited the Law Society's success in prosecuting for unauthorized practice and also enabled the emergence of a legal paraprofessional industry that would in time present a troubling reality for lawyers. The situation is not unique to Ontario. Across Canada, a broad range of unregulated non-lawyer legal service provision is permitted by statute, including the very

[8] *An Act for the better regulating the Practice of Law* (UK), UC 1797 (37 Geo III) (1st Sess), c 13, online: *Canadian Research Knowledge Network* <www.canadiana.ca/view/oocihm.9_10042_2/23?r=0&s=1>.

statutes that govern the legal profession and pursuant to which lawyers in Canada claim a monopoly over legal practice and the provision of legal services.

The issue of paralegal practice reached a turning point in the mid-1980s when Ontario's Law Society was unsuccessful in prosecuting a former police officer who ran a business acting as agent for clients fighting traffic tickets and related matters in Provincial Court, pursuant to statutory authority.[9] What most concerned the Law Society is that the agent charged a fee for his services. The Court of Appeal's dismissal of the case threw open the floodgates to non-lawyer practice. Unregulated paralegals who offered services for a fee were viewed by lawyers as a significant threat to their claimed monopoly[10] over legal services and their economic interests; the Law Society claimed it was the public who were at risk from incompetent, unscrupulous and unregulated paralegals. The clash of interests between lawyers and paralegals was inflamed and would not soon be quelled. For many lawyers, the prospect of having to share the legal services market with others was a serious threat.[11] The Ontario Court of Appeal recognized the existing and growing paralegal industry that had been created by statute and, in both 1986 and again in 1999,[12] recommended legislative action in the form of regulation. The Law Society fought any suggestion of the regulation of, and independent, non-lawyer legal service provision, arguing non-lawyers could and should be allowed to work only under lawyer supervision, to protect the public from harm. The government commissioned two major studies of paralegals and their potential regulation. Both Ron Ianni, in 1990, and retired Supreme

[9] *R v Lawrie and Pointts Ltd* (1987), 59 OR (2d) 161, 32 CCC (3d) 549 (CA) [*Lawrie and Pointts*].

[10] A "lawyers' monopoly" over legal services is often-cited and apparently widely accepted but is not an entirely accurate characterization. As discussed in Chapter 4, a lawyers' monopoly was and always has been limited by statutory authority for non-lawyer practice including but not limited to the statutes governing the legal profession.

[11] Stager & Arthurs, *supra* note 7 at 75.

[12] *Lawrie and Pointts*, *supra* note 9; *R v Romanowicz* (1999), 45 OR (3d) 506 (CA).

Court of Canada Justice Peter Cory, in 2000, recommended the regulation of independent paralegals and a regulatory model consistent with the public's need for greater access to legal services.[13] The Law Society made it clear it did not want to regulate paralegals, and paralegals did not want to be regulated by lawyers and the Law Society. But the government persisted. In 2004, it asked the LSUC to assume responsibility for regulating paralegals, citing its 200-year history of expertise in regulating the legal profession.[14] The LSUC agreed, ostensibly, in the public interest.[15]

In 2006, after more than twenty years of an uneasy co-existence between the Law Society and paralegals, and after much discussion, debate, and disagreement, the Ontario government introduced a paralegal regulatory scheme within an access to justice agenda. It promised that paralegal regulation would increase access to justice by increasing the public's choice of competent and qualified legal professionals and offering the public an affordable alternative to lawyers for legal assistance.[16] The government's choice of the Law Society as regulator was contrary to the conclusions

[13] R W Ianni, *Report on the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) at xvii [Ianni Report]; Peter de C Cory, *A Framework for Regulating Paralegal Practice in Ontario: Executive Summary and Recommendations* (Toronto: Ministry of the Attorney General, 2000) at 4 [Cory Report].

[14] Law Society of Upper Canada, *Task Force on Paralegal Regulation Report to Convocation* (Toronto: LSUC, 23 September 2004) at 2 [LSUC Task Force].

[15] Although there is some indication that paralegal regulation was not created with the goal of increasing access to legal services or consumer choice, but to regulate an existing group of non-lawyer legal service providers that were increasing in number: Saskatchewan Legal Services Task Team, "Final Report of the Legal Services Task Team" (14 August 2018) at 76-77, online (pdf): <www.lawsociety.sk.ca/media/395320/107840-legal_services_task_team_report_august_14-_2018-1.pdf> [SASK LSTT Report].

[16] "Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005", 1st reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 11 (27 October 2005) (Hon Michael Bryant) at 494-495; "Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006", 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 106 (13 February 2006) (Hon Michael Bryant, David Zimmer). "Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006", 3rd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 106 (12 October 2006) (David Zimmer).

of both Ianni and Justice Cory that it would be a conflict of interest for the LSUC to regulate competitors and would lead to lawyers controlling the legal services market, contrary to the public interest.[17]

More than a decade before paralegal regulation was implemented in Ontario, Stager and Arthurs argued that as lawyers faced increasing competition, the bar associations (as distinct from provincial law societies) would need to assume more responsibility for advancing lawyers' self-interest "so that the law societies' unambiguous mandate would be the advancement of the public interest." They also cautioned that "the public interest can be entrusted to no single organization, especially if that organization retains control over admission, continuing competence, conduct, and conditions of practice."[18]

The legal services market in Ontario, already segmented, became even more so with the regulation of paralegals. With paralegal regulation came an expanded mandate for the LSUC to regulate so as to facilitate access to justice.[19] Giving the Law Society, a self-regulating body that for more than 200 years had regulated lawyers, the power to regulate others complicates the self-regulatory model and raises questions about the Law Society's ability, and inclination, to regulate not only itself but others in the public interest. The traditional model of self-regulation *for* others (the public) became self-regulation *for* others (the public) *and of* others. Significantly, with regulation imposed, paralegal scope of practice did not expand beyond existing statutory authority. In

---

[17] Ianni Report, *supra* note 13; Cory Report, *supra* note 13.

[18] Stager & Arthurs, *supra* note 7 at 329.

[19] *Law Society Act*, RSO 1990, c L.8, s 4.2 [*LSA*]

requesting the LSUC to regulate paralegals, the Attorney General argued that constituting the Law Society as single regulator would be in the interests of the public, the legal profession, and paralegals.[20] When the Ontario legislature amended the *Law Society Act* to enshrine the regulation of paralegals, the LSUC's regulatory mandate expanded but not as much as the Law Society claimed.[21]

Paralegals are licensed in Ontario to provide legal services directly to the public, for a fee, and independent of lawyers.[22] Regulation essentially established a new profession of legal service providers, and being regulated by the LSUC arguably gave paralegals professional legitimacy and enhanced credibility.[23] But while allowed to provide legal services independent of lawyers, paralegals are regulated by lawyers. Law Society control ensured paralegals would be a separate and subordinate profession with a minor role in its own governance.

In its review of paralegal regulation after the first five years, the Law Society proclaimed regulation had been successful, providing consumer protection and maintaining access to justice in the public interest. The LSUC also proclaimed itself to be "the right choice" of regulator for

---

[20] Michael J Bryant, Address (Speech to Convocation at the Law Society of Upper Canada delivered at Osgoode Hall, Toronto, 22 January 2004) at 23, Transcript of Debates, online: *Law Society of Upper Canada* <lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true>.

[21] Law Society of Upper Canada, News Release, "Law Society Welcomes Introduction of Legislation to Protect Consumers of Paralegal Services" (27 October 2005). The Law Society's expanded regulatory reach did not and does not cover all legal services in the province: see Chapter 3.

[22] The term "paralegal" does not appear in the *LSA*, and is not defined. The *LSA* sets out two categories of licensee in s. 1(1) and By-law 4: L1 for a barrister and solicitor who is authorized to practise law in Ontario, and P1 for a person who is licensed to provide legal services.

[23] According to the LSUC, that is: Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the* Law Society Act (Toronto: LSUC, June 2012) at 3-4, online (pdf): <lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf> [LSUC Five-Year Report].

paralegals.[24] Despite the more than a dozen years that have passed since paralegal regulation was implemented in Ontario, there is a dearth of empirical evidence about its effectiveness and, more particularly, whether it has met the government's promises and Law Society's claims of increased access to justice.[25] The Canadian Bar Association recognizes that Canada is plagued by a paucity of access to justice research.[26] This dissertation provides empirical research on the issue in an attempt to begin to fill that gap.

It must be kept in mind that at the centre of paralegal regulation is a Law Society with deep historical roots and, with state support, a legal profession that has long claimed a monopoly over legal services and control over the legal services market. Paralegal regulation presented a new challenge for the Law Society. Could it regulate others in the public interest? In doing so, or attempting to do so, would self-serving tendencies be exposed? In regulating others, could the legal profession make disinterested decisions about competitors when lawyers' own economic and other interests are directly impacted? At the heart of the privilege of self-regulation lies a regulatory bargain: in exchange for the authority to govern itself and exclusive right to practice, the profession must regulate in the public interest. This public interest mandate arises from the profession's specialized knowledge and expertise which members of the public, who rely on the profession's services, lack. But critics of self-regulation, particularly Abel and Rhode, argue that self-regulation

[24] *Ibid* at 3, 5, 26.

[25] The only evidence is one research study conducted by STRATCOM for the LSUC as part of the LSUC's Five-Year Review of Paralegal Regulation that gathered qualitative evidence of the "impressions and opinions" of licensed paralegals and Ontarians who had used the services of a licensed paralegal: David Kraft, John Willis, Stephanie Beattie & Armand Cousineau, "Five Year Review of Paralegal Regulation: Research Findings, Final Report for the Law Society of Upper Canada" (6 May 2012) in LSUC Five-Year Report, *ibid*.

[26] Canadian Bar Association, *Equal Justice: Balancing the Scales* (Ottawa: CBA, 2013) at 145, online (pdf): <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf> [CBA, *Equal Justice*].

serves the interests of the profession over the public interest through the profession's control of the legal services market. The foundation of market control theory is the regulation of the supply of legal services.[27] More particularly, lawyers will exercise their monopoly to control competitors and limit competition.[28] If this is so, then one would expect the self-serving tendencies of self-regulation to be exposed when the Law Society's mandate expanded to include the regulation of paralegals. The 2006 decision of the Ontario government to subject paralegals to regulation by the LSUC offers an opportunity to test the Abel/Rhode thesis that self-regulation is guided by the profession's incentive to serve its own interests at the expense of the public interest.

The focus of this dissertation is whether the regulation of paralegals has increased access to justice in Ontario. It examines the history of the legal profession and Law Society, non-lawyer legal service providers, the events leading to paralegal regulation, and the issue of regulation elsewhere in Canada. Using market control as the theoretical underpinning, but recognizing that it is situated within the context of the cultural history of the legal profession, this dissertation analyzes the Law Society's exercise of regulatory authority over paralegals in light of its public interest justification for doing so. This dissertation also employs empirical research regarding the services provided by paralegal representatives at Ontario's Workplace Safety and Insurance Appeals Tribunal (WSIAT).

II. RESEARCH QUESTION AND HYPOTHESIS

I will first examine the history and culture of the legal profession in Canada, and Ontario specifically, and then, against this backdrop, provide a statutory history of paralegal regulation in

[27] Richard L Abel, "England and Wales: A Comparison of Professional Projects of Barristers and Solicitors" in Abel & Lewis, *supra* note 5 at 23 [Abel, "England and Wales"].

[28] *Ibid* at 39; Deborah L Rhode, "The Profession and the Public Interest" (2002) 54:6 Stan L Rev 1501 at 1519 [Rhode, "Public Interest"].

Ontario, identifying the Law Society's ostensible justifications for agreeing to regulate paralegals and measuring those justifications against the Law Society's exercise of regulatory authority. In particular, I will examine the government's promises that assigning regulatory responsibility to the Law Society was in the public interest in that it would (a) provide consumers greater choice of legal service provider, (b) ensure paralegal competence and therefore provide consumer protection, and (c) make paralegals' services more affordable than lawyers' services, thereby increasing access to justice. I will also assess the Law Society's claims that regulation has been successful in that it has increased access to justice.

In order to provide detailed evidence of the effects of the 2007 implementation of paralegal regulation, I undertook two empirical studies. The first explores outcomes by representative type at WSIAT, an adjudicative body where paralegals operated extensively both before and after regulation was implemented; The second, an online survey, explores the billing practices and cost of services of WSIAT paralegal representatives. Based on this original research, I offer a critique of both the government's decision to give the Law Society regulatory authority over paralegals and the Law Society's exercise of regulatory authority.

Briefly stated, the hypothesis I am advancing is that the statute that brought in paralegal regulation, the *Access to Justice Act, 2006*, has not resulted in improved access to justice, as its name implies. The regulatory model, self-regulation, is inadequate given the inherent conflict of interest in having lawyers regulate other legal service providers and the Law Society has failed to exercise regulatory authority in the public interest. I conclude that paralegal regulation by the Law Society exposes the legal profession's self-serving tendencies, limiting competition and controlling the

market for legal services. In short, paralegal regulation has not increased access to justice, contrary to the public interest.

III. THE LITERATURE

Relevant to this dissertation is the literature on professional self-regulation, the cultural history of Canada's legal profession, and access to justice, all of which is critical to and bound up within the issue of the regulation of paralegals in Ontario. This part examines each of the following in turn: the rationales for regulating markets generally, professional self-regulation and its dual aspects: public interest/access to justice and professional interests/market control, the culture and history of Canada's legal profession within which self-regulation exists and endures, and the concept and ideal of access to justice. In short, the legal profession's cultural history and self-regulatory status provide the rich context and background for this dissertation's study of the regulation of paralegals from an access to justice perspective. The theoretical underpinning that frames this research is market control and the cultural history of the legal profession.

A. Why Regulate?

A useful starting point is to consider why markets are regulated at all.

Markets for goods and services should be functional and competitive.[29] Where consumers are incapable of evaluating an occupation's expertise,[30] it is generally accepted that some level of regulation is required to ensure that the services offered meet standards of quality, and the providers

[29] Gillian K Hadfield, *Rules for a Flat World – Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (New York: Oxford University Press, 2017) at 244 [Hadfield, *Rules for a Flat World*].

[30] Joan Brockman, "'Fortunate Enough to Obtain and Keep the Title of Profession': Self-Regulating Organizations and the Enforcement of Professional Monopolies" (1998) 41:4 Can Public Administration 587 at 593.

meet standards of competence, to protect the public from harm that might otherwise ensue.[31] Licensing, then, acts as a quality assurance mechanism.[32] With professions or specialized trades, there exist market imperfections, referred to as market failures, because of information and power imbalances, or asymmetry, between a profession's specialized knowledge and expertise on the one hand and the public's lack of such knowledge and expertise on the other.[33]

This imbalance in knowledge or "asymmetry" of information requires third party oversight to protect the public.[34] This is the public interest theory of regulation – that regulation addresses "informational asymmetry" (which is one type of market imperfection).[35] As Woolley and Farrow explain, regulation has significant benefits:[36] since the market for legal services is notably imperfect, such that the forces of supply and demand cannot reliably ensure efficient prices or appropriate quality of services, some form of regulation to protect the public interest in ensuring the adequacy

[31] Eliot Freidson, *Professional Powers – A Study of the Institutionalization of Formal Knowledge* (Chicago: University of Chicago Press, 1986) at 63 [Freidson, *Professional Powers*]. See also *ibid* at 593, 600; Michael J Trebilcock & Barry J Reiter, "Licensure in Law" in Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 79 at 71 [Trebilcock & Reiter].

[32] Freidson, *Professional Powers, supra* note 31 at 65.

[33] Robert Mysicka, *Who Watches the Watchmen? The Role of the Self-Regulator* (Toronto: CD Howe Institute Commentary No 416, 8 October 2014) at 7; Joan Brockman, *supra* note 30 at 593; Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) at xi-xii [Evans & Trebilcock]; Michael J Trebilcock & Barry J Reiter, *supra* note 31 at 66; Richard F Devlin & Porter Heffernan, "The End(s) of Self-Regulation?" (2008) 45:5 Alta L Rev 169 at 188, 197 [Devlin & Heffernan].

[34] Frank H Stephen, Lawyers, Markets and Regulation (Cheltenham, UK: Edward Elgar Publishing, 2013) at 12, 15-16.

[35] Alice Woolley, "Why Do We Regulate Lawyers?" in *Why Good Lawyers Matter*, eds David L Blaikie, Hon. Justice Thomas A Cromwell & Darrel Pink (Toronto: Irwin Law, 2012) 105 at 111-114; Noel Semple, *Legal Services Regulation at the Crossroads – Justitia's Legions* (Cheltenham, UK and Northampton, MA: Edward Elgar, 2015) at 18-19.

[36] Alice Woolley & Trevor CW Farrow, "Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges" (2016) 3:3 Texas A&M L Rev 549 at 571 [Woolley & Farrow].

of legal services is required.[37] To be clear, public interest theory is concerned with the interest of consumers of legal services in the choice, quality and price of those services.[38]

Regulation, then, is a means to control markets and is necessary for the public good. Regulation in the form of entry standards and continuing practice requirements, if related to the ability to perform a service properly, raises the quality of service offered to the public by licensed practitioners and benefits the public by way of increased protection from harm that could result from the improper provision of the service.[39] Regulation is thus concerned with underlying values of the society in which it operates: democracy, accountability, equality, transparency, effectiveness and efficiency.[40]

As Freidson explains, the definition and conceptualization of *profession* has varied over time. In the mid-1900s, the central characteristics of professions focused on a profession's especially complex formal knowledge and skill along with an ethical approach to their work.[41] The emphasis then shifted to the "monopolistic institutions of professions and their high status."[42] A profession's knowledge, skill, and ethical orientations were treated not as objective characteristics but "as ideology and as claims by professions seeking to gain or to preserve status and privilege."[43] The

---

[37] *Ibid* at 570-71.

[38] Noel Semple, Russell G Pearce & Renee Newman Knake, "A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England and Wales, and North America" (2013) 16:2 Legal Ethics 258 at 265.

[39] Manitoba Law Reform Commission, *Regulating Professions and Occupations* (Winnipeg: Queen's Printer, October 1994) at 152, online (pdf): <www.manitobalawreform.ca/pubs/pdf/archives/84-full_report.pdf> [Manitoba Law Reform Commission].

[40] Devlin & Heffernan, *supra* note 33 at 185.

[41] Freidson, *Professional Powers, supra* note 31 at 29.

[42] *Ibid*.

[43] *Ibid*.

focus shifted again, in the 1970s, to the political and cultural influence of professions, their relation to political and economic elites and the state, and their relation to the market and the class system.[44] Larson studied the process or project by which professions organize themselves to attain market power and characterizes modern professions as possessing an inherent tendency toward monopoly.[45] Professionalization, according to Larson, describes a profession's attempt to translate one order of scarce resources – special knowledge and skills – into another: social and economic rewards. She conceptualized *professionalization* as "the process by which producers of special services sought to constitute *and control* a market for their expertise."[46] To maintain scarcity "implies a tendency to monopoly" – a monopoly of expertise in the market and of status in a system of stratification.[47] To put it another way, Freidson describes *professionalism* as the occupational control of work [48] which exists when an organized occupation gains the power to determine who is qualified to perform a defined set of tasks, the power to prevent all others from performing that work, and the power to control the criteria by which to evaluate performance.[49] Monopoly is viewed as essential to professionalism which "directly opposes it to the logic of competition in a free market."[50] But, the argument goes, monopoly in some version cannot be avoided and is essential for the nurturance of

[44] *Ibid*. Freidson here refers to Magali Sarfatti Larson's 1977 edition of *The Rise of Professionalism: A Sociological Analysis* in noting the focus on professions' relation to the market and class system. See Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (California: University of California Press, 1977) [Larson 1977], reprinted in Magali Sarfatti Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets* (New Brunswick, NJ: Transaction Publishers, 2013) [Larson 2013].

[45] Larson 1977, *supra* note 44 at 208.

[46] Larson 2013, *supra* note 44 at xvi, "Introduction to the Transaction edition".

[47] *Ibid* at xvii.

[48] Freidson, *Professionalism: The Third Logic* (Chicago: University of Chicago Press, 2001) at 179 [Freidson, *Professionalism*].

[49] *Ibid* at 12.

[50] *Ibid* at 3.

specialized knowledge.[51] According to Freidson, the "institutions of professionalism remain largely intact because complex, esoteric knowledge and skill is difficult to organize in any other way than by some kind of protective monopoly and expert authority."[52] Larson explored how the model of profession passed from a predominantly economic function – organizing the linkage between education and the marketplace, to a predominantly ideological one – justifying inequality of status and closure of access in the occupational order.[53]

In summary, the main features of a *profession* include specialized knowledge and skill, monopolies of expertise and competence, monopolization over the application of that knowledge aimed at market closure and control, and social status and prestige. Moreover, professions and professional monopolies are endorsed by the state and shaped by political, cultural and economic influences.

Since professions are occupations with specialized knowledge and expertise,[54] it is difficult, the argument goes, for anyone other than members of the profession itself to regulate the profession. The state therefore grants traditional professions, like the legal profession in most of Canada, the privilege of self-regulation because of that specialized knowledge and expertise. Since regulation restricts the provision of legal services to members of the self-regulating profession,[55] such

[51] *Ibid* at 208.

[52] *Ibid* at 208-09.

[53] Larson 2013, *supra* note 44 at xviii.

[54] Freidson, *Professional Powers*, *supra* note 31 at 15-16, 24-25. Freidson describes professionals as "agents of formal knowledge."

[55] Stephen, *supra* note 34 at 13.

professions also gain special power and prestige.[56] Contrary to the public interest theory of regulation, private interest or "capture" theory views regulation from the perspective of supplier self-interest.[57] Capture theory holds that regulation by the regulated group is designed and operated primarily for its own benefit.[58]

B. Self-Regulation

Professional self-regulation is the dominant response to market failure.[59] While regulation is justified by its public interest objective, self-regulation permits lawyers to regulate themselves. There are, therefore, both public and professional interests at play within a system designed to primarily, ostensibly, protect the public from harm. Self-regulation is a defining feature of Canada's legal profession.[60] Provincial legislatures have granted to the legal profession the privilege of governing itself and a monopoly over legal practice resulting from the profession's acknowledged specialized knowledge and expertise.[61] The profession therefore enjoys a double monopoly: over the provision of legal services and self-regulation.[62]

---

[56] See Larson, 1977, supra note 44 at x.

[57] Semple, Pearce & Knake, "Taxonomy", *supra* note 38 at 259.

[58] *Ibid* at 261. See also George J Stigler, "The Theory of Economic Regulation" (1971) 2:1 *Bell Journal of Economics and Management Science* 3 at 3.

[59] Stephen, *supra* note 34 at 20.

[60] See Philip Girard, "The Making of the Canadian Legal Profession: A Hybrid Heritage" (2014) 21:2 Intl J Leg Prof 145 at 146-147.

[61] As will be discussed in Chapter 4, lawyers do not have a monopoly over the provision of all legal services. Further, defining "legal practice" or the "practice of law" is fraught with difficulties.

[62] Adam M Dodek, "Lawyers, Guns, and Money: Lawyers and Power in Canadian Society" in *Why Good Lawyers Matter*, eds David L Blaikie, Hon. Justice Thomas A Cromwell & Darrel Pink, *Why Good Lawyers Matter* (Toronto: Irwin Law, 2012) 57 at 64, 66 [Dodek, "Lawyers"].

i. Public Interest

The rationale for self-regulation is therefore predicated on the notion that it provides a vehicle through which the quality of service can be maintained in markets where the consumer cannot readily measure the quality himself.[63] The profession's self-regulatory status and effective monopoly, then, are generally justified because of the protection afforded members of the public[64] – the public interest. The basic theory behind the professional project is that professions gain market privileges in return for regulating their members' competence and ethics, and lawyers enjoy a monopoly and get to charge more for their services than they could in a free market on the assumption that they provide better quality services and are "more trustworthy" than others.[65] That professionals can be trusted to act in the public's interest might also be based on the argument that government has no other choice, in that only professionals can properly administer their own regulatory regime. The contention is that an individual who has not undergone the education and training of a professional is incapable of setting and enforcing appropriate standards for entry into the profession or for conduct thereafter.[66]

---

[63] Avner Shaked & John Sutton, "The Self-Regulating Profession" (1981) 48:2 Rev Economic Studies 217 at 217 [Shaked & Sutton]. See also Gillian K Hadfield & Deborah L Rhode, "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering" (2016) 67 Hastings L J 1191 at 1199.

[64] Richard L Abel, "Lawyer Self-Regulation and the Public Interest" (2017) 20:1 Legal Ethics 115 at 115.

[65] Richard Moorhead, Alan Paterson & Avrom Sherr, "Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales" (2003) 37:4 Law & Soc'y Rev 765 at 765-66.

[66] Manitoba Law Reform Commission, *Regulating Professions and Occupations* (Winnipeg: Queen's Printer, October 1994) at 9, online (pdf): <www.manitobalawreform.ca/pubs/pdf/archives/84-full_report.pdf> [Manitoba Law Reform Commission]. See also Harry W Arthurs, "Why Canadian Law Schools Do Not Teach Legal Ethics" in Kim Economides, ed, *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998) 105 at 105.

The regulatory bargain, then, is that in exchange for the right to self-govern, the legal profession must do so in the public interest.[67] Three elements are key to self-regulation: setting admission, quality and ethical standards; monitoring compliance with standards; and instituting mechanisms for enforcing standards.[68]

Governments favour self-regulation because delegating authority to professions, such as the legal profession, shifts rule-making and enforcement responsibility to the professionals who interact with the public.[69] This delegation of authority is advantageous in many respects: it reduces inefficiencies associated with third-party regulation and provides autonomy for professionals, allowing them to enhance their credibility and legitimacy in the eyes of the public."[70] Self-regulators have particular expertise and "sensitivity to the conditions of practice,"[71] an information advantage in the form of greater expertise and technical knowledge over an external regulator, and are likely to have greater expertise in identifying low quality and devising ways to ensure quality, and this greater expertise reduces monitoring and enforcement costs. In addition, the direct costs of regulation are

[67] Robert Schultze, "What does it mean to be a self-governing regulated profession?" (2007) 4:3 J Property Tax Assessment & Administration 41 at 41-42.; Devlin & Heffernan, *supra* note 33 at 190. See The Law Society of Upper Canada, Annual Report, "1994 Annual Report" (1994) at 2, 22, online: <https://lawsocietyontario.azureedge.net/media/lso/media/about/1994-lsuc-annual-report.pdf>.

[68] Paul D Paton, "Between a Rock and a Hard Place: The Future of Self-Regulation – Canada between the United States and the English/Australian Experience" (2008) J Professional Lawyer 87 at 87; Devlin & Heffernan, *supra* note 33 at 196.

[69] Mysicka, *supra* note 33 at 2, 5.

[70] *Ibid* at 2-3.

[71] *Pearlman v Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869.

generally borne by members of the profession.[72] The state is thus both a source of legitimacy and an essential ally[73] in enhancing a profession's social authority, power, and privileges.[74]

The benefits of self-regulation, then, flow to both the profession and the public. It is Stephen's view that self-regulation of the legal profession persists because of the "implicit social contract" between the profession/law society and the government in which the profession agrees not to exploit its monopoly position in exchange for the right to self-regulate.[75]

Regulation in the public interest[76] is a law society's "paramount role."[77] The Supreme Court of Canada has held that the *public interest* is a broad concept that is contextually dependent.[78] Deference is owed to a law society's interpretation of the "public interest"[79] and to its determination of the manner in which it exercises its mandate.[80] Such deference "properly reflects legislative intent" and also acknowledges a law society's institutional expertise.[81] The *public interest* includes notions of the common good, the general welfare of society, and the common interests of citizens as

---

[72] Stephen, *supra* note 34 at 17.

[73] Girard, *supra* note 60 at 150.

[74] Tracey L Adams, "The Changing Nature of Professional Regulation in Canada, 1867-1961" (Summer 2009) 33:2 Social Science History 217 at 237.

[75] Stephen, *supra* note 34 at 17.

[76] *Law Society Act*, RSO 1990, c L.8, s 4.2; *Legal Profession Act*, SBC 1998, c 9, s 3; *Legal Profession Act,* RSA 2000, c L-8, s 49(1); *Legal Profession Act, 1990,* SS 1990-91, c L-10.1, s 3.1; *Legal Profession Act*, CCSM c L107, s 3(1); *Legal Profession Act*, SNS 2004, c 28, s 4(1); *Law Society Act, 1996*, SNB 1996, c 89, s 5; *Legal Profession Act*, RSPEI 1988, c L-6.1, s 4; *Law Society Act, 1999*, SNL 1999, c L-9.1, s 18(1.1); *Legal Profession Act,* RSNWT 1988, c L-2, s 22(a); *Legal Profession Act,* RSNWT (Nu) 1988, c L-2, s 22(a); *Legal Profession Act*, RSY 2002, c 134, s 3; *Professional Code,* CQLR c C-26, s 23.

[77] *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 36.

[78] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 34 [*LSBC v TWU*].

[79] *Ibid* at paras 35-38.

[80] *Ibid* at para 38.

[81] *Ibid*.

distinguished from individual concerns.[82] Law societies' obligations to the public include access to professional services by all members of the public in need of services; the availability of services at a reasonable cost; provision of services using the most cost efficient methods consistent with maintenance of quality; standards of admissions, competence, credentials, integrity, and professional conduct; and sanctions or discipline procedures to deal with wayward or incompetent practitioners.[83]

The issue is "whether the social bargain is sufficient to ensure self-regulation occurs in the public rather than the profession's interest."[84] Because self-governing professions enjoy market monopoly backed by the coercive power of the state[85] and have exclusive rights to engage in certain activities, including the right to sell services to the general public,[86] there is, it is argued, a "natural inclination to self-interest."[87] Paton describes self-regulation as both a "remarkable privilege" and "an enormous conceit."[88] The privilege of self-regulation conveys both a responsibility to serve the general public interest *and* substantial market power with which to serve private and professional interests.[89]

---

[82] Rhode, "Public Interest", *supra* note 28 at 1514-15.

[83] Stager & Arthurs, *supra* note 7 at 31-32, citing Bryan Williams, "Abuse of Power by Self-governing Bodies" in *The Abuse of Power and the Role of an Independent Judicial System in Its Regulation and Control* (Special Lectures of the Law Society of Upper Canada, 1979) at 345-66. See also Tracey L Adams, "Professional Self-Regulation and the Public Interest in Canada" (Paper delivered at the ISA RC52 Interim Conference on Challenging Professionalism, The School of Economics and Management (ISEG), Lisbon, Portugal, 29 November 2013) at 16-23.

[84] Christine Parker, *Just Lawyers*: *Regulation and Access to Justice* (Oxford: Oxford University Press, 1999) at 114.

[85] W Wesley Pue, "Foxes, Henhouses, Unfathomable Mysteries, and the Sufferance of the People: A Review of *Regulating Professions and Occupations*" (1996) 24:2 Man LJ 283 at 289 [Pue, "Foxes, Henhouses"].

[86] Evans & Trebilcock*, supra* note 33 at xii.

[87] Duncan Webb, "Are Lawyers Regulatable?" (2008) 45:5 Alta L Rev 233 at 253.

[88] Paton, *supra* note 68 at 87.

[89] Michael Trebilcock, "Regulating the Market for Legal Services" (2008) 45:5 Alta L Rev 215 at 217 [Trebilcock, "Regulating"].

Economists, on the one hand, view individual professionals and their self-regulators as self-interested economic agents. The professions, on the other hand, view individual professionals and their self-regulators as being motivated not by self-interest but by the interests of their clients and society more widely.[90]

ii. A Fundamental Paradox

Cummings identifies a "fundamental paradox" at the heart of the legal profession. The very notion that lawyers are members of a profession suggests "a delicate balance of incentives and duties that pull in different directions."[91] Cummings describes lawyers' dual status in this way: "in the market, but above it; diligent servants of clients, but also special guardians of the 'public interest.'"[92]

Given this, does self-regulation ensure professions actually regulate in the public interest? Do lawyers facilitate access to justice or are they an impediment to its full realization?[93] For Larson, the "singular characteristic" of professional power is the profession's "exclusive privilege of defining *both* the content of its knowledge and the legitimate conditions of access to it, *while the unequal distribution of knowledge protects and enhances this power.*[94] Professions are also "special communities of discourse endowed with the authority of speaking *about* and *for* their field" and, in so doing, construct its meaning for the public.[95] A profession's control over knowledge and its

[90] Stephen, *supra* note 34 at 44.

[91] Scott L Cummings, "Introduction: What Good Are Lawyers?" in Scott L Cummings, ed, *The Paradox of Professionalism – Lawyers and the Possibility of Justice* (New York: Cambridge University Press, 2011) 1 at 1.

[92] *Ibid.*

[93] See *ibid* at 2.

[94] Larson 1977, *supra* note 44 at 48 (emphasis in original).

[95] Larson 2013, *supra* note 44 at xx.

application involves dominating outsiders who attack that control.[96] Professional projects aimed at market closure require control over the production of the producers;[97] professional education constitutes the "production of producers" whose services must be branded as superior in a competitive market and sanctioned by the state.[98]

Does the legal profession, through self-regulation, effectively serve the public interest?[99] Does it ensure the availability of competent professionals and quality services at a reasonable cost? In regulating others, the question becomes whether the self-regulating legal profession, through the Law Society, can effectively regulate others in the public interest to ensure access to justice.

This dissertation is concerned with how Ontario's self-regulating legal profession has fared in regulating others. Self-regulation's primary weakness is that it is just that, *self*-regulation, which "puts a conflict of interest at the heart of the regulatory approach."[100] Although self-regulation imposes

[96] Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago Press, 1988) at 2, 8.

[97] Larson 2013, *supra* note 44 at xxv; Richard L Abel, *English Lawyers Between Market and State: The Politics of Professionalism* (Oxford: University of Oxford Press, 2003) at 159 [Abel, "English Lawyers"].

[98] Larson 2013, *supra* note 44 at xxv.

[99] The possibility of the self-regulating profession operating in its own interests rather than the public interest gives rise to the idea of regulatory competition, which is what led to liberalization of the legal services market in England and Wales. The *Legal Services Act 2007* (UK), c 29, s 1 contains regulatory objectives that include the promotion of competition and consumer interest: see Stephen, *supra* note 34 at 111-118 and, generally, chapters 5 & 7. See also Semple, Pearce & Knake, "Taxonomy", *supra* note 38 at 276-278 for discussion of the co-regulatory model in England and Wales that favours competition.

[100] Gillian Hadfield, *Rules for a Flat World, supra* note 29 at 268. See also Manitoba Law Reform Commission, *supra* note 38 at 152; Canada, Competition Bureau, *Self-regulated Professions: Balancing Competition and Regulation* (Ottawa: Industry Canada, 2007) at 37, 133, online: <www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02523.html> [Competition Bureau, *Balancing*].

obligations on a profession, its members are also the beneficiaries of regulation because they enjoy exclusive and valuable access to particular markets.[101]

iii. Market Control

Abel and Rhode equate professional self-regulation with "economic protectionism."[102] It is clear that self-regulation serves the interests of both the public and the profession,[103] but a central criticism of self-regulation is the profession's tendency to monopolize and control the delivery of and the market for legal services.[104] Critics of self-regulation[105] argue it serves professional interests over the public interest by seeking to control the market for legal services, raising the cost of and restricting access to those services. Self-regulation allows a profession to erect barriers, control entry to the profession, seek to protect itself from competition, particularly external competition, and operate in its own interest.[106] As Pue asserts, since an important rationale for creating regulatory structures in the first place is a perceived need to remedy failures in the efficient or just functioning of a market economy, there is a logical inconsistency in giving self-governing powers to an occupational group that enjoys a state-created monopoly. For Pue, there is no more suspect a situation than one in which economic monopoly combines with imperfect consumer information, as is commonly the case with

---

[101] Evans & Trebilcock, *supra* note 33 at xii. See also John Pearson, "Canada's Legal Profession: Self-Regulating in the Public Interest?" (2015) 92:3 CBR 556 at 562; Schultze, *supra* note 67 at 42.

[102] Abel, "England and Wales", *supra* note 27 at 39; Rhode, "Public Interest", *supra* note 28 at 1519.

[103] Richard L Abel, "Lawyer Self-Regulation and the Public Interest" (2017) 20:1 Legal Ethics 115 at 121. See also Devlin & Heffernan, *supra* note 33 at 169.

[104] Deborah L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (New York: Oxford University Press, 2000) at 208; Arthurs, Weisman & Zemans, *supra* note 5 at 123; Freidson, *Professionalism*, *supra* note 48 at 12; Pue, "Foxes, Henhouses", *supra* note 85 at 284; Competition Bureau, *Balancing*, *supra* note 100 at vii.

[105] Abel, "England and Wales", *supra* note 27. See also Arthurs, Weisman & Zemans, *supra* note 5 at 123; Rhode, "Public Interest", *supra* note 28; Deborah L Rhode, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice" (1996) 1 J Inst for Study Legal Ethics 197 at 204 [Rhode, "Professionalism"] .

[106] Abel, "England and Wales", *supra* note 27 at 24; Rhode, *In the Interests of Justice*, *supra* note 104 at 3.

professions, where "a grant of self-regulatory powers becomes all too reminiscent of the proverbial selection of a fox as keeper of the chickens."[107] Quite simply, Rhode explains, no occupational group can make unbiased assessments of the public interest on issues that place its own status and income directly at risk.[108] As Abel puts it, self-regulating professions seek to protect their exclusive mastery of a body of expert knowledge, aspire to superior social status, seek to control entry to the profession, and aim to suppress competition to protect profits and status.[109] But Abel offers some explanation or justification for this behaviour: all occupations under capitalism are compelled to seek control over their markets because the only alternative is to be controlled *by* the market, "a situation that is fraught with uncertainty at best and may lead to economic extinction at worst."[110]

The foundation of market control is the regulation of supply.[111] Market control "is inextricably related to occupational status, not only symbolizing status but also enhancing it instrumentally," both by restricting numbers and by controlling the characteristics of entrance.[112] Professions pursue market control and status enhancement through collective action by erecting barriers to entry and seeking to protect members from competition, both external and internal.[113] Market control, then, concerns turf wars and jurisdictional disputes.[114] This, for some, is the real and determining history of the

[107] Pue, "Foxes, Henhouses", *supra* note 85 at 294.

[108] Rhode, *In the Interests of Justice*, *supra* note 104 at 16. See Hadfield, *Rules for a Flat World*, *supra* note 29 at 268.

[109] Abel, "English Lawyers", *supra* note 97 at 471, 478.

[110] Abel, "England and Wales", *supra* note 27 at 23.

[111] *Ibid* at 23-24.

[112] *Ibid*.

[113] *Ibid*.

[114] Julian Webb, "Turf Wars and market control: competition and complexity in the market for legal services" (2004) 1-2 Intl J Leg Prof 81.

professions.[115] That history is also about exclusion.[116] The competent delivery of legal services by others challenges the legal profession's dominance, privileged status, economic rewards, and claims of exclusive knowledge.[117] If the legal profession is defined by its control of the market for legal services, one would expect the legal profession to be particularly and further defined, and its market-controlling tendencies revealed, by how, when given the opportunity to do so, it exercises regulatory authority over competitors and the provision of legal services by others. That is what this dissertation explores.

Since the public interest is arguably not the sole motivation for lawyers' behaviour, regulation of markets for legal services cannot be left solely to the legal profession's self-regulators.[118]

Market control is the theoretical underpinning of this dissertation, but it is not the only analytical framework.

iv. Beyond Market Control

The market control perspective assumes the profession will adequately control its members so it can act as a unified whole in its own economic self-interest.[119] But the homogeneity of the

---

[115] Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago Press, 1988) at 2.

[116] Joan Brockman, "Dismantling or Fortifying Professional Monopolies? On *Regulating Professions and Occupations*" (1996) 24:2 Man LJ 301 at 306.

[117] Mary Anne Noone, "Paralegals – in the Community's Interest?" in Julia Vernon and Francis Regan, eds, *Improving Access to Justice: The Future of Paralegal Professionals* (Canberra: Australian Institute of Criminology, 1990) 25 at 33. See also Moorhead, Paterson & Sherr, *supra* note 65 at 796, and the written submissions from Noel Semple in Ontario, Ministry of the Attorney General, *Family Legal Services Review*, Justice Annemarie E Bonkalo (Toronto: MAG, 31 December 2016) at Part 2b, online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/>.

[118] Stephen, *supra* note 34 at 6, 146.

[119] Parker, *supra* note 84 at 115.

profession claimed by market control theorists and others is not entirely accurate.[120] Rather, the legal profession is diverse, specialized, profoundly segmented and members have different interests and concerns, and there exist wide discrepancies in status and rewards.[121] Referring to the *legal profession* as a singular entity is not to suggest it is a unified entity. Sugarman and Pue argue that rather than treating the history of lawyers in a singular and unitary fashion, one must recognize the plurality of lawyers in terms of sub-groups, culture, social composition, and geography, and the "fragmented and de-centred character of much of the legal community."[122] Despite significant differences within the profession, however, there also exists a "congealing force" which tends to bind the profession together.[123] To be clear, the legal profession can best and more accurately be described as united by a common set of historical, cultural, ethical and professional ideals but featuring divisions within those ideals.[124]

According to Sugarman and others, the history and sociology of the legal profession reveal built-in conflicts of interest and a "plurality of voices, logics, 'traditions', audiences and spheres of action that are an important feature of legal work, thought, culture and authority."[125] This broader perspective reveals the "relative elasticity of the ideology of legal professionalism and the ways in

---

[120] Rob McQueen, "Together We Fall, Divided We Stand: The Victorian Legal Profession in Crisis 1890-1940" [McQueen, "Together We Fall"] in W Wesley Pue & David Sugarman, eds, *Lawyers and Vampires: Cultural Histories of the Legal Professions* (London, UK: Hart Publishing, 2003) 293 at 327 [Pue & Sugarman, *Lawyers and Vampires*].

[121] Rhode, *In the Interests of Justice*, *supra* note 104 at 17; See also Rhode, "Public Interest", *supra* note 28 at 1508. Parker, *supra* note 84 at 115; Larson 1977, *supra* note 44 at xi.

[122] David Sugarman & W Wesley Pue, "Introduction: Towards a Cultural History of Lawyers" in Pue & Sugarman, *Lawyers and Vampires*, *supra* note 120, 1 at 9 [Pue & Sugarman, "Introduction"].

[123] McQueen, "Together We Fall", *supra* note 120 at 326.

[124] *Ibid at* 325.

[125] D Sugarman, "Blurred Boundaries: The Overlapping Worlds of Law, Business and Politics" in M Cain & C B Harrington, eds *Lawyers in a Postmodern World: Translation and Transgression* (Buckingham: Open University Press, 1994) 105-06, as quoted by Rob McQueen in "Together We Fall", *supra* note 120 at 326.

which that ideology sustains apparently divergent conceptions of the profession" while also asserting a common culture and history that bind lawyers together as a community.[126]

Rhode uses the term *profession* to refer to lawyers' common occupational status by and through which they enjoy distinctive powers and privileges, including control over their own regulation; she also uses the term *profession* in another sense, to refer to lawyers as "an occupational group with views and interests separate and distinct from that of the general public."[127] This characterization of the *legal profession* asserted by Rhode is adopted in this dissertation.

C. HISTORY & CULTURE OF CANADA'S LEGAL PROFESSION

Market control theory might be too narrow or simplistic a lens through which to assess the Ontario Law Society's regulatory behaviour once it was given expanded authority to regulate paralegals. To be clear, to view the exercise of regulatory authority as being either in the public interest (to increase access to justice) or in the profession's interest (to control and restrict the market for legal services) is too simplistic and suggests a false dichotomy. Rather, it is acknowledged that market control theory is embedded within and arises from the Canadian legal profession's cultural history which provides a contextual understanding of the legal profession and its exercise of self-regulatory authority. The profession's cultural history also provides insight into the profession's antagonistic relationship with competitors, both within and beyond the profession, throughout its 200-year history. Appreciating the legal profession's history and culture also provides a more nuanced understanding and, perhaps, some explanation for the Law Society's manner of regulating paralegals.

[126] *Ibid*. See also Stager & Arthurs, *supra* note 7 at 327; Rhode, "Public Interest", *supra* note 28 at 1508.

[127] Rhode, "Public Interest", *supra* note 28 at 1510.

Gaining regulatory authority over others, particularly competitors in the legal services market, arguably confounded the self-regulatory model.

The history and culture of professions, and of Canada's legal profession particularly, are important to understanding the profession's modern iteration and perhaps also, its motivations, and therefore are relevant to market control theory. Abel's definition of "professionalism" includes the "specific historical formulation" in which the members of an occupation exercise a substantial degree of control over the market for their services.[128] This aligns with Freidson's characterization of a profession as "a changing historic concept,"[129] not a scientific concept generalizable to a wide variety of settings but, rather, a "historically and nationally specific 'folk concept.'"[130] The history of professions is marked by their claims to knowledge "to assert their 'right' to respect and autonomy, to bid up the value of their intellectual and cultural capital, to control the market for their services and to enhance their financial and psychological rewards."[131]

Sugarman and Pue argue the legal profession must be understood more broadly and in terms of the complex ways in which it is culturally constructed.[132] Further, the cultural histories of the legal profession suggest that many of the most important things about lawyers cannot be understood within the constraints of a market control theory alone.[133] The market control model – measuring

[128] Abel, "England and Wales", *supra* note 27 at 23.

[129] Freidson, *Professional Powers*, *supra* note 31 at 32.

[130] *Ibid* at 35 citing discussion of "folk concept" in Howard S Becker, "The Nature of a Profession" in Howard S Becker, ed, *Sociological Work: Method and Substance* (Chicago: Aldine Publishing, 1970) 87 at 92.

[131] Harry W Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33:4 Alta L Rev 800 at 801.

[132] Pue & Sugarman, "Introduction", *supra* note 122 at 21.

[133] *Ibid* at 22.

professionalism by institutional characteristics and a propensity to claim monopoly control of specialized fields of knowledge – arguably ignores the larger role and practices of lawyers economically, politically, and culturally.[134] One of the principal concerns in the study of the cultural history of lawyers is describing and analyzing the production, transmission and reception of the ideas and practices of lawyers in society over time.[135] According to Sugarman and Pue, a cultural approach to lawyers in history "would also critically describe and assess the role of lawyers as potentially important actors in the complex process by which notions of national distinctiveness and personal identity were imaginatively constructed."[136] Further, a cultural approach, concerned with "culture and symbols – concerns of reputation, social standing and cultural capital," can assist in explaining why and when lawyers act "in ways that at first blush do not appear to accord with their material self-interest."[137] This is not to suggest the market control theory espoused by Abel and others should be discounted but rather, to recognize that cultural and historical factors enhance understanding of the legal profession and complement or qualify the market control thesis.[138] For Pue, market control theory is not "a framework into which an appreciation of the culture of professionalism can easily be integrated"[139] as it suffers from an inability to accommodate a sophisticated appreciation of professional 'ideology'.[140]

---

[134] *Ibid* at 6; See also Girard, *supra* note 60 at 145-46.

[135] Pue & Sugarman, "Introduction", *supra* note 122 at 13.

[136] *Ibid*.

[137] *Ibid*.

[138] Rob McQueen, "Together We Fall", *supra* note 120 at 297.

[139] W Wesley Pue, "'Trajectories of Professionalism?': Legal Professionalism After Abel" (1990) 19:3 Man L J 384 at 406.

[140] *Ibid.*

Pue is of the view that many accounts of the legal profession in history are distorted, based on professional rhetoric or myth rather than reality.[141] On this, Pue makes three points that "sit uneasily with history-as-Canadian-lawyers-would-like-it-to-be."[142] The first is that history discloses that each of the hallmarks of modern Canadian legal professionalism, as that concept is now understood by lawyers' governing bodies – monopoly, education, disciplinary powers, and codes of ethics – is of relatively recent origin.[143] Secondly, while the legal profession has not always been as single-minded in the pursuit of the public interest as law societies suggest, the assertion that lawyers have used their professional organizations first and foremost to advance their own collective economic interest rather than the public interest is an unhelpful oversimplification and also, perhaps, entirely misleading. Pue acknowledges, though, that the legal profession's interferences with free market principles such as restrictions on entry and suppression of economic competitors is problematic and that Canadian legal professions have often been slow to introduce many of the measures of public protection that contemporary law society leaders celebrate.[144] Thirdly, the history of the organized legal profession reveals that lawyers have not always "virtuously sought to advance the cause of liberty, democracy, and the Canadian way;" while professional legal organizations might wish to project the image that they stand somehow apart from politics, the reality is they do not.[145]

A brief review of the history of the Canadian legal profession here assists in understanding the profession in its cultural context. According to Pue, it has only been within the last century in

---

[141] W Wesley Pue, *Lawyers' Empire: Legal Profession and Cultural Authority, 1780-1950* (Vancouver, BC: UBC Press, 2016) at 26 [Pue, *Lawyers' Empire*].

[142] *Ibid* at 24.

[143] *Ibid* at 24.

[144] *Ibid* at 25.

[145] *Ibid*.

Canada that full privileges of self-governance have been conferred upon law societies by provincial governments.[146] As he explains, while the LSUC had long exercised the power to suspend or disbar barristers and, in 1876, gained the right to discipline attorneys, it was only in 1880 when the Benchers were provided unequivocal statutory power to suspend, disbar, expel or move to strike barristers, attorneys, or clerks guilty of professional misconduct or conduct unbecoming.[147] The distinction between a barrister and solicitor created a Canadian legal profession made up of "two distinct professions, with different duties, different responsibilities and liabilities, different history and traditions and subject to different rules."[148] Further, the development of a code of professional ethics was strongly influenced by visions of professionalism promoted by elite lawyers who sought to cultivate a profession composed of learned men who could be trusted by the public and who would care more for the advancement of the public good rather than their own private gain.[149] But Pue wonders what historical forces actually motivated Canadian lawyers to develop codes of professional ethics in the early twentieth century (adopted in Ontario in 1921[150]), noting too little is known about their development.[151] Claims that codes of ethics arose exclusively, or even primarily, from "altruistic impulses" are generally repudiated, and many view codes of ethics as self-serving.[152] As Pue puts it, the projection of an "ethical" image is sometimes portrayed as necessary in order to legitimate self-interested market control strategies, including state enforcement of a professional monopoly over

[146] *Ibid* at 337.

[147] *Ibid*.

[148] *Ibid* at 338, n 32.

[149] *Ibid*.

[150] *Ibid* at 348.

[151] *Ibid* at 335.

[152] *Ibid* at 333-34.

the provision of services.[153] Alternatively, the "ethical" project might be conceived as a means by which the cultural authority of the profession as a whole is enhanced or, alternatively again, as a means for elites within the profession to repress those members of whom they disapprove.[154] In the early 1900s, common justifications for legal professionals' special privileges and exclusive roles, as well as incomes, in an evolving democratic state emphasized learning, practical usefulness, dedication to public service, and purportedly superior moral sensibility.[155] For example, Sir James Aikins, president of the Canadian Bar Association, developed a comprehensive theory of professionalism developed from the usefulness of lawyers and the pursuit of social well-being which, he argued, justified a professional monopoly on the provision of legal services – although Canadian lawyers have not fully secured such a monopoly – as well as more rigorous and exclusive legal education and high professional fees. Aikins asserted that the practice of law is only for those who are highly educated and possess high morals.[156] He believed the well-educated deserve adequate rewards for meritorious service, and commended law societies for acting as "bulwarks protecting the people against incompetent and unscrupulous men posing as lawyers, and thus guarding the honour of the profession."[157] Accordingly, Pue asserts, "the linkage of State, ethics, education, fees, elimination of unauthorized practice, expanded professional monopoly, and advance of the public interest forms a logical whole."[158]

---

[153] *Ibid* at 334.

[154] *Ibid.*

[155] *Ibid* at 339.

[156] *Ibid* at 340, citing Sir James Aikins, "The Legal Profession in Relation to Ethics, Education and Emolument" (1919) 55:11 Can LJ 335 at 335, online: *Canadiana* <www.canadiana.ca/view/oocihm.8_04911_884/15?r=0&s=1>.

[157] Aikins, *supra* note 156 at 338.

[158] Pue, *supra* note 141 at 340.

Lawyers' relationship with power is "complicated and conflicted."[159] The Canadian legal profession's collective power arises, in part, from its virtual monopoly over the delivery of legal services and unchallenged self-regulation.[160] The profession's exercise of power must be subjected to critical scrutiny "against the measuring stick" of the public interest.[161]

I recognize that the market control model is too narrow a lens through which to attempt to answer my research questions. I therefore also draw upon and adopt a broader analytical framework within which market control theory arises – the cultural history of the legal profession, with its "concerns of reputation, social standing and cultural capital"[162] – in an effort to understand and critique the Law Society's exercise of regulatory authority over paralegals. For example, looking only through the narrow lens of market control theory, it would be expected that the Law Society would have eagerly sought out the opportunity to regulate paralegals but, as Chapter 2 reveals, that was not the case. For years, the LSUC opposed the regulation of independent paralegals on the basis that they would not well serve the public's need for access to justice and also resisted taking on the role of regulator. Presumably, beyond any public interest justification, the Law Society viewed the idea of embracing paralegals and allowing them into its regulatory fold would tarnish or diminish the status and prestige enjoyed by the legal profession and the Law Society as regulator. This is more revealing of the dynamics of the profession's cultural and historical underpinnings. In reality, the Law Society only agreed to take on the regulation of paralegals after the government requested it to do so and when it became clear that paralegal regulation was inevitable, at least in part so as to maintain

[159] Dodek, "Lawyers", *supra* note 62 at 59.

[160] *Ibid* at 61.

[161] *Ibid* at 59.

[162] Pue & Sugarman, "Introduction", *supra* note 122 at 13.

a favourable relationship with the government on whom it relies for its privilege of self-regulation. Thus, both market control and the legal profession's cultural history theories might best explain this dissertation's findings.

D. ACCESS TO JUSTICE

i. Regulation

Access to justice is inextricably tied to regulation of the legal profession[163] and, more specifically, to self-regulation's public interest rationale.[164] Many have argued that increased competition from legal paraprofessionals is a desirable regulatory objective as it will have a positive effect on the availability of and access to legal services as well as the price and quality of those services, resulting in increased consumer satisfaction and greater efficiency in both services delivery and the legal system.[165] Access to justice challenges the "fundamental premise" of the profession as existing in the public interest.[166] In Dodek's view, the access to justice crisis in Canada "exposes the fundamental gap between the promise of the legal profession and its delivery."[167]

It is clearly understood and accepted, if not obvious, as the extent of the provision of legal services in Canada demonstrates (discussed in Chapter 4), that lawyers are not required to provide

[163] Parker, *supra* note 84 at 143.

[164] LSUC Task Force, *supra* note 14 at 15.

[165] Laurel S Terry, Steve Mark & Tahlia Gordon, "Adopting Regulatory Objectives for the Legal Profession" (2012) 80:6 Fordham L Rev 2685 at 2738; Rhode, *In the Interests of Justice*, *supra* note 102 at 138; Victor S Savino, *Paralegalism in Canada: A Response to Unmet Needs in the Delivery of Legal* Services (LLM Thesis, Dalhousie University, 1976) at 347 [unpublished].

[166] Adam M Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008) 46:1 Osgoode Hall LJ 1 at 40 [Dodek, "Canadian Legal Ethics"].

[167] *Ibid.*

all legal services, just as "a surgeon is not required to pierce an ear."[168] The difficulty for law societies appears to lay in determining the standard of skill and competence required by paralegals to perform distinct services and carving out those services from the traditional practice of lawyers – in short, determining paralegal scope of practice. With the legal profession having state support through legislative authority to decide what services non-lawyers may perform, Law Society regulation of paralegals arguably introduced a "stickiness"[169] into the legal services pipeline, potentially impeding the optimal realization of enhanced access to justice, which is contrary to the ostensible rationale for paralegal regulation in the first place. Throughout its history, Canada's legal profession has sought to claim for lawyers a monopoly over all legal practice and the provision of legal services, allowing for exceptions only where and to the extent necessary.[170] From a regulatory perspective, it is argued, the public can be protected without affording lawyers complete exclusivity over all legal tasks and law societies should neither prohibit nor limit the ability of related service providers, such as paralegals, from performing legal tasks unless there is "compelling evidence of demonstrable harm to the public."[171] Competition among members of the professions is an important driver for the supply of and access to innovative, low cost and high-quality professional services and is important

[168] Deborah L Rhode, "Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions" (1981) 34:1 Stan L Rev 1 at 88. See also Woolley & Farrow, "Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges" (2016) 3:3 Texas A&M L Rev 549 at 552.

[169] Alice Woolley, "Imperfect Duty: Lawyers' Obligation to Foster Access to Justice" (2008) 45:5 Alta L Rev 107 at 124 [Woolley, "Imperfect Duty"]. To be clear, Woolley was not referring to paralegal regulation specifically but to supply and demand in the market for legal services.

[170] Or where the legal profession had no choice: for example, statutory authority for non-lawyer practice in provincial and federal statutes (Canada's *Criminal Code*, for example) over which law societies have little control. State support refers to the legislative authority granted to Law Societies to govern members of the profession. These points are further discussed in Chapter 4.

[171] Competition Bureau, *Balancing*, *supra* note 100 at 70.

for the welfare of all Canadians.[172] Since both professionals and the public benefit from competition,[173] restrictions on the competitive supply of professional services should be avoided as much as possible.[174] The need for lawyers for discreet tasks must not be a barrier to new non-lawyer legal service providers competing with lawyers to provide effective access to the legal system.[175] Indeed, many scholars argue that licensing multiple legal occupations is essential for access to justice.[176] The goal of regulation in the public interest should be to protect clients from incompetence, not to protect lawyers from competition.[177]

Regulation, then, can be described as both a gateway and a barrier to access to justice. It is argued that the more a service is regulated or controlled the less accessible it generally becomes.[178] As Abel explains, entry barriers and restrictions on internal and external competition increase the cost of legal services and reduce access to them.[179] A criticism of Canada's self-regulatory model – described as professionalist-independent regulation – is that it is vulnerable to lawyer-centricity[180]

---

[172] Canada, Competition Bureau, *Self-regulated Professions – Post-Study Assessment* (Ottawa: Industry Canada, 2011) at 4, online: <www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03407.html> [Competition Bureau, *Post-Study Assessment*].

[173] Competition Bureau, *Balancing*, *supra* note 100 at 37, 133.

[174] Canada, Competition Bureau, *Self-regulated Professions – Post-Study Assessment* (Ottawa: Industry Canada, 2011) at 4, online: <www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03407.html> [Competition Bureau, *Post-Study Assessment*]. The Competition Bureau also takes the position that paralegals should not be regulated by law societies given "the obvious conflict of interest that arises from having one competitor regulate another": Competition Bureau, *Balancing*, *supra* note 100 at 69.

[175] Woolley & Farrow, *supra* note 36 at 572. See also Parker, *supra* note 84 at 143, 156-57.

[176] Semple, *supra* note 35 at 288; Parker, *supra* note 84 at 143, 156-57; Hadfield, *Rules for a Flat World*, *supra* note 29 at 243.

[177] Deborah L Rhode, "What We Know and Need to Know about the Delivery of Legal Services by Non Lawyers" (2016) 67:2 SCL Rev 429 at 438.

[178] Ianni Report, *supra* note 13 at 13.

[179] Richard L Abel, "Just Law?" in Scott L Cummings, ed, *The Paradox of Professionalism – Lawyers and the Possibility of Justice* (New York: Cambridge University Press, 2011) 298 at 301.

[180] Semple, *supra* note 35 at 296.

and therefore an impediment to access to justice since it tends to inflate the cost of services and suppress innovation.[181]

ii. Lawyers' Obligation

Scholars have identified lawyers as "gatekeepers of justice through law."[182] Woolley, for example, contends that since lawyers enjoy a (purported) state-granted monopoly over legal services, they have an obligation to promote access to justice.[183] This perspective is echoed by David Johnston, former Governor General of Canada (and a former law dean), who has stated that in return for its self-regulatory privilege and monopoly to practise law, the legal profession is "duty bound to serve … clients competently, to improve justice and to continuously create the good."[184] As Devlin puts it, law societies have an obligation to assist in resolving the problems of access to justice[185] and should not only permit but also encourage the emergence of paralegal services and expand the range of legal services that paralegals may provide.[186]

---

[181] *Ibid* at 305.

[182] Rebecca L Sandefur, "Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes" (2011) at 3 [unpublished], citing Rebecca L Sandefur, "Access to Civil Justice and Race, Class and Gender Inequality" (2008) 34 Annual Rev Sociology 339; Richard Devlin, "Breach of Contract?: The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession" (2002) 25:2 Dal LJ 335 at 346 [Devlin, "Breach of Contract"].

[183] Woolley, "Imperfect Duty", *supra* note 169 at 111-17. See also Bryan Williams, "Abuse of Power by Self-Regulating Bodies," Law Society of Upper Canada Special Lectures (1979) 345-346 referred in David AA Stager and Harry W Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990) at 31.

[184] Address (presentation delivered at the Canadian Bar Association national conference, 17 August 2011), cited in Jerry McHale, "Re: Family Law Legal Service Providers: Consultation Paper" (29 October 2018), online (pdf): *University of Victoria Law* <static1.squarespace.com/static/5532e526e4b097f30807e54d/t/5bff12ce8a922d66f5ee55af/1543443152742/JM-BCLS+FLSP+Response.pdf>.

[185] Richard Devlin, "Bend or Break: Enhancing the Responsibilities of Law Societies to Promote Access to Justice" (2015) 38 Man LJ 119 at 122.

[186] *Ibid* at 149. In addition, legislative changes in Ontario that brought in paralegal regulation and expanded the Law Society's regulatory authority introduced a new regulatory principle for the Law Society: "a duty to act so as to facilitate access to justice for the people of Ontario."

Self-regulation in the public interest is not only a statutory imperative[187] but also a professional obligation.[188] Woolley suggests that lawyers might have a special obligation to remedy the insufficiency of access to justice which possibly arises from the numerous imperfections in the market for legal services: in enjoying economic rents – the benefits of their virtual monopoly over legal services – lawyers are contributing to the insufficiency of access to justice.[189]

The design of any regulatory model governing non-lawyers must balance the public interest in maximizing choice and minimizing harm.[190] Regulation that seeks to ensure access to justice must adequately address the competence of legal services providers and the quality and affordability of services.[191] The interests of the profession in providing the public with legal services will not always equate with the interests of the public in accessing those services,[192] but with the Law Society in charge of regulating paralegals in Ontario, it is asserted that lawyers and the legal profession stand awkwardly at the intersection between regulation and access to justice.[193]

---

[187] *Law Society Act, RSO 1990, c L.8,* s 4.2; *Legal Profession Act*, SBC 1998, c 9, s 3; *Legal Profession Act*, RSA 2000, c L-8, s 49; *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 3.1; *Legal Profession Act*, CCSM c L107, s 3(1); *Law Society Act, 1996*, SNB 1996, c 89, s 5(a); *Legal Profession Act*, SNS 2004, c 28, s 4; *Legal Profession Act*, RSPEI 1988, c L-6.1, s 4; *Law Society Act, 1999*, SNL 1999, c L-9.1, s 18; *Legal Profession Act*, RSNWT 1988, c L-2, s 22; *Legal Profession Act*, RSY 2002, c 134, s 3; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2 s 22.

[188] Federation of Law Societies of Canada, *Model Code of Professional Conduct* (last modified 19 October 2019) at 8, online (pdf): <flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>.

[189] Woolley, "Imperfect Duty", *supra* note 169 at 141.

[190] Rhode, "Professionalism", *supra* note 105; Gillian Hadfield, "On Right-Regulating Legal Markets" (19 September 2011), online: *Truth on the Market* <truthonthemarket.com/2011/09/19/gillian-hadfield-on-right-regulating-legal-markets/>.

[191] Canadian Bar Association, Standing Committee on Access to Justice, *Access to Justice Metrics: Discussion Paper* (Ottawa: CBA, 2013) at 8, online (pdf): <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/Access_to_Justice_Metrics.pdf> [CBA, *Access to Justice Metrics*].

[192] John Pearson, *supra* note 101 at 578.

[193] Here I borrow from Parker's view that lawyers "stand at an awkward intersection between law and justice": Parker, *supra* note 84 at 11. To be clear, Parker was not referring specifically to the regulation of paralegals.

Central to this dissertation is the question of whether increased access to justice can be achieved from within the traditional self-regulatory model by a law society given the authority to regulate competitors.

iii. Conception of Access to Justice

What is access to justice, particularly in the context of a regulatory imperative?[194] Access to justice is a much-used phrase, justification, ideal, and also a "multidimensional concept" that is not only difficult to define, but also difficult to measure.[195] There are many definitions of *access to justice*.[196] It is acknowledged and understood to be a "multi-faceted issue" of "fundamental importance" but lacking a common definition.[197] It is described as a fundamental precept of a democratic society[198] and a basic right.[199] Without access to legal services, full and meaningful

---

[194] The *LSA*, s 4.1, *supra* note 19 was a legislative amendment that came in with paralegal regulation. It requires the Law Society, in carrying out its functions, to "have regard to" a number of principles including "a duty to act so as to facilitate access to justice for the people of Ontario."

[195] CBA, *Equal Justice*, *supra* note 26 at 142; Sarah Chamness Long & Alejandro Ponce, World Justice Project, *Measuring the Justice Gap* (2019) (Washington, DC: World Justice Project) at 14, online: <https://worldjusticeproject.org/sites/default/files/documents/WJP_Measuring%20the%20Justice%20Gap_final_20Jun2019_0.pdf>.

[196] See, for example, Law Society of Upper Canada, TAG – Treasurer's Advisory Group on Access to Justice, Karen Cohl, "Access to Justice Themes: 'Quotable Quotes'" (background paper for the Law Society of Ontario's Access to Justice Symposium, "Creating a Climate for Change", 29 October 2013) [Cohl, "Quotable Quotes"] in Law Society of Upper Canada, *Report of the Treasurer's Advisory Group on Access to Justice Working Group – Report to Convocation* (Toronto: LSUC, 24 January 2014), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convjan2014_treasurersadvisorygroup.pdf> [TAG Report 2014]; Devlin, "Breach of Contract", *supra* note 182 at 341.

[197] TAG Report 2014, *supra* note 196 at 240, 241.

[198] See Thomas G Conway in Law Society of Upper Canada, *2012 Annual Report: Performance Highlights* at 2, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/a/an/annual_report_2012_performance_en.pdf>; Deborah L Rhode, *Access to Justice* (New York: Oxford University Press, 2004) at 20.

[199] Madeleine Meilleur, Address (keynote remarks delivered at the Better Justice Together Conference, Toronto, 18 November 2014), online: <www.attorneygeneral.jus.gov.on.ca/english/better_justice/speech.php>.

participation in a democratic society is illusory.[200] On a practical level, as former Supreme Court of Canada Chief Justice McLachlin has stated, a justice system must provide justice to the people it is meant to serve[201] through access to the courts and other tribunals so people can resolve the legal issues that confront them.[202]

How access to justice is defined is largely contextual – it depends on the perspective of the person or entity attempting to define it, the purpose for which it is being used, and whether the emphasis is on *access*, or *justice*, or both. There is a commonality of thinking on the concept of access to justice which recognizes that access to justice extends beyond access to lawyers and courts; that it requires a range of ways to prevent and resolve everyday legal problems; and includes fair processes and just outcomes.[203] Access to justice is linked to substantive justice through the enforcement of rights.[204] In Macdonald's conceptualization of access to justice, access is not just procedural.[205] The real issue is not access to a process but substance, and the goal is the outcome, not law so much as justice, including social justice in the broader sense.[206] Other scholars agree, that

[200] Ianni Report, *supra* note 13 at 13.

[201] Rt Hon Beverley McLachlin, "Justice in Our Court and the Challenges We Face" (speech delivered at the Empire Club of Canada Address, Toronto, 8 March 2007), online: <speeches.empireclub.org/62973/data>.

[202] Rt Hon Beverley McLachlin, "Preserving Public Confidence in the Courts and the Legal Profession" (2003) 29:3 Man LJ 277 at 280.

[203] Cohl, "Quotable Quotes", *supra* note 196 at 4; see also Frederick H Zemans, "The Non-lawyer as a Means of Providing Legal Services" in Evans & Trebilcock*, supra* note 33 at 263 [Zemans, "Non-lawyer"].

[204] Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity: Final Report* (Toronto: Law Commission of Ontario, February 2013) at 15, online (pdf): <www.lco-cdo.org/wp-content/uploads/2013/06/family-law-reform-final-report.pdf> [LCO, *Family Justice*].

[205] Roderick A Macdonald, "Foundation Paper: Executive Summary" prepared for and forming part of Law Society of Upper Canada, Access to Justice Committee, *Report to Convocation* (Toronto: LSUC, 26 June 2003) at 6-7. See also Roderick A Macdonald, "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: The Law Society of Upper Canada, 2005) 19 at 23 [Macdonald, "Access to Justice"].

[206] *Ibid* at 7.

those who seek justice consider it in terms of outcome and just resolution, not strictly legal services.[207] While accessing justice does not always require lawyers' assistance,[208] given the pervasiveness and complexity of both substantive and procedural law in Canada, access to a legal professional seems to be "a necessary element" of access to justice.[209] To be clear, legal representation, then, provides a means for people to obtain legal resolutions. The World Justice Project's (WJP) Rule of Law Index considers access to justice in practical terms, which includes the availability and affordability of legal advice and representation.[210] The WJP recognizes "access to justice" has both a "thin" and "thick" meaning.[211] In the "thick" sense, access to justice is conceptualized as encompassing the legitimacy of the courts or elements that contribute to enhance the legal empowerment of the poor. The "thin" sense focuses on access to justice "in terms of access to dispute resolution mechanisms, mostly in terms of access to counsel and access to tribunals."[212]

---

[207] See Parker, *supra* note 84 at 29, although Parker was not speaking specifically about paralegal regulation. See also Rebecca L Sandefur, "Access to What?" (Winter 2019) 148:1 Daedalus 49 at 49-50, online: <www.mitpressjournals.org/doi/pdf/10.1162/daed_a_00534>; Meilleur, *supra* note 160.

[208] Sandefur, "Access to What?", *supra* note 207 at 51, 52; See also Macdonald, "Access to Justice", *supra* note 205 at 31-32; CBA, *Access to Justice Metrics*, *supra* note 191 at 9, citing World Justice Project, "WJP Rule of Law Index" (last visited 20 May 2020), online: <worldjusticeproject.org/rule-of-law-index/> [WJP Rule of Law Index].

[209] Devlin, "Breach of Contract", *supra* note 182 at 341. See also Deborah L Rhode, *Access to Justice* (New York: Oxford University Press, 2004) at 20.

[210] WJP Rule of Law Index, *supra* note 208 at 8. The World Justice Project Rule of Law Index defines the rule of law as a rules-based system in which four universal principles are upheld, two of which are: the process by which laws are enacted, administered, and enforced is accessible, fair and efficient; and access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, at 1. See also Mark David Agrast, Juan Carlos Botero & Alejandro Ponce, *The World Justice Project Rule of Law Index, 2011* (Washington: World Justice Project, 2011), online (pdf): <worldjusticeproject.org/sites/default/files/documents/WJP_Rule_of_Law_Index_2011_Report.pdf> [Agrast, Botero & Ponce].

[211] CBA, *Access to Justice Metrics*, *supra* note 191 at 9.

[212] *Ibid*. See also CBA, *Equal Justice*, *supra* note 26 at 44-45; Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) at 14, online (pdf): *FLSC* <flsc.ca/wp-content/uploads/2014/10/ACCESSActionCommFinalReport2013.pdf> [Roadmap for Change].

Outcomes are one way to measure access to justice, as they are viewed as a "valid representation of a legal system's ability to solve problems, provide legal certainty and reinforce the social order."[213] Therefore, the inaccessibility of legal services remains a significant barrier to a fair and efficient justice system.[214] Legal representation matters[215] – both its availability and quality.[216] That is central to the justification for regulation which brings matters back to the question of why the market for legal services is regulated at all. In terms of quality, the professional competence of service providers is therefore a key component of access to justice; the delivery of legal services by incompetent or unqualified legal service providers does not serve the public interest. In terms of availability, non-lawyers must be permitted a scope of practice that allows their provision of legal services to fill the gaps left by unmet legal needs.

In summary, the literature supports a definition of *access to justice* that includes access to the legal system as a means for people to resolve their disputes. For the purposes of this dissertation, *access* refers to the availability of quality and affordable services provided by competent providers, resulting in *justice* in the form of fair and just outcomes achieved through access to formal dispute resolution systems.[217]

---

[213] CBA, *Access to Justice Metrics, supra* note 191. See also Roadmap for Change, *supra* note 212 at 9.

[214] Samreen Beg & Lorne Sossin, "Should Legal Services Be Unbundled?" in Michael Trebilcock, Lorne Mitchell Sossin & Anthony Duggan, eds, *Middle Income Access to Civil Justice* (Toronto: University of Toronto Press, 2012) at 198 [Beg & Sossin]; Roadmap for Change, *supra* note 212 at 14.

[215] Beg & Sossin, *supra* note 214 at 198. See also Woolley & Farrow, *supra* note 36 at 569-71.

[216] Woolley & Farrow, *supra* note 36 at 570.

[217] This definition is derived from the World Justice Project's "access to civil justice factor": Agrast, Botero & Ponce, *supra* note 210 at 13.

For the purposes of this dissertation's research, it is expected that with the introduction of paralegal regulation, *access* would be demonstrated by an increased number of competent and affordable providers of legal services, and *justice* observed through an increase in favourable outcomes.

IV. METHODOLOGY

This study employs three research methods: The first is a critical review of the publicly available documents relevant to the legal profession and non-lawyer legal service provision and the issue of paralegal regulation in Ontario, specifically, and also in Canada; in addition, and for comparison, a review of publicly available documents relevant to regulation of the health professions in Ontario. The publicly available documents include studies and reports of governments, law societies, the Canadian Bar Association, paralegal associations, WSIAT, the media and others; and a review of legislative history, including Hansard and legislative committee proceedings, reports and submissions.

The second is a randomized study of WSIAT decisions focusing on appeal outcomes by representative type for the pre-regulation years 2004 – 2006 and the post-regulation years 2015 – 2017. Examining outcomes in these years allows for a comparison of outcomes obtained by representative type both within and across the two time periods. The purpose of this study and its focus on outcomes is to determine if regulation's promise of increased access to justice – through increased choice of legal service provider and more competent paralegals providing better quality services – is borne out at this particular tribunal. Given the government's stated rationales for the regulation of paralegals, and the Law Society's pubic interest justification for assuming regulatory authority over paralegals, it is expected this research will reveal 1) an increased number of paralegal

representatives at WSIAT post-regulation, and 2) that paralegals achieve better outcomes (as in an increase in successful outcomes) post-regulation. The following explains my choice of the two separate time periods. The 2004 – 2006 time period includes the last full three years before regulation became effective (in mid-2007). The decision to compare these pre-regulation years to the 2015 – 2017 post-regulation years, with a ten-year span between the two time periods, was based on the following factors: 1) It would take some time for the effects of the new regulatory scheme to be apparent and measurable. The Law Society acknowledged that the first five years of regulation were early years in the development of the regulatory model and that further enhancements and refinements were required;[218] and 2) 2017 marked the ten-year anniversary of paralegal regulation and it could reasonably be expected that, by then, sufficient enhancements and refinements had been made to the regulatory scheme and the Law Society's exercise of regulatory authority such that a more accurate view of the effects of regulation would be revealed and measurable.

The third research method is an online survey of licensed paralegal representatives identified in the WSIAT study's post-regulation years about their billing practices and cost of services. The data gathered is compared with the cost of lawyers' services published in the Canadian Lawyer's 2019 Legal Fees Survey.[219] Given the affordability rationale of regulation – that paralegals would be an affordable alternative to lawyers – it is expected the survey of WSIAT paralegals will reveal that their services cost less than lawyers' services.

[218] LSUC Five-Year Report, *supra* note 23 at 26.

[219] Marg. Bruineman, "Steady Optimism – 2019 Legal Fees Survey", *Canadian Lawyer* (8 April 2019), online: <www.canadianlawyermag.com/surveys-reports/legal-fees/steady-optimism-2019-legal-fees-survey/276027>.

V. THIS DISSERTATION

This dissertation aims to contribute empirical research to the issue of the regulation of non-lawyer legal service providers and access to justice. Using market control within the context of the cultural history of the legal profession as the theoretical underpinning, this dissertation seeks to determine whether paralegal regulation in Ontario has increased access to justice. While regulation itself is arguably in the public interest, the self-regulatory model, and the Law Society's expanded self-regulatory authority over paralegals, might also be in the interests of the profession. This dissertation further aims to inform policy and legislative reform and initiatives concerning the regulation of independent paralegals and non-lawyer legal services providers both in Ontario and elsewhere in Canada. This dissertation proceeds as follows.

A. Roadmap

Chapter 2 lays the foundation for the dissertation. The first part sets out a brief history of the legal profession and the Law Society in Ontario, and the forces that shaped it. This brief history reveals a legal profession united in some respects but deeply divided in others. It also reveals, from the legal profession's earliest days, the existence of lay practitioners. The chapter then examines the studies, discussions, and debates amongst the government, the Law Society, lawyers, and legal para-professionals in Ontario. It chronicles the decades-long and contentious route leading, ultimately, to the implementation of paralegal regulation in 2007 and sets out the Law Society's justifications for agreeing to regulate paralegals.

Chapter 3 focuses on the paralegal regulatory scheme, the Law Society's expanded regulatory authority and its exercise of that authority. More particularly, this chapter analyzes institutional initiatives in light of the government's promises of regulation – increased choice of

competent and affordable legal service providers – and in light of the Law Society's claims that regulation has been successful and the Law Society was the right choice of regulator.[220] The Law Society's exercise of regulatory authority demands scrutiny in light of its justifications for regulating paralegals as well as its duties to facilitate access to justice to ensure competent and accessible legal services and to protect the public interest.[221] This chapter concludes that the Law Society's exercise of regulatory authority over paralegals (within the self-regulatory model) is deficient and an impediment to increased access to justice.

Chapter 4 provides a comparative context of non-lawyers and their regulation elsewhere in Canada. The chapter examines, firstly, the extent of non-lawyer legal service provision across Canada, much of which exists pursuant to statutory authority. The chapter next examines the ongoing debates and varied perspectives on paralegal regulation in other Canadian jurisdictions. This reveals a range of attitudes about the need for and capacity of paralegal regulation to increase access to justice, the appropriate regulatory model, and law societies' public interest and protectionist perspectives on regulating paralegals. As this chapter reveals, of these discussions and debates have persisted for more than thirty years and the same arguments continue to be offered against allowing paralegals much if any leeway to provide legal services independent of lawyers. Despite Ontario's implementation of paralegal regulation in 2007, no other jurisdiction in Canada is yet prepared to also regulate paralegals as independent providers of legal services. Most perspectives tend to reveal a desire to control the legal services market rather than introduce regulatory initiatives aimed at

[220] LSUC Five-Year Review, *supra* note 23 at 3, 5, 26. See also Conway, *supra* note 198 at 2.

[221] Law Society of Upper Canada, *Treasurer's Report to Convocation* (Toronto: LSUC, 26 April 2012) at paras 15, 16, online (pdf): <www.lawsocietygazette.ca/conv/convapr12-legal-needs-analysis.pdf>. See also *LSA*, ss 4.1-4.2.

increasing access to competent legal service providers and to justice, although they also tend to be couched in protecting the public interest rhetoric. By way of further comparison, the chapter also explores the regulatory regimes governing the professions in Quebec and the health professions in Ontario where professional regulation has moved away from self-regulation to a co-regulatory model based on restricted acts and the risk of harm to the public. Regulation of the health professions provides an apt comparative lens given that a number of independent paraprofessions provide similar or overlapping services as part of the state-funded healthcare system.

Chapters 5 turns to my empirical research and analyzes the findings of my two studies. The first study examines outcomes by representative type at WSIAT. Both lawyers and non-lawyer representatives appear before this tribunal and have done so since it was created in 1985, long before paralegal regulation was implemented. This forum therefore allows comparison of outcomes by representative type both within and across pre- and post-regulation time periods. The data gathered in this study are analyzed in light of the increased choice and competence rationales of the government's promise of increased access to justice through regulation. The second study, the survey, canvasses WSIAT paralegals' billing practices and the cost of services. The survey data are analyzed in light of the affordability rationale of the promise of increased access to justice.

Chapter 6 concludes by discussing how my hypothesis plays out. This dissertation concludes, based on the research and analysis undertaken, that paralegal regulation has not increased access to justice, as the government promised it would and the Law Society claims it has. This finding is discussed in light of the Law Society's public interest justification for regulating paralegals. Ultimately, this dissertation concludes that both the self-regulatory model and the Law Society's exercise of regulatory authority are barriers to achieving increased access to justice.

B. Terminology

The term "paralegal" has various meanings. In its broadest sense, it refers to non-lawyers who provide legal services, both under lawyer supervision and independently, both unlicensed and licensed. In Ontario, since the introduction of paralegal regulation in 2007, the term "paralegal" refers to an individual who is licensed to provide legal services to the public for a fee independent of lawyer supervision.[222] Prior to 2007 in Ontario, the term was used to refer to unlicensed and independent, non-lawyer, legal service providers. For clarity, throughout this dissertation, I attempt to specify the type of paralegal to which I refer either by point-in-time reference or through use of a qualifier such as "unlicensed" paralegal. In most other jurisdictions in Canada, a "paralegal" is a non-lawyer who works under lawyer supervision and does not provide legal services directly to the public, for a fee. These paralegals might also be referred to as legal assistants or law clerks.[223]

The terms "paraprofessional" and "non-lawyer" have a similar meaning. They refer, generally, to both licensed and unlicensed non-lawyers who provide legal services and include, in addition to

[222] Ianni Report, *supra* note 13 at xi.

[223] The Canadian Association of Paralegals defines a "paralegal" is "an individual qualified through education, training or work experience, who is employed or whose services have been retained by a legal professional, law firm, governmental agency, private or public corporation or other entity in a capacity or function which involves the performance, under the supervision of a legal professional, of substantive legal work … requiring sufficient knowledge of legal concepts": Canadian Association of Legal Assistants, "About" (last visited 23 May 2020), online: *CAP* <caplegal.ca/en/about/>.

law clerks and legal assistants, members of other professions.[224] "Paraprofessional" is generally understood to refer to one who is not licensed to practise as a fully qualified professional.[225]

The term "agent" is used in its statutory meaning – non-lawyers who are authorized to provide legal services. Essentially, in Ontario, regulated paralegals replaced both (unlicensed) agents, who are authorized by statute to provide legal services, and consultants, the title used by many of Ontario pre-regulation paralegals. Unlicensed agents continue to provide legal services pursuant to statutory authority elsewhere in Canada.

A brief note about the significance of an occupational title is warranted. Some argue that the term "paralegal" in reference to persons licensed to provide legal services independent of lawyers is a contradiction in terms.[226] Paula Pevato argued, long before paralegal regulation was implemented, that independent legal workers do not work "para" or alongside a lawyer but instead operate separate and apart from lawyers which is precisely what distinguishes independent paralegals from other non-lawyers who work alongside and under the supervision of lawyers.[227] The term "paralegal" is generally defined by the person's position in relation to a lawyer, as "a person trained in subsidiary legal matters but not fully qualified as a lawyer."[228] Elsewhere in Canada, there is a reluctance to use

---

[224] Other licensed legal service providers are referred to by their occupational or professional title, such as immigration consultants, insurance agents and adjusters, real estate agents, chartered accountants and others who provide legal services pursuant to statutory authority: see Chapters 3 and 4 herein for further discussion of this point.

[225] Lexico, "UK Dictionary: paraprofessional" (last visited 23 May 2020), online: <www.lexico.com/definition/paraprofessional>. See also Collins Dictionary, online: <https://www.collinsdictionary.com/dictionary/english/paraprofessional>.

[226] Paula Pevato, "Should Law Societies 'Prosecute the Hell' Out of Independent Paralegal Firms?" (1991) 7 J L & Soc Pol'y 215 at 222.

[227] *Ibid*.

[228] Lexico, "UK Dictionary: paralegal" (last visited 23 May 2020), online: <www.lexico.com/definition/paralegal>. See also Collins Dictionary, online: <https://www.collinsdictionary.com/dictionary/english/paralegal>.

the title "paralegal" for regulated and independent non-lawyers who provide legal services because in most jurisdictions outside Ontario, "paralegal" refers to those who work under the supervision of a lawyer.[229] In British Columbia, where the regulation of non-lawyer legal service providers appears to be imminent, it is argued that their title should not include qualifiers such as *alternate, limited, para-legal* or *non-lawyer* because such would signal an inferior status in relation to a lawyer. In Saskatchewan, however, the Legal Services Task Team has suggested that a new category of alternative legal service providers who are granted a limited license to practice could be referred to as Limited Licensees.[230]

"Access to justice," for the purposes of this dissertation, is defined as the availability of competent legal service providers offering affordable services. This research contemplates that where *access* is demonstrated by an increased number of competent and affordable providers of legal services, *justice* should result and be measurable in the form of better or an increase in successful outcomes.

Throughout this paper, "legal profession" refers to Canada's traditional legal profession comprised of lawyers. The term "legal services providers" is used to refer more broadly to all those who provide legal services, including non-lawyers.

A final note about the name of the Law Society is warranted. The Law Society of Upper Canada (LSUC) changed its name to the Law Society of Ontario (LSO) effective May 2018.[231] It is

[229] McHale, *supra* note 184 at 6.

[230] SASK LSTT Report, *supra* note 15 at 83.

[231] Law Society of Ontario, "Amendments to Legislation Make Law Society of Ontario Name Change Official" (8 May 2018), online: <lso.ca/news-events/news/2018/amendments-to-legislation-make-law-society-of-onta>.

referred to throughout this dissertation by its name at the time of reference. Further, I refer to the LSUC/LSO, a specific Law Society, and/or law societies generally, throughout this dissertation in terms of the governing body, in their role as regulator and not in the corporate sense. In doing so, I acknowledge that a law society as a governing body does not necessarily represent the views of all lawyers, members or licensees, and that the legal profession is not a homogenous entity.

CHAPTER 2:
THE LAW SOCIETY, THE LEGAL PROFESSION, & THE ROAD TO PARALEGAL REGULATION IN ONTARIO

INTRODUCTION

Part I of this chapter provides a brief history of the Law Society of Upper Canada and the establishment of the legal profession in Ontario. The two are inextricably intertwined. This part also examines the social, political, economic, and cultural factors and influences that shaped the Law Society over its first 200-plus years. While it can provide only an overview of such a long and detailed history, this account reveals themes that have continued into the twenty-first century. The main features of Ontario lawyers' professionalization saw them seeking to create and maintain an elite profession, secure a monopoly over legal services, and protect lawyers from competition from both within and beyond the legal profession. Part II examines the debates in the decades leading to the introduction of paralegal regulation in Ontario. It exposes the clash of interests between lawyers and legal paraprofessionals, the government, and the Law Society – those who were, from the service delivery perspective, most interested in and would be most affected by the regulation of paralegals.

I. THE LAW SOCIETY AND THE LEGAL PROFESSION

A. Early Days: An Emerging Profession

Law societies across Canada have diverse origins, developing at different times and in different ways.[1] Despite this, according to Stager and Arthurs, there were two important and common experiences: first, law societies were formed after colonial governments had enacted controls on who

[1] David Stager & Harry W Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990) at 34.

might be qualified to practise law and self-governing authority was transferred only gradually to the law societies; second, provisions for what now would be called "delivery of legal services" were influenced strongly by the paucity of legal resources in the early colonies.[2]

The roots of Ontario's legal profession reach back to the earliest years of the colony of Upper Canada. In 1794, legislation authorized the governor or lieutenant-governor to license up to sixteen persons whom he deemed "from their probity, education, and condition in life, best qualified to act as advocates and attorneys in the conduct of all legal proceedings in the province."[3] The preamble to this legislation recognized that "much inconvenience may ensue from the want of persons duly authorized to practise the profession of the law" in the province.[4] A few years later, in July 1797, the Law Society of Upper Canada (LSUC) was created by ten lawyers (representing two-thirds of all lawyers then practicing in the colony) pursuant to *An Act for the better regulating the Practice of Law*,[5] the purpose of which is clear from its title.[6] The Act authorized the legal practitioners of Upper Canada – barristers, advocates, solicitors, and attorneys already practicing in the colony – to gather and form themselves into a Society "for the establishing of order amongst themselves, as for the purpose of securing to the Province and the profession a learned and honorable body to assist their

[2] *Ibid*.

[3] *An Act to Authorize the Governor of Lieutenant-Governor to Licence Practitioners in the Law* (UK), UC 1794, (34 Geo III), c 4, s 2 [1794 Act].

[4] *Ibid*.

[5] The Law Society of Upper-Canada (original spelling contained the hyphen, see Preamble) was created by *An Act for the better regulating the Practice of Law* (UK), UC 1797 (37 Geo III) (1st Sess), c 13 [1797 Act]. The Law Society of Upper Canada changed its name to the Law Society of Ontario on January 1, 2018: online, <lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/research-themes/history-of-the-law-society>. It will be referred to by its name at the time.

[6] Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers: 1797 – 1997* (Toronto: University of Toronto Press, 1997) at 13-15.

fellow subjects as occasion may require and to support and maintain the constitution of the said Province."[7] In short, legislative authority to self-regulate and establish a learned and honourable profession to assist the public and the state. Lawyers were granted a monopoly of practice at the bar of His Majesty's courts in Upper Canada and membership was compulsory for all members who engaged in such practice.[8] The 1797 Act also authorized the Law Society to appoint senior members as governors, or Benchers, to make rules for its own government, and accept as members only lawyers who had qualified and conformed to LSUC stipulations.[9] This Act, according to historian Christopher Moore, "created something new in the world – a profession empowered by legislative statute to control entry to its ranks, define its standards, and police its monopoly of practice."[10] The Law Society of Upper Canada appears to have been the first professional community authorized to govern by formally promulgated rules,[11] by specific language of a legislative act subject to interpretation by lawyers and legislators.[12] Lawyers themselves had been given statutory authority over the most important indicia of professional activity – controlling access to the profession, regulating one another's behavior (which was shared with the courts at first), defining and defending the rightful domain of lawyerly activity, and protecting and enhancing the corporate honour and status of the profession.[13]

---

[7] 1797 Act, *supra* note 5; Stager & Arthurs, *supra* note 1 at 35.

[8] Philip Girard, "The Making of the Canadian Legal Profession: A Hybrid Heritage" (2014) 21:2 Intl J Leg Profession 145 at 151.

[9] 1797 Act, *supra* note 5.

[10] Moore, *supra* note 6 at 9; Girard, *supra* note 8 at 149.

[11] Moore, *supra* note 6 at 45.

[12] *Ibid* at 43.

[13] Girard, *supra* note 8 at 149, citing Michael Burrage, *Revolution and the Making of the Contemporary Legal Profession in England, France, and the United States* (New York: Oxford University Press, 2006).

After the 1797 Act was passed, there were two routes to admission to the legal profession in Ontario: by membership in the LSUC, or by governor's appointment under the 1794 Act.[14] There was also a third route open to barristers of England, Scotland, Ireland or other colonies in British North America who could be admitted by judges of the King's Bench.[15] Even from its early days, the legal profession was not a homogenous group with entirely common interests. The 1797 Act maintained the separate professions of barrister and attorney and different rules for the training of each branch of the profession[16] – apprenticeship of five years for a student-of-the-law in order to be admitted to the practise of law as a barrister and three years as an articled clerk in order to be admitted as an attorney or solicitor who could act in any of his Majesty's courts of law or equity in the province[17] – but the Act also proclaimed that all lawyers were entitled to practice in both capacities once they had completed a five-year apprenticeship.[18] From the beginning, the legal profession was reserved for those with "a certain independence of means and character."[19] Lawyers were expected to be "gentlemen, right-thinking and politically safe."[20] According to Moore, the early legal community of

[14] Stager & Arthurs, *supra* note 1 at 35-36; RD Gidney & WPJ Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1994) at 17-18; 1794 Act, *supra* note 3 (also referred to as the Judicature Act).

[15] Stager & Arthurs, *supra* note 1 at 36.

[16] Gidney & Millar, *supra* note 14 at 31.

[17] Stager & Arthurs, *supra* note 1 at 36; 1797 Act, *supra* note 5 at s V.

[18] Girard, *supra* note 8 at 148.

[19] Moore, *supra* note 6 at 43.

[20] W Wesley Pue, "Cultural Projects and Structural Transformation in the Canadian Legal Profession" in W Wesley Pue & David Sugarman, eds, *Lawyers & Vampires: Cultural Histories of Legal Professions* (Portland, Or: Hart Publishing, 2003) 367 at 388 [Pue & Sugarman]. A woman (Clara Brett Martin) would not be admitted to the LSUC until 1897, and the first female bencher (Laura Legge) was not elected until 1975: Law Society of Ontario, "The Law Society of Ontario in context: a chronology" (last visited 25 May 2020), online: <lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/chronology>.

Upper Canada espoused "Georgian professionalism" – the belief that what defined a professional was not skill or qualifications but status.[21]

Rob McQueen argues that dissent and friction between sectors of the legal profession are the norm and law societies must balance a range of contradictory interests.[22] Indeed, dissent, friction, and hints of varying status, privilege and superiority were evident within the LSUC from its earliest years. While the 1797 Act contained separate requirements for barristers and solicitors, membership in the LSUC was required for both, and most lawyers became both.[23] As such, the two branches of the profession at the time were, in effect, united.[24] But, as Gidney and Millar recount, some of the legal elite believed the respectability of the bar was compromised by that union.[25]

In 1822, Law Society Benchers sought to eliminate attorneys from the profession.[26] Barristers maintained that their work was learned and honourable and required mastery of the science of law. They deemed attorneys' work as requiring mere technical skills, resembling more a trade than a profession, too routine and commercial to suit gentlemen barristers.[27] Courtroom litigation was the essential work of barristers, while the more routine and commercial work of attorneys "remained slightly tainted."[28] Upper Canada's barristers were seeking to entrench the status divide that

[21] Moore, *supra* note 6 at 43.

[22] Rob McQueen, "Together We Fall, Divided We Stand: The Victorian Legal Profession in Crisis 1890-1940" in Pue & Sugarman, *supra* note 20 at 327.

[23] Moore, *supra* note 6 at 62.

[24] Gidney & Millar*, supra* note 14 at 32.

[25] *Ibid*.

[26] *Ibid*.

[27] Moore, *supra* note 6 at 86-87.

[28] *Ibid* at 110.

distinguished the two professions in England.[29] The *Law Society Act* was amended, in 1822, to eliminate the LSUC's supervisory powers over attorneys or their articled clerks, giving the Law Society sole responsibility for admission to the practice of law, but only barristers could be admitted.[30] As Gidney and Millar describe it, "those who were attorneys only were banished from the charmed circle of barristers" who constituted the membership of the Law Society.[31] Attorneys were no longer required to be enrolled on the books of the society and to pass prescribed examinations before admission. They were still allowed to practise without being members of the LSUC, but were under the supervision of the courts.[32] Attorneys were only required to have served under written articles for a period of five years and could thereafter be enrolled as solicitors by the Court of King's Bench.[33] But, after the Law Society relinquished authority over attorneys' training and practice in 1822 and raised education standards for barristers, the number of attorneys who were not barristers began to grow because it was much easier to become an attorney than a barrister.[34] Further, the 1822 legislation did not succeed in creating a distinct separation between barristers and attorneys because the majority of lawyers qualified in both branches of the law.[35] As Gidney and Millar note, while being a barrister gave a lawyer "the mark of respectability," he made his living from his practice as an

[29] Gidney & Millar, *supra* note 14 at 32. See also Girard, *supra* note 8 at 146, wherein the author argues the Canadian model of the legal profession married the strengths of the English tradition of self-governance with the American practices of a unified legal profession, zealous client service, flexible organization, and a creative attentiveness to the needs of business.

[30] Stager & Arthurs, *supra* note 1 at 36; Gidney & Millar, *supra* note 14 at 32.

[31] Gidney & Millar, *supra* note 14 at 32.

[32] Stager & Arthurs, *supra* note 1 at 36.

[33] Gidney & Millar, *supra* note 14 at 32.

[34] Moore, *supra* note 6 at 87; Gidney & Millar, *supra* note 14 at 77.

[35] Gidney & Millar, *supra* note 14 at 32.

attorney.[36] In 1837, a Court of Chancery was established in Upper Canada and its jurisdiction was similar to a commercial court, dealing with property mortgages, commercial contracts, business partnerships, and trusts – matters "reminiscent of attorneys' work."[37] The Court of Chancery created a third category of legal professional – solicitors – making all attorneys "solicitors of Chancery" and all barristers "Chancery counsel."[38]

By the end of its first twenty-five years, according to Moore, the LSUC had become "prosperous, respected, influential, and securely in control of the profession."[39] By 1840, 40% of legal practitioners were attorneys who had not qualified as barristers.[40] According to Moore, while barristers sneered at attorneys, barrister-attorneys "felt the sting of competition from the numerous and unregulated attorneys" who competed for advocacy work.[41] In some cases, attorneys acted as advocates in the county courts – one of the prerogatives that was supposed to distinguish the barrister from the attorney – which led the Law Society in 1847 to challenge, unsuccessfully, the right of attorneys to act as advocates.[42] The Chief Justice of the Court of King's Bench decided the county court judges had the authority to determine who could act as advocates in their courts[43] and, as a result, some county court judges, especially those in the more remote districts, allowed attorneys to

[36] *Ibid*.

[37] Moore, *supra* note 6 at 110-11.

[38] Stager & Arthurs, *supra* note 1 at 36.

[39] Moore, *supra* note 6 at 64.

[40] *Ibid* at 109

[41] *Ibid*.

[42] Gidney & Millar, *supra* note 14 at 77.

[43] *Ibid*. See also Moore, *supra* note 6 at 109.

appear.[44] According to Gidney and Millar, attorneys and solicitors were, by the 1850s, "posing a double threat to the bar: not only were they economic competitors but they challenged [barristers'] exclusive prerogatives as well."[45] There were calls for action by a newspaper editor and correspondents to protect the reputations and income of barristers, the "educated and learned branch of the profession," against less qualified attorneys.[46]

Public outcry against lawyers was uncommon in the quarter century after 1850 such that the legal profession was "insulated by [a] benign political atmosphere" and therefore developed almost entirely outside the public eye.[47] During these critical years, lawyers attempted to increase their role in the administration of justice, secure expanded powers of occupational self-regulation, and exercise greater control over the market for legal services.[48] Lawyers exerted powerful influence in the Legislature, especially in cabinet, and "tended to arrogate to themselves the right to define the direction and character of law reform, and to treat knowledge of the law as their own private preserve."[49]

During the first half of the nineteenth century, those who wanted to become barristers had to be recommended by a member of the profession and demonstrate to the Benchers they had the "appropriate manners, morals and intellectual quality suitable to a professional gentleman."[50] Until

[44] Gidney & Millar, *supra* note 14 at 77.

[45] *Ibid*.

[46] *Ibid* at 77-78.

[47] *Ibid* at 70.

[48] *Ibid*.

[49] *Ibid* at 73.

[50] *Ibid* at 82.

1871, LSUC Benchers held office for life and the Benchers selected each new Bencher.[51] Until the late 1850s, the Benchers' job was, primarily, to maintain the bar as a learned and honourable profession and that required "little more than the judicious regulation of education."[52] According to Gidney and Millar, around that time, the legitimacy of lawyers' professional privileges came to be taken for granted as leading lawyers found it relatively easy to extend the power of the Law Society in any areas defined as within the prerogatives of the profession, stating:

> The Benchers moved resolutions and consulted with professional men in the cabinet, and laws were passed raising educational standards, or circumscribing attorneys, or extending lawyers' roles in the courts, all without public debate, without a public outcry, without, indeed, apparent public interest. Secure behind the bulwarks of the Law Society Act, controlling many of the levers of power in society, constituting a key element of the economic and social elite, the law, as an organized profession, had little difficulty obtaining the objectives it set for itself.[53]

That changed starting mid-century when admission became merit based. As Gidney and Millar describe it, as the Benchers became concerned about growing numbers they turned unselfconsciously to such meritocratic devices as formal, written examinations, or more exacting academic standards, as a means of selecting qualified applicants and they did so, in part, because they wanted a way to more effectively restrict entry.[54] The LSUC controlled entry to the profession through its exclusive jurisdiction over formal legal education and the production of lawyers, in some form or other, starting in 1820[55] and established its first lectures in law in 1854 at Osgoode Hall.[56]

---

[51] *Ibid* at 73.

[52] *Ibid* at 75.

[53] *Ibid* at 81. Gidney and Millar explain that it might not, in fact, have been that easy but the surviving public record makes it look that way.

[54] *Ibid* at 84: The Benchers also believed it was a fairer way to admit persons to the profession.

[55] Moore, *supra* note 6 at 88.

[56] *Ibid* at 116.

These lectures were viewed as a supplement to apprenticeship and examinations.[57] The Law Society engaged in the formal instruction of lawyers from that time onward, although the formal foundation of the Society's Osgoode Hall Law School did not occur until 1889.[58] The bar's monopoly over all phases of the production of lawyers lasted until the 1950s when control over legal education gradually transferred to the universities.[59] Osgoode Hall Law School was transferred to York University in 1968, but the LSUC continued to control professional training.[60]

In and around mid-century, the number of lawyers started to increase, doubling between 1840 and 1858 and increasing by more than half again by 1870.[61] These growth rates produced growing unease among the profession as this raised not just a narrowly economic problem but also concern about the respectability of the profession.[62] According to Gidney and Millar, the profession responded to the increased numbers by formulating strategies designed to bring the profession under greater control.[63] It proposed raising entry standards and making its examinations more difficult, attempted to limit the deleterious effects of competition by imposing more effective internal discipline on LSUC members, and importantly, the LSUC reasserted control over those attorneys and

[57] *Ibid* at 117.

[58] Gidney & Millar, *supra* note 14 at 371.

[59] Harry W Arthurs, Richard Weisman & Frederick Zemans, "Canadian Lawyers: A Peculiar Professionalism" in Richard L Abel and Philip Simon Coleman Lewis, eds, *Lawyers in Society: The Common Law World* (Oakland, CA: University of California Press, 1988) 123 at 149 [Arthurs & Weisman].

[60] *Ibid*. Law societies in Canada are involved in setting national standards for education and entry through a national body, the Federation of Law Societies of Canada (FLSC): Federation of Law Societies of Canada, "About" (last visited 27 May 2020), online: <flsc.ca/about-us/>.

[61] Gidney & Millar, *supra* note 14 at 75. The authors note the number of lawyers increased from 267 to 530 between 1840 and 1858, and to 893 by 1890.

[62] *Ibid* at 76.

[63] *Ibid*.

solicitors who were not also barristers.[64] In the result, the various branches of the profession came together again under the unified control of the Law Society in 1857.[65] According to Moore, the lack of any proof of fitness of attorneys created both professional and public dissatisfaction and consequently the Legislature, apparently persuaded that unregulated attorneys were a threat to the public,[66] returned to the Law Society full jurisdiction over the education and certification of attorneys as well as barristers, through *An Act to amend the Law for the admission of Attornies*.[67] This Act, according to Riddell J., introduced the modern system – "just as no Court can hear a Barrister who has not been called by the Society, so no Court can admit a Solicitor without the certificate of the Society."[68] In a strong endorsement of the Law Society's self-regulatory privilege, Riddell J. proclaimed that the Law Society "is the sole judge of the fitness and capacity of either; the legal profession is master in its own house."[69] The Act required a person to have served as an articled clerk for a five-year term and pass a Law Society exam before being admitted and enrolled as an attorney or solicitor and before one could apply to the courts for permission to practice.[70] The separate professions of barrister and attorney or solicitor were maintained. The Law Society raised educational standards for both students-at-law (future barristers) and articled clerks (future attorneys), and in 1872 it was granted greater authority over the education of attorneys, including the introduction of an entrance

[64] *Ibid*.

[65] Stager & Arthurs, *supra* note 1 at 36.

[66] Moore, *supra* note 6 at 109.

[67] S Prov C 1857 (20 Vict), c 63 [1857 Act]. See also Moore, *supra* note 6 at 85-87; Blair JA, of the Court of Appeal for Ontario, reviews the history of the legal profession in *R v Lawrie and Pointts* (1987), 59 OR (2d) 161 (CA) [*Lawrie and Pointts*]. The 1857 Act consolidated the several Acts of Upper Canada relating to Attornies and Solicitors: s I.

[68] William Renwich Riddell, *The Legal Profession in Upper Canada in its Early Periods,* (Toronto: Law Society of Upper Canada, 1916) c V at 21, as cited by Blair JA in *Lawrie and Pointts*, *supra* note 67.

[69] *Ibid.*

[70] 1857 Act, *supra* note 67, ss II, III; Gidney & Millar, *supra* note 14 at 78.

exam for articled clerks.[71] By then, lawyers "finally established full control over entry and examination standards for both intending barristers and attorneys."[72] As educational standards rose, the incentive to train only as an attorney was substantially reduced.[73] By 1876, the reintegration of attorneys was complete when *Law Society Act* amendments gave the LSUC authority to make rules governing all aspects of discipline and practice of both barristers and attorneys.[74] This was an important benchmark and the last major step in bringing the attorneys back into the Law Society's fold, "fusing together the two branches of the profession."[75] According to Moore, in the latter half of the nineteenth century, Ontario's emergence "as a prosperous, proto-industrial province … out of the backwoods frontier colony of Upper Canada" transformed the nature of legal practice to the point where separating barristers from attorneys was no longer an issue.[76] The common law and equity courts were merged in 1881 pursuant to the *Ontario Judicature Act* and those admitted as solicitors or attorneys would from then on be known as solicitors.[77] Thereafter, most lawyers qualified as both barristers and solicitors, and the status distinction between the two branches of the profession began to fade.[78] After the two professions were formally reunited under the authority of the *Law Society Act* in 1857, future stratification within the

[71] Gidney & Millar, *supra* note 14 at 80. See also Moore, *supra* note 6 at 109.

[72] Gidney & Millar, *supra* note 14 at 386.

[73] *Ibid* at 80.

[74] *Ibid* at 80-81.

[75] Gidney & Millar, *supra* note 14 at 81.

[76] Moore, *supra* note 6 at 87.

[77] *The Ontario Judicature Act, 1881*, SO 1881, c 5, s 74 [*Judicature Act*]. See Superior Court of Justice, "History of the Court" (last visited 25 May 2020), online: <www.ontariocourts.ca/scj/about/history/>.

[78] Moore, *supra* note 6 at 111; Stager & Arthurs, *supra* note 1 at 36.

profession, according to Girard, "was … more likely to be organized around financial success, which, especially after the rise of corporate law, was tied mainly to the type of client one represented."[79]

B. Competition – Lay Practitioners

Lay practitioners also provided legal services in Upper Canada, including but not only in the lower courts as advocates, even before the LSUC was created.[80] According to Moore, laymen handled much of the real estate conveyancing, will drawing, and lower court advocacy in rural areas un-serviced by lawyers even after the LSUC was established.[81] Lay advocates appeared before justices of the peace in the Courts of Requests which were established in 1792 in acknowledgement of "the need for cheap and easy access to justice in small claims matters."[82] These courts placed the resolution of disputes in minor matters in the hands of local justices of the peace, and these courts remained in the hands of lay judges and lay advocates.[83] The district courts were established in 1794 for small claims actions in contract (limited by monetary sum).[84] In the same year, a Court of King's Bench to be located at the capital was established and common law procedures were introduced in both courts.[85] The intent and effect of the Act were "to make a place in the province for the regularly bred."[86] While lay judges, lay advocates, and litigants themselves could still be found in the district

[79] Girard, *supra* note 8 at 149.

[80] Gidney & Millar, *supra* note 14 at 17-18.

[81] Moore, *supra* note 6 at 147.

[82] Gidney & Millar, *supra* note 14 at 17-18.

[83] *Ibid* at 17.

[84] *An Act to Establish a Court for the Cognizance of Small Claims in each and every District of this Province* (UK), UC 1794 (34 Geo III), c 3; Gidney & Millar, *supra* note 14 at 17.

[85] Gidney & Millar, *supra* note 14 at 17 (who refer to the legislation as the Judicature Act, 1794); *An Act to Establish a Superior Court of Civil and Criminal Jurisdiction, and to Regulate the Court of Appeal* (UK), UC 1794 (34 Geo III), c 2.

[86] Gidney & Millar, *supra* note 14 at 18.

courts,[87] according to Gidney and Miller, "the sheer technical complexities of the common law – a body of law and procedures accumulated over centuries, involving a plethora of archaic or Latin phraseology and demanding high levels of precision in the fine details of the case – made lawyers more necessary than before [and in] the major cases coming before the Court of King's Bench, they were essential."[88] To be clear, this all occurred prior to 1797, before the Law Society of Upper Canada was established.

In the first half of the 1800s, lawyers and laymen both provided legal services in Ontario in relative harmony. Since the number of lawyers remained small and most practiced in larger towns and cities, and lay practitioners worked in rural areas, there was little conflict between the two groups.[89] As Gidney and Millar explain, they tended to different matters and thus did not compete against each other:

> Lawyers controlled the county and superior courts, carried on most of the complex or special conveyancing, and more generally could rely on the routine business of all those prosperous citizens who wanted professionals to tend to their affairs. Laymen tended to pick up any remaining business, combining conveyancing with a variety of other services such as land surveying, insurance, real estate, accounting, or similar activities.[90]

In the early days of the legal profession, in what was then Canada West (following the Union of 1841), the market for legal services was limited. Most of the farmers did what is today considered lawyers' work on their own or with lay assistance. They sought advice from those who had some education

[87] *Ibid* at 17-18.

[88] *Ibid* at 18.

[89] *Ibid* at 257.

[90] *Ibid*; Moore, *supra* note 6 at 147.

and experience; basic forms for matters such as wills, rentals, sales and mortgages were available in general stores. Even as transactions became more sophisticated, farmers were more likely to turn to a non-lawyer notary or unlicensed conveyancer for help.[91] Moreover, lay persons charged relatively low fees for their services.[92] As the number of lawyers increased in the latter decades of the 1800s, the practice of lay practitioners posed a serious economic threat to lawyers, in part because it extended far beyond conveyancing.[93] Laymen offered legal advice on a wide variety of matters and routinely acted as advocates in the division courts, where they had the right to represent themselves or act for others as agents.[94] Through the late-nineteenth century, lawyers started to move out into rural areas from the major centres as country towns and rural farm communities became a new source of clients for a profession that many lawyers considered to be overcrowded. In order to secure this clientele, lawyers had to drive back the lay advocates and conveyancers. Significantly, as Moore describes it, the lawyers were "seeking to expand, rather than merely to defend" the boundaries of legal work in their battle against the conveyancer 'plague'."[95] This friction, according to Girard, arose because Canadian lawyers did not benefit from the same statutory monopoly over conveyancing given to English solicitors in 1804.[96] At first, neither the Legislature nor LSUC Benchers, dominated by prosperous city barristers, were eager to support the country lawyers' fight against lay conveyancers, dismissing it, presumably, as economic self-interest and, at least in part, because their

[91] Moore, *supra* note 6 at 103.

[92] Girard, *supra* note 8 at 153.

[93] Gidney & Millar, *supra* note 14 at 258.

[94] *Ibid*.

[95] Moore, *supra* note 6 at 148.

[96] Girard, *supra* note 8 at 153-54.

own practices were not threatened.[97] When the country lawyers stopped arguing their cause based on self-interest – their monetary woes – and based it instead on the "honour of the profession and the protection of the public," the appeal to professional ideals succeeded in getting Law Society support[98] although Convocation had no power to outlaw lay competitors.[99] In 1883, a committee appointed by the Benchers to examine the issue of lay conveyancing reported having consulted with leading lawyer-politicians and the consensus was that there was "no chance" of getting restrictive legislation passed. About a decade later, another Law Society committee again took up the issue and reported that several Benchers who were also members of the provincial Legislature had advised there was "not the slightest prospect of obtaining legislation which would have for its plain object the protection of the profession against outside conveyancers"[100] and, if attempted, would be likely to result in legislation "of quite an opposite character" and detrimental to the profession.[101] By the turn of the century, the Law Society was trying to assist in the fight against unlicensed practitioners with the argument that they were "a danger to the public."[102] A bill to give solicitors a monopoly on conveyancing reached the floor of the Legislature several times between 1903 and 1906, but was never passed. Eventually the problem of lay conveyancers solved itself as the oversupply of small-town practitioners migrated to the city in search of better opportunities, recruitment to the bar itself

[97] *Ibid* at 153-54.

[98] Moore, *supra* note 6 at 148.

[99] Gidney & Millar, *supra* note 14 at 313.

[100] *Ibid* at 314.

[101] *Ibid*.

[102] Moore, *supra* note 6 at 148.

decreased significantly, and the number of lay conveyancers slowly declined.[103] Gradually, in part by presenting the lawyer as being both "more skilled and more responsible – more modern and professional" than a lay competitor, the lawyers managed to wean much of rural Ontario from reliance on lay conveyancers, even without legislative support.[104] But the fight over lay conveyancers had prompted a group of dissenting lawyers to form an organization called the Ontario Bar Association (OBA) in 1906[105] to protect lawyers' collective interests.

C. Seeking a Lawyers' Monopoly

The statutory prohibition against unqualified persons acting as a barrister or solicitor originated in the 1797 Act that created the LSUC. It included a provision that only members of the Society could practise in the courts.[106] But a legislative monopoly over all legal services, and legal service providers, was not explicitly provided for and simply did not exist.

What constituted lawyers' work and what, if any, exclusive jurisdiction over legal work did lawyers have?[107] Stager and Arthurs argue there are two incorrect assumptions about what lawyers do: that they perform certain services that other people do not or cannot perform, and they do not render services that may be rendered by lay people.[108] According to Stager and Arthurs, an analysis that treats "lawyers' services" as "a fact rather than an artefact is likely to be seriously deficient" as:

---

[103] Girard, *supra* note 8 at 154.

[104] Moore, *supra* note 6 at 148.

[105] *Ibid* at 154. See also Ontario Bar Association, "About Us: History" (last visited 25 May 2020), online: <www.oba.org/About-US/About-Us/History>, which states that the OBA has been in existence since 1907.

[106] 1797 Act, *supra* note 5, s 5.

[107] The question remains relevant today. See further discussion of this point in Chapters 3 & 4 herein.

[108] Stager & Arthurs, *supra* note 1 at 54.

> It will incorrectly describe, for example, the market context in which the profession operates, because it will not take account of all the sources of competition that diminish the profession's apparent monopoly over 'lawyers' services.' Similarly, it will overlook the extent to which lawyers perform a range of services beyond those conventionally thought of as 'lawyering tasks.'[109]

"Lawyers' services" can be distinguished from a much broader category of activities called *legal services* that encompass most, but not all, of lawyers' services in addition to other services.[110] While difficult to define, it is suggested that *legal services* can be generally defined as the "advice, assistance and representation required by a person in connection with his rights, duties and liabilities."[111]

The Division Courts bill, introduced in 1878 (Division Courts Act of 1880), which decentralized civil law by transferring a large category of cases from the county to the local division courts and thereby increased the range of cases lay practitioners could conduct in the Division Courts, posed a threat to young and struggling practitioners, especially country lawyers, and sparked anger amongst them against the Law Society for not protecting their interests.[112] But the bill also drew expressions of anti-lawyer sentiment from members of the public who defended the competence of lay practitioners and the rights of poor men "to pursue cheap justice unencumbered by fee-hungry lawyers."[113] Concern about access to justice even then, before the twentieth century, reveal the same themes – the availability and competence of legal service providers and the cost of services – that continue to exist, almost a century and a half later, and are central to the issue of paralegal regulation

[109] *Ibid* at 54-55.

[110] *Ibid* at 55.

[111] *Ibid* at 61.

[112] Gidney & Millar, *supra* note 14 at 298-299.

[113] *Ibid* at 298, 313.

currently. It also reveals the entrenched role of non-lawyers in meeting the public's legal needs. The Law Society then began, in the late 1880s, to attempt to strengthen its licensing power to protect lawyers from external competition.[114] The Law Society's attempts, although unsuccessful, to convince the provincial Legislature to grant the legal profession a monopoly over real estate conveyancing, for example, were intended to limit the negative effect of competition from outside the profession by giving lawyers the exclusive right to offer advice to vendors and purchasers of real property.[115] The history of the Law Society's struggles over lay conveyancers and its efforts to restrict, or even eliminate, them highlights the economic, political and cultural forces at play within the profession, as Sugarman and Pue maintain. It also reveals market control tendencies, as Abel and Rhode assert. More particularly, it reveals the profession's concerns with status, reputation, and superiority intertwined with economic self-interest. It is significant that the Law Society was rebuffed by the legislature in its efforts to gain control over competitors and faced the possibility, even then, of losing its professional privileges in attempting to over-extend its monopoly. This attempt serves as a reminder of a law society's reliance on the state for its self-regulating authority and that it is best to maintain a cooperative or at least not antagonistic relationship with the government. These are themes that would recur and inform the Law Society's concerns about, and actions in respect of, the regulation of paralegals a century later.

The Court of Appeal for Ontario has reviewed the history of prohibited practice legislative provisions.[116] Early versions of the *Solicitors Act* in the early 1900s prohibited practice by an

[114] John A Flood & Frederick H Zemans, "Unauthorized Legal Practice Prosecutions and Independent Paralegals in Ontario and the United States" [Flood & Zemans] in R W Ianni, ed, *Report on the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) 176 at 178 [Ianni Report].

[115] *Ibid* at 177-78.

[116] *Lawrie and Pointts*, *supra* note 67, decision of Blair JA.

unqualified person but that prohibition was limited to court practice.[117] Legislative amendments in 1940 extended the scope of a solicitor's practice – not only was an unauthorized person prohibited from acting as a solicitor in any court of civil or criminal jurisdiction or before any justice of the peace, but one was also not permitted to "hold himself out as or represent himself to be or practise or for gain or reward act as" a solicitor – and also introduced sanctions for unqualified practice.[118] Laidlaw J.A. of the Ontario Court of Appeal, in deciding an unauthorized practice case in 1952, explained the two-fold object of the legislation: to protect members of the legal profession who have been admitted, enrolled and duly qualified as solicitors "against wrongful infringement by others of their right to practise their profession" and also, to protect the public.[119] In that case, the accused was a duly appointed notary public who was also licensed under the *Real Estate and Business Brokers Act*, who had "engaged in connection with real estate transactions" – he prepared and approved forms of offer to purchase, considered and approved the form and contents of deeds, examined documents of title and provided opinions as to title to his clients, and generally "engaged in any matter or transaction with which he was concerned in the same manner as though he were a duly qualified solicitor."[120] The Court of Appeal found the appellant's conduct – performing transactions for the sale and purchase of real estate – viewed as a whole, would lead a reasonable person to believe that he possessed and purported to exercise the skill and learning of a duly qualified solicitor.[121] The court found the most offending conduct to be the accused's concern with questions of title and having

---

[117] *R ex rel Smith v Mitchell*, [1952] OR 896 (CA) [*Mitchell*]; *Lawrie and Pointts*, *supra* note 67, Blair JA. See, for example, *An Act Respecting Solicitors*, SO 1912, c 28, s 3.

[118] *Lawrie and Pointts*, *supra* note 67; *An Act to Amend The Solicitors Act*, SO 1940, c 26, s 1 [*Solicitors Amendment Act 1940*].

[119] *Mitchell*, *supra* note 117.

[120] *Ibid*.

[121] *Ibid*.

expressed opinions to clients that they had "good and marketable title."[122] In a previous case, the Ontario Court of Appeal had determined that an accountant, Ott, was not "practicing as a solicitor" in securing letters of incorporation for his clients.[123] Ott had copied and completed standard government forms, adding his own language to broaden the scope of some of the clauses. The question at trial was whether he had practised, or for gain or reward acted, as a solicitor pursuant to the *Solicitors Act*. The court determined he had, but Ott's conviction was set aside on appeal. A further appeal, to the Court of Appeal, was dismissed. The Court of Appeal held that the accused had performed a mechanical act on an isolated occasion and had not provided legal advice, and therefore his actions did not amount to practising as a solicitor. According to Gibson J.A., the taking of steps to incorporate a company did not constitute acting or practising as a solicitor pursuant to the relevant statute.[124]

Blair J.A. of the Ontario Court of Appeal, in a subsequent unauthorized practice case (in 1987), reviewed the history of the legislation concerning unauthorized practice which was set out in three separate statutes.[125] As of 1912, The *Law Society Act* continued the constitution of the Law Society and its jurisdiction over the education, admission and discipline of barristers and solicitors; the *Barristers Act* provided for the order of preference at the bar, but contained nothing about unauthorized practice; and the *Solicitors Act* contained a prohibition against practicing when unqualified.[126] Amendments to the *Barristers Act* in 1944 added to it the same unauthorized practice

[122] *Ibid*.

[123] *Rex ex rel Smith v Ott*, [1950] OR 493.

[124] *Ibid*.

[125] *Lawrie and Pointts*, *supra* note 67.

[126] *Ibid*.

provision found in the *Solicitors Act*, but with "the significant addition" of an exception for laymen acting as agents to appear in court under the authority of any statute.[127] The prohibition against unqualified persons acting as a barrister originated in the 1797 Act establishing the Law Society.[128] In 1970, the *Law Society Act* was amended and for the first time contained a section dealing with unauthorized practice. The Law Society's control over education, admission and discipline continued by deletion of the sections dealing with qualification and admission from both the *Barristers Act* and the *Solicitors Act.*[129] Further, control over unauthorized practice was also transferred to the LSUC,[130] and set out in section 50(1) of *The Law Society Act, 1970*, which stated:

> Except where otherwise provided by law, no person, other than a member … shall act as a barrister or solicitor or hold himself out as or represent himself to be a barrister or solicitor or practise as a barrister or solicitor."[131]

The inclusion of the opening phrase, "Except where otherwise provided by law," incorporates the exception for agents found in the *Barristers Act* of 1944.[132] The remaining language of the section is otherwise broad. The Ontario Court of Appeal describes the *Law Society Act* section 50 as appearing "to cast a wider net" than the prohibition contained in the *Barristers Act* of 1944, since it was limited to practicing "at the Bar of Her Majesty's Courts in Ontario."[133] Flood and Zemans note that section 50 does not define "acting" or "practicing as" a lawyer, and Canadian law is not clear on what if any

---

[127] *Ibid*; *The Statute Law Amendment Act*, *1944*, SO 1944, c 58, s 1 [*SLAA*]. See also The *Barristers Act*, RSO 1950, c 31, s 5 [*Barristers Act*]

[128] *Lawrie and Pointts*, *supra* note 67; 1797 Act, *supra* note 6 at s 5.

[129] *Lawrie and Pointts*, *supra* note 67.

[130] *Ibid*.

[131] *The Law Society Act, 1970*, SO 1970, c 230, s 50(1) [*LSA* 1970].

[132] *Lawrie and Pointts*, *supra* note 67; See *SLAA*, s 1 and *Barristers Act*, s 5.

[133] *Lawrie and Pointts*, *supra* note 67.

is the distinction between the two.[134] Blair J.A. suggested the broader language found in the *Law Society Act* might be a reason the *Statutory Powers Procedure Act*, passed in 1971, specifically authorized representation by agents before tribunals.[135] According to Blair J.A., when the sections prohibiting unauthorized practice were transferred to the *Law Society Act* in 1970, the exceptions covered by the phrase "otherwise provided by law" continued to apply to agents acting as barristers and also, for the first time, specifically to agents acting as solicitors.[136] The effect of all of this, it seems, is that even when the Legislature gave the Law Society control over unauthorized practice in 1970, it was still not clear what activities only lawyers were authorized to engage in. The line that separated lawyers' work from legitimate non-lawyers' work was, even then, far from clear.

Throughout the Law Society's history, then, and even before the Law Society existed, there was widespread statutory authority for lay practitioners to appear in various courts and administrative tribunals.[137] Lay advocates were permitted to appear on small claims matters in the Courts of Requests in the early 1790s[138] and, as the Court of Appeal recounted,[139] such authority extended to small claims matters before Divisional Courts in 1872; in mechanics lien proceedings since 1910;[140] in summary conviction proceedings under the *Criminal Code* since 1906;[141] in coroners' inquests since

[134] Flood & Zemans, *supra* note 114 at 180.

[135] *The Statutory Powers Procedure Act, 1971*, SO 1971, c 47 [*SPPA*].

[136] *Lawrie and Pointts*, *supra* note 67; *LSA* 1970, *supra* note 131, s 50.

[137] *Lawrie and Pointts*, *supra* note 67.

[138] Gidney & Millar, *supra* note 14 at 17.

[139] *Lawrie & Pointts*, *supra* note 67.

[140] *The Mechanics' and Wage-Earners' Lien Act*, SO 1910, c 69, s 37(7).

[141] *Criminal Code*, RSC 1906, c 146, s 270.

1972;[142] in proceedings under in the *Landlord and Tenant Act* since 1975;[143] pursuant to the *Provincial Offences Act* since its enactment in 1979;[144] and as agents pursuant to the *Crown Attorneys Act*[145] and prosecutors pursuant to the *Police Act* since 1980.[146]

In one particular administrative setting – labour arbitrations under collective agreements in the men's clothing industry – unions and employers were routinely represented by lay representatives to the parties' "apparent mutual satisfaction" since about 1920.[147] A decision in which the arbitrator refused to allow representation by lawyers on the basis that they would likely delay the proceedings and their cost might deter arbitration more generally was appealed to Ontario's Divisional Court. As Southey J. noted, arbitrations had been "handled without intervention of lawyers in a very informal and expeditious manner, which has resulted in speedier and cheaper decisions than those in other industries."[148] The Divisional Court recognized the parties had no absolute right to legal counsel but overturned the arbitrator's decision because of the "vital importance" of the particular controversy in that case to the applicant company and the "apparent complexity of the matter both in fact and law."[149] The general hesitancy to allow lawyer representatives was explained by Arbitrator Arthurs as follows:

> Both of the procedural and substantive aspects of industrial relationships

[142] *The Coroners Act, 1972*, SO 1972, c 98, s 33.

[143] *The Landlord and Tenant Amendment Act, 1975*, SO 1975, c 13, s 6.

[144] *Provincial Offences Act*, RSO 1980, c 400, ss 1, 5, 114.

[145] *Crown Attorneys Act*, RSO 1980, c 107, s 7.

[146] *Police Act*, RSO 1980, c 381, s 57. Blair JA in *Lawrie and Pointts*, *supra* note 67.

[147] *Re Men's Clothing Manufacturers Association of Ontario v Arthurs* (1979), 26 OR (2d) 20 (Div Ct), rev'g (1979), 22 LAC (2d) 328, leave to appeal to ONCA refused [*Men's Clothing Manufacturers*].

[148] *Ibid*.

[149] *Ibid*.

> throughout the industry seem to function well because they are unusually responsive to the special needs and traditions of the industry, rather than to the logic of legal analysis.
>
> The egregious introduction of lawyers may put all of this at risk: arranging arbitration dates to convenience counsel may well delay hearings; conventional techniques of proof may well lengthen them by many hours; legal arguments based on contract analysis may shift the arbitrator's attention from issues which the parties have hitherto expected him to consider and which need to be addressed if their relationship is to remain stable; and the cost of legal representation may generate such a deterrent to arbitration – especially of minor matters such as price setting – that processes of mutual adjustment break down because the wealthier party is effectively insulated from challenge.[150]

The reasons for limiting lawyers' involvement in arbitrations in that particular industry at the time likely had broader application even then and remain relevant currently for many matters in a range of forums. Indeed, as subsequent chapters will reveal, the historical friction between lawyers and lay competitors is an enduring issue for Canada's legal profession.[151]

The first statutory provision permitting agents to represent a party appearing before administrative tribunals is the one found in the *Statutory Powers Procedure Act, 1971*.[152] At the time of its introduction, Ronald Atkey recognized the competence of paralegals in such forums, arguing that:

> The inclusion of an agent [as a procedural protection] … is encouraging particularly in view of the diverse expertise required before the numerous tribunals in Ontario and the emergence of para-legal personnel who are not qualified to practice law

[150] *Re Men's Clothing Manufacturers Association of Ontario v Arthurs* (1979), 22 LAC (2d) 328 as quoted by Southey J in *Men's Clothing Manufacturers*, *supra* note 147.

[151] As Chapter 5 reveals, studies show that non-lawyers with specialized knowledge, expertise and experience are capable and competent representatives, particularly before administrative tribunals.

[152] *SPPA*, s 10. See Ronald G Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10:1 Osgoode Hall LJ 155 at 155 [Atkey].

> … but are nonetheless competent to properly represent or advise parties before certain tribunals.[153]

Many of the statutes that authorize representation by agents also contained a provision empowering the court or tribunal to bar any agent it deemed not competent to represent or advise the person for whom the agent appeared,[154] and many forums maintain inherent jurisdiction to control their own process.[155]

What legal services did non-lawyers provide that attracted prosecution by the Law Society? Of the twenty unauthorized practice matters heard in Ontario from 1910 to 1988, the main non-lawyer activities were preparation of forms and provision of legal advice. These activities, it seems, the courts considered to be legal work and therefore the exclusive domain of lawyers[156] but there was "a lack of precision in determining what is 'lawyers' work'."[157] Arthurs, Weisman and Zemans similarly argue that judicial interpretation of jurisdictional statutes "tended to enlarge the protected scope of professional practice."[158] They note "the preparation of papers for probate, the drawing of wills, the drafting of legal documents by a collection agency, applications for incorporation, and the processing of uncontested divorces all have been designated 'unauthorized practice' when performed for gain

[153] Atkey, *supra* note 152.

[154] *Lawrie and Pointts*, *supra* note 67.

[155] *R v Romanowicz* (1999), 45 OR (3d) 506 (CA) [*Romanowicz*]. See also *Equiprop Management Ltd v Harris* (2000), 51 OR (3d) 496, 2000 CanLII 29053 (ON SCDC) at paras 54 [*Equiprop*] and see paras 52-63 for further discussion of inherent jurisdiction and paralegal representation. See also, for example, *Courts of Justice Act*, RSO 1990, c C.43, s 26; *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 23.

[156] Flood & Zemans, *supra* note 114 at 178.

[157] *Ibid* at 179.

[158] Arthurs & Weisman, *supra* note 59 at 137.

by a nonlawyer, even in the absence of compelling statutory language."[159] The LSUC viewed its policing role as an obligation.[160] In February 1996, the Law Society Benchers overwhelmingly – by a vote of 27 to 3 – committed to "active and vigorous" prosecution of paralegals engaged in unauthorized practice.[161]

The Law Society's power to prosecute for unauthorized practice did not sit well with others. The Professional Organizations Committee, appointed by the provincial government in 1977 to study the legislative frameworks applicable to professional and self-governing organizations in Ontario, found a strong case for subjecting the performance of legal functions to a licensure regime, particularly from a public interest perspective.[162] The more difficult questions arose, in the Committee's view, when considering what legal functions should be subject to licensure and who should qualify for a licence. The Committee was concerned about the Law Society's power to prosecute pursuant to section 50 of the *Law Society Act* because that section did not define what constitutes practicing as a barrister or solicitor and contravention of the section was a quasi-criminal offence, arguing it was "somewhat unusual and generally undesirable" to attach criminal sanctions to undefined statutory prohibitions.[163] Nonetheless, the Committee believed it would be a "nearly

[159] *Ibid*. They cite *R v Engel and Seaway Divorcing Service* (1976), 11 OR (2d) 343 (Prov Crt) wherein a non-lawyer was found to be providing legal advice with respect to questions of custody, maintenance, and alimony and preparing documents for court to enable clients to obtain an uncontested divorce. Fitzpatrick J. held that such questions "are of momentous importance to the individuals concerned [and] should only, in my opinion, be dealt with by a duly qualified solicitor".

[160] House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, 35-1 (7 November 1995) at 1005 (Richard Tinsley), online: <www.ourcommons.ca/content/archives/committee/351/cits/evidence/98_95-11-07/cits98_blk-e.html#0.1.CITS98.000001.AA1005.A> [Tinsley].

[161] Law Society of Upper Canada, *Benchers Bulletin* (1996) 4:5.

[162] H Allan Leal, J Alex Corry & J Stefan Dupre, *The Report of the Professional Organizations Committee* (Toronto: Ministry of the Attorney General, 1980).

[163] *Ibid* at 70.

hopeless task" to attempt to develop an inventory of functions that duly qualified lawyers, and only lawyers, should be permitted to perform.[164] While it expressed some concern about the activities of non-lawyers providing legal services beyond the Law Society's boundaries, the Committee thought it best not to wake the sleeping giant since, at the time, there were no significant jurisdictional disputes and, in its view, there was nothing to be gained by provoking them. The Committee stated that:

> [A]ny attempt to impart great precision to the definition of the statutory scope of licensed functions is likely to increase correspondingly the prospects of demarcation disputes with any of a number of allied occupations and activities on the periphery of the legal profession (e.g., insurance brokers, insurance adjusters, patent agents, real estate agents, trust companies, land-use planners, accountants, underwriters, labor union grievance officers, stockbrokers, etc.).[165]

The Committee was "not inclined" to recommend that "routine" services be "carved out" of the existing licensing regime and opened up to other service providers.[166] But it was sufficiently concerned that non-lawyers providing legal services and the public generally should be entitled to some assurance that the licensing scheme was being administered "in a disinterested way, informed exclusively by considerations of the public interest" and therefore recommended that any LSUC decision to prosecute for unauthorized practice require the approval of the Attorney General.[167] The Canadian Bar Association agreed, arguing that such approval "would help to allay any charges that

[164] *Ibid*.

[165] *Ibid*.

[166] *Ibid* at 73.

[167] *Ibid* at 71.

the Law Society was using the prosecution as a method of protecting its alleged monopoly on the delivery of legal services."[168]

In the twentieth century, significant changes also shaped the legal profession. Starting in the early 1960s, enrollment in law programs in Ontario grew rapidly (changing the make-up of the legal profession which now included women and ethnic minorities).[169] In the early 1970s, the Law Society's concern over competitors arose again when York University's Osgoode Hall Law School opened a storefront law office offering free legal advice (by law students and professors) in a low-income neighborhood of Toronto. The Law Society was opposed to the clinic taking on work rather than having it done by "traditional lawyers," viewing the move as a challenge to the LSUC's authority.[170] The LSUC's resistance seemed to subside upon realizing that it could not prevent or control the emergence of storefront legal clinics and the clinics were no real threat to the private practice of law, in part because the clinics' services were limited to clients who could not afford regular legal fees.[171] In 1980, a sharply increased population of lawyers faced an economy in recession and a reduced demand for legal services. The view of the profession generally was that there were too many lawyers.[172] Once again, some members of the Law Society wanted to control entry because, they argued, "the standards of professional service were threatened" and they wanted protection from competition.[173] The profession also splintered into "a maze of specialties" in the 1980s, including

[168] Canadian Bar Association, Ontario Branch, *Brief to the Professional Organizations Committee* (April 1979) at 99.

[169] Moore, *supra* note 6 at 306.

[170] *Ibid* at 289-90.

[171] *Ibid*.

[172] See Stager & Arthurs' study of lawyers in Canada, supra note 1 at 317 and generally.

[173] Moore, *supra* note 6 at 307-309.

megafirms and merger-and-acquisition specialists, boutique firms, and every growing field of legal business – such as employment, malpractice, intellectual property, international trade, aboriginal land claims, and others – seemed to be producing a "specialist bar."[174] By the 1990s, one third of all lawyers were employed in government, business and other institutions, not private practice. Other new developments included the emergence of the "legal aid bar" – criminal lawyers, family lawyers, and other "socially activist and relatively low-paid specialists" such as immigration and refugee lawyers whose clients were all heavily dependent on legal aid – and increased competition for the traditional solo practitioner.[175] Arthurs and Weisman argue that while the Canadian legal profession "clings strongly to the notion that all its members engaged in a common activity, share common attitudes, pursue common interests, and participate equally in the common enterprise of delivering legal services to the public," the reality is starkly different.[176] Within the profession, they argue, there is "a clear division of labor, clientele, and rewards" and both the profession and the public accord differential respect and recognition to individuals and practice roles.[177]

In the 1990s, the LSUC's new mission statement, intended to set out the Law Society's core responsibilities, contained the traditional declaration that the Law Society existed to govern the profession in the public interest. When the mission statement was circulated to members in the spring of 1994, however, it provoked a third of respondents to deny the society should subordinate the interests of the profession to those of the public, and almost half of respondents could not accept

[174] *Ibid* at 313.

[175] *Ibid* at 314.

[176] Arthurs & Weisman, *supra* note 59 at 151.

[177] *Ibid*.

that the Law Society did not exist to advance members' interests.[178] In Bencher elections a year later, one candidate argued the LSUC's motto should be to "serve and protect lawyers" while another declared it was time to put the profession's needs to the forefront.[179]

Abel's market control theory of the legal profession – anti-competitive protectionism – is manifest in the profession's enduring opposition to competition from lay practitioners which continued, as Part II will reveal, when the paralegal profession emerged in the mid-twentieth century as a serious threat to lawyers' ostensible monopoly. Not only did the Law Society prosecute paraprofessionals for unauthorized practice, but it was for many years unwilling to accept even the idea of regulated paraprofessionals as independent providers of legal services.[180] A degree of lawyer supervision over paralegals was required, the Law Society argued, to ensure protection of the public[181] but the LSUC conveniently failed to acknowledge the profession's ongoing concerns about the impact of non-lawyer legal service provision on lawyers' economic livelihood. As Arthurs and Weisman argue, that statutes permit people to act on their own behalf or as unremunerated agents does little to dispel the suspicion that restrictions on practice have less to do with protecting consumers than with protecting markets.[182]

In conclusion, according to Moore, the "most creative and active moments" in the Law

---

[178] Moore, *supra* note 6 at 337.

[179] *Ibid* at 337-38.

[180] Tinsley, *supra* note 160. The LSUC altered its position in 1992, expressing the view that paralegals could provide certain immigration and refugee law services independent of lawyer supervision if subject to a regulatory scheme. It must be noted that immigration and refugee law is a federal matter, so the LSUC's acceptance of the federal government's decision to regulate paralegals to practice unsupervised was not much of a concession by the LSUC since it had no legislative authority to block the federal government's decision.

[181] *Ibid*.

[182] Arthurs & Weisman, *supra* note 59 at 136.

Society's history probably came in the last decades of the nineteenth century, "in the midst of the long and bewildering redefinition of what a profession was and what lawyers did."[183] Between 1870 and 1920, the old-established professions like law and medicine migrated from Georgian professionalism, in which the main obligation of the lawyer or doctor was to be a gentleman, to "modern professionalism" in which formal qualifications based on demonstrated expertise replaced gentlemanly worth as the claim of the professional.[184] But, however described, what was still an essential feature of a profession was its special knowledge and skill. Much flows from that.

The mid to late-twentieth century would expose the clash of interests surrounding the provision of legal services by non-lawyers. It would also continue to expose the legal profession's desire to maintain elite status, protect itself from outside competition, and secure its perceived right (perhaps ideal) to a monopoly over all legal services and legal service providers. By the beginning of the twenty-first century, the Law Society's role as regulator would be re-defined.

II. ON THE ROAD TO PARALEGAL REGULATION

> *I think we've all realized that there is an inherent conflict of interest in setting up the law society to regulate independent paralegals. No matter what we would say … [about] the proper role of the lawyer and paralegal, I think there would always be conflict between the two.*[185]
>
> Richard Tinsley, Secretary, Law Society of Upper Canada (7 November 1995)

[183] Moore, *supra* note 6 at 340.

[184] *Ibid* at 147.

[185] Tinsley, *supra* note 160 at 1020.

No amount of education and training short of that undertaken by individuals who later qualify to become lawyers can permit a paralegal to bring to a client's problem the knowledge, skills and abilities of a lawyer.[186]

Law Society of Upper Canada (24 July 2000)

A. An Emerging Paralegal Profession & A Clash of Interests

In the mid to late-1990s, within the same legal services market that the Law Society tried to claim for itself, the role of non-lawyers was expanding and their numbers growing. There is little research on paralegals. The first major report appears to be a 1976 study of paralegalism in Canada by Victor Savino who called for an expansion of the role of legal paraprofessionals to deal with the more common or routine legal tasks as part of an expanded legal services delivery team. Savino's study discovered trends in the development of paralegal functions in the delivery of legal services and concluded that non-lawyers generally fell into one of three categories: 1) legal technicians, such as law clerks and legal assistants, working in a law office who were trained and supervised by a lawyer; 2) advocates appearing before lower courts and administrative tribunals; and 3) since 1972, legal aid paralegals employed in community legal services offices – a blend of the traditional roles of legal technician and advocate.[187] Savino also found that although legislation in Ontario had long authorized some legal work to be performed by non-lawyers, they were considered to be of much lower status than, and received lower remuneration for doing substantially the same work as, lawyers.[188] Subsequent research reported the emergence of an expanded independent paralegal profession in

[186] Law Society of Upper Canada, *An Analysis of A Framework for Regulating Paralegal Practice in Ontario* (Toronto: LSUC, 24 July 2000) at 11.

[187] Victor S Savino, *Paralegalism in Canada: A Response to Unmet Needs in the Delivery of Legal Services* (LLM Thesis, Dalhousie University, 1976) [Savino]. Moore, *supra* note 6 at 130-32.

[188] Mary Anne Noone, "Paralegals and Legal Aid Organisations" (1988) 4 J L & Soc Pol'y 146 at 162.

Ontario likely dates back to around the mid-1960s.[189] As Moore noted, since about 1971, the Law Society's unauthorized practice committee had to accept the presence of "divorce-kit" marketers and other services that challenged the lawyers' monopoly on giving legal advice.[190] In a landmark case, the Ontario Court of Appeal, in 1987, recognized the widespread statutory authority for, and legitimate activities of, non-lawyer agents who were providing legal services for a fee. The Court noted the growth, since 1980, of independent paralegal businesses carrying on "lawyer-like activities free from the direction and supervision of the legal profession" and the public importance of such activity.[191] The Court took notice of the longstanding participation of non-lawyer "agents" in judicial proceedings, but found they had been the subject of only one reported decision and little had been written about them. In addition, the Court of Appeal found it ironic that statutes governing the legal profession and their application to non-lawyer agents lacked clarity, and recommended that the Legislature clarify the legislation as well as the status of agents and paralegals.[192] But it was early days still. Paralegal regulation would not be realized for another twenty years. The festering conflicts between the Law Society, legal profession and paralegals, coupled with the provincial government's cautious approach and slow progress toward regulation, would ensure a statutory solution would be decades away.

A detailed history of the paralegal industry in Ontario is difficult to trace, likely for at least two main reasons. The first is the lack of a common definition of *paralegal*, owing to the range of non-lawyer or legal paraprofessional roles. In 2000, Lang J. of the Ontario Divisional Court used the term

[189] Ianni Report, *supra* note 114 at 11.

[190] Moore, *supra* note 6 at 317.

[191] *Lawrie and Pointts*, *supra* note 67.

[192] *Lawrie and Pointts*, *supra* note 67.

paralegal to refer to

> one of a growing number of individuals with diverse experience, with or without formal training, and not subject to regulation of any kind, who wish to represent litigants in proceedings before the court … [They] are not subject to training or supervision by anyone. Anyone may designate him or herself as a paralegal … A paralegal requires no qualifications, need not obtain insurance and is subject to neither regulation nor discipline.[193]

The second reason is that the role of a paralegal is not rooted in a single formal or organized occupational structure. By contrast, practicing lawyers had long been members of an exclusive and recognized profession and a single institution, the Law Society.[194] In addition, lawyers had the Canadian Bar Association (CBA), which has continuously existed since 1914 and claims to be the "leader and the voice of Canada's legal profession"[195] and champion of the cause of lawyers in Canada.[196] The CBA's large and "most active network"[197] of lawyers stands in stark contrast to the splintered history of paralegals in Ontario. Instead of a single association representing all paralegals, a number of splinter groups existed, divided mainly by practice area and type of employment, and many of these organizations were not formed until later in the twentieth century. The oldest appears to be the Institute of Law Clerks of Ontario (ILCO) which was incorporated in 1968 to provide an

---

[193] *Equiprop*, *supra* note 155 at para 2 (this decision was in November 2000 just a few months after Ianni's Report had been released.) Note the term *paralegal* has different meanings in different jurisdictions. The Law Societies of both British Columbia and Saskatchewan have grappled with what title to give non-lawyers who provide legal services independent of lawyer supervision: see Chapter 4 for further discussion.

[194] Although not all lawyers at all times were members of the Law Society throughout its history: See Chapter 1.

[195] Canadian Bar Association, "Who We Are: About Us" (last visited 25 May 2020), online: <cba.org/Who-We-Are/About-us>. The CBA represents some 36,000 lawyers, judges, notaries, law teachers and law students from across Canada.

[196] Canadian Bar Association, "Who We Are: History" (last visited 25 May 2020), online: <cba.org/Who-We-Are/About-us/History>.

[197] Canadian Bar Association, "Membership & Benefits: Why CBA?" (last visited 25 May 2020), online: <cba.org/Membership/Why-CBA>.

"organized network for the promotion of unity, cooperation and mutual assistance" for law clerks who work under the supervision of a lawyer.[198] Some of the many associations merged over time, and some did not last. As such, historical records are scarce. The following brief overview of the many associations reveals a broad-based but fractured history. The Independent Paralegal Guild of Ontario was created in 1985 to enhance the integrity and credibility of independent paralegals.[199] The Legal Agents Society was created in 1987 and changed its name to the Paralegal Society of Ontario (PSO) in 1996.[200] The Paralegal Society of Canada (PSC), which continues to exist, was formed in 1992 "to gather paralegals under one banner to work towards creating awareness and giving a voice to paralegals."[201] The Prosecutors' Association of Ontario (PAO), formed in 1995, continues to unite prosecutors who are employed or contracted by various prosecuting agencies, including provincial ministries, municipalities, transit authorities, conservation authorities, health departments and other agencies who prosecute offences within the Ontario Court of Justice, Provincial Offences court.[202] The Ontario Association of Professional Searchers of Records (OAPSOR) is an association of

[198] Institute of Law Clerks of Ontario, "Who We Are" (last visited 9 January 2020), online: <www.ilco.on.ca/about-ilco/about-us/who-we-are>. Law clerks in Ontario work for and under the direct supervision of lawyers. Elsewhere in Canada, individuals in the same position are referred to as "paralegals" not law clerks. For example, paralegals in Saskatchewan "work under the direct supervision of a lawyer and do not engage in activities that could be construed as unauthorized practice of law": ParalegalEDU.org, "How to Become a Paralegal in Saskatchewan" (last visited 9 January 2020), online: <www.paralegaledu.org/saskatchewan/>. Similarly, in Nova Scotia, paralegals also "must work under the direct supervision of a lawyer": ParalegalEDU.org, "How to Become a Paralegal in Nova Scotia" (last visited 9 January 2020), online: <www.paralegaledu.org/nova-scotia/>.

[199] See the comments of Terrence O'Connor in Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 33-2, No 18 (22 May 1986) [O'Connor].

[200] The PSO was formerly the Legal Agents Society: Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard)*, 38-2, No JP-24 (13 September 2006) at JP-651 (Eileen Barnes) [Barnes]. The Legal Agents Society is also referred to as the Legal Document Agents Society and Association of Legal Document Agents. It appears that these were one and the same organization.

[201] Paralegal Society of Canada, "Home: History and Structure" (last visited 9 January 2020), online: <pscanada.ca>.

[202] See Prosecutors' Association of Ontario, "About" (last visited 25 May 2020), online: <prosecutors.on.ca/about/>.

corporate, litigation and real estate searchers that continues to exist.[203] The Association of Agents at Court was created in and around 1984-85 by a group of traffic court agents and became the Institute of Agents at Court (IAC) in 1990.[204] In 2007, it was again renamed and became the Licensed Paralegal Association (LPA).[205] In the meantime, the Professional Paralegal Association of Ontario (PPAO), was established in 2000 to act as a unifying body for paralegals to promote and pursue self-regulation.[206] The PPAO was an umbrella organization for a number of associations of paralegal service providers to promote the cause of paralegals in the province.[207] Under that umbrella were many of the above organizations: the PSO, PAO, OAPSOR, IAC, and ILCO.[208] In late 2005, the Paralegal Society of Ontario unanimously voted to stop its financial support of the PPAO and in early 2006, PPAO members voted to dissolve its organization.[209] The PPAO dissolved bitterly divided over the issue of the LSUC as the regulator of paralegals.[210] As reported by a few paralegals at the time, the PPAO Board favoured governance by the LSUC but most of the PPAO's members did not.[211] The dissolution

---

[203] Ontario Association of Professional Searchers of Records, "What is OPASOR" (last visited 9 January 2020), online: <oapsor.ca/about-us>. It is unclear when the OAPSOR was created, but it was in existence in as far back as 2006: see Barnes, *supra* note 200.

[204] *Barnes*, *supra* note 200; See also email from Michelle Lomazzo, LSO Paralegal Bencher and member of the Paralegal Standing Committee, (11 May 2020) on file with author.

[205] As per email from Michelle Lomazzo, LSO Paralegal Bencher and member of the Paralegal Standing Committee, (11 May 2020) on file with author.

[206] Bruce Parsons (21 January 2007 at 6:14 p.m.), comment on David Giacalone, "Ontario paralegals to be regulated – by the Bar" (28 November 2006), online (blog): *shlep: the Self-Help Law Express* <blogs.harvard.edu/shlep/2006/1188ontario-paralegals-to-be-regulated-by-the-bar/> [Giacalone]. See also the comments in response of Bruce Parsons.

[207] Mitchell, *supra* note 117 at 9.

[208] Frederick H Zemans, *Paralegals in Ontario: Research Report* (Professional Paralegal Association of Ontario, August 2004) at 3 [Zemans].

[209] Angela Browne (7 February 2007), comment in response to Giacalone, *supra* note 206.

[210] Giacalone, *supra* note 206.

[211] See Giacalone, *supra* note 206, particularly the comments in response of Bruce Parsons and Angela Browne. See also Barnes, *supra* note 200.

of the PPAO gave the Paralegal Society of Ontario (PSO) the largest membership, including paralegals from every area of practice.[212]

The lack of a single organization representing paralegals' interests and an emerging profession fractured mainly by practice area resulted in a lack of consensus about the most significant issues facing paralegals: How best to be regulated and by whom? This lack of occupational unity was perhaps largely responsible for paralegals' inability to gain any meaningful traction in their fight for professional legitimacy and independence. Eileen Barnes, president of the Association of Legal Document Agents and the Paralegal Society of Ontario when she appeared before the Standing Committee on Justice Policy in September 2006, argued paralegals had "struggled … valiantly to organize"[213] but blamed the Law Society's unauthorized practice prosecutions over the years for having divided them.[214] The government's choice of the LSUC as regulator was a further divisive issue. According to Barnes, a majority of paralegals wanted regulation but not regulation by the Law Society.[215] As one observer noted, referring to the long-running "soap opera" of paralegals versus the legal establishment, paralegals' "rag-tag ranks [had] little hope of out lobbying 30,000 unhappy lawyers."[216] Even after paralegal regulation was implemented, paralegals in Ontario still did not have

---

[212] Ken Mitchell, *White Paper on the Licensing and Governance of Paralegals: A Roadmap to Self-management of Paralegal Practitioners* (Paralegal Society of Ontario, 1 September 2006) at 5, online (pdf): *PSO* <www.parallaxparalegal.com/wp-content/uploads/2013/09/pso_whitepaper3.pdf>. See also Barnes, *supra* note 198. According to Eileen Barnes, President of the Association of Legal Document Agents and the Paralegal Society of Ontario (in 2006), the PPAO was a group of paralegals who faced little threat from the Law Society and who "were enthralled with the prospects of Law Society membership".

[213] Barnes, *supra* note 200. Barnes appeared before the Standing Committee to speak to Bill 14, *An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006*, 2nd Sess, 38th Leg, Ontario, 2005 (assented to 19 October 2006), SO 2006, c 21 [Bill 14].

[214] Barnes, *supra* note 200.

[215] *Ibid*.

[216] Kirk Makin, "Legal turf war: courting the enemy", *Globe and Mail* (10 June 2002), online: <globeandmail.com>.

a single, unified voice until several years later when, in July 2014, the Licensed Paralegal Association amalgamated with the Paralegal Society of Ontario to form the Ontario Paralegal Association (OPA).[217] Prior to amalgamation, LPA members were strictly *Provincial Offences Act* (POA) practitioners; other paralegals were members of the PSO.[218] The Ontario Paralegal Association is now the only professional association of licensed paralegals in Ontario and has over 9,000 members.[219] Then-Attorney General John Gerretsen supported the creation of the single association, the OPA, acknowledging that a "truly strong" and unified profession was necessary to effect change: "[U]ntil paralegals speak with one voice, they will not get what they are looking for."[220] It seems this unity came too late for Ontario's paralegals – by then, they were firmly within the Law Society's control. This fragmentation of paraprofessionals in Ontario likely detracted from their struggles for recognition, fuelled the long-standing opposition they faced from the established legal profession, and attenuated the time it took for them to achieve some form of legitimacy as an emerging paraprofession. Zemans argues that paralegals were unable to achieve any economic or political clout in part because the nature of the work they performed – matters in which large sums of money were not at stake such as small claims, highway traffic, landlord and tenant, workers compensation, family matters, simple incorporations, wills, and uncontested divorces – made it difficult to sustain viable

[217] Paralegal Scope Magazine, "LPA Brings Paralegal Issues to AG Gerretsen" August 29, 2013; "Change Will Come: AG Gerretsen" December 3, 2013; See also Ontario Paralegal Association, "About Us" (last visited 10 January 2020), online*:* <www.opaonline.ca> [OPA Website], and also, TAG: The Action Group on Access to Justice, "Legal Organizations and Access to Justice Activities in Ontario" (May 2014) at 27, online (pdf): *Law Society of Ontario* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/backgrounderonlegalorganizationsasofmay282014engfinal.pdf>.

[218] As per email from Michelle Lomazzo, LSO Paralegal Bencher and member of the Paralegal Standing Committee (11 May 2020) on file with author.

[219] OPA Website, *supra* note 217.

[220] "LPA Brings Paralegal Issues to AG Gerretsen", Paralegal Scope Magazine (29 August 2013), online: <http://paralegalscope.com/lpa-brings-paralegal-issues-to-ag-gerretsen>. "Change Will Come: AG Gerretsen", Paralegal Scope Magazine (3 December 2013), online: <paralegalscope.com/change-will-come-ag-gerretsen/>.

practices.[221] In addition, the boundaries delineating what legal work paralegals could and could not perform were unclear, and the continuous threat of prosecution by the Law Society for unauthorized practice made paralegals reluctant to attract attention to their activities by organizing into a provincial professional association.[222] According to Barnes, paralegal regulation was difficult to achieve because the Law Society did not want to cede any ground to paralegals and fought "tooth and nail to keep paralegals out of as many areas of legal practice as possible."[223] She also claimed the "anger that some lawyers' groups demonstrate towards the very idea of paralegals treading on their turf [was] palpable."[224] This animosity is reflected in comments made by the LSUC almost twenty years earlier when it referred to paralegals as "untrained and unsupervised amateurs [who] purport to provide professional services" to the public.[225] At least some of this animosity, or opposition at least, continues to exist.[226]

Long before paralegal regulation was implemented in Ontario, Savino characterized the "problem of professionalization" as one of the most complex in the entire area of paralegalism.[227] Implicit in professionalization was the dependence/independence dichotomy. Savino questioned whether a vertical professional structure, where lawyers are dominant and paralegals subservient, was necessary and whether it might be more desirable to characterize the relationship as one of

[221] Zemans, *supra* note 208.

[222] *Ibid*. See also Barnes, *supra* note 200.

[223] Barnes, *supra* note 200.

[224] *Ibid*.

[225] Law Society of Upper Canada, *Submission to the Task Force on Paralegals* (Toronto: LSUC, February 1989) [LSUC Submission 1989].

[226] See Chapter 3 for further discussion.

[227] Savino, *supra* note 187 at 304.

interdependence, "where no one profession is the master of the other but … each profession depends on the other for its continued existence."[228] The key to regulation was the need of the community for quality legal services and not the need of the legal profession to monopolize the delivery of legal services.[229] Foreseeing problems on the horizon for paralegals, Savino argued:

> It is important … not to confuse the objects of "professionalization" with the object of monopolizing the delivery of services. This is the contemporary problem of the "traditional" professions. The original objective of ensuring that the public was guaranteed a minimum quality of service has been replaced by the economic objective of controlling the market. This aberration of the objectives of professionalization results in the narrow view that admits of no competing or complementary professions and the characterization of such developments as 'unauthorized practice'.[230]

Savino warned that "the case for paralegalism" was "bound to encounter very strong resistance from some very powerful institutions in our society."[231] His remarks proved prescient. Thirty rocky years later, paralegals would become entirely dependent on the Law Society for their professional existence and livelihood, and the provincial government and LSUC were responsible for ensuring that would be so.

In the meantime, the LSUC continued to prosecute paralegals for unauthorized practice. The difficulty continued to lay in defining the boundaries of lawyers' work. In considering whether paralegals should be permitted to represent litigants before Divisional Court on a residential tenancy matter, Lang J. held that a paralegal representing a party in court was indeed practising law.[232] She

---

[228] *Ibid*.

[229] *Ibid* at 334.

[230] *Ibid* at 306.

[231] *Ibid* at 347-49.

[232] *Equiprop*, *supra* note 155 at para 57.

further held that *legal representation* is not confined to drafting material or appearances in court, stating:

> Legal representation obliges counsel to consider at all times and from time to time the merits of their client's case. A lawyer must, with each new piece of information, assess the facts and apply the law in order to advise the client properly whether he or she should proceed with the next step in the litigation. This is a heavy if not impossible burden to place on a paralegal in all but the most routine of cases.[233]

The majority of Law Society prosecutions for unauthorized practice up until that time appear to have focused on non-advocacy work. The pivotal case came in 1985 when the LSUC unsuccessfully prosecuted Brian Lawrie and his company, Pointts, for unlawfully acting as a barrister or solicitor under section 50(2) of the *Law Society Act*.[234] Lawrie had established a successful business representing persons charged with offences under the *Highway Traffic Act*, appearing as their "agent" pursuant to the *Provincial Offences Act*[235] for a fee. Charges against both Lawrie and Pointts were dismissed. On appeal of the initial decision, Moore J. of the District Court recognized the Legislature had "created a new trade or calling…of para-legals" but without oversight and called for legislative action:

> At present, it would appear … that the control, supervision, and the discipline of such agents cannot be found in the provincial statutes, and to paraphrase a popular saying of the day, I am suggesting that the province get its Acts together and so provide.[236]

---

[233] *Ibid* at para 70.

[234] *R v Lawrie and Pointts,* decision of Kerr J (Ont Prov Crt) (2 October 1985): *Lawrie and Pointts*, *supra* note 67.

[235] *Provincial Offences Act*, RSO 1980, c 400, s 51.

[236] *R v Lawrie and Pointts Ltd* (1986), 58 OR (2d) 535 (Div Ct).

A further appeal to the Ontario Court of Appeal was dismissed in 1987. The Court of Appeal, too, recognized the robust unregulated paralegal industry that had long been authorized by statute. Its decision had a fairly narrow application, specific to the meaning of "agent" in the *Provincial Offences Act*. Blair J.A. held that non-lawyers could represent persons for a fee in specific circumstances, and individuals who did so could not be prosecuted for unauthorized practice.[237] The decision, however, was interpreted much more broadly. The media erroneously reported, and many paraprofessionals likewise believed, that the Court of Appeal's decision legitimized all paralegal activities in the province and supported expansion of the independent paralegal legal services industry. While much of the increased independent paralegal activity in Ontario can be traced to the *Pointts* decision, the non-lawyer legal services industry already existed. Blair J.A. took judicial notice of the extent of the business carried on in Ontario by persons acting as agents under the *Provincial Offences Act* and those performing other paralegal services, stating that while "it is the view of the law society that agents are not entitled to operate a business for reward, the obvious fact is that they do and have done so for many years.[238]

While the Law Society had to contend with legislative authority for independent paralegal activities, particularly representation for a fee, it would continue, acting in the public interest it insisted, to question paralegals' competence and oppose any expansion of paralegal practice.[239] The *Pointts* decision would be the catalyst for change, but it also exacerbated existing tensions between

[237] *Lawrie and Pointts*, *supra* note 67

[238] *Ibid*.

[239] See Law Society of Upper Canada, *Submission to Attorney General of Ontario on the Provision of Legal Services by Unsupervised Persons* (LSUC: 3 October 1986) [LSUC Unsupervised]; LSUC Submission 1989, *supra* note 225; Law Society of Upper Canada, AM Rock, *Interim Report of the Special Committee on Paralegals and Access to Legal Services* (LSUC: June 1992) [LSUC Rock].

lawyers and paralegals. Ianni, who headed Ontario's first Task Force concerning the activities of paralegals, recognized that as the *Pointts* decision spurred the growth of the paralegal industry in Ontario, the Law Society continued to "vigilantly" pursue the prosecution of paralegals who provided legal services.[240] Abbot's observation that it is the control of work that brings the professions into conflict with one another is particularly apt in these circumstances.[241] According to Abbot, the "interplay of jurisdictional links between professions determines the history of the individual professions themselves."[242] Indeed, the *Pointts* decision might be viewed, in retrospect, as the start of a new chapter in the Law Society's history. While it had for two centuries dealt with non-lawyer competitors and had been generally successful at keeping them at bay, the *Pointts* decision pushed wide open the door to an emerging legal para-profession determined to gain a foothold in the independent fee-for-service legal services market. How the Law Society responded would reveal much about the legal profession's concerns, motivations, tendencies, and manner of self-regulation in the late twentieth century.

Following the Law Society's unsuccessful prosecution of Lawrie and Pointts at first instance, MPP Terrence O'Connor introduced a private member's bill – Bill 42, *Paralegal Agents Act* – in the Ontario Legislature in May, 1986.[243] It was the first attempt at a paralegal regulatory scheme and recognized the need for the public's access to competent and affordable legal services. It was not the first time that issues of access to justice were raised in connection with non-lawyer legal service

[240] See "Issues for Discussion" in Appendix B of the Ianni Report, *supra* note 114 at 99.

[241] Andrew Abbott, *The System of Profession: An Essay on the Division of Expert Labor* (Chicago: University of Chicago Press, 1988) at 19-20.

[242] *Ibid*.

[243] Bill 42, *An Act to Regulate the Activities of Paralegal Agents, 1986*, 2nd Sess, 33rd Leg, Ontario, 1986 (first Reading 22 May 1986) [Bill 42].

provision. Ten years earlier, and thirty years before paralegal regulation would be implemented, Savino identified some of the benefits of allowing non-lawyers to provide legal services:

> [W]hy not make more use of trained non-lawyers to expand access? In both the public and private sectors of the delivery system such a move would reduce the cost of legal services, increase the efficiency of the delivery system, expand the number of people with a knowledge of how "the system" works (and how to make it work where it doesn't), increase community involvement in legal services delivery (and at the same time increase the level of "legal education" in the community), and most important of all, increase the chance that the average Canadian citizen will obtain access to justice and the 'system' when he or she needs it.[244]

Savino argued for expansion of the paralegal industry to increase access to, including the affordability of, alternative legal service providers.[245]

In introducing the Bill, O'Connor recognized the unregulated and "burgeoning profession of people serving the obvious needs of the consumer for competent and affordable representation" in traffic court, small claims court, landlord and tenant tribunals and immigration proceedings but he also warned that the public was at risk "from the very few who are unqualified."[246] O'Connor considered the proposed regulatory scheme as necessary to increase access to justice, describing the Bill as a solution to the government's "obligation to the people of this province to enshrine their right to competent, affordable access to the justice system."[247] On second reading, O'Connor argued that the Legislature had already created the profession of paralegals and regulation of the growing business of paralegal agents was fundamentally necessary because, although "hundreds [of

[244] Savino, *supra* note 187 at 347.

[245] See, for example, Savino, *supra* note 187 at 350.

[246] O'Connor, *supra* note 199.

[247] *Ibid.*

paralegals] are honest, competent and hard-working" and practicing in areas in which they offer unique expertise, the "antics of a few" were tarnishing the good reputation of the majority.[248] O'Connor criticized the provincial government's "abdication of duty" in failing to regulate paralegals, particularly in light of then-Attorney General Ian Scott's recent remarks endorsing the provision of legal services by paralegals.[249] Anti-monopoly sentiments and calls for greater access to justice are not only more recent concerns. According to Moore, the proliferation of lawyers in the mid-1800s in Ontario, in response to the work for lawyers created by new institutions of politics and public administration, provoked resentment towards the lawyers who were becoming unavoidable intermediaries between the state and citizens.[250] Some "radicals" at the time demanded the abolition of all "undemocratic" privileges and monopolies, including those of lawyers, and "called for simple, clearly codified laws and cheap, accessible courts where lawyers would be unnecessary and justice available to all."[251]

Bill 42 proposed a definition of a registered "paralegal agent" as a person who independently acts on behalf of another for a fee, in a proceeding in a court of law or before a tribunal or other adjudicator with respect to the determination of a person's rights or liabilities.[252] A paralegal agent would be authorized to act in matters before provincial offences and small claims courts, landlord and tenant matters, and certain immigration matters, before a coroner's inquest, and in prescribed

[248] *Ibid*.

[249] *Ibid*, referring to comments of AG Scott in *Globe and Mail* article (22 March 1986): See note 1 in Chapter 1 herein.

[250] Moore, *supra* note 6 at 108.

[251] *Ibid*.

[252] Bill 42, *supra* note 243, s 1.

courts and tribunals.[253] Perhaps to allay any fears of encroachment on lawyers' domain, Bill 42 specifically did not authorize a person "to practise as a barrister or solicitor or to hold himself or herself out as a barrister or solicitor."[254] The Bill proposed governance by a committee of the LSUC – to be known as the Paralegal Agents Committee – which gave the Law Society the authority to investigate complaints about misconduct or incompetence and to impose discipline.[255]

Around the same time, the Law Society was conducting its own study of unsupervised paralegals providing legal services to the public for a fee. In its submission to the Attorney General in October 1986,[256] the LSUC stated it "would not object" if appropriate legislation was enacted to allow unsupervised persons to represent the public in certain matters, particularly minor provincial and municipal motor vehicle offenses including *Highway Traffic Act* matters, at provincial court civil division, and before certain administrative tribunals, but called for "strict legislative controls" in order to protect the public.[257] Most significantly, the Law Society took the position that a special branch of the Ministry of Consumer and Commercial Relations, and not the Law Society itself, should enforce such legislation.[258] The LSUC made it clear that it was not interested in taking on the role of regulator. Meanwhile, the Canadian Bar Association of Ontario also weighed in, forming a committee to respond to Bill 42 that was chaired by Mary Jane Mossman.[259] The Mossman Committee concluded

[253] *Ibid*, s 8.

[254] *Ibid*, s 9.

[255] *Ibid*, ss 2, 7.

[256] LSUC Unsupervised, *supra* note 239.

[257] *Ibid* at 1-2.

[258] *Ibid* at 1-3.

[259] Canadian Bar Association, Committee to Respond to Bill 42: An Act to Regulate the Activities of Paralegal Agents, *Report to Council*, by Mary Jane Mossman (Toronto: CBA, 27 September 1986) [Mossman Report].

that the risk created by the absence of any measure or standard of competence for paralegal agents was "simply unacceptable" but rejected the two alternate approaches – in the Committee's opinion, the continued use of section 50 of the *Law Society Act* as the sole mechanism for regulation was "simply too blunt an instrument" for regulating the sophisticated legal services market that was developing at an ever-accelerating pace; and the scope of Bill 42 was "too narrow … ambiguous [and] … potentially too broad."[260] Too narrow, the Committee argued, because some of the existing paralegal activities would not be covered by the Bill; too ambiguous, because the Bill focused primarily on matters of representation and left many types of non-representation paralegal activities unregulated; and too broad, because the Bill allowed for the creation of "a new profession of 'law jobs'" in the absence of public debate and scrutiny.[261] The Mossman Committee warned that a protectionist, self-serving response would be of little use, arguing it would be

> … utterly futile, as a political strategy, to present to the public (and the government) a solution which effectively preserves the appearance of a monopoly of all legal services for lawyers; this is especially so when such a solution does not accord with the reality of our society, and also appears contrary to the public interest in affordable legal services.[262]

The Mossman Committee also expressed "major concern" about the potential conflict of interest if the Law Society was to be responsible for regulating both lawyers and paralegals, and it too therefore recommended instead that the regulation of paralegals should be left to a government agency such

[260] *Ibid* at 26-27.

[261] *Ibid* at 27-28.

[262] *Ibid* at 26.

as the Ministry of Consumer and Commercial relations or an independent regulatory agency.[263] The Mossman report formed the basis for the CBAO's submission to the Standing Committee on the Administration of Justice in response to Bill 42.[264] Ultimately, however, the CBAO disagreed with the Mossman Committee regarding its choice of regulator, arguing instead that any regulatory authority for paralegals must involve the LSUC because of its strong tradition of independence from government and substantial experience in the regulation of legal practitioners, and to ensure consistency and uniformity between lawyers and paralegals in matters such as ethics, advertising restrictions, negligence insurance, and competence supervision.[265] Whether these compelling reasons and laudable goals would be realized in practice, when the Law Society subsequently took on the role of the regulator of paralegals, would need to be determined.[266]

[263] *Ibid* at 33. This concern was echoed by both subsequent government studies: the Ianni Task Force in 1990 recommended a Registrar of Independent Paralegals within the Ministry of Consumer and Commercial Relations: Ianni Report, *supra* note 114; and Justice Cory in 2000 recommended an independent body, *infra* note 304. The LSUC itself had also previously recommended that the Ministry of Consumer and Commercial Relations regulate paralegals: LSUC Unsupervised, *supra* note 239.

[264] CBAO *Submission to the Standing Committee on the Administration of Justice of the Legislative Assembly of Ontario Re: Bill 42 An Act to Regulate the Activities of Paralegal Agents* (27 May 1987) [CBAO Submission Re: Bill 42].

[265] *Ibid* at 28-30.

[266] This dissertation's research attempts to do so although, more specifically, with respect to competence and cost within an access to justice agenda.

Bill 42 reached second reading in the Legislature but was never passed. The Ontario government agreed to study the matter of paralegal regulation.

B. Regulation Envisioned

The issue of paralegal regulation was about more than a clash between lawyers and paralegals – it was central to the issue of access to justice.[267] In response to Bill 42, the Ontario government, in July 1988, appointed a Task Force on Paralegals headed by Ron Ianni.[268] It was created, amidst a clash of interests and an uncertain environment for an emerging paraprofession, to examine the activities of paralegals in Ontario and to make specific recommendations regarding their future operations.[269] The Ianni Task Force was guided by two overarching questions: Should some or all of the services of paralegals not be permitted? And, should some or all of these services, if permitted, be regulated?[270] It was also guided by two fundamental goals: to increase access to legal services and to provide adequate protection for consumers who use such services.[271] Ianni recognized the current demand for a "'no-frills' kind of legal service especially in relation to matters which the public considers to be uncomplicated, routine, and of low risk."[272] Regulation, however, would be a long way off. Competitors, and competing interests, made agreement over any regulatory scheme elusive. But why was it so difficult to implement the regulation of paralegals?[273] Neil Vidmar, a member of the

---

[267] Melina Buckley, *Innovative Approaches to the Provision of Legal Representation and Assistance to Litigants – An Issue Paper prepared for the CBA Systems of Civil Justice Task Force* (January 1996) [Buckley].

[268] Ianni Report, *supra* note 114 at xi.

[269] *Ibid*.

[270] *Ibid*.

[271] *Ibid* at xvi.

[272] *Ibid* at xv-xvi.

[273] See Chapter 4 for a discussion of the experiences of other Canadian provinces.

Ianni Task Force, provides a sense of the tension between the LSUC and the paralegal industry at the time:

> Prior to the report … officials of the Law Society of Upper Canada had indicated publicly that their files were filled with citizen complaints about paralegal activities. On the other hand, members of paralegal organizations asserted that their only problem was persecution by the Law Society. We documented that neither of these claims had validity.[274]

The Ianni Task Force discovered that approximately 750 independent paralegals were offering legal services to the public in Ontario and that paralegal activities were expanding. One of the main reasons the public retained the services of paralegals was the relative cost of services.[275] The Ianni Task Force recognized the legal profession's statutory monopoly to govern in the public interest[276] and to determine the manner in which the legal profession provides legal services to the public.[277] As Ianni described it, the LSUC had "tended to react cautiously to proposals for change in the delivery of legal services, upholding the status quo on the basis that it best served both the public interest and the interest of the profession."[278] But he also recognized the "considerable time and effort" expended by the Law Society in prosecuting independent paralegals for unauthorized practice, arguing the public interest would not be served by prosecutions alone.[279] Ianni argued the public

[274] LSUC Rock, *supra* note 239, citing a letter from Neil Vidmar to RW Ianni in response to criticisms from the LSUC about the Task Force's empirical research, dated November 15, 1991.

[275] Ianni Report, *supra* note 114 at xiv.

[276] *Ibid* at 12.

[277] *Ibid*.

[278] *Ibid*.

[279] *Ibid* at 13.

interest would be served by expanded access to legal services but he cautioned that the regulation of paralegals and increased access to legal services are not necessarily compatible:

> The question is whether or not access to legal services can be improved by the existence of independent paralegals and, if so, by what means their operations can be circumscribed and controlled….
>
> Access to the legal system is dependent in large measure on the availability of legal services within the system. And, in general, the more a service is regulated or controlled the less accessible it tends to become.[280]

In its submission to the Ianni Task Force, the LSUC argued that paralegals should only be allowed to provide legal services within limited legislative exemptions, effectively endorsing a limited role for paralegals as "agents" in courts and before administrative tribunals[281]– essentially, no expanded role for paralegals beyond what was already permitted by statute – and proposed that regulation should be undertaken by the courts and administrative tribunals before which paralegals appear.[282] In contrast, the CBAO recommended paralegals be "directly or indirectly" supervised by the Law Society.[283] The CBAO's choice of language throughout its submissions to the Task Force is worth noting. The CBAO expressed concern about creating a "second class"[284] type of legal services delivery but argued paralegals could become an "adjunct" to the legal system.[285] The CBAO also argued for adherence to tradition – that basic protections for the consumer such as education and training, insurance, and accountability were the "result of centuries of evolution" of

[280] *Ibid*.

[281] LSUC Submission 1989, *supra* note 225 at 13.

[282] *Ibid* at 17.

[283] Canadian Bar Association Ontario, *Submission to the Ontario Task Force on Paralegals*, (CBAO: February 1989) at 4 [CBAO Submission 1989].

[284] *Ibid* at 22.

[285] *Ibid* at 15.

the legal system, and to "completely forego those protections, in the interests of providing a potentially cheaper, secondary, legal system is to ignore the experience of history."[286] The Ianni Task Force concluded that paralegals should be subject to regulation and recommended "the least intrusive necessary" regulatory model consistent with the public's need for greater access to legal services along with some protection against possible abuses in the delivery of those services.[287] It recommended regulation in the form of a simple registry system under the responsibility of a government-appointed Registrar of Independent Paralegals, overseen by the Ministry of Consumer and Commercial Relations.[288] With the requisite education and training, qualified paralegals would be allowed to register in one or both of the proposed registration streams: as "court agents" permitted to appear before particular courts and administrative tribunals, and/or as "legal assistants" in specifically defined non-agency matters such as applications for changes of name or criminal pardons, preparation of documents for powers of attorney, simple wills, uncontested divorce petitions, and incorporation of small businesses.[289] The Ianni Task Force rejected the Law Society's involvement in anything beyond an advisory role for two reasons: the LSUC had made it clear that it did not want to regulate paralegals,[290] and the Law Society as regulator would be placed in the "potentially difficult position of having to make decisions on issues where the interests of independent paralegals and those of the legal profession are in conflict."[291]

---

[286] *Ibid* at 13. But see Mossman Report, *supra* note 259 at 33.

[287] Ianni Report, *supra* note 114 at xvii.

[288] Ianni Report, *supra* note 114 at 48-49.

[289] See the Executive Summary and Recommendations of the Ianni Report, *supra* note 114.

[290] LSUC Submission 1989, *supra* note 225 at 17.

[291] Ianni Report, *supra* note 114 at 44-45.

While the LSUC did not want to be the regulator, it certainly wanted a prominent role in the design of any regulatory model. The Law Society reacted to Ianni's report "with care and concern" for the public, it insisted, within the greater issue of access to legal services.[292] While it did "approve" of many of Ianni's recommendations, including paralegals' role as agents in certain courts and before administrative tribunals, the LSUC called for the creation of a tripartite committee of representatives of the Law Society, the Attorney General's department, and paralegals to examine the recommended areas of "legal assistant" practice – the second stream proposed by the Ianni Task Force. So, the LSUC was willing to accept the existing statutory authority for agents, but disapproved of any expansion of the scope of practice to activities beyond that.[293] The Law Society's resistance to an expanded scope of paralegal practice has not waned much, if at all, since then and continues to define its exercise of regulatory authority over paralegals, as Chapter 3 reveals. Curiously, though, how and why did the Law Society have, or believe it had, the authority to approve or disapprove of any of the Ianni Task Force's recommendations, when the Task Force was appointed by the Ontario government and was independent of the Law Society? The LSUC was understandably an interested party, but it was still adamant that it did not want to take on the role of regulator and therefore would not have any direct involvement in paralegal governance. Nevertheless, the Law Society insisted that its "approval" or "disapproval" of Ianni's recommendations stemmed from its public interest mandate and not the profession's self-interest. It claimed it did not regard the activities of independent paralegals "as presenting issues involving competition with lawyers for the business of clients" but, rather, perceived "the fundamental issue"

[292] LSUC Rock, *supra* note 239 at 4. Allan Rock, Chair of the Special Committee, became Treasurer of the LSUC in 1992, was elected to the House of Commons in 1993, and became federal Justice Minister.

[293] *Ibid* at 5.

to be protection of the public.[294] A dozen years later, in an about-face, the Law Society would agree to regulate paralegals.

One of the Law Society's main criticisms of the Ianni Report deserves particular attention, because more than twenty years later the LSUC would do exactly what it criticized the Task Force for doing and which, the Law Society claimed, weakened the Task Force's conclusions.[295] After conducting empirical research concerning the existence and extent of the paralegal industry, Bogart and Vidmar cautiously concluded that consumers were generally satisfied with paralegal services.[296] The LSUC's Special Committee on Paralegals and Access to Legal Services criticized the Task Force's reliance on consumer satisfaction, arguing that it was "unrealistic to expect members of the public to provide an enlightened assessment of the quality of legal services" provided by a lawyer or paralegal.[297] Twenty years later, however, in its own review of paralegal regulation, the Law Society would do the same – rely on the impressions and experience of the public in declaring the success of paralegal regulation.[298]

The Ianni Task Force recommendations did not spur any action toward regulation. The courts continued to deal with disputes over the provision of legal services by non-lawyer agents on a case-

[294] *Ibid* at 4.

[295] *Ibid* at 34-36.

[296] WA Bogart & Neil Vidmar, "An Empirical Profile of Independent Paralegals in The Province of Ontario" in Ianni Report, *supra* note 114 at 174.

[297] LSUC Rock, *supra* note 239 at 35.

[298] Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the* Law Society Act (Toronto: LSUC, June 2012) at 3-4, online (pdf): <lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf> [LSUC Five-Year Report]. See also David Kraft, John Willis, Stephanie Beattie & Armand Cousineau, "Five Year Review of Paralegal Regulation: Research Findings, Final Report for the Law Society of Upper Canada" in LSUC Five-Year Report, *supra* at 29.

by-case basis. The Ontario Court of Appeal had occasion to deal with the issue of representation by agents again in 1999 and found that the absence of any regulatory control over paralegals had become "particularly problematic" in the criminal courts.[299] The Court of Appeal had this to say about the unregulated non-lawyer legal services industry and chastised the Legislature for its inaction:

> A person who decides to sell t-shirts on the sidewalk needs a licence and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case. … Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person's liberty and livelihood are at stake invites miscarriages of justice.
>
> Some 13 years ago in R. v. Lawrie … this court indicated that legislative attention to the status of agents and other paralegals appearing on behalf of the accused persons was a matter of importance.…Since that time other courts have echoed the same concerns.…The matter has been thoroughly studied, debated and various options set out. Continued legislative inaction suggests indifference.[300]

Following this, the Ontario government invited the Law Society and other organizations to assist in its analysis of the delivery of legal services by, and the regulation of, non-lawyers. In response, the LSUC established a Paralegal Task Force to conduct research and propose regulatory models. Two of the Paralegal Task Force's main concerns were quality of service and risk to the public, and within that, it identified two critical issues: 1) jurisdiction or scope of practice – what type of legal services might be provided to the public by non-lawyers? and 2) regulation – what monitoring process

[299] *Romanowicz*, *supra* note 155 at para 2. In that case, the accused, Romanowicz, was charged with failing to remain at the scene of an accident and chose to be represented by an agent which was then, and still is, permitted by the Criminal Code of Canada. Romanowicz was convicted and appealed, in part, on the basis of incompetent representation. The conviction was confirmed, and he appealed again. The Court of Appeal dismissed the appeal.

[300] *Ibid* at paras 88, 89. Of note, the CBA was an intervenor in this case.

should be instituted to provide safeguards to minimize the risk to the public?[301] The question for the Task Force, ultimately, was not whether to regulate paralegals but how?[302] The public interest was, ostensibly, the central consideration.[303] Around the same time, the Ontario government appointed retired Supreme Court of Canada Justice Peter Cory to lead another review, seeking input on the role of paralegals in Ontario's justice system including a regulatory governance model and educational requirements. Cory J. found there to be general consensus among stakeholders that a system of licensing and regulating paralegals was "urgently needed" but there was no consensus on the appropriate areas of paralegal practice.[304] Noting a "sharp difference of opinion" between lawyer and paralegal organizations, he argued that "it would be contrary to human nature to expect a member of the legal profession to accept that anyone, other than a lawyer, could appropriately advise and represent members of the public on matters that contain any possible aspect of legal advice or action."[305] In Cory J.'s opinion, regulation involved two paramount considerations – increased access to justice and protection of the public. He argued that:

> To increase access to justice in a manner that protects the public must be the aim of the legal profession and the goal of government. Increased access may be provided through competent, licensed paralegals acting for fees which would, I think, be significantly lower than fees charged by members of the legal profession.[306]

---

[301] Law Society of Upper Canada, Paralegal Task Force, *Final Report* (LSUC, March 2000) at 6 [LSUC Paralegal Task Force 2000]. The Task Force was formed in June 1999.

[302] *Ibid* at 22.

[303] *Ibid* at 5.

[304] Peter de C Cory, *A Framework for Regulating Paralegal Practice in Ontario: Executive Summary and Recommendations* (Toronto: Ministry of the Attorney General, 2000) at 4 [Cory Report].

[305] *Ibid* at 5.

[306] *Ibid*.

Cory J. recommended the regulatory body should be a corporation delegated by the province that would function independently of both the LSUC and the government (to be comprised of representatives from the Attorney General's office, the Law Society, paralegals, and the public, with a non-lawyer majority).[307] Like Ianni before him, Cory J. also rejected governance by the Law Society because of the animosity of lawyers toward paralegals, stating:

> At the outset, I would emphasize that it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the Province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the Law Society should not be in a position to direct the affairs of paralegals.[308]

Cory J. proposed a scope of practice that was generally in line with the recommendations of the Ianni Task Force a decade prior – paralegals should be allowed to appear at certain courts and before administrative tribunals and provide other services such as in matters pertaining to real estate, powers of attorney, wills, and family law. Cory J. also recommended a two-year course of study at a community college, education and training, adherence to a code of conduct, errors and omissions insurance, and a disciplinary procedure. He also recommended a specialized license in addition to a general licence for those paralegals who wished to appear before specialized tribunals.[309] A workable but still tentative regulatory scheme began to take shape. The Law Society once again responded. Its analysis of Cory J.'s framework,[310] though, is somewhat puzzling. The LSUC suggested the regulation of paralegal practice should be resolved having regard only to the protection of the public,

---

[307] *Ibid* at 82.

[308] *Ibid* at 83.

[309] *Ibid* at 89-98.

[310] Law Society of Upper Canada, *An Analysis of A Framework for Regulating Paralegal Practice in Ontario* (Toronto: LSUC, 24 July 2000) [LSUC Analysis].

and not access to justice, for three reasons: 1) There was no clear indication (other than anecdotal evidence) as to why certain sectors of the population were being denied access to justice and therefore it was not clear that permitting paralegals to practice in certain areas would resolve problems of access; 2) there was no easy answer to the question of whether paralegals could play a role in facilitating access to justice; and 3) permitting paralegals to practice in certain areas (such as family law, wills and estates) would "at worst, exclude persons relying on paralegals from access to justice and, at best, establish a two-tiered justice system."[311] These "reasons" seem to highlight self-serving, protectionist sentiments more than public interest considerations. On the one hand, the Law Society wanted to sidestep the access to justice issue because of a lack of evidence that paralegals and paralegal regulation could actually increase access. But without paralegal regulatory scheme from which to gather data, there could be no evidence about a proposed scheme's effectiveness – it is a circular and unhelpful argument. On the other hand, it seems the LSUC acknowledged that access to justice was a concern for the public, that paralegals were already providing access, and that the regulation of paralegals could protect the public but, oddly, it was unwilling to acknowledge that any potential access to justice benefits might result from paralegal regulation. Again, it is a circular and unhelpful argument. The Law Society's attitude was essentially this: *We don't know if it will work so we won't try, and if we try we won't measure if, or how, increased access to justice might be achieved.* The LSUC's stated concerns about a two-tiered justice system suggest a continued insistence on the myth of a unified legal profession – that there were, among lawyers, no divisions based on status and type of work, specialization, clientele, or incomes. The LSUC continued to argue that a licensed

[311] *Ibid* at 2.

paralegal could not adequately serve the public's need for access to justice, as the following excerpt makes abundantly clear:

> A paralegal, practising in certain areas (e.g. family law, wills and estates) stands to mire the administration of justice leaving his or her clients without any access to justice at all or with a level of access to justice far short of that obtained by a lawyer for his or her clients…. It is not serving the public well to answer their call for access to justice, their need and wishes for the services of a lawyer, by saying that the public can have access to the services of a licensed paralegal.[312]

The LSUC claimed that while it believed the public deserved to have both the issue of the regulation of paralegal practice and any problems of lack of access to justice resolved, it took the position that it would be "unfair to the public to merge the two matters" because doing so would result in a regulatory framework that "inadequately addresses the risk of harm to the public [and also] delays a comprehensive study and complete solution of the problems of lack of access to justice."[313] The LSUC also viewed its own involvement in regulation to be critical.[314] While Cory J. had envisioned the regulatory body as a "collaborative venture" between two important stakeholders, the Law Society and the Government of Ontario,[315] the LSUC wanted "significant representation" on the regulatory body and complained that Cory J. had "undervalued" its experience in self-regulating the legal profession.[316] Significantly, though, the Law Society still did not want to take on the role of regulator.

---

[312] *Ibid* at 11.

[313] LSUC Analysis, *supra* note 310 at 13.

[314] *Ibid* at 46.

[315] Cory Report, *supra* note 304 at 83.

[316] LSUC Analysis, *supra* note 310 at 46. Cory J. did recognize the Law Society's experience, stating that "paralegals would be remiss in their duty to themselves and to the public if they did not seek out the advice of the Law Society …. Paralegals can and should benefit from the experience and learning of the Law Society:" Cory Report, *supra* note 304 at 83.

The introduction of a paralegal regulatory scheme remained elusive, but the march towards regulation continued. In the spring of 2001, Ontario's Attorney General David Young expressed interest in developing a regulatory framework based on consensus among the legal and paralegal communities and that his government remained "committed to protecting consumers who use the services of paralegals."[317] Members of legal organizations, including the LSUC and Ontario Bar Association, formed a Working Group with the PPAO[318] to develop principles for paralegal regulation. In April 2002, the working group released a consultation document setting out a proposed regulatory framework[319] which would be endorsed by the several lawyer organizations but not, ultimately, by the principal paralegal organizations.[320] While the consultation document did not result in the implementation of a regulatory scheme, many aspects of it formed the basis for the LSUC's final proposed approach to regulation which would be submitted to the Attorney General almost two years later.[321] Significantly, the consultation document proposed that one body – the Law Society – regulate paralegals.[322]

---

[317] Law Society of Upper Canada, Government Relations Committee, *Report to Convocation* (LSUC: 25 April 2002) [LSUC "Consultation Framework April 2002"].

[318] *Ibid*. In addition to the LSUC and OBA, participants included the Advocates' Society, County and District Law Presidents' Association, and the Metropolitan Toronto Lawyers Association. The PPAO represented several paralegal organizations: Paralegal Society of Ontario, Institute of Agents at Court, and Ontario Searchers of Record.

[319] LSUC Consultation Framework April 2002, *supra* note 317. This report contained *A Consultation Document on a Proposed Regulatory Framework* (23 April 2002) [Consultation Document].

[320] Law Society of Upper Canada, Government Relations Committee, *Report to Convocation* (LSUC: 22 January 2004) at paras 20-21 [LSUC Report to Convocation January 2004].

[321] Law Society of Upper Canada, The Law Society Task Force on Paralegal Regulation, *Regulating Paralegals: A Proposed Approach, A Consultation Paper* (May 2004) at 4, online (pdf): *The Law Society of Upper Canada* <docplayer.net/10926567-Regulating-paralegals-a-proposed-approach.html>.

[322] Consultation Document at Part IV.A, in LSUC "Consultation Framework April 2002", *supra* note 317 at para 15. Of note, the Consultation Document contemplated two types of licensed paralegals – Advocates and Non-Advocates. The Non-Advocates' license would require lawyer involvement in and supervision of the provision of services: LSUC Consultation Framework April 2002, *supra* note 317 at paras 17-18, 30-31.

C. Regulation Realized

In January 2004, Attorney General Michael Bryant attended LSUC Convocation to urge the Benchers to assume responsibility for regulating paralegals and work with the government to both develop the details of a regulatory scheme and determine paralegal scope of practice.[323] He asked the Law Society to agree to regulate paralegals in the public interest – arguing that an absence of paralegal regulation was not in the public interest – and also to regulate paralegals in the interests of the legal profession, to keep regulation out of the hands of a separate regulatory body.[324] In anticipating a "Why us, why the Law Society?" response from Convocation, the Attorney General insisted that the Law Society would not want to cede responsibility for the regulation of paralegals to another body "that may be at times brilliant, at times ignorant, at times foolish" in the way in which it governed paralegals.[325] He warned that if paralegals were to be governed by a separate body, the Law Society would likely find itself coming back to the government seeking a legislative solution because the two professions' regulatory bodies would be at odds. This, Bryant argued, "is not in the public interest, it is not in the interests of our profession, and I do not believe it is ultimately in the interests of paralegals either."[326]

---

[323] Michael J Bryant, Address (Speech to Convocation at the Law Society of Upper Canada delivered at Osgoode Hall, Toronto, 22 January 2004) at 23 [Bryant Address], Transcript of Debates, LSUC Convocation (22 January 2004), online: *Law Society of Upper Canada* <lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL-3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true> [Transcript, 22 January 2004]. See also Letter from Michael Bryant, Attorney General, to Frank Marrocco, LSUC Treasurer, (22 December 2003) in Appendix 1 to LSUC Report of Convocation (22 January 2004).

[324] Bryant Address, *supra* note 323.

[325] *Ibid* at 25.

[326] *Ibid* at 25.

After a "20-year logjam,"[327] Convocation overwhelmingly agreed to regulate paralegals and to work with the government to develop a detailed proposal for regulation which would have the support, to the extent possible, of the Law Society, the profession and other stakeholders.[328] The Law Society's main justification for agreeing to regulate paralegals was the public interest. Convocation was of the view that the LSUC had the experience, expertise and capacity to regulate the provision of all legal services in the public interest; the Law Society, as the single regulator of all legal services and legal service providers, would be able to provide more consistent and efficient oversight than separate regulators could; and the Law Society could balance the interests of lawyers, paralegals, and the public. Convocation also recognized that unregulated paralegals were already providing legal services and contributing to access to justice but the public is not protected by a lack of regulation.[329] The Benchers also expressed other reasons that could be viewed as further evidence of their commitment to the public interest, but also as evidence of their concern for the interests of the profession: it was in the Law Society's interest, as well as in paralegals' interest and the public interest, for the Law Society to co-operate with the Attorney General; having a separate regulator of paralegals could lead to jurisdictional disputes and, ultimately, to the imposition of a single regulator and also, potentially, to the legal profession's loss of or diminished self-regulation. Further, Convocation

[327] Kirk Makin, "Law Society Agrees to Police Paralegals", *Globe and Mail* (23 January 2004), online: www.theglobeandmail.com/news/national/law-society-agrees-to-police-paralegals/article4086688/.

[328] The vote was 42-3 with one abstention: Law Society of Upper Canada, Convocation (22 January 2004), Transcript of Debates, online: *Law Society of Upper Canada* <lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL-3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true> [Transcript, 22 January 2004]. See also Law Society of Upper Canada, *Task Force on Paralegal Regulation Report to Convocation* (Toronto: LSUC, 23 September 2004) at paras 12, 14 [LSUC Paralegal Regulation Proposed Approach Sept 2004].

[329] Transcript, 22 January 2004, *supra* note 323. This is a summary of the various views expressed by Benchers at Convocation before the vote.

recognized that the regulation of paralegals was inevitable – the government was determined to implement a regulatory scheme – and the LSUC could either play a dominant role in regulation or have none.[330] As one Bencher expressed, "we can either spend our time warring with [another] regulator or we can be the regulator."[331] Thus, while the Law Society's main justification for agreeing to regulate paralegals was the public interest, both it and the Attorney General recognized that the Law Society as regulator would also be in its and the profession's interest.[332]

Beneath the competing issues of access to affordable legal services and protection of the public was a power struggle. As Dodek maintains, the battle over paralegals represents "a microcosm of lawyer power and the justification for it."[333] Lawyers' monopoly over the provision of legal services can only be justified on the basis of the public interest and lawyers, therefore, could not oppose paralegals on the grounds that they would be "an unwelcome competitor" but only on the grounds of public protection.[334] However, as paralegals became more entrenched in the legal services market and access to justice pressures increased, the legal profession realized it could no longer oppose

[330] *Ibid*. It must be kept in mind that the legal profession relies on the state for its self-regulatory privilege. See Girard, *supra* note 8 for discussion of the development of the Canadian legal profession: "The long-standing statutory base of the legal profession's autonomy in Canada has required it to maintain a cooperative, or at least not antagonistic, relationship with the state" at 164.

[331] *Ibid*. This view was expressed by Bencher Carole Curtis. See also LSUC Report to Convocation January 2004, *supra* note 320 at 16. The LSUC was wary of the recent experience of England and Wales, where separate regulators resulted in a "regulatory maze" and, in turn, contributed to the government's introduction of a single, super-regulator to oversee all existing regulators, including the Law Society: at para 17.

[332] I acknowledge that the public interest and the profession's interest are not necessarily, or entirely, mutually exclusive.

[333] Adam M Dodek, "Lawyers, Guns, and Money: Lawyers and Power in Canadian Society" in David L Blaikie, Hon. Thomas H Cromwell, & Darrel Pink, eds *Why Good Lawyers Matter* (Toronto: Irwin Law, 2012) 57 at 63.

[334] *Ibid* at 63.

paralegals and an accommodation was necessary: the public interest demanded paralegal regulation, both to promote access to justice and to ensure the public was protected.[335]

In early 2004, the LSUC established a Task Force that conducted research and consultation meetings with more than sixty stakeholders including paralegal organizations, members of the legal profession, legal organizations, the courts, community colleges, adjudicative tribunals, and other interested parties.[336] As a solid regulatory proposal began to take shape, a newspaper editor had this to say about the long road to implementing regulation:

> Mountain ranges have formed and lakebeds dried up in less time than it has taken to regulate paralegals …. In Ontario – the national hotbed of paralegal conflict … one inquiry report after another has been shot full of holes and abandoned on the trail to Queen's Park.[337]

The LSUC Task Force on Paralegal Regulation delivered its final report in September 2004. It noted that previous attempts to regulate paralegals failed principally because of an inability to achieve a consensus on two matters: the regulatory model and the scope of paralegal activities.[338] The Task Force reported the legal profession, "for the most part," now accepted that regulated paralegals could provide services in certain practice areas.[339] The Task Force reiterated that paralegal regulation in the public interest could be accomplished "more efficiently and economically" by the Law Society

---

[335] *Ibid* at 63.

[336] Law Society of Upper Canada, News Release, "Law Society Proposes New Model for Regulation of Legal Services" (23 September 2004), online: <lso.ca>.

[337] "Rules and the paralegal", Editorial, *Globe and Mail* (14 May 2004), online: <www.globeandmail.com>.

[338] LSUC Paralegal Regulation Proposed Approach Sept 2004, *supra* note 336 at para 19.

[339] *Ibid* at para 20.

than by a new regulatory body, given the LSUC's experience governing barristers and solicitors in the public interest for more than 200 years.[340] The LSUC itself proclaimed its expertise as follows:

> Few would disagree that on matters such as the safety of nuclear energy, judgments and decisions are best made by qualified scientists and nuclear engineers. Similarly, judgments about the law, justice and legal services should be made by a qualified expert. The Law Society is such an expert.[341]

In drafting the regulatory framework, the Task Force adopted two principles: 1) Regulation must be in the public interest, providing consumer protection and enhancing access to justice; and 2) it must ensure paralegal competence.[342] (This was, however, a very different position than the one expressed by the LSUC in response to Cory J.'s recommendations several years earlier, which was that the public interest and access to justice were separate issues.) The Task Force noted that previous attempts to regulate paralegals had failed principally because of a lack of consensus among interested parties about the regulatory model and the scope of paralegal activities.[343] Scope of practice, the Task Force recommended, should be restricted to existing areas of practice defined and authorized by statute and case law, with a focus on advocacy work.[344] There were a few reasons for this according to the Task Force: There was "better consensus" on what constitutes advocacy work; the impetus for public concern about paralegals stemmed from advocacy; and from an access to justice perspective, there were advocacy areas in which it was difficult to obtain the services of a lawyer but no evidence that solicitors were difficult to obtain for wills and real estate transactions;

---

[340] *Ibid* at para 21.

[341] Law Society of Upper Canada, *Governing in the Public Interest: Public Protection and Paralegal Services An Approach for Ontario* (Toronto: LSUC, 2004) at 8.

[342] LSUC Paralegal Regulation Proposed Approach Sept 2004, *supra* note 336 at para 66.

[343] *Ibid* at para 19.

[344] *Ibid* at para 74.

there was "little evidence" that paralegals provided solicitor-type services at a more reasonable rate than lawyers; and the Task Force had heard "compelling accounts [from lawyers] of bad results in the provision of solicitors' work by paralegals, particularly family and estates work."[345] For these reasons, the Task Force concluded that expanding paralegals' scope of practice to include solicitors' work would be contrary to the public interest[346] and would also complicate and significantly delay implementation of the regulatory model.[347] The Task Force recommended that the paralegal regulatory model should follow as closely as possible the existing regulatory model for lawyers:[348] for example, one general licence for paralegals should be established initially (with room for the creation of further categories in the future)[349] and the same process for review of lawyers' fees should apply to paralegals' fees.[350] In addition, the Task Force recommended that any legislative scheme be designed "to achieve flexibility" by including the minimum of detail in the *Law Society Act* itself with most details in the regulations or Law Society by-laws.[351]

The Law Society had thought it necessary to adopt a definition of the *practice of law* in order to assume a broad jurisdiction, but the Task Force concluded that the "best approach to achieving the desired result" would be instead to define the *provision of legal services*, on the assumption that the Law Society would regulate the provision of all legal services in Ontario.[352] The Task Force

[345] *Ibid*.

[346] *Ibid* at paras 74-76.

[347] *Ibid* at para 84.

[348] *Ibid* at para 188.

[349] *Ibid* at para 135.

[350] *Ibid* para 119.

[351] *Ibid* at paras 68, 165.

[352] *Ibid* at paras 67, 89.

favoured a broad definition so that "every person who engages in any activity contained in the definition" would be providing legal services,[353] thus expanding the LSUC's regulatory reach as widely as possible:

> The objective is to permit the Law Society to regulate the delivery of all legal services. This will require a broad definition of the practice of law. Exemptions can then be created for those whom it is not necessary or appropriate for the Law Society to regulate.[354]

This approach, the Task Force assured, maintained the distinction between lawyers and paralegals by granting to each a different class of licence on the assumption that "only lawyers practise law and can be said to practise law,"[355] and a paralegal would be licensed to provide legal services.[356] The distinction would be further secured, the Task Force proposed, by maintaining the status of "member" of the Law Society for lawyers.[357]

The PPAO, however, still did not agree that the Law Society should be the regulator. It argued, instead, for regulation by an independent legal services corporation[358] because, consistent with the conclusions of both Ianni and Cory J., of the inherent conflict of interest in the LSUC regulating paralegals.[359] Legal scholars agree that lawyers should not regulate non-lawyers because of the "obvious" conflict of interest between the legal profession's privilege of regulating itself and

---

[353] *Ibid* at para 89.

[354] *Ibid* at para 67. The Ontario government's legislative counsel would make the final decision on the wording in the legislation: at para 90. (The proposed definition of "provision of legal services" (at Appendix 3 of the Task Force report) appears in Bill 14, *Access to Justice Act, 2006*, Sched C, s 2).

[355] LSUC Paralegal Regulation Proposed Approach Sept 2004, *supra* note 336 at para 89.

[356] *Ibid*.

[357] *Ibid*.

[358] Zemans, *supra* note 208 at 23.

[359] *Ibid* at 13.

its public interest regulatory mandate.[360] The PPAO argued, like others before, that the goals of access to justice and the protection of the public would best be served by the creation of a legal services corporation as regulator since the "central element essential to this [regulatory] model is the independence of paralegals both from the province and the legal profession."[361]

Finally, on October 27, 2005, Bill 14, the *Access to Justice Act, 2006*[362] was introduced in the Ontario Legislature. As Attorney General Bryant proclaimed, paralegal regulation was finally, and in the public interest, becoming a reality. Bryant promised the regulation of paralegals would "increase access to justice by giving consumers a choice in the qualified legal services they use, while protecting those who receive legal advice from non-lawyers."[363] The Law Society had "agreed to transform itself into a regulator of professionals providing legal services" because of its "experience, infrastructure and expertise" in regulating lawyers.[364] The government further declared that Ontarians deserve access to high-quality, affordable services, and promised regulation would improve access to qualified and trained paraprofessionals.[365] Bill 14 contained amendments to the *Law Society Act*, expanding the mandate of the Law Society to provide for the qualification and regulation of

[360] Deborah L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (New York: Oxford University Press, 2000) at 211; See also Deborah L Rhode, "Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Provisions" (1981) 34 Stan L Rev 1 at 97-99. See also Gillian Hadfield, *Rules for a Flat World – Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (New York: Oxford University Press, 2017) at 268.

[361] Zemans, *supra* note 208 at 23.

[362] Bill 14, *supra* note 213. Specifically, Schedule C of Bill 14 contained amendments to the *Law Society Act*.

[363] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 11 (27 October 2005) (Hon Michael Bryant).

[364] *Ibid*. See Chapter 3 for discussion of the Law Society's expanded mandate and exercise of regulatory authority.

[365] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 106 (12 October 2006) (MPP David Zimmer, Parliamentary Assistant to the Attorney General).

paralegals in addition to lawyers.[366] The proposed amendments set out the Law Society's expanded function: to ensure that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.[367] Bill 14 did not define the *practice of law* but instead defined the *provision of legal services*: where a person "engages in conduct that involves the application of legal principles and legal judgment" which includes giving advice with respect to or negotiating the legal interests, rights or responsibilities of a person, drafting documents, and representation.[368] New provisions to guide the Law Society's exercise of regulatory authority included duties to protect the public interest and to facilitate access to justice for the people of Ontario. In addition, standards of learning, professional competence and conduct must be "proportionate to the significance of the regulatory objectives sought to be realized."[369] Significantly, there would be two classes of licensee: persons licensed to practise law in Ontario as a barrister and solicitor, and persons licensed to provide legal services in Ontario[370] who would be referred to as paralegals.[371]

Many, both lawyers and paralegals, were opposed to Bill 14. The OBA's Bill-14 Review Subcommittee addressed what it considered the Bill's "negative consequences" on the legal profession and the public, "with particular emphasis on the negative impact on litigation."[372] The

[366] Bill 14, *supra* note 213, Schedule C.

[367] *Ibid*, Schedule C, s 7.

[368] *Ibid*, Schedule C, s 2.

[369] *Ibid*, Schedule C, s 7.

[370] *Ibid*, Schedule C, s 2.

[371] *Ibid*, Schedule C, s 5(2)(d).

[372] Ontario Bar Association, Civil Litigation Section, Bill-14 Review Subcommittee, *Report to OBA Task Force on Paralegals, Executive and Section Chairs* (OBA: Amended First Position Paper, 27 February 2006) at opening page [OBA Bill-14 Subcommittee].

Subcommittee argued that the broadly worded definition of a person authorized to provide legal services and lawyers' new "licensee" status "substantially diminished" the lawyer's role.[373] For some lawyers, the Bill

> raised the immediate and unpleasant prospect of paralegals being given free rein to compete against lawyers at **all** levels, as well as diminishing the role of lawyers when other categories of licensee (other than barristers and solicitors) are introduced."[374] [emphasis in original]

The OBA Subcommittee "most strongly" suggested that it should lead the charge on behalf of all practising lawyers in Ontario, and especially those at risk of losing their practices or significant parts of them to paralegals, in redefining the wording of the Bill "so that mischief will **not** be done, neither to the public, nor to our noble profession."[375] Echoing long-standing claims of an elite profession's status and superiority, and in language reminiscent of the legal profession's fight against lay conveyancers and other lay practitioners more than one hundred years before, the OBA declared this was its opportunity "to engage as the champion of all lawyers fighting to maintain the noble and true virtues of our great profession."[376] Strong reaction to Bill 14 also came from paralegals who, for the most part, welcomed regulation but were strongly opposed to the Law Society as regulator. Dahn Batchelor, a paralegal since 1964 and a founding member of both the Paralegal Society of Ontario and Paralegal Society of Canada, voiced concern about the Law Society's motivations given the animosity between lawyers and paralegals that had existed for many years, stating:

> The question that comes to the fore is, why does the law society really want to

[373] *Ibid* at paras 1-4.

[374] *Ibid* at para 5.

[375] *Ibid* at paras 10, 12. Emphasis in original.

[376] *Ibid* at para 24.

> embrace the paralegals, whom many lawyers have described in the past as rabble who are untrained, unsupervised, uninsured and irresponsible? After all, isn't the law society the bastion for members of a nobler profession? As far as many lawyers are concerned, opening the doors of the law society and inviting the paralegals into their hallowed halls is akin to Queen Marie Antoinette opening the doors of Versailles and inviting the unwashed Parisian rabble into her boudoir. [377]

Another paralegal voiced a preference for regulation by the Attorney General "as opposed to someone I'm competing against. … Canadian Tire would not like to have Wal-mart determine where they can practise and what kind of business they can do."[378] Similarly, Brian Lawrie, who two decades earlier had evaded conviction for unauthorized practice despite the LSUC's determined prosecutorial efforts, was of the opinion that giving the Law Society control over paralegals was "fraught with danger" and "equivalent to asking the fox to watch the chickens."[379] Some paralegals sought self-regulation, preferring to be in charge of their own profession. Judi Simms, president of the Paralegal Society of Canada at the time, argued that paralegals were happy to be regulated but opposed to regulation "by a body who regard us as their competitors."[380] There were legal challenges to Bill 14. Paralegal groups filed at least two separate applications for judicial review of the legislation's designation of the LSUC as regulator asserting, among other things, that the legislation violated the

[377] Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard),* 38-2, No JP-19 (5 September 2006).

[378] *Ibid* (Hon Mark Brown).

[379] Richard Mackie, "Law Society Wants Control over Activities of Paralegals", *Globe and Mail* (24 September 2004), online: <globeandmail.com>; Timothy Appleby, "Draft Legislation on Way to Regulate Ontario Paralegals", *Globe and Mail* (1 November 2004), online: <globeandmail.com>. Lawrie would subsequently be appointed by the government to the Law Society's first Paralegal Standing Committee and would also become one of the LSUC's first paralegal benchers: "LSUC Sets Up Paralegal Committee", *Law Times* (27 November 2006), online: <www.lawtimesnews.com/news/general/lsuc-sets-up-paralegal-committee/259003>.

[380] Martha Neil, "Paralegals Sue Over Regulation By Canadian Bar Association", *ABA Journal* (23 January 2008), online: <www.abajournal.com/mobile/article/paralegals_sue_over_regulation_by_canadian_bar_association>. (The author incorrectly named the CBA as regulator).

Charter of Rights and Freedoms.[381] Members of Ontario's Legislative Assembly also voiced concerns about the Law Society, as regulator, being in a conflict of interest position;[382] others argued the proposed regulatory scheme was unfair to paralegals.[383] MPP Peter Kormos described the Bill as "a half-hearted, half-baked, insincere … irresponsible, outright negligent exercise at creating a responsible regulatory regime for paralegals in this province."[384] In addition, other professionals – non-lawyers who provided some form of legal services as part of their professional work such as actuaries, bankers, mortgage brokers and lenders, trade union representatives, immigration consultants, patent agents, trademark agents, workers compensation specialists, and used car dealers – expressed concerns about the breadth of the LSUC's new regulatory reach, hoping not to be caught in its net.[385]

In the end, despite the arguments of many to the contrary, the Law Society was granted the authority to regulate paralegals. Bill 14, the *Access to Justice Act, 2006*, received Royal Assent on October 19, 2006;[386] the amendments to the *Law Society Act* became effective May 1, 2007. With that, twenty years after a regulatory scheme was first proposed, paralegal regulation in Ontario had finally become a reality.

---

[381] Thomas Claridge, "Paralegal groups concerned about regulation and accreditation", *The Lawyers Weekly* (1 February 2008) at 16.

[382] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 38-2, No 107B (16 October 2006) (Robert W Runciman; Shelley Martel).

[383] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 38-2, No 106 (12 October 2006) (Ted Chudleigh and Gilles Bisson).

[384] *Ibid*.

[385] Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 38-2 (submissions by various groups before the Standing Committee on Justice Policy on 5 September 2006, 6 September 2006, 7 September 2006, 11 September 2006, 13 September 2006).

[386] *Access to Justice Act, 2006*, SO 2006, c 21.

CHAPTER 3:
THE PARALEGAL REGULATORY SCHEME: LAW SOCIETY GOVERNANCE & ITS IMPLICATIONS

> *The implementation of the regulation of paralegals in Ontario has been a success, and has provided consumer protection while maintaining access to justice. The paramount consideration in the development of the model has been protection of the public interest.*
>
> *The Law Society was, and continues to be, the right choice of regulator for paralegals…*[1]
>
> Law Society of Upper Canada (June 2012)

INTRODUCTION

Once the LSUC had agreed to take on the role of regulator of paralegals, the government granted it the responsibility to determine the details of the regulatory scheme including paralegal scope of practice. The government also required the Law Society to review and report on its own performance. The amended *Law Society Act* that instituted the regulation of paralegals demanded two formal reviews of paralegal regulation after the first five years, one by the Law Society itself and the other by an independent person appointed by the Attorney General,[2] of the manner in which paralegals had been regulated and the effect of regulation on paralegals and members of the public.[3] In its formal review, which relied on research that gathered the impressions and opinions of paralegals

[1] Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the* Law Society Act (Toronto: LSUC, June 2012) at 26, online (pdf): <lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf> [LSUC Five-Year Review].

[2] *Law Society Act*, RSO 1990, c L.8, s 63.1. The independent review was conducted by David Morris.

[3] See historical versions of the *LSA* (7 in total) beginning with the version for the period October 19, 2006 to April 30, 2007 until and including the historical version for the period June 1, 2011 to December 11, 2013.

and the public, the Law Society concluded that regulation had been a success.[4] The Law Society proclaimed itself the "right choice"[5] of regulator and that as a result of regulation, consumer protection had been balanced with maintaining access to justice, paralegals were "working to a higher standard of competence," and the public interest had thereby been protected.[6] At the ten-year anniversary of paralegal regulation, the Law Society was equally enthusiastic about its manner of regulating. Then-Treasurer Paul Schabas declared that the Law Society had been "tremendously successful in … making legal services more accessible and improving consumer services and public protection."[7] Noticeably absent from these proclamations of success, however, is any mention of the cost of paralegals' services – noticeably absent in light of the government's promise that regulation would make paralegals' services more affordable than lawyers' services.[8]

The LSUC's opinion of its own regulatory scheme and exercise of regulatory authority is not an objective one, yet law societies, as professional defenders of the self-regulatory *status quo*, inevitably act as judges in their own cause.[9] The Law Society's claims of success of the regulatory

[4] See STRATCOM, "Five-Year Review of Paralegal Regulation: Research Findings – Final Report for the Law Society of Upper Canada" (6 May 2012), forming part of the LSUC Five-Year Review, *supra* note 1 [STRATCOM Report]. Notably, reliance on similar evidence of consumer satisfaction was criticized as being unreliable by the LSUC itself some years earlier: Law Society of Upper Canada, AM Rock, *Interim Report of the Special Committee on Paralegals and Access to Legal Services* (Toronto: LSUC, June 1992) at Chapter 1, n 39.

[5] LSUC Five-Year Review, *supra* note 1.

[6] *Ibid* at 3.

[7] Omar Ha-Redeye, "10th Anniversary of Paralegal Regulation", *SLAW* (30 April 2017), online: <www.slaw.ca/2017/04/30/10th-anniversary-of-paralegal-regulation/>.

[8] In terms of costs, the LSUC's Five-Year Review, *supra* note 1 at 26, deals only with the cost of regulatory scheme, not the cost of paralegals' services.

[9] Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) at xiii.

scheme cannot be accepted at face value, particularly since, at the heart of its newly expanded authority, is a conflict of interest in regulating competitors.

In light of the Law Society's public interest justification for agreeing to regulate paralegals, its claims of the success of paralegal regulation, and that it was the right choice of regulator, this chapter analyzes the Law Society's exercise of regulatory authority over paralegals. Part I sets out the Law Society's expanded authority and details of the regulatory scheme. Part II examines the manner in which the Law Society exercises its regulatory authority over paralegals from the perspective of regulation's promise of increased access to justice, specifically: increased choice, competence, and more affordable (than lawyers) cost of services. This chapter concludes with a discussion of the implications of the Law Society's exercise of regulatory authority in light of the government's promises and the LSUC's public interest justification for regulating paralegals.

I. THE LAW SOCIETY AS REGULATOR

A. The Law Society's Expanded Authority

It is the Law Society's role to ensure that the public is provided with competent and professional legal services which, according to the Ontario Court of Appeal, are "the bedrock on which self-regulation of the legal profession rests."[10] Regulation sets parameters that define a profession and aims to ensure that professional practitioners are skilled, knowledgeable, and competent.[11] Entry standards act as both a gateway and a barrier, separating the qualified from the

[10] *Groia v The Law Society of Upper Canada*, 2016 ONCA 471 at para 2.

[11] Tracey L Adams, "Professional Regulation in Canada: Past and Present" (Spring 2007) Can Issues 14 at 16 [Adams, "Past and Present"].

unqualified.[12] Licensure is thus both a means of quality control and an assurance of quality to the public that one who is licensed is fit to practise.[13] Regulation protects the public in two ways: by ensuring that every practitioner has attained a minimum level of education and is fit to practise, and by providing the public redress through a complaints and discipline process in the event of misconduct or incompetence.[14] Thus, regulation inherently restricts access to professional practice but it does so to ensure the competence of practitioners and public well-being. The goal is to ensure that the barriers in place "are fair ones that keep out the unskilled and incompetent."[15] Educational requirements and a licensing exam are two ways to, ostensibly, ensure fitness for practise at entry level. As regulator, then, the Law Society has the power to control and exclude[16] within its public interest mandate.

As the regulator of paralegals, the Law Society's expanded regulatory authority empowered it to design, implement and administer the paralegal regulatory framework. The Law Society's expanded function is to ensure that "all persons who practice law or provide legal services meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide."[17] In addition to its duty to protect the public interest, a new regulatory

[12] *Ibid* at 14.

[13] Law Society of Ontario, "Paralegal Licensing Process – Licensing Examinations" (last visited 26 April 2020), online: <lso.ca/becoming-licensed/paralegal-licensing-process/licensing-examinations>.

[14] Law Society of Upper Canada, "Governing in the Public Interest: Public Protection and Paralegal Services – An Approach for Ontario" (LSUC, 2004) at 2 [LSUC, "Governing in the Public Interest"].

[15] Adams, "Past and Present", *supra* note 11 at 16.

[16] Magali Sarfatti Larson, *The Rise of Professionalism* (New Brunswick, New Jersey: Transaction, 2013) at xx.

[17] *LSA*, s 4.1.

objective was imposed on the Law Society: a duty to facilitate access to justice for the people of Ontario.[18]

As set out in Chapter 2, the Law Society agreed to regulate paralegals in part because the government asked it to, so as not to displease the grantor of its self-regulatory powers. As regulator, the Law Society has broad authority to regulate as it sees fit,[19] and both the Law Society and the government benefit from the relationship. As Adams explains, professions seek and rely on state support to enhance their social authority, power, and privileges while "state actors may seek to use professions to enhance their legitimacy, aid in governance, and achieve other goals."[20] The Law Society's expanded role came with increased responsibility, an access to justice imperative, and new challenges for the profession. As David Morris, who conducted the other five-year review of paralegal regulation stated:

> As the regulator of two complementary professions … [i]t is now incumbent upon the Law Society to drive the provision of legal services to the most accessible, appropriate level of the professions it regulates. Its challenge is in doing so without compromising professional standards or protection of the public interest."[21]

---

[18] *Ibid*, s 4.2.

[19] Ontario's Attorney General is a Bencher by virtue of office and may vote in Convocation, the Law Society's governing body but that is, effectively, the extent of government oversight or involvement: *LSA, supra* note 2, ss 12(2),(5).

[20] Tracey L Adams, "The Changing Nature of Professional Regulation in Canada, 1867-1961" (Summer 2009) 33:2 Social Science History 217 at 237.

[21] David Morris, *Report to the Attorney General of Ontario – Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario Pursuant to Section 63.1 of the Law Society Act* (Toronto: Ontario Ministry of the Attorney General, Queen's Printer for Ontario, 2012) at 3, online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.html>. [Morris Report].

The paralegal regulatory scheme was not laid out in its entirety in the amended *Law Society Act*. The Law Society had proposed that the Act itself contain a minimum of detail, and that most of the details be contained in regulations and Law Society by-laws, to "afford the greatest flexibility" to allow for future amendments to the regulatory scheme.[22] Arguably, such an approach is reasonable to allow the a regulator the greatest flexibility to govern within its statutory mandate. It also provides the Law Society broad authority to govern paralegals. Indeed, much was left to the Law Society to determine. Its existing delegated authority to make by-laws relating to the affairs of the Law Society and a range of matters expanded with its new role governing paralegals including, significantly, the authority to determine classes of licence that may be issued, the scope of activities authorized under each class of licence, and any terms, conditions, limitations or restrictions imposed on each class of licence.[23] Licensing requirements for paralegals are similar to licensing requirements that already existed for lawyers, such as a good character,[24] professional competence,[25] not engaging in prohibited conduct,[26] adherence to a code of professional conduct,[27] and a requirement to carry professional liability insurance.[28]

Statutory amendments to the *Law Society Act* introduced the term "licensee" which refers to both lawyers and paralegals as members of the Law Society.[29] The revised Act defines the *provision*

---

[22] LSUC, "Governing in the Public Interest", *supra* note 14 at 11.

[23] *LSA*, ss 27(1) and 62. The Law Society also had, and has, the authority to make regulations but this, unlike for by-laws, requires the approval of the Lieutenant Governor in Council: s 63.

[24] *Ibid*, s 27(2).

[25] *Ibid*, s 41.

[26] *Ibid*, s 33.

[27] *Ibid*, s 62.10.

[28] *LSA*, By-law 6, Part II, s 12(1).

[29] *LSA*, ss 1(1), 2(2).

of legal services[30] but not the *practice of law*, as the Task Force had recommended.[31] But the Act provides that barristers and solicitors *practise law*, which distinguishes them from paralegals, who *provide legal services.*[32] The distinction between the two is far from clear, other than seemingly preserving for lawyers their monopoly over the *practice of law*.[33] The definition of *provision of legal services* is broad and covers what both lawyers and paralegals do – engage in "conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person."[34] The *provision of legal services* includes any of the following: providing advice with respect to a person's legal interests, rights or responsibilities; selecting, drafting, completing or revising a document on behalf of a person; representing a person in a proceeding before an adjudicative body; and negotiating the legal interests, rights or responsibilities of a person. Representing a person includes determining what documents to serve or file in relation to the proceeding; conducting an examination for discovery; and engaging in any other conduct necessary to the conduct of the proceeding.[35] The definition of the *provision of legal services* is arguably broader than what licensed paralegals are allowed to do. Paralegal scope of practice is restricted to representation.[36]

---

[30] *Ibid*, s 1(5).

[31] Law Society of Upper Canada, *Task Force on Paralegal Regulation Report to Convocation* (Toronto: LSUC, 23 September 2004) at para 86 [Task Force Sept 2004].

[32] *LSA*, s 1(1): definition of "licensee" and s 2(2)(c),(d).

[33] This is discussed further in Chapter 4 herein.

[34] *LSA*, s 1(5)-(7).

[35] *Ibid*, s 1(5)-(7).

[36] *LSA*, By-law 4, s 6 (last amended 11 September 2019), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/by-law-4.pdf>.This is consistent with the LSUC's *Task Force on Paralegal Regulation*: Task Force Sept 2004, *supra* note 31.

B. Governance

With the introduction of paralegal regulation, the amended *Law Society Act* established the Paralegal Standing Committee (PSC)[37] which is responsible for developing policy options on classes of licence for the provision of legal services, scope of authorized activities, licensing, rules of professional conduct, and professional competence.[38] The Chair of the PSC must be a licensed paralegal.[39] The Paralegal Standing Committee originally consisted of thirteen members: five paralegals, five lawyers, and three lay Benchers[40] such that licensed paralegals did not comprise a majority on the only committee charged with responsibility for paralegal matters. As with other standing committees, the work of the PSC is subject to the approval of Convocation.[41] Of note, Zemans had previously argued that it would be inappropriate for Convocation to possess such power over the regulation of paralegals.[42]

The introduction of two classes of Law Society licensee[43] changed the composition of Convocation, the Law Society's governing body,[44] to include paralegals. The amended Act provided for a fixed number of paralegal Benchers – only two – rather than allow for proportional representation.[45] As a result, for the first seven years after paralegal regulation was implemented,

---

[37] *LSA*, s 25.1.

[38] *LSA*, By-law 3, s 130, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/governance/by-laws/by-law-3.pdf>.

[39] *Ibid*, s 130.5.

[40] *LSA*, s 25.1(3) as it appeared between October 19, 2006 and April 30, 2007.

[41] *LSA*, By-law 3, s 107.

[42] Frederick H Zemans, *Paralegals in Ontario: Research Report* (August 2004) at 25.

[43] *LSA*, s 1(1) and By-law 4.

[44] *LSA*, s 10.

[45] *LSA*, s 16(1) as it appeared between May 1, 2007 and July 24, 2007.

Convocation comprised only two paralegal Benchers in addition to 40 lawyer Benchers.[46] While there was an equal number of paralegals and lawyers on the PSC, lawyer Benchers held a 95% majority at Convocation.[47] At the time, two paralegal Benchers at Convocation was slightly less than paralegals' proportionate Law Society membership which, in 2008, amounted to 5.4% of total licensees.[48] In his five-year review of paralegal regulation, Morris recommended proportionally equal representation of lawyers and paralegals in the governance structure which, in his view, is critical for access to justice.[49] As he stated:

> Proportionally equitable representation is not simply just from a governance perspective, it is critical in allowing the Law Society to act impartially as it drives the provision of legal services to the most accessible, appropriate level of the professions it regulates – as its duty-bound obligation to facilitate access to justice requires of it.[50]

In 2014, in efforts to modernize regulation of the legal profession, the number of elected paralegal Benchers was increased to five.[51] These paralegal Benchers are now also the five members of the PSC.[52] Then-Attorney General John Gerretsen claimed the increase would "better recognize the importance of this maturing [paralegal] profession."[53] According to the LSUC, though, the increase

---

[46] *LSA*, s 15(1). The number of lawyer benchers remained the same as it was prior to amendments to the *Law Society Act* that implemented paralegal regulation in 2007.

[47] 40 lawyer benchers out of 42 total = 95.2%.

[48] Law Society of Upper Canada, *2008 Annual Report*, online: <lso.ca/about-lso/governance/annual-report/>.

[49] Morris Report, *supra* note 21 at section 4, "Key Findings and Observations", and Recommendation 2.

[50] *Ibid*.

[51] Bill 111, *Modernizing Regulation of the Legal Profession Act, 2013*, 2nd Sess, 40th Parl, Ontario, 2013 (assented to 12 December 2013), SO 2013, c 17, ss 3(1), 4(2), 28(3); For current see *LSA*, ss 16(1) and 25.1(3).

[52] *LSA*, s 25.1(3).

[53] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 40-2, No 66 (1 October 2013), online: <www.ola.org/en/legislative-business/house-documents/parliament-40/session-2/2013-10-01/hansard#para586> (John Gerretsen).

in the number of paralegal Benchers was not based on proportional representation.[54] Convocation is now comprised of 40 lawyer Benchers and five paralegal Benchers,[55] giving paralegals an increased voice at Convocation (11%), but a voice that is increasingly less than paralegals' proportionate membership. That membership has increased steadily to 13.6% in 2015,[56] 14% in 2016,[57] 14.2% in 2017,[58] and 14.5% in 2018.[59] Prior to the implementation of paralegal regulation, Zemans had expressed "concern that the effectiveness and legitimacy of any governance model would be undermined where paralegal representation is no greater than that of a profession that has not infrequently expressed its strong opposition towards the activities of independent paralegals."[60] The Law Society claims that elected paralegals play a "prominent role" in the governance of their profession,[61] but after more than a dozen years, paralegals do not even have a majority voice on the PSC nor a proportionally equal voice at Convocation. It is unclear how regulation of paralegals by the

[54] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 25 April 2013) at para 22, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/protecting-the-public/convapr2013_paralegal.pdf> [LSUC PSC Report April 25 2013]. The LSUC provided no further explanation.

[55] *LSA*, ss 15, 16, 23. In addition, Convocation also has up to eight appointed lay benchers. Bencher elections are separate: lawyers elect lawyer benchers and paralegals elect paralegal benchers: *LSA,* By-law 3, Parts I and I.1.

[56] Law Society of Upper Canada, *2015 Annual Report*, online: <lso.ca/about-lso/governance/annual-report> [LSO 2015 Annual Report].

[57] Law Society of Upper Canada, *2016 Annual Report*, online: <lso.ca/about-lso/governance/annual-report> [LSO 2016 Annual Report].

[58] Law Society of Upper Canada, *2017 Annual Report*, online: <lso.ca/about-lso/governance/annual-report> [LSO 2017 Annual Report].

[59] Law Society of Upper Canada, *2018 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

[60] Zemans, *supra* note 42 at 24.

[61] Law Society of Upper Canada, "Paralegal Bencher Election 2014" (last visited 26 April 2020), online: <lso.ca/about-lso/governance/bencher-election-2019/paralegal-bencher-election-2014>.

Law Society is in the public interest, as the government insisted it would be,[62] when paralegals remain dominated by lawyers and do not have even a majority voice on the only Law Society committee devoted to paralegal issues and Convocation remains in the firm control of lawyers.

C. Boundaries – Who's Subject to Regulation and Who's Not

With the implementation of paralegal regulation, the LSUC claimed that its mandate was expanded to include all legal services provided in Ontario,[63] but the reality is that its regulatory reach does not extend that far. Not all legal services or legal service providers are captured by the Law Society's regulatory net. While the LSUC governs the provision of legal services by lawyers, and some non-lawyers, there are many who provide legal services in Ontario without needing to be licensed by the Law Society at all. Some of these non-lawyers are authorized to act by the Law Society Act, the Law Society itself and/or by other statutes, and some are members of other professions.

A person who is authorized to provide legal services in Ontario includes a person who is licensed to provide legal services *and* a person who is not licensed but permitted to provide legal services pursuant to the by-laws.[64] When the *Law Society Act* was amended with the implementation of paralegal regulation, the previous unauthorized practice prohibition[65] was replaced with a new prohibition section which restricts any person, other than a licensee whose licence is not suspended,

---

[62] Michael J Bryant, Address (Speech to Convocation at the Law Society of Upper Canada delivered at Osgoode Hall, Toronto, 22 January 2004) at 23 [Bryant Address], Transcript of Debates, LSUC Convocation (22 January 2004), online: *Law Society of Upper Canada* <lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL-3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true> [Transcript, 22 January 2004].

[63] LSUC Five-Year Review, *supra* note 1 at 2.

[64] *LSA*, s 1(1); *LSA*, By-law 4, ss 29-34.

[65] *LSA,* s 50 as it appeared between November 26, 2002 and October 18, 2006. See Chapter 2 herein.

from practising law or providing legal services in Ontario[66] and stipulates that a licensee may only practice law or provide legal services to the extent permitted by the licensee's license.[67] Exceptions apply to those persons who are not licensees but who are permitted to practise law or provide legal services to the extent permitted by the by-laws,[68] which are discussed further below. Significantly, while the former prohibition against unauthorized practice contained an exception for non-lawyer practice "except where otherwise provided by law,"[69] the new prohibition does not, but stipulates that it applies even to a person who "is acting as agent under the authority of an Act of the Legislature or an Act of Parliament."[70] With creation of the new paralegal regulatory scheme, for legislative consistency, all non-lawyer practice authorized by other statutes, essentially those that provided for representation by agents, was brought under the Law Society's regulatory umbrella. Bill 14, *Access to Justice Act, 2006* also amended various statutes to clarify that a non-lawyer representative refers to a person who is authorized by the *Law Society Act*.[71] In the *Statutory Powers Procedure Act* (SPPA), for example, a "representative" means a person authorized by the *Law Society Act* to represent a person in a proceeding to which the SPPA applies.[72] Similar language appears in amendments to the

[66] *LSA*, s 26.1(1).

[67] *Ibid*, s 26.1(3).

[68] *Ibid*, s 26.1(5)-(7) and see also s 62(0.1)25.

[69] *LSA*, ss 50(1) as it appeared between November 26, 2002 and October 18, 2006.

[70] *LSA*, s 26.1(8).

[71] Bill 14, *An Act to Promote Access to Justice by Amending or Repealing Various Acts and by enacting the Legislation Act, 2006*, 2nd Sess, 38th Leg, Ontario, 2005 (assented to 19 October 2006), SO 2006, c 21. See especially the Explanatory Note and Schedule C Amendments to the *Law Society Act* and Related Amendments to Other Acts.

[72] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 1(1): "representative" means a person authorized by the Law Society Act to represent a person in a proceeding to which the SPPA applies.

Provincial Offences Act,[73] the *Courts of Justice Act*,[74] and the *Coroners Act*.[75] The Ontario Court of Justice had occasion to rule on the constitutionality of the provisions of the *Law Society Act* that deal with the regulation of non-lawyers appearing on federal summary conviction matters.[76] In that case, the accused wanted to be represented by an agent but the agent was not licensed by the Law Society nor did he meet any of the exceptions to licensing in the *Law Society Act*.[77] The agent argued that he was permitted by the *Criminal Code* to appear as agent and therefore, notwithstanding the provisions of the *Law Society Act*, he was permitted to appear for the accused in provincial court.[78] He further argued that the provisions of the *Law Society Act* conflicted with the *Criminal Code* provisions allowing representation by an agent[79] and are therefore *ultra vires* the provincial legislature.[80] The court disagreed. It was satisfied that a person can comply with the provisions of both the *Criminal Code* and *Law Society Act* at the same time[81] and concluded that the provisions of the *Law Society Act* regarding the licensing of non-lawyers who appear on federal summary conviction matters are *intra vires* the province and not in conflict with the *Criminal Code* provisions

[73] *Provincial Offences Act*, RSO 1990, c P. 33, s 1(1): "representative" means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* represent a person in that proceeding.

[74] *Courts of Justice Act*, RSO 1990, c C.43, s 26: a party may be represented in a proceeding in Small Claims Court by a person authorized under the *Law Society Act* to represent the party.

[75] *Coroners Act*, RSO 1990, c C.37, s 41(2): a person with standing at an inquest may be represented by a person authorized under the *Law Society Act*.

[76] *R v Toutissani*, 2008 ONCJ 139, leave to appeal to SCC refused, 32684 (18 September 2008) [*Toutissani*].

[77] *Ibid* at para 4.

[78] *Ibid* at para 5.

[79] *Criminal Code*, RSC 1985, c C-46, ss 800, 802, 802.1 [*Criminal Code*].

[80] *Toutissani*, *supra* note 76 at para 8.

[81] *Ibid* at paras 29, 31.

allowing representation by agents.[82] Notably, only non-lawyers who provide legal services with respect to *Criminal Code* matters in Ontario are caught within the Law Society's regulatory net, and must be licensed. Elsewhere in Canada, where there is no regulatory scheme governing paralegals or other non-lawyer service providers, they may provide legal services as agent pursuant to the same *Criminal Code* provisions[83] without needing to be licensed or regulated.

While the amended *Law Society Act* expanded the Law Society's regulatory reach it also set its limits. In addition, the Law Society, in exercising its regulatory authority, exempts many from licensing. Who should be licensed, and who need not be, were purportedly determined from a consumer protection and access to justice perspective.[84] Given the Law Society's claim that it regulates all legal services provided in Ontario[85] – which is not accurate – it is curious why the Law Society did not extend its regulatory reach more broadly from the start.

Exceptions and exemptions are well-entrenched in the *Law Society Act*. While the statute itself contains exceptions to the *practice of law* and to the *provision of legal services*, further exceptions are set out in the by-laws, as determined by the Law Society itself.[86] In addition, persons

[82] *Ibid* at para 32. The only decision that cites *R v Toutissani* is a decision of Ontario's Workplace Safety and Insurance Appeals Tribunal: Decision No. 2268/08I, 2009 ONWSIAT 970, which does not deal with the constitutionality of the Law Society Act's provisions. In determining that an unlicensed agent did not meet the "friend" exemption in the *Law Society Act*, WSIAT's decision confirmed that the Law Society had "set the standard for competency and accountability through the licensing requirements for paralegals" and that such requirements were enacted to protect the public and must be followed so as not to bring the administration of justice into disrepute.

[83] *Criminal Code*, ss 800, 802, 802.1.

[84] Task Force Sept 2004, *supra* note 31 at para 136.

[85] LSUC Five-Year Review, *supra* note 1 at 2.

[86] *LSA*, s 1(8); By-law 4, s 28.

exempt from licensing are also found in the by-laws.[87] Before setting out the current exemptions, it is useful to provide a brief history about the factors relevant to determining the exemptions. The Law Society's mandatory licensing applied, initially, only to those paralegals providing legal services to the public who pay for those services, either directly or indirectly.[88] The Paralegal Standing Committee was given authority to create exemptions for those whom it is "not necessary or appropriate" for the Law Society to regulate.[89]

i. History

From the outset, it was the Law Society's intention to narrow the exemptions in order to cast the widest possible regulatory net. But the stated overriding objective of the regulatory model was to provide both consumer protection and access to justice – the Task Force on Paralegal Regulation was of the view that regulation "should not be broader than is necessary to achieve these objectives."[90] The Task Force reported that throughout the consultations, there was no disagreement that independent paralegals representing clients for a fee before courts and tribunals should be regulated, and that law clerks and other persons providing services to lawyers (not directly to the public) should be exempted, as should family members or friends representing a person free of charge.[91] According to the Task Force, there were also good reasons to exclude from licensing union

[87] *LSA*, By-law 4, ss 29-34.

[88] Task Force Sept 2004, *supra* note 31 at para 152.

[89] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 29 March 2007) at para 24, online: <www.yumpu.com/en/document/read/28834180/paralegal-standing-committee-report-the-law-society-of-upper-> [LSUC PSC Report March 29 2007]. Such authority is set out in ss 1(8) & 62 of the *LSA*, and the exemptions can be found in By-law 4.

[90] Task Force Sept 2004, *supra* note 31 at para 136.

[91] *Ibid* at para 137.

stewards and corporate human resources representatives appearing at labour arbitrations, who represent sophisticated clients in a specialized area.[92]

The PSC adopted the Task Force's proposed model that included three categories of persons: 1) licensees authorized to provide prescribed advocacy services for a fee; 2) persons providing the same services as licensees but without charging a fee to the public such as family members or friends, in-house salaried non-lawyer advocates such as municipal and provincial prosecutors, community legal workers, and insurance company representatives (whether supervised by a lawyer or not), who would be exempt from licensing; and 3) persons providing non-advocacy services under the supervision of a lawyer, such as law clerks and legal assistants employed in law firms, and independent contractors such as document preparers and title searchers whose only clients are lawyers.[93]

More specifically, the PSC initially determined that the following groups should be exempt from licensing: in-house paralegals employed by a single employer, such as municipal prosecutors; persons whose work is supervised by a lawyer (and therefore covered by the insurance of the supervising lawyer); persons who are not in the business of providing legal services and who occasionally provide assistance to a friend or relative for no fee; articling students; employees of legal clinics funded by Legal Aid Ontario; employees of organizations similar to legal clinics that provide free services to low-income clients; and Aboriginal Court Workers (as they were then called).[94] Further exemptions were granted to constituency assistants working in MPPs' offices; staff of the Office of

[92] *Ibid*.

[93] LSUC PSC Report March 29 2007, *supra* note 89 at para 27 (adopting the view of the Task Force on Paralegal Regulation: Task Force Sept 2004, *supra* note 31 at para 140).

[94] LSUC PSC Report March 29 2007, *supra* note 93 at para 29. The exemption for grand-parented applicants was time-limited, ending April 30, 2008.

the Worker Advisor and Office of the Employer Advisor; and students working in Student Legal Aid Services Societies provided they were supervised by a lawyer and covered by the lawyer's insurance.[95]

Before paralegal licensing took effect in May 2007 the PSC, tasked with determining who was actually providing legal services and therefore were to be licensed, received requests for specific exemptions from a number of other groups and organizations.[96] Many sought an exemption from licensing on the basis that they did not provide legal services directly to the public, provided services only under the supervision of a lawyer, had received no prior complaints about their work, served a clientele that could ill afford to bear the cost of licensing, and/or that the cost of licensing would effectively put them out of business and thus eliminate their provision of legal services to some of society's most needy. Public servants, for example, in the Office of the Worker Adviser (OWA) and Office of the Employer Advisor (OEA), agencies of the Ministry of Labour who provide free legal advice and representation in worker's compensation claims to injured workers and small employers, respectively, argued successfully for an exemption from licensing for several reasons: they were already accountable as public servants and subject to an in-house staff training program; all services are provided free of charge to the client; as agencies of the Ontario government there were assets available to satisfy any judgment against them; and further, it would be difficult for the Ministry to absorb the cost of licensing because of budget constraints.[97] Similarly, volunteers at injured workers' groups, who provide legal advice and representation on matters and proceedings before the

[95] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 26 April 2007) at para 11 [LSUC PSC Report April 26 2007].

[96] LSUC PSC Report March 29 2007, *supra* note 93 at para 34. See also Task Force Sept 2004, *supra* note 31 at para 145. The Task Force had received submissions seeking an exemption from several groups including Volunteer Special Education Advocates, Adult Protective Service Workers, Victim Service Workers, Employees of the Office of Child and Family Service Advocacy, and employees of the John Howard and Elizabeth Fry Societies.

[97] Task Force Sept 2004, *supra* note 31 at paras 138, 139.

Workplace Safety and Insurance Board (WSIB) and the Workplace Safety and Insurance Appeals Tribunal (WSIAT) as well as related proceedings, were granted an exemption from licensing.[98] This exemption also applied to member groups of the Injured Workers Outreach Services, composed of injured worker support groups across the province funded by WSIB. These groups typically provide advice and representation to injured workers free of charge and the representatives are generally volunteers. From an access to justice perspective, the PSC noted that most of the clients of these organizations are low-income persons who have "no other realistic hope of representation."[99] The PSC also recognized the economic reality that these volunteer groups did not have the resources to become licensed and insured, and failing to grant the exemption might effectively shutter these organizations, "causing distress to injured workers who may have no other recourse."[100] The PSC also granted an exemption to persons who work under some degree of lawyer supervision, including those employed or hired by a lawyer to attend "set court date" in criminal matters on the basis that a licensing requirement would drive up the cost of running a criminal law practice.[101] According to the PSC, criminal lawyers "who act on legal aid matters are not in a financial position to absorb this increased cost, and access to legal services and justice may be adversely affected" by a licensing

[98] *LSA*, By-law 4, s 31. See also Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 28 June 2007) at paras 4-12 [LSUC PSC Report June 28 2007].

[99] LSUC PSC Report June 28 2007, *supra* note 98 at para 10.

[100] *Ibid* at para 11. The exemption for Injured Workers Groups is about to be revoked with an amendment to By-law 4: Law Society of Ontario, Paralegal Standing Committee, *Ending Licensing Exemption for Injured Workers' Groups* (27 February 2020) at 2, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/convocation/convocation-february-2020-paralegalstandingcommittee-report.pdf>. Convocation decided in September 2015 to end this exemption effective September 30, 2017, but By-law 4 had yet to be amended to reflect this. The Injured Worker Outreach Services program was the sole program operating pursuant to this exemption but no longer provides legal representation by unlicensed volunteers: at 2.

[101] *LSA*, By-law 7.1.

requirement.[102] Likewise, Pro Bono Students Canada, a program in which law students provide services to non-profit groups and public interest organizations under the supervision of a lawyer, was granted an exemption from licensing based on access to justice considerations when the students' work broadened to include advocacy services before the Health Professions Appeal & Review Board.[103] The PSC noted that the students served clients who were unlikely to obtain effective help elsewhere and lacked the financial resources to retain paid assistance.[104]

Many of the PSC's decisions to exempt, then, seem to have been guided by economic factors and considerations of access to justice – such as the nature of the legal services provided and for whom, oversight and accountability, quality and competence, and whether the services are provided for a fee – recognizing that some providers meet a public need for legal services that would otherwise go unmet and that mandatory licensing could result in the elimination of the services offered to the public.[105] In short, though, those persons who, unsupervised, provided legal services to the public for a fee would need to be licensed.

But in a decision that appears to be in direct contradiction to the stated purpose of regulation – to protect consumers and increase access to justice – the Law Society's Paralegal Standing Committee denied an exemption to a group of volunteers who provided free advice and

[102] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 25 October 2007) at para 20.

[103] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 21 February 2008) at paras 17-25.

[104] *Ibid* at para 26.

[105] LSUC PSC Report April 26 2007, *supra* note 95 at para 7.

representation to street-involved people.[106] Ottawa's Ticket Defence Program (TDP) was an access-to-justice initiative with a mandate to assist street-involved people in challenging provincial or municipal offences tickets that serve to regulate life on the street.[107] The TDP's volunteer agents (all of whom underwent mandatory training) provided advocacy services, public legal education and referrals to lawyers and paralegals for any issues that were too complex to be handled by the volunteers, and operated with a Legal Advisory Committee comprised of fourteen lawyers (all members of the Law Society).[108] The organization's quality and effectiveness were demonstrated by its high rate of success, lack of complaints from its clientele, and being awarded for its work.[109] The TDP incorporated as a not-for-profit in an effort to meet the Law Society's requirements for an exemption, but could not afford the cost of licensing or liability insurance.[110] Bouclin argues that the Law Society's rigid application of its exemption criteria and reliance on a narrow conception of legal services that can be provided without a paralegal license denied street-involved people in Ottawa access to effective and meaningful legal services, seemingly contrary to its duty to act so as to facilitate access to justice for the people of Ontario.[111] For Bouclin, this decision

> … indicates a greater tension with the larger trend, and one of the LSUC's objectives, towards improving affordable and client-centred access to justice

[106] Suzanne Bouclin, "Regulated Out of Existence: A Case Study of Ottawa's Ticket Defence Program" (2014) 11 JL & Equality 35 at 64.

[107] *Ibid* at 49.

[108] *Ibid* at 54, 70.

[109] *Ibid* at 69.

[110] *Ibid* at 69-70.

[111] *Ibid* at 83.

> options for marginalized populations….[and] suggests a need for the LSUC to re-evaluate its role in fulfilling its mandate to further access to justice.[112]

From an access to justice perspective, then, the Law Society's granting of exemptions is inconsistent. Government employees who provide legal services to workers and employers (for free to the client but not the taxpayer) were exempted but the TDP (which served otherwise unmet legal needs of vulnerable people, also for free) was not. The cost of licensing was a concern, but not an obstacle for the government in order for its employees, such as those at the Office of the Worker Adviser and Office of the Employer Adviser who assist injured workers and employers. The Law Society accepted that concern as a reason to exempt OWA and OEA representatives from licensing[113] but did not accept the resulting denial of access to justice in deciding not to exempt the TDP. Perhaps the inconsistent determinations about exemptions stemmed from legitimate concern for competence and accountability, or perhaps, as Bouclin suggests, the LSUC's refusal to grant an exemption to the TDP – which operated with lawyer oversight and supervision – reveals the regulator's unwillingness to "make space for more holistic, grounded and pragmatic models of legal advocacy."[114]

The exemptions have narrowed. After the first two years of paralegal regulation,[115] the previous single exemption for a person "acting for a family member, friend or neighbor" was separated into two exemptions: one for immediate family and one for friends. The friend exemption, which had allowed such representation "only occasionally," was limited to three occasions per

---

[112] *Ibid*.

[113] Task Force Sept 2004, *supra* note 31 at paras 138, 139.

[114] Bouclin, *supra* note 106 at 82.

[115] The review was required by *LSA* By-law 4, s 33.

calendar year, to eliminate abuse of the previous broader exemption.[116] An exemption was also added for paralegal college students on college-approved work placements, including community legal clinics where services are provided under the supervision of a lawyer.[117] The Association of Community Legal Clinics of Ontario argued, successfully, that clinic staff who do not provide advocacy services, are supervised by a lawyer and covered by insurance, "play an important role in expanding the reach of community legal clinics in providing access to justice to Ontario's low income communities."[118] The PSC's objective was always to reduce the number of exemptions over time.[119] In consultations with stakeholder groups, several boards and tribunals reported that licensing had "significantly improved the standard of professionalism at their hearings."[120] Yet the Ministry of the Attorney General continued to argue for an exemption from licensing for its own employees, such as OWA and OEA staff,[121] which is ironic since it was the Attorney General who pushed to implement paralegal regulation in the first place on the basis that it would increase competence and better protect the public.

The PSC subsequently established an integration process, effectively a second grandparenting period, to give exempted persons a favorable opportunity to acquire a law society

---

[116] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 28 January 2010) at para 3 [LSUC PSC Report Jan 28 2010]. The original exemption allowing such representation "only occasionally" was problematic because that phrase was not defined and was open to abuse. For example, the PSC cited a person who had provided representation as a "friend" before the WSIAT at least 50 times: see paras 34, 35.

[117] *Ibid* at paras 3, 26-30; See also proposed amended version of *LSA* By-law 4, s 34.1 (June 17, 2010) in Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 29 June 2010) [LSUC PSC Report June 29 2010]. The current By-law 4 s 34.4 contains the amendment.

[118] LSUC PSC Report Jan 28 2010, *supra* note 116 at paras 22-30 and Appendix 2.

[119] *Ibid* at paras 8, 9.

[120] *Ibid* at para 16. The individual tribunals are not identified.

[121] *Ibid* at 54-55.

licence,[122] in an effort to bring more individuals within the purview of Law Society governance. The LSUC promised that this would "further enhance consumer protection and access to justice by addressing a … gap in regulation and increasing the number of licensed, competent paralegals."[123] The Law Society's logic seems to have been that licensing would result in competence or, at least, that competence would accompany licensing. The LSUC's own research and resulting actions, however, would appear to confirm otherwise. Its Legal Needs Analysis, conducted in 2011, suggests that licensing alone had not, in fact, ensured paralegal competency.[124]

ii. Subsequent Reviews

Morris, in his five-year review of paralegal regulation, concluded that certain exemptions – for example, law students who provide legal services through a pro bono program under the direct supervision of a lawyer – are easily justified in that they facilitate access to justice without compromising protection of the public interest.[125] But he was critical of other exemptions, such as the exemption granted to municipal prosecutors, which he found difficult to justify "as anything but a fee-saving allowance" granted to individuals and/or their employers.[126] Morris argued that such exemptions fostered "a double-standard" that undermined the Law Society's legislated functions and

[122] LSUC PSC Report April 25 2013, *supra* note 54 at para 21; LSUC PSC Report June 29 2010, *supra* note 116.

[123] LSUC PSC Report June 29 2010, *supra* note 116, "Communications Strategy". A total of 312 candidates became licensed through this integration process: Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 29 January 2015) at para 5 [LSUC PSC Report Jan 29 2015].

[124] The LSUC's "Legal Needs Analysis" is referred to in some detail in LSUC Five-Year Review, *supra* note 1, but is available to neither the public nor Law Society members.

[125] See "Exemptions from Regulation" in section 4, "Key Findings and Observations", and Recommendation 1 of the Morris Report, *supra* note 21.

[126] *Ibid*.

duties.[127] Morris recommended the elimination of exclusions from licensing that could not be justified in terms of facilitating access to justice or protection of the public interest.[128]

The Law Society has continued to monitor the activities of those exempt from licensing and eliminate exemptions where appropriate, in its view, to do so. In 2015, for example, Convocation ended licensing exemptions for the Canadian Registered Safety Professionals (CRSP) and the Appraisal Institute of Canada (AIC) after learning that some members of the CRSP were representing employers and workers at the WSIB and WSIAT, and some members of the AIC had developed a practice of appealing municipal assessments at the Assessment Review Board.[129] The PSC took the position that "it is generally in the public interest for persons offering advocacy services to members of the public, including potentially vulnerable clients, to be licensed [and] insured and required to observe the rules of conduct."[130] Yet the exception for OWA and OEA representatives remains, even though the Law Society determined in March 2016 that it would move to eliminate the exemption for worker advisers and employer advisers.[131] The Law Society reportedly agreed to a transition arrangement such that current OWA and OEA staff may continue to deliver legal services concerning workplace insurance without being licensed, but new staff will be required to be licensed

[127] *Ibid*.

[128] *Ibid*, Recommendation 1.

[129] The CRSP and AIC were exempt under s 30 of *LSA* By-law 4, "Other Profession or Occupation". See LSUC PSC Report Jan 29 2015, *supra* note 123 at paras 7-8.

[130] LSUC PSC Report Jan 29 2015, *supra* note 123 at paras 9-11.

[131] Ontario, Office of the Worker Adviser, "Business Plan 2018-19 to 2020-21" (15 February 2018) at 13, online (pdf): *OWA* <www.owa.gov.on.ca/en/about/Files/18%2002%2015%20%20%202018-19%20OWA%20Business%20Plan%20-%20.pdf> [OWA Business Plan]; Ontario, Office of the Employer Adviser, "Business Plan 2019-2020 to 2021-2022" (2 April 2019) at 11, online (pdf): *OEA* <www.employeradviser.ca/wp-content/uploads/2019/05/OEA-Business-Plan-2019-2022-English-approved-Apr.2-2019.pdf> [OEA Business Plan].

paralegals.[132] By-law 4, however, has not been amended to reflect the elimination of the exemption.[133] Currently, job postings for a Worker Adviser require new hires to be licensed by the Law Society and entitled to provide legal services in Ontario.[134] The Office of Employer Advisor argues that removing the exemption and requiring OEA staff who provide advice and representation to be licensed constitutes an ongoing financial strain for the organization.[135] Yet OWA and OEA staff who provide legal services in relation to the *Occupational Health and Safety Act* (OHSA) must be licensed by the Law Society. This requirement arose only after amendments to the OHSA in 2011 expanded the mandate of the OWA and OEA to educate, advise and provide representation before the Ontario Labour Relations Board to non-unionized workers who experienced reprisals from employers under the OHSA.[136]

Paralegal regulation targeted non-lawyers who were providing legal services directly to the public for a fee. Arguably, regulation also aimed to rein in those legal service providers who were in direct competition with lawyers.

---

[132] OWA Business Plan, *supra* note 131 at 13; A communication from Ontario Office of the Worker Adviser (21 June 2016), on file with author, indicates the Law Society planned to end the exemption as of November 2016, and effective July 1, 2016 all new hires were required to be licensed by the Law Society.

[133] *LSA*, By-law 4, s 31(4) (current as of 20 May 2020).

[134] For a Worker Adviser job posting from 2017, see Ontario, The Ontario Public Service Careers, "Amended – Worker Adviser" (last modified 31 August 2018), online: <www.gojobs.gov.on.ca/Preview.aspx?JobID=113714>.

[135] OEA Business Plan, *supra* note 131 at 11.

[136] Adrian Miedema, "Government OHSA advisors must be licensed paralegals, court decides" (27 May 2014), online: *Canadian Occupational Health & Safety Law* <www.occupationalhealthandsafetylaw.com/government-ohsa-advisers-must-be-licenced-paralegals-court-decides>; *LSUC v OPSEU*, 2014 ONSC 270; *Occupational Health and Safety Act*, RSO 1990, c O.1, s 50.1.

iii. Regulation in Practice

Statutory exceptions and exemptions still leave many non-lawyers providing legal services unregulated by the Law Society.[137] Currently, the Act excludes from licensing those who are deemed not to be practising law or providing legal services, which include a person who is acting in the normal course of carrying on a profession or occupation governed by other provincial or federal legislation that regulated the activities of persons engaged in that profession or occupation; an employee or officer of a corporation who selects, drafts, completes or revises a document for the corporation's use; an individual who is acting on his or her own behalf in relation to a document, a proceeding or otherwise; an employee or volunteer representative of a trade union acting on behalf of the union or a union member in connection with a grievance, labour negotiation, arbitration proceeding or a proceeding before an administrative tribunal; and any other person or member of a class of persons prescribed by the by-laws.[138] By-law 4 adds the following to the list of those persons deemed not to be practising law or providing legal services: an Aboriginal Courtworker; 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, but excluding representing a person in a proceeding before an adjudicative body; and a person whose profession or occupation is not the provision of legal services or the practice of law who represents another person before a committee of adjustment under the *Planning Act*.[139] By-law 4 also sets out exemptions – those who may provide Class P1 (paralegal) legal services without a licence: [140] individuals employed by a single employer that is not a licensee or a

[137] *LSA*, s 1(8) and By-law 4.

[138] *LSA*, ss 1(8), 62(0.1)3.1.

[139] *LSA*, By-law 4, s 28.

[140] *Ibid*, ss 29-34.

licensee firm;[141] employees of a legal clinic funded by Legal Aid Ontario and employees of a not-for-profit organization established for the purposes of providing legal services and funded by the Ontario government;[142] a person who provides legal services on behalf of a friend or neighbour, without compensation, and not more than for three matters per year;[143] a person who provides legal services on behalf of family, without compensation;[144] a member of Provincial Parliament (MPP) or the member's designated staff who provides legal services for and on behalf of a constituent; a certified human resources professional;[145] a public servant working in the Office of the Worker Adviser or Office of the Employer Adviser who engages in advocacy work before the WSIB and WSIAT;[146] a volunteer working with injured workers groups who provides advice and assistance with WSIB and WSIAT matters;[147] and employees and volunteer representatives of trade unions.[148] In addition, an articling or Law Practice Program student may provide legal services, without a licence, but only under direct supervision of a lawyer licensee.[149] Legal aid workers do their jobs alongside duty counsel and staff lawyers in courthouses and legal aid offices. They can assist clients with in-person certificate applications, contacting sureties and adjourning matters in first appearance court.[150] Table 1 sets out

[141] *Ibid*, s 30(1).

[142] *Ibid*, s 30(2),(3).

[143] *Ibid*, s 30(4).

[144] *Ibid*, s 30(5).

[145] *Ibid*, s 30(7).

[146] *Ibid*, s 31(2),(3).

[147] *Ibid*, s 31(4). The exemption for Injured Worker Outreach Services ended September 30, 2017. By-law 4 will be amended to reflect the change: Law Society of Ontario, Paralegal Standing Committee Report, *Ending Licensing Exemption for Injured Workers' Groups* (Toronto: LSO, 27 February 2020).

[148] *Ibid*, ss 29-32.

[149] *Ibid*, s 34.

[150] Legal Aid Ontario, *Annual Report 2017-18* (Toronto: LAO, 7 September 2018) at 23, online (pdf): <www.legalaid.on.ca/wp-content/uploads/LAO-annual-report-2017-18-EN.pdf>.

all those who need not be licensed to provide legal services in Ontario pursuant to the Act and by-laws:

TABLE 1: LICENSING EXCEPTIONS and EXEMPTIONS – *Law Society Act* and By-Law 4[151]

LAW SOCIETY ACT	INDEPENDENT	SUPERVISED	Details
s 1(8): Deemed Not to be Practising Law or Providing Legal Services	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.		
	An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.		employee
	An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.		
	An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.		employee or volunteer
	A person or a member of a class of persons prescribed by the by-laws.		
BY-LAW 4			
Deemed Not to be Practising Law or Providing Legal Services **s 28**	**Aboriginal Courtworker**		Services delivered through an Aboriginal delivery agency contracted with Government of Ontario or of Canada
	Other profession or occupation:		A person whose profession or occupation is not the provision of legal services or practice of law

[151] *LSA*, By-law 4, s 6. The table is current as of 9 March 2020.

	A person who acts in the normal course of another profession or occupation, excluding representing a person in a proceeding before an adjudicative body		
	A person who participates in hearings before a **committee of adjustment** constituted under section 44 of the Planning Act.		A person whose profession or occupation is not the provision of legal services or practice of law
Who may provide Class P1 legal services without a licence **ss 29 - 34**	**In-house legal services provider** who is employed by a single employer (not a licensee or licensee firm) and provides the legal services only for and on behalf of the employer.		Employed (other than a Canadian law student or Ontario paralegal student)
	Individuals employed by a legal clinic within meaning of Legal Aid Services Act, 1998, funded by Legal Aid Ontario, provides legal services only through the clinic, and has professional liability insurance.		Employed (other than a Canadian law student or Ontario paralegal student)
	Not-for-profit organizations established for the purposes of providing legal services funded by Government of Ontario or municipal government in Ontario or Government of Canada – a person who provides legal services only through the organization and has professional liability insurance.		employed Professional liability insurance required
	An individual acting for a friend or neighbour who provides the legal services only for and on behalf of a friend or neighbour, in respect of not more than three matters per year, and for no compensation, gain or reward		one whose profession or occupation is not and does not include provision of legal services or practice of law; services provided for free
	An individual acting for family who provides the legal services only for and on behalf of a related person (within meaning of Income Tax Act (Canada)), and for no compensation, gain or reward		one whose profession of occupation is not and does not include provision of legal services or practice of law; services provided for free
	An MPP or his/her designated staff who provides the legal services only for and on behalf of a constituent		one whose profession of occupation is not and does not include provision of legal services or practice of law
	Other profession or occupation: A person who is a member of the Human Resources Professionals Association of Ontario (Certified HR Professional category) who provides the legal services only occasionally and as ancillary to the carrying on of his/her profession		one whose profession of occupation is not and does not include provision of legal services or practice of law

s 31	**A public servant in the Office of the Worker Adviser** may advise a worker who is not a member of trade union, or the worker's survivors, of his/her legal interests, rights and responsibilities under the Workplace Safety and Insurance Act,1997 and act on behalf of the worker or worker's survivors in connection with matters and proceedings before the WSIB and WSIAT or related proceedings		
	A public servant in the Office of the Employer Adviser may advise an employer of his/her/its legal interests, rights and responsibilities under the Workplace Safety and Insurance Act,1997 or predecessor legislation and act on behalf of an employer in connection with matters and proceedings before the WSIB and WSIAT or related proceedings		
	An individual who volunteers in an Injured workers' group may give a worker advice on his/her legal interests, rights or responsibilities under the Workplace Safety and Insurance Act,1997 and act on behalf of a worker in connection with matters and proceedings before the WSIB and WSIAT or related proceedings		*This exemption will soon be revoked.* (See *supra,* note 147.)
s 32	**An employee of a trade union, a volunteer representative of a trade union** or an individual designated by the Ontario Federation of Labour may provide to the union, a member of the union, a former member of the union or a survivor, the following: give the person advice on his/her or its legal interests, rights or responsibilities in connection with a workplace issue or dispute, act on behalf of the person in connection with a workplace issue or dispute or related proceeding before an adjudicative body (other than a federal or provincial court) and may act on behalf of the person in enforcing benefits payable under a collective agreement in Small Claims Court		
s 34		Provision of legal services by student while articling or at work placement in Law Practice Program, under direct supervision of L1 licensee (barrister or solicitor)	

While there is an exception for members of another profession or occupation to provide some legal services in the ordinary course of their business,[152] these non-lawyers have long been providing legal services and most are otherwise licensed or regulated. In 1942, Urquhart J. of the Ontario High Court of Justice commented on the thousands of dollars' worth of business "taken from lawyers" by real estate agents, insurance agents and others.[153] The Real Estate Council of Ontario regulates real estate professionals.[154] The Financial Services Regulatory Authority of Ontario regulates insurance agents and adjusters and accident benefit service providers.[155] Land surveyors in the province are regulated by the Association of Ontario Land Surveyors, a self-governing association established in 1892.[156] Chartered professional accountants are regulated by CPA Ontario.[157]

II. THE EXERCISE OF REGULATORY AUTHORITY

The government's promises of paralegal regulation – in the public interest to enhance access to justice – were generally but not entirely nor specifically reflected in the proposed approach to paralegal regulation.[158] The Law Society of Ontario claims that it governs to ensure that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence

---

[152] *Ibid*, s 28.

[153] *Re The Solicitors Act; Re Hood*, [1942] OR 611 (HC).

[154] Real Estate Council of Ontario, "About" (last visited 5 May 2020), online: <www.reco.on.ca/about/>; *Real Estate and Business Brokers Act, 2002*, SO 2002, c 30, s 4.

[155] Financial Services Regulatory Authority of Ontario, "About FSRA" (last visited 5 May 2020), online: <www.fsrao.ca>; *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8.

[156] Association of Ontario Land Surveyors, "About AOLS" (last visited 5 May 2020), online: <www.aols.org/about-us/about-aols>; *Surveyors Act*, RSO 1990, c S.29, ss 2, 11.

[157] CPA Ontario, "Stewardship of the Profession: Governance" (last visited 5 May 2020), online: <www.cpaontario.ca/stewardship-of-the-profession/governance>; *Chartered Professional Accountants of Ontario Act, 2017*, SO 2017, c 8, Sched 3, ss 5, 8.

[158] Task Force Sept 2004, *supra* note 31 at para 66. Paralegal regulation was also intended to mirror the regulation of lawyers wherever possible, to avoid confusion and duplication.

and professional conduct.[159] In 2012, on the five-year anniversary of the implementation of paralegal regulation, though, the LSUC acknowledged that it was early in the development of the paralegal regulatory model and recognized that "future enhancements and refinements" would be required and would also improve regulation for both the public and paralegals.[160] According to Laurie Pawlitza, then-Treasurer of the LSUC, the problem of access to legal services, the effectiveness of the justice system, and the need for qualified assistance for users of the system are entwined.[161] This part now turns to a more detailed examination of the Law Society's exercise of regulatory authority over paralegals.

A. Choice

The government promised that paralegal regulation would provide the public increased choice through the availability of other (non-lawyer) qualified legal providers. Increased choice and availability are inextricably tied to paralegal scope of practice which must be sufficiently broad such that, from an access to justice perspective, it includes areas of paralegal practice consistent with the public's (unmet) needs. Increased choice, then, would presumably result from the increased number of competent legal service providers qualified to provide a range of legal services. But would regulation actually increase the range of qualified legal service providers and their services and offer the public more assistance with their legal needs? Some suggest it had the opposite effect, that the

[159] Law Society of Ontario, "About LSO" (last visited 5 May 2020), online: <lso.ca/about-lso >.

[160] LSUC Five-Year Review, *supra* note 1 at 26.

[161] Law Society of Upper Canada, *Treasurer's Report to Convocation* (Toronto: LSUC, 26 April 2012) at para 7, online (pdf): <www.lawsocietygazette.ca/conv/convapr12-legal-needs-analysis.pdf> [Treasurer's Report April 26 2012].

imposition of regulation discouraged or reduced independent non-lawyer legal services activity in Ontario.[162]

i. History: Determining Scope of Practice

Defining paralegals' scope of practice was a contentious issue from the start, and that contentiousness was "sidestepped…for the purposes of introducing regulation."[163] Indeed, a lack of consensus about the scope of paralegal activities was a principal reason why early attempts to implement a paralegal regulatory scheme failed.[164] Adams asserts that scope of practice is often at the heart of most inter-professional conflicts.[165] It seems lawyers were not willing to cede much of their traditional turf. The Law Society had a significant role to play in determining paralegal scope of practice, even though it would seem to be apparent that any decisions by the legal profession, which held the balance of power, about competitive legal service providers and their scope of permitted services would be clouded, if not compromised, by self-interest.[166] In the result, paralegal scope of practice was confined to the existing scope of practice permitted by statutory authority – in other words, essentially the same scope of practice that unregulated paralegals already had. The existing, pre-regulation scope of practice might well have been a ready solution to the long-standing dispute

[162] Law Society of Alberta, *Alternative Delivery of Legal Services: Final Report* (February 2012) at 23, online (pdf): <www.cba.org/CBA/cle/PDF/JUST13_Paper_Billington.pdf>.

[163] See "Scope of Practice" in section 4, "Key Findings and Observations", of the Morris Report, *supra* note 21. See also LSUC Five-Year Review, *supra* note 1 at 8.

[164] See LSUC Paralegal Regulation Proposed Approach Sept 2004 at 19 SEE Chapter 2 footnotes 328.

[165] Tracey L Adams, "Inter-professional Conflict and Professionalization: Dentistry and Dental Hygiene in Ontario," (2004) 58:11 Social Science & Medicine 2243 at 2249.

[166] See Malcolm Mercer, "Mired in Conflict? Me Deciding Whether You Can Compete With Me" (10 July 2020), online (blog): *SLAW blog*: <http://www.slaw.ca/2020/07/10/mired-in-conflict-me-deciding-whether-you-can-compete-with-me/comment-page-1/>.

over jurisdiction and the quickest route to implementing regulation[167] and, arguably, in the public interest, but it was also a convenient solution for the Law Society – it would need not to give up or share any of lawyers' exclusive practice areas. In short, adopting a paralegal scope of practice that already existed pursuant to legislation (and which the Law Society had no authority to quash anyway) that resulted in no loss of ground for lawyers, rather than carving out a new or expanded scope of practice for paralegals, was convenient if not beneficial for the Law Society. Paralegal scope of practice was not only limited but limiting from the start.

Research conducted by the Ianni Task Force in the late 1980s found that as many as 750 independent (non-licensed) paralegals provided a wide range of legal services in Ontario that included but were not limited to representation in a range of practice areas – in matters in respect of *Highway Traffic Act* and other provincial offences, and summary conviction offences and bail hearings under the *Criminal Code*, at Small Claims court, and before a variety of administrative tribunals (in matters concerning social assistance and unemployment insurance, workers' compensation applications, landlord and tenant disputes including rent review applications, and others).[168] Non-lawyers were also providing legal services in other areas such as immigration matters, real estate matters, debt counselling, pardons for criminal offences, general assistance with filling out and filing government documents and other forms, and drafting simple wills, powers of attorney, and simple incorporations.[169] Some were also practicing in family law.[170] Ianni reported that the range of services

[167] LSUC, "Governing in the Public Interest", *supra* note 14 at 6.

[168] RW Ianni, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) at 19 [Ianni Report].

[169] *Ibid* at 18-20.

[170] Ha-Redeye, *supra* note 7.

provided by independent paralegals appeared to be expanding and these services had "generally been accepted and approved by the public who regard them as a viable option to those traditionally provided by lawyers."[171] Significantly, Ianni also reported that "the heaviest concentration of activity" for individual paralegals was in the areas of highway traffic offences, immigration, and divorce matters, and "less frequently" in workers' compensation applications, landlord and tenant issues, and Small Claims court cases.[172] At WSIAT, for example, non-lawyer representatives outnumbered lawyer representatives in most of the years since the tribunal was created in 1985, long before paralegal regulation was implemented.[173]

Other areas of practice were proposed but rejected. Zemans recommended, without success, a scope of practice that included family law advocacy matters[174] and solicitors' work such as real estate, wills and estates, and incorporations.[175] Both Ianni and Cory J. had recommended that licensed paralegals be permitted to draft wills.[176] The area of family law, particularly, generated much debate. Arguments in favour of including family law matters in paralegal scope of practice cited the high number of unrepresented parties in Family Court[177] but the Family Lawyers' Association was

[171] Ianni Report, *supra* note 168 at 20.

[172] WA Bogart & Neil Vidmar, "An Empirical Profile of Independent Paralegals in the Province of Ontario" in Ianni Report, *supra* note 168 at 153.

[173] See Chapter 5 herein at n 5.

[174] Zemans, *supra* note 42 at 48-52.

[175] *Ibid* at 72-77. See also Task Force Sept 2004, *supra* note 31 at para 40. Justice Cory, too, had recommended that paralegal scope of practice include solicitors' work: Peter de C Cory, *A Framework for Regulating Paralegal Practice in Ontario: Executive Summary and Recommendations* (Ontario: Ministry of the Attorney General, 2000), at Recommendations 42-44 [Cory Report].

[176] Ianni Report, *supra* note 168 at 73; Cory Report, *supra* note 175 at 72.

[177] Task Force Sept 2004, *supra* note 31 at paras 40, 75.

strongly opposed.[178] Although the Task Force acknowledged concern about the number of unrepresented parties in family law cases, it did not believe that representation by agents was an appropriate solution to the problem.[179] Expanding scope of practice to include family law would continue to be a contentious issue, as discussed later in this chapter. Nor was the Task Force convinced that expanding the scope of paralegal practice to include solicitor's work was necessary from an access to justice perspective since there was no evidence that solicitors were difficult to obtain for wills and real estate transactions."[180] Most significantly, perhaps, is that the determination of paralegal scope of practice was not based on legal needs[181] but instead, expediency,[182] which raises concerns about the LSUC's commitment to access to justice. How genuine was the commitment to enhancing access to justice[183] if regulated paralegals' scope of practice was determined without any actual evidence of or regard for the nature and extent of the legal needs of Ontarians? This strongly suggests that what the Law Society (with government support) would permit paralegals to do emanated more from an economic protectionist[184] stance than an access to justice objective and is consistent with the market control theory of professional regulation – that lawyers as a profession are inclined to, and do, exercise of a substantial degree of control over the market for

[178] *Ibid* at para 79.

[179] *Ibid* at para 80.

[180] *Ibid* at paras 74-76.

[181] *Ibid* at para 74. This is seemingly confirmed by the Law Society of Ontario: Saskatchewan Legal Services Task Team, *Final Report of the Legal Services Task Team* (14 August 2018) at 77, online (pdf): <www.lawsociety.sk.ca/media/395320/107840-legal_services_task_team_report_august_14-_2018-1.pdf>.

[182] See "Scope of Practice" in section 4, "Key Findings and Observations", of the Morris Report, *supra* note 21.

[183] It was the main rationale for paralegal regulation: see Chapter 2 herein.

[184] Deborah L Rhode, "The Profession and the Public Interest" (2002) 54:6 Stan L Rev 1501 at 1519.

legal services.[185] It appears the Law Society, in determining paralegals' scope of practice, was also seeking to protect lawyers from competition from within.[186]

In the result, the Law Society's permitted paralegal scope of practice mirrored existing practice areas already authorized by law – essentially, representation – matters in Small Claims Court, *Provincial Offences Act* matters in the Ontario Court of Justice, summary conviction matters under the *Criminal Code*, matters before provincial and federal tribunals, and certain matters pursuant to the Statutory Accident Benefits Schedule (no-fault motor vehicle insurance matters) under the *Insurance Act.*[187] The focus was on advocacy work because, according to the Task Force, there existed "a need for services in advocacy areas where it … [was] difficult to obtain the services of a lawyer."[188] Notably, paralegal scope of practice did not include two of the three main practice areas in which independent paralegals had already been practicing: immigration and divorce matters. The role of advocate is at the core of paralegal scope of practice.[189]

ii. Regulation in Practice: Expansion of Scope of Practice

Merely regulating existing authorized non-lawyer practice may have been the quickest and least contentious route to finally implementing paralegal regulation but doing so also effectively

[185] Richard L Abel, "England and Wales: A Comparison of the Professional Projects of Barristers and Solicitors" in Richard L Abel & Philip SC Lewis, eds, *Lawyers in Society: The Common Law World* (California: University of California Press, 1988) 23.

[186] *Ibid* at 23-24.

[187] Task Force Sept 2004, *supra* note 31 at paras 73-84; *LSA*, By-law 4, s 6.

[188] Task Force Sept 2004, *supra* note 31 at para 74.

[189] *LSA*, s 1(7) defines "representation" as determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document, conducting an examination for discovery, and engaging in any other conduct necessary to the conduct of the proceeding.

cemented for paralegals a scope of practice no broader than had already existed. Arguably, that was not in the public interest nor paralegals' interest. After the first five years, the LSUC committed to review paralegal scope of practice.[190] The issue of an expanded paralegal scope of practice continues to fan the flames of the seemingly endless debate over paralegal competence and what paralegals should be allowed to do, exposing lawyers' tendencies to protect their traditional turf and exacerbating long-existing tensions between lawyers and paralegals. To date, more than thirteen years since regulation was implemented, paralegal scope of practice has expanded in only one area and only slightly, and now includes representation before the Immigration and Refugee Board and the provision of legal services for matters relating to an IRB hearing.[191] In 2010, the LSUC argued, successfully, before the House of Commons Standing Committee on Citizenship and Immigration for expansion of paralegal practice to include representation before the Immigration and Refugee Board on the basis that the paralegal licensing regime already provided "effective consumer protection in the public interest."[192] Ultimately, what legal services paralegals or other non-lawyers may provide in

[190] LSUC Five-Year Review, *supra* note 1 at 27.

[191] *LSA*, By-law 4, s 6(7)2(iv). This change was brought about by Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act*, 3rd Sess, 40th Parl, 2011 (assented to 23 March 2011), SO 2011, c 8. This Act was formerly called the *Cracking Down on Crooked Consultants Act*. See also Law Society of Ontario, "FAQ – Who Needs a License?" (last visited 5 May 2020), online: <lso.ca/becoming-licensed/paralegal-licensing-process/faqs> [LSO FAQ]: "Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act* came into force on June 30, 2011 and paralegals licensed by the Law Society became eligible to provide certain legal services in immigration law. Specifically, they may appear before the Immigration and Refugee Board (IRB) to represent clients in a hearing and can provide legal services to clients for matters relating to an IRB hearing (By-law 4, s. 6(2)2(iv)). Licensed paralegals may not draft documents or engage in other legal services practices that are not related to an IRB hearing as such fall outside paralegal scope of practice". See also LSA, *supra* note 36, By-law 4, s 6.

[192] Law Society of Upper Canada, *Submission to the Standing Committee on Citizenship and Immigration* (Toronto: LSUC, 1 November 2010) at para 22 [LSUC Submission]. The Standing Committee heard submissions regarding Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act*. Paralegals who are licensed by the Law Society became eligible to provide certain legal services in immigration law. Paralegals, like lawyers, who are licensed by the LSO may appear at the Immigration and Refugee Board pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 as amended.

immigration and refugee matters is federally regulated. Despite repeated calls for expansion,[193] the Law Society has not further expanded paralegal scope of practice although change appears to be on the horizon. Scope of practice is, purportedly, poised to expand into family law to help address the well-documented gap in affordable legal services and the need for access to legal assistance for the majority of litigants who are self-represented in family court.[194] Scope of practice might also expand with respect to criminal summary conviction matters. The pending expansion of scope of practice into family law and the possible expansion with respect to criminal summary matters are discussed further below. The history of debates and discussions about paralegal activities exposes the clash of interests that has long existed as well as overwhelming reluctance by many to "allow" paralegals a greater scope of practice. It also exposes the inherent tensions and conflict of interest at the heart of the legal profession's self-regulatory privilege and its new-found authority to regulate others. The

[193] The LSUC Five-Year Review of paralegal regulation found that while the majority (62%) of paralegals were reportedly satisfied with the scope of practice, others believed it should be expanded: LSUC Five-Year Review, *supra* note 1 at 4. A paralegal's role (but not scope of practice) expanded in July 2013 when licensed paralegals were added to the list of those who, by virtue of office, are commissioners for taking affidavits: *Commissioners for Taking Affidavits Act,* RSO 1990, c C.17; O Reg 386/12, s 1(1)4.1.

[194] See Ontario Civil Legal Needs Project, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, May 2010) at 57: "Access to resources in family law in the form of information, legal and social assistance, and resolution of family law problems for low and middle-income Ontarians is a priority issue for the civil legal system…[A]ddressing the gap in services and support in family law will require a range of services from all partners in our civil legal system" [Ontario Civil Legal Needs Project]. See also Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report* (May 2013) at 33, online (pdf): <representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf> [Macfarlane, *NSRLP Report*], which found that across Ontario, 64% of individuals involved in applications under the *Family Law Act*, the *Children's Law Reform Act* or the *Divorce Act* were self-presented at the time of filing. Also, at 39: Across Ontario, British Columbia and Alberta, the most consistently cited reason for self-presentation was the inability to afford or retain, or to continue to retain, legal counsel. Macfarlane recommended a re-evaluation of the historical reasons for the restriction of para-legal services in Canada, and stated at 123: "Such an evaluation should include urgent reconsideration of the types of assistance that can be lawfully offered by (licensed) para-legals, especially in relation to family matters where the need appears to be greatest".

same arguments about non-lawyer competence, quality of service and consumer protection continue with similar vigour.

a. Family Law

It is significant that, prior to the implementation of regulation, Ontario's family court rules allowed a party to be represented by a non-lawyer[195] yet this permitted practice area was excluded from paralegal scope of practice upon regulation. The Law Society first agreed to consider expanding paralegal scope of practice to include family law matters in 2010, but only in response to a motion filed by a group of paralegals asking Convocation to review the expansion of permitted areas of paralegal practice to include certain family law-related services: the preparation of documents, representation before family court on certain matters, drafting uncontested divorces and drafting incorporations.[196] Family lawyers were reportedly "up in arms" over such a request.[197] Then-Treasurer Laurie Pawlitza reminded Convocation of its obligation to the public interest, arguing that "[a]s clients' needs change, our mandate requires that we address the growing variety of legal needs in a creative and accessible way."[198] Strong opposition to expanding paralegal practice to include family law matters came from the Ontario Bar Association's Family Law section and the Family Lawyers

[195] O Reg 114/99: Family Law Rules, Rule 4(1)(c): "A party may be represented by a person who is not a lawyer, but only if the court gives permission in advance." O Reg 114/99 is under the *Courts of Justice Act*, RSO 1990, c C.43.

[196] Law Society of Upper Canada, "Notice: Annual General Meeting – Motion" (26 March 2010), online: *Slidelegend* <slidelegend.com/motion-law-society-of-ontario_5b243b5e097c4710738b4570.html>.

[197] Michael McKiernan, "Update: Paralegals Call Truce Over Law Society Motion", *Law Times* (2 May 2010), online: <www.lawtimesnews.com/20100503762/headline-news/update-paralegals-call-truce-over-law-society-motion>[McKiernan, "Truce"].

[198] "Paralegal Update: Paralegal scope of practice under review", *Ontario Lawyers Gazette* 15:1 (Spring 2011) at 27, online (pdf): <lawsocietygazette.ca/wp-content/uploads/2013/01/gazette-2011-01-spring.pdf>.

Association.[199] Georgina Carson, chairwoman of the OBA's family law section, argued that only family law lawyers are qualified to steer families through this complex area of law.[200] But that is, in part, a faulty and self-serving argument – as part of the regulatory scheme, any expansion of scope of practice would need to be, and easily could be, accompanied by enhancement of educational and licensing requirements. Morris, in his review of regulation at the five-year mark, would recommend just that – the LSUC should "actively pursue opportunities to facilitate greater access to justice" by broadening of the scope of permissible paralegal practice, but cautioned that any expansion of the scope should be directly linked to a comprehensive review of the paralegal training and examination regime, starting with a re-assessment of the competency profile that is appropriate for the legal services permissibly offered by newly-licensed sole practitioners.[201] The Law Society, in 2011, reportedly began a process of small group consultations with lawyers, paralegals, adjudicators, and judges to obtain views on the need for expanded legal services in a variety of areas.[202] In considering how best to approach its review of paralegal scope of practice, the LSUC was mindful that, as regulator, it "must ensure that lawyers and paralegals are well-trained and competent to serve the needs of clients."[203] In 2012, the LSUC, set out on an "ambitious" enquiry to ascertain the public's legal needs so that it might expand paralegal scope of practice to meet those needs,[204] suggesting

[199] McKiernan, "Truce", *supra* note 197. McKiernan further reported that the Family Lawyers Association had started a poster campaign in courthouses around the province urging lawyers to attend the AGM (presumably to oppose the motion).

[200] *Ibid*.

[201] Morris Report, *supra* note 21, Recommendations 4 and 10. Morris delivered his report in November 2012, well after the LSUC's Legal Needs Analysis. He did not review the report(s) of the LNA.

[202] Treasurer's Report April 26 2012, *supra* note 161 at paras 4-5.

[203] *Ibid* at para 1.

[204] *Ibid* at para 4. The Law Society's *Legal Needs Analysis* report, however, is not available to the public or to members of the Law Society: emails from Diana Miles, then-Executive Director, Organizational Strategy and Professional Competence, LSUC, dated March 14 & 31, 2016, are on file with author.

the public's needs were not ascertained when the paralegal regulatory scheme was designed and scope of practice initially determined. Such an approach that does not ascertain nor is designed to meet the public's needs is arguably not in the public interest. In 2013, paralegals again brought another motion seeking to expand their scope of practice to include family law and other practice areas, but withdrew the motion after Convocation assured the paralegals that it was addressing the matter.[205] Again, the motion reportedly stirred "fierce debate between paralegals, who say it's time they practised with fewer limitations, and lawyers who argue only law school can prepare a person for the kind of work they do."[206] Paralegal scope of practice still did not expand into family law matters, despite recognized and documented unmet legal needs in family law. In a 2013 study, Julie Macfarlane found that more than half of litigants involved in family law applications before Ontario courts were self-represented, mainly because of an inability to afford a lawyer. Macfarlane called on policy makers and professional regulators to re-evaluate the historical reasons for the restriction of paralegal services in Canada, including "urgent reconsideration of the types of assistance that can be lawfully offered by (licensed) paralegals, especially in relation to family matters where the need appears to be greatest."[207] Instead, family lawyers continued to resist efforts to expand paralegal scope of practice to include any family law legal services.[208]

---

[205] Yamri Taddese, "Paralegal Motion Withdrawn Hours Before Law Society AGM", *Canadian Lawyer* (8 May 2013), online: <www.canadianlawyermag.com/news/general/paralegal-motion-withdrawn-hours-before-law-society-agm/271984>. The motion sought an expanded scope of practice allowing paralegals to practise fully in other areas such as immigration law. See also Treasurer's Report April 26 2012, *supra* note 161 at para 3.

[206] Taddese, *supra* note 205.

[207] Macfarlane, *NSRLP Report*, *supra* note 194. See also Ontario Civil Legal Needs Project, *supra* note 194 at 56.

[208] Julie Macfarlane, "A Week of Contradictions: Why I Sometimes Feel Despair About the Profession I Love" (27 April 2016), online (blog): *NSRLP* <representingyourselfcanada.com/2016/04/27/> [Macfarlane, "Contradictions"].

Then, in early 2016, Ontario's Attorney General and the Law Society established a public consultation to explore ways to make family legal services more accessible by expanding the choice of available legal services providers – "for example, law clerks or law students, who could also offer qualified legal services in family law."[209] Bonkalo J. was appointed to lead the review.[210] But why look to law clerks, law students and others, potentially? Why not look to licensed paralegals, a seemingly obvious and ready solution? Curiously, the Family Legal Services Review was undertaken separate from any review of paralegal scope of practice by the Law Society. The Review's search for "alternative and affordable models" of family legal services delivery[211] suggests an unwillingness by both the government and the LSUC to open the doors of the family justice system, even just a little, to licensed paralegals. The Review's terms of reference state that "[s]ome reports have identified that permitting paralegals to handle certain family law matters without the supervision of a lawyer deserves careful consideration."[212] It is curious, and not insignificant, that the Review seemed prepared, even determined, to look past independent, licensed paralegals to those who work only under lawyer supervision, who do not bill independently for their services and, unlike paralegals, do not compete with lawyers in providing legal services for a fee. It seems the government and the Law Society were together seeking alternatives not only to lawyers but also to paralegals, without any explanation as to why. In language almost identical to the Ianni Task Force more than twenty-five years before regarding the need to regulate paralegals,[213] the background paper to the Family Legal

[209] *Ibid.* Ontario, Ministry of the Attorney General, "Terms of Reference for Family Legal Services Review" (9 February 2016), online: <news.ontario.ca/mag/en/2016/02/terms-of-reference-for-family-legal-services-review.html>.

[210] *Ibid*.

[211] *Ibid*.

[212] *Ibid.*

[213] Ianni Report, *supra* note 168 at 39.

Services Review identified a need to increase access to alternative and affordable ways to obtain qualified legal services, and the "challenge is to develop a regulatory framework that broadens access but still ensures the competence of legal service providers in the quality of service they provide."[214] But that regulatory framework, according to the LSUC itself, already existed.[215] Before turning to Bonkalo J.'s findings and recommendations, the establishment of the Review eight-and-a-half years after paralegal regulation was implemented raises some key questions. Why were paralegals still being excluded from the family justice system? Was there evidence they could not provide qualified legal services? Or that they were no more affordable than lawyers? If either is correct, or both are, then the LSUC's paralegal regulatory scheme had utterly failed – neither affordable services or competent paralegals, the very purposes of regulation, had resulted from the new regulatory scheme, contrary to the government's promises of regulation and the Law Society's access to justice and public interest mandates. Arguably, not expanding paralegal scope of practice to include at least some family law matters and seeking other alternatives to the high cost of lawyers' services have little to do with competence or access, but much to do with family lawyers' (perceived) exclusive monopoly over the family legal services market. The Family Legal Services Review (its terms of reference, at least) seemed to expose yet another example of the self-regulating legal profession putting its own interests ahead of the public interest. That family lawyers were (and continue to be) able to wield this economic self-interest is contrary to the stated rationales for paralegal regulation and as a result, one might expect although incorrectly, that such a stance would draw sanction if not

[214] Ontario, Ministry of the Attorney General, "Expanding Legal Services Options for Ontario Families" (9 February 2016), online: <www.attorneygeneral.jus.gov.on.ca/english/family/legal_services_consultation_paper.html> [MAG Expanding Legal Services].

[215] See LSUC Five-Year Review, *supra* note 1; LSUC Submission*, supra* note 194.

from the LSUC, at least by the provincial government from which the Law Society gets its authority to self-govern.[216] And yet, the government and the Law Society seemed determined, and were perhaps even complicit, in looking beyond licensed paralegals and to others.

Expanding paralegal scope of practice did not appear to be an urgent matter even for the PSC. Its preferred approach, it stated, is "incremental and methodical in order to avoid undue risk."[217] If the "risk" is a lack of, or shortfall in, competence then a serious flaw of the paralegal licensing scheme is exposed, which impacts consumers of legal services and the public interest; if the "risk" is to the profession – lawyers ceding too much authority to paralegals and thereby losing their monopoly over family law legal services – the impact is felt only by the profession. One might reasonably wonder if the PSC's cautious approach stems from its non-paralegal majority and/or from its need for the approval of Convocation, which is overwhelmingly comprised of lawyers, for any of its recommendations.

Bonkalo J. saw the Review as an important opportunity for public interest analysis of the delivery of legal services and she approached it with consideration of what would best serve the interests of the public.[218] In the end, Bonkalo J. concluded that paralegals' scope of practice should be expanded into family law,[219] a somewhat surprising result given the Review appeared to be

---

[216] See Chapter 4, Part II herein for a discussion of similar themes with respect to regulation of the health professions in Ontario.

[217] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 27 February 2014) Tab 5.3.2, "Progress Report on Paralegal Regulation" at paras 27, 28, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convfeb2014_psc.pdf>.

[218] *Ibid*, Part 4.

[219] Ontario, Ministry of the Attorney General, *Family Legal Services Review*, Justice Annemarie E Bonkalo (Toronto: MAG, 31 December 2016) at Recommendation 4, online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/> [Bonkalo Report].

designed to find otherwise – that is, to find alternatives to both lawyers and paralegals in the provision of family law services. Bonkalo J. argued that some assistance is better than no assistance "where paralegals, properly trained and regulated, are able to provide legal services in family matters."[220] She also was of the view that paralegals would provide greater choice of legal service provider for those in the middle class.[221] More particularly, Bonkalo J. recommended that paralegals be required to obtain a specialized license in order to provide some legal services in family law matters, including assistance with document preparation, legal advice, and representation in mediated negotiations and in court (but not at trial), independently – that is, without lawyer supervision.[222] Precluding paralegals from appearing in court "would be a disservice to clients."[223] Bonkalo J. recommended that paralegals be permitted to provide "a complete spectrum of services in prescribed areas of family law that are typically (but by no means always) less complex than others."[224] Not everyone agreed.[225] Some family lawyers and judges insisted that paralegals should be restricted to providing only legal information and guidance[226] or completing only delegated work under lawyer supervision.[227] But

[220] *Ibid*, Part 2b.

[221] *Ibid*.

[222] *Ibid*, Recommendations 4, 6.

[223] *Ibid*, Part 4, 2b and Recommendations 4, 5, 6.

[224] *Ibid*, Recommendation 4.

[225] Macfarlane, "Contradictions", *supra* note 208; Ontario Bar Association, "Comments on the Family Legal Services Review Report" (Toronto: CBA, 15 May 2017) at 22 [OBA Comments].

[226] OBA Comments, *supra* note 225 at 4-6; Letter from Chief Justices Heather J Smith & Lisa Maisonneuve to the Honourable Yasir Naqvi & Treasurer Paul B Schabas (26 May 2017) in *Family Law Services Review Report Call for Input: Organization Submissions* at 19, online (pdf): *LSO* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/f/flsrorsubmissions.pdf> [Organization Submissions].

[227] The Advocates' Society, "Response to Public Consultation: Expanding Legal Services Options for Ontario Families" (29 April 2016) in Organization Submission, *supra* note 226 at 431.

LSO[228] Convocation appears to have responded appropriately – perhaps it had little choice given it played a prominent role in establishing the Review in the first place – and has expressed its intention to expand paralegal scope of practice to include family law matters.[229] It agrees that this expanded scope is intended to improve access to justice for the public and not to serve the professional interests of either lawyers or paralegals.[230] But more than two years have passed; paralegal scope of practice has not yet been expanded, expansion is not imminent,[231] and the family bar's resistance to sharing what it considers its exclusive practice area persists.[232] Many lawyers argue that anything less than a law degree is inadequate preparation for the complexities of family law.[233] This continued opposition is perhaps understandable given Bonkalo J.'s position that only licensed and independent paralegals can offer meaningful competition to lawyers.[234]

---

[228] The Law Society of Upper Canada changed its name to the Law Society of Ontario on 3 November 2017, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/n/new/news-name-change-nov-2-2017-en.pdf>. The *Law Society Act* was amended accordingly on 8 May 2018, online: <https://lso.ca/news-events/news/2018/amendments-to-legislation-make-law-society-of-onta>.

[229] Law Society of Ontario, "Law Society benchers approve action plan to improve access to justice for families via special licensing for paralegals and others" (1 December 2017), online: <lso.ca/news-events/latest-news/latest-news-2017/law-society-benchers-approve-action-plan-to-improve-access-to-justice-for-families-via-special-licen>.

[230] Law Society of Upper Canada, Access to Justice Committee, *Report to Convocation* (Toronto: LSUC, 1 December 2017) at para 21, online (pdf): <afccontario.ca/wp-content/uploads/2017/12/LSUC-Convocation-Access-to-Justice-committee-Report-Dec-1-17.pdf> [LSUC, "Report to Convocation 2017"].

[231] In June 2020, the LSO put out a call for comments on a proposed Family Legal Services Provider (FLSP) Licensing model seeking to "engage in productive dialogue with the legal community and the public on the most effective approach to improving access to family law services." The deadline for submission of comments is 30 November 2020: Law Society of Ontario, "Family Legal Services Provider Call for Comment" (26 June 2020), online: <https://lso.ca/about-lso/initiatives/family-law-action-plan/flsp-call-for-comment>.

[232] Michael McKiernan, "Paralegals in family law", *Canadian Lawyer* (19 March 2018), online: <www.canadianlawyermag.com/author/michael-mckiernan/paralegals-in-family-law-15386/> [McKiernan, "Paralegals"].

[233] *Ibid.* It's a familiar argument: see Law Society of Upper Canada, *An Analysis of A Framework for Regulating Paralegal Practice in Ontario* (Toronto: LSUC, 24 July 2000) at 11 (at Chapter 2 herein, fn 186).

[234] Bonkalo Report, *supra* note 219, Part 4, 2b.

The delay in implementing Bonkalo J.'s recommendations and expanding paralegal scope of practice might be because, as Rhode argues, once there is evidence that non-lawyers can competently perform many of the same services as lawyers do and provide quality services, it becomes more difficult for law societies and lawyers to claim exclusive knowledge, skill, and status and to protect themselves from outsiders – non-lawyer competitors.[235] Given the extent of unmet legal needs in family law,[236] lawyers' opposition to paralegals providing any family law services independent of lawyer supervision smacks of heavy-handed protectionism that does little to serve the public interest.

b. Criminal Law – Summary Offences

Recent amendments to the *Criminal Code* (in 2019) that reclassified offences and increased the maximum term of imprisonment for many summary offences[237] required the Law Society to re-examine paralegal scope of practice in this area. Prior to the *Criminal Code* amendments, the maximum penalty for most summary offences was a fine not exceeding $5000, six months in prison, or both.[238] The amendments harmonized the default maximum penalty for summary offences to two years less a day, thus increasing the maximum penalty for many offences.[239] Pursuant to section 802.1 of the *Criminal Code*, agents – persons other than lawyers such as paralegals, articling students and

---

[235] Deborah L Rhode, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice" (1996) 1 J Inst for Study Legal Ethics 197 at 203 [Rhode, "Perspective"].

[236] See Macfarlane, *NSRLP Report*, *supra* note 194. See also Ontario Civil Legal Needs Project, *supra* note 194 at 56.

[237] Canada, Department of Justice, "Legislative Background: *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, as enacted (Bill C-75 in the 42nd Parliament): Overview of Former Bill C-75" (last modified 6 September 2019), online: www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html [Legislative Background]. The amendments came into force on September 19, 2019.

[238] *Ibid.*

[239] *Ibid.* The federal government's objective was not to signify that those offences with an increased penalty should be punished more seriously, but to standardize the approach to summary conviction offenses.

non-legally trained individuals – may represent defendants in summary conviction matters that carry a maximum penalty of imprisonment of six months or less, unless the agent is authorized to do so under a provincially or territorially-approved program, such as the Indigenous Courtworker programs, student legal clinic/articling programs and paralegal programs.[240]

Prior to these amendments, and from the outset of regulation, the Law Society's paralegal scope of practice permitted paralegals to represent a party before a summary conviction court[241] but this was restricted by section 802.1 of the *Criminal Code* that limited agent representation to only those offences with a maximum penalty of six months' imprisonment.[242] According to the Law Society, paralegal scope of practice in summary conviction matters was created with reference to section 802.1 and "was intended to be limited accordingly."[243] As a result of the recent *Criminal Code* amendments,[244] paralegal scope of practice with respect to summary offences was virtually eliminated as there was no provincially-approved authorization for licensed agents to appear on summary conviction offences that carry a maximum penalty greater than six months.[245] To avert this, Ontario's

[240] *Criminal Code*, s 802.1; Legislative Background, *supra* note 237.

[241] *LSA*, By-law 4, s 6(2)(2)(iii); See also Law Society of Ontario, Paralegal Standing Committee, *Bill C-75 Response* (11 September 2019) at 9, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2019/convocation-september-2019-paralegal-standing-committee-report.pdf> [LSO, PSC, Bill C-75 Response].

[242] *Criminal* Code, s 802.1; See also Law Society of Ontario, Paralegal Standing Committee, *Convocation Minutes – Transcript of Debates* (11 September 2019) at 12, online: <http://lx07.lsuc.on.ca/R/QQQFKTRLSFYDS97EK5RSRQNJJ3UJYC3SB6NBXXKJ9MKHQI89A5-01880> [LSO 2019 Convocation Minutes].

[243] LSO, PSC, Bill C-75 Response, *supra* note 241 at 4. Bencher Megan Shortreed has stated that paralegals' role has been defined more by the Criminal Code than by the Law Society itself: Anita Balakrishnan, "Law Students, Paralegals Can Continue Working On The Same Summary Conviction Matters", *Law Times* (11 September 2019), online: <www.lawtimesnews.com/resources/professional-regulation/law-students-paralegals-can-continue-working-on-the-same-summary-conviction-matters/303980>.

[244] Legislative Background, *supra* note 237.

[245] *Criminal Code*, s 802.1.

Attorney General designated the LSO's regulation of persons authorized to practice law or provide legal services pursuant to the *Law Society Act* "an approved program" for the purposes of section 802.1 of the *Criminal Code*[246] on the basis that the Law Society "is most appropriately positioned to determine the scope of legal services to be provided by its licensees," deferring to the Law Society's broad regulatory authority and letting it define paralegal scope of practice.[247] This, in turn, required the Law Society to amend By-law 4 in order to avoid a sudden expansion of paralegal scope of practice that would have included all summary conviction matters.[248] The Paralegal Standing Committee had recommended, and Convocation adopted,[249] a two-stage approach: amend By-law 4 to essentially preserve the *status quo* by creating a scope of practice for criminal matters that includes the same summary offences that were punishable by a maximum penalty of six months' imprisonment before the *Criminal Code* amendments came into force, and then engage in a "comprehensive review" of paralegal scope of practice in criminal matters[250] that will take into account education, training standards and competency development in the field,[251] as it should. The review will involve data collection and consultation with lawyers, paralegals, the courts, Crown Attorneys, and other major stakeholders.[252] The PSC insists this approach will allow the Law Society

[246] See LSO, PSC, Bill C-75 Response, *supra* note 241 at 26-27.

[247] Letter from Doug Downey, Attorney General for Ontario, to Malcolm Mercer, Treasurer of the Law Society of Ontario (11 July 2019) in LSO, PSC, Bill C-75 Response, *supra* note 241 at 24-25.

[248] LSO, PSC, Bill C-75 Response, *supra* note 241 at 9; LSO 2019 Convocation Minutes, *supra* note 242 at 15.

[249] "Convocation Preserves Criminal Law Scope for Regulated Agents in Response to Bill C-75", *Law Society Gazette* (11 September 2019), online: <www.lawsocietygazette.ca/news/bill-c-75/>.

[250] LSO, PSC, Bill C-75 Response, *supra* note 240 at 10; LSO 2019 Convocation Minutes, *supra* note 242 at 16, 18. The PSC also recommended, and Convocation adopted, amendments to By-law 4 that will re-add to paralegal scope of practice four offences that had been within agent scope since the onset of regulation but were amended by Bill C-46 and as a result were no longer within the scope as of December 17, 2018 (hereafter referred to as the "four driving offences"): LSO, PSC, Bill C-75 Response, *supra* note 241 at 2, 13.

[251] LSO 2019 Convocation Minutes, *supra* note 242 at 12, 18. See also Balakrishnan, *supra* note 243.

[252] LSO 2019 Convocation Minutes, *supra* note 242 at 18.

to make policy "based on evidence and experience" in order to build a regulatory framework that supports the scope of practice.[253] Arguably, this should have been the approach all along. According to then-LSO Treasurer Malcolm Mercer, regulated agents in Ontario "play a significant role in the criminal law system" and criminal and quasi-criminal law account for "the largest area of legal services provided by paralegals in Ontario."[254] It is important to note that various other quasi-criminal provincial offences that fall within paralegal scope of practice, and for which regulated agents have been providing services for many years, already carry maximum penalties of imprisonment for terms longer than six months.[255] These include, for example, careless driving causing bodily harm or death in the *Highway Traffic Act*, which carries a maximum penalty of two years' imprisonment,[256] and offences in the *Tobacco Tax Act* and *Environmental Protection Act*. [257] Thus, arguably, the increased penalty for summary offences should not present an insurmountable challenge to paralegal scope of practice nor disqualify paralegals from providing such legal services.

[253] *Ibid* at 19.

[254] House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 42-1, No 104 (17 September 2018) at 1845 (Malcolm Mercer), online: <www.ourcommons.ca/DocumentViewer/en/42-1/JUST/meeting-104/evidence>. For example, the Paralegal Standing Committee reports that in the 2017 Paralegal Annual Report, 452 paralegals reported that they had provided legal services in relation to eligible summary conviction criminal offences over the preceding year. 100 of those paralegals indicated that this area made up at least 25% of their work, and 71 of those reported devoting at least 50% of their work to this area: LSO, PSC, Bill C-75 Response, *supra* note 241 at 5.

[255] LSO, PSC, Bill C-75 Response, *supra* note 241 at 12; See also LSO 2019 Convocation Minutes, *supra* note 242 at 17.

[256] *Highway Traffic Act*, RSO 1990, c H, s 130(3).

[257] LSO, PSC, Bill C-75 Response, *supra* note 241 at 12; LSO 2019 Convocation Minutes, *supra* note 242 at 17-18.

But once again, the prospect of an expanded paralegal scope of practice has raised apparent concerns about the competence of licensed paralegals and protection of the public.[258] Perhaps predictably, the Criminal Lawyers' Association (Ontario) objects to expanding paralegal scope of practice on the basis it will "not improve access to justice in criminal cases as justice is illusory if we cannot have confidence that both the Crown and the defence are represented properly and appropriately."[259] It cites no evidence or basis for this alleged lack of proper and appropriate representation. What ultimately results from the Law Society's review of paralegal scope of practice in criminal summary matters is yet to be determined.

It is significant, and interesting, that the *Criminal Code* continues to provide authority for non-lawyer agents across Canada to appear for the defendant and to examine or cross-examine witnesses with respect to some summary offences.[260] It is also noteworthy that when paralegal regulation was implemented in Ontario, licensed paralegals were afforded no greater authority or scope of practice than the *Criminal Code* already allowed. Paralegal regulation merely imposed a regulatory scheme on those non-lawyer agents who were already authorized to practice in this area (as in other practice areas). Curiously, this also meant that unregulated non-lawyer agents elsewhere in Canada could appear and provide the same legal services under the *Criminal Code* as only regulated agents in Ontario are permitted to do. Perhaps the LSO will expand scope of practice in criminal matters and

[258] Jacques Gallant, "Paralegals and Law Students Can Continue Working in Criminal Court, Law Society Decides", *The Toronto Star* (17 September 2019), online: <www.thestar.com/news/gta/2019/09/12/paralegals-and-law-students-can-continue-working-in-criminal-court-law-society-decides.html>.

[259] *Ibid*, quoting Michael Lacy, President of the Criminal Lawyers' Association.

[260] *Criminal Code*, s 802.1 (current version as of June 2019, per 2019, c 25, s 317.1).

create a specialized licence requirement, as it is apparently planning to do with the pending expansion of the scope of practice into family law matters. [261]

B. Competence

It is a law society's function, particularly for a self-regulating profession, to ensure that its members are competent to provide the services they are licensed to provide. This is part of the regulatory bargain and at the centre of regulation in the public interest. The aim of licensing is to ensure quality at the gate.[262] As Hadfield and Rhode put it, a principal reason to regulate professional services is to raise the likelihood that consumers of legal services receive quality services.[263] Therefore, both the quality and availability of legal representation matter.[264] One of the stated rationales for paralegal regulation was to ensure access to competent paralegals and quality services. Self-regulating organizations argue that they need some form of monopoly over the provision of services to effectively control incompetence and misconduct[265] and licensing is often justified on the "seemingly logical basis that imposing (or raising) entry standards will increase the quality of service to the public."[266] The monopolization of competence is also one way professions control the market for their services.[267] Competence has developed as the "essential measure of the reliable

[261] This specialized licence, although not yet implemented, is referred to as the Family Legal Services Licence: LSO, PSC, Bill C-75 Response, *supra* note 241 at 15.

[262] Law Society of Upper Canada, Diana Miles, *Proposal for Revisions to Paralegal Licensing Examination* (Toronto: LSUC, October 2012) at para 18 [LSUC, Miles, Proposal for Revisions].

[263] Gillian K Hadfield & Deborah L Rhode, "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering" (2016) 67 Hastings L J 1191 at 1199.

[264] Alice Woolley & Trevor CW Farrow, "Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges" (2016) 3:3 Texas A&M L Rev 549 at 570.

[265] Joan Brockman, "Fortunate Enough to Obtain and Keep the Title of Profession: Self-Regulating Organizations and the Enforcement of Professional Monopolies" (1998) 41:4 Can Public Administration 587 at 593.

[266] *Ibid* at 596.

[267] Larson, *supra* note 16 at 51.

professional" but measuring and evaluating competence is extremely problematic.[268] One definition is that competence is the "combination of skill applied to knowledge, with the appropriate attitude, which gives rise to definably acceptable … service."[269] Arthurs suggests the notion of competence has three aspects: 1) "tacit knowledge" of assumptions, standard procedures and typologies which accrues over time to people who work within any system; 2) substantive knowledge, which concerns the law and formal procedures; and 3) forensic skills – the ability to negotiate, advise, persuade, and strategize.[270] Competence in terms of quality can be defined as "fitness for purpose" or "meeting the customer's needs, preferences and expectations."[271] Arguably, competence can be assessed through licensing standards, conduct, and results or outcomes achieved. But, it is argued, licensing does not necessarily guarantee quality service[272] and studies have demonstrated no adequate relationship between licensing and quality.[273] Competence in terms of educational and licensing standards, and discipline for misconduct, are examined in this part.

Most consumers of legal services do not know if competence or professional standards were met by the lawyer or paralegal who provided the service, and consumers are therefore unable to make accurate assessments about the services they receive.[274] The responsibility therefore falls on

[268] Jeremy Cooper, "What is Legal Competence?" (1991) 54 Mod L Rev 112 at 112.

[269] Neil Gold, "Report on the Education and Training of Independently Practising Paralegals" forming part of the Ianni Report, *supra* note 168, 196 at 198.

[270] HW Arthurs, "A Review of Advocacy and Dispute Resolution in the Ontario Automobile Insurance System" (Toronto: Government of Ontario, 1993) at 33.

[271] Alan Paterson & Avrom Sherr, "Quality, Clients and Legal Aid" (1992) 142 New LJ 783 at 783.

[272] Brockman*, supra* note 265 at 598. See also Harry W Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33 Alta L Rev 800 at 803.

[273] Brockman*, supra* note 265 at 598.

[274] Michael Trebilcock, "Regulating the Market for Legal Services" (2008) 45:5 Alta L Rev 215 at 232.

the governing body to regulate competence to protect the public. In its five-year review of regulation, the Law Society proclaimed that paralegals were, as a result of regulation, working to a "higher standard of competence."[275] The regulatory scheme imposes entry requirements that consist of educational standards, a licensing exam, and a good character requirement.[276] Licensees must obtain liability insurance, adhere to a professional code of conduct, and are subject to a disciplinary process in the event of misconduct.[277]

A paralegal is required to provide a quality of service that is "competent, timely, conscientious, diligent, efficient and civil."[278] The *Paralegal Rules of Conduct* define a competent paralegal as "one who has and applies the relevant skills, attributes, and values appropriate to each matter undertaken on behalf of a client" including knowledge of general legal principles, procedures and substantive law, the ability to investigate facts, identify issues, ascertain the client's objectives, implement a chosen course of action through the application of appropriate skills including legal research and analysis, applying the law to the facts, negotiation, advocacy, problem-solving and alternative dispute resolution.[279] Competence also includes representing a client in a cost-effective manner.[280] The *Paralegal Professional Conduct Guidelines* state that competence is founded upon both ethical and legal principles and involves more than an understanding of legal principles:

---

[275] LSUC Five-Year Review*, supra* note 1 at 3.

[276] *LSA*, s 27.

[277] See Brockman, *supra* note 265 at 588-90.

[278] Law Society of Ontario, *Paralegal Rules of Conduct*, Toronto: LSUC, 2007, Rule 3.02, online: <lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct> [*Paralegal Rules of Conduct*].

[279] *Ibid*, Rule 3.01.

[280] *Ibid*, Rule 3.01(4)(d).

> [I]t involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the paralegal should keep abreast of developments in all areas of law in which the paralegal provides legal services.[281]

Professional competence is not defined in the *Law Society Act* but a lack of competence is. A licensee fails to meet standards of professional competence if there are deficiencies in the licensee's knowledge, skill or judgment, attention to the interests of clients, the records, systems or procedures of the licensee's business or other aspects of the licensee's professional business, and "the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected."[282] The Law Society Tribunal has held that a lack of competence requires more than an isolated negligent act or omission. The conduct must be cumulative such that it brings discredit upon the profession.[283] The *Paralegal Rules of Conduct* define professional misconduct as "conduct in a paralegal's professional capacity that tends to bring discredit upon the paralegal profession"[284] and includes such conduct as violating or attempting to violate one of the *Rules of Conduct*, misappropriating or otherwise dealing dishonestly with a client's money or property, and engaging in conduct that is prejudicial to the administration of justice.[285]

---

[281] Law Society of Ontario, *Paralegal Professional Conduct Guidelines*, Toronto: LSUC, 2014, Guideline 6: "Competence and Quality of Service", online: <lso.ca/about-lso/legislation-rules/paralegal-professional-conduct-guidelines> [*Paralegal Professional Conduct Guidelines*], referencing *Paralegal Rules of Conduct*, Rule 3. Both the *Professional Rules of Conduct* (applicable to lawyers) and the *Paralegal Rules of Conduct* set out a standard of competence essentially identical to the Federation of Law Societies of Canada, *Model Code of Professional Conduct* (last modified 19 October 2019), online (pdf): <flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>.

[282] *LSA*, s 41.

[283] *Law Society of Upper Canada v Hohots*, 2015 ONLSTH 72 at para 30.

[284] *Paralegal Rules of Conduct*, Rule 9.01(13).

[285] *Ibid*.

If paralegal regulation was implemented to ensure the competence of paralegals – based on the arguments that existing unlicensed paralegals were incompetent – then regulatory measures including pre-licensing educational requirements and the licensing process are key to achieving the promises of regulation, particularly competence. How does the Law Society's exercise of regulatory authority aim to ensure competence?

i. Educational Requirements

If licensing is to ensure competence of a paralegal in all areas of permitted practice, the starting point must be education and training requirements that result in the acquired knowledge and skills assessed by a licensing exam. The implementation of paralegal regulation broadened the Law Society's authority over education. Prior, the Law Society had the authority to maintain the Bar Admission Course and programs of continuing legal education for lawyers.[286] But when paralegal regulation was implemented, the Law Society gained broader authority over "pre-licensing education or training" (which replaced specific reference to the Bar Admission Course) as well as programs of continuing professional development.[287]

Ianni had recommended a mandatory two-year community college program, arguing that "[w]hile a formal educational program cannot guarantee competence in the delivery of paralegal services any more than legal training guarantees the competence of lawyers, it ought to provide some measure of protection for the public."[288] Mandatory education and training as features of any

[286] *LSA*, s 60(1) as it appeared between November 26, 2002 and October 18, 2006.

[287] *LSA*, s 60(1) current version. Convocation has the authority to make by-laws respecting legal education: *LSA*, s 62(0.1)23.

[288] Ianni Report, *supra* note 168 at xv.

regulatory scheme, according to Ianni, would help to reinforce the public's confidence in the legal services provided by paralegals.[289]

a. Regulation in Practice

At the outset of paralegal regulation, the Paralegal Standing Committee prepared a Competency Profile setting out the required competencies for an entry-level paralegal.[290] These competencies – the "knowledge, skills, abilities, attitudes and judgments required to safely and effectively fulfill the requirements of the paralegal profession"[291] – were described as forming "the most basic building blocks for examinations and assessments" and, in turn, for the licensure system.[292] The Law Society sets strict and comprehensive paralegal education requirements – a two-year college diploma program that can be offered only by accredited institutions which includes eighteen courses covering substantive and procedural law, legal skills, and practice management, within paralegal scope of practice, and 120 hours of field placement work experience[293] – and closely monitors the educational institutions through accreditation and regular audits to ensure compliance.[294]

---

[289] *Ibid*.

[290] LSUC PSC Report April 26 2007, *supra* note 95 at para 14.

[291] Law Society of Upper Canada, Diana Miles*, Report on Competency Profile and Examination Development – Paralegal Licensing Exam* (Toronto: LSUC, March 2007) at para 7 [LSUC, Miles, Competency Profile].

[292] *Ibid* at para 6.

[293] Law Society of Upper Canada, Professional Development and Competence Department, *Report on Paralegal College Program Accreditation* (September 2010). Accredited programs must offer a minimum of 830 program hours of instruction, 590 hours of that in compulsory legal courses within a paralegal's permitted scope of practice in addition to the 120 hours of field placement/practicum work experience.

[294] Law Society of Ontario, "Paralegal Education Program Accreditation" (last visited 13 May 2020), online: <lso.ca/becoming-licensed/paralegal-licensing-process/paralegal-education-program-accreditation>.

b. Subsequent Reviews

After the first five years of regulation, the Law Society identified a key underlying challenge of the regulatory scheme: its need to increase the basic competency of paralegals.[295] The LSUC recognized that the competency of legal services providers is a foundational issue that lies "at the heart of any future advancement in access to justice and the ability of the professions to provide solutions for legal needs"[296] and that pre-licensing and licensing requirements must be sufficiently robust to ensure competence.[297] At the same time, Morris, the independent reviewer, discovered a "universality of criticism" of paralegal education – including concerns about inadequate substantive legal knowledge and the absence of any meaningful work experience through a period of apprenticeship as a condition of licensure[298] – and recommended a comprehensive review of paralegal training and examination. The starting point should be a re-assessment of the competency profile appropriate for the legal services permissibly offered by newly licensed sole practitioners.[299] Consistent with findings and recommendations of the LSUC's Legal Needs Analysis which had been conducted around the same time,[300] Morris strongly recommended that before any expansion of scope of practice the standards of learning, professional competence and professional conduct of

[295] LSUC, Miles, Proposal for Revisions, *supra* note 262 at para 19.

[296] Treasurer's Report April 26 2012, *supra* note 161 at para 9.

[297] *Ibid* at para 13.

[298] See section 4, "Paralegal Education and Training", and Recommendation 4 of the Morris Report, *supra* note 21.

[299] *Ibid*, Recommendation 4.

[300] The Legal Needs Analysis, prepared by the Law Society's Professional Development and Competence Department, and referred to in the LSUC's Five-Year Review, *supra* note 1, is not available to the public.

paralegals be improved,[301] arguing that while the Law Society has a duty to facilitate access to justice, it also has a duty to protect the public interest.[302] Morris found it difficult to accept

> the seemingly pervasive rationale that deficiencies in professional standards and/or the meeting of professional standards is somehow acceptable when the potential consequence of incompetence is "only" six months imprisonment … or the forfeiture of "only" $25,000 rather than $25,001.[303]

In contrast to the Law Society's own claims of paralegal success, Morris' review was more critical of paralegal regulation and resulted in suggestions for improvements of the regulatory scheme.[304] Most significantly, Morris called for both enhanced education and training to increase entry-level competence of paralegals and an expanded scope of practice to facilitate greater access to justice.[305] Beyond these legislative reviews, however, there is scant research assessing the practical implications, quality or effectiveness of the regulatory model. The report of the Law Society's Legal Needs Analysis, in 2011, is not publicly available, and therefore neither the nature and extent of the research undertaken nor the Law Society's conclusions and recommendations are known. Through references to the Legal Needs Analysis (LNA) in other documents, however,[306] it appears the analysis found that the paralegal licensing regime had failed to produce an acceptable level of competence of this new class of legal services providers.[307] The LNA identified as a "key, underlying challenge" the need to

---

[301] See section 4, "Paralegal Education and Training", and Recommendation 4 of the Morris Report, *supra* note 21.

[302] *Ibid* at 19.

[303] *Ibid*, referring to Ontario Small Claims Court's maximum monetary jurisdiction of $25,000 at the time: O Reg 626/00 under the *Courts of Justice Act*, RSO 1990, c C.43, s 1 as it appeared between July 1, 2011 and October 22, 2019.

[304] Morris Report, *supra* note 21, specifically section 6, "Summary of Recommendations".

[305] *Ibid*, Paralegal Education and Training and Recommendation 4.

[306] See particularly the LSUC's Five-Year Review, *supra* note 1 and Treasurer's Report April 26 2012, *supra* note 161.

[307] Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 25 October 2012) at para 16; LSUC, Miles, Proposal for Revisions, *supra* note 262 at paras 1-4.

increase the basic competency of paralegals and revealed concerns about the breadth and focus of entry-level assessment.[308] It recommended a "broader spectrum of substantive and procedural competency assurance prior to entry into the paralegal profession."[309] An enhanced licensing process, the LNA concluded, would both ensure entry-level competence and promote the maturation of the paralegal profession.[310] In short, enhanced measures to increase entry-level competence would set the stage for an expansion of paralegal scope of activities and improve the public's access to legal professionals, the courts and tribunals.[311] Curiously, though, the LSUC still declared the first five years of paralegal regulation a success, in part because of increased paralegal competence.[312]

The Family Legal Services Review called for an expanded paralegal scope of practice to include some family law matters and Bonkalo J. therefore recommended that certain family law topics be added to paralegal education and training: gender-based violence, family dynamics, client counselling, forms completion, ethics and professionalism, substantive and procedural family law and indicators that a client requires referral to a lawyer,[313] and practical experience.[314] In short, Bonkalo J. recommended the Law Society develop a curriculum "that contains all of the elements necessary to ensure that well-trained, qualified paralegals are equipped to competently deliver specialized family legal services"[315] and create a specialized license for paralegals offering family legal services.

---

[308] LSUC, Miles, Proposal for Revisions, *supra* note 262 at paras 19-21.

[309] *Ibid* at para 1.

[310] *Ibid* at paras 19-21.

[311] Treasurer's Report April 26 2012, *supra* note 161 at paras 9-11. This report mentions a broader concern over the competency of both paralegals and lawyers, both new and experienced practitioners.

[312] LSUC Five-Year Review, *supra* note 1 at 2-3. The LNA is referred to throughout the LSUC Five-Year Review.

[313] Bonkalo Report, *supra* note 219, Recommendation 8.

[314] *Ibid*.

[315] *Ibid*.

Arguably, a paralegal who obtains a specialized licence will be better trained and more competent in family law matters within their permitted scope of practice than a newly-licensed lawyer practicing family law with a general licence who might not have any formal education or training nor specialize in family law.[316] Specialized licensing is tied to both competence and cost of service.

ii. Licensing Exam

The competencies set out in the Competency Profile formed the foundation for the first paralegal licensing exam and would support all subsequent examinations following the initial grandparenting period.[317] The "grandparent" applicants, who applied for a Class P1 licence prior to November 1, 2007, included persons who had at least three years' experience providing legal services (that a licensed paralegal is authorized to provide) in the five years prior to May 1, 2007, but no formal legal education including an LSUC-accredited college paralegal program.[318] Significantly, the PSC's first Competency Profile was designed to reflect only the *Paralegal Rules of Professional Conduct*. It was not based on substantive areas of law within paralegals' permitted scope of practice but, rather, on generic issues involving professional responsibility, practice management and ethics.[319] Since the licensing exam was initially designed to allow grandparent applicants to become licensed, it covered the *Rules of Professional Conduct*, ethics, and practice management but did not

[316] Family law is not a required course or area of study in Canada's law schools: Federation of Law Societies of Canada, *National Requirement* (1 January 2018), online (pdf): <flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>.

[317] LSUC, Miles, Competency Profile, *supra* note 291 at paras 11-13.

[318] *LSA*, By-law 4, s 11(1)1.

[319] LSUC PSC Report April 26 2007, *supra* note 95 at para 16. Substantive areas were covered in the curricula of approved college programs.

include any testing of substantive or procedural law.[320] The Law Society justified the initial licensing exam's narrow focus on the following basis:

> Given the diversity of paralegal practice, the recognition that grandparented paralegals will be receiving a general licence, and the inability to gauge the pre-licensing educational achievements of this entry group, it is not feasible or fair to test in all of the unique substantive areas that may fall within the scope of paralegal practice. Such a broad-based assessment may establish barriers to entry for those paralegals that have been successfully practising in only one or two discreet areas within the scope of practice.[321]

This reality arguably would have justified, even demanded, specialized licences (for which practice area-specific licensing exams could have been created) from the outset, rather than a general one-size-fits-all licence obtained through a licensing exam that failed to test one's knowledge of any substantive or procedural law relevant to any practice areas within paralegals' permitted scope of practice. The initial licensing exam drew criticism for not being in the public interest and not ensuring competence. The head of an injured workers' support group, for one, expressed deep concern that a test

> … that deal[s] with the Conduct of Paralegals and <u>not the Acts or Law as it pertains to different situations</u> will be the standard used to determine who will be licensed as a Paralegal.… This testing in our view, seems to do little other than assure that the Legislature and the Law Society are in actual fact, creating a legal society of shingle hangers, who without knowledge, will be allowed legally to charge a fee to those vulnerable clients who … [the Law Society is] committed to protect.[322] [*emphasis in original*]

[320] LSUC, Miles, Competency Profile, *supra* note 291 at para 6.

[321] *Ibid* at para 10.

[322] Letter from Linda J Wood, CEO Injured Workers Support Network, to Julia Bass (23 May 2007) forming Appendix 1 to LSUC PSC Report June 28 2007, *supra* note 98. The Injured Workers Support Network, a group of volunteer representatives acting for injured workers free of charge, sought an exemption from licensing on the basis that its limited funding prohibited the licensing of its members.

Perhaps it was for reasons of expediency that the Law Society chose to disregard competency standards and focus only on ethics, professional conduct and practise management in creating the first licensing exam. Whatever its reasons, protection of the public does not appear to be one of them. Proceeding as it did, the Law Society, at best, ensured that the first licensed paralegals were not unscrupulous but it did not ensure they were competent. This is hardly consistent with the government's promises of regulation or the Law Society's statutory mandate to protect the public and more, but not necessarily competent, legal service providers does not facilitate access to justice. This is not to suggest that the first licensed paralegals were not competent – many of them had practiced for years and in so doing would have likely gained not only experience but also expertise – but to point out that the Law Society appears to have accepted that a few years of experience providing legal services translated to and assured a minimum, entry-level standard of competence. The Law Society's position seems contradictory. In accepting that paralegals' previous unregulated experience providing legal services had resulted in an acceptable level of competence not only undermines its previous claims of paralegal incompetence without regulation but also reveals those arguments to be false.

Following both five-year reviews of regulation, the Paralegal Standing Committee proposed expansion of the licensing exam to incorporate substantive areas of law "as a first step in moving toward a more robust testing and assessment system that supports entry-level competence."[323] As a result, the LSUC developed a new set of substantive competencies that became the blueprint for the enhanced licensing exam. The initial licensing exam though, designed for grandparent applicants,

[323] Law Society Upper Canada, *Proposal for Reforms to Accreditation and Audit Framework for Paralegal Education Programs* (Toronto: LSUC, 13 February 2014) at para 1.

outlasted the grandparenting period by several years. The paralegal licensing exam was not revised to assess substantive and procedural legal knowledge until August 2015 when, for the first time, it included Canadian law fundamentals and jurisdiction, administrative law, criminal and quasi-criminal law, and civil litigation in addition to professional responsibility, ethics and practice management.[324] Perhaps the concerns (of both the Law Society and Morris) about competency were a direct result of the licensing exam's failure to test substantive legal knowledge for the first seven and a half years of paralegal regulation,[325] a situation of the Law Society's own making.

The Law Society believes success or failure in writing the licensing exam is the most objective measure of entry-level competence[326] and insisted that the more comprehensive exam would ensure the competence of newly licensed paralegals.[327] The licensing process, including educational requirements, must reflect and support paralegal scope of practice.

[324] *Ibid.*

[325] See LNA, cited in LSUC Five-Year Review, *supra* note 1; Morris Report, *supra* note 21.

[326] LSUC, Miles, Proposal for Revisions, *supra* note 262 at para 28.

[327] Law Society of Upper Canada, *2012 Annual Report* at 13, online: <lso.ca/about-lso/governance/annual-report> [LSO 2012 Annual Report].

iii. General and Specialized Licenses

Some argue that licensure is a "very crude" sign of quality, particularly where there is only a single licensing standard.[328] Such is the case in Ontario, where both lawyers and paralegals practice pursuant to a general licence only.[329]

a. History

Cory J. had recommended a general license as well as a specialized license for paralegals who wished to appear before specialized tribunals in Ontario, those with complicated procedures operating in sensitive areas such as labour relations, workplace safety and insurance, and consent and capacity.[330] He argued that it would be difficult for a general licensing process to provide sufficient training for paralegals appearing before specialized boards and tribunals to adequately protect the public.[331] Zemans also recommended a specialized or limited license in addition to a general license for practice before a specialized board or tribunal or in a specialized practice area.[332]

b. Regulation in Practice

Despite such recommendations to the contrary, the Law Society followed the Paralegal Task Force's recommendation for a general paralegal licence only, leaving open the possibility of further

---

[328] Michael J Trebilcock & Barry J Reiter, "Licensure in Law" in Trebilcock & Evans, *supra* note 9, 65 at 68.

[329] *LSA*, s 1(1) and By-law 4: a Class L1 licence is required for barristers and solicitors, and a P1 licence for paralegals. The only specialization designation is available for lawyers only. A lawyer may be certified as a specialist in a certain practice area of law. That designation is awarded upon application (with payment of associated fee) by the lawyer and based in part on years of practice experience and LawPro claims history. See Law Society of Ontario, "Administrative Policies Governing the Certified Specialist Program" (last visited 13 May 2020), online: <lso.ca/getdoc/56e68eeb-e725-456d-b796-fb3e48256b52/administrative-policies-governing-the-certified-sp>.

[330] Cory Report, *supra* note 175 at 25, 83, 89-98.

[331] *Ibid*.

[332] Zemans, *supra* note 42 at 27, Recommendation 5.

specialized categories in the future. The Task Force was purportedly concerned that limited licences "might give the appearance of restricting access to paralegal work"[333] despite a number of provincial tribunals, such as the Workplace Safety and Insurance Appeals Tribunal and Financial Services Commission of Ontario, having argued in favour of limited licensing on the basis that their jurisdiction is uniquely complex.[334]

c. Subsequent Reviews

The Law Society, Morris, and Bonkalo J. all agree that sub or specialized licences are a means of increasing the competence of licensed paralegals.[335] But no specialized licence, for any practice area, has yet been created. A major virtue of specialized licenses is the higher quality services that are required for, and can result from, specialization, more so than a general license would require or demand and more so than the quality provided by general practitioners.[336] It is argued that by far the greatest source of the excessive cost of professional services is the result of overtraining.[337] Universal licensing makes legal services more expensive and less accessible to the extent that its heavy training requirements exclude service providers who could meet basic client needs at a lower price.[338] One regulatory solution is tiered or specialized licensing.

---

[333] Task Force Sept 2004, *supra* note 31 at para 129.

[334] *Ibid* at para 133.

[335] Morris Report, *supra* note 21, Recommendation 5; Treasurer's Report April 26, 2012, *supra* note 161 at para 13; LSUC, "Report to Convocation 2017", *supra* note 230 at para 22; Bonkalo Report, *supra* note 219 at Recommendation 4.

[336] Hadfield & Rhode, *supra* note 263 at 1221. This argument could also be made for lawyers, particularly newly licensed lawyers in their first few years of practice, which might be another way to address the access to justice crisis.

[337] Brockman, *supra* note 265 at 600.

[338] Noel Semple, *Legal Services Regulation at the Crossroads – Justitia's Legions* (Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2015) at 288.

iv. Discipline

Regulation concerns competence, conduct and accountability. Competence of its members is a key feature of a self-regulating profession's ability to serve the public interest, and the ability to deal effectively with the incompetence of its members is one way the legal profession justifies its right to govern itself.[339] The LSO's regulatory scheme includes a complaints investigation and disciplinary process that ostensibly protects the public from incompetent or unscrupulous legal service providers. Unlike entry standards that aim to ensure a standard of entry-level competence, discipline deals with problems after they arise. That the Law Society is entrusted to ensure licensees meet standards of professional competence and conduct is more than a statutory imperative – it is central to its duties to protect the public interest.[340] A failure to do so, or do so adequately, arguably undermines access to justice which cannot be facilitated without quality services provided by competent licensees. Accountability, as in discipline of licensees, is a key regulatory measure. The Law Society Tribunal hears disciplinary matters about licensees for complaints that make it that far.[341] But, according to Arthurs, simply because the self-regulating legal profession has the power and the knowledge to regulate effectively, it does not follow that it will do so.[342] In his view, regulation is not a major determinant of professional conduct[343] – law societies do not discipline for incompetence[344] and

---

[339] John Swan, "Regulating Continuing Competence" in Trebilcock & Evans, *supra* note 9, 351 at 376.

[340] *LSA*, s 4.1.

[341] See www.lawsocietytribunal.ca: "The Law Society Tribunal is an independent adjudicative tribunal within The Law Society of Upper Canada. The Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest": Law Society Tribunal, "Welcome to the Law Society Tribunal" (last visited 13 May 2020), online: <www.lawsocietytribunal.ca>.

[342] Harry W Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33:4 Alta L Rev 800 at 801.

[343] *Ibid* at 803.

[344] *Ibid* at 801.

professional norms are violated with impunity.[345] According to Arthurs, the "ethical economy" of the profession explains which kinds of ethical concerns attract the vigilance of the law society, which do not, and who is likely to find themselves in what kind of trouble.[346] In this "ethical economy,"

> the profession's treatment of discipline reflects a tendency to allocate its scarce resources of staff time, public credibility and internal political consensus to those discipline problems whose resolution provides the highest returns to the profession with the least risk of adverse consequences.[347]

The "returns" are the enhancement of public goodwill or professional solidarity, and the "risks" concern the possibility of damaging either of them.[348] The "ethical economy" of the profession results in governing bodies directing "virtually all their attention to two types of behaviour: clear dishonesty (especially in regard to clients' funds), and subversion of the profession's regulatory processes"[349] which, according to Arthurs, are two forms of misbehaviour which generate few controversies either within the profession or in the public mind.[350] Virtually no lawyers are disciplined for incompetence *per se*, Arthurs argues, because "the underdeveloped and contested nature of legal professional knowledge makes proof of incompetence almost impossible in all but the most egregious cases."[351] Gavin MacKenzie agrees that regulation of the legal profession has not done enough to ensure competence. The enforcement of competency standards through discipline proceedings has been

---

[345] *Ibid* at 802.

[346] *Ibid* at 804.

[347] Harry W Arthurs, "Why Canadian Law Schools Do not Teach Legal Ethics" in Kim Economides, ed, *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998) 105 at 112.

[348] *Ibid* at 112.

[349] *Ibid*.

[350] *Ibid* at 115.

[351] *Ibid* at 113.

for the most part limited to "blatant cases of wilful and reckless failure to maintain even the most minimal standards of competence and quality of service."[352] MacKenzie believes that even with regulation, the public is not protected from incompetence, arguing that the legal profession has done an appreciably better job of protecting the public from lawyers who have acted dishonestly than it has of protecting the public from lawyers who have acted incompetently.[353] Woolley examined whether Arthurs' characterization of the "ethical economy" of the legal profession remained apt by reviewing law society discipline decisions in four Canadian provinces in 2009.[354] She concluded the current regulatory approach of Canadian law societies conforms to Arthurs' theory of an ethical economy of legal regulation[355] in that the conduct that attracts severe sanction is either morally unambiguous and likely to harm the reputation of the profession, or relates to the lawyer's governability by the law society.[356] Significantly, Woolley found that incompetence was one of the less common matters raised by the governing law society and, in the vast majority of cases, the provisions of the codes of conduct received little or no regulatory attention.[357] As a result, Woolley argues that a broader approach to professional discipline is required, and states:

> Ultimately, the regulatory choice to pursue only morally unambiguous behaviour or ungovernability, and to focus on a sub-set of the profession, disserves the public

[352] Gavin MacKenzie, "Regulating Lawyer Competence and Quality of Service" (2008) 45:5 Alta L Rev 143 at 146.

[353] *Ibid* at 150.

[354] Alice Woolley, "Regulation in Practice: The 'Ethical Economy' of Lawyer Regulation in Canada and a Case Study in Lawyer Deviance" (2012) 15:2 Legal Ethics 243 at 243-45.

[355] *Ibid* at 245.

[356] *Ibid*.

[357] *Ibid* at 249.

> interest every law society is charged with protecting.… Law societies cannot abdicate responsibility by radically limiting their regulatory mandate.[358]

The inclusion of paralegals within the LSO's regulatory scheme provides an opportunity to test Arthurs' "ethical economy" with respect to paralegals. Does the Law Society exercise its regulatory power in the same limited way in disciplining paralegals as it does in disciplining lawyers? Does it hold true that only low-risk, high-reward matters are pursued, and that very few paralegals are disciplined for incompetence? In short, is the LSO's exercise of disciplinary authority for misconduct of paralegals any different than it is for lawyers? How the Law Society exercises its regulatory authority in disciplining paralegals should be evident from a review of Law Society Tribunal disciplinary decisions. The following inquiry focuses on how the number of complaints and types of matters that proceed to discipline hearings involving paralegals compare with those involving lawyers and whether any paralegals have been sanctioned specifically for incompetence or charging clients excessive fees.

a. Complaints Received

The LSO reports annually the total number of complaints about licensees it receives and how many of those survive to be the subject of a hearing before the Law Society Tribunal. Before turning to statistics and Tribunal decisions concerning professional misconduct, a brief description of the complaints and discipline process is warranted. The LSO's Complaints and Compliance department receives all complaints,[359] the majority of which come from members of the public – almost 70% in

[358] *Ibid* at 274.

[359] Law Society of Ontario, "The Complaints Process" (last visited 15 May 2020), online: <www.lso.ca/protecting-the-public/complaints/complaints-process> [LSO Complaints Process]. *LSA*, By-law 11, "Regulation of Conduct, Capacity and Professional Competence", sets out the process for receiving, investigating, resolving, and referring discipline matters to the Law Society Tribunal. See, particularly *LSA*, By-law 11, s 51.

each of 2016 and in 2017.[360] Complaints that are within the Law Society's jurisdiction and raise issues concerning a licensee's professional conduct are directed to the Intake and Resolution department of the Professional Regulation Division for investigation.[361] At that stage, it is determined if further investigation is warranted, remedial action is required, or the matter can be closed.[362] Some matters might then be referred to the Proceedings Authorization Committee to determine if further action is warranted,[363] and the Committee may refer a matter for a discipline hearing before the Law Society Tribunal.[364] The Proceedings Authorization Committee will authorize a hearing when there are reasonable grounds to believe that a licensee has engaged in professional misconduct or conduct unbecoming a lawyer or paralegal, has failed to meet the standards of professional competence, or is incapacitated.[365] Complaints and investigations are confidential[366] until a Notice of Application, containing details of the allegations against the licensee, is issued.[367] About 5% of all complaints are referred to the Proceedings Authorization Committee.[368] Table 2 sets out information reported by the LSO concerning complaints received, the number of complaints referred to the Professional

[360] LSO 2016 Annual Report, *supra* note 57; LSO 2017 Annual Report, *supra* note 58.

[361] *LSA*, s 49.3(1) authorizes the LSO to investigate a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee.

[362] LSO Complaints Process, *supra* note 359.

[363] *Ibid*. See also *LSA*, s 49.20 and By-law 11, particularly ss 43, 46, 50. *LSA*, By-law 11, s 26 authorizes the LSO to require a licensee to provide specific information about the licensee's quality of service to clients, including the licensee's knowledge, skill or judgment; the licensee's attention to the interests of clients; the records, systems or procedures of the licensee's professional business; and other aspects of the licensee's professional business.

[364] *LSA*, ss 49.20.1, 49.25.

[365] Law Society of Ontario, "If you are the Subject of a Complaint" (last visited 14 May 2020), online: <www.lso.ca/protecting-the-public/information-for-licensees/if-you-are-the-subject-of-a-complaint> [LSO, "Subject of Complaint"]; *LSA*, By-law 11, s 51.

[366] *LSA*, s 49.12.

[367] A Notice of Application is a public document: LSO, "Subject of Complaint", *supra* note 365.

[368] LSO, "Subject of Complaint", *supra* note 365.

Regulation Division by licensee type, the percentage of matters referred for prosecution, and the types of allegations involved. It also sets out the percentage of complaints in relation to paralegals' proportionate membership. Paralegals comprised about 14% of total LSO licensees in each of 2015, 2016 and 2017.[369]

[369] These are the same post-regulation years examined in my WSIAT study: see Chapter 5 herein. It is important to note that 2015 data is not reported consistent with the manner in which 2016 and 2017 data is reported by the LSO in its annual reports.

TABLE 2: COMPLAINTS RECEIVED, TRANSFERRED, REFERRED FOR PROSECUTION, LICENSEE TYPE & MATTERS

YEAR	Total Complaints received[370]	Complaints referred to Professional Regulation Division [371]	Complaints by Licensee type[372]		Paralegals % of LSO licensees[373]	Following investigation, % transferred for prosecution[374]	Types of Allegations raised in Notices issued by Discipline Dept[375]
			Lawyers	Paralegals			
2015	6,127	4,647	87%	13%	13.6%	__	__
2016	6,313	4,833	80%	12%	14%	12%	Service 47% Financial 46% Integrity 32% Governance 27%
2017	6,364	4,737	80.5%	12%	14.2%	15%	Governance 43% Integrity 41% Financial 35% Service 34%

[370] In 2015, the Law Society received 6,127 complaints. Of those, 4,647 were referred to the Professional Regulation Division: LSO 2015 Annual Report, *supra* note 56 at 31, "Key Trends: Complaints and Investigations". See also LSO 2016 Annual Report, *supra* note 57; LSO 2017 Annual Report, *supra* note 58.

[371] LSO 2015 Annual Report, *supra* note 56 at 31, "Key Trends: Complaints and Investigations".

[372] In 2015 4,190 complaints concerned conduct, capacity and competence, 87% of which concerned lawyers and 12.98% of which concerned paralegals: LSO 2015 Annual Report, *supra* note 56 at 31, "Key Trends: Complaints and Investigations"; Law Society of Upper Canada, "2016 Annual Report: Key Trends – Licensing Statistics" (last visited 14 May 2020), online: <annualreport.lsuc.on.ca/2016/en/key-trends/licensing-statistics/>; In 2017, 80.5% of matters concerned lawyers and 11.9 % concerned paralegals: Law Society of Upper Canada, "2017 Annual Report: Key Trends & Accomplishments" (last visited 14 May 2020), online: <annualreport.lso.ca/2017/en/key-trends/regulating-the-professions/> [2017 Key Trends].

[373] LSO 2015 Annual Report, *supra* note 56; Law Society of Upper Canada, "2016 Annual Report: The Professions – Membership Statistics" (last visited 14 May 2020), online: <annualreport.lsuc.on.ca/2016/en/the-professions/membership-statistics.html>; Law Society of Upper Canada, "2017 Annual Report: Professions – Membership Statistics" (last visited 14 May 2020), online <annualreport.lso.ca/2017/en/the-professions/membership-statistics.html>.

[374] In the LSO Annual Report 2015, this figure is not reported: LSO 2015 Annual Report, *supra* note 56 at 31, "Key Trends: Complaints and Investigations"; Law Society of Upper Canada, "2016 Annual Report: Key Trends – Professional Regulation" (last visited 16 May 2020), online: <annualreport.lsuc.on.ca/2016/en/key-trends/> [2016 Key Trends]. In 2017, 14.9%: 2017 Key Trends, *supra* note 372.

[375] In the LSO Annual Report 2015, this information is not reported: LSO 2015 Annual Report, *supra* note 56 at 31, "Key Trends: Complaints and Investigations"; 2016 Key Trends, *supra* note 374; Law Society of Upper Canada, "2017 Annual Report: 2017 Annual Report Data" (last visited 16 May 2020), online: <annualreport.lso.ca/2017/en/annual-report-data.html#TypesOfAllegations> [2017 Annual Report Data].

The proportion of complaints that the LSO decided to refer to the Professional Regulation Division that concern paralegal conduct is, for all three years, less than paralegals' proportionate membership. This suggests that either there are fewer complaints filed, proportionately, about paralegals than there are about lawyers, or that the nature of complaints filed about paralegals are less serious and therefore do not warrant further investigation to the extent that complaints against lawyers do, that paralegals are less likely to engage in misconduct worthy of investigation, or that the nature of matters and type of legal services offered within paralegal scope of practice attract fewer complaints.

b. Law Society Tribunal Hearings

The number of professional conduct matters that were heard and disposed of by the Law Society Tribunal – Hearing Division in each of the years 2015 – 2017 is fairly consistent: 128 in 2015,[376] 112 in 2016[377] and 122 in 2017.[378] Matters heard do not necessarily arise from complaints received in that same year, but nonetheless reveal the relatively small number of matters that the regulator considers to be serious enough to demand a hearing. The most common discipline issues dealt with by the Tribunal in each of the years 2015, 2016 and 2017 were client service issues (including failure to account, failure to communicate, and failure to serve a client), integrity issues (including civility and behaving dishonourably), governance (including failure to co-operate with the Law Society and

[376] Law Society of Upper Canada, "2015 Annual Report: 2015 Annual Report Data" (last visited 16 May 2020), online: <annualreport.lsuc.on.ca/2015/en/annual-report-data.html#TribunalsOpenedByTypeAndYear/> [2015 Annual Report Data].

[377] Law Society of Upper Canada, "2016 Annual Report: 2016 Annual Report Data" (last visited 16 May 2020), online: <annualreport.lsuc.on.ca/2016/en/annual-report-data.html#NewComplaintsByDiscipline> [2016 Annual Report Data].

[378] 2017 Key Trends, *supra* note 375, "Discipline".

unauthorized practice), and financial matters (including mishandling trust accounts, misappropriation, and real estate/mortgage schemes).[379] Examining Law Society Tribunal professional conduct discipline matters involving paralegals who were sanctioned for incompetence or for charging clients an excessive fee provides insight into how the LSO exercises its regulatory authority and reveals a great deal about the type of misconduct that most concerns the regulator.

A search of Law Society Tribunal (LST) decisions for the three years 2015 to 2017 revealed seven findings of incompetence involving six lawyers and one paralegal.[380] The paralegal's professional misconduct consisted of failing to properly serve clients (by missing a deadline to file materials with a tribunal) and improperly withdrawing trust funds.[381] The LST's hearing panel found that the paralegal's conduct fell below the standards required of a reasonably competent paralegal[382] and brought discredit to the paralegal profession[383] and imposed a one-month suspension.[384] In doing so, the hearing panel stated that the most fundamental purpose of imposing a penalty is to maintain public confidence in the (paralegal) profession.[385] A further search of LST decisions concerning an "excessive fee" for the same years – 2015, 2016 and 2017 – revealed eighteen matters

[379] Client Service issues accounted for 55.3% of complaints in 2015, 47% in 2016, and 34% in 2017; Integrity issues accounted for 46.8% of complaints in 2015, 32% in 2016, and 41% in 2017; Governance issues accounted for 45.3% of complaints in 2015, 27% in 2016, and 43% in 2017; Financial matters accounted for 21.6% of complaints in 2015, 46% in 2016, and 35% in 2017: 2015 Annual Report Data, *supra* note 376; 2016 Annual Report Data, *supra* note 377; 2017 Annual Report Data, *supra* note 375. Note these discipline issues are not reported by type of licensee.

[380] A CanLII search of Law Society Tribunal decisions involving "incompetence" with date restriction 2015-01-01 to 2017-12-31 was conducted on September 19, 2019.

[381] *Law Society of Upper Canada v Brooks*, 2015 ONLSTH 87.

[382] *Ibid* at para 160.

[383] *Ibid* at para 167.

[384] *Ibid* at paras 27, 38. This penalty was based on mitigating factors: paras 15-27.

[385] *Ibid* at para 13.

in which a lawyer or paralegal charged excessive fees to clients and/or Legal Aid Ontario.[386] These matters involved thirteen lawyers and two paralegals,[387] Lee[388] and Spiegel,[389] both of whom were found to have also engaged in other misconduct, including financial misconduct. In the result, the licences of both paralegals were revoked.[390] Lee was found to have engaged in professional misconduct for charging an excessive fee to a client in addition to holding himself out as a lawyer, acting for opposing parties in a conflict of interest, acting or corresponding in an uncivil and discourteous manner with clients, and misappropriating $31,000 of a client's trust funds,[391] for which he took no responsibility.[392] The LST hearing panel found that Lee had engaged in a pattern of conduct that displayed "a complete disregard for his professional obligations of honesty, loyalty and competent service to his clients."[393] Spiegel was found to have engaged in professional misconduct for submitting multiple forms to insurance companies in order to increase his claim for fees, dishonestly submitting forms containing misrepresentations to insurance companies on behalf of his clients' claims for benefits, claiming for services he did not provide, and failing to cooperate with the

[386] A search of Law Society Tribunal decisions in CanLII for "excessive fee" with date restriction 2015-01-01 to 2017-12-31 was conducted on September 14, 2019. This search produced 56 results, but only 18 matters concerned excessive fees charged by a lawyer or paralegal to clients and/or Legal Aid Ontario. The other matters concerned licensees' non-payment of professional fees (LSO annual membership), fees and costs of disciplinary hearings, etc.

[387] Of the 18 matters total, 15 concerned lawyers but two lawyers were each involved in two separate decisions, so the number of lawyers involved is 13. The same paralegal was the subject of two of the three decisions involving paralegals.

[388] *Law Society of Upper Canada v Lee*, 2017 ONLSTH 210 [*Lee*].

[389] *Law Society of Upper Canada v Spiegel*, 2017 ONLSTH 188 [*Spiegel*].

[390] *Lee*, *supra* note 388 at para 19; *Spiegel*, *supra* note 389.

[391] *Lee*, *supra* note 388 at paras 1-2.

[392] *Ibid* at para 10.

[393] *Ibid* at paras 3, 5.

Law Society's investigation.[394] The LST hearing panel found that his misconduct included acting dishonestly, without integrity, and in bad faith,[395] which brought the paralegal profession into disrepute.[396] A separate search of Law Society Tribunal decisions during the same three-year period for matters involving "overbilling" revealed a total of twelve matters, all involving lawyers who had overbilled Legal Aid Ontario or clients.[397] The revocation of one's licence is not reserved for the worst cases "but may be imposed wherever the integrity of the legal profession is at stake."[398] A search of the LST's discipline hearing decisions that resulted in revocation of licence revealed that twelve paralegals had their licence revoked in the same three year period – two in 2015, three in 2016 and seven in 2017.[399] By comparison, a total of thirty-three lawyers had their licences revoked over the same period.[400] The misconduct that led to revocation of the paralegals' licences included misappropriation of client funds,[401] a failure to co-operate with a Law Society investigation,[402] fraud,

[394] *Spiegel*, *supra* note 389 at paras 1-5.

[395] *Ibid* at paras 130, 141.

[396] *Ibid* at para 126. Spiegel brought a motion to stay the order revoking his P1 licence pending appeal: *Law Society of Upper Canada v Spiegel*, 2018 ONLSTA 13, which was denied. Spiegel's appeal was subsequently dismissed for delay: *Law Society of Ontario v. Spiegel*, 2020 ONLSTA 7.

[397] A search in CanLII for Law Society Tribunal decisions involving "overbilling" with date restriction 2015-01-01 to 2017-12-31 was conducted on September 14, 2019. Not one matter involved a paralegal. Note that paralegals are not authorized to take on Legal Aid work: *Legal Aid Services Act, 1998,* SO 1998 c 26, s 14(4) [*Legal Aid Services Act*].

[398] *Law Society of Upper Canada v Nicholson*, 2015 ONLSTH 110 at para 47.

[399] A search in CanLII of Law Society Tribunal decisions for "professional misconduct paralegal revocation" was conducted on September 23, 2019 for each of the years 2015, 2016 and 2017. The Law Society reports, however, that fewer (total 8) paralegal licences were revoked in the same years: 2 in 2015, 2 in 2016 and 4 in 2017: 2017 Annual Report Data, *supra* note 375, "Final orders rendered by the Hearing Division, by year".

[400] The number of lawyer licenses revoked were as follows: 14 in 2015, 9 in 2016, and 10 in 2017: *Ibid*.

[401] *Law Society of Upper Canada v Garth*, 2015 ONLSTH 62 [*Garth*]; *Law Society of Upper Canada v Djukic*, 2016 ONLSTH 115; *Law Society of Upper Canada v Cairns*, 2017 ONLSTH 8; *Lee*, *supra* note 388; *Law Society of Upper Canada v Nicholas*, 2017 ONLSTH 37; *Law Society of Upper Canada v Castillo Garcia*, 2017 ONLSTH 155.

[402] *Law Society of Upper Canada v Smith*, 2015 ONLSTH 4 [*Smith*]; *Law Society of Upper Canada v Charalabidis*, 2016 ONLSTH 194; *Law Society of Upper Canada v Charalabidis* 2017 ONLSTH 95 (penalty hearing); *Law Society of Upper Canada v Sokolowski*, 2017 ONLSTH 54 [*Sokolowski*].

dishonesty and a lack of integrity,[403] a failure to serve clients conscientiously and diligently,[404] and ungovernability.[405] In one case, the paralegal did not commit fraud or theft but his conduct and "blatant disregard for being truthful to his client, and the absolute failure to respond to any Law Society inquiry or communication"[406] led the Tribunal to conclude that the paralegal's licence must be revoked to exercise general deterrence and to maintain public confidence in the paralegal profession.[407]

It therefore appears that Arthurs' theory of Law Society professional discipline applies equally to paralegals as it does to lawyers in Ontario in that, as Woolley also discovered, the Law Society seems most concerned about essentially two types of behaviour: clear dishonesty, especially in regard to clients' funds, and subversion of the profession's regulatory processes.[408]

C. Cost of Services

One of the most fundamental issues in the entire process of self-regulation, according to Swan, is a profession's ability to assert effectively the public interest in competent service at a reasonable cost and if the profession cannot adequately meet the public's needs, its right to remain

[403] *Garth*, *supra* note 401; *Law Society of Upper Canada v Kovtanuka*, 2018 ONLSTH 2.

[404] *Smith*, *supra* note 402; *Sokolowski*, *supra* note 402.

[405] *Law Society of Upper Canada v Latina*, 2016 ONLSTH 192; *Law Society of Upper Canada v Webster-Clarke*, 2017 ONLSTH 29.

[406] *Sokolowski*, *supra* note 402 at para 27.

[407] *Ibid.*

[408] Arthurs, *supra* note 347 at 112.

a self-governing profession must be challenged.[409] The affordability of legal services is undeniably a key feature of access to justice.

i. History

The high cost of lawyers' services was cited as a rationale for paralegal regulation, and regulation was predicated on the understanding that quality legal services at a lower cost would increase the public's access to legal services. In the debate in the Ontario Legislature in 1986 over whether to regulate paralegals, the high cost of legal services was cited as a reason for regulation. As one MPP stated,

> [L]egal fees are rising. … [I]n many cases people of moderate means may not be able to afford a lawyer, particularly if there is not a great deal of money at stake, such as in fighting a traffic ticket. … Representation by a lawyer may not make sense, considering the charge or the money at risk and the amounts lawyers charge.[410]

A few years later, Ianni recognized that regulation "may well have the effect of making independent paralegals' services less affordable" and that the interest in cost of service must be balanced against the interest in quality of service.[411] Cory J., too, turned his mind to the cost of paralegals' services, arguing that increased access to justice could be provided through competent, licensed paralegals charging fees that are "significantly lower" than lawyers' fees.[412]

---

[409] Swan, *supra* note 339 at 376.

[410] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 33-2, No 40 (26 June 1986) (Herbert Arnold Epp).

[411] Ianni Report, *supra* note 168 at 39.

[412] Cory Report, *supra* note 175 at 5.

In introducing the new regulatory scheme, the government argued for paralegal regulation on the basis of both quality and affordability: "Ontarians deserve access to high-quality, affordable legal services" and the government is committed to "enabling the people of Ontario to get those services."[413] Despite this, the cost of paralegal services had received little mention in the Task Force's proposed regulatory scheme. Of the 205 paragraphs that comprise the Task Force's blueprint for regulation, only three are devoted to fees charged by paralegals.[414] Although problems with fees being charged by some paralegals were identified – for example, "unconscionable" fees in the context of the Financial Services Commission of Ontario and Workplace Safety and Insurance Board matters – the Task Force concluded only that the public should have recourse to a mechanism to review unreasonable paralegal fees (after services are rendered).[415]

ii. Regulation in Practice

The cost of legal services provided by paralegals, then, ought to be a key concern and a prominent feature of the paralegal regulatory model designed to increase access to justice. The reality, however, is that the Law Society does not regulate the cost of services.[416] The only stipulation, found in the *Paralegal Rules of Conduct*, is that fees and retainers charged by paralegals must be

---

[413] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 103 (5 October 2006) at 5281, online (pdf): <www.ola.org/sites/default/files/node-files/hansard/document/pdf/2006/2006-10/house-document-hansard-transcript-2-en-2006-10-05_pdfL103.pdf> (David Zimmer).

[414] Task Force Sept 2004, *supra* note 31.

[415] *Ibid* at paras 189-92. In addition, the Task Force recommended that the rules governing contingency fees for lawyers should also apply to paralegals. The process for disputing fees is not the same for paralegals' fees as it is for lawyers' fees. *Ibid* at para 74: The Task Force reportedly considered the cost of services in proposing that paralegal scope of practice should focus on advocacy work in part because there was "little evidence" that paralegals would provide services in areas such as wills and real estate at a more reasonable rate than lawyers.

[416] There is no provision in the *LSA* or the By-laws with respect to the regulation of the cost of services of paralegals or lawyers.

"fair and reasonable."[417] The paralegal licensing scheme lacks any actual measures to regulate, let alone ensure the lower cost (compared to lawyers) or affordability of paralegal services.[418] Specifically, the LSO does not cap hourly rates or fees that can be charged by paralegals nor the number of hours that can be charged for particular tasks or services – reasonable regulatory measures that would be consistent with its access to justice regulatory mandate. The Law Society merely takes the position that it is up to a lawyer or paralegal to set fees at his or her own discretion,[419] even though it recognizes the pressure to reduce the cost of legal services.[420] This hands-off approach to regulating the cost of legal services, and particularly paralegals' services, is arguably a dereliction of its duty to protect the public interest. For clients who believe their legal bill is too high, the only advice the Law Society offers is to suggest that clients speak with their lawyer or paralegal about their bill. If one is unable to settle a dispute over a paralegal's fees, the Law Society directs the person to file a claim in Small Claims Court.[421] To be clear, for people who turned to a paralegal in the first place for help with a legal problem, the only means of reducing the cost of services that the Law Society offers is for the client to become involved in another legal dispute or court process, either on one's own or

[417] *Paralegal Rules of Conduct*, Rule 5. Rule 5 also contains a list of features that might determine what is "fair and reasonable" including the time and effort required, difficulty and importance of the matter to the client, the amount involved or value of the subject matter, the impact of the retainer on the paralegal's ability to accept other employment, results obtained, special circumstances such as urgency, and the paralegal's experience – any of a broad range of factors. The same stipulation and related factors also apply to lawyers' fees: Law Society of Ontario, *Rules of Professional Conduct*, Toronto: LSUC, 2000, Rule 3.6-1, online: <lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>.

[418] It is recognized that lower cost does not necessarily equate with affordability.

[419] See Law Society of Ontario, "Choosing the Right Legal Professional" (last visited 16 May 2020), online: <lso.ca/public-resources/choosing-the-right-legal-professional#what-are-the-general-guidelines-for-choosing-a-legal-professional—4> [LSO, "Choosing the Right Legal Professional"].

[420] LSO 2012 Annual Report, *supra* note 327 at 4.

[421] Law Society of Ontario, "Complaints about Legal Fees" (last visited 16 May 2020), online: <lso.ca/protecting-the-public/complaints/complaints-about-legal-fees?lang=en-ca>. For disputes over a lawyer's bill, the LSUC advises one to have the bill assessed by an Assessment Officer of the Ontario Superior Court of Justice.

with the assistance of another paralegal, presumably, and incur more costs. Contrary to the Law Society's statutory mandate, that is not regulation in the public interest, nor does it facilitate access to justice. As Devlin and Heffernan argue, if consumers can be guaranteed fair billing only through recourse to the courts, that would seem to be a significant institutional failure of self-regulation.[422] It must be noted, here, that the Law Society does not regulate the cost of lawyers' services either and, arguably, is unwilling to regulate the cost of paralegals' services because doing so would require it to justify why it cannot also regulate the cost of lawyers' services. In this way, the Law Society's regulatory inaction is a glaring example of the legal profession shirking its professional responsibility and, indirectly, putting its own economic self-interest ahead of the public interest.[423]

The Ontario government's commitment to affordable legal services is reflected, at least in part, in its provision of state-funded legal services. To control costs, Legal Aid Ontario fixes the compensation payable to those who provide legal services to low-income individuals by setting hourly rates and the maximum number of hours (for which one will be reimbursed) for various tasks and matters.[424] Legal Aid services, then, would appear to be one area in which paralegals could contribute efficiently and effectively to enhancing access to justice by providing quality services and competent expertise at lower cost. Legal Aid Ontario has a statutory mandate to promote access to justice for low-income individuals by providing services in a cost-effective and efficient manner,"[425] and to provide legal aid services by any method that it considers appropriate, having regard to,

---

[422] Richard F Devlin & Porter Heffernan, "The End(s) of Self-Regulation?" (2007) 45 Alta L Rev 169 at 180.

[423] See Eliot Freidson, *Professionalism: The Third Logic* (Chicago: University of Chicago Press, 2001) at 2.

[424] Legal Aid Ontario, *Tariff and Billing Handbook* (October 2007), online (pdf): <www.legalaid.on.ca/wp-content/uploads/Tariff_Manual.pdf>.

[425] *Legal Aid Services Act*, s 1.

among other things, the costs of providing such services.[426] Yet, pursuant to the *Legal Aid Services Act*, legal services may only be provided by a lawyer or a person working under the direct supervision of a lawyer.[427] In 2016, licensed paralegals gained some ground through LAO's creation of a permanent role for four licensed paralegals in four criminal courthouses in Ontario, working within teams of staff lawyers and other legal aid workers,[428] after licensed paralegals demonstrated that they could provide "quality legal assistance."[429] LAO acknowledges that "with the proper support and mentorship, licensed paralegals can thrive alongside duty counsel, providing client-centred and cost-effective services as part of an inter-disciplinary team,"[430] but are only allowed to work under lawyer supervision. Licensed paralegals are still not permitted to provide legal aid services, even for matters that are within paralegal scope of practice, independently. This legislated exclusion,[431] according to Morris, constitutes a barrier to practice and a denial of access to justice.[432] He recommended that statutory language that excludes paralegals and cannot be justified in the interest of facilitating access to justice or protecting the public interest should be amended to include paralegals.[433] The Law Society claimed, years ago, to be working with the Ontario government to update statutes[434] but only

[426] *Ibid*, s 14(1).

[427] *Ibid*, s 14(4).

[428] Legal Aid Ontario, "LAO's Paralegals Provide Full Range of Practice in Criminal Courts" (4 April 2016), online: <www.legalaid.on.ca/en/news/newsarchive/2016-04-04_paralegal-announcement.asp> [LAO Paralegals in Criminal Courts].

[429] Legal Aid Ontario, "LAO Paralegals Expand Scope of Services in Four Criminal Court" (25 August 2014), online: <www.legalaid.on.ca/en/news/newsarchive/1408-12_paralegalscope.asp>.

[430] LAO Paralegals in Criminal Courts, *supra* note 428.

[431] *Legal Aid Services Act*, s 14(4).

[432] Morris Report, *supra* note 21, Recommendation 3.

[433] *Ibid.*

[434] LSUC Five-Year Review, *supra* note 1 at 24. See also LSUC PSC Report April 25 2013, *supra* note 54 at paras 23-38 re: Morris Report recommendations and statutes to be updated.

lawyers continue to be permitted to provide legal aid services. It seems the government itself does not support independent paralegal practice in areas of unmet need. This stance is curious given Legal Aid Ontario is accountable to the government of Ontario[435] and both the Attorney General and LSO play a role in governance of the Legal Aid Services Corporation.[436]

iii. Subsequent Reviews

In a survey of users of paralegal services conducted as part of the LSUC's five-year review, almost half of the respondents cited lower cost as the reason they chose to use the services of a paralegal rather than those of a lawyer.[437] The Ontario Civil Legal Needs project found that the real and perceived cost of legal services is a barrier to access to civil justice for low and middle-income Ontarians.[438] Macfarlane's study revealed that the majority of individuals involved in applications in family law matters who were self-represented at the time of filing, and the many more who became self-represented at some point during the process, were self-represented because of an inability to afford to retain, or continue to retain, legal counsel.[439] There is a gap in affordable legal services and a need for access to legal assistance for the majority of litigants who are self-represented in family court.[440] Addressing the gap in services requires a range of services from all partners in the civil legal system.[441] Like Ianni did more than twenty-five years earlier,[442] Bonkalo J., in reviewing family legal

[435] *Legal Aid Services Act*, s 3(4).

[436] *Ibid*, s 5.

[437] STRATCOM Report, *supra* note 4 at 12.

[438] Ontario Civil Legal Needs Project, *supra* note 194 at 46.

[439] Macfarlane, *NSRLP Report*, *supra* note 194 at 33, 39.

[440] See Ontario Civil Legal Needs Project, *supra* note 194 at 57. See also Macfarlane, *NSRLP Report*, *supra* note 194.

[441] Ontario Civil Legal Needs Project, *supra* note 194.

[442] Ianni Report, *supra* note 168 at 39.

services, recognized the need to increase access to alternative and affordable ways to obtain qualified legal services.[443]

III. CONCLUSION: IMPLICATIONS AND DISCUSSION

Inherent in the legal profession's self-regulatory privilege are both public and private interests. Regardless, regulation must ensure meaningful access to justice for the public.[444] The government promised that paralegal regulation would increase access to a greater selection of legal service providers and high-quality and more affordable (than lawyers') services,[445] and that Ontarians would be better served by licensed and regulated paralegal professionals.[446] In short, an increase in access to justice through increased choice and availability of competent legal service providers and affordable services.

The Law Society claims that paralegal regulation has been successful in increasing access to justice and also that it was the right choice of regulator. This chapter's analysis of the Law Society's exercise of regulatory authority over paralegals, however, leads to a different conclusion. The Law Society agreed to regulate paralegals in the public interest – efficient and effective regulation that would recognize the important role of paralegals in providing access to justice and balance the

[443] Bonkalo Report, *supra* note 219.

[444] *LSA*, s 4.2 provides the LSO's statutory mandate.

[445] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 103 (5 October 2006) at 5281, online (pdf): <www.ola.org/sites/default/files/node-files/hansard/document/pdf/2006/2006-10/house-document-hansard-transcript-2-en-2006-10-05_pdfL103.pdf> (David Zimmer), *supra* note 413.

[446] *Ibid.* See also LSUC Five-Year Review, *supra* note 1 at 3.

interests of lawyers, paralegals and the public.[447] As one Bencher declared, "there's nobody with more expertise to draw the line between legal services that must be delivered by lawyers and those that may reasonably be delivered by … properly regulated and trained paralegals."[448] But, the Law Society also had other reasons to regulate paralegals which were in the interest of the profession more than the public – to secure a dominant role in the regulation of paralegals and to please the government to preserve its traditional self-regulating privilege. As this chapter reveals, these professional interest motivations also, and in some respects more strongly than public interest concerns, are revealed through the Law Society's exercise of regulatory authority over paralegals. This is most evident with respect to paralegal scope of practice and the cost of services, but also with respect to competence.

It is worth noting, before proceeding to a discussion of the Law Society's exercise of regulatory authority, that the Law Society's claims of the success of paralegal regulation stem, in part, from establishment of a "prestigious and well-regarded" paralegal profession,[449] important changes in paralegals' credibility and prestige[450] and their "enhanced professional standing."[451] But success depends on the definition used and the perspective of the proclaimer. Success for whom? For the

[447] Transcript of Debates, LSUC Convocation (22 January 2004), online: *Law Society of Upper Canada* <lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL-3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true> [Transcript, 22 January 2004].

[448] *Ibid.*

[449] LSUC Five-Year Review, *supra* note 1 at 3.

[450] *Ibid* at 27.

[451] *Ibid* at 3. Morris, too, cited the "evident consensus" in Ontario's legal community that regulation had "elevated the reputation and image of the paralegal sector," and perhaps this explains why, despite his criticisms and calls for change, he proclaimed paralegal regulation "by any objective measure … an unqualified success": Morris Report, *supra* note 21 at Executive Summary, 10.

Law Society in securing the role of regulator? For the public, ostensibly better served by more regulated legal service providers? For paralegals, because of their embrace by the storied Law Society? The Law Society's proclamations of success in terms of enhanced reputation and prestige belie the profession's inescapable attachment to self-interest and preoccupation with its own privileged status.[452] Claims of paralegals' increased status and credibility, however, have little to do with the public interest and appear to be a ringing endorsement by the Law Society of its own governance and its privileged position of control over competitors and the market for legal services, and is reflective of the broader social, political and cultural foundations of Canadian legal professionalism.[453]

But the purpose of the regulation of paralegals in the public interest was to increase access to justice. The Law Society claims that it has. Access to justice, therefore, is the lens through which the exercise of the LSUC/LSO's exercise of regulatory authority must be analyzed.

Law Society as Regulator

The legal profession's privilege of self-regulation conveys not only a responsibility to serve the general public interest, but also substantial market power with which to serve private and professional interests.[454] The Law Society reportedly views its obligation to facilitate access to justice

[452] It is worth noting, as discussed in Chapter 1, that paralegals welcomed regulation because it would in part provide legitimacy to the fledgling paralegal profession that had long fought for professional recognition. Regulation by the LSUC, controversial for some because of conflict-of-interest concerns, provided, it seemed, an instant elevation of paralegals' status as a newly regulated profession.

[453] See W Wesley Pue, "Cowboy Jurists and the Making of Legal Professionalism" (2008) 45:5 Alta L Rev 29 at 52; Philip Girard, "The Making of the Canadian Legal Profession: A Hybrid Heritage" (2014) 21:2 Intl J Leg Prof 145; Richard L Abel, *English Lawyers Between Market and State: The Politics of Professionalism* (Oxford: Oxford University Press, 2003).

[454] Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) at xiii.

for Ontarians as an "increasingly compelling"[455] and "major" priority,[456] and cites paralegal regulation as an "important component" of the Law Society's ongoing commitment to access to justice.[457] Yet, the LSUC/LSO has not undertaken any study to objectively assess whether the regulation of paralegals has enhanced access to justice for the people of Ontario.[458] Given the Law Society's public interest justification for regulating paralegals and its expanded statutory mandate to facilitate access to justice for the people of Ontario, it would seem incumbent on it to objectively measure (or more appropriately, have a third party do so) how the regulatory scheme fares from an access to justice perspective.

The governance structure ensures that paralegals remain a separate and subordinate profession which arguably serves the legal profession's interest more so than the public interest. Increased choice, competence and affordability could still be responsibly achieved with greater paralegal involvement in decision-making. At Convocation, lawyers have a majority voice, and all recommendations of the Paralegal Standing Committee, the only committee responsible for paralegal matters specifically and at which paralegals do not enjoy a majority, are subject to

---

[455] Thomas Conway, Treasurer, in LSO 2012 Annual Report, *supra* note 327 at 1.

[456] *Ibid* at 4.

[457] See Laurie Pawlitza, Treasurer, "Treasurer's Message" in Law Society of Upper Canada, *2011 Annual Report: Performance Highlights* at 2, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/p/pe/performance-ar2011-en.pdf>. See also Thomas Conway, Treasurer, "Message from the Treasurer" in Law Society of Upper Canada, *2013 Annual Report*, online: <www.annualreport.lsuc.on.ca/2013/en/treasurers-message.html>.

[458] Or, at least, not one that is publicly available. The only available study undertaken, as part of the LSUC's statutory five-year review of regulation, surveyed the attitudes and impressions of paralegals and members of the public who had used paralegal services but it provided no objective measure of access to justice. The LSUC's Legal Needs Analysis reportedly canvassed the views of lawyers, paralegals, adjudicators and judges, but that report is not publicly available and its methodology and findings therefore cannot be ascertained. It must be noted here that the legislative provisions requiring the two reviews of regulation after the first five years did not require an assessment of access to justice implications but the "manner" and "effect" of regulation: *LSA*, s 63.1, as it appeared between October 19, 2006 and April 30, 2007.

Convocation's approval. As a result, Ontario's paralegals are not only regulated but also out-regulated by lawyers. More than two decades before paralegal regulation was implemented, Zemans argued in favour of independent non-lawyer legal service delivery to assist in providing access to justice, insisting that the translation of the ideal of equal access before the law into a reality would require opening the legal services market to alternative suppliers and entrusting them with the maximum degree of independence consistent with adequate and competent service.[459] But, Zemans warned, the "retention of monopolies which seek to curtail the scope of activities of alternative suppliers in the market for legal services would amount to a serious denial of access to justice" since it would deprive those whose need is greatest of the ability to assert their legal claims and to pursue their rights.[460]

Scope of Practice

The area that most defines the Law Society's exercise of regulatory authority over paralegals, particularly given its public interest justification for regulating paralegals, is scope of practice. Scope of paralegal practice was one of the main hurdles to implementing paralegal regulation even long before the LSUC agreed to take on the role of regulator. Indeed, the task of defining scope of paralegal practice was part of the Attorney General's enticement of the Law Society to agree to take on the role of regulator of paralegals. The Law Society has broad regulatory authority to define paralegal scope of practice and also to expand it. Perhaps most revealing is that, after thirteen years

[459] Frederick H Zemans, "The Non-lawyer as a Means of Providing Legal Services" in Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 263 at 293 [Zemans, "Non-lawyer"].

[460] *Ibid*.

of regulation, paralegal scope of practice remains essentially the same as it was before regulation was implemented. To be clear, the Law Society has done little to expand paralegal scope of practice to increase the public's access to legal services despite well-documented legal needs. Scope of practice is critical and it is therefore important that the Law Society "get it right" to both address the public's need for increased access to legal services and protect the public from harm that could result from incompetent legal service providers. Any scope of practice, once determined, can and must by supported by proper educational and licensing standards. But, undeniably, the authority to determine paralegal scope of practice affords the Law Society broad power to decide what legal services paralegals will be allowed to provide and in which practice areas. At the centre of this authority is an inherent conflict of interest in having the Law Society regulate others and control what paralegals may or may not do. By adopting the pre-existing (pre-regulation) scope of practice and subsequently not expanding paralegal scope of practice much beyond that – refusing to cede to paralegals a larger piece of the legal services market – exposes the tendencies of the Law Society, as regulator, toward economic self-interest. This is consistent with market control theory and also with the legal profession's cultural history of attachment to exclusive knowledge and superior status. To be clear, the Law Society has chosen to tightly control, maintain and protect rather than innovate and expand paralegals' practice areas and the range of legal services paralegals may provide.

Cost of Services

The issue of the cost of paralegals' services, it seems, was either forgotten or simply ignored by the Paralegal Task Force in designing the regulatory scheme. More significantly, regulating the cost of paralegals services has been almost completely abandoned by the Law Society in its exercise of regulatory authority. It is not only significant but also contrary to its public interest justification for

regulating paralegals and its public interest and access to justice mandates, that while the affordability of legal services is a component of access to justice, and one of the government's rationales for implementing paralegal regulation, the Law Society of Ontario does not regulate the cost of paralegal services.[461] Yet it is well documented that the high cost of lawyers' services is a major reason for the high rate of self-represented individuals and a prominent feature of the access to justice crisis. The Law Society's regulation of paralegals is therefore deficient in that it does not contain practical measures concerning the cost of services to ensure their affordability. In this way, it fails to serve and protect the public interest.[462]

Competence

Regulation was designed to create and ensure a standard of paralegal competence, but Law Society regulation with respect to competence falls short in three ways. Firstly, while educational standards are important, the licensing exam is what finally determines whether a licensing candidate has met the required standards. Yet, the paralegal licensing exam did not test any substantive or procedural knowledge for the first seven years of regulation. In what might be described as an abdication of the Law Society's regulatory imperative to ensure competence in the public interest,

[461] The law society leaves it to individual paralegals (and lawyers) to set fees based on the services they provide: See LSO, "Choosing the Right Legal Professional", *supra* note 419.

[462] It is acknowledged that regulating the cost of paralegals' services only (and not lawyers' services) would be another means by which the Law Society could restrict and control potential competitors and the market for legal services, so in that sense the lack of regulation of paralegals' services is, arguably, in paralegals' interest. But it would also be indefensible (and not good for its reputation), and smack of economic self-interest, for the Law Society as regulator to restrict the cost of paralegals' services but not lawyers' services.

the first seven years' worth of licensed paralegals[463] were licensed without any assurance that they possessed substantive or procedural legal knowledge. As Chapter 2 reveals, the incompetence of paralegals was repeatedly cited by the Law Society as an argument against regulation that would allow paralegals to provide legal services independently. Secondly, as this chapter reveals, the Law Society does little to discipline paralegals for incompetence, choosing instead to focus on essentially two types of misconduct: money matters, such as misappropriation of clients' funds and fraud, and a failure to respond to or cooperate with the Law Society. (It is arguably of little comfort to the public that lawyers are treated in the same manner.) Lastly, many have argued that one way to regulate and ensure paralegal competence is to establish specialized licenses for certain practice areas, particularly those areas in which the provision of legal services involves greater risk for the public. Specialized licenses were recommended (by Cory J. and Zemans) long before a paralegal regulatory scheme was implemented and have also been recommended since regulation was implemented – by Morris and, almost four years ago, by Bonkalo J. in the area of family legal services in conjunction with an expanded scope of practice – but the Law Society has not created one specialized paralegal license.

Conclusion

In granting the Law Society regulatory authority over paralegals, the Ontario government gave the Law Society broad authority to regulate in the public interest and also to expand its control over the market for legal services by regulating others. In the result, the Law Society has exercised its authority not only in the public interest – such as through education and licensing standards, creating

[463] In 2008, the first full year after paralegal regulation was implemented, there were 2,283 licensed paralegals in Ontario: LSUC 2008 Annual Report Performance Highlights, online: <https://lawsocietyontario.azureedge.net/media/lso/media/about/2008-lsuc-performance-highlights-en.pdf> at 7. By the end of 2013, there were almost 6,000 licensed paralegals: LSUC 2013 Annual Report, online: <http://www.annualreport.lsuc.on.ca/2013/en/the-professions/membership-statistics.html>.

paralegal rules of conduct, mandatory insurance – but also in the profession's interest by securing and reinforcing its professional monopoly.[464] The Law Society essentially controls every aspect of paralegal regulation and few countervailing forces have a meaningful voice.[465] Such a regulatory structure is, inevitably, likely to privilege professional over public interests.[466]

The Law Society agreed to regulate paralegals in the public interest. But where does the public interest lie where the Law Society has done little to expand paralegal scope of practice; where paralegals are prohibited from providing services in areas of high public need and precluded from being part of solutions to the access to justice crisis; and where the cost of paralegal services is not capped or controlled and the regulator refuses to involve itself in clients' disputes over fees; and where the Law Society rarely disciplines for incompetence? Cutting through the rhetoric,[467] this chapter reveals the Law Society's self-serving tendencies in its embrace of paralegals and apparently lukewarm commitment to the public interest.

In summary, this chapter reveals that the Law Society's exercise of regulatory authority appears to be, in critical respects, influenced more by the interests of the legal profession rather than the public, particularly with respect to paralegal scope of practice and the cost of services, but also with respect to competence. Since these are core aspects of regulation intended to protect the public

[464] See generally Julian Webb, "Turf Wars and Market Control: Competition and Complexity in the Market for Legal Services" (2004) 11:1-2 Intl J Leg Prof 81 at 81.

[465] See Deborah L Rhode & Alice Woolley, "Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada" (2012) 80:6 Fordham L Rev 2761 at 2776, although the authors were not referring to paralegal regulation in Ontario.

[466] *Ibid*.

[467] Harry Arthurs is of the view that rhetoric is the most significant factor in the politics of professionalism: Harry Arthurs, Book Review of *English Lawyers Between Market and State: The Politics of Professionalism* by Richard L Abel, (2004) 54:4 J Leg Educ 609 at 609.

and facilitate access to justice, the inescapable conclusion is that the Law Society's exercise of regulatory authority over paralegals is deficient. While the Law Society's public interest justification for regulating paralegals does not appear to accord, in Sugarman and Pue's words, with the legal profession's inclination to protect its self-interest,[468] its exercise of regulatory authority does.

[468] David Sugarman & W Wesley Pue, "Introduction: Towards a Cultural History of Lawyers" in Pue & Sugarman, *Lawyers and Vampires*, at 13 [Pue & Sugarman, "Introduction"].

CHAPTER 4:
OTHERS & REGULATION ELSEWHERE IN CANADA: A COMPARATIVE ANALYSIS

INTRODUCTION[1]

This chapter provides, for comparative purposes, an examination of non-lawyer legal service provision and the issue of the regulation of non-lawyers – others – who also provide legal services in Canada, outside Ontario, through the lens of access to justice. It also examines the regulatory models governing the professions in Quebec and the health professions in Ontario in which the professions retain some self-regulatory privileges but with government oversight.

While the LSO is unique amongst Canadian law societies in having gained regulatory jurisdiction over paralegals – the extent of which has been canvassed in Chapter 3 – it is not unique in having wrestled with the issue of the regulation of paralegals. Other jurisdictions are similarly considering just what to do about non-lawyers who provide legal services. Nor is the Law Society of Ontario unique amongst the professions in Ontario in having redefined its connection to adjacent or related occupational groups whose members work in collaboration and/or competition with its members. In Part I of this chapter I canvass, firstly, the extent of non-lawyer legal service provision across Canada; secondly, the experience of other Canadian jurisdictions, and particularly law societies, with the regulation or potential regulation of non-lawyer legal service providers; and thirdly, other non-lawyer regulatory schemes that exist separate from and are beyond law society regulation. In Part II, I examine the system of regulation of the professions in Quebec and healthcare

[1] Substantial parts of this chapter were previously published in two articles: Lisa Trabucco "What Are We Waiting For? It's Time to Regulate Paralegals in Canada" (2018) 35 Windsor YB Access Just 149 and Lisa Trabucco, "Lawyers' Monopoly? Think Again: The Reality Of Non-Lawyer Legal Service Provision In Canada" (2018) 96:3 Can Bar Rev 460.

professionals in Ontario and review the experience of the Ontario medical profession in seeking to maintain regulatory control over non-physician providers of medical services. In Part III, I offer some reflections on the lessons to be learned, if any, from these experiences.

Any discussion of non-lawyer of legal service provision and perspectives with respect to the regulation of paralegals must first examine what constitutes *legal services* and what the *practice of law* entails.

I. OTHERS: PARAPROFESSIONALS PROVIDING LEGAL SERVICES & REGULATION

A. Extent of Non-lawyer Legal Service Provision

Many believe that legal advice and representation are, and must remain, the purview of lawyers.[2] Yet legislation allows otherwise. The same statutes that purportedly grant lawyers a monopoly over legal services also allow a range of non-lawyers to engage in practice-of-law activities, many without lawyer supervision. Other statutes – federal, provincial and territorial – also permit independent non-lawyer provision of legal services. The reality is that non-lawyers provide a range of legal services in Canada – services that go beyond legal information and guidance and include legal advice and representation pursuant to statutory authority. The Supreme Court of Canada has recognized that representation by non-lawyers before federal tribunals involves some aspect of the traditional practice of law.[3]

---

[2] Ontario, Ministry of the Attorney General, *Family Legal Services Review*, Justice Annemarie E Bonkalo (Toronto: MAG, 31 December 2016), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/>.

[3] *Ibid* at para 56.

Lawyers in Canada have an exclusive right to practise law.[4] Pursuant to the statutes governing the legal profession in Canada, the *practice of law* is[5] and includes the application of legal principles and legal judgment in a manner that requires the knowledge and skills of a person trained in the law.[6] More specifically, the *practice of law* includes the following: giving legal advice, drafting or preparing legal documents, representing a person in a proceeding before an adjudicative body, appearing as counsel or advocate, negotiating legal rights or responsibilities, and settling a claim or demand for damages.[7] In some places, these activities constitute the practice of law only if performed for a fee, gain or reward.[8] The Law Society and government of Saskatchewan are of the view, however, that the payment of a fee "does not necessarily change the nature of the service provided and … [is] an artificial distinction"[9] between what constitutes legal services and what does not.

---

[4] *Legal Profession Act*, SBC 1998, c 9, s 15(1); *Legal Profession Act*, RSA 2000, c L-8, s 106; *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 30; *Legal Profession Act*, CCSM c L107, s 20(1); *Law Society Act, 1996*, SNB 1996, c 89, s 33; *Legal Profession Act*, SNS 2004, c 28, s 16(2); *Legal Profession Act*, RSPEI 1988, c L-6.1, s 20; *Law Society Act, 1999*, SNL 1999, c L-9.1, s 33; *Legal Profession Act*, RSNWT 1988, c L-2, s 68; *Legal Profession Act*, RSY 2002, c 134, s 1; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2 s 68.

[5] *Legal Profession Act, 1990*, SS 1990-91 c L-10.1, s 29.1; *Legal Profession Act*, SNS 2004 c 28, s 16(1).

[6] *Legal Profession Act, 2017*, SY 2017, c 12, s 30(1); *Legal Profession Act*, SNS 2004 c 28, s 16(1), and see also *Law Society Act, 1996*, SNB 1996 c 89, s 2.

[7] See for example *Legal Profession Act*, SBC 1998 c 9, s 1(1); *Legal Profession Act*, CCSM c L107, s 20(3); *Legal Profession Act*, SNS 2004 c 28, s 16(1); *Law Society Act, 1996*, SNB 1996 c 89, s 1; *Law Society Act, 1999*, SNL 1999 c L-9.1, s 2(2); *Legal Profession Act*, RSPEI 1988 c L-6.1, s 21(1); *Legal Profession Act, 1990*, SS 1990-91 c L-10.1, s 29.1; *Legal Profession Act*, RSA 2000, c L-8, s 106(1); *Legal Profession Act, 2017*, SY 2017, c 12, s 30(1); *Legal Profession Act*, RSNWT 1988, c L-2, s 1; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 1; *Act Respecting the Barreau du Québec*, CQLR c B-1, s 128 [*Barreau du Québec* Act]; *Notaries Act*, CQLR c N-3, s 15.

[8] *Legal Profession Act*, SBC 1998 c 9, s 1(1); *Legal Profession Act*, CCSM c L107, s 20(3); *Legal Profession Act*, SNS 2004 c 28, s 16(1); *Legal Profession Act*, RSNWT 1988, c L-2, s 1; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 1; *Legal Profession Act,* RSPEI 1988 c L-6.1, s 21.

[9] Saskatchewan Legal Services Task Team, *Final Report of the Legal Services Task Team* (14 August 2018) at 66, online (pdf): <www.lawsociety.sk.ca/media/395320/107840-legal_services_task_team_report_august_14-_2018-1.pdf> [SASK LSTT].

The practice of law includes acting and practising as a barrister or solicitor[10] and also includes providing legal services.[11] In Yukon, a person *provides a legal service* if they do any of the same activities that constitute the practice of law elsewhere.[12] (In Manitoba, representation is not included in the definition of the practice of law.[13]) In Quebec, lawyers belong to either the Order of Advocates, called the Barreau du Quebec, or the Chambre des notaires du Québec.[14] The statute governing the Barreau separates an advocate's practice into two categories and sets out exclusive areas of practice: Activities that fall within the "exclusive prerogative" of the practising advocate or solicitor involve giving legal advice and drafting and preparing documents for various purposes;[15] practising advocates also have the exclusive prerogative to plead or act before any tribunal[16] (with some exceptions, such as before the Administrative Labour Tribunal and the Administrative Tribunal of Quebec in matters including workers' compensation, crime victims' compensation, and immigration).[17] A notary's practice involves document preparation, giving legal advice, and representation.[18]

[10] *Law Society Act, 1999*, SNL 1999 c L-9.1, s 2(2): "acting"; *Legal Profession Act*, RSA 2000, c L-8, s 106(1): acting and practicing.

[11] *Law Society Act, 1996*, SNB 1996, c 89, s 2(b).

[12] *Legal Profession Act, 2017*, SY 2017, c 12, s 30(1).

[13] *Legal Profession Act*, CCSM c L107, s 20(3).

[14] *Barreau du Québec* Act, ss 1-4. A solicitor is defined as an advocate from another province or territory of Canada or a law professor who is entered on the Roll under a restrictive permit. The term "advocate" includes "solicitor" unless otherwise provided by law: s 1(g). See also *Notaries Act*, CQLR c N-3.

[15] *Barreau du Québec* Act, s 128(1).

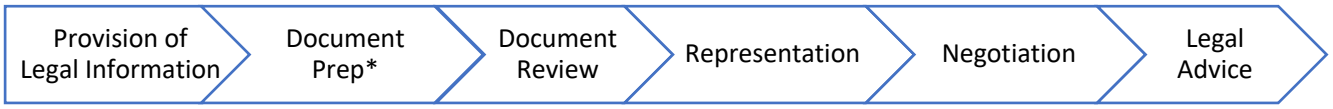
[16] *Ibid*, s 128(2).

[17] *Ibid*.

[18] *Notaries Act*, CQLR c N-3, s 15.

The same statutes governing the legal profession that define the *practice of law* and *provision of legal services* and reserve activities for lawyers, barristers, solicitors, attorneys, law society licensed members, students-at-law, articled clerks, and law students[19] also contain exceptions and exemptions to the practice of law and provision of legal services which allow a broad range of non-lawyers to engage in many of the same activities that are otherwise reserved for lawyers. The activities that constitute the provision of legal services and the practice of law – which both lawyers and a range of non-lawyers may perform – can be plotted on a continuum of legal services, as shown in Table 3.[20]

TABLE 3: LEGAL SERVICES CONTINUUM



***Document Prep** includes form filling and drafting pleadings & other documents (contracts, wills, separation agreements, etc.).

There is significant overlap among these legal services on the continuum. Representing a person in a proceeding includes the preparation and filing of documents and the conduct of discovery in relation to the proceeding and any other conduct necessary for the proceeding.[21] Giving legal

[19] See for example *Legal Profession Act, 1990,* SS 1990-91 c L-10.1, s 30(1); *Legal Profession Act*, SNS 2004 c 28, s 16(1); *Law Society Act, 1999*, SNL 1999 c L-9.1, s 76(1); *Legal Profession Act,* RSPEI 1988 c L-6.1, s 21(1); *Legal Profession Act*, SBC 1998 c 9, s 1(1); *Law Society Act, 1996*, SNB 1996 c 89, s 33(1); and also a few specified others such as a professional law corporation *Law Society Act, 1999*, SNL 1999 c L-9.1, s 76(1).

[20] A continuum is defined as a continuous series the parts of which "cannot be separated or separately discerned", online: <https://www.collinsdictionary.com/dictionary/english/continuum>. The order of the legal services in this continuum is not necessarily fixed and could be re-ordered (for example, document prep and document review could switch places). It is difficult to order them but arguably it might be possible to do so based on, for example, degree of the application of legal skill and knowledge required or extent of the legal education of the provider. The table is intended to show that the overlap of the many legal services either separately, in combination or totality, constitute the practice of law and provision of legal services.

[21] *Legal Profession Act, 2017*, SY 2017, c 12, s 30(2).

advice is integral to and often incorporated into the other activities such as document preparation (both solicitors' work and advocacy-related), negotiation, and representation. It is unclear where providing legal information falls (or how providing legal information should be categorized and treated). Saskatchewan's Legal Service Task Team argues that a person who provides legal information short of legal advice "might be permitted to help the client understand when a problem is a legal problem, discuss options without making recommendations, and discuss possible next steps,"[22] that the provision of legal information should not be included in definitions of the practice of law[23] and should not be a regulated legal service.[24] The distinction matters – if providing legal information is not considered the practice of law or providing legal services, then non-lawyers could provide legal information to assist in meeting the public's legal needs. However, as legal information becomes more useful to an individual and more effective as an access to justice resource it might also begin to take on some characteristics of legal services.[25]

The public's legal needs fall across a spectrum, ranging from basic information to full-service representation by lawyers.[26] The boundaries around the legal services industry are blurred. Not every legal task requires a licensed lawyer to perform it.[27] According to Evans and Trebilcock, activities and

[22] SASK LSTT, *supra* note 9 at 15.

[23] *Ibid* at 65-66.

[24] *Ibid* at 90. See also Jennifer Bond, David Wiseman & Emily Bates, "The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector" (2016) 25:1 J Law & Soc Policy 1 at 11.

[25] Bond, Wiseman & Bates, *supra* note 24 at 11-12.

[26] Deborah Rhode, *Access to Justice* (New York: Oxford University Press, 2004) at 20.

[27] Gillian K Hadfield, *Rules for a Flat World – Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (New York: Oxford University Press, 2017) [Hadfield, *Rules for a Flat World*].

commodities "form a continuum, and divisions are inevitably arbitrary."[28] Plotting legal services on a continuum begins to allow a visualization of legal services as being delivered by multiple providers with different types and levels of skill, rather than exclusively by lawyers.[29] Others also provide legal services, and professional services overlap; for example, lawyers, accountants, and lay tax advisors all share the tax consulting market.[30] The question is whether all of these services qualify as legal services or whether legal services are only those done by lawyers or law firms?[31]

Drafting or completing legal documents or agreements that affect the legal rights of an entity or person[32] includes preparing pleadings and other documents related to a proceeding as well as other documents, agreements, instruments such as contracts, wills, deeds, articles of incorporation, powers of attorney and separation agreements.[33] Drafting or filling legal forms might or might not constitute practicing law, that is, an activity that only someone with legal skill and judgment and training in the law can or should provide. As McDermid J. of the Alberta Court of Appeal has held, it is "a question of degree in each case."[34] He states:

> There are many businesses which require persons not solicitors, to fill in forms which have a legal effect …. real estate agents fill in forms relating to the purchase and sale and rental of property; insurance agents fill in forms relating to insurance;

---

[28] Robert G Evans & Michael J Trebilcock, *Lawyers and the Consumer Interest – Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) at viii.

[29] Paula Littlewood & Stephen Crossland, "Alternative Legal Service Providers: Filling the Justice Gap" in Paul A Haskins, ed, *The Relevant Lawyer: Reimagining the Future of the Legal Profession* (American Bar Association, 2015) 25 at 27.

[30] Trebilcock & Evans, *supra* note 28 at viii.

[31] *Ibid.*

[32] *Legal Profession Act, 1990*, SS 1990-91 c L-10.1, s 29.1; *Legal Profession Act*, RSA 2000, c L-8, s 106(1); *Legal Profession Act, 2017*, SY 2017, c 12, s 30(1); *Legal Profession Act*, SNS 2004 c 28, s 16(1).

[33] See, for example, *Legal Profession Act*, CCSM c L107, s 20(3); *Legal Profession Act,* RSPEI 1988 c L-6.1, s 21; *Legal Profession Act, 2017*, SY 2017, c 12, s 30(1); *Law Society Act, 1996*, SNB 1996 c 89, s 2.

[34] *R v Nicholson*, 1979 Alta SCAD 54 at para 34 [*Nicholson*].

> bankers fill in forms relating to loans. Now to properly fill in a form may require legal knowledge that only a person trained in the law has. A simple form of lease may have added to it a clause of complexity so that the person is not merely filling in a form but is actually drafting clauses which should only be done by a person trained in the law.[35]

Document review is similarly problematic. It involves reviewing documents to determine relevance, assessing if they are subject to privilege, classifying them according to legal issue, and identifying which documents are beneficial or prejudicial to a client's legal position.[36] Whether document review is legal work depends on how much the task requires the application of legal skill and judgment, and the degree of legal knowledge and education required will depend on the purpose and nature of the review.[37] Dera Nevin, an e-discovery and legal technology lawyer, argues that it does not require a legal education to determine whether or not a document contains a specific word, such as "balloon," if the presence of the word alone is the measure of the review's completeness and efficacy; a computer can do this faster and more accurately than humans.[38] But, arguably, where a document needs to be vetted for a complex legal concept, such as privilege, a legal education seems mandatory.[39] Others argue that because document review "requires a strong understanding of legal principles like materiality, relevancy, and privilege" and also requires the application of legal

[35] *Ibid* at para 34.

[36] Yamri Taddese, "Lawyers Confused at Stance on Document Review", *Law Times* (23 March 2015), online: <www.lawtimesnews.com>.

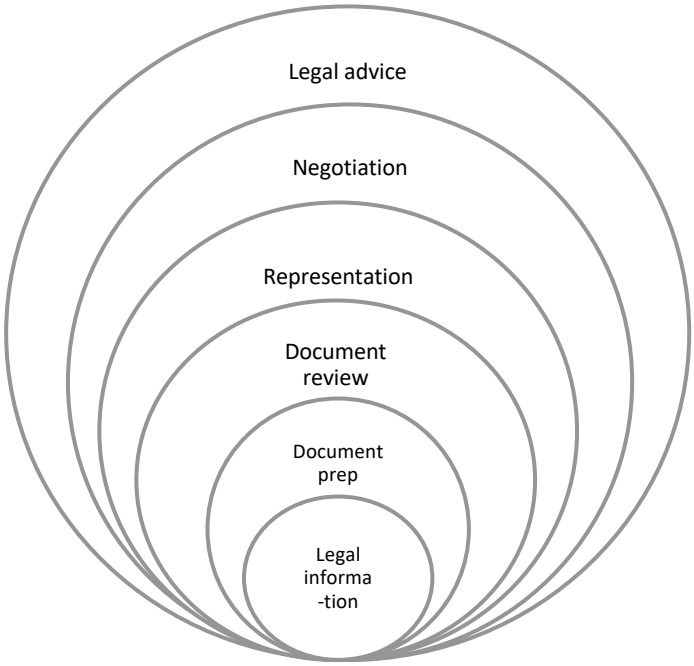
[37] Dera J Nevin, "Is Document Review Legal Work?", *Canadian Lawyer* (1 September 2014), online: <www.canadianlawyermag.com/news/features/is-document-review-legal-work/269514>.

[38] *Ibid.*

[39] *Ibid*.

principles, document reviewers are practicing law.[40] Table 4 depicts the legal services continuum differently than in Table 3 to highlight the lack of distinct tasks or overlap in legal services:

TABLE 4: LEGAL SERVICES CONTINUUM: OVERLAPPING SERVICES



The lack of separate and distinct legal services or acts is at the heart of the difficulty in separating lawyers' work from non-lawyers' work.[41] Alberta's definition of the *practice of law* is the most broad, stipulating, essentially, that only members of the law society may practise as barristers and solicitors.[42] The definition also stipulates that only a lawyer may commence, carry on or defend any action or proceeding before a court or judge on behalf of another person and therefore arguably

[40] Heather Douglas, "Is Doc Review Legal Work?", *SLAW* (13 January 2016), online: <www.slaw.ca/2016/01/13/is-doc-review-legal-work/>.

[41] For a similar discussion of "controlled acts" under the *Regulated Health Professions Act, 1991*, SO 1991, c 18, see *infra* Part II.

[42] *Legal Profession Act*, RSA 2000, c L-8, s 106(1).

allows non-lawyers to commence, carry on or defend any matter before an administrative tribunal on behalf of another person.[43] Other statutory provisions further complicate the matter. Canada's *Bankruptcy and Insolvency Act*, for example, defines "legal counsel" narrowly, as "any person qualified, in accordance with the laws of a province, to give legal advice."[44]

Cases involving the prosecution of non-lawyers for unauthorized practice illustrate lawyers' continued but unsuccessful pursuit of a monopoly over legal services and also expose the unclear boundary between the *practice of law* – that phrase being reserved to describe what lawyers do – and the provision of legal services by non-lawyers. The Alberta Court of Appeal has held that the right of audience conferred upon an agent does not authorize the agent to assist in preparing, issuing, and filing documents related to ongoing litigation, as these activities fall within the practice of law.[45] Yet the Supreme Court of Canada has held that representation, which non-lawyers may provide in many jurisdictions and forums, includes document preparation and providing advice in relation to a proceeding.[46] The British Columbia Supreme Court has drawn the line between merely assisting a party by appearing to speak on his or her behalf at a hearing free of charge, which is not considered the practice of law, and taking on the prosecution or defense of a proceeding, which does constitute the practice of law, particularly if one charges a fee for such services .[47] The legal services, set out in

[43] *Ibid*, s 106(1)(c).

[44] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 2. That definition would include a licensed paralegal in Ontario, per the *Law Society Act*, RSO 1990, L.8, ss 1(6), 2(2).

[45] *Pacer Enterprises Ltd v Cummings*, 2004 ABCA 28 at paras 14, 18.

[46] *Law Society of British Columbia v Mangat*, 2001 SCC 67 at para 32 [*Mangat*].

[47] *The Law Society of British Columbia v Boyer*, 2016 BCSC 342 at para 29; *The Law Society of British Columbia v Parsons*, 2015 BCSC 742 at para 38.

the continuum, all fall within the definitions of both the *practice of law* and *provision of legal services*, and which both lawyers and non-lawyers provide.

For greater clarity, and in the public interest, a different regulatory approach might be in order. Instead of setting out what only members of a law society (lawyers) can do, and exceptions and exemptions, it might be best to set out who (categories of legal service providers) may perform certain services from a risk of harm perspective. Almost forty years ago, McDermid J. of the Alberta Court of Appeal, in attempting to distinguish between activities that constitute the practice of law from those that do not, and what can be performed by a non-lawyer, stated the test is whether the act "should only be done by members of the legal profession in order that the public be adequately protected from acts by unqualified persons."[48]

i. Non-lawyers Providing Legal Services: Four Categories

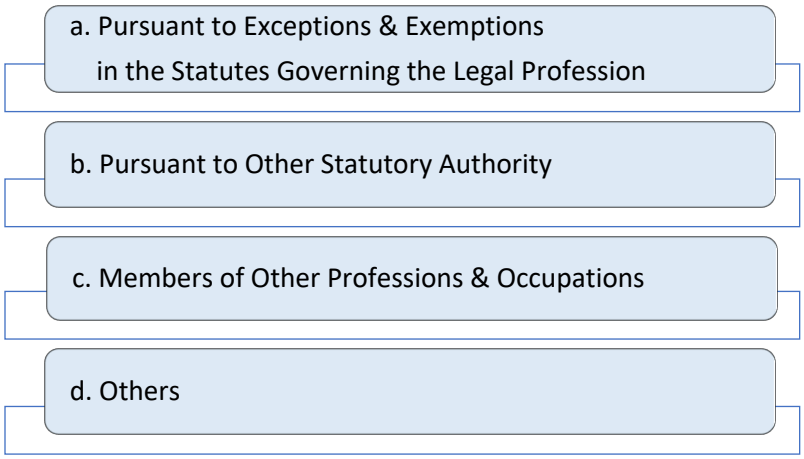
Non-lawyers who provide legal services[49] in Canada fall into four main categories (set out in Table 5 below): (a) Those who provide legal services pursuant to exceptions and exemptions set out in the statutes that govern the legal profession; these include persons who provide the same services but are supervised by a lawyer (who mainly prepare legal documents but may also engage in representation and advocacy work) as well as those who provide legal services independently (largely representation and advocacy work); (b) those who provide legal services independently pursuant to statutory authority (and in many jurisdictions unregulated) including representation and advocacy services before an adjudicative body. These include court and tribunal agents, worker and employer

[48] *Nicholson*, *supra* note 34 at para 35. See also Noel Semple, *Legal Services Regulation at the Crossroads – Justitia's Legions* (Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2015) at 245-46 for a discussion of risk-based regulation.

[49] The provision of legal services by non-lawyers includes activities that constitute the practice of law: *supra* note 7.

advisors, Indigenous courtworkers,[50] immigration consultants, patent agents, trade-mark agents, and others. Authority for these legal service providers is found in either or both of the statutes that govern the legal profession and other statutes, such as worker compensation legislation that authorizes worker advisers and employer advisers to provide legal advice and representation to workers and employers; (c) members of other professions or occupational groups who provide some legal services (document preparation, legal advice, and/or representation and advocacy) in the ordinary course of their work, many of whom are regulated by professional bodies; and (d) others such as entities that provide legal information and documents including standard and customized legal forms. This part now turns to a more detailed examination of each category.

TABLE 5: FOUR MAIN CATEGORIES OF NON-LAWYER LEGAL SERVICE PROVIDERS



[50] Also spelled "court workers." The spelling "courtworker" is used as it is consistent with the Indigenous Courtwork Program: Government of Canada, Department of Justice, Indigenous Courtwork Program (last updated 22 June 2017), online: <www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html> [Indigenous Courtwork Program].

a. *Pursuant to Exceptions and Exemptions in the Statutes Governing the Legal Profession*

Across Canada, the statutes that govern the legal profession contain both exceptions to the practice of law – activities that would otherwise constitute the practice of law but do not in certain circumstances – and exemptions that allow others to engage in practice-of-law activities. Pursuant to the *Legal Profession Acts* of British Columbia, Nova Scotia, Northwest Territories, Nunavut, and Yukon, activities that would otherwise constitute the practice of law do not when they are performed for free – without expectation of a fee, gain or reward.[51] Whether performed for free or for a fee has little to do with the nature or quality of the work. Rather, the "for no-fee" exception preserves for lawyers the ability to earn an income from such activities and restricts their non-lawyer competitors' ability to earn an income from the same activities. Presumably, these non-lawyers are competent enough to provide the identical activities but must do so for free.

Under Supervision

The many statutory exceptions and exemptions require some non-lawyers to be supervised. Most of the following provide legal services under varying degrees of lawyer supervision: legal assistants, law clerks, paralegals outside Ontario, designated paralegals in BC, a *parajuriste* or *technicien juridique* in Quebec, articling students and law students, community advocates and community workers, and corporate employees.[52] Specifically, those who may act only under the

[51] *Legal Profession Act*, RSNWT 1998, c L-2, s 1; *Legal Profession Act*, SNS 2004, c 28, s 16(2); *Legal Profession Act*, RSY 2002, c 134, s 1; *Legal Profession Act*, SBC 1998, c 9, s 1; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 1.

[52] *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 31; *Legal Profession Act*, SBC 1998, c 9, s 15(2); Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, Vancouver: LSBC, 2017, ch 6.1-3.1 [BC Code]; *Legal Profession Act*, RSA 2000 c L-8, s 106(2); *Legal Profession Act*, CCSM c L107, s 20(4); *Legal Profession Act*, SNS 2004, c 28, s 16(4); *Legal Profession Act*, RSPEI 1988, c L-6.1, s 21(4); *Law Society Act, 1996*, SNB 1996 c 89, s 33(2); Community Legal Assistance Society of BC, online: <www.clasbc.net>.

supervision of a practising lawyer include a person who is employed by a practising lawyer, law firm, law corporation or the government;[53] anyone who is not a barrister or solicitor who performs practice-of-law functions;[54] student-at-law and articling student;[55] a university law student, or student engaged in a legal advice program or clinical law program run by, associated with, or housed by a law school;[56] a community advocate funded and designated by the Law Foundation of BC or, with the Law Society's approval, a person employed by or volunteering with a clinic that provides free legal services.[57] Students-at-law and articling students, as well as students and others, such a community advocates, who provide legal services through clinics that engage in a range of legal work that may include advocacy and representation in addition to document preparation. In Manitoba, for example, non-lawyer advocates employed by Legal Aid Manitoba provide representation services in residential tenancy and welfare appeal matters.[58]

The Canadian Association of Paralegals, a national association, defines a *paralegal* as a person "qualified through education, training or work experience, who is employed or whose services have been retained by a legal professional, law firm, governmental agency, private or public corporation or other entity in a capacity or function which involves the performance, *under the supervision of a*

[53] *Legal Profession Act*, SBC 1998, c 9, s 15(2).

[54] *Law Society Act, 1996*, SNB 1996 c 89, s 33(2).

[55] *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 31; *Legal Profession Act*, CCSM c L107, s 21; The Law Society of Manitoba, *Rules of The Law Society of Manitoba* (31 October 2002), R 5-7.1.

[56] Law Society of Alberta, *The Rules of the Law Society of Alberta* (1 December 2016), R 81; *Legal Profession Act*, SNS 2004, c 28, s 16; *Legal Profession Act*, RSPEI 1988, c L-6.1, s 21(4); *Legal Profession Act*, RSNWT 1998, c L-2, s 68; *Legal Profession Act*, RSNWT (Nu) 1998, c L-2, s 68; BC Code, *supra* note 52, ch 6.1-3.1.

[57] BC Code, *supra* note 52, ch 6.1-3.1.

[58] Ian Froese, "Legal Aid Manitoba Wants Non-lawyers Empowered to Argue Refugee Claims", *CBC News* (2 January 2019), online: <www.cbc.ca/news/canada/manitoba/legal-aid-manitoba-advocates-refugee-claimants-1.4952641>.

legal professional, of substantive legal work … requiring sufficient knowledge of legal concepts."[59] CAP's use of the term "paralegal" is intended to standardize various designations used in the job market including legal assistant and law clerk.[60] Across Canada, many paralegals are employed by lawyers, law firms, corporations and government, and do legal work – work that requires legal skill and judgment – such as legal research and the preparation of documents used in and for legal proceedings. These paralegals come within the contemplation of the law societies across Canada, which impose on their members professional responsibility to directly supervise non-lawyers to whom the lawyers delegate work.[61]

The Federation of Law Societies' *Model Code* stipulates that a lawyer "has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions."[62] The *Model Code* specifies that, subject to the provisions of any statute, rule or court practice, "the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required."[63] The identical passage

[59] Canadian Association of Paralegals, "About CAP" (last visited 20 March 2020), online: <www.caplegal.ca/en/about/> [emphasis added].

[60] *Ibid*.

[61] Federation of Law Societies of Canada, *Model Code of Professional Conduct* (19 October 2019) R 6.1, online (pdf): <flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf> [FLSC *Model Code*].

[62] *Ibid*.

[63] *Ibid*, R 6.1, Commentary 5. The Code of Professional Conduct that governs members of the Barreau du Quebec stipulates that a lawyer must "adequately supervise" work performed by others who are collaborating with him or her in the performance of professional services: *Code of Professional Conduct of Lawyers*, CQLR c B-1, r 3.1.

appears in the legal professional codes of all Canadian jurisdictions except Quebec and Alberta.[64] The *Model Code* also lists the activities that a non-lawyer is not permitted to do: give legal advice, appear in court or actively participate in formal legal proceedings on behalf of a client other than in a supporting role to the lawyer, sign correspondence containing a legal opinion, or perform any duties that only lawyers may perform or do anything that lawyers themselves may not do, among other things.[65] This same list appears in the codes in all jurisdictions except Quebec.[66]

In BC, the Law Society allows three types of paralegals to provide legal services, under varying degrees of lawyer supervision inversely proportional to the amount of knowledge, skill, training, experience, character and competence of the non-lawyer. A "non-lawyer" – an individual who is neither a lawyer nor an articled student – is distinguished from a "paralegal" – a non-lawyer who is a trained professional working under the supervision of a lawyer, and further distinguished from a "designated paralegal" who is permitted to give legal advice and represent clients before a court or tribunal.[67] Lawyers are cautioned not to delegate work to a paralegal unless the lawyer is satisfied that the person "has sufficient knowledge, skill, training and experience and is of sufficiently good

[64] See also BC Code, *supra* note 52, ch 6.1-1, commentary 5; Law Society of Saskatchewan, *Code of Professional Conduct*, Regina: LSS, 2016, ch 5.01(1), commentary 5; Law Society of Manitoba, *Code of Professional Conduct*, Winnipeg: LSM, 2011, ch 6.1-1, commentary 5; Nova Scotia Barristers' Society, *Code of Professional Conduct*, Halifax: NSBS, 2017, ch 6.1-1, commentary 3; Law Society of New Brunswick, *Code of Professional Conduct*, Fredericton: LSNB, 2017; Law Society of Prince Edward Island, *Code of Professional Conduct*, Charlottetown: LSPEI, 2016, ch 6.1-1, commentary 5. The Law Society of Newfoundland and Labrador, *Code of Professional Conduct*, St John's: LSNL, 2016, ch 6.1-1, commentary 5; Law Society of Northwest Territories, *Model Code of Professional Conduct*, Yellowknife: LSNT, 2016, ch 21(1), commentary 4; Law Society of Nunavut, *Model Code of Professional Conduct*, Iqaluit: LSN, 2016, ch 6.1-1, commentary 5. Law Society of Yukon, *Code of Professional Conduct*, Whitehorse: LSY, 2016, ch 6.1-1, commentary 5.

[65] FLSC *Model Code*, *supra* note 61, ch 6.1-3.

[66] See also ch 6.1-3 in the Codes of all other jurisdictions except in Quebec and Saskatchewan. Saskatchewan's Code sets out the same non-lawyer restricted activities in ch 5.01(3). For Alberta see Law Society of Alberta, *Code of Conduct*, Calgary: LSA, 2017.

[67] BC Code, *supra* note 52, ch 6.1.2.

character to perform the tasks delegated by the lawyer in a competent and ethical manner."[68] If a designated paralegal has "the necessary skill and experience," a lawyer may permit the designated paralegal to give legal advice; to represent clients before a court or tribunal (but not a family law arbitration), as permitted by the court or tribunal; or to represent clients at a family law mediation.[69] In Quebec, a paralegal (referred to as a *parajuriste*, which is synonymous with *technicien juridique*)[70] is similar to many paralegals in other jurisdictions in Canada, and a law clerk in Ontario, who assist lawyers and notaries by conducting legal research, drafting documents, and performing functions related to the legal work of the lawyer or notary; a paralegal is not allowed to give legal opinions to clients or represent them in court.[71] To become a paralegal, one is often required to have a college diploma in paralegal technology.[72]

Independent

The list of non-lawyers who may provide legal services (most of them independently) pursuant to the very statutes that govern the legal profession is a long one. Those included in this category varies by jurisdiction, but in most jurisdictions, non-lawyers who may engage in practice-of-law activities independently include a public officer, notary public, and/or a licensed insurance adjuster

[68] *Ibid*, ch 6.1-3.2.

[69] *Ibid,* ch 6.1-3.3.

[70] Jennifer Brown, "Quebec Paralegals Want Recognition From Barreau", *Canadian Lawyer* (19 November 2013), online: <www.canadianlawyermag.com/news/general/quebec-paralegals-want-recognition-from-barreau/272304>.

[71] Educaloi, "Legal Careers: Paralegal" (last visited 20 March 2020), online: <www.educaloi.qc.ca/en/youth/legal-careers/paralegal>.

[72] *Ibid*.

or agent.[73] Others include an officer or employee of a corporation or unincorporated organization acting within the scope of one's employment;[74] a member of a police force or Sheriff;[75] a district registrar or deputy district registrar acting within the scope of their duties;[76] a licensed trustee in bankruptcy;[77] an employee or designated agent of a trade union or an employee of an employers' or employees' organization, or association representing trade unions or employees regarding a labour or employment matter, and a person appearing on behalf of another person before a Labour Arbitration Board;[78] a person who provides mediation or arbitration services, including legal advice;[79] an elected representative, a member of municipal government and of a Legislative Assembly, House of Commons, and/or Senate of Canada;[80] a real estate agent;[81] and an accountant.[82] In addition, certain acts done under a prepaid legal services plan or other liability insurance program do not constitute the practice of law.[83] In most jurisdictions, a person may represent oneself. A member of another occupation or profession who is licensed or authorized by statute, and engaged in the

[73] *Legal Profession Act*, SBC 1998, c 9, s 1(h); *Legal Profession Act*, RSA 2000 c L-8, s 106(2); Manitoba *LPA*, s 20(4); *Law Society Act, 1996*, SNB 1996 c 89, s 33(2); *Law Society Act, 1996*, SNB 1996 c 89, s 33(2); *Law Society Act*, 1999, SNL 1999, c L-9.1, s 2(2); *Legal Profession Act*, RSNWT 1998, c L-2, ss 1, 68; *Legal Profession Act*, RSNWT (Nu) 1998, c L-2, ss 1, 68; *Legal Profession Act*, RSY 2002, c 134, s 1.

[74] *Legal Profession Act*, RSA 2000 c L-8, s 106(2); *Legal Profession Act*, SNS 2004, c 28, s 16(4); Manitoba *LPA*, s 20(4).

[75] *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 31.

[76] Manitoba *LPA*, s 20(4). *The Real Property Act*, CCSM c R30, s 3.8 also stipulates that a person who performs the duties of a district registrar is not practising law.

[77] *Law Society Act, 1996*, SNB 1996 c 89, s 33(2).

[78] *Legal Profession Act*, SNS 2004, c 28, s 16(4); *Legal Profession Act*, RSPEI 1988, c L-6.1, s 21(2).

[79] *Law Society Act, 1996*, SNB 1996 c 89, s 33(2); *Legal Profession Act*, SNS 2004, c 28, s 16(4).

[80] *Legal Profession Act*, SNS 2004, c 28, s 16(4); *Legal Profession Act*, RSY 2002, c 134, s 1; *Legal Profession Act*, RSNWT (Nu) 1998, c L-2, s 1; *Law Society Act*, 1999, SNL 1999, c L-9.1, s 2(2).

[81] *Law Society Act*, 1999, SNL 1999, c L-9.1, s 2(2);

[82] *Legal Profession Act*, SNS 2004, c 28, s 16(4).

[83] *Legal Profession Act*, RSY 2002, c 134, s 1.

practice of that profession, is an exception to the practice of law.[84] In other jurisdictions, agents are specifically authorized to engage in practice of law activities. Alberta's *Legal Profession Act* contains an exception to the practice of law for a person who is permitted by statute to appear as the agent of another person before a justice of the peace, the Provincial Court or a provincial judge.[85] In Manitoba, the *Legal Profession Act* specifically authorizes a non-lawyer to act as agent on behalf of, or provide legal advice to, another person with respect to an offence under the *Highway Traffic Act* or *The Drivers and Vehicles Act*, in Provincial Court, in limited circumstances.[86] Communications between the agent and her client privileged "in the same manner and to the same extent as communication between a lawyer and his or her client."[87] In Saskatchewan, the *Legal Profession Act* authorizes a member of a police force to appear for the Crown before a Provincial Court judge or justice of the peace, and a government employee to prosecute summary conviction cases.[88] In Quebec, the legislation governing the legal professions authorizes non-lawyers to provide certain legal services otherwise reserved for lawyers. A person who is not a member of the Order of Advocates may not practise the profession of advocate, nor usurp the functions of an advocate,[89] but is permitted to appear before the Administrative Labour Tribunal[90] and the Administrative Tribunal of Quebec, Social Affairs Division, particularly in matters involving compensation for victims of crime

[84] *Law Society Act, 1996*, SNB 1996 c 89, s 33(2).

[85] *Legal Profession Act*, RSA 2000 c L-8, s 106(2).

[86] *Legal Profession Act*, CCSM c L107, s 40(1).

[87] *Ibid*, s 41.

[88] *Legal Profession Act, 1990*, SS 1990-1991, c L-10.1, s 31.

[89] *Barreau du Québec* Act, ss 132 and 133(a).

[90] *Act to Establish the Administrative Labour Tribunal*, CQLR T-15.1, s 20. See also *Act Respecting Industrial Accidents and Occupational Diseases*, CQLR A-3.001, ss 265, 266, 280.

or immigration.[91] The Act governing the Barreau du Québec also specifically exempts Chartered Professional Accountants, who constitute a separate professional order, from practice of law restrictions.[92]

Table 6 sets out the range of non-lawyer practice authorized by the statutes that govern the legal profession in jurisdictions across Canada, outside Ontario.

TABLE 6: NON-LAWYER PRACTICE IN CANADA (OUTSIDE ONTARIO): EXCEPTIONS & EXEMPTIONS TO THE *PRACTICE OF LAW* AND *PROVISION OF LEGAL SERVICES*

	BC	**AB**	**SK**	**MB**	**PQ**	**NB**	**NS**	**PEI**	**NL**	**YK**	**NWT**	**NU**
SUPERVISED												
Articled student, student-at-law, law student	*	*	*	*		*	*	*	*		*	*
Community advocates	*											*
Others						*						
INDEPENDENT												
Self		*	*	*		*	*		*		*	*
Public Officer	*	*		*		*	*	*	*	*	*	*
Notary Public	*	*		*				*	*		*	*

[91] Administrative Tribunal of Quebec, "Getting Help: Services of a lawyer" (last visited 20 March 2020), online: <www.taq.gouv.qc.ca/en/help/services-of-a-lawyer>.

[92] *Barreau du Québec* Act, *supra* note 93, s 141.

Professional Corp		*					*					
Corporate officer or employee/ person in course of employment acting exclusively for employer		*		*	*			*				
Trade union employee before admin tribunal & employee or employers' or employees' organization							*	*				
Corporation represented by agent if authorized by statute							*					
Person who represents another before a Labour Arbitration Board								*				
Gov't employee (prosecuting provincial summary conviction cases)			*									
Member of Legislative Assembly, House of Commons, Senate of Canada, or municipal council including elected member of a Yukon First Nation gov't							*			*	*	*
District Registrar or Deputy District Registrar				*								
Member of police force			*									

Sheriff			*									
Mediator or arbitrator (including provision of legal advice)						*	*					
Licensed Insurance adjuster or agent	*	*				*	*		*		*	*
Real Estate agent									*	*		
Licensed Trustee in Bankruptcy						*						
Accountant					*		*					
Member of another licensed or regulated profession or occupation						*				*		
Indigenous Courtworker										*		
"Agent" permitted by statute		*		*					*		*	*

Statutory authority, by jurisdiction: *Legal Profession Act*, SBC 1998, c 9, s 1(1); *Legal Profession Act*, RSA 2000, c L-8, s 106(2); *Legal Profession Act*, 1990, SS 1990, c L-10.1; s 31 *Legal Profession Act*, CCSM c L107, ss 20(4), 21; *Act Respecting the Barreau du Québec,* CQLR c B-1, ss 128(2), 141; *Law Society Act*, 1996, SNB 1996, c 89, s 33(2); *Legal Profession Act*, SNS 2004, c 28, s 16(4); *Legal Profession Act*, RSPEI 1988, c L-6.1, s 21(2); *Law Society Act*, 1999, SNL1999, c L-9.1, ss 2(2), 76; *Legal Profession Act*, 2017, SY 2017, c 12, s 31; *Legal Profession Act*, RSNWT 1988, c L-2, ss 1, 68(2); *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, ss 1, 68(2).

b. Pursuant to Other Statutory Authority

In this category are non-lawyers who provide legal advice and representation before an adjudicative body, both courts and administrative tribunals. Court agents and others may represent

a party in many jurisdictions. Agents are permitted to represent parties at small claims courts and in civil matters claiming up to $35,000, in matters involving highway traffic and other provincial offences.[93] BC's *Court Agent Act*[94] allows non-lawyers to engage in practice-of-law activities in places where lawyers are scarce.[95] Quebec's *Code of Civil Procedure* permits a mandatary to represent a person for the recovery of small claims,[96] while the state, legal persons, partnerships and associations, and other groups may be represented by a non-lawyer who is an officer or employee "in their sole service."[97] In the Tax Court of Canada, an agent – such as an accountant or bookkeeper – may represent parties to an appeal under the *Income Tax Act*.[98] The *Criminal Code* allows non-lawyer agents to represent persons charged with summary conviction offences where the term of imprisonment upon conviction is not more than six months, and to examine and cross-examine witnesses as agent for either the defendant or prosecutor.[99] In the Supreme Court of Northwest

[93] *Territorial Court Civil Claims Rules*, NWT Reg 122-2016, s 22(20); *Small Claims Rules*, BC Reg 261/93, R 7; *Small Claims Act, 1997,* SS 1997, c S-50.11, ss 7.1, 29 (This Act was replaced by *The Small Claims Act, 2016*, SS 2016, c S-50.12, and specifically ss 12 and 33 (Sask. Legislative Assembly, Bill 28)); Public Legal Education and Information Service of New Brunswick, *Small Claims Court: A Guide for Claimants, Defendants and Third Parties* (April 2018), online (pdf): <www.legal-info-legale.nb.ca/en/uploads/file/pdfs/Small_Claims_EN.pdf>; NB Reg 2012-103 under the *Small Claims Act* (OC 2012-383), s 27; *Small Claims Court Act*, RSNS 1989, c 430, s 16; The Courts of Nova Scotia, *Nova Scotia Provincial Court Rules* (1 January 2013) r 1.1, online (pdf): <www.courts.ns.ca/Provincial_Court/NSPC_I_rules_and_forms/NSPC_criminal_rules_12.11.pdf#1.1-1>; Courts of Prince Edward Island, "Rules of Civil Procedure Rule 74:Small Claims Section" (1 September 2017) ss 4.01, 4.02, 7.01, 9, 10.01, online (pdf): *Courts of PEI* <www.courts.pe.ca/sites/www.courts.pe.ca/files/Forms%20and%20Rules/a-rule74.pdf>; *Highway Traffic Act*, RSPEI 1988, c H-5, s 264.3(4).

[94] RSBC 1996, c 76.

[95] *Ibid*. The Act entitles any registered voter in a judicial district to appear in Provincial or Supreme Court as "the attorney and advocate" of any party to a proceeding but only in locations where there are less than two members of the law society in actual practice.

[96] CQLR c-25.01, art 88.

[97] *Ibid*, art 542.

[98] *Tax Court of Canada Act*, RSC 1985, c T-2, s 18.14; *Tax Court of Canada Rules (Informal Procedure)* (SOR/90-688b) s 5; Cyndee Todgham Cherniak, "General Procedure Cases Before The Tax Court of Canada and Not Hiring A Lawyer" (18 September 2011), online (blog): *The HST Blog* <www.thehstblog.com/tags/tax-court-of-canada/>.

[99] *Criminal Code*, RSC 1985, c C-46, ss 785, 800(2), 802(2), 802.1.

Territories, the court may grant audience to any individual if the court considers it appropriate to do so in the interests of justice.[100] An agent may represent a party on a summary conviction appeal in Yukon Supreme Court.[101] The Supreme Court of British Columbia may allow a non-lawyer agent to appear before it depending on the agent's skill, ability, competence and character.[102]

In some jurisdictions, RCMP officers act as agents of the Crown in criminal proceedings. Until mid-2017, for example, a police officer represented the Crown in the majority of first-appearance bail hearings.[103] In 2015, approximately 60,000 arrests in Alberta resulted in Hearing Office bail hearings before a justice of the peace that were conducted by police prosecutors.[104] In some jurisdictions, particularly in remote areas of Saskatchewan, RCMP officers appear in Provincial Court in the role of prosecutor on mainly routine matters such as making elections about whether to proceed by summary conviction or indictment, and speaking to the release of an accused.[105] Sometimes RCMP officers conduct basic traffic offence trials.[106] It is also common for RCMP officers to represent the Crown at bail hearings.[107]

Indigenous courtworkers provide services in most jurisdictions in Canada.[108] Federal support

---

[100] *Rules of the Supreme Court of the Northwest Territories*, NWT Reg 010-96, r 7(4).

[101] Supreme Court of Yukon, *Summary Conviction Appeal Rules, 2009*, SI/2012-64, s 2(1).

[102] See for example *Ambrosi v Duckworth*, 2011 BCSC 1582.

[103] *Hearing Office Bail Hearings (Re)*, 2017 ABQB 74, para 28.

[104] *Ibid* at para 8.

[105] Sean Trembath, "Could Alberta Judge's Ruling on RCMP Acting as Prosecutors Affect Saskatchewan?", *Saskatoon Star Phoenix* (21 February 2017), online: <http://thestarphoenix.com>.

[106] *Ibid*.

[107] *Ibid*.

[108] Indigenous Courtwork Program, *supra* note 50. (The program was formerly, until mid-2017, referred to as the Aboriginal Courtwork Program). The Indigenous Courtwork Program operates in every province and territory except PEI, Newfoundland and Labrador, and New Brunswick.

of the courtworker program commenced in 1969 with a legal service orientation[109] to help Indigenous people in conflict with the criminal justice system.[110] Courtworkers serve as a liaison between criminal justice officials and Indigenous peoples and communities by advocating for Indigenous peoples before the courts.[111] Courtworkers negotiate settlements with the Crown, enter pleas, speak to sentence, and also provide support, advice, and representation in non-criminal matters including family, juvenile, and civil legal matters.[112] The vast majority of clients in JP courts in NWT and Nunavut are represented by courtworkers.[113] More than 180 courtworkers provide services to approximately 60,000 Indigenous clients in over 450 communities each year.[114] It is worth noting that the extensive role afforded non-lawyers in the courts, particularly in the territories, is a direct result of the scarcity of lawyers in those jurisdictions – where non-lawyer provision of legal services is required to address otherwise unmet needs. In such jurisdictions, then, non-lawyers do not infringe on lawyers' practice. It is interesting to note that lawyers did not object to courtworkers taking on an advocacy role,[115] which belies the public interest (and protection) basis of lawyers' claims to and arguments for a monopoly over legal services. If non-lawyers are allowed and admittedly capable of providing legal services in rural and remote communities where lawyers are scarce, why are they not capable of

[109] James C Hathaway, "Native Canadians and the Criminal Justice System: A Critical Examination of the Native Courtworker Program" (1984-1985) 49 Sask LR 201 at 201-02.

[110] Indigenous Courtwork Program, *supra* note 50.

[111] *Ibid.*

[112] Hathaway, *supra* note 109 at 217-19; Department of Justice Canada, *Legal Service Provision in Northern Canada—Summary of Research in the Northwest Territories, Nunavut, and the Yukon*, by Pauline de Jong (Ottawa: Government of Canada, 2004) at 6.3, online: <www.justice.gc.ca/eng/rp-pr/aj-ja/rr03_la15-rr03_aj15/index.html> [De Jong].

[113] De Jong, *supra* note 112 at 7.2.

[114] *Ibid.*

[115] Hathaway, *supra* note 109 at 215, 219.

providing the same services in urban centres where lawyers are many? Geography or proximity to lawyers has little to do with non-lawyers' ability to provide legal services. The longevity of the Indigenous courtworker program, and its expansion into civil matters, suggests not only a demand for such legal services but also, arguably, a lack of harm (or at least a lack of evidence of harm).

Non-lawyers also appear as representatives before administrative tribunals in Canada. The Federal Court of Appeal recognizes that representation by non-lawyers is a common feature of administrative adjudication.[116]

Worker advisors and employer advisors provide legal assistance, advice and representation to injured workers and employers, respectively. Pursuant to workers' compensation legislation in each jurisdiction, worker and employer advisors appear before workers' compensation boards and appeals tribunals.[117] Worker, employer, and appeals advisors are generally government employees who provide assistance, advice, and representation to clients for free. By so doing, they fall under an exception to the practice of law for services provided for free.[118] In Alberta, appeals advisors are certified in tribunal administrative justice and are specialists in interpreting and applying the workers' compensation legislation and Workers' Compensation Board policies.[119] Non-lawyer representatives

---

[116] *Law Society of Upper Canada v Canada (Minister of Citizenship and Immigration)*, 2008 FAC 243, [2009] 2 FCR 466 at para 8.

[117] *Workers Compensation Act*, RSBC 1996, c 492, s 94; *Workers Compensation Act*, RSPEI 1988, c W-7.1, s 85; *Workers' Compensation Act*, SNWT 2007 c 21, s 109; *Workers' Compensation Act,* SNu 2007 c 15, s 109; *The Workers Compensation Act*, CCSM c W200, s 180(2); *Workers' Compensation Act*, SNS 1995-95, c 10, ss 260-261; New Brunswick, *Legislative Review of Workers' Compensation: Workers' and Employers' Advocate Services in New Brunswick*, Discussion Paper (May 2015), online (pdf): <www2.gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Promo/AdvocatesServices.pdf>.

[118] *Supra* note 8: *Legal Profession Act*, SBC 1998 c 9, s 1(1); *Legal Profession Act*, CCSM c L107, s 20(3); *Legal Profession Act*, SNS 2004 c 28, s 16(1); *Legal Profession Act*, RSNWT 1988, c L-2, s 1; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 1; *Legal Profession Act,* RSPEI 1988 c L-6.1, s 21.

[119] Alberta Fair Practices Office (last visited 10 June 2020), online: <www.workeradvocates.ca>.

out-numbered lawyer representatives before workers' compensation appeal tribunals in Alberta,[120] Saskatchewan,[121] Nova Scotia,[122] Newfoundland and Labrador,[123] and Ontario[124] over the last few years.

Non-lawyers are permitted to act as representatives before a number of other administrative bodies across the country.[125] These include a coroner's inquest in BC, PEI and Nunavut,[126] the BC's Civil Resolution Tribunal,[127] and in New Brunswick at a discipline hearing under the *Police Act*[128] and at the Assessment and Planning Appeal Board.[129] In Nova Scotia, a union representative may appear at a hearing concerning the professional conduct of a registered nurse or nurse practitioner[130] and

---

[120] Alberta, Workers' Compensation Appeals Division, *Annual Report 2015-16* (Edmonton and Calgary: Appeals Commission, 2016) at 11, online (pdf): <www.appealscommission.ab.ca/Website%20Documents/AC%20AnnualReportFinal.pdf>.

[121] Saskatchewan, Workers' Compensation Board, *2017 Annual Report* (Regina: WCB, 2017) at 15, online (pdf): <www.wcbsask.com/wp-content/uploads/2018/03/2017-Annual-Report.pdf>. Non-lawyer representatives out-numbered lawyer representatives in each year from 2013 to 2017.

[122] Nova Scotia, Workers' Compensation Appeals Tribunal, *Annual Report for the Year Ending March 31, 2018* (WCT, 2018) at 9, online (pdf): <wcat.novascotia.ca/sites/default/files/documents/WCATAnnualReport2017.pdf>; Nova Scotia, Workers' Compensation Appeals Tribunal, *Annual Report for the Year Ending March 31, 2017* (WCAT, 2017) at 8-9, online (pdf): <wcat.novascotia.ca/annual-reports>.

[123] Newfoundland and Labrador, Workplace Health, Safety and Compensation Review Division, *Annual Performance Report 2016-17* (Mount Pearl, NL: WHSCRD, 2017) at 27, online (pdf): <www.gov.nl.ca/whscrd/files/publications/annualreports/2016_17_WHSCRD_AR.pdf>.

[124] Ontario, Workplace Safety and Insurance Appeals Tribunal, *2017 Annual Report* (Toronto: WSIAT, 2018) at 49, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2017.pdf>; Ontario, Workplace Safety and Insurance Appeals Tribunal, *2016 Annual Report* (Toronto: WSIAT, 2017) at 49, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2016.pdf>.

[125] See, for example, *Administrative Tribunals Act*, SBC 2004, c 45, s 32; *Legal Profession Act*, SNS 2004, c 28, s 16(4).

[126] *Coroners Act*, SBC 2007, c 15, s 31; *Coroners Act*, RSPEI 1988, c C-25.1, s 34(2); *Coroners Act*, RSNWT 1988, c C-20, ss 40, 41.

[127] *Civil Resolution Tribunal Act*, SBC 2012, c 25, s 20.

[128] *Discipline Regulation*, NB Reg 86-49, s 1.

[129] *Assessment and Planning Appeal Board Regulation*, NB Reg 84-59, s 6.

[130] *Registered Nurses Regulations*, NS Reg 154/2016, s 70. See also *Registered Nurses Act*, SNS 2001, c 10, ss 16, 35, 36, 41, 43.

represent a paramedic before an investigative committee or hearing panel of the College of Paramedics.[131] In addition, someone other than legal counsel may represent a midwife before that profession's regulatory college[132] and an appellant before an appeal board established pursuant to the *Employment Support and Income Assistance Act*.[133] A police officer in PEI has the right to the advice and assistance of a fellow officer, Police Association representative, or union representative throughout his or her disciplinary process.[134] Before the Health Research Ethics Board of Newfoundland and Labrador, a principal investigator who requests reconsideration of a decision of the board or a research ethics body may be represented by a person of his or her choice.[135] In NWT, an agent may represent an applicant for a license before the Liquor Licensing Board, and a director or officer of a corporation that applies for a licence may represent the corporation.[136] In addition, an agent may represent a person at a property assessment hearing before a Municipal or Territorial Board of Revision or the Assessment Appeal Tribunal.[137] In Nunavut, a non-lawyer may represent a person before the Resolute Bay Alcohol Education Committee considering an application for permission to purchase or possess liquor or make beer or wine in a restricted area,[138] a complainant or accused medical practitioner before a Board of Inquiry under the *Medical Inquiry Act*,[139] and a

[131] *Paramedics Act*, SNS 2015, c 33, ss 56, 70.

[132] *Midwifery Regulations*, NS Reg 58/2009, s 41.

[133] *Assistance Appeal Regulations*, NS Reg 90/2001, s 11(1)(a).

[134] *Code of Professional Conduct and Discipline Regulations*, PEI Reg EC142/10, s 18.

[135] *Health Research Ethics Authority Act*, SNL 2006, c H-1.2, s 13.

[136] *Liquor Act*, SNWT 2007, c 15, ss 1, 8(2)-(3).

[137] *Property Assessment and Taxation Act*, RSNWT 1988, c P-10, ss 44(2), 65(2).

[138] *Resolute Bay Liquor Restriction Regulations*, RRNWT (Nu) 1990, c L-46, s 17(2).

[139] *Medical Profession Act*, RSNWT (Nu) 1988, c M-9, s 35.

person at a property assessment and taxation hearing before the Territorial Board of Revision.[140] An appellant appearing before the Apprenticeship, Trade and Occupations Certification Board of Nunavut may be represented by a person of his or her choice.[141] In Yukon, an agent may represent a nurse before a discipline committee of the Yukon Registered Nurses Association,[142] act as a representative at a hearing before the Yukon Liquor Corporation Board,[143] represent a party to an appeal before the Hospital Privileges Appeal Board,[144] and a party to any dispute resolution proceeding held under the *Residential Landlord and Tenant Act.*[145]

Non-lawyers are also permitted to appear as representatives before federal tribunals, including the Veterans Review and Appeal Board,[146] the Canadian International Trade Tribunal,[147] the Public Servants Disclosure Protection Tribunal,[148] the Transportation Appeal Tribunal of Canada,[149] and the Canada Industrial Relations Board.[150] Pursuant to the *Royal Canadian Mounted Police Act*, a

[140] *Property Assessment and Taxation Act*, RSNWT 1988, c P-10, s 44(2).

[141] *Apprenticeship, Trade and Occupations Certification Regulations*, RRNWT (Nu) 1990, c A-8, s 47.1(3).

[142] *Registered Nurses Profession Act*, RSY 2002, c 194, s 31(3).

[143] *Liquor Act*, RSY 2002, c 140, ss 35(7) –(8).

[144] *Hospital Act*, RSY 2002, c 111, s 21(4).

[145] *Residential Landlord and Tenant Act*, SY 2012, c 20, s 80(3).

[146] *Veterans Review and Appeal Board Act*, SC 1995, c 18, s 35. The Board has full and exclusive jurisdiction to hear, determine and deal with all applications for review that may be made to the Board under the *Pension Act*, RSC 1985, c P-6, or the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21, s 18, and to hear, determine and deal with all appeals that may be made to the Board under the *War Veterans Allowance Act*, RSC 1985, c W-3, s 26.

[147] *Canadian International Trade Tribunal Act,* RSC 1985, c 47 (4th Supp), s 31.

[148] *Public Servants Disclosure Protection Act*, SC 2005, c 46, s 21.6(1).

[149] *Transportation Appeal Tribunal of Canada Act*, SC 2001, c 29, s 15(3). The Tribunal has jurisdiction in respect of reviews and appeals as expressly provided for under the *Aeronautics Act*, RSC 1985, c A-2, the *Canada Shipping Act, 2001*, SC 2001, c 26, the *Marine Transportation Security Act*, SC 1994, c 40, the *Railway Safety Act*, RSC 1985, c 32 (4th Supp), and any other federal Act regarding transportation: s 2(2).

[150] *Status of the Artist Act*, SC 1992, c 33, s 19(3).

representative other than counsel may represent any person whose conduct or affairs are being investigated by a board of inquiry.[151] In all proceedings under the *Pension Act*, an applicant may be represented by a service bureau of a veterans' organization or by any other representative of the applicant's choice.[152] The Supreme Court of Canada has held that authorization of non-lawyer representation before administrative bodies acknowledges the expertise of non-lawyers.[153]

There is a dearth of information about the number (and effectiveness) of independent non-lawyer representation before the courts and administrative tribunals in Canada. Some tribunals publish statistics concerning representative type, but many do not.[154] At hearings before the BC Human Rights Tribunal in 2015-2016, for example, non-lawyer agents represented 10% of complainants and 10% of respondents.[155] It seems curious, given the history and extent of authorized non-lawyer representation across the country, that the extent of non-lawyer representation it is not tracked or, if tracked, data is not publicly available. Such evidence would arguably be of assistance

---

[151] *Royal Canadian Mounted Police Act*, RSC 1985 c R-10, s 24.1(4).

[152] *Pension Act*, RSC 1985 c P-6, s 88. The *Pension Act* is an Act to provide pensions and other benefits to or in respect of members of the Canadian naval, army and air forces and of the Canadian Forces.

[153] *Mangat*, *supra* note 46 at para 56.

[154] A search of the following online (conducted by the author on July 6, 2018) found no statistics about non-lawyer representatives: Ontario, *The Superior Court of Justice: Realizing Our Vision, Report for 2015 and 2016* (last visited 23 March 2020), online (pdf): <www.ontariocourts.ca/scj/files/annualreport/2015-2016.pdf>; Environment and Land Tribunals Ontario, *2016-17 Annual Report* (Toronto: Queen's Printer for Ontario, 2017), online (pdf): <elto.gov.on.ca/wp-content/uploads/2018/05/2016-2017-ELTO-Annual-Report.pdf>; Transportation Appeal Tribunal of Canada, *Annual Report 2016-2017* (19 May 2017), online (pdf): <www.tatc.gc.ca/a274/ar-ra-2016-17-eng.pdf>; Canadian Human Rights Commission, *Annual Report 2016* (Ottawa: Minister of Public Works and Government Services, 2017), online (pdf): <www.chrt-tcdp.gc.ca/transparency/AnnualReports/2016-ar/2016-en.pdf >; Nova Scotia Human Rights Commission, *Annual Report 2015-2016* (last visited 23 March 2020), online (pdf): <humanrights.novascotia.ca/sites/default/files/16-45369%202015-16%20AnnRpt%20-%20for%20web.pdf>; The Court of Queen's Bench of Alberta, *Annual Report 2016 to 2017* (17 October 2017), online (pdf): <albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf?sfvrsn=593aac80_0>.

[155] British Columbia Human Rights Tribunal, *Annual Report 2015 – 2016* (Vancouver: BCHRT, 2016) at 8, online (pdf): <www.bchrt.bc.ca/shareddocs/annual_reports/2015-2016.pdf>.

to governments and law society regulators given existing access to justice concerns. David Wiseman's study of representation at the Landlord and Tenant Board of Eastern Ontario reveals the majority of landlord representatives are non-lawyers – licensed paralegals and others including employees and agents of corporate landlord entities. In the five years studied, more than 50% of landlord representatives were non-lawyers (excluding self-represented) while less than 20% were lawyers.[156]

c. Members of Other Professions or Occupations

Many other professionals or members of occupational groups provide a range of legal services that require knowledge and application of legal principles as well as legal judgment in the ordinary course of their work, outside the traditional legal system, and they do so independently. Many are regulated by their own professional bodies. These include immigration consultants, patent agents and trade-mark agents,[157] notaries public, real estate agents, insurance adjusters and agents, land surveyors, and chartered professional accountants[158] and tax preparers.[159]

---

[156] David Wiseman, "Research Update: Paralegals, the Cost of Justice and Access to Justice: A Case Study of Residential Tenancy Disputes in Ottawa" (29 June 2016), online (blog): *CFCJ* <www.cfcj-fcjc.org/a2jblog>.

[157] Intellectual Property Institute of Canada, "How to Become an Agent" (last visited 20 March 2020), online: <ipic.ca>; *Trade-marks Act*, RSC 1985, c T-13, s 28(2); *Trade-marks Regulations*, SOR/96-195, s 18; *Patent Act*, RSC 1985, c P-4, s 15; *Patent Rules*, SOR/96-423, s 12.

[158] See generally Saskatchewan Land Surveyors Association, "About the SLSA" (last visited 20 March 2020), online: *SLSA* <www.slsa.sk.ca/about_slsa.php> [SLSA]; Association of Canada Lands Surveyors (last visited 10 June 2020), online: *ACLS-ACTC* <www.acls-aatc.ca> [ACLS]; See also *Notaries Public Act*, RSNB 2011, c 197; *Evidence Act*, RSNWT 1988, c E-8, s 83; *Evidence Act*, RSNWT (Nu) 1988, c E-8, s 83; *Notaries Act*, RSY 2002, c 158; The Society of Notaries Public of British Columbia (last visited 10 June 2020), online: *BC Notaries* <www.notaries.bc.ca>; *Notaries Act*, RSBC 1996, c 334, ss 28, 55; For real estate agents, see e.g. New Brunswick Real Estate Association (last visited 10 June 2020), online: *NBREA* <nbrea.ca> [NBREA]; Prince Edward Island Real Estate Association (last visited 10 June 2020), online: <peirea.com> [PEIREA]; Manitoba Real Estate Association (last visited 10 June 2020), online: <realestatemanitoba.com> [Manitoba REA]; For insurance adjusters and agents, see for example, *Financial Institutions Act*, RSBC 1996, c 141, ss 168, 179, 180; *Insurance Act*, RSA 2000, c I-3, s 2; *Insurance Act*, RSNWT(Nu) 1988, c I-4, s 229; *Insurance Act*, RSNWT 1988, c I-4, s 229; *Insurance Act*, RSY 2002, c 119, s 242.

[159] Doug Stansbury, "Registration of Tax Preparers – An Idea Whose Time Has Come" (22 January 2014), online (blog): *On Target* <www.stansco.ca/2014/01/registration-of-tax-preparers-an-idea-whose-time-has-come/>.

At the federal level, immigration consultants are regulated non-lawyers who are authorized by statute to provide legal services in immigration and refugee matters including advice and representation for a fee or other consideration.[160] In addition to regulated immigration consultants, other non-lawyers, such as family members, friends and other third parties, may provide the same services but only free of charge.[161] Since 2011, regulated immigration consultants have been authorized by statute to provide advice and representation in immigration and refugee matters.[162] The Supreme Court of Canada has endorsed this role for non-lawyers.[163] The *Immigration and Refugee Protection Act* (IRPA) requires anyone who is not a lawyer or licensed by a law society or Chambre des notaires du Québec who provides Canadian immigration or citizenship advice or representation for a fee or other consideration to be a member in good standing of the Immigration Consultants of Canada Regulatory Council (ICCRC).[164] There are over 4,200 regulated Canadian immigration consultants.[165] And yet, the CBA argues that non-lawyers should not be allowed, for compensation, to represent or advise on immigration and refugee matters, and insists that its call for the elimination of independent non-lawyer practice is about competence and quality services[166] and stems from concerns about the ICCRC's regulatory framework's lack of adequate oversight and

[160] Immigration Consultants of Canada Regulatory Council (last visited 10 June 2020), online: <iccrc-crcic.ca> [ICCRC]; *Immigration and Refugee Protection Act*, SC 2001, c 27, s 91 [IRPA]; *Immigration and Refugee Protection Act*, SC 2001, c 27, s 91; *Regulations Designating a Body for the Purposes of Paragraph 91(2)(c) of the Immigration and Refugee Protection Act*, SOR/2011-142.

[161] Government of Canada, Immigration and Citizenship, "Learn about representatives" (last updated 16 May 2019), online: <www.cic.gc.ca/english/information/representative/rep-who.asp>.

[162] ICCRC, *supra* note 160; IRPA, *supra* note 160.

[163] *Mangat*, *supra* note 46.

[164] ICCRC, *supra* note 160.

[165] *Ibid*.

[166] Michael McKiernan, "Advocacy group says CBA proposal is anti-competitive", *Law Times* (12 March 2018), online: <www.lawtimesnews.com/author/michael-mckiernan/advocacy-group-says-cba-proposal-is-anti-competitive-15436/>.

protection of the public.[167] Patent agents and trade-mark agents are newly regulated, in the public interest, by the College of Patent Agents and Trademark Agents.[168] A licensed patent agent may represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office.[169] Similarly, a trademark agent may represent persons in the presentation and prosecution of applications for the registration of trademarks or in other business before the Office of the Registrar of Trademarks.[170] Both lawyers and non-lawyers are patent agents and trade-mark agents. Land surveyors are public officers who "must preserve in all their work, the judicial mind and impartial attitude of an arbitrator rather than the bias of an advocate."[171] Canada Lands Surveyors, who survey in the three territories as well as in Federal Parks, on Aboriginal reserves, or on and under the surface of Canada's oceans, must hold a licence to practise from the Association of Canada Lands Surveyors, the national licensing body.[172] Otherwise, land surveyors are provincially regulated.

Notaries do much the same work as lawyers do.[173] British Columbia's notaries are self-regulating and provide legal services relating to the purchase and sale of a business, contracts, health care declarations, insurance loss declarations, notarization of documents, real estate transfers, wills

[167] House of Commons, Standing Committee on Citizenship and Immigration, *Starting Again: Improving Government Oversight of Immigration Consultants* (June 2017) at 3, 14 (Chair: Boris Wrzesnewskyj) [Starting Again].

[168] *College of Patent Agents and Trademark Agents Act*, SC 2018, c 27, s 247, s 6.

[169] *Ibid*, s 27.

[170] *Ibid*, s 30.

[171] SLSA, *supra* note 158.

[172] ACLS, *supra* note 158.

[173] See e.g. *Notaries Public Act*, RSNB 2011, c 197; *Evidence Act*, RSNWT 1988, c E-8, s 83; *Evidence Act*, RSNWT (Nu) 1988, c E-8, s 83; *Notaries Act*, RSY 2002, c 158.

preparation and powers of attorney.[174] Real estate agents and salespersons are licensed in each jurisdiction in which they carry on business.[175] Insurance adjusters, who act for a claimant and negotiate the settlement of a claim for loss or damage under a contract of insurance, are regulated by provincial governing bodies.[176] In the territories, though, a licensed insurance adjuster's scope of practice is limited. Only a barrister or solicitor acting in the usual course of their profession may negotiate or attempt to negotiate on behalf of a claimant, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury or death or damage to property.[177] It appears, then, that an insurance adjuster may only do so for free. This restriction does not suggest that an insurance adjuster is not competent to so act. It simply prohibits an insurance adjuster from getting paid and earning an income from performing an activity that has been reserved for lawyers.

d. Others

Companies and online entities that provide legal information, standard forms and, in some cases, customized legal forms raise questions about the blurry distinction between legal information and legal advice and appear to operate on the edges of practising law or providing legal services. Cory J., in 2000, cited the extent of self-help material pertaining to the drafting of wills and the

---

[174] *Notaries Act*, RSBC 1996, c 334, ss 28, 55; See also The Society of Notaries Public of British Columbia, "Services BC Notaries Provide" (last updated 27 March 2019), online: *BC Notaries* <www.notaries.bc.ca/resources/showContent.rails?resourceItemId=624>. BC's notaries are self-regulated by the Society of Notaries Public of British Columbia, online: *Justice Education Society* <www.adminlawbc.ca/tribunals/professionals-associations/society-notaries-public-bc>.

[175] See e.g. NBREA, *supra* note 158; PEIREA, *supra* note 158; Manitoba REA, *supra* note 158.

[176] See for example, *Financial Institutions Act*, RSBC 1996, c 141, ss 168, 179, 180; Insurance Council of British Columbia, "About Us" (last visited 10 June 2020), online: <www.insurancecouncilofbc.com/about-us/>; *Insurance Act*, RSA 2000, c I-3, s 2.

[177] *Insurance Act*, RSNWT(Nu) 1988, c I-4, s 229; *Insurance Act*, RSNWT 1988, c I-4, s 229; *Insurance Act*, RSY 2002, c 119, s 242.

administration of estates available to the public through business stationers and on the internet and he recognized that the "whole manner in which members of the public are obtaining access to legal advice is changing."[178] Information technology has increased the availability of and access to standard forms and other legal documents and it has also created for the legal profession a "great disruption."[179] Machine intelligence and the generation of legal documents are changing the way legal services are delivered. McGinnis and Pearce argue that intelligent machines will become better and better, both in terms of performance and cost,[180] an important consequence of which is the weakening of lawyers' market power over providing legal services.[181] McGinnis and Pearce argue that such developments will generally increase competition, commoditize legal services, and bring in new entrants including direct suppliers of services.[182] They argue that the disruption will hit mostly journeymen lawyers – those who write routine wills, vet house closings, write standard contracts, and review documents.[183] One way in which developing technology is having a significant impact is in generating legal documents and forms, which can be easily generated given that they often depend on formulaic inputs.[184] McGinnis and Pearce predict that:

> The overall effect of the machine invasion thus will be quite mixed for lawyers, but particularly difficult for nonspecialized lawyers of average or worse than average ability. For consumers at every level, the progress of machine intelligence is

[178] Peter de C Cory, *A Framework for Regulating Paralegal Practice in Ontario: Executive Summary and Recommendations* (Toronto: Ministry of the Attorney General, 2000) at 72. Justice Cory also reported it was "clear that the lawyers' organizations cannot accept any intrusion into the field of wills by paralegals," at 73.

[179] John O McGinnis & Russell G Pearce, "The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services" (2014) 82:6 Fordham L Rev 3041 at 3041.

[180] *Ibid*.

[181] *Ibid* at 3042.

[182] *Ibid*.

[183] *Ibid*.

[184] *Ibid* at 3050-51.

> excellent news, offering lower prices and more transparency. It is especially good for the underserved middle class and even the poor who are more likely to access legal services at prices they can afford.[185]

The authors argue that technology "is beginning to substitute for core legal skills"[186] and, therefore, they predict that "machine intelligence will play an increasing role in the legal services market to the extent that it provides quality, lower cost legal services, or inputs into lawyers' services."[187] Several online companies – such as Rocket Lawyer, LegalZoom, Law Depot, and Wonder Legal, among others – offer legal information, guides, forms, templates and legal documents in a range of areas: wills and estates, divorces, loans, rentals, contracts, buying and selling a house, starting and business and protecting intellectual property. Rocket Lawyer makes free legal documents "for hundreds of purposes"[188] and also provides access to "affordable representation" by licensed attorneys, serving 20 million people.[189] Rocket Lawyer's website states that it does not provide legal advice or participate in any legal representation and is not a lawyer referral service.[190] LegalZoom, created in 1999, operates in the USA and provides access to independent attorneys and self-help services but its website states that it does not provide "advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms or strategies."[191] Through LegalZoom, one can obtain legal information and tailored legal documents for both personal and

[185] *Ibid* at 3055.

[186] *Ibid* at 3056.

[187] *Ibid* at 3057.

[188] Rocket Lawyer (last visited 10 June 2020), online: <www.rocketlawyer.com>;

[189] Rocket Lawyer, "About Us" (last visited 27 March 2020), online: <www.rocketlawyer.com/about-us.rl>.

[190] *Ibid*. Rocket Lawyer operates in the United States, United Kingdom, France, Spain, and the Netherlands.

[191] Legal Zoom (last visited 10 June 2020), online: <LegalZoom.com>.

business matters[192] including wills and trusts, family, intellectual property, and contracts and agreements.[193] LegalZoom has served over 4 million customers and helped more than 2 million people start or run their business.[194] Law Depot provides free legal documents, forms and contracts but not legal advice.[195] It has over 10 million users and has created over 10 million legal documents. It claims to have saved customers over $2 billion in legal service fees.[196] Wonder Legal creates automated, tailored legal documents but it, too, does not provide legal advice.[197]

These are just a few of the online legal service offerings currently available. Are these companies practicing law?[198] Can a company, rather than an individual, provide legal advice or apply legal principles or judgment? Are online document preparers circumventing unauthorized practice restrictions? McGinnis and Pearce argue that "machine intelligence has made significant progress in undermining lawyers' monopoly … and we can expect continued, exponential increases in the ability of machine intelligence to provide quality services at lower prices than human lawyers" in certain practice areas.[199] While online services make legal document preparation quicker and arguably more accessible, there is nothing new in others – companies and entities – providing such assistance, particularly standard forms.

---

[192] *Ibid*.

[193] LegalZoom, "Our Products & Services" (last visited 30 March 2020), online: <www.legalzoom.com/all-products.html>.

[194] *Ibid*.

[195] Law Depot (last visited 10 June 2020), online: <www.lawdepot.ca>.

[196] *Ibid*. Law Depot operates in Canada, the United States, the United Kingdom, and Australia.

[197] Wonder Legal (last visited 10 June 2020), online: <www.wonder.legal>.

[198] See note 7 herein: definitions of the "practice of law" which include the drafting and preparation of legal documents.

[199] McGinnis & Pearce, *supra* note 179 at 3059.

B. To Regulate or Not? Law Societies' Perspectives on Paralegal Regulation

This part canvasses law societies' perspectives and initiatives concerning the regulation of paraprofessionals across Canada. It reveals not only a general reluctance by lawyers and law societies to regulate but also a range of reasons and arguments for not doing so. Since Ontario implemented paralegal regulation more than thirteen years ago, other jurisdictions have similarly grappled with the issue of whether, and if so how, to regulate paralegals but not one is yet prepared to do so. Progress is being made in some jurisdictions, but it remains that law societies and/or the legal profession are generally resistant to the idea of (regulated) paralegals as independent providers of legal services. Many lawyers, particularly, still cling to their perceived monopoly over all legal services, particularly in family law. They do so despite the fact that the statutes governing the legal profession, and pursuant to which lawyers claim a monopoly, also require law societies to regulate in the public interest.[200] Saskatchewan's *Legal Profession Act*, specifically, stipulates that protection of the public takes priority over the interests of a member of the law society.[201] It is the Law Society of Yukon's "overriding duty", and the Law Society of British Columbia's "object and duty" to uphold and protect the public interest in the administration of justice.[202] The Federation of Law Societies' *Model Code* recognizes that self-regulatory powers have been granted to the legal profession on the understanding that the profession will exercise those powers in the public interest.[203] Courts of

[200] *Legal Profession Act*, SBC 1998, c 9, s 3; *Legal Profession Act*, RSA 2000, c L-8, s 49(1); *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 3.1; *Legal Profession Act*, CCSM c L107, s 3(1); *Legal Profession Act*, SNS 2004, c 28, s 4(1); *Law Society Act, 1996*, SNB 1996, c 89, s 5; *Legal Profession Act*, RSPEI 1988, c L-6.1, s 4; *Law Society Act, 1999*, SNL 1999, c L-9.1, s 18(1.1); *Legal Profession Act*, RSNWT 1988, c L-2, s 22(a); *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 22(a); *Legal Profession Act*, RSY 2002, c 134, s 3; Law Society Act, RSO 1990, c L.8, s 4.2; *Professional Code*, CQLR c C-26, s 23.

[201] *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 3.2.

[202] *Legal Profession Act*, RSY 2002, c 134, s 3(a); *Legal Profession Act*, SBC 1998, c 9, s 3.

[203] FLSC *Model Code*, *supra* note 61 at 8.

Appeal in Canada have clearly stated that statutes that grant law societies the power to self-regulate are not designed to preserve a monopoly for members of a law society,[204] and the Supreme Court of Canada has held a law society's main duty is to protect the interests of the public.[205] The Supreme Court has also confirmed that the privilege of self-government is granted only in exchange for, and to assist in, protecting the public interest with respect to the services concerned.[206] The resistance to regulating other legal service providers, then, is arguably indefensible amidst a widely-recognized access to justice problem gripping the country and inconsistent with law societies' statutory duty to regulate in the public interest. Indeed, law societies across Canada recognize that there is an access to justice problem, that regulatory innovation is required, and that there is potential for an enhanced role for paralegals to increase access to justice.[207] This part canvasses the debates, discussions, and

---

[204] *Green v Law Society of Manitoba,* 2015 MBCA 67, 386 DLR (4th) 511 at para 12, aff'd 2017 SCC 20, 407 DLR (4th) 573. See also *Law Society (British Columbia) v Lawrie* (1991), 84 DLR (4th) 540, 59 BCLR (2d) 1 (CA) at para 13.

[205] *Ryan v Law Society (New Brunswick)*, 2003 SCC 20, [2003] 1 SCR 247 at para 36.

[206] *Ibid* at para 36, quoting David Stager in David AA Stager with Harry W Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990) at 31. For law societies' statutory mandate to regulate in and protect the public interest see: *Legal Profession Act*, SBC 1998, c 9, s 3; *Legal Profession Act*, RSA 2000, c L-8, s 49(1); *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 3.1; *Legal Profession Act*, CCSM c L107, s 3(1); *Legal Profession Act*, SNS 2004, c 28, s 4(1); *Law Society Act, 1996*, SNB 1996, c 89, s 5; *Legal Profession Act*, RSPEI 1988, c L-6.1, s 4; *Law Society Act, 1999*, SNL 1999, c L-9.1, s 18(1.1); *Legal Profession Act*, RSNWT 1988, c L-2, s 22(a); *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 22(a); *Legal Profession Act*, RSY 2002, c 134, s 3; *Law Society Act*, RSO 1990, c L.8, s 4.2; *Professional Code*, CQLR c C-26, s 23.

[207] Law Society of British Columbia, "Delivery of Legal Services Task Force Final Report" (1 October 2010) at 2, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/legalservices-tf_2010.pdf>; Law Society of British Columbia, "Final Report of the Legal Service Providers Task Force" (6 December 2013) at paras 85-92, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesProvidersTF_final_2013.pdf> [LSBC Delivery Report 2013]; Law Society of Alberta, "Alternative Delivery of Legal Services Final Report" (February 2012) at 1, 18, online (pdf): *CBA* <www.cba.org/CBA/cle/PDF/JUST13_Paper_Billington.pdf> [LSA ADLS]; Victoria Rees, Nova Scotia Barristers' Society, "Transforming Regulation and Governance in the Public Interest" (28 October 2013), online (pdf): <archives.nsbs.org/unpublished/81563.pdf>; Darrel Pink, Nova Scotia Barristers' Society, "Memorandum to Council – Request for Amendments to the Legal Profession Act" (23 September 2016), online: <nsbs.org/council-materials; Jeff Hirsch, President of LSM, Law Society of Manitoba Communique (February 2010) (on file with the author); Law Society of Yukon, "Toward a New Legal Profession Act Policy Paper" (28 November 2011), online (pdf): <lawsocietyyukon.com/forms/policypapernovember2011.pdf> [Yukon Policy Paper].

concerns of several Canadian law societies concerning independent paralegals and the regulation of these alternative legal service providers (referred to by various names or titles in different jurisdictions). In British Columbia, Manitoba, and Saskatchewan, particularly, a regulatory scheme appears to be on the horizon. Most of the arguments against paralegal regulation are not new – they have been repeated for years, decades even in some jurisdictions, across Canada.

In British Columbia, debates about the regulation of paralegals have raged for decades (since the mid-1980s) but the government, it seems, has run out of patience and has thrust the authority and responsibility for regulating paralegals onto the Law Society. Notwithstanding thirty years of discussion about the role of non-lawyers and what to do about them, the Law Society of BC has failed to act in any meaningful way to increase access to legal services through independent and licensed paralegals, opting instead to preserve, or preserve the illusion of, a lawyer's monopoly over all legal services. Despite the government's insistence that the time for the LSBC to act is now, change, it seems, is coming too quickly for BC's lawyers.

Several years ago, in 2014, the BC government requested the Law Society to propose legislative amendments to allow for new categories of legal service providers.[208] As a result, in late 2014, the Law Society Benchers unanimously adopted recommendations of its Legal Services Regulatory Framework Task Force to seek amendments to the *Legal Profession Act* authorizing the LSBC to establish and regulate new classes of legal service providers in order to address unmet legal

[208] "Can BC Lead the Way on Paralegals?" (7 May 2019), online (podcast): *National Self-Represented Litigants Project* <representingyourselfcanada.com/can-bc-lead-the-way-on-paralegals/> [NSRLP podcast *Can BC Lead*].

needs.[209] It would be another four years before the LSBC's Alternative Legal Services Provider Working Group, created to develop policy recommendations for consideration by the Benchers, delivered its report.[210] That report, or Consultation Paper, proposed a scope of practice for the new category of legal service providers (who would be members of the LSBC),[211] with a focus on family law[212] to increase the public's access to more affordable services to meet unmet demand.[213] The proposed scope of practice for the new family law legal service providers includes the provision of advice, preparation of court forms and pleadings, attendance at mediations, representation of a client in settlement discussions and preparation of settlement agreements, and appearance in court with a client to advise on court processes and support the client, but not full representation of clients at court.[214] The LSBC's Working Group states:

> The right of audience before a court is ultimately a matter for the court to determine. The proposal is to begin this initiative with a "McKenzie Friend"-like role, where the service provider is able to assist the client in preparing at and appearing in court and advising the client during the appearance. It is not

[209] British Columbia, Legislative Assembly, "Bill 57 — Attorney General Statutes Amendment Act, 2018 " First Reading, *Official Report of Debates (Hansard)*, 41-3, No 185 (20 November 2019) at 6505 (Hon D Eby), online (pdf): <www.leg.bc.ca/content/hansard/41st3rd/20181119pm-Hansard-n185.pdf> [Bill 57 Debates]. See also Law Society of British Columbia, "Report of the Legal Services Regulatory Framework Task Force" (5 December 2014) at para 64, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesRegulatoryFrameworkTF.pdf> [LSBC Framework].

[210] Law Society of British Columbia, Alternate Legal Service Provider Working Group, *Family Law Legal Service Providers: Consultation Paper* (LSBC, September 2018) [FLLSP Consultation Paper]. The 2018 ALSPWG's work and subsequent consultation paper built on the work of the previous 2014 report: Jean Sorensen, "LSBC establishes licensed paralegal task force", *Canadian Lawyer* (15 May 2019), online: <www.canadianlawyermag.com/resources/professional-regulation/lsbc-establishes-licensed-paralegal-task-force/276136> [LSBC Establishes LPTF].

[211] FLLSP Consultation Paper, supra note 210 at para 2.

[212] *Ibid* at para 9.

[213] Ibid at paras 7, 13.

[214] *Ibid*, Schedule A at 12.

> proposed at the outset that the service provider will be permitted to act in a full representative capacity as counsel in court.[215]

With that, the Working Group put the responsibility on the courts so as not to cede too much ground to any newly authorized non-lawyer legal services providers. Since the aim is to improve access to legal services, it requires, in practical terms, that the new legal professionals have sufficient scope of practice to be economically viable as a career.[216] Once the scope of practice is approved, the Law Society will create education, skills training and regulatory requirements that ensure the new class of legal professionals are properly trained and regulated.[217]

The LSBC sought feedback on the draft model for creating a limited scope licence in family law matters.[218] Jerry McHale, in his submission to the Alternative Legal Service Provider Working Group,[219] writes that "effective access reform is imperative," noting that more than twenty-five years of reform efforts "have produced little or no real improvement in access to justice."[220] It is McHale's view that while the justice system tends to be conservative and risk averse, the current situation in BC requires a high degree of innovation and higher tolerance for mistakes,[221] and any concern about this "should be balanced by the fact that an unreformed status quo is an even greater risk" than the risk

---

[215] *Ibid*, Schedule A at 13.

[216] *Ibid* at para 20.

[217] *Ibid*.

[218] Law Society of British Columbia, "Unbundling Legal Services" (last visited 2 April 2020), online: <www.lawsociety.bc.ca/our-initiatives/access-to-justice/unbundling-legal-services/>.

[219] Jerry McHale, "Re: Family Law Legal Service Providers: Consultation Paper" (29 October 2018), online (pdf): *University of Victoria Law* <static1.squarespace.com/static/5532e526e4b097f30807e54d/t/5bff12ce8a922d66f5ee55af/1543443152742/JM-BCLS+FLSP+Response.pdf>.

[220] *Ibid* at 1.

[221] *Ibid* at 2.

of innovation.[222] McHale expresses concern about the affordability of the legal services and the sustainability of the business model. He questions, on the demand side, how low hourly rates would have to go to make the system affordable for the public, and whether the proposed model will reduce costs to that level.[223] On the supply side, McHale questions if there will be a sufficiently profitable niche in the market to attract alternate service providers.[224] Before creating a new class of legal service providers and a regulatory scheme, McHale argues, "there should be a detailed examination of its economic viability for both the users and the suppliers of legal services."[225]

After the Working Group delivered its report (in Sept 2018), BC's Attorney-General, David Eby, addressed members of the LSBC at its annual general meeting in October 2018, seeking its support for legislative changes. Eby insisted the government "alone cannot solve the access to justice problem we face."[226] Soon thereafter, in November 2018, Eby introduced and pushed through legislative amendments that included renaming the *Legal Profession Act* the *Legal Professions Act*, (making "profession" plural), a definition of "licensed paralegal," and provision for the practice of law by a licensed paralegal.[227] The amendments, Eby explained, are intended to increase access to legal services and choice of provider "by expanding who may engage in the practice of law."[228] Eby

---

[222] *Ibid*.

[223] *Ibid* at 3.

[224] *Ibid*.

[225] *Ibid*.

[226] Jean Sorensen, "B.C. attorney general urges members to support alternative legal service providers", *Canadian Lawyer* (31 October 2018), online: <www.canadianlawyermag.com/resources/professional-regulation/b.c.-attorney-general-urges-members-to-support-alternative-legal-service-providers/275587>.

[227] Bill 57 – 2018*, Attorney General Statutes Amendment Act, 2018*, 3rd Sess, 41st Parl, British Columbia, 2018, cls 25, 26, 33 (assented to 27 November 2018), SBC 2018, c 49 [Bill 57]. See also the definition of "licensed paralegal" which will change in *Legal Professions Act*, SBC c 49, s 1(1), still waiting to come into force as s 26 of Bill 57.

[228] See Bill 57 Debates, *supra* note 227. Bill 57 received First Reading on 19 November 2018, Second Reading on 20 November 2018, and Third Reading on 26 November 2018. It received Royal Assent 27 November 2018.

views the amendments as putting in place the structure "for the law society to do what I believe is necessary" and look at ways to deliver legal services to the people.[229] The Attorney General expressed his hope – expectation even – that the LSBC and its members would lead the way on reform, and warned that the government "won't sit by and allow nothing to happen in the profession."[230] He pointed to the legal profession's responsibility to govern in the public interest and further warned that the profession "is mistaken if they believe that people in Canada and the provinces are going to tolerate a legal system that they functionally have no access to in the name of preserving a monopoly for lawyers."[231]

But while the LSBC's Benchers were willing to accept change and implement a regulatory scheme for licensed paralegals – the majority of Law Society members (that is, individual lawyers) were not.[232] In December 2018, after the government's legislative amendments were passed, the majority of LSBC members voted to direct the Benchers to delay implementing a paralegal regulatory scheme until they had more time to complete their consultations regarding licensed paralegals and also to not authorize licensed paralegals to practice family law under the authority provided by the recent legislative amendments.[233] In short, lawyers overwhelmingly voted to block or at least delay

[229] National Self-Represented Litigants Project, "Carrot or Stick? Moving Forward in BC" (2 April 2019), online (podcast): *NSRLP* <representingyourselfcanada.com/carrot-or-stick-moving-forward-in-bc/> [NSRLP podcast *Carrot or Stick*].

[230] *Ibid.*

[231] *Ibid*.

[232] Jean Sorensen, "B.C. lawyers vote to block licensed paralegals as AG pushes through legislation", *Canadian Lawyer* (5 December 2018), online: <www.canadianlawyermag.com/legalfeeds/bc-lawyers-vote-to-block-licensed-paralegals-as-ag-pushes-through-legislation-16580/>.

[233] John-Paul Boyd, "The Gloomy Future of Access to Family Justice in British Columbia: Outcomes of the Law Society's 2018 Annual General Meeting", *SLAW* (7 December 2018), online: <www.slaw.ca/2018/12/07/the-gloomy-future-of-access-to-family-justice-in-british-columbia-outcomes-of-the-law-societys-2018-annual-general-meeting/>. The members' resolution passed with an overwhelming majority – 66.8% of members who voted in favour. There were 1,288 votes cast. 861 (66.8%) voted in favour, 368 (28.6%) against, and 59 abstentions.

the Benchers, their self-regulatory body, from exercising its new statutory authority to regulate licensed paralegals. The members also voted, overwhelmingly, to defy the government's desire and intention to implement measures to improve access to justice by increasing availability of legal service providers and lowering the cost of services, particularly in family law matters, an area of high unmet need. John-Paul Boyd believes it was "foolhardy in the extreme" for the members to direct the Benchers to shirk the regulatory responsibility that government intended them to have.[234]

It is curious that BC's lawyers (or at least the majority who voted to delay) are not yet prepared to accept paralegal regulation given that the Law Society of BC, more than ten years prior, had recognized that a complete reservation of the practice of law to lawyers could not be maintained.[235] Subsequently, in early 2017, the LSBC acknowledged that the regulation of paralegals is an important component of access to justice.[236] At that time, the Law Society reported that it was "actively pursuing … discussions relating to amendments" to BC's *Legal Profession Act* to authorize the creation of new classes of regulated legal service providers, which "could include paralegals," to address the need for greater access to affordable legal services.[237] Nancy Merrill, then-president of the LSBC and also former chair of the Alternative Legal Services Working Group, acknowledges that a major part of the

---

[234] *Ibid*.

[235] Law Society of British Columbia, "Towards a New Regulatory Model – Report to the Benchers from the Futures Committee" (30 January 2008) at 2, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Futures-2008.pdf>, referenced in LSBC Delivery Report 2013, *supra* note 207 at para 36.

[236] Elizabeth Raymer, "LSBC Discontinues 'Paralegals in Court' Pilot", *Canadian Lawyer* (12 January 2017), online: www.canadianlawyermag.com/legalfeeds/3631/lsbc-discontinues-paralegals-in-court-pilot.html. Not Just For Lawyers, "Kristin Dangerfield, CEO, The Law Society of Manitoba" (last visited 03 April 2020), online: <http://notjustforlawyers.com/kristen-dangerfield/> [Dangerfield]; LSBC Framework, supra note 209 at para 49.

[237] Law Society of British Columbia, "Designated Paralegal Initiative Improves Access to Lower Cost Legal Services" (13 January 2017), online: <www.lawsociety.bc.ca/about-us/news-and-publications/news/2017/designated-paralegal-initiative-improves-access-to/> [LSBC, "Paralegal Initiative"].

access to justice crisis is that many people cannot afford to hire a lawyer and that family law appears to be "the area of greatest need."[238] According to Merrill, more time is required to "get it right" since this is "simply too important" a matter to push through without appropriate consultation.[239] Perhaps the slow pace of change, or the unwillingness to actually implement change, is indicative of what Macfarlane has referred to as the "obvious tension" between the gate-keeping role of the profession and its vested interest in maintaining its monopoly.[240] Boyd cites the legal profession's failure to do "anything of much significance or substance" over the previous two decades at least to address the significant barriers to justice experienced by most Canadians. He questions why non-lawyers, with proper training and proper oversight, should not be able to provide legal services or, "to put the question another way, what makes lawyers so uniquely qualified to provide legal services?"[241] As Boyd argues:

> With truly adequate training and professional accountability being required of and imposed on non-lawyers, I struggle to find a rational basis to limit the practice of law to lawyers, especially since we have so spectacularly failed to address the access to justice crisis afflicting such a large share of the population.[242]

Boyd warns that "the beginning of the end of our statutory monopoly is in sight,"[243] arguing that legislative amendments clearly signal the government's intention to allow non-lawyers to practice law and if the Law Society fails "to embrace the inevitable and regulate the extent to which non-lawyers

---

[238] *Ibid*; See also NSRLP podcast *Can BC Lead*, *supra* note 208.

[239] NSRLP podcast *Can BC Lead*, *supra* note 208.

[240] Julie Macfarlane, "2017 Could be the Year of the Paralegal – Or, Will #AltFacts Prevail?" (31 January 2017), online (blog): *NSRLP* <https://representingyourselfcanada.com/2017-could-be-the-year-of-the-paralegal-or-will-altfacts-prevail/> [Macfarlane, "Alt Facts"].

[241] Boyd, *supra* note 233.

[242] *Ibid.*

[243] *Ibid*.

practice law," the government will do so.[244] BC's Attorney General Eby cites the government's intervention, in 2016, with respect to that province's realtors who lost their right to self-govern as a result of failing to protect the public from cut-throat practices and putting their own financial interests above those of their clients,[245] warning that:

> [T]he realtors lost track of the public interest in their regulation and oversight and they lost independent oversight of their own profession. So, there is a precedent in BC for that happening and I think the law society and the members, everybody absolutely needs to keep front of their mind the public interest not just the professional interest.[246]

LSBC's members are not alone in their opposition to implementing a regulatory scheme for licensed paralegals. Echoing the current resistance in Ontario with respect to an expansion of licensed paralegals' scope of practice to include some family law matters, family lawyers in BC offer similar reasons for not allowing licensed paralegals to provide legal services in family law matters. The Access to Justice Committee of the Canadian Bar Association, BC branch (CBABC)[247] acknowledges that there continue to be significant problems with access to justice in BC[248] and that lawyers have a significant role to play in bringing about change,[249] but expresses concerns about the LSBC's

---

[244] *Ibid*.

[245] John Lehmann, "B.C. Puts End to Real Estate Self-Regulation", *The Globe and Mail* (29 June 2016), online: <www.theglobeandmail.com/real-estate/vancouver/bc-premier-christy-clark-says-change-coming-to-real-estate-industry/article30681945/>.

[246] NSRLP podcast *Carrot or Stick*, *supra* note 229.

[247] Canadian Bar Association (British Columbia Branch), *Submissions of the Canadian Bar Association (British Columbia Branch) Access to Justice Committee to the Law Society of BC Regarding the Family Law Legal Service Providers: Consultation Paper* (21 December 2018), online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/Alternate/Consultation-feedback_2018-12-28.pdf>.

[248] *Ibid* at 2.

[249] *Ibid* at 3.

proposal. The CBABC argues that the proposed licensing scheme for Family Legal Service Providers does not address how a new class of legal service providers will improve the justice system; it is not clear how the public will be protected; and there is no analysis of the lessons to be learned from other jurisdictions (including Ontario) with respect to their initiatives concerning non-lawyer legal service provision.[250] The A2J Committee also argues that affordability is "but one of the many factors that have contributed to the access to justice crisis" – the complexity of the existing justice system is another factor – and further points out that the LSBC's proposal does not address how the fees of alternative legal service providers will be regulated, if at all.[251] While some of these, at least, may be valid points, it appears clear that the CBA is strongly opposed to any encroachment by non-lawyers who practice independently into family lawyers' arena.[252] In addition, the CBABC Family Law Working Group argues that creating a new class of legal service providers – FLSPs – is not the solution to the access to justice problem.[253] Instead, it recommends that restoration of a fully funded family legal aid program administered by the Legal Services Society "would be the single most significant initiative to improve access to justice for family law litigants" and could be more quickly implemented than the LSBC's FLSP proposal.[254] Not surprisingly, in repeating the same old concerns that the CBA and

[250] *Ibid* at 5.

[251] *Ibid*.

[252] The CBA has expressed this same position concerning the scope of practice of licensed paralegals in Ontario: See Chapter 3 herein. But elsewhere in Canada, unregulated non-lawyers are permitted by statute to provide some representation in family law matters. A non-lawyer may appear as a representative in Family Court in Newfoundland and Labrador, and a lay assistant may speak on behalf of another person at trial or a hearing before the Supreme Court of Nova Scotia, Family Division: *Provincial Court Family Rules*, 2007, NLR 28/07, s 5.04; The Courts of Nova Scotia, *Nova Scotia Civil Procedure Rules* (6 June 2008), Rule 34.08(1), online (pdf): <www.courts.ns.ca/Civil_Procedure_Rules/cpr_docs/civil_procedure_rules_june_08_complete.pdf>. See also *R v Cox*, 2013 NSCA 140 at para 22.

[253] CBA Submissions, *supra* note 247 at 5.

[254] *Ibid* at 6.

others voiced prior to the implementation of paralegal regulation and more recently with respect to the pending expansion of paralegal scope of practice to include family law matters in Ontario, the CBABC's Family Law Working Group argues that only lawyers can adequately and competently practice law and takes the position that "without lawyer supervision, it may be better for clients to have no representation at all than to have some representation from a family law alternate legal service provider."[255]

In response to the members' vote to delay the Benchers from exercising their new legislative mandate to design and implement a regulatory scheme for paralegals, even though the resolution was not binding on the Benchers, they gave in.[256] In March 2019, the LSBC created yet another task force, the Licensed Paralegal Task Force, which continues the work of the Alternate Legal Service Provider Working Group.[257] The new Task Force will consult with the profession and others "to identify opportunities for the delivery of legal services that would benefit the public in areas of substantial unmet legal need" as well as the scope of practice, education and other qualifications that would be required for licensed paralegals and to make recommendations to the Benchers on the regulatory framework required.[258] And so it goes, around and around again with little forward progress. It is interesting to note that the only paralegal on the new Licensed Paralegal Task Force – there are at least seven other members – had to ask to be included.[259]

---

[255] *Ibid* at 7.

[256] LSBC Establishes LPTF, *supra* note 210.

[257] *Ibid*.

[258] *Ibid*.

[259] *Ibid*.

None of this is out of character nor surprising. What is concerning, however, is the BC legal profession's prolonged resistance to change. Clearly, change will not come easily. Thirty years of a lack of regulatory innovation to meaningfully share the legal services market with others, particularly in the face of the LSBC's newly imposed statutory authority to do so, arguably reveals a lack of true commitment to or regard for the public interest and access to justice as well as willful indifference to the unmet legal needs of many. A brief review of the issue provides context and reveals the profession's cultural history, with its political and economic forces, and its self-serving tendencies amidst a growing and recognized need for greater access to legal services. The issue of paralegal regulation and credentialing was first discussed by the Law Society of BC in 1989. At that time, and again in 2003, the LSBC rejected the idea of creating a class of independent paralegals who would provide unsupervised legal services. But a decade later, the law society changed its position, finding merit in allowing clients a choice of service providers for some legal services, as long as those service providers were appropriately qualified and regulated to ensure the public is protected from incompetent or unethical service.[260] The LSBC expressed that it was "essential" to start the discussion about defining appropriate areas of practice for any new legal service providers by considering what legal services the public needs rather than asking: *Should anyone other than lawyers be able to provide the legal services the public needs*?[261] It concluded that a new class of legal professional should be established to provide advocacy services in Small Claims Court and before administrative tribunals.[262] The Law Society was of the view that the public would be better served by having access

[260] LSBC Delivery Report 2013, *supra* note 207 at paras 127-33.

[261] LSBC Framework, *supra* note 209 at paras 71-72.

[262] *Ibid* at para 74.

to the services of a trained and licensed non-lawyer than having to "go it alone."[263] In the midst of all this, in 2012, the LSBC created a Designated Paralegal Program that allows lawyers to designate paralegals working under that lawyer's supervision who would be permitted to perform additional duties.[264] This expanded role was designed to provide the public with more choice in obtaining competent, affordable legal assistance.[265] A further initiative, the Court Pilot Project (CPP), which ran from January 2013 to late 2015, permitted designated paralegals to appear on certain procedural family law matters in the Supreme and Provincial Courts in some jurisdictions in the province.[266] The CPP was an attempt to ascertain how a limited scope of appearance and practice afforded designated paralegals might work,[267] but it produced no useful evidence because very few lawyers actually sent their designated paralegals to court and, as a result, the pilot project was discontinued.[268] The numbers reveal an interesting reality. After the CPP had concluded, the LSBC conducted a survey of 481 lawyers who had supervised designated paralegals.[269] Of the fifty-four lawyers (11%) who responded, not one of them had sent a designated paralegal to court as part of the family law pilot project.[270] The LSBC's decision to discontinue the CPP, argues Macfarlane, highlights the tension

[263] *Ibid* at para 85.

[264] LSBC, "Paralegal Initiative", *supra* note 237.

[265] Law Society of British Columbia, "Paralegals – Part of the Access to Justice Solution", *Benchers' Bulletin* 3 (2012) at 12, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/bb_2012-03-fall.pdf>.

[266] Law Society of British Columbia, "Lawyers – Practice Support and Resources – Paralegals" (last visited 4 April 2020), online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/>. The Court Pilot Project ended in the Supreme Court on December 31, 2014 and in the Provincial Court on October 1, 2015.

[267] LSBC, "Paralegal Initiative", *supra* note 237.

[268] *Ibid*. See also Raymer, *supra* note 236.

[269] LSBC, "Paralegal Initiative", *supra* note 237. There were 11,433 practising lawyers in BC in 2015: Law Society of British Columbia, *2015 Report on Performance*, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/ar/2015-AnnualReport.pdf>. The 481 supervising lawyers represent less than five percent (about 4.25% actually) of practising lawyers in the province.

[270] *Ibid*. The majority of respondents, however, reported a belief that paralegals can play an effective role in court.

between the self-interest of the profession and the public interest.[271] Designated paralegals are still permitted, under lawyer supervision, to provide legal advice and may continue to appear before tribunals if the tribunal permits.[272] In mid-2015, the LSBC announced that it was preparing to introduce yet another class of legal service provider.[273] Certified paralegals, the LSBC assured, would be "lower-cost, credentialed and regulated professionals" who would help to increase access to the justice system.[274] The LSBC argued at the time that central to an expansion of the market for legal services was the question of "how wide that door ought to be opened, rather than whether the door need be opened at all"[275] but no certification scheme for paralegals materialized.[276]

In Manitoba, the Law Society's public interest mandate applies broadly to the delivery of legal services, not strictly to the practice of law,[277] and the *Legal Profession Act* therefore contains oversight mechanisms governing non-lawyers and the provision of legal services by them. The Act provides clear authority for a person who is not authorized to practice law to act as agent on behalf of, or provide legal advice to, another person with respect to provincial offences, and further requires that

[271] Macfarlane, "Alt Facts", *supra* note 240.

[272] Raymer, *supra* note 236.

[273] "Law Society of B.C. Proposes New Category of Legal Professionals", *CBC News* (16 April 2015), online: <www.cbc.ca/news/canada/british-columbia/law-society-of-b-c-proposes-new-category-of-legal-professionals-1.3035642>.

[274] *Ibid*.

[275] *Ibid.*

[276] It is interesting to note that the development of a certification scheme for paralegals was previously recommended, by the Paralegalism Subcommittee in 1989 and again in 2002 by the Paralegal Task Force, but rejected: LSBC Delivery Report 2013, *supra* note 207 at paras 29-34. Presumably, this new certification scheme has been replaced or subsumed by the Family Law Legal Service Providers initiative.

[277] The Law Society's duties, however, are more narrowly directed to regulating the practice of law: *Legal Profession Act*, CCSM c L107, s 3.

agents carry liability insurance.[278] The Act also provides that communication between a person who acts as agent or provides legal advice is privileged in the same manner and to the same extent as communication between a lawyer and his or her client.[279] The LSM recognizes that non-lawyers "might have a role to play"[280] in addressing the access to justice problem and is prepared to expand the delivery of legal services by alternate legal service providers.[281] In 2018, the Law Society explored whether it "ought to take steps to give up the legal profession's "monopoly" over the delivery of legal services"[282] (even though, pursuant to the *Legal Profession Act* that governs them, lawyers do not enjoy this monopoly), and decided to seek legislative amendments to permit the Benchers to expand the scope of legal services that could be provided by other categories of service providers.[283] In early 2020, the Manitoba government proposed legislative amendments that would allow the Law Society to designate a category of non-lawyers, to be called Limited Practitioners, to provide a limited scope of legal services.[284] The aim is to provide more affordable and accessible options for legal information and representation. The LSM will have the statutory authority to determine the scope of practice and education requirements for Limited Practitioners because of its "expertise of regulating

[278] *Legal Profession Act*, CCSM c L107, s 40(1)(c); *Agents Bonding and Insurance Regulation*, Man Reg 105/90, ss 15-16 stipulate that an agent must have insurance coverage for errors, omissions and negligence of $100,000 minimum.

[279] *Legal Profession Act*, CCSM c L107, s 41. These provisions were added in 2005: SM 2005, c 37, Sch A, s 155.

[280] Dangerfield, *supra* note 236.

[281] Law Society of Manitoba, *2018 Annual Report* (16 July 2019) at 2, online (pdf): <lawsociety.mb.ca/wp-content/uploads/2019/07/2018-Annual-Report.pdf>.

[282] *Ibid* at 4.

[283] Law Society of Manitoba, *2019 Annual Report* (2019) at 5, online (pdf): <www.lawsociety.mb.ca/publications/annual-reports/2019%20Annual%20Report.pdf/view> [2019 Annual Report].

[284] Government of Manitoba, News Release, "Manitoba Introduces Legislation That Would Improve Access to Legal Services" (9 March 2020), online: <https://news.gov.mb.ca/news/index.html?item=46922> [Manitoba Introduces Legislation]. See also Terry Davidson, "'Limited Practitioners'" Needed for Access to Justice in Manitoba, Says Official", *The Lawyers' Daily* (17 March 2020), online: <https://www.thelawyersdaily.ca/articles/18136> [Davidson, "Limited Practitioners"].

legal services in the public interest."[285] It appears Limited Practitioners will be limited to providing "advice and direction" in the area of family law, which is somewhat similar to BC's approach. According to Kristin Dangerfield, CEO of the Law Society of Manitoba, that role might "one day" expand to civil matters, particularly real estate, small claims, residential tenancy disputes and tax matters.[286] In addition, Legal Aid Manitoba is considering a pilot project to use trained (non-lawyers) advocates to handle refugee board hearings and is seeking approval from the Immigration and Refugee Board of Canada.[287] Legal Aid Manitoba is of the view that trained advocates would provide good representation at a lesser cost than lawyers. The advocates would be authorized to prepare a legal aid application, complete the basis of claim form, and provide representation at a hearing[288] under the supervision of in-house lawyers.[289] At least one immigration lawyer believes that allowing non-lawyers to represent refugee claimants is a "huge risk."[290] In response, Dangerfield argues that lawyers need to make room for alternative legal service providers in order to increase access to affordable legal services in Canada. According to Dangerfield, there will always be a need for lawyers as there will always be matters which require "the judgment and skills and expertise of a lawyer to manage" but there are also matters that do not require a lawyer.[291]

---

[285] Manitoba Introduces Legislation, *supra* note 284.

[286] Davidson, "Limited Practitioners", *supra* note 284.

[287] Froese, *supra* note 58.

[288] *Ibid.*

[289] *Ibid*. See also Terry Davidson, "Legal Aid Paralegals Not Qualified to Handle Risky Refugee Cases: Lawyer", *The Lawyer's Daily* (15 January 2019), online (pdf): <www.thelawyersdaily.ca/articles/9608/legal-aid-paralegals-not-qualified-to-handle-risky-refugee-cases-lawyer> [Davidson, "Legal Aid Paralegals"].

[290] Davidson, "Legal Aid Paralegals", *supra* note 289.

[291] *Ibid*.

In Saskatchewan, an expanded role for non-lawyer or alternative legal service providers has been extensively studied but a regulatory scheme for independent paralegals has been rejected. In April 2016, the government's Ministry of Justice and the Law Society initiated a joint project to explore the possibility of expanding the scope of non-lawyer legal service providers[292] with a goal to provide greater access to legal services.[293] Both the Ministry and the LSS acknowledge that not all legal services need to be provided by a lawyer.[294] They recognize that having some assistance from a paralegal or legal technician would be better than no assistance,[295] and that non-lawyer legal service providers might increase the affordability of legal services.[296] The Legal Services Task Team delivered its report in mid-2018, expressing the view that it is "time to move towards greater flexibility in the regulation and delivery of legal services" and recommending legislative amendments to allow for "a different regulatory approach."[297] The Task Team's overall goal, as elsewhere, was "to enhance access to legal services for Saskatchewan citizens while maintaining protection of the public."[298] The rationale was three-fold: a need for increased access to legal services including the affordability of those services; a desire for increased consumer choice; and a need to ensure effective regulation of

[292] Law Society of Saskatchewan, "Survey – Expanding the Responsibilities of Non-lawyer Legal Service Providers – Open Until May 12, 2016" (21 April 2016), online (blog): *Legal Sourcery* <www.lawsociety.sk.ca/>.

[293] Law Society of Saskatchewan, "Consultation Paper: Expanding the Classes of Legal Service Providers in Saskatchewan" (2016) at 1, online (pdf): <www.lawsociety.sk.ca/media/138207/ConsultationPaperApr2016.pdf> [LSS Consultation].

[294] *Ibid* at 2-3.

[295] *Ibid*.

[296] Brea Lowenberger, "Recommendations from Dean's Forum Becoming a Reality: Law Society and Ministry of Justice seeking feedback on expanding the responsibilities of non-lawyer legal service providers in Saskatchewan" (17 May 2016), online (blog): *Legal Sourcery* <https://lsslib.wpcomstaging.com/2016/05/17/recommendations-from-deans-forum-becoming-a-reality-law-society-and-ministry-of-justice-seeking-feedback-on-expanding-the-responsibilities-of-non-lawyer-legal-service-providers-in-saskatchew/>.

[297] SASK LSTT, *supra* note 9 at iii, 83.

[298] *Ibid* at 1.

legal services.[299] The Legal Services Task Team raised familiar concerns that have been raised elsewhere and echo across the country: the cost and affordability of legal services, competence in legal service provision, the public interest, consumer choice, competition, and innovation,[300] as well as "balancing considerations of protecting consumers from harm with providing more options and increased access to legal services."[301] The Task Force argues that the current reality, in which only lawyers are authorized to perform and deliver legal services, "has the effect of reducing competition and increasing prices by restricting the supply of legal services."[302] It also cautiously acknowledges that "a law degree may not be required in order to competently deliver all legal services."[303]

The Task Team concluded that it is time to "move towards greater flexibility in the regulation and delivery of legal services" to address underserved legal needs and legal service gaps.[304] One recommendation is to expand the list of exceptions to the practice of law to reflect the current reality and acknowledge that non-lawyers are providing "a valuable and legitimate service."[305] The Task Team cited Aboriginal Courtworkers and OWA Advocates as two examples of successful models that can be replicated "to maximize efficiency and effectiveness" in creating a new limited licensing system.[306] The Task Team ultimately concluded, however, that it is not yet time, as the circumstances do not currently exist in the province, to create an entirely separate professional group of legal service

[299] *Ibid* at i.

[300] *Ibid.*

[301] *Ibid* at ii.

[302] *Ibid* at i.

[303] *Ibid*.

[304] *Ibid* at iii, 63.

[305] *Ibid* at 74.

[306] *Ibid* at 88. Aboriginal Courtworkers are now known as Indigenous Courtworkers.

providers with a common scope of practice[307] and there would not be a critical mass to support establishing a new regulatory structure.[308] Cognizant of the need for a viable profession, the Task Team concluded that the additional cost of training or initial licensing fees, the cost of overhead, and the much smaller population in Saskatchewan would make it "difficult for a legal service provider akin to an Ontario paralegal to earn a living in Saskatchewan, let alone be able to offer legal services at a lower cost to the public."[309] The Task Team did, however, conclude that the creation of a new professional group of service providers might be appropriate in future given the existence of unmet legal needs.[310] The Task Team is of the view that the regulatory scheme for legal services should be better able to adapt to changing circumstances, and recommends legislative amendments to allow for the creation of a new professional group "should the circumstances call for it."[311] It also concluded that a single regulator would be more efficient and economical than competing regulators and regulatory frameworks and a single regulatory would be able to apply consistent standards for regulating in the public interest.[312] The Law Society is the appropriate regulator because of its "well-established experience in legal regulation."[313] The ostensible pubic interest arguments and justifications for the Law Society to regulate other legal service providers are similar to those expressed by the LSUC when it agreed to regulate paralegals in Ontario.

---

[307] *Ibid* at iii.

[308] *Ibid* at 76.

[309] *Ibid* at 77.

[310] *Ibid.*

[311] *Ibid*.

[312] *Ibid*.

[313] *Ibid* at 77-78, 84, 90. (The same exists in Ontario, and is recommended in BC).

The Task Team concluded that some context-specific needs could be serviced by alternative service providers operating within a specific, individualized scope of practice that reflects their knowledge, training, and experience and therefore recommends the creation of limited licenses for the practice of law that can be granted by the Law Society on a case-by-case basis.[314] The Task Team, which includes members of the Law Society, is willing to leave it to the Law Society to determine if limited licensees will be able to practice independently or under lawyer supervision, based on the nature of the legal services provided and scope of practice.[315] This is yet another example of a provincial government affording a law society broad authority and significant power to regulate competitors if, when, and as it sees fit. The Task Team appears to assume, without question, that the Law Society will regulate in the public interest. It is also an example of a law society maintaining and benefitting from a co-operative relationship with the state, thereby further entrenching its privileged and dominant status.[316]

But there also appears to have been another impetus to act that takes into account the interests of the profession and its desire to maintain control over any regulatory changes to come (not unlike the situation in Ontario). The LSS insisted, when the Legal Services Task Team launched the joint project in April 2016, that being proactive would result in the best possible outcome for the Saskatchewan public, the legal profession and other service providers, and that if the Law Society did not engage with these regulatory changes, it might be forced to change "in ways that might not

[314] *Ibid* at iv and 78.

[315] *Ibid* at 85.

[316] See Philip Girard, "The Making of the Canadian Legal Profession: A Hybrid Heritage" (2014) 21:2 Int'l J Legal Profession 145 at 164.

consider stakeholder interests and concerns."[317] In other words, take control or risk losing (and not have any) control. These are not unfamiliar sentiments.

Elsewhere, efforts are also underway to expand non-lawyer legal service provision although initiatives are less developed than they are in BC, Manitoba and Saskatchewan. In Nova Scotia, regulatory changes appear set to alter the provision of legal services and expand the role of paralegals in that province. The Barristers' Society, in 2013, adopted a strategic framework to transform regulation of the delivery of legal services and doing so was guided by two priorities: regulating in the public interest and enhancing access to legal services and the justice system.[318] These priorities are reflected in regulatory objectives adopted in 2016.[319] Recent revisions to the *Legal Profession Act* will expand the Barristers' Society's role – its new purpose will be to uphold and protect the public interest in the practice of law *and* the delivery of legal services.[320] Darrel Pink, then-Executive Director of the Barristers' Society, argued that this new purpose imposes on the Society an obligation to enhance access to legal services.[321] The Barristers' Society recognizes that it needs to expand the availability of legal services by a variety of means but must also ensure that the public is protected from poor quality and incompetent service providers.[322] This expansion includes creating and regulating a new class of non-lawyer legal service provider – paralegals – who will be permitted

[317] LSS Consultation, *supra* note 293 at 3.

[318] Nova Scotia Barristers' Society (last visited 10 June 2020), online: <nsbs.org>.

[319] Nova Scotia Barristers' Society, *Legal Services Regulation Update*, Issue 5 (April 2016) at 3, online: <nsbs.org>.

[320] Darrel Pink, Nova Scotia Barristers' Society, "Memorandum to Council – Request for Amendments to the Legal Profession Act" (23 September 2016), online: <nsbs.org/council-materials>.

[321] *Ibid.*

[322] *Ibid*.

to provide limited-scope legal services.[323] Paralegals' scope of practice is yet to be determined, and it is not clear whether they will be allowed to provide legal services independently.[324] In Quebec, the paralegal profession is not regulated.[325] The Association of Paralegals is seeking regulation similar to Ontario's model[326] although progress appears to be slow. In the territories, the Yukon government tabled a new *Legal Profession Act* in October 2017 to update and modernize regulation.[327] It is yet to be determined if any legislative revisions will provide for increased access to legal services through courtworkers and independent, licensed paralegals. Several years before, in 2011, the Law Society of Yukon identified "increasing concerns" about access to justice and the availability and affordability of legal services.[328] It recognized that the public interest must be paramount and the legal profession must evolve to increase access to legal services.[329] The Law Society of Yukon expressed the view that new legislation should not be limited to regulating the practice of law by lawyers only[330] and insists that there must be flexibility in the legislation to allow for the creation of other categories of members, such as paralegals, who can engage in designated aspects of the provision of legal services.[331] There

[323] *Ibid*. See also Nova Scotia Barristers Society, "Transforming Regulation: Legislative Changes" (Fall 2016) 35:2 The Society Record at 13, online: <www.nsbs.org> [NSBC Transforming]; Nova Scotia Barristers Society, "Legislative Changes Required for Legal Services Regulation in Nova Scotia" (November 2016) 35:7 The Society Record, online: <nsbs.org>.

[324] NSBC Transforming, *supra* note 323.

[325] ParalegalEDU.org, "How to Become a Paralegal in Quebec" (last visited 9 April 2020), online: <www.paralegaledu.org/quebec/>.

[326] Brown, *supra* note 70. The APQ has met with the government and is working on a written submission to be presented to the Minister of Justice and Attorney General of Quebec: Association des Parajuristes du Quebec, online: <www.parajuristequebec.ca/page-1739698>. The meeting was held on June 1, 2016.

[327] Government of Yukon, News Release, 17-216, "Government of Yukon tables a new Legal Profession Act" (11 October 2017), online (pdf): <https://open.yukon.ca/data/sites/default/files/17-216.pdf>.

[328] Yukon Policy Paper, *supra* note 207 at 1.

[329] *Ibid* at 2-3.

[330] *Ibid* at 5, 30.

[331] *Ibid* at 31.

is no formal regulation of paralegals in the Northwest Territories or Nunavut. The Law Society of NWT is considering an expanded role for non-lawyers to address the access to justice problem. In 2014, the Access to Justice Committee undertook to lead and coordinate initiatives to improve and promote access to justice across the territory.[332] Part of the Committee's mandate was to identify barriers that reduce access to justice and recommend new responses to those barriers that might include alternative and/or innovative models of legal service delivery.[333] Identified barriers to accessing justice include a lack of affordability of lawyers, a scarcity of lawyers, inadequate resources for self-represented litigants facing a complicated justice system, and a lack of "truly independent, impartial, well-trained justice workers in smaller communities."[334] A 2004 federal government study of legal services provision in the Yukon, NWT and Nunavut revealed a significant lack of representation in a wide range of family and other civil law matters and a need to expand the role of Indigenous courtworkers across the northern jurisdictions in conjunction with an expanded role in Justice of the Peace courts.[335] Since a common constraint identified by all courtworkers was a lack of training in procedural and substantive legal issues,[336] a significant increase in courtworker training, leading to certification for a specific role, was proposed as a way to address areas of unmet need.[337]

[332] Northwest Territories, "NWT Access to Justice Committee – Terms of Reference" (24 April 2014), online (pdf): <https://ajrndotco.files.wordpress.com/2016/06/tor-committee-final.pdf>.

[333] *Ibid.*

[334] Law Society of The Northwest Territories, "Access to Justice – Survey Results" (21 April 2015) at 2, 5, online (pdf): <https://ajrndotco.files.wordpress.com/2016/06/survey-results-report-april-21.pdf>.

[335] De Jong, *supra* note 114 at para 6.4.

[336] *Ibid* at para 6.2.

[337] *Ibid* at para 14.3.

In Alberta, non-lawyer legal service providers and the provision of legal services by them are viewed quite differently than elsewhere in Canada. Rather than trying to restrict and control competitors, the Law Society of Alberta takes a hands-off, consumer choice approach, preferring to leave the non-lawyer legal service industry to market forces. The Law Society's view of its role is a narrow one – to protect the public when they engage a lawyer, not to protect consumers from freely made choices in accessing legal services, and not to regulate non-lawyers.[338] The LSA does not view the regulation of paralegals as a means to increase access to legal services[339] and previously rejected the idea of doing so because, it claimed, the province's robust and expanding independent and unregulated non-lawyer legal services industry already meets consumers' need and demand for low-complexity, low-risk legal services.[340] Research reveals that Albertans have found good value in, and the majority is satisfied with, the services provided by non-lawyers[341] who are subject to consumer protection legislation and market forces.[342] As of 2009, there were approximately 900 independent and unregulated non-lawyers providing legal services to the public for a fee.[343] Those services include legal advice, representation before courts and tribunals, document drafting, and filling out forms.[344] The Law Society of Alberta acknowledges that unregulated providers do not necessarily provide quality services and, in the absence of regulation, there are no client protections in place for

[338] LSA ADLS, *supra* note 207 at 1-2, 23.

[339] *Ibid* at 23-24.

[340] *Ibid* at 1, 16-24. Between 2000 and 2009 the independent non-lawyer legal service industry in Alberta increased by 230%: *Ibid* at 15.

[341] *Ibid* at 14.

[342] *Ibid* at 18.

[343] *Ibid* at 15.

[344] *Ibid* at 16.

independent non-lawyer legal service delivery.[345] But the Law Society has limited ability to prosecute non-lawyers for unauthorized practice because the *Legal Profession Act* does not contain a clear definition of the practice of law.[346] Critics Heather White and Sarah Burton, however, argue that low and middle-income Albertans "are desperate for affordable legal assistance" and agents are increasingly filling the demand, but the need to keep costs low does not justify a complete void in regulation or oversight.[347] They acknowledge that regulation might raise barriers to justice, but argue that regulation also has benefits.[348] White and Burton argue that the Law Society is the only feasible regulatory body to govern non-lawyer agents and it needs to ensure, through some sort of regulatory scheme, that agents have good character and enough training to pass a licensing exam. Doing so, they insist, will help reduce the disparity between the quality of justice for the wealthy and for those with lower income.[349]

The LSA is seeking broader legislative authority to permit lawyers to expand the scope of legal service delivery[350] and is exploring different ways of delivering legal services through lawyers,[351] not through non-lawyers. The LSA acknowledges its regulatory responsibility to facilitate innovation that supports accessibility to legal services while protecting the public interest, and not to hinder

[345] *Ibid* at 18, 22.

[346] *Ibid* at 2, 25. See *Legal Profession Act*, RSA 2000, c L-8, s 106(1).

[347] Heather White & Sarah Burton, "Agent Regulation: The Case of Emmerson Brando (AKA Arturo Nuosci, AKA Maverick Austin Maveric, AKA Landon Emmerson Brando)" (15 June 2015), online (blog): *ABlawg* <http://ablawg.ca>.

[348] *Ibid*.

[349] White & Burton, *supra* note 347.

[350] Law Society of Alberta, "Legal Profession Act Amendment Update" (22 March 2018), online: <www.lawsociety.ab.ca/legal-profession-act-amendment-update/>.

[351] *Ibid.*

progress in that regard.[352] The LSA recognizes that the amendments it seeks "are not a complete solution" to access to justice but the amendments will allow the law society to innovate in the ways legal services are provided.[353]

C. Other Non-lawyer Regulatory Schemes

There are other (federal) regulatory schemes governing non-lawyers and their delivery of legal services that are separate from and beyond law societies' regulatory reach. The regulatory scheme governing immigration consultants has been recently revised, giving that paraprofession self-regulatory authority, and a scheme governing IP agents (both non-lawyers and lawyers) has been recently established. Each is discussed briefly below for the purpose of comparison.

The House of Commons Standing Committee on Citizenship and Immigration in 2017 conducted a study of the legal, regulatory, and disciplinary frameworks governing immigration, refugee and citizenship consultants and paralegal practitioners.[354] The Committee recommended the creation of a new independent, public-interest regulatory body that maintains high ethical standards so as to preserve the integrity of the system and protect the public[355] and a new, more rigorous regulatory scheme for immigration consultants.[356] Yet the Canadian Bar Association continues in its pursuit of a lawyer's monopoly in immigration and refugee matters, arguing that only lawyers who are members in good standing of a law society, and Quebec notaries, should be allowed, for

[352] Law Society of Alberta, "Innovation in Regulation Task Force Update" (9 February 2017), online: <lawsociety.ab.ca/default/whats_new/2017/02/09/innovation-in-regulation-task-force-update>.

[353] *Ibid.*

[354] Starting Again, *supra* note 167 at 3.

[355] *Ibid* at 32, Recommendation 1.

[356] *Ibid* at 32-33, Recommendations 1 & 4.

compensation, to represent or advise on immigration and refugee matters.[357] The CBA concedes that immigration consultants could be allowed work in a more restricted capacity – only under lawyer supervision.[358] In April 2019, the federal government introduced legislation establishing a regulatory college to govern immigration consultants to replace the current regulator, granting immigration consultants self-regulatory powers.[359] The scheme imposes a code of conduct and enhances the College's oversight powers by establishing both a complaints committee with investigative powers and a discipline committee.[360] The regulatory scheme also provides for tiered licensing, reserving representation for those classes of licensee who have completed relevant and specialized training.[361] The Act sets out the College's purpose, which is "to regulate immigration and citizenship consultants in the public interest and protect the public."[362] It also sets out ways in which the College's purpose is to be realized, including through qualification and practice standards, for example, but it is silent as to competence and the cost of services.[363] While these and other key components of protecting the public interest and access to justice appear elsewhere in the Act,[364] they are missing from the

[357] Canadian Bar Association, *Immigration Consultants* (March 2017) at 7, 11, online (pdf): <www.cba.org/CMSPages/GetFile.aspx?guid=d2ddcb44-166c-41c9-b0b7-02ffa3d4125c>; Letter from Barbara Caruso to Minister of Immigration, Refugees and Citizenship (8 December 2017), online (pdf): *CBA* <www.cba.org/CMSPages/GetFile.aspx?guid=51885453-08c7-4402-a35a-f05dab1f9960>.

[358] Kim Covert, "CBA submission: Lawyers, not immigration consultants, should represent newcomers", *CBA National Magazine* (3 January 2018), online: <nationalmagazine.ca>.

[359] *College of Immigration and Citizenship Consultants Act*, being clauses 291-300 of Bill C-97, *An Act to Amend Certain Provisions of the Budget*, 1st Sess, 42nd Parl (assented to 21 June 2019), SC 2019, c 29, s 292 [*Citizenship Consultants Act*]. See also Aidan Macnab, "New Program Will Train Immigration and Citizenship Consultants", *Canadian Lawyer* (2 May 2019), online: <www.canadianlawyermag.com/legalfeeds/author/aidan-macnab/new-program-will-train-immigration-and-citizenship-consultants-17207/>.

[360] Macnab, *supra* note 359.

[361] *Citizenship Consultants Act*, s 80(2)-(3).

[362] *Ibid*, s 4.

[363] *Ibid.*

[364] *Ibid*, s 80.

very statutory provision in which the College's public interest mandate is set out. This is curious given the government's own recommendation just two years prior that the mandate of the new regulatory body include "high standards of competence" and the encouragement of "reasonable fees for services rendered."[365] Despite extensive consultation over several years about reforming the regulatory scheme, old and familiar arguments against independent non-lawyer provision of legal services in immigration and refugee matters continue to be voiced. They are similar to those currently being expressed in Ontario in opposition to paralegal scope of practice expanding into family law. Immigration lawyer Ravi Jain, who is now chair of the CBA's Immigration Law Section,[366] argued before the Standing Committee that only lawyers should be allowed to represent clients for a fee.[367] He claimed, without offering any evidence in support, that incompetent and unscrupulous immigration consultants take business away from "well-meaning immigration lawyers who don't charge excessive fees."[368] He offered no solutions nor suggestions to improve the regulatory scheme from an access to justice or public interest perspective – it was an argument based on economic self-interest.

Elsewhere, in the practice of intellectual property law, federal legislation passed in 2018 created the College of Patent Agents and Trademark Agents,[369] an independent regulator with the authority to establish and administer a licensing system to ensure IP agents deliver high-quality

[365] Starting Again, *supra* note 167.

[366] Canadian Bar Association, "Immigration Law Section: Executive" (last visited 9 April 2020), online: <www.cba.org/Sections/Immigration-Law/Executive>.

[367] House of Commons, Standing Committee on Citizenship and Immigration, Evidence, 42-1, No 157 (7 May 2019) at 18 (Ravi Jain), online (pdf): <www.ourcommons.ca/Content/Committee/421/CIMM/Evidence/EV10466590/CIMMEV157-E.PDF> .

[368] *Ibid*.

[369] *College of Patent Agents and Trademark Agents Act*, SC 2018, c 27, s 247 (assented to 13 December 2018).

services and legal advice.[370] The College is to regulate patent and trademark agents in the public interest to "enhance the public's ability to secure" their rights provided for in the *Patent Act* and *Trademarks Act*.[371] To this end, the new governing legislation requires that licensed patent agents and trademark agents (both lawyer and non-lawyer agents) meet standards of professional conduct and competence.[372] The CBA argued it is not necessary for the College to regulate lawyer IP agents since they are already regulated by the Law Society,[373] but the government disagreed, taking the position that it is not uncommon for professionals to be regulated by more than one regulator. The government recognizes the potential for overlap but advises the legislation ensures "minimal regulatory conflict" for lawyers who are also agents,[374] and the College's investigation committee may refer a complaint to another profession's regulatory body.[375] The effect of this is that lawyers who are also IP agents are subject to two regulatory schemes but also potentially reap double benefits of self-regulation.

---

[370] "Government of Canada launches call for directors to oversee new College of Patent Agents and Trademark Agents as part of IP Strategy" (15 February 2019), online: *Cision* <www.newswire.ca/news-releases/government-of-canada-launches-call-for-directors-to-oversee-new-college-of-patent-agents-and-trademark-agents-as-part-of-ip-strategy-892854987.html> [*Cision*]; Government of Canada, News Release, "Minister Bains appoints directors to oversee new college governing patent and trademark agents" (9 August 2019), online: <www.canada.ca/en/innovation-science-economic-development/news/2019/08/minister-bains-appoints-directors-to-oversee-new-college-governing-patent-and-trademark-agents.html> [News Release 9 August 2019].

[371] *College of Patent Agents and Trademark Agents Act*, SC 2018, c 27, s 247, s 6 (referring to *Patent Act*, RSC 1985, c P-4 and *Trademarks Act*, RSC 1985, c T-13).

[372] *Cision, supra* note 370. See also *College of Patent Agents and Trade-mark Agents Act*, s 32. The Act also establishes both an Investigations Committee and a Discipline Committee: s 21.

[373] Kim Covert, "College of Patent and Trademark Agents Need Not Regulate Lawyers", *CBA National Magazine* (9 April 2019), online: <www.nationalmagazine.ca/en-ca/articles/cba-influence/submissions/2019/college-of-patent-and-trademark-agents-need-not-re>.

[374] Government of Canada, "Frequently Asked Questions: College of Patent Agents and Trademark Agents" (last visited 9 April 2020), online: <www.ic.gc.ca/eic/site/693.nsf/eng/00167.html>.

[375] *Ibid*.

II. ELSEWHERE

This Part examines the regulatory schemes that govern the professions in Quebec and the healthcare professions in Ontario in order to highlight differences in the regulatory approaches between these schemes and self-regulation of the legal profession. Both in Quebec, generally, and within the health professions in Ontario, the traditional dominant professions no longer enjoy full self-regulatory privileges nor regulatory control over competing service providers. The first section, on Quebec, is intended to provide a brief overview of lawyer regulation within the broader regulatory scheme governing all professions, which is a regulatory model different from lawyer regulation in other Canadian jurisdictions. The second section provides a detailed and historical account of regulation of the health professions in Ontario.

A. Regulation of the Professions in Quebec

In Quebec, the legal professions – the Barreau du Québec or Chambre des notaires du Québec[376] – are subject to the same regulatory system as all other professions. That regulatory scheme is similar to Ontario's regulatory model governing the health professions. Regulatory change in Quebec came about in the early 1970s, arising out of the Commission of Inquiry on Health and Social Welfare, also known as the Castonguay-Nepveu Commission (CNC).[377] The CNC held that the provincial government had historically delegated too much power to professionals, resulting in inequality amongst professions, inter-professional conflict, and chaos in the regulatory system.[378] The

[376] *Act Respecting the Barreau du Québec*, CQLR c B-1; *Notaries Act*, CQLR c N-3, s 15, *supra* note 18.

[377] CNC 1970, *supra* note 418. The CNC was appointed in 1966.

[378] Tracey Adams, "Professional Self-Regulation and the Public Interest in Canada" (Paper delivered at the ISA RC52 Interim Conference on Challenging Professionalism, The School of Economics and Management (ISEG), Lisbon, Portugal, 29 November 2013) at 18, referencing *Report of the Commission of Inquiry on Health and Social Welfare* (Quebec: 1970) at 24, better known as the Castonguay-Nepveu Commission's report [CNC 1970].

proposed solution was "a drastically different regulatory framework in which the state took an active role."[379] All professions were to be placed on equal footing and have identical status; regulatory bodies would serve the public interest, not the interests of the professions; and all professions would be governed by over-arching legislation in the form of a *Professional Code*.[380] The legislative system that flowed from the CNC, passed in 1973, completely altered the structure of professional regulation in Quebec. The regulatory model, described as a competitive-consumerist model, stands in contrast to self-regulation of the legal profession elsewhere in Canada which remains firmly entrenched in the professionalist-independent model.[381] In Quebec's regulatory scheme, forty-six professional bodies, referred to as Orders – including the Order of Advocates (the Barreau du Québec) and the Chambre des notaires du Québec – supervise the practice of fifty-four regulated professions.[382] The professional orders are the "guardians and promoters" of professional competence.[383] Over-arching legislation – the *Professional Code* – aims to ensure legislative and regulatory consistency by instituting shared organizational principles among all of the professional orders.[384] The *Professional Code* also establishes the Office des Professions du Québec, the oversight body whose function is to see that each order ensures protection of the public, and the Quebec Interprofessional Council, which acts as the intermediary between the professional orders and the government.[385]

---

[379] Adams, *supra* note 378 at 18.

[380] *Ibid*, referencing CNC 1970, *supra* note 378 at 32.

[381] Noel Semple, "Canada: Legal Services Regulation in Canada: *Plus Ça Change*?" in Andrew Boon, ed, *International Perspectives on the Regulation of Lawyers and Legal Services* (Oxford: Hart Publishing, 2017) 95 at 97.

[382] *Professional Code*, CQLR c C-26, Schedule 1, and see s 32 [Quebec *Professional Code*].

[383] Quebec Interprofessional Council, "La mission du CIQ" (last visited 20 March 2020), online: <www.professions-quebec.org/fr/mission/>.

[384] *Ibid*. The Quebec Interprofessional Council is the voice of Quebec's professional orders.

[385] Quebec *Professional Code*, *supra* note 382, ss 12, 19, 23-26.

B. Regulation of the Health Professions in Ontario

This section examines the regulatory scheme governing health care professionals in some detail, including the history and justifications for it. As will be evident, access to services and protection of the public are common themes. In 1991, an overhaul of the legislative scheme governing the health professions changed the health services landscape by expanding the classes of service providers and loosening traditional professional monopolies over health services. When Ontario's then-Minister of Health, Frances Lankin, introduced to the Standing Committee on Social Development draft legislation that led to the adoption of the *Regulated Health Professions Act, 1991* (RHPA), she stated that regulating more health professions would expand the provision of health care services and make the health care system more accessible for all Ontarians.[386] The new regulatory system emerged from eight years of work by the Health Professions Legislation Review (HPLR). Its report, delivered in 1989, promised important advantages over existing health professions regulation: more effective protection for the public from harm caused by unqualified health care providers; respect for consumers' right to choose a health care provider from a range of safe options; and the evolution of a more flexible, rational, and cost-efficient health care system.[387] It was around the same time that similar themes were raised concerning the regulation of paralegals in Ontario – increased choice of legal service provider, protection of the public, and quality and affordable services.[388]

---

[386] Ontario, Legislative Assembly, Standing Committee on Social Development, *Official Records (Hansard: Committee Transcripts)*, 35-1 (6 August 1991), online (pdf): <www.ola.org/en/legislative-business/committees/social-development/parliament-35/transcript/committee-transcript-1991-aug-06> [Social Development Committee Transcript]; *Regulated Health Professions Act, 1991*, SO 1991, c 18, as amended [*RHPA*].

[387] Health Professions Legislation Review, *Striking a New Balance: A Blueprint for the Regulation of Ontario's Health Professions* (Toronto: Queen's Printer, 1989) at 4 [*Striking a New Balance*].

[388] See Chapter 2.

The RHPA maintained the self-governing status of individual health care professions, but subjected them to increased state involvement that requires enhanced accountability and public protection[389] – in effect, co-regulation. It also implemented regulatory change designed to increase access to competent health care providers and quality services.[390] All regulated health professions in Ontario are subject to the same over-arching legislation[391] that seeks to regulate professions only to the extent necessary to protect the public from harm. The regulation of particular health professions is determined based on a "risk of harm" threshold which is met "when it is in the public interest to regulate a profession because lack of proper regulation and oversight puts the public at risk."[392] In regulating its members, each profession's college must develop, establish and maintain standards of qualification and practice to assure quality,[393] as well as standards of knowledge and skill to promote continuing competence among members.[394] A college must investigate complaints regarding the conduct of its members and has the power to discipline a member for incompetence or misconduct.[395] The two major innovations of the new legislation were the distinction between scopes

[389] *Striking a New Balance*, *supra* note 387 at 12.

[390] *RHPA*, Schedule 2 – *Health Professions Procedural Code*, s 2.1. Pursuant to the RHPA, s 4 the *Code* is deemed to be part of each health profession Act.

[391] Health care professions in Ontario are also regulated by specific legislation governing each profession and professional college.

[392] Trudo Lemmens & Kanksha Mahadevia Ghimire, "Regulation of Health Professions in Ontario: Self-Regulation with Statutory-Based Public Accountability" (2019) 19:3 J of Health L 124 at 130. This risk-based approach is similar to the regulatory approach to legal services adopted in England in Wales in 2007 where only reserved legal activities are regulated (for example, advocacy, litigation, and preparing certain documents for conveyancing) and non-regulated activities can be performed by any person or business: Crispin Passmore, "The Solicitors Regulation Authority: Looking to the Future" (2016) 19:1 Legal Ethics 145; See also Legal Services Act, 2007 (UK), c 29, s 12.

[393] *RHPA*, Procedural Code, s 80.1

[394] *RHPA*, Schedule 2 – *Health Professions Procedural Code*, s 3.

[395] *RHPA*, Schedule 2 – *Health Professions Procedural Code*, ss 25-37 and following.

of practice and "licensed acts," and further restriction of professional self-government.[396] Concerned with a more "rational" division of labour in the health care field, the new regulatory scheme narrowed the areas over which an occupation has exclusive jurisdiction.[397] The RHPA was created because change was necessary. According to the Health Professions Legislation Review, the previous traditional method of regulation granted "unnecessarily wide and ill-defined monopolies,"[398] recognizing that "while monopoly power might be advantageous to the profession that wields it, it is difficult to justify in terms of the public interest."[399]

Before examining, in greater detail, the system of governance imposed by the *Regulated Health Professions Act, 1991*, it is helpful to provide some background about health services regulation in Ontario prior to 1991 and examine what led to the current regulatory model. The issues are not dissimilar from the professional and regulatory issues plaguing the legal profession and legal services regulation, such as professional monopolies and access to services. Licensing was first introduced under the *Medical Act* of 1818, but not all practitioners had to be licensed. Those who had any training or experience were mostly excluded from the licensing requirement.[400] The lack of a formal definition of the practice of medicine inhibited efforts by the College of Physicians and Surgeons of Ontario to police those who were not qualified to practice.[401] By the twentieth century,

[396] David Coburn, "State Authority, Medical Dominance, and Trends in the Regulation of the Health Professions: The Ontario Case" (1993) 37:7 Social Science & Medicine 129 at 135.

[397] *Ibid.*

[398] *Striking a New Balance*, *supra* note 387 at 13.

[399] *Ibid* at 13.

[400] IR Dowie, Horace Krever & MC Urquhart, *Committee on the Healing Arts, Report* (Toronto: Queen's Printer, 1970) Vol 1 at 57 [CHA Report].

[401] *Ibid*, Vol 1 at 60.

the number of occupations providing health care had expanded, and many of these paramedical groups believed they should be given the same powers of self-regulation as the established professions.[402] This led to the creation of the *Drugless Practitioners Act* of 1925 and an amendment to the *Medical Act* forbidding other practitioners (except dentists) from using the title "doctor".[403] One such group was dental technicians, who in 1947 were recognized as dental hygienists, but only after dentists recognized that much of their own work was routine and could be done just as well by less highly qualified persons.[404] The Committee on the Healing Arts (CHA or Committee) was established in 1966 to study the legislation governing the various health professions and healing groups, particularly the educational and regulatory arrangements related to the fifty or more disciplines that comprised the "healing arts."[405] Its general purpose was to propose methods of overcoming the existing lack of coordination among the various professions and services, and "to regard all aspects of the health industry – including educational, regulatory, and governmental bodies – as parts of an integrated and coordinated system designed to meet the needs of the community."[406] The Committee was guided (as the HPLR would also subsequently be) by what would be best for patients and the public interest, and it viewed the health system and the various healing disciplines as "part of a sophisticated industry, not as separate fragments."[407] Since the time of the previous commission in 1918, on medical education,[408] new disciplines and new categories of non-medical

[402] *Ibid*, Vol 1 at 70.

[403] *Ibid*, Vol 1 at 70-71.

[404] *Ibid*, Vol 1 at 74.

[405] *Ibid*, Vol 1 at 1.

[406] *Ibid*, Vol 1 at 11.

[407] *Ibid*, Vol 1 at 1.

[408] Frank Egerton Hodgins, *Report and Supporting Statements on Medical Education in Ontario* (Toronto: Ontario Commission on Medical Education, 1917).

health personnel had emerged in increasing numbers, along with a corresponding increase in the numbers of medical specialists and specialties.[409] The CHA found that the interests of patients and the public did "not always take clear precedence over the somewhat narrower interests of the professions, practitioners and administrators."[410] In aiming for a "rational and more coordinated system of regulation,"[411] the Committee acknowledged "the confusion, inconsistencies and outright nonsense that has resulted from the separate treatment of the various professions and occupational groups as though they were distinct entities in unrelated industries."[412] The Committee insisted that every effort be made to focus attention on the "true role" of the various regulating agencies as "delegates of the legislature to act as trustees for the public interest."[413] It also found that the lack of a definition of scope of practice in the *Medical Act*, since 1925, for those registered under the Act was problematic and would continue to be so.[414] Establishing mandatory licensing of a profession raises the question of defining the practice that is licensed, or describing the right to practise that is conferred exclusively on those who are licensed. The medical profession was at the heart of this problem.[415] The College of Physicians and Surgeons wanted the CHA to recommend a definition of the practice of medicine that was, in the Committee's opinion, "so broad that it would effectively prevent anyone but a person licensed by the College to engage in a healing art."[416] Notwithstanding

[409] CHA Report, *supra* note 400, Vol 1 at 1.

[410] *Ibid*, Vol 1 at 9.

[411] *Ibid*, Vol 3 at 46.

[412] *Ibid*.

[413] *Ibid*, Vol 3 at 76-77.

[414] *Ibid*, Vol 3 at 34.

[415] *Ibid*.

[416] *Ibid*.

the need to define scopes of practice, and recognizing that others are likely capable of performing similar tasks, the CHA urged the medical profession to continue to seek ways to allow others to do some of the work traditionally reserved for physicians only, arguing that:

> [O]ccasions can and … will arise when other personnel than physicians perform acts which lie beyond the legal scope of practice as defined in the governing legislation. But such acts, with changing technology, may well turn out to be not beyond their actual competence and, indeed, it is to be hoped the procedures which today are within the competence of physicians will tomorrow be within the competence of lesser trained personnel. In that event it would be a sad waste of scarce resources to continue to require licensed physicians to perform such tasks simply because of the rigidities of the law.[417]

This same argument is equally applicable to continuing debates over the regulation of independent paralegals across Canada and the extent of the scope of practice of licensed paralegals in Ontario, although lawyers and law societies have been less willing to allow lesser trained personnel to provide legal services independently. Ultimately, the CHA called for sweeping reforms of professional regulation and more government involvement to ensure public protection,[418] a point of view that would be echoed by the HPLR almost twenty years later. The CHA's recommendations resulted in new legislation, *The Health Disciplines Act, 1974* (HDA).[419]

Ontario's HDA was based on the underlying principle of more direct government involvement and control over governance of the health professions.[420] Nine different statutes regulated seventeen

---

[417] *Ibid*.

[418] Adams, *supra* note 378 at 16, referencing CNC 1970, *supra* note 378.

[419] *The Health Disciplines Act, 1974*, SO 1974, c 47.

[420] DA Geekie, "Ontario's New Health Disciplines Act Extends Government Control, Increases Professional Accountability" (1975) 113 Canadian Medical Association J 446 at 446-47, online (pdf): <www.ncbi.nlm.nih.gov/pmc/articles/PMC1956654/pdf/canmedaj01542-0114.pdf>.

health professions. Six professions were regulated by the *Health Disciplines Act*, 1974: dentistry, dental hygiene, medicine, nursing, optometry, and pharmacy; four professions were regulated by the *Drugless Practitioners Act* of 1925: chiropractic, massage, osteopathy, and physiotherapy; and several other professions were regulated by individual statutes: chiropodists, dental technicians, ophthalmic dispensers, psychologists, radiological technicians, and denture therapists.[421] This regulatory model was criticized for granting physicians and other professions a monopoly that was greater than could be justified by the need for public protection,[422] and Ministry of Health officials expressed concern about the quality and cost-effectiveness of services.[423] Less than ten years after the introduction of the *Health Disciplines Act, 1974*, Ontario's Health Professions Legislation Review (HPLR) was established. Its mandate came amidst "a crisis in health care generated by ever increasing costs" and a need for changes to health care services delivery.[424] The HPLR was tasked with determining which regulated health professions should continue to be regulated, which unregulated health professions should be regulated, and developing a new legislative structure governing the health professions.[425] It was guided by the understanding that the public, not members of the professions, is the intended beneficiary of regulation.[426] As a result of this Review, there occurred "a clear paradigm shift in the manner and mode" of regulation of the health professions: profession-

[421] *Striking a New Balance*, *supra* note 387 at 10.

[422] See Law Society of Upper Canada, *Paralegal Task Force Final Report* (March 2000) at 98 [LSUC Paralegal Report].

[423] Patricia Louise O'Reilly, *Health Care Practitioners: An Ontario Case Study in Policy Making* (Toronto: University of Toronto Press, 2000).

[424] *Striking a New Balance*, *supra* note 387 at 5.

[425] O'Reilly, *supra* note 423 at 71. See also *Striking a New Balance*, *supra* note 387 at 489.

[426] *Striking a New Balance*, *supra* note 387 at 9-10.

centered regulation gave way to public interest regulation.[427] The new regulatory scheme introduced by the Review has three main elements: each profession's scope of practice is described but not licensed; all potentially harmful acts are licensed; and "licensed acts" may be performed only by qualified health professionals who are authorized by their professional Act to do so.[428] Significantly, the new legislation, the *Regulated Health Professions Act, 1991* (RHPA), contains a scope-of-practice model based on the principle that "the sole purpose of regulation is to protect the public interest, and not to enhance any profession's economic power or raise its status."[429] This is consistent with the Committee on the Healing Arts' view of professional self-regulation clearly expressed almost two decades earlier:

> [T]he purpose for which licensing powers are given to a professional body is the protection of the public against incompetent and unscrupulous practitioners. The advancement of the economic interests, prestige and status of the practitioner is not the business of the statutory regulatory body whose duty is to the public ... the history of the regulatory bodies in Ontario abounds in decisions, policies and regulations of a truly or apparently restrictive-practice nature.[430]

Ontario's current health professions regulatory model consists of one umbrella statute – the RHPA, which regulates twenty-three health professions, a uniform *Professional Code*, and an individual Act for each profession or cluster of professions.[431] The RHPA governs the various professions, lists "controlled acts" that may only be performed by a member of a regulated health profession licensed by a college, and sets out the general duties and obligations of individual

---

[427] Health Professions Regulatory Advisory Council, *Adjusting the Balance: A Review of the Regulated Health Professions Act* (Ontario: March 2001) at 17.

[428] *Striking a New Balance*, *supra* note 387 at 4; see also *Regulated Health Professions Act, 1991*, SO 1991, c 18.

[429] *Striking a New Balance*, *supra* note 387 at 3.

[430] CHA Report, *supra* note 400, Vol 3 at 43.

[431] *Striking a New Balance*, *supra* note 387 at 10, 12.

professional colleges.[432] The RHPA had the effect of diminishing individual power of the dominant professions and removed exclusive scopes of practice but retained safeguards to protect the public. As the report of the Health Professions Legislation Review states:

> The reality is that in no profession are all the activities engaged in by members potentially harmful. To prohibit other caregivers from providing harmless services solely because they are within the scope of practice of a licensed profession maintains a useless fiction. The obverse of this is also true: some activities now legally performed by unregulated, or regulated but unlicensed, professionals, are potentially harmful, and to the extent possible the law should not permit unqualified persons to perform them.[433]

The RHPA replaced a system of statutory professional monopolies with a system more narrowly focused on specific activities that can cause harm to the public.[434] Minister Lankin expressed the government's view that because only certain health care professionals may provide all of the controlled acts, the RHPA provides ample protection for consumers.[435] According to the Ministry of Health during legislative committee proceedings, listing licensed acts would establish clearer limits on the exclusive practice of regulated health professions.[436] The thrust of the legislation was to increase competition in the health care system for services outside of the controlled acts. During committee proceedings, a Ministry of Health official advised that the Review's intention was to design "a system that would protect the hard core of hazardous activities that ought to be strictly controlled,

---

[432] *Regulated Health Professions Act, 1991*, SO 1991, c 18. There are fourteen controlled acts: see specifically s 27 and Schedule 1. As of April 2020, there are twenty-nine self-governing health professions: Health Force Ontario, "Health Providers" (last updated 26 March 2019), online: www.healthforceontario.ca/en/Home/Health_Providers> [Health Force Ontario].

[433] *Striking a New Balance*, *supra* note 387 at 14.

[434] LSUC Paralegal Report, *supra* note 422 at 98.

[435] See Frances Lankin, Minister of Health for Ontario, Social Development Committee Transcript, *supra* note 386.

[436] See Linda Bohnen, Ontario Ministry of Health official, in Social Development Committee Transcript, *supra* note 386.

but free up in the overall health care system the performance of relatively low-risk activities."[437] Individual profession's scopes of practice are not restrictive and can overlap with those of other professions. It is perhaps not surprising that the College of Physicians and Surgeons of Ontario was opposed to the new regulatory model, arguing, unsuccessfully, that the public would be better protected if the exclusive scope of practice of medicine was preserved.[438] According to Barbara Beardwood, the RHPA re-arranged hierarchies according to a profession's ability to perform controlled acts and at the same time made boundaries more flexible.[439] She argues that medicine is under threat from other professions such as nursing, since nurses – particularly nurse practitioners – offer a cheaper alternative to the provision of many aspects of medical care that are provided by a physician.[440] Medicine has lost some of its dominance over other professions with respect to their governance, and it is no longer the gatekeeper to the other health professions. Beardwood argues that the "potential to extend the controlled acts of one profession to other professionals heightens the permeability of boundaries."[441]

Under the new scheme, a separate governing body regulates most professions. For the nursing profession, however, one governing body, the College of Nurses of Ontario (CNO), regulates three distinct classes of nurses – nurse practitioners, registered nurses, and registered practical nurses – each with separate but overlapping scopes of practice and among whom there is significant overlap

[437] *Ibid.*

[438] *Ibid.*

[439] Barbara Beardwood, "The Loosening of Professional Boundaries and Restructuring: The Implications for Nursing and Medicine in Ontario, Canada" (1999) 21:3 Law & Policy 315 at 328.

[440] *Ibid*.

[441] *Ibid*.

in knowledge and skills.[442] Nurse Practitioners are registered nurses who have met additional education requirements and are authorized to diagnose, order and interpret diagnostic tests, and prescribe medication and other treatment.[443] While they have been working in Ontario since the early 1970s, their role was first regulated with the introduction of the "extended class" designation of registered nurses in 1998[444] but the title of nurse practitioner did not become a protected title in Ontario until 2007.[445] The role of nurse practitioner developed, as many paraprofessional roles do, in response to the public's unmet needs, resulting in an expanded scope of practice for registered nurses working in northern and under-serviced communities where access to health care services was lacking.[446] That is, nurse practitioners filled a gap in communities where doctors were scarce and the need for medical services unmet, a situation similar to the role filled by BC's court agents and federal Indigenous courtworkers – non-lawyers who provide legal services in remote and other areas under-served by lawyers.[447]

[442] The role of the CNO is to protect the public "by ensuring applicants are ready to practise safely": College of Nurses of Ontario, "New RN Exam: Let's Get Back to the Facts" (11 March 2016), online: <www.cno.org/nclex-fact-sheet>.

[443] College of Nurses of Ontario, "Nurse Practitioners" (last updated 25 November 2019), online: <www.cno.org/en/learn-about-standards-guidelines/educational-tools/nurse-practitioners/>.

[444] *Nursing Act, 1991*, SO 1991 c 32, s 5.1.

[445] *Ibid*. See also Health Force Ontario, *supra* note 432.

[446] Nurse Practitioners Association of Ontario, "About" (last updated 19 November 2019), online: <npao.org/about-npao/>. In 1998, the *Expanded Nursing Services for Patients Act* amended the Regulated Health Professions Act and Nursing Act (as well as other legislation) to provide NPs in the province of Ontario with an expanded scope of practice): Ontario, Ministry of Health and Long-Term Care, *Report on the Integration of Primary Health Care Nurse Practitioners into the Province of Ontario* (2003), online: <www.health.gov.on.ca/en/common/ministry/publications/reports/nurseprac03/nurseprac03_mn.aspx>.

[447] An exploration of evidence of increased access without increased risk of harm with respect to services provided by nurse practitioners after they became a regulated health profession is beyond the scope of this chapter, but might provide helpful insight for the law societies as they deal with the issue of the regulation of paralegals.

The RHPA also increased the range and number of regulated health professions and governs them all in the same way. As a Ministry of Health official explained, every regulated profession operates "under the same set of rules."[448] Under the new scheme, many professions, whose members were at one time paraprofessionals under the regulatory control of related dominant professions, particularly the medical profession (physicians and surgeons), gained increased status under the new legislation. For example, physiotherapists, formerly dependent specialists, won professional status and clinical and entrepreneurial independence.[449] Chiropractors and midwives, formerly independent specialists who had "long been derided by the dominant practitioners as quacks," also made gains.[450] With passage of the RHPA, Ontario became the first province to recognize and regulate midwives as autonomous health care practitioners.[451] More than 25 years later, however, midwives argue that because of systemic obstacles, the supply of midwives in Ontario remains less than the demand for midwifery services.[452] This lack of access to midwives results primarily from a lack of hospital privileges, arguably for two reasons: hospital budget caps on the number of midwife-facilitated births that can occur at one hospital, and the power and influence wielded by physicians who still control

[448] Social Development Committee Transcript, *supra* note 386.

[449] O'Reilly, *supra* note 423 at 205.

[450] *Ibid*; *Striking a New Balance*, *supra* note 387 at 11. See also *Chiropractic Act, 1991*, SO 1991, c 21; *Midwifery Act, 1991*, SO 1991, c 31.

[451] "Midwife" became a protected title. Only individuals registered with the College of Midwives of Ontario may practice midwifery and receive funding from the province: Friends of Muskoka Midwives, "History of Midwifery in Ontario" (last visited 10 April 2020), online: <www.friendsofmuskokamidwives.com/history-of-midwifery-in-ontario.html>. The CMO aims to provide safe, quality care and promotes "a model of care that protects informed choice, choice of birthplace and continuity of care": College of Midwives of Ontario, "About the College" (last visited 10 April 2020), online: <www.cmo.on.ca/about-the-college/>. See also *Midwifery Act, 1991*, SO 1991, c 31. The history of midwives, however, is one of exclusion. By the early 20th century medicine had succeeded in largely eliminating midwives as legal competitors. Throughout the 1970s and 1980s however, the growth of lay midwifery, which catered to a mainly middle-class clientele, led to a push to legalize the practice: Coburn, *supra* note 396 at 132.

[452] Malone Mullin, "Need for Ontario Midwives 'Past the Tipping Point,' say Pros", *CBC News* (17 June 2017), online: <www.cbc.ca/news/canada/sudbury/growing-demand-for-midwives-northern-ontario-1.4009366>.

decision-making in hospitals.[453] Also as a result of the RHPA, dental hygiene became recognized as a self-regulated profession, and dental hygienists primary health care providers.[454] They gained limited independence from dentists in 2007 and are permitted to operate in their own practice settings.[455] Dental hygienists reportedly charge less than dentists for providing the same service,[456] increasing access to their services. The RHPA, however, did not completely eliminate professional turf wars or jurisdictional disputes. A 2002 survey of Ontario's dentists found them to be overwhelmingly opposed to independent dental hygiene practice.[457] Adams observes that in the past, dominant professions like medicine and dentistry had largely unquestioned authority over their field of expertise, a great deal of autonomy in their own work, and authority over the work performed by allied, subordinate workers.[458] But the RHPA changed that and struck "a kind of balance" between the old monopolies of the practice of the elite professionals and the more flexible and cost-efficient utilization of alternative providers.[459] Nurse practitioners, midwives, and dental hygienists are clear examples of once-subordinate health care providers threatening the traditional practice areas of physicians, surgeons, and dentists.

[453] *Ibid*.

[454] Sherryll Sobie, "Dental Hygienists in Ontario: Their Changing Role and What it Means to You", *Toronto Star* (1 April 2012), online: <www.thestar.com>.

[455] *Dental Hygiene Act, 1991*, SO 1991, c 22, particularly ss 4 and 5.

[456] The fees charged by independent dental hygienists are about 30% lower than those charged by dentists' offices for the same service: Sobie, *supra* note 454.

[457] Tracey L Adams, "Attitudes to Independent Dental Hygiene Practice: Dentists and Dental Hygienists in Ontario" (2004) 70:8 J Cdn Dental Assoc 535. The reasons for this opposition are not provided.

[458] Tracey L Adams, "Dentistry and Medical Dominance" (1999) 48 Soc Science & Medicine 407 at 408-11.

[459] O'Reilly, *supra* note 423 at 83.

According to Trudo Lemmens and Kanksha Mahadevia Ghimire, Ontario's current model of state-organized self-regulation of health professionals "offers an interesting middle ground between fully autonomous professional self-regulation, and state supervised regulation" as well as a level of public accountability that leaves each profession itself "still predominantly in charge."[460] Perhaps Ontario should consider adopting a similar model for the regulation of legal professionals although the regulatory model governing the health professions has not managed to quash professional self-interest.[461] This is hardly surprising. The contentious issues of professional self-interest and power imbalance associated with the regulation of complementary and competing professions, or para-professions, with overlapping scopes of practice are not confined to the health professions nor to modern times but, instead, appear to be an enduring feature of the history and culture of both the medical and legal professions, regardless of the extent of self-regulatory privilege that remains.

III. REFLECTIONS AND OBSERVATIONS

The extent of the provision of legal services by non-lawyers across Canada and law societies' perspectives and initiatives concerning the regulation of independent paralegals canvassed in Part I, and the regulatory schemes governing professions in Quebec and the health professions in Ontario examined in Part II, lead to the following observations. Firstly, the extent of legal paraprofessionals and other non-lawyers who provide a broad spectrum of legal services in Canada makes the continuing restriction of the practice of law to lawyers "a useless fiction."[462] It also makes it clear that non-lawyers are integral to enhanced access to justice for Canadians. Secondly, law societies across

[460] Lemmens and Ghimire, *supra* note 392 at 155.

[461] *Ibid* at 156.

[462] This phrase is borrowed from the Health Professions Legislation Review: *Striking a New Balance*, *supra* note 387 at 14.

Canada (outside Ontario) are not yet prepared to regulate independent paralegals, and governments are not inclined to do so apart from law societies (although the BC government, like the Ontario government years before, has urged the Law Society to implement a regulatory scheme). Governments (in BC and Saskatchewan) believe that law societies are the appropriate choice of regulator which, even if that is so, will result in securing for lawyers expanded self-regulatory mandates and control over competitors. Thirdly, if law societies are truly concerned about increasing access to justice and regulating in the public interest they might consider a different regulatory model similar to those that govern all professions in Quebec and the health professions in Ontario that diminish traditional self-regulatory power and increase the range of service providers by regulating controlled or restricted acts based on risk of harm to the public. The argument could be made that the health professions' regulatory scheme might be justified in part by the fact that health care is state-funded and there are more paraprofessional health care providers who provide a much broader range of health care services compared to legal paraprofessionals and legal services, but the regulation of the health professions and self-regulation of the legal profession are both intended to be in the public interest – to ensure access to competent professionals and quality and affordable services. While the state does not fund legal services to the extent it funds health care, the state does fund the legal system and the administration of justice and some legal services. Each of these points is discussed further below followed by a broader discussion of access to justice in the context of this chapter.

Extent of Legal Paraprofessionals and Spectrum of Services: Non-lawyers Integral to Access to Justice

This chapter has revealed that an extensive array of paraprofessionals – members of occupational groups closely connected to lawyers and the work they do – and other non-lawyers

across Canada provide a variety of services that require the application of legal skill and legal judgment. That is, the provision of legal services is not restricted to lawyers.

The reality is that non-lawyers, in numerous settings and in various roles, already provide (and have long provided) a broad range of legal services independent of lawyers, and they do so mostly pursuant to statutory authority. Some of that authority arises pursuant to exceptions to the practice of law and exemptions for non-lawyers to engage in practice of law activities from the same legislation that govern the legal profession. Ironically, it is the same legislation under which lawyers claim an exclusive monopoly over the provision of legal services. Authority also comes from statutes that deal with court and administrative tribunal practice, and those that govern other professions. The extent of non-lawyer provision of legal services in Canada, however, is not new.[463] It can be argued that the very extent of non-lawyer legal service provision in Canada, combined with statutory authority for much of it, is evidence of not only its need but also its adequacy.

Law Societies' Reluctance to Regulate Independent Paralegals

The traditional professionalist-independent mode of regulation of the legal profession in Canada through self-governance endures (except in Quebec). It preserves lawyers as the dominant profession largely responsible for a lack of expansion of other (regulated) legal paraprofessions. The power to regulate others, and the decision whether and how to do so, have been left largely in the hands of law societies and lawyers who tend to want to keep the profession's gates closed to outsiders, despite law societies' public interest mandate. The lack of action or, at best, snail's pace

[463] See, for example, Harry W Arthurs & Richard Weisman, "Canadian Lawyers: A Peculiar Professionalism" in Richard L Abel & Philip Simon Coleman Lewis, eds, *Lawyers in Society: Common Law World* (Oakland, CA: University of California Press, 1988) 123 at 125-26, 136-37.

of progress, reveals an apparent lack of commitment by the legal profession to ensure meaningful access to justice, perhaps because of its inclination to economic self-interest. Law societies and the legal profession seem intent on expending greater effort to maintain lawyers' claimed monopoly over the provision of all legal services rather than, in the public's interest, take positive action to increase the availability of quality and affordable legal services. Most law societies are content to keep paralegals under lawyers' direct supervision and control and are not prepared to regulate independent paralegals to allow them to provide legal services directly to the public, for a fee. In Saskatchewan, the Legal Services Task Team has concluded that an independent regulated paralegal profession is not yet viable, given the number of paralegals and size of the legal services market, but that is a circular argument – the paralegal profession might just be viable if the Law Society grants it a sufficiently broad scope of practice in order to serve the public's unmet needs. All the power is in the hands of the law societies (as granted by the state).

There appear to be obvious reasons why lawyers should not be in charge of regulating non-lawyers.[464] Both Ianni and Cory J., decades ago, were of the view that it would be a conflict of interest for a law society to regulate paralegals, but their recommendations for a regulatory body independent of the Law Society was ignored by the Ontario government at the time and are similarly being ignored by other governments currently. What plausible explanation for law society involvement in the regulation of others can there be that does not reveal, to at least some extent, market control, economic self-interest, self-preservation, and the dominance of non-lawyer competitors? Law societies recognize that there is an access to justice problem, that regulatory

[464] Hadfield, *Rules for a Flat World*, *supra* note 27, at chapter 9.

innovation is required, and that there is potential for an enhanced role for paralegals to increase access to justice,[465] yet not one is prepared to regulate independent paralegals nor suggest an alternate regulatory approach. The Law Society of Alberta, though, takes a different position, viewing its role as the regulator of lawyers only[466] and is not interested in regulating non-lawyer legal service providers. Law societies appear to be suffering from tunnel vision. As Hadfield argues, solving the access to justice problem requires lawyers to "share the field with other, less expensive" non-lawyer professionals and organizations.[467] That, it appears, is the sticking point.

An aim of regulation in the public interest is to protect the public from untrained and incompetent providers, but it appears that regulation is being used instead, or also, by law societies as both a shield to protect lawyers from competition and a sword to suppress or restrict others who provide overlapping services. The regulation of independent paralegals is a solution (and there is a model in Ontario to follow or improve upon) to insufficient access to justice and the prevalence of unmet legal needs.[468] Paralegal regulation is not a new idea. The question law societies purport to be grappling with is the same one that guided Ontario's Task Force on Paralegals thirty years ago: "Whether or not the activities of independent paralegals, properly regulated, can contribute to, not erode, the public's interest in gaining greater access to law."[469] But the law societies will not know if

[465] See *supra* note 207.

[466] LSA ADLS, *supra* note 209.

[467] Gillian K Hadfield, "Lawyers, Make Room for Non-Lawyers" (November 25, 2012), online: <http://works.bepress.com/ghadfield/50/>.

[468] In Alberta, however, the absence of regulation of independent paralegals is arguably less restrictive than regulation would be, allowing for access to legal services providers who meet the demand for affordable services in an industry left to market forces, with safeguards provided by consumer protection legislation. See notes 223-26 herein.

[469] R W Ianni, ed, *Report on the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) at 14 [Ianni Report].

they do not try. As Arthurs and Weisman point out, the legal profession's "preoccupation with preventing the 'socialization' of legal services (following the example of medicine) retards the emergence of new areas of practice."[470] The delivery of legal services by non-lawyers challenges the dominance of the legal profession.[471] It is more difficult, as Rhode puts it, for lawyers to claim special status and justify regulatory autonomy when it becomes clear that non-lawyers can effectively perform legal tasks.[472] The obstacles to innovation in the regulation of legal markets are not problems of knowledge, but of politics.[473] They are also, arguably, problems deeply rooted in the culture and history of Canada's legal profession.

Lessons from Regulation of the Health Professions: Regulating Controlled Acts

Regulation of the health professions in Ontario underwent a major overhaul almost thirty years ago and the regulatory scheme was re-designed with a focus on access, quality, competence, affordability, consumer choice, cost efficiency and protection of the public.[474] The regulatory scheme under the RHPA loosened traditional monopolies enjoyed by physicians and surgeons, and dentists, and opened up the provision of health care services, giving professional self-regulating status to many former paramedical professions who were under the control and supervision of the dominant professions. Regulatory change came by switching the focus from professional monopolies through self-regulation to controlled or restricted acts and the risk of harm to the public. Facing the same

[470] Arthurs & Weisman, *supra* note 463.

[471] Mary Anne Noone, "Paralegals – in the Community's Interest?" in Julia Vernon & Francis Regan, eds, *Improving Access to Justice: The Future of Paralegal Professionals* (Canberra: Australian Institute of Criminology, 1990) 25 at 33.

[472] Deborah L Rhode, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice" (1996) 1 J Inst for Study Legal Ethics 197 at 202-03.

[473] Hadfield, *Rules for a Flat World*, *supra* note 27 at 237.

[474] *Striking a New Balance*, *supra* note 387 at 4, 12.

concerns about access to legal services currently, as the health professions faced previously, the legal profession might find inspiration for regulatory innovation in the health professions regulatory model that exists in Ontario. This is not a novel idea, that the focus should be on the legal act or nature of the service and risk to the public. Nearly forty years ago, McDermid J. of the Alberta Court of Appeal, in attempting to distinguish between activities that constitute the practice of law from those that do not, held that the test is whether the act "should only be done by members of the legal profession in order that the public be adequately protected from acts by unqualified persons."[475] If law societies do not embrace the idea of regulating differently, they risk having a different model foisted upon them, as BC's Attorney General has warned lawyers in that province.

In law, as in health care, there are unmet needs,[476] access to services is critical, and resources are limited. A more efficient system arguably requires a central authority that holds the balance of power. The state has an interest and a stake in an efficient justice system and regulation of the provision of legal services is a matter of public interest – the state already provides some funding for legal services through legal aid,[477] legal clinics, and other means such as government funding of Indigenous courtworkers and government employees who provide legal services (such as worker advisors and employer advisors). Clinging to traditional self-regulation of the legal profession in Canada might soon be untenable, as the experience of the medical professions in Ontario reveal.

---

[475] *Nicholson*, *supra* note 34 at para 35.

[476] See Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants - Final Report* (May 2013) at 33, which found that across Ontario, 64% of individuals involved in family law applications before the courts in Ontario were self-represented, mainly because of an inability to afford a lawyer, discussed in Chapter 2 herein.

[477] See, for example, Legal Aid Ontario, online: <www.legalaid.on.ca/en/>; Legal Aid Manitoba, online: <www.legalaid.mb.ca>; Nova Scotia Legal Aid, online: <www.nslegalaid.ca>; BC Legal Services Society, online: <www.lss.bc.ca>; Legal Aid Alberta, online: <www.legalaid.ab.ca>.

Unlike the legal profession, the health care system boasts an array of professionals and paraprofessionals who can and do provide a range of health care services without being dominated by the traditional dominant professions. As Hadfield points out, if the medical world looked like the legal world, all of our health care would need to be provided under the direct supervision of physicians and surgeons, making health care expensive and inaccessible.[478]

Access to Justice

The curious result of paralegals being regulated only in Ontario is that, throughout the rest of Canada, non-lawyers provide a broad range of legal services independently and mostly unlicensed and unregulated. Moreover, they engage in much of the same practice and provide many of the same legal services that, in Ontario, only licensed paralegals are allowed to provide.[479] Without regulation, however, non-lawyers outside Ontario, for the most part, may only provide legal services to the extent that provincial and federal statutes permit and law societies allow.[480] While the regulation of paralegals appears to be a way to increase access to justice in some practice areas, the reality (as this chapter reveals) is that law societies, with government support, get to be the gate-keepers who have the ultimate authority to allow or deny a broader role for independent legal paraprofessionals. It must be kept in mind that it is the public, not members of the legal profession, who should most benefit from regulation.

The extent of legal services provided by a broad range of non-lawyers in Canada makes lawyers' claims of a monopoly nonsensical. Perhaps it is finally time for lawyers to let go of their

[478] Hadfield, *Rules for a Flat World*, *supra* note 27 at 243.

[479] Worker Advisors (also spelled "Advisers") are one example.

[480] Alberta seems to be the exception.

perceived rightful stranglehold over legal services and, as one family lawyer suggests, loosen the reins of control.[481] The legal services market is expanding. Governments and law societies across the country recognize that increased access to justice in terms of greater consumer choice and availability of a broader range of legal service providers and quality and affordable legal services is necessary in the public interest. Law societies have a public interest mandate. Implementing a paralegal regulatory scheme should not require the years of study and protracted deliberations, nor face such resistance, by law societies and lawyers as has occurred. As Devlin asserts, law societies' embrace of paralegals should not require the reinvention of the wheel.[482]

In summary, from this chapter it can be argued that the legal profession's self-regulatory privilege, entrenched in its cultural history and market control tendencies, is an insurmountable hurdle to regulating to enhance access to justice for the public, largely because law societies as regulators have the authority to determine paralegals' scope of practice and are not willing to surrender or share much of the legal services market.[483] As Rhode points out, the legal profession has "traditionally been well-positioned to block changes that might benefit the public at the profession's expense."[484]

It is interesting that in the many studies about paralegal regulation, few if any address in any meaningful way the conflict of interest at the heart of the notion that a self-regulating profession can

---

[481] Leisha Murphy, a partner at Connect Family Law in Vancouver, as quoted in Michael McKiernan, "Paralegals in family law", *Canadian Lawyer* (19 March 2018), online: <www.canadianlawyermag.com/author/michael-mckiernan/paralegals-in-family-law-15386/>.

[482] Richard Devlin, "Bend Or Break: Enhancing the Responsibilities of Law Society to Promote Access to Justice" (2015) 38 Man LJ 119 at 149.

[483] I use the term paralegal here but recognize that independent non-lawyer legal service providers are referred to by other names and might be given different titles, for example: alternate legal service providers, family law legal service providers, limited licensees or limited practitioners.

[484] Rhode, *Access to Justice, supra* note 26 at 19.

adequately, or should, regulate others in the public interest. Perhaps lessons can be learned from Alberta, where the unregulated nonlawyer legal services market is left to market forces and consumer protection legislation. Perhaps a middle ground, and sensible approach, would be to have paralegals regulated by a separate body independent of a law society, such as in a co-regulatory scheme more like those governing the professions in Quebec and the health professions in Ontario.

CHAPTER 5:
THE RESEARCH: WSIAT STUDY & ONLINE SURVEY

INTRODUCTION

The government's decision to provide the Law Society of Ontario a mandate to regulate paralegals was prompted by a stated desire to enhance access to justice by expanding the number (availability) and choice of qualified providers of legal services, ensuring the competence of paralegals, and making such services more affordable. In this chapter, I test the assumptions on which the policy decision was made to give the Law Society this mandate by examining the evolution of paralegal representation in a legal setting that is crucially concerned with the rights of working people – Ontario's Workplace Safety and Insurance Appeals Tribunal. Two empirical research studies were undertaken. The first, a study of paralegal representatives at WSIAT, addresses both the choice and competence rationales of regulation. The second, an online survey, explores the cost of services of paralegal representatives at WSIAT and compares the findings to lawyers' fees to address the affordability rationale. The research studies explore whether there is evidence to support the Law Society's claim that paralegal regulation has resulted in increased access to justice.

The WSIAT study empirically evaluates whether paralegal regulation increased appellants' choice of non-lawyer representative and the competence of paralegals at that tribunal. Since outcomes are a measure of access to justice,[1] and since representation at appeal hearings is a factor

[1] Canadian Bar Association, Standing Committee on Access to Justice, *Access to Justice Metrics: Discussion Paper* (Ottawa: CBA, 2013) at 6, online (pdf): <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/Access_to_Justice_Metrics.pdf> [CBA, *Access to Justice Metrics*].

that could influence the outcome,[2] this study examined both the number of appeals and appeal hearing outcomes by representative type both pre- and post-regulation. This research was conducted through a randomized study of outcomes over two time periods, before and after regulation. The online survey also explored paralegals' opinions about the number and competence of representatives at WSIAT pre- and post-regulation. In addition, it examined the cost of paralegals' services, their billing practices, and other aspects of their practice including client type, practice concentration, practice setting and location.

If paralegal regulation has enhanced access to justice for the people of Ontario, it is expected the data would reveal that post-regulation, as compared to pre-regulation, there was an increase in 1) the use of paralegal representatives, and 2) positive outcomes[3] obtained by paralegal representatives. It is also be expected the data would reveal paralegals' services cost less than lawyers' services.[4]

Before turning to the research methodology, I discuss the history and nature of WSIAT and the cost of legal services in the context of access to justice.

WSIAT

The Workplace Safety and Insurance Appeals Tribunal ("WSIAT" or "Appeals Tribunal"), formerly the Workers' Compensation Appeals Tribunal, was legislated into existence in late 1985 and

[2] Douglas Hyatt & Boris Kralj, "The Impact of Representation and Other Factors on the Outcomes of Employee-Initiated Workers' Compensation Appeals" (2000) 53:4 Industrial & Labor Relations Rev 665 at 670.

[3] "Positive outcomes" include both *appeal allowed* and *appeal allowed in part* WSIAT appeal dispositions.

[4] Affordability is a relative concept and cannot be measured by this survey.

became operational in January 1986.[5] It is an administrative judicial tribunal – an integral part of our justice system[6] – that adjudicates appeals of decisions of workplace safety and insurance matters under the *Workplace Safety and Insurance Act, 1997*.[7] Created by statute, adjudicative tribunals such as WSIAT exercise delegated decision-making powers of the executive branch and serve quasi-judicial functions otherwise fulfilled by the formal judicial system.[8] Since it exercises a judicial rights-determining function pursuant to its statutory mandate, WSIAT has the character of, but more procedural flexibility than, a court.[9] It is a specialist administrative body that operates independently of the Workplace Safety and Insurance Board (WSIB or Board) from which appeals emanate[10] and is regarded by both the Divisional Court and Court of Appeal as an "expert" tribunal.[11] WSIAT is the final level of appeal to which both workers and employers may appeal final decisions of the Board.[12]

---

[5] Workers' Compensation Appeals Tribunal, *First Report 1985-1986* (5 October 1986) at 1, online (pdf): *WSIAT*<www.wsiat.on.ca/english/publications/AnnualReport1985_1986.pdf> [WCAT First Report]; *Workplace Safety and Insurance Act, 1997*, SO 1997, c 16, Sched A, s 173(1) [*WSIA*].

[6] Ron Ellis, *Unjust by Design: Canada's Administrative Justice System* (Vancouver: UBC Press, 2013) at 136-37.

[7] *WSIA*, Sched A.

[8] Lorne Sossin & Steven J Hoffman, "The Elusive Search for Accountability: Evaluating Adjudicative Tribunals" (2010) 28 Windsor YB Access Just 343 at 347.

[9] Ellis, *supra* note 6 at 137, 142, 147, 152.

[10] Paul C Weiler, *Reshaping Workers' Compensation for Ontario* (November 1980) at 111, online: *Internet Archive* <www.archive.org/stream/reshapingworkers00weil/reshapingworkers00weil_djvu.txt>.

[11] WSIAT, *Annual Report 2004* (2005) at 1, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2004.pdf> [*Annual Report 2004*].

[12] WSIAT, *Annual Report 1997* (1998) at 57, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport1997.pdf> [*Annual Report 1997*]; *WSIA*, s 173(1); *WSIA*, s 123(1). See also WSIAT *First Report*, *supra* note 5 at 1, and *WSIA*, s 123(1): The Appeals Tribunal has exclusive jurisdiction to hear all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan, and all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of premiums and penalties payable by a Schedule 1 or Schedule 2 employer.

The workers' compensation system was designed to operate in a non-adversarial manner but it does not appear to be entirely non-adversarial in practice. In a review of the system in 2012, Harry Arthurs found that a "clear imbalance of resources" had developed between employers and workers in the context of claims processing and adjudication as well as policy debates.[13] He was of the opinion that if adversarial attitudes were becoming entrenched in the processing of individual claims and in the formulation of funding and other policies, it would be in WSIB's interests "that both adversaries should be adequately represented."[14] While Arthurs was not commenting specifically on claims adjudication before WSIAT, adversarial attitudes between employers and workers within the workplace safety and insurance system are likely to spill over into appeal hearings. According to Michelle Alton, most adjudicative systems are neither adversarial nor inquisitorial but "hybridized" reflecting the unique nature of tribunal adjudication.[15] Green and Sossin similarly are of the view that most administrative proceedings are located "somewhere between the model of the courtroom and the model of the inquiry," between the adversarial and inquisitorial norms – a hybrid model they refer to as "active adjudication."[16] Green and Sossin further argue that adjudicative tribunals are suited neither to the adversarial model nor the inquisitorial model. Instead, adjudicators at these tribunals aim at "problem-solving."[17]

---

[13] Harry Arthurs, *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System* (Toronto: Queen's Printers, 2012) at 112-13, online (pdf): <collections.ola.org/mon/26005/315866.pdf>.

[14] *Ibid* at 113-14.

[15] Michelle A Alton, "Rethinking Fairness in Tribunal Adjudication to Best Promote Access to Justice" (2019) 32:3 Can J Admin L & Prac 151 at 153. See also Samantha Green & Lorne Sossin, *Administrative Justice and Innovation: Beyond the Adversarial/Inquisitorial Dichotomy* (2011), online (pdf): *SSRN* <ssrn.com/abstract=1948761>.

[16] Green & Sossin, *supra* note 15 at 1.

[17] *Ibid* at 4, referencing Arie Freiberg, *Post-Adversarial and Post-Inquisitorial Justice: Transcending Traditional Penological Paradigms* (2010) at 8, online (pdf): *SSRN* <ssrn.com/abstract=no.1609468>.

WSIAT hears and decides appeals from both workers and employers although 90% of appeals are brought by workers.[18] The Appeals Tribunal is required to make decisions based upon "the merits and justice of a case"[19] and to provide written decisions with reasons.[20] The appellant has the onus of establishing that the evidence meets the standard of proof – on a balance of probabilities.[21] Where the evidence for or against an issue is equally persuasive, the issue shall be resolved in favour of the person claiming the benefit.[22]

According to Hazel Genn, it is frequently asserted that administrative tribunals are "informal, simple hearings in which applicants can put their case without skilled representation" and they will get a fair hearing since the tribunal can search out the truth and make the right decision, but the reality is different.[23] Genn argues that:

> Representation makes a crucial difference because at the heart of tribunal decision-making is a complex body of law which the tribunal is not permitted to ignore. Tribunals do not dispense palm-tree justice; nor is it desirable that they should. Their decisions must be reasoned, consistent and in accordance with the law."[24]

The authority for non-lawyer representation at WSIAT stems from the tribunal's statutory power to determine its own practice and procedure.[25] Pursuant to this authority, WSIAT has long

---

[18] Pursuant to *WSIA*, s 123. See also Table 7: WSIAT Study Data Collection, *infra* at I. Research Methodology, p 19 herein.

[19] *WSIA*, s 124(1).

[20] *Ibid*, s 131(4).

[21] Decision No. 2307/12R, 2014 ONWSIAT 1211 at paras 41, 45.

[22] *WSIA*, s 124(2). See also WSIAT Decision No. 1173/16, 2016 ONWSIAT 1783 at para 36.

[23] Hazel Genn, "Myth of the Simple, Cheap Alternative: Legal Brief", *The Times* (12 September 1989), online: <www.thetimes.co.uk> [Genn, "Myth"].

[24] *Ibid*.

[25] *WSIA*, s 131(2). (See the former *Workers' Compensation Act*, RSO 1990, c W.11, s 72(1) which was repealed on January 1, 1998).

recognized that parties have the right to be represented by another person before the Appeals Tribunal.[26] While representation is not necessary, the tribunal recognizes the value of adequate representation (which need not be limited to lawyer representation). WSIAT adjudicators have at times encouraged worker appellants to obtain professional representation to assist the Tribunal in making a decision on the real merits and justice of the case, and in matters where the issues on appeal are complex.[27]

Long before paralegal regulation was implemented in Ontario, non-lawyer representatives featured prominently in appeals of workers' compensation and workplace safety and insurance matters, representing both workers and employers, at hearings before the Appeals Tribunal. Indeed, non-lawyer representatives have out-numbered lawyer representatives at WSIAT throughout most of its history.[28] WSIAT acknowledges the quality of representation is a key factor in providing the public with a quality administrative justice system.[29] In creating the Appeals Tribunal in 1985, the Ontario government (Ministry of Labour) also created a category of non-lawyer legal service providers who

[26] WSIAT Practice Direction (1 October 2007), provided via email by Emily Sinclair, Reference Librarian, Ontario Workplace Tribunals Library (8 November 2008), on file with author. For current Practice Directions, see Workplace Safety and Insurance Appeals Tribunal, "Practice Directions" (last updated January 2020), online: <www.wsiat.on.ca/english/pd/index.htm>.

[27] See, for example, Decision No. 952/99I, 1999 CanLII 16012 at para 11 (ONWSIAT); Decision No. 600/89, 1989 CanLII 1551 (ONWSIAT); Decision No. 185/07I, 2007 ONWSIAT 247 at paras 3, 9.

[28] There are two exceptions. In 2008 and 2009, more lawyers than non-lawyers represented employers in employer appeals. This might be because paralegal regulation took effect in May 2007 after which time only licensed paralegals could act as representative before WSIAT. The 2008 and 2009 statistics perhaps reflect an "adjustment" period. See Workplace Safety and Insurance Appeals Tribunal, "Archived Annual and Quarterly Reports" (last modified April 2015), online <www.wsiat.on.ca/english/about/annualQuarterlyReportsArchived.htm>.

[29] WSIAT, *Annual Report 2008* (2009) at 1, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2008.pdf>.

provide free legal assistance to workers and employers in workplace safety and insurance matters.[30] According to Hyatt and Kralj, this was in recognition of the increasing complexity of the workers' compensation system and the appeals process.[31] The Office of the Worker Adviser (OWA) functions to educate, advise, and represent workers who are not members of a trade union and their survivors; the Office of the Employer Adviser (OEA) functions similarly for employers, primarily those with fewer than 100 employees.[32] These government employees provide legal services including advice and representation at WSIAT. For several years after paralegal regulation was implemented, OWA and OEA advisers were not required to be licenced by the Law Society of Ontario.[33]

The Appeal Tribunal's first annual report in 1985-1986 describes the range of representatives appearing before it and the rationale for allowing parties to be represented by non-lawyers:

> In compensation systems it is a tradition – and an article of faith – that the process must accommodate the effective participation of workers or employers who are unrepresented or who are represented by non-professional representatives. Professional representation—by worker or employer advisers or consultants, experienced in compensation advocacy—is, of course, increasingly common. But workers regularly appear before this Appeals Tribunal without any representation or represented by a priest, a relative, an alderman, an M.P.P., etc. Employers when they do appear are more often than not represented by staff members such as

[30] Office of the Worker Adviser, "About the OWA" (last visited 11 June 2020), online: <www.owa.gov.on.ca/en/about/Pages/default.aspx>; Office of the Employer Adviser (last visited 11 June 2020), online: <www.employeradviser.ca/en/>.

[31] Hyatt & Kralj, *supra* note 2 at 666.

[32] *WSIA*, ss 176(1), (2). The OWA and OEA are independent agencies of Ontario's Ministry of Labour: Ministry of Labour, Training and Skills Development (last updated 15 May 2020), online: <www.ontario.ca/page/ministry-labour>.

[33] *Law Society Act*, RSO 1990, c L.8, By-Law 4, ss 31(2), (3) (Part V, Providing Legal Services Without a Licence). See discussion in Chapter 4 herein.

> personnel managers who typically do not have compensation advocacy experience.[34]

In its second year of operation, the Appeal Tribunal reported that less than 20% of employer representatives and more than 20% of worker representatives at appeal hearings were lawyers.[35] By comparison, non-lawyer representatives accounted for more than 25% of all employer representatives[36] and 60% of all worker representatives. The Appeals Tribunal recognized that some of the "so-called para-professionals" engaged in the business of appearing before the Tribunal on behalf of a party for a fee "are highly professional and exceptionally competent."[37] Ten years later, the tribunal reported that representation of injured workers and employers by private enterprise consultants had "grown dramatically" such that, in 1996, 27% of all represented workers were represented by consultants, which was more than double the number in 1994.[38] The tribunal also noted the quality of representation provided by consultants was "often very acceptable" but also that hearing panels were "increasingly encountering representatives who either contribute nothing of value to the process or who become a positive hindrance to a panel's hearing of the case."[39] The tribunal recognized that bad representation was not confined to consultants, nor to those

[34] WCAT *First Report*, *supra* note 5 at E-1. In 1998, the Tribunal's name changed to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

[35] See Appendix G of Workers' Compensation Appeals Tribunal, *Third Report 1987-1988* (1988), online (pdf): *WSIAT* <www.wsiat.on.ca/english/publications/AnnualReport1987_1988.pdf>.

[36] *Ibid.* Note that the term "Advisor" appears in both categories of Office of Employer Advisor and Office of Worker Advisor but the correct term was then, as now, "Adviser": see WCAT *First Report*, *supra* note 5 at 1.

[37] Workers' Compensation Appeals Tribunal, *Second Report 1986-1987* (1987) at 28, online: <www.wsiat.on.ca/english/publications/AnnualReport1986_1987.pdf> .

[38] Workers' Compensation Appeals Tribunal, *Annual Report 1995 and 1996* (1997) at 12, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport1995_1996.pdf>.

[39] *Ibid*.

representing injured workers[40] and that the quality of representation can impact the fair and efficient conduct of a hearing.[41] A few years later, WSIAT reported the large majority of advocates – including union representatives, human resource managers, OWA and OEA advisers, and private consultants – represent their clients "in a professional and knowledgeable manner."[42] Cory J., in his 2000 report, noted that in "a field which lawyers have virtually deserted, competent paralegals are providing much-needed assistance to injured workers and to the Tribunal," a forum where representatives appearing before it must be knowledgeable since there is "no doubt that the work of this Tribunal [WSIAT] is extremely important."[43]

The complexity of workers' compensation claims, the at-times adversarial nature of appeals, and the complexity of issues on appeal appear to create the need, or perceived need, for representation. In a study of representatives in workers' compensation appeals in Ontario in 2000, Hyatt and Kralj argue the system's "conceptual simplicity belies its complexity in practice."[44] With the increasing complexity of workers' compensation claims, as well as more generous benefits (and therefore higher costs), the decisions of workers' compensation boards and insurers with respect to individual claims have drawn increased scrutiny by both injured workers and employers.[45] This scrutiny is manifest in both appeals of decisions and in the use of lawyers or other representatives in the

[40] *Ibid* at 13.

[41] *Code of Conduct for Representatives* (1999), 51 WSIATR 293.

[42] *Ibid.* See also Peter de C Cory, *A Framework for Regulating Paralegal Practice in Ontario: Executive Summary and Recommendations* (Ontario: Ministry of the Attorney General, 2000) at 34 [Cory Report].

[43] Cory Report, *supra* note 42 at 33.

[44] Hyatt & Kralj, *supra* note 2 at 665.

[45] *Ibid* at 666.

appeals process.[46] Part of the increasing complexity of the appeals system is the degree of employer opposition to a worker's appeal.[47] Hyatt and Kralj note that although a worker-initiated appeal is essentially a dispute between the worker and the system, decided by the Board, it might in some cases be, indirectly, a dispute between the worker and the employer, since the outcome of the appeal could have implications for the employer. The employer might choose to attend the appeal hearing in opposition to the worker's appeal, at least to present the employer's version of events. As such, some appeals can take on a somewhat adversarial nature.[48] A worker will appeal a claim when the benefits of doing so outweigh the costs and will retain representation "in order to increase the probability of winning their appeal or to increase the value of the ultimate award (or both)."[49] According to Hyatt and Kralj, it is generally acknowledged "that some workers' compensation claims are more difficult to adjudicate than others and therefore more prone to the vagaries of subjective determinations."[50] To the extent this subjectivity creates uncertainty in claims adjudication, to better exploit any such uncertainties in their favour a worker may seek representation.[51] Hyatt and Kralj identified representation, and more particularly representative type, as a factor that could influence the outcome of an appeal.[52]

---

[46] *Ibid.*

[47] *Ibid* at 671.

[48] *Ibid* at 669, 671.

[49] *Ibid* at 670.

[50] *Ibid.*

[51] *Ibid.*

[52] *Ibid*. Their study was restricted to employee-initiated appeals. Other factors identified: employer experience rating (intended to proxy the degree of employer opposition to the workers' appeal), complexity of the appeal, issue under appeal, nature of the injury, and characteristics of the worker.

Representation at WSIAT includes a variety of tasks and services: filling out forms, participating in mediation and/or a pre-hearing conference, gathering and disclosure of documentary evidence, and representing one's client at the appeal hearing which includes questioning and cross-questioning of witnesses and making submissions and arguments as to the merits of the case. It also requires knowledge of the relevant legislation and WSIAT policy, procedure and practice directions, legal and medical research, and adherence to WSIAT's *Code of Conduct* governing representatives.[53]

With the implementation of paralegal regulation in 2007, representatives who appear before the tribunal must be licensed by the Law Society of Ontario or authorized to provide legal services in accordance with the *Law Society Act* and its regulations and bylaws.[54] Both pre- and post-regulation, both workers and employers were represented by lawyers and a range of non-lawyers.[55]

Cost of Legal Services

There is a well-documented gap in affordable legal services in Canada and a need for access to legal assistance.[56] Retired Supreme Court of Canada Justice Cromwell has called upon the legal

[53] Workplace Safety and Insurance Appeals Tribunal, "Appeal Process" (last modified July 2014), online: <www.wsiat.on.ca/english/appeal/index.htm#hearing>; Workplace Safety and Insurance Appeals Tribunal, "Code of Conduct for Representatives" (last modified July 2019), online: <http://www.wsiat.on.ca/english/forReps/repCode.htm>; Workplace Safety and Insurance Appeals Tribunal, "Best Practices for Representatives" (last modified January 2010), online: <http://www.wsiat.on.ca/english/forReps/bestPractices.htm>.

[54] See chapter 2 herein, particularly exceptions and exemptions to licensing.

[55] WSIAT, *Annual Report 2001* (2002) at 21, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2001.pdf>. See also *Annual Report 1997*, *supra* note 12 at 34-35.

[56] See Ontario Civil Legal Needs Project, *Listening to Ontarians* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, May 2010) at 57, online: <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/m/may/may3110_oclnreport_final.pdf> [Civil Legal Needs].

profession to urgently facilitate regulatory reforms to alleviate the public's vast unmet needs for affordable legal services.[57] Both Hadfield and Trebilcock agree that the legal profession must address the cost of legal services since cost creates the gap between peoples' need for services and their ability to obtain them.[58] As Hadfield puts it, "the crux of the access problem is cost."[59] According to Semple, the scant attention that North American regulators have paid to price-related goals is disproportionate to the importance of service price for clients, and also disproportionate to the pivotal role the price of legal services has played in impeding access to justice.[60] Meeting client's interest in choice demands the availability of different quality services at different price points.[61] For many law-related needs, lawyers are not the most cost-effective providers.[62] As Macdonald long ago expressed: "[W]hy go to a full-service lawyer in a full-service downtown law firm for advice about a standard form contract when a para-legal can deliver the same product more cheaply from a neighbourhood storefront McLaw Office?"[63]

Prior to the implementation of paralegal regulation in Ontario, the Ianni Task Force found consumers retained the services of independent paralegals because they believed paralegals

[57] Cristin Schmitz, "Closing Gap in Legal Services in Major Challenge, Cromwell Warns", *The Lawyers Weekly* (21 October 2016), online: <www.lawyersweekly.ca/articles/3122>.

[58] *Ibid*. I was in attendance at CIAJ 2016 Conference and heard Justice Cromwell, Gillian Hadfield and Michael Trebilcock deliver these remarks firsthand.

[59] Gillian K Hadfield, "The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law" (2014) 38 Int'l Rev L & Econ 49 at 49.

[60] Noel Semple, Legal Services Regulation at the Crossroads – Justitia's Legions (Cheltenham, UK: Edward Elgar, 2015) at 261.

[61] *Ibid* at 249.

[62] Deborah L Rhode, "Whatever Happened to Access to Justice?" (2009) 42:4 Loy LA L Rev 869 at 899.

[63] Roderick A Macdonald, "Let Our Future Not Be Behind Us: The Legal Profession in Changing Times" (2001) 64 Sask L Rev 1 at 18.

provided comparable or similar services to lawyers at less cost.[64] Stager considered whether paralegal regulation would result in low price, good quality, routine legal services delivery.[65] He recognized some factors associated with regulation would likely lead to higher fees than the unregulated market – training requirements would reduce the number of entrants, premiums for professional liability insurance would drive up the cost of services, and the demand for paralegal services would increase as public awareness and confidence grew. Other factors, however, would point to lower fees – the supply of services would increase, advertising would encourage competitive fee setting, and increased demand could result in economies of scale through the concentration of routine work by paralegals.[66]

Affordability is a key aspect of accessibility.[67] According to the CBA, a "fair, effective and accessible civil justice system is essential to the peaceful ordering and the economic and social well-being of our society"[68] but that access to the justice system – to dispute resolution – is impeded in part by the high cost of (lawyers') services.[69] The civil justice system must be more efficient, accessible, accountable, fair, and cost-efficient.[70] A similar view purportedly prompted the Ontario government to introduce a paralegal regulatory scheme, but the cost of paralegals' services is virtually unregulated

[64] RW Ianni, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) at 28-29 [Ianni Report].

[65] David Stager, "Economic Issues Relating to the Possible Introduction of Independent Paralegals in Ontario" in Ianni Report, *supra* note 64 at 226.

[66] *Ibid* at 232-33.

[67] Eleanore Cronk, Canadian Bar Association, *Report of the Task Force on Systems of Civil Justice* (Ottawa: CBA, 1996) at 15.

[68] *Ibid* at 11.

[69] *Ibid*.

[70] *Ibid* at iii.

and there has been no study of the cost of paralegals' services – not by the government or the Law Society.

The motivation for my current study is that there is very little empirical research that examines the relationship between the Law Society's regulation of paralegals and access to justice – that is, availability, competence, and affordability. This chapter proceeds as follows: Part I sets out the research methodology of the WSIAT study and online survey. Part II canvasses previous studies of non-lawyer representation and the literature on empirical legal research to provide context for the current research. In Part III, the data analysis and research findings are set out. The limitations of the studies are discussed in Part IV, and my conclusions, reflections and discussion of the implications of this research in Parts V and VI.

I. RESEARCH METHODOLOGY

A. WSIAT Study

Given the range of types of representatives at WSIAT both before and after paralegal regulation, WSIAT provides a data-rich forum and thus a unique opportunity to study the effects of different types of representatives both before and after paralegals were regulated in 2007. Through analysis of an originally-compiled dataset, this study seeks to determine if regulation increased access to justice. Particularly, this study seeks to empirically answer two questions: 1) Did the number of paralegal representatives at this tribunal increase post-regulation (from consultants, their unregulated counterparts, prior)? and 2) Did paralegals achieve better outcomes post-regulation compared to consultants? To gain a clearer picture of paralegal competence, appeal hearing outcomes achieved by paralegals and consultants are also compared to outcomes achieved by lawyers within and across

the two time periods. Lawyers' outcomes are used as a baseline measurement for two reasons. The first is that licensed paralegals were billed by the Ontario government as a competent alternative to lawyers. The second is that it is generally assumed that lawyer representation is competent and leads to fair and proper outcomes.[71] The effectiveness of representation is typically measured by case outcomes in terms of results achieved.[72] The CBA recognizes that outcomes are a "valid representation of a legal system's ability to solve problems [and] provide legal certainty."[73] In addition, an assessment of the relative quality of lawyers and non-lawyers is possible, at least partly, through an assessment of outcomes.[74] Social scientists view the use of comparisons and control groups as the best empirical method for isolating the effectiveness of a particular intervention while excluding other explanations for the intervention's claimed effects.[75] Variations on this method include the use of a "pre/post methodology" to examine a judicial system before and after implementation of a new access to justice intervention.[76] The regulation of paralegals in Ontario is one such intervention.

The two time periods – 2004-2006 and 2015-2017 – were chosen for several reasons: 1) The pre-2007 years capture the last three full years before regulation was implemented and would

[71] See Laura K Abel, "Evidence-Based Access to Justice" (2009-2010) 13 U Pa J L & Soc Change 295 at 299. Abel proposed an outcome-based metric to measure whether a particular access to justice intervention enables judges to render fair and accurate decisions, using "full and competent attorney representation" as an appropriate baseline measurement "because we generally assume that attorney representation is a key indicator of fairness".

[72] See, for example, Hyatt & Kralj, *supra* note 2; Anne E Carpenter, Alyx Mark & Colleen F Shanahan, "Trial and Error: Lawyers and Nonlawyer Advocates" (2017) 42:4 Law & Soc Inquiry 1023 at 1025; Herbert M Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work* (Ann Arbor, MI: University of Michigan Press, 1998) at 20.

[73] CBA, *Access to Justice Metrics*, *supra* note 1 at 6.

[74] Richard Moorhead, Avrom Sherr & Alan Paterson, "Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales" (2003) 37:4 Law & Soc'y Rev 765 at 784 [Moorhead, Sherr & Paterson].

[75] Laura K Abel, *supra* note 71 at 299.

[76] *Ibid* at 299-300.

therefore likely capture many non-lawyer representatives who would go on to be licensed (grandfathered) paralegals; 2) the intention was to capture in the dataset paralegals who appeared at WSIAT both before and after regulation was implemented, including those with some pre-regulation years of experience; 3) the ten-year span between the pre- and post-regulation years would allow time for paralegal regulation to take hold, mature and reveal its effects. Indeed, the Law Society acknowledges the first five years of regulation were "early days;" 4) both five-year reviews of regulation – by the Law Society and Morris, in 2012 – recommended changes that would take at least a few years to implement and start to produce measurable effects; 5) the licensing exam did not include (or test knowledge of) substantive and procedural law until mid-2015; and finally, 6) in celebrating the ten-year anniversary of paralegal regulation (in 2017), both the Law Society and Ontario government lauded its positive impact on access to justice.

i. WSIAT Data & Data Collection

WSIAT publishes data concerning appeal case processing through the tribunal's open data initiative[77] but it does not track appeal outcomes by hearing disposition. WSIAT disposed of, on average, about 3,000 cases per year for each year of the study, totalling just over 17,500 cases.[78]

[77] Workplace Safety and Insurance Appeals Tribunal, "Open Data Catalogue: WSIAT Case Processing" (last modified March 2018), online: <www.wsiat.on.ca/OpenData/OpenData.htm>.

[78] *Annual Report 2004*, *supra* note 11 at 36; WSIAT, *Annual Report 2005* (2006) at 36, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2005.pdf>; WSIAT, *Annual Report 2006* (2007) at 32, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2006.pdf> [*Annual Report 2006*]; WSIAT, *Annual Report 2015* (2016) at 45, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2015.pdf> [*Annual Report 2015*]; WSIAT, *Annual Report 2016* (2017) at 45, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2016.pdf> [*Annual Report 2016*]; WSIAT, *Annual Report 2017* (2018) at 45, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2017.pdf> [*Annual Report 2017*] .

The majority of matters are disposed of by way of final tribunal decisions.[79] The most frequent issues adjudicated involved entitlement to benefits, which is consistent across the years of the study.[80]

All WSIAT appeal decisions are published and were accessed through CanLII.[81] Sample size was determined to be 1300 decisions.[82] To obtain a randomized sample, the decision was made to review and extract data from one appeal decision per day, for each day (as available), for all six years

[79] *Annual Report 2017*, *supra* note 78 at 45. In 2017, the total was almost 69%.

[80] In the 2015 – 2017 years, loss of earnings and non-economic loss and quantum were the two most common issues: *Annual Report 2017*, *supra* note 78 at 46: loss of earnings (25%), non-economic loss (14%). *Annual Report 2015*, *supra* note 78 at 46: loss of earnings (23%), non-economic loss and quantum (15%); *Annual Report 2016*, *supra* note 78 at 46: loss of earnings (24%), non-economic loss and quantum (16%). In 2004 – 2006, issue type was differently categorized but nonetheless the vast majority of appeals disposed of involved the issue of entitlement, more than 93% in 2006: *Annual Report 2006*, *supra* note 78 at 38.

[81] Workplace Safety and Insurance Appeals Tribunal, "About WSIAT Decisions" (last modified May 2015), online: <www.wsiat.on.ca/english/decisions/index.htm>; Canadian Legal Information Institute, online: <canlii.org>. WSIAT decisions appear in CanLII's WSIAT database by the date the decision was released, grouped by year, month and day, and organized chronologically by date (for each month, in reverse chronological order – the last day of the month appears first). Decisions are not rendered on every day of each month and the number of decisions released per day varies: see, for example, CanLII, "Ontario Workplace Safety and Insurance Appeals Tribunal — 2006" (last visited 12 June 2020), online: <www.canlii.org/en/on/onwsiat/nav/date/2006/>. At WSIAT, decisions are dated by the adjudicator(s) once ready and that date is the release date of the decision. WSIAT then applies neutral citations sequentially to each decision before sending it to CanLII. These neutral citations also appear on CanLII after the date and decision number. For example, 2004-01/30 Decision No. 43/04, 2004 ONWSIAT 187 (CanLII): As per Sarah Sutherland, Director, Programs and Partnerships, Canadian Legal Information Institute (CanLII) via email dated 25 October 2018, on file with author. See also CanLII, "Ontario Workplace Safety and Insurance Appeals Tribunal – 2004" (last visited 12 June 2020), online: <www.canlii.org/en/on/onwsiat/nav/date/2004/> and for January 2017, see CanLII, "Ontario Workplace Safety and Insurance Appeals Tribunal – 2017" (last visited 12 June 2020), online: <www.canlii.org/en/on/onwsiat/nav/date/2017/>.

[82] Sample size was calculated with assistance of Kristi Thompson, then-Data Librarian at Leddy Library, University of Windsor (April 2018).

of the study.[83] This study focuses on final appeal decisions only, which constitute "applicable decisions" for the purposes of the study. The number of days on which at least one applicable decision was rendered ranged from 15 to 23 per month. In total, 1,475 decisions were selected and examined.

WSIAT decisions are identified by case number. Decisions that are not final appeal decisions[84] contain a letter at the end of the decision number and were excluded as a source of data collection, as were matters in which a final appeal decision was not rendered.[85] In several selected applicable decisions, both a worker appeal and an employer appeal were decided.[86] Each appeal was recorded as a separate decision. For each decision, the following variables were recorded: year of decision,

[83] To obtain a randomized sample, the following pattern of selection was followed in order to avoid selection bias. For January of each year, the last applicable case listed for each day of the month listed was examined. For February, the second-last applicable case listed for each day of the month was selected; for March, it was the third-last applicable case, and for April, the fourth-last applicable case. This pattern of selection was repeated twice more for the remaining months in each year. The pattern of selection was as follows: For January, May, and September: last applicable case; for February, June, and October, the second-last case; for March, July, and November, the third-last case; and for April, August, and December, the fourth-last case. In short, the random selection pattern for each year was: M1:LC, M2:2LC, M3:3LC; M4:4LC, M5:LC, M6:2LC, M7:3LC, M8:4LC, M9:LC, M10:2LC, M11:3LC; M12:4LC. (where M1 is January and M12 is December; LC = case; 2LC = second-last case; 3LC = third last case, and 4LC = fourth last case. If there were not enough decisions listed for a particular day—for example, it was a month for which the fourth last case per day was to be selected but there were only three decisions listed for one day—then the last decision of that day was selected.

[84] Some decisions are rendered with respect to interim or preliminary issues—procedural or evidentiary matters such as production of documents, access to a worker's file, privilege, or extensions of time and some decisions arise out of a request for reconsideration: see for example Decision No. 1907/04I, 2005 ONWSIAT 189; Decision No. 200/17I, 2017 ONWSIAT 282; Decision No. 141/15I, 2015 ONWSIAT 236; Decision No. 42/17E, 2017 ONWSIAT 132.

[85] In some matters selected, the appeal was withdrawn or abandoned short of a decision; and some involved applications concerning issues such as a party's right to sue pursuant to the Act: see, for example, Decision No. 893/11, 2015 ONWSIAT 1396. A total of 55 matters without final appeal dispositions were excluded from the dataset.

[86] The following WSIAT Decision Nos. selected decided both a worker and employer appeal: Decision No. 571/15, 2015 ONWSIAT 2513; Decision No. 1074/15, 2016 ONWSIAT 1929; Decision No. 370/15, 2017 ONWSIAT 2666; Decision No. 811/15, 2015 ONWSIAT 1039; Decision No. 143/15 2015 ONWSIAT 1084, Decision No. 997/15, 2015 ONWSIAT 2123; Decision No. 1906/11, 2011 ONWSIAT 2361; Decision No. 1083/16, 2016 ONWSIAT 2044; Decision No. 213/14, 2016 ONWSIAT 2357; Decision No. 2566/15, 2017 ONWSIAT 83; Decision No. 1393/17, 2017 ONWSIAT 1967; Decision No. 1096/11, 2015 ONWSIAT 2093; Decision No. 1984/14, 2015 ONWSIAT 241.

appeal type (whether worker or employer initiated), representative type, and outcome (appeal allowed, appeal allowed in part, or appeal denied). In both the pre- and post-2007 years, there were two general categories of representatives who appeared at WSIAT appeal hearings: lawyers and non-lawyers. The non-lawyer category included several representative types: OWA and OEA advisers, trade union representatives, self (including individuals, in-house HR, and claims managers), and others. Pre-2007, consultants constituted another category of non-lawyers. Post-regulation, consultants were replaced by paralegals, reflecting the introduction of paralegal regulation. All information for each appeal decision was recorded into the dataset without interpretation or assumption. In total, 1,420 appeal decisions comprise the dataset analyzed for this study, as set out in Table 7.

TABLE 7: WSIAT STUDY DATA COLLECTION

WSIAT Study Data Collection						
	2004-2006		**2015-2017**		**Combined Total**	
Total appeal decisions reviewed	741		734		1475	
NOT final appeals (interim, abandoned, withdrawn, etc.)	35		20		55	
"Applicable" appeal decisions	**706**		**714**		**1420**	
		2004-06 %		**2015-17 %**		**Overall %**
APPEAL BY:						
Worker	631	89.38%	646	90.48%	1277	89.93%
Employer	75	10.62%	68	9.52%	143	10.07%
TOTAL appeal decisions in dataset	**706**	100%	**714**	100%	**1420**	100%

ii. Coding, Variables and Accuracy

All appellant representative types were coded into one of three categories: lawyer, consultant/paralegal, or other.[87] Outcomes – appeal dispositions – were coded as either a "positive outcome" (*appeal allowed* and *appeal allowed in part* since some level of success was obtained) or denied.

This study's main variables are representative type, appeal outcome, and date of decision – three representative types, two possible outcomes, and two time periods. Since WSIAT decisions concern a limited range of similar issues, involve both lawyer and non-lawyer representatives both pre- and post-2007, and all final appeal hearings result in essentially binary outcomes, a study of this tribunal allows for meaningful case comparison across the dataset.[88]

The data was gleaned from WSIAT published decisions and is assumed to be accurate.[89]

B. Online Survey

An online survey of paralegal representatives identified in the WSIAT study in 2015 – 2017 (referred to as the "WSIAT paralegals") was then conducted to explore the cost of paralegals' services

[87] Where a representative type was not specified or stated, it was coded as "other." For example, in at least one decision, the representative was listed as "Injured Worker Advisory Program" but representative type was not specified: WSIAT Decision No. 1682/04, 2005 ONWSIAT 638. In another, the representative was listed as "Renfrew Legal Clinic" only: WSIAT Decision No. 807/04, 2005 ONWSIAT 968. The other category includes: OWA, OEA, union rep self, employer, all of whom are non-lawyers, and unknown/not stated/not specified who are all assumed to be non-lawyers and non-consultants or paralegals.

[88] See Carpenter, Mark & Shanahan, *supra* note 72 at 1030.

[89] CanLII's database of WSIAT decisions relies on WSIAT's provision of its decisions. At CanLII, editors monitor a mostly automated system and there are stringent protections to ensure decisions are not missed on CanLII's end: Sarah Sutherland, Director, Programs and Partnerships, CanLII, email dated 25 October 2018, on file with author. It is possible there are inaccuracies in the reported decisions as a result of error in the written decision, or incomplete or inaccurate reporting by the representative or recording of information by the tribunal.

as well as opinions about the number and competence of paralegals post-regulation.[90] An examination of survey responses for this study was conducted in the form of exploratory data analysis. As Thaddeus Hwong argues, the "main objective of an exploratory approach is to determine what kind of information can be obtained from the data."[91] This approach differs from most social science quantitative empirical studies where data analysis is conducted to prove the validity and/or applicability of theories[92] – the starting point is the theory and the main objective is "to put the theory to a test."[93] An exploratory approach differs in that the analysis centres on the data and the objective is "to discover what can be found in the data."[94] As Hwong argues:

> If a theory-driven study is a focused search, a data-driven study will be a wide-open search. In other words, the data-driven nature of an exploratory study is to put aside preconceived notions of what can be found in the data and let the data tell the story.[95]

i. Survey Participants & Design

The WSIAT study revealed that 134 paralegals appeared as representatives in the 307 decisions in the dataset for the years 2015-2017. Many appeared on more than one occasion; two appeared as many as fourteen times. Published WSIAT decisions identify representatives by first initial, last name, and type. For the 134 paralegals identified, the following information needed to be ascertained: full name, licensee status, and contact information (email address particularly). Name,

---

[90] Research ethics approval was obtained from York University's Office of Research Ethics pursuant to Certificate # STU 2019-083.

[91] Thaddeus Hwong, "An Exploration of Influences of Sociodemographic Characteristics of Supreme Court Justices in Judicial Decision-Making in Income Tax Cases, 1920-2003" (2009) 33 Man L J 151 at 153.

[92] *Ibid*.

[93] *Ibid*.

[94] *Ibid*.

[95] *Ibid*.

status, and telephone contact information (but few email addresses) were obtained through a search of the LSO's Paralegal Directory.[96] Not all paralegals in the dataset could be located nor identified with certainty.[97] Many – a total of 32 paralegals – could not be identified, sufficient contact information was not available, or they were not (currently) providing legal services.[98] That reduced the number of potential survey participants to 102 paralegals. For one-third of these paralegals, email addresses were found through a search of the LSO's Paralegal Directory, Ontario Paralegal Association's online membership directory,[99] and the internet.[100] Every remaining paralegal on the list for whom no personal email address had been found was telephoned.[101] Of the 68 paralegals contacted, approximately one-third were not interested in participating, could not be located (wrong number or number no longer in service), were not available to participate or did not return my call to provide their email address.

[96] Law Society of Ontario, "Lawyer and Paralegal Director" (last visited 12 June 2020) online: <lso.ca/public-resources/finding-a-lawyer-or-paralegal/lawyer-and-paralegal-directory>. The Paralegal Directory listings contained very few email addresses.

[97] For example, if a paralegal representative was noted as A. Jones in the WSIAT decision, there might not have been a paralegal with the last name Jones and a first initial or name starting with the letter A, or several paralegals with the last name Jones and a first initial or name starting with the letter A, the particular paralegal could not be identified.

[98] For those not currently practicing, status was listed in the LSO Paralegal Directory as retired, Not Providing Legal Services – Employed, Not Providing Legal Services – Other, licence surrendered, under administrative suspension, or suspended. These paralegals were eliminated from the list of potential survey participants because the survey sought current fee rates and billing practices.

[99] Ontario Paralegal Association, "Paralegal Directory" (last visited 12 June 2020), online: <opaonline.ca/paralegal/>.

[100] Only a few listings in LSO Paralegal Directory contained email addresses; only one email address was found in the OPA directory, and Google searches produced few email addresses but some phone numbers.

[101] This occurred from November 5 to November 18, 2019: initial telephone calls from Nov 5 to Nov 8 with follow-up calls on Nov 15, and return calls, texts and emails until Nov 18. Voice mail messages or messages with assistants or receptionists were left where possible to do so. When contact was made, either in person or by voice mail, the paralegal was invited to provide their email address so they could be invited to participate in the survey.

The survey consisted of 24 questions designed to gather from the paralegals' data about their billing practices and fees, demographic data, and opinions about regulation's impact on paralegals as representatives and paralegals' competence at WSIAT.[102] The survey was administered through Qualtrics survey software.[103]

ii. Data Collection

The survey was emailed to 78 paralegals in total. Three were undeliverable, which left 75 potential respondents. The survey was completed by 47 respondents. One further respondent partially completed the survey. This resulted in a survey response rate of 63%.[104] All responses constituted the dataset for purposes of analysis.

A survey's response rate, defined as the percentage of the contacted sample that has answered and returned the questionnaire[105] is, according to Weimiao Fan and Zheng Yan, the "most widely used and commonly computed statistic" to indicate a survey's quality.[106] A higher response rate is preferable because it suggests the missing data is not random.[107] Overall, across different types of surveys (in -person, mail, email, online, telephone, in-app) the average response rate is 33%

[102] The survey questions are at Appendix A to this dissertation.

[103] The collected data is stored on servers located in Canada. No data is stored outside the country. University of Windsor, "Qualtrics Surveys" (last modified 23 February 2019), online: <uwindsor.teamdynamix.com/TDClient/1975/Portal/Requests/ServiceDet?ID=9524>.

[104] This figure does not include the partially completed survey. If included, response rate increases to 64%. The survey was completed from 21 November to 19 December, 2019.

[105] Elisabeth Deutskens, Ko de Ruyter, Marking Wetzels & Paul Oosterveld, "Response Rate and Response Quality of Internet-Based Surveys: An Experimental Study" (2004) 15:1 Marketing Letters 21 at 27. The authors considered the net response rate – the percentage of questionnaires that actually reached the respondent. Undeliverable emails were excluded.

[106] Weimiao Fan and Zheng Yan, "Factors Affecting Response Rates of the Web Survey: A Systematic Review" (2010) 26:2 Computers in Human Behavior 132 at 132.

[107] Nigel Lindemann, "What's the Average Survey Response Rate?" (8 August 2019), online (blog): *SurveyAnyplace* <surveyanyplace.com.average-survey-response-rate/>.

and for email surveys specifically it is 30%.[108] A variety of factors influence response rates.[109] Research affiliation is a potential influence.[110] Researchers have found academic surveys tend to have higher response rates than those sponsored by commercial agencies.[111] Sheehan reports the salience of an issue – the association of importance and/or timeliness with a specific topic – to the sampled population has been found to have a strong positive correlation with response rate.[112] In addition, invitation design (such as through personalized email and letting participants know they are part of a select group), pre-notification and reminders, including a deadline to complete the survey, have also been found to be key factors that positively influence response rates.[113]

II. CURRENT STUDY IN CONTEXT

A. Previous Studies: Non-lawyer Representation

Among the published research, there are only a few studies that empirically examine the effectiveness of non-lawyer representation. Only one quantitatively explores both lawyer and non-lawyer representation in worker-initiated workers' compensation appeals in Ontario, but before paralegal regulation was implemented. Another explores representation by regulated immigration consultants and lawyers at Canada's Immigration and Refugee Board. None compares outcomes

---

[108] *Ibid*.

[109] Fan & Yan, *supra* note 106 at 133, 137; See also Kim Bartel Sheehan, "E-mail Survey Response Rates: A Review" (2001) 6:2 J Computer-Mediated Communication, online: *Wiley* <onlinelibrary.wiley.com/doi/full/10.1111/j.1083-6101.2001.tb00117.x>.

[110] Sheehan, *supra* note 109.

[111] Fan & Yan, *supra* note 106 at 133.

[112] *Ibid*; see also Sheehan, *supra* note 109.

[113] Fan & Yan, *supra* note 109 at 134-35. See also Sheehan, *supra* note 109. Sheehan references a study by Mehta and Sivadas that suggests pre-notification for email surveys is imperative: R Mehta & E Sivadas, "Comparing response rates and response content in mail versus electronic surveys" (1995) 4:37 *Journal of the Market Research Society* 429.

obtained by paralegals in Ontario pre- and post-paralegal regulation. Collectively, the studies employ both quantitative and qualitative research methodologies.

Hyatt and Kralj studied the impact of representation on outcomes of worker-initiated appeals at Ontario's Workers' Compensation Appeal Tribunal for the years 1986 to 1989.[114] Their study focused on the impact of different forms of representation[115] and found that only representation by the Office of the Worker Advisor and by politicians (or their staff) was associated with a statistically significant greater likelihood of success relative to no (or self) representation.[116] Both types of representatives, the authors noted, provided services free of direct cost to the worker, with OWA representation provided by the workers' compensation system itself.[117] Hyatt and Kralj's study revealed that outcomes achieved with a lawyer representative did not differ at a statistically significant level from what workers could achieve by representing themselves, where other factors were held constant.[118]

Bogart and Vidmar conducted a study of unlicensed paralegals in the late 1980s as part of the Ianni Task Force on Paralegals.[119] Their study did not examine the effectiveness of non-lawyers but provided an empirical profile of independent (and unlicensed) paralegals in Ontario and was drawn from a range of data sources including a survey of administrative agencies and interviews with

[114] Hyatt & Kralj, *supra* note 2 at 666, 673.

[115] *Ibid* at 667-668.

[116] *Ibid* at 674. The authors equate no representation with self-representation.

[117] *Ibid* at 675.

[118] *Ibid* at 674.

[119] WA Bogart & Neil Vidmar, "An Empirical Profile of Independent Paralegals in the Province of Ontario" in Ianni Report, *supra* note 64 at 145 [Bogart & Vidmar].

paralegals, clients of paralegals, and persons knowledgeable about paralegals—provincial court judges, immigration officials, Justices of the Peace, and lawyers.[120] The researchers found that at one Provincial Offences Court, one out of five defendants was represented by a paralegal.[121] Consumers were "generally satisfied" with the services provided by paralegals,[122] and most clients of paralegals interviewed believed paralegals' services were less expensive than lawyers' services.[123] A similar situation existed elsewhere. The American Bar Association undertook a comprehensive study of non-lawyer activity throughout the USA around the same time.[124] It reported widespread non-lawyer practice which included offering advice and assistance, representing consumers in law-related situations, and representing parties in an extensive array of federal and state administrative agency proceedings and concluded non-lawyers have important roles to perform in providing affordable access to justice.[125]

The only published empirical study (of the effectiveness and impact) of licensed paralegals was conducted in 2012 as part of the Law Society's own five-year review of paralegal regulation.[126] That study explored the impressions and opinions of licensed paralegals and the experiences and impressions of the public (users of paralegals' services) through online surveys, interviews and focus

[120] *Ibid*, at 146-50.

[121] *Ibid* at 152.

[122] *Ibid* at 174.

[123] *Ibid* at 158.

[124] American Bar Association, *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* (Chicago: ABA, 1995).

[125] *Ibid* at 4.

[126] David Kraft, John Willis, Stephanie Beattie & Armand Cousineau, "Five Year Review of Paralegal Regulation: Research Findings – Final Report for the Law Society of upper Canada" (6 May 2012) in Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the Law Society Act* (Toronto: LSUC, 2012), online: <www.lsuc.on.ca/with.aspx?id=2147486410> [STRATCOM Report].

groups.[127] Individuals who had used paralegals' services for a range of legal matters reported doing so in part because they believed paralegals had the appropriate specialization and were less expensive than lawyers.[128] The majority of those who used paralegal services reported being satisfied with the quality and value of those services;[129] 68% reported receiving very good or good value for the fees charged.[130] The study also found the majority (70%) of paralegals themselves believed regulation had increased the competence and conduct of paralegals.[131]

David Wiseman's study of representation in residential tenancy dispute cases at the Landlord and Tenant Board (Eastern Region) is the only study of Ontario's regulated paralegals. His study sought to identify the role of paralegals in the residential tenancy dispute resolution system and analyze their impact on the cost of justice and access to justice.[132] But it focused only on the different types of representatives who appeared before the Board over a five-year period post-regulation.[133] Wiseman's study revealed paralegals "play virtually no role" in tenant representation[134] but "have

---

[127] *Ibid* at 4. The STRATCOM research, however, was only concerned with opinions, impressions and experience post-2007 (after regulation was implemented) and does not compare its findings, particularly the experiences and impressions of the public who used the services of licensed paralegals' services with the services of unlicensed paralegals pre-regulation. The study is further undermined, at least the part that canvasses the views of the public/users of paralegals' services, in that it includes the experiences and impressions of members of the public (28%) who retained the services of either unlicensed paralegals (post-2007) (or not independent paralegals) and/or paralegals providing services outside paralegal scope of practice: at 36.

[128] *Ibid* at 11.

[129] *Ibid* at 11-13.

[130] *Ibid* at 44-45.

[131] *Ibid* at 9, 21-22.

[132] David Wiseman, "Paralegals, the Cost of Justice and Access to Justice: A Case Study of Residential Tenancy Disputes in Ottawa" (19 November 2013) at 1, online (pdf): <cfcj-fcjc.org/sites/default/files//Paralegals%2C%20the%20Cost%20of%20Justice%20and%20Access%20to%20Justice%20-%20A%20Case%20Study%20of%20Residential%20Tenancy%20Disputes%20in%20Ottawa.pdf>. Wiseman's study covers five years post-paralegal regulation.

[133] *Ibid*.

[134] *Ibid* at 4.

established a significant role" in landlord representation, particularly corporate landlords.[135] The study did not explore the impact of representatives on case outcomes nor the cost of paralegals' services. Wiseman concluded that paralegals, who purportedly offer more affordable and accessible legal services than lawyers, are continuing to make a significant contribution to the resolution of residential tenancy disputes in Ottawa, but only for landlords and, largely, for corporate landlords."[136] This, Wiseman argues, raises fundamental questions about whether access to justice is actually being improved in the forum studied.[137]

Only Sean Rehaag's empirical study of the role of counsel at refugee determination hearings before the Immigration and Refugee Board (IRB) explores outcomes by representative type, including both lawyers and regulated non-lawyer immigration consultants.[138] At that tribunal, regulated immigration consultants are authorized by statute to represent claimants for a fee.[139] While Rehaag's study raised concerns over the quality of representation by immigration consultants and the regulatory scheme governing them, it also revealed many examples of "extremely well qualified and conscientious" immigration consultants who had long provided excellent representation before the

[135] *Ibid* at 5.

[136] David Wiseman, "Research Update: "Paralegals, the Cost of Justice and Access to Justice: A Case Study of Residential Tenancy Disputes in Ottawa" (29 June 2016), online (blog): <cfcj-fcjc.org/a2jblog/research-update-paralegals-the-cost-of-justice-and-access-to-justice-a-case-study-of-residential-tenancy-disputes-in-ottawa-2/>.

[137] *Ibid*.

[138] Sean Rehaag, "The Role of Counsel in Canada's Refugee Determinations System: An Empirical Assessment" (2011) 49:1 Osgoode Hall L J 71.

[139] *Immigration and Refugee Protection Act*, SC 2001, c 27, s 91. See also Immigration Consultants of Canada Regulatory Council, online: <https://iccrc-crcic.ca/about-us/>. That study reviewed over 70,000 refugee protection decisions before the IRB from 2005 to 2009: at 83. For each decision, a range of information was collected including counsel type and outcome: at 83. Counsel type was coded into four categories: lawyer, consultant, none, and other (such as family, friends, and others): at 84.

IRB's Refugee Protection Division.[140] The study found claimants succeed more often when they are represented by lawyers than by immigration consultants but also demonstrated claimants achieved significantly better outcomes when represented by immigration consultants than not represented at all.[141] Rehaag also found experienced counsel achieved better outcomes than inexperienced counsel.[142] Of note, the study revealed the same finding with respect to immigration consultants – that more experienced consultants achieved better outcomes than less experienced consultants.[143] This finding – that level of experience is an important factor affecting outcomes – is consistent with studies of lay representatives in other administrative settings.[144] Rehaag's study did not compare outcomes obtained by experienced immigration consultants and inexperienced lawyers. If it had done so, the results might have provided insight into whether experience, more than professional designation, is a key determinant of effective representation in that particular forum.

A few studies have examined the differences between the quality of work of non-lawyers and lawyers, particularly as advocates.[145] Moorhead argues that rules forbidding unqualified practice of law in the United States (as elsewhere) and the general restriction of non-lawyer work "to more marginal or the less socially controversial work" limit the occasions in which non-lawyers perform work

[140] Rehaag, *supra* note 138 at 111.

[141] *Ibid*.

[142] *Ibid* at 92.

[143] *Ibid* at 89-90.

[144] See Hazel Genn & Yvette Genn, *The Effectiveness of Representation at Tribunals: Report to the Lord Chancellor* (May 1989), online (pdf): <www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/effectiveness_of_representation_at_tribunals.pdf> [Genn & Genn]; Kritzer, *supra* note 72; Moorhead, Paterson & Sherr, *supra* note 74; Richard Moorhead, "Lawyers and Other Legal Service Providers" [Moorhead, "Lawyers and Others"] in Peter Cane & Herbert Kritzer eds, *The Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 785 at 799 [Cane & Kritzer].

[145] Moorhead, "Lawyers and Others", *supra* note 144 at 799. See also Kritzer, *supra* note 72 at 13.

that can be compared with work done by lawyers.[146] Thus, professional monopolies "are protected from empirical scrutiny in a way that more contested terrains are not."[147] Research into the effects of legal representation is rare because in many settings in which people might have lawyers, "legal representation is either so common or so unusual that it cannot serve as a variable."[148]

Four extensive studies have examined the effectiveness of (unlicensed) non-lawyer representation in administrative settings in the UK and USA. All examine case outcomes by representative type.[149] From these studies, it has generally been observed that specialization, not professional qualification, is the key determinant of quality.[150]

Hazel Genn and Yvette Genn's research of the effectiveness of representation (through outcomes) at administrative tribunals in Britain stemmed from debate over extending Legal Aid to tribunals and making effective use of the skills of lay advisers.[151] Although lay representation was permitted at most tribunals, the ability of applicants and appellants to obtain representation was restricted since Legal Aid was available for only a few specific tribunals and alternative sources of free advice and representation were limited.[152] The broad objectives of the research were to establish the effect of representation on the outcome of tribunal hearings and to analyze the contribution of

[146] Moorhead, "Lawyers and Others", *supra* note 144 at 799. See also Karl Monsma & Richard Lempert, "The Value of Counsel: 20 Years of Representation before a Public Housing Eviction Board" (1992) 26:3 Law & Soc'y Rev 627 at 628-629.

[147] Moorhead, "Lawyers and Others", *supra* note 144 at 799.

[148] Monsma & Lempert, *supra* note 146 at 627.

[149] Genn & Genn, *supra* note 144*;* Kritzer, *supra* note 72; Moorhead, Paterson & Sherr, *supra* note 74; Carpenter, Mark & Shanahan, *supra* note 72.

[150] Moorhead, "Lawyers and Others", *supra* note 144 at 799.

[151] Genn & Genn, *supra* note 144 at 1.

[152] *Ibid.*

representation to both pre-hearing processes and hearings themselves.[153] Its methodology consisted of quantitative analysis of data collected from tribunal files and qualitative research consisting of observation of hearings and interviews with tribunal chairs and adjudicators, representatives, appellants, applicants, and others.[154] The study concluded that in all the tribunals, the presence of a representative "significantly and independently" increased the probability that appellants and applicants would succeed in their case.[155] This conclusion, according to Tom Mullen, is "virtually unassailable" given the length to which the researchers went in attempting to isolate the effect of representation from other factors which might influence success at tribunal hearings.[156] Genn and Genn also found the type of representation to be important in all settings.[157] Specialist representation increased the likelihood of success at hearings, and at some tribunals, specialist lay representation was as effective as lawyer representation.[158] Genn and Genn's research also revealed that "few among the tribunals or representatives interviewed believed that lawyers were necessarily best equipped to conduct representation in tribunals."[159] All tribunals agreed that specialist skills were required[160] and the most common view was that specialization and experience were "the most important

[153] *Ibid* at 4. The study investigated the operation of four different types of tribunals: the Social Security Appeals Tribunal, Industrial Tribunals, Mental Health Review Tribunals and hearings before Immigration Adjudicators: at 6.

[154] *Ibid* at 7-8.

[155] *Ibid* at 243.

[156] Tom Mullen, "Representation at Tribunals" (1990) 53:2 Mod L Rev 230 at 230. See also Monsma & Lempert, *supra* note 146 at 629: They consider Genn and Genn's study as the "most sophisticated" since, by including non-lawyer representatives as well as lawyers, the researchers were able to conduct a multivariate analysis of the effects of representation before various informal English tribunals.

[157] Genn & Genn, *supra* note 144 at 243-44: In the Social Security appeal hearings, lay agencies specializing in welfare law had the greatest impact on the outcome of hearings. In immigration hearings, specialist lay representatives, along with solicitors and barristers, had the greatest impact.

[158] *Ibid* at 247.

[159] *Ibid* at 245.

[160] *Ibid* at 216.

qualifications for good representation."[161] It is noteworthy that Genn and Genn's study was commissioned to assist in the determination of whether public funds should be extended to tribunal representation.[162] The government was reluctant to do so without evidence of the need for, and effectiveness of, such representation.[163] The same concerns about cost, quality and access to representation are found in the Ontario government's access to justice rationale for paralegal regulation. Genn and Genn's conclusion that representation at the tribunals studied "contributes to more accurate decision-making and to the fairness of the process by which decisions are reached"[164] fits squarely within an access to justice approach.

Around the same time, Herbert Kritzer's study of lay advocates at administrative tribunals in Wisconsin addressed the "increasingly important topic of debate within the legal profession" of what non-lawyers should be permitted to do and how they should be regulated.[165] Overall, similar to Genn and Genn's findings, Kritzer concluded that expertise, or specialization, is central to effective advocacy.[166] His study employed a mixed methods research strategy combining statistical assessment of outcomes with observation of processes, surveys, and informal conversations in four tribunal settings.[167] The research findings varied. Kritzer concluded that the key determinant of effective

[161] *Ibid* at 245-46.

[162] *Ibid* at 1.

[163] *Ibid* at 1-2.

[164] *Ibid* at 248.

[165] Kritzer, *supra* note 72 at 11.

[166] *Ibid* at 201. See also Moorhead, Paterson & Sherr, *supra* note 74 at 795-96.

[167] Kritzer examined appeals of unemployment compensation claims, state tax appeals before the Wisconsin Tax Appeals Commission, appeals of denials of social security disability claims, and labour grievance arbitrations before arbitrators from the Wisconsin Employment Relations Commission: Kritzer, *supra* note 72 at 21-22.

advocacy "appears to be situation-specific experience" rather than legal training[168] which includes general advocacy skills, insider knowledge of specific hearing practices and players,[169] procedural expertise,[170] and technical expertise (such as having the right exhibits).[171] Kritzer concluded that "formal legal training is only one path to the skills and knowledge necessary for competent legal assistance and representation."[172] Specialists are able "to provide higher-quality services, and do so more efficiently, than … the generalist."[173] Based on this study, "an expert nonlawyer is preferable to a minimally competent lawyer" and it might therefore make sense "to facilitate the availability and use of expert nonlawyers" in certain settings.[174]

In the UK, Richard Moorhead, Avrom Sherr and Alan Paterson studied advice and assistance at administrative tribunals and collected a range of quantitative and qualitative data to understand the behaviour of solicitors and non-lawyer agencies and evaluate the quality of their work.[175] The researchers note the "presumption has traditionally been that lower-cost services, even with a potential diminution in quality, enable greater access to legal services … and that nonlawyer provision will give rise to such lower-cost and lower-quality provision"[176] and that the professions have attacked this as unfair competition or "justice on the cheap."[177] The study's results, however, questioned these

[168] *bid* at 77, 190, 201.

[169] *Ibid* at 76.

[170] *Ibid* at 108.

[171] *Ibid* at 149.

[172] *Ibid* at 203.

[173] *Ibid* at 212.

[174] *Ibid.*

[175] Moorhead, Paterson & Sherr, *supra* note 74 at 778.

[176] *Ibid* at 782.

[177] *Ibid.*

assumptions.[178] The researchers found that non-lawyers provided significantly improved quality (for some clients) but at significantly increased cost, turning the "'justice on the cheap' presumption about nonlawyer services … on its head."[179] Controlling for differences in case type, a cost-per-case analysis revealed that a case handled by a non-lawyer agency cost, on average, approximately double that of solicitors.[180] An assessment of relative quality was conducted through client satisfaction, the judgments of peer reviewers, and case outcomes.[181] Overall, the data revealed a statistically significant difference between solicitors and non-lawyer agencies in terms of quality.[182] Non-lawyer agencies received slightly higher client satisfaction ratings, got "significantly better" results, and their work on cases was more likely to be graded at higher levels of quality by experienced practitioners working in their field. Moorhead, Sherr and Paterson concluded that, at least in certain contexts, "nonlawyers are at least as capable of providing a satisfactory level of quality as their lawyer counterparts."[183] They argue that control over entry into legal practice, the years of legal education required, and the regulation of lawyers' conduct and competence had "done little or nothing to distinguish the lawyers from their nonlawyer competitors."[184] This study leads to a similar conclusion as the studies by Genn and Genn, and Kritzer, that "specialization, not professional status … appears to be the best predictor of quality."[185]

---

[178] *Ibid.*

[179] *Ibid* at 789.

[180] *Ibid* at 783.

[181] *Ibid* at 786.

[182] *Ibid* at 789.

[183] *Ibid* at 796.

[184] *Ibid* at 795.

[185] *Ibid.* See also Deborah J Cantrell, "The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers" (2004) 73:3 Fordham L Rev 883 at 885: Cantrell notes some research suggests specialist nonlawyers are more effective than generalist lawyers in certain circumstances.

In another study, Anne Carpenter, Alyx Mark and Colleen Shanahan investigated case outcomes and procedural behaviors for lawyer and non-lawyer representatives in unemployment insurance appeal hearings at Office of Administrative Hearings (OAH) in the District of Columbia.[186] Theirs is only the second original empirical study to examine non-lawyer practice in the United States.[187] The OAH offered a unique opportunity to examine lawyers and non-lawyers who practice in the same court and represent the same focal party – employers opposing the grant of unemployment benefits,[188] because the cases followed a predictable timeframe, typically resulted in a hearing, involved relatively narrow legal issues, and had essentially binary outcomes, all of which allowed for meaningful case comparisons across the dataset.[189] According to the authors, existing research suggests the relative formality and adversarial nature of a given court is relevant to understanding legal representation.[190] The results of quantitative analysis in the OAH study presented what the authors described as "an intriguing puzzle: where employers have non-lawyer representation, the non-lawyers appear in a minority of hearings—the most critical moment in the case. But when non-lawyers do show up to hearings, they engage in certain procedural steps and win cases at the same rates as lawyers."[191] In line with the results of previous studies, the researchers found that non-lawyers with specialized knowledge can help parties navigate basic procedures and basic substantive law.[192]

---

[186] Carpenter, Mark & Shanahan, *supra* note 72 at 1030-31. The authors examined a total of 5,150 cases.

[187] *Ibid* at 1024.

[188] *Ibid*.

[189] *Ibid* at 1030. Similar conditions exist for my WSIAT study.

[190] *Ibid*.

[191] *Ibid* at 1024.

[192] *Ibid*.

In summary, these studies of lay representatives in administrative tribunal settings indicate that not only is legal representation a determinant of outcomes, but also that experience and specialized knowledge or expertise, rather than formal legal training, are key determinants of effective advocacy and fair outcomes. This suggests non-lawyer advocates, when trained and experienced, can be at least as effective as attorneys in assisting people in pursuing their claims in tribunals.[193] As Moorhead, Sherr and Paterson put it, non-lawyers "can successfully challenge the monopolies of lawyers, without diminishing quality."[194] Against this background, I present my own research findings of paralegal representatives at WSIAT. Before doing so, however, I rehearse the views of other socio-legal researchers concerning the necessity and difficulty of empirical research in law.

B. Empirical Legal Research

Empirical legal scholarship offers the opportunity for objective assessment of the legal system.[195] Theodore Eisenberg points out that "[a]cross a broad range of legal issues, empirical studies can inform policymakers and the public" and provide "unique opportunities to enhance description and understanding of the legal system.[196] Empirical legal studies permit one "to draw conclusions about legal phenomena in a way that extends well beyond individual court decisions, personal biases, and anecdotes."[197] Drawing on the work of others, Christina Boyd offers a definition of empirical legal scholarship as relying "on objective observation and/or experience of some facet

[193] Rebecca L Sandefur, "The Impact of Counsel: An Analysis of Empirical Evidence" (2010) 9:1 Seattle J Soc Justice 51 at 79.

[194] Moorhead, Paterson & Sherr, *supra* note 74 at 796.

[195] Theodore Eisenberg, "Why Do Empirical Legal Scholarship?" (2004) 41:4 San Diego L Rev 1741 at 1741.

[196] *Ibid* at 1746.

[197] Christina L Boyd, "In Defense of Empirical Legal Studies" (2015) 63:2 Buff L Rev 363 at 364.

of the world."[198] The resulting data, and inferences drawn from the data, "hold the potential to advance *scientific knowledge* of the law and legal actors, something that differs rather significantly from," Boyd argues, quoting Buttolph Johnson & Joslyn, "'knowledge derived from myth, casual observation, intuition, belief, or common sense.'"[199] The goal is to use facts we know to learn about facts we do not know.[200]

The CBA recognizes a growing awareness of the "utility of increased empirical knowledge about the functioning of the justice system."[201] James Greiner asserts that achieving access to justice requires employing a new legal empiricism.[202] More empirical research in law is required and can transform the legal profession into an evidence-based field.[203] The new legal empiricism – strong empirical research applied to law – "involves investigations into how the current legal system works, and how to change the world for the better, however "better" is defined."[204] As Greiner describes it, once "the empirical questions to be explored have been identified, the empiricist must determine how to answer them" and there will always be several options to employ, including quantitative and qualitative techniques.[205] The new legal empiricism means beginning with a specific set of questions

[198] *Ibid* at 365, referencing Janet Buttolph Johnson & Richard A Joslyn, *Political Science Research Methods*, 3rd ed (Washington, DC: CQ Press, 1995) 1.

[199] Boyd, *supra* note 197 at 366, referencing Buttolph Johnson & Joslyn, *supra* note 198 at 19.

[200] Lee Epstein and Andrew D Martin, "Quantitative Approaches to Empirical Legal Research" in Cane and Kritzer, *supra* note 144 at 913 [Epstein & Martin].

[201] CBA, *Access to Justice Metrics*, *supra* note 1 at 3.

[202] D James Greiner, "The New Legal Empiricism & Its Application to Access-to-Justice Inquiries" (Winter 2019) 148:1 Daedalus 64 at 64, online: <www.amacad.org/publication/new-legal-empiricism-its-application-access-justice-inquiries>.

[203] *Ibid* at 65.

[204] *Ibid* at 65-66.

[205] *Ibid* at 67.

to be investigated that "are not value judgments masquerading as factual inquiries" but empirical.[206] Significantly, the investigator must follow the evidence where it leads, including "to unpopular conclusions," and must be "careful to explain the limits of the techniques she deploys."[207] All of this, Greiner points out, is new only to law.[208] Ultimately, policy choices must stand or fall on the basis of empirical evidence.[209] Craig Allan Nard describes empirical scholarship as "a window on the pathologies of the law [that] allows us to gauge the effect and efficiency, or lack thereof, of particular legal mechanisms" operating within society.[210] Empirical legal scholarship provides the profession with "a compass in our sometimes foggy legal waters."[211]

Empirical legal scholarship relies on objective observation and experience.[212] The development of data is critical to empirical legal research.[213] The metrics that help ensure good empirical legal studies include, among other things, utilizing measures that are both reliable and valid, accounting for alternative hypotheses, avoiding selection bias, documenting the data-generation process, and producing replicable results.[214] *Reliability* refers to the extent to which it is possible to replicate a measure, reproducing the same value on the same standard for the same

---

[206] *Ibid* at 69-70.

[207] *Ibid*.

[208] *Ibid*.

[209] Craig Allen Nard, "Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and Profession" (1995) 30 Wake Forest L Rev 347 at 349.

[210] *Ibid.*

[211] *Ibid.*

[212] Boyd, *supra* note 197 at 365; Lee Epstein and Gary King, "The Rules of Inference" (2002) 69:1 Chicago L Rev 1 at 2 [Epstein & King].

[213] Michael Heise, "The Past, Present and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism" (2002) 4 U Ill L Rev 827 at 829.

[214] Boyd, *supra* note 197 at 366.

subject at the same time; *validity* refers to the extent to which a reliable measure reflects the underlying concept being measured.[215] David Trubek identified two challenges of empirical inquiry. The first is getting the right facts – "separating what the observer wants to believe (bias) from the real facts."[216] Randomized design of a study reduces the impact of selection bias on measured outcomes.[217] The second challenge is to "reduce the information we receive about empirical reality to a comprehensible and testable set of propositions." According to Lee Epstein and Gary King, the key to measurement in empirical research "is that we abstract the right dimensions for our purposes, and that we measure enough dimensions…to capture all the parts that are essential to our research question."[218] The very nature of simplification and abstraction, however, "can be an open invitation for criticism."[219]

According to Trubek, "[e]mpiricists not only look at the law from the outside, but also make problematic what is taken for granted by those whose activities they study."[220] He argues in favour of a pragmatic approach to empirical inquiry:

> For scholars who employ legal methods factual inquiry in legal studies is necessary because law cannot be defined other than by the difference it makes in society, and empirical inquiry is necessary to determine what that is.[221]

---

[215] Epstein and Martin, *supra* note 200 at 908.

[216] David M Trubek, "Where the Action Is: Critical Legal Studies and Empiricism" (1984) 36:1 Stan Law Rev 575 at 580.

[217] Catherine R Albiston & Rebecca L Sandefur, "Expanding the Empirical Study of Access to Justice" (2013) Wis L Rev 101 at 106.

[218] Epstein & King, *supra* note 212 at 81.

[219] Boyd, *supra* note 197 at 368.

[220] Trubek, *supra* note 216 at 587.

[221] *Ibid* at 580-81.

Within this pragmatic approach, the question of whether non-lawyers are as skilled as lawyers, at least for some tasks, is an empirical one and "should be answered not with anecdotes, but with appropriately-gathered data."[222] The primary concerns driving quantitative empirical research include "the need to test reform efforts so as to determine whether they have been effective, or whether palliative energies have been misdirected."[223] As Linda Haller explains, "empirical studies have proved essential in testing theories critical of the public-regarding claims of professions themselves."[224] One way to test the claim that a monopoly is in the public interest is to consider how well non-professionals can provide a similar service.[225] Haller recognizes it is difficult to obtain comparative empirical data if a profession's monopoly is strictly enforced.[226]

According to Macdonald, reliable "non-anecdotal data is a foundational requirement for instrumentally useful empirical research into access to justice."[227] Some of the best empirical studies on access to justice in terms of accessing the official system (lawyers and courts), Macdonald points out, focus on the availability and impact of legal representation.[228] The bottom-line question in comparing different types of advocates is whether there is a difference in the results achieved.[229] The

[222] Cantrell, *supra* note 185 at 885.

[223] Roderick A Macdonald, "Access to Civil Justice" in Cane & Kritzer, *supra* note 144, 492 at 516 [Macdonald, "Access to Civil Justice"].

[224] Linda Haller, "Regulating the Professions" in Cane & Kritzer, *supra* note 144, 216 at 217.

[225] *Ibid* at 220.

[226] *Ibid* at 224. Haller cites tribunal work and legal aid as less lucrative areas of practice where researchers encountered a lax enforcement of boundaries that made it possible to compare the quality of services provided by professionals and non-professionals

[227] Macdonald, "Access to Civil Justice", *supra* note 223 at 495.

[228] *Ibid* at 504.

[229] Kritzer, *supra* note 72 at 20.

problem of access to civil justice "constitutes a necessity that can spur innovation, both in how we think about access to civil justice and in what we do about it."[230] Sandefur argues that:

> Choosing what solutions to employ in any given reform should be substantially an empirical question – that is, we should use empirical evidence to guide us in deciding … when a nonlawyer advocate or legal advice from a nonlawyer advisor would be sufficient, or when situations need fully qualified attorneys.[231]

As Macdonald puts it, good empirical scholarship on access to justice "needs a theory of what the statistics are meant to tell, how they can be interpreted, and where to find the 'dogs that are not barking.'"[232]

Methodologically, it is usually better to combine qualitative and quantitative data whenever possible because one can "learn different things from different types of data."[233] Qualitative approaches are distinct from quantitative ones.[234] Kirk and Miller explain that a qualitative observation identifies the presence or absence of something, in contrast to quantitative observation, which involves measuring the degree to which some feature is present.[235] Qualitative research does not depend on statistical quantification but attempts to capture and categorize social phenomena and their meanings.[236] According to Lisa Webley, while qualitative methods are generally understood to

---

[230] Sandefur, *supra* note 193 at 85.

[231] *Ibid.*

[232] Macdonald, "Access to Civil Justice", *supra* note 223 at 517.

[233] Herbert M Kritzer, "Conclusion: 'Research is a Messy Business' – An Archeology of the Craft of Sociological Research" in Simon Halliday & Patrick Schmidt, *Conducting Law and Society Research: Reflections on Methods and Practices* (New York: Cambridge University Press, 2009) 264 at 272.

[234] Lisa Webley, "Qualitative Approaches to Empirical Legal Research" in Cane & Kritzer, *supra* note 144, 927 at 927.

[235] Jerome Kirk & Marc L Miller, *Reliability and Validity in Qualitative Research.* (Beverly Hills, CA: Sage Publications, 1986) at 9.

[236] Webley, *supra* note 234 at 927-28.

be used for exploratory research and quantitative methods for explanatory research, both types may be used for descriptive studies – research designed to describe an issue, situation, problem or set of attitudes.[237] It is possible, though, to use qualitative research for exploratory, explanatory and descriptive research to draw causal inferences from the data.[238] Generally, quantitative or statistical data require human interpretation to give them meaning; qualitative data sometimes need to be quantified to provide some understanding of how frequently particular themes emerge within the data.[239] Webley explains that it is "difficult to provide a precise or widely accepted definition of qualitative research and the theory underpinning it because so much of the terrain is contested."[240] As Webley puts it,

> The two [qualitative and quantitative] methodological traditions rest on different epistemologies—quantitative methods are often associated with deductive reasoning while qualitative methods often rely heavily on inductive reasoning. Deductive reasoning is based on a general hypothesis posed before data collection begins whereas inductive reasoning seeks to derive general themes or patterns from the data collected as the research progresses."[241]

While qualitative research often uses some form of quantification, statistical forms of analysis are not viewed as central.[242] Qualitative research should produce explanation and arguments, rather than claim to offer mere descriptions.[243] Jennifer Mason argues that:

---

[237] *Ibid* at 928.

[238] *Ibid.*

[239] *Ibid* at 930.

[240] *Ibid* at 929.

[241] *Ibid.*

[242] Jennifer Mason, *Qualitative Researching*, 2nd ed (London, UK: Sage Publications, 2002) at 4.

[243] *Ibid* at 7.

> The elements which a researcher chooses to see as relevant for a description or exploration will be based, implicitly or explicitly, on a way of seeing the social world, and on a particular form of explanatory logic. What I am advocating is that qualitative researchers recognize that they are producing arguments, and are explicit about the logic on which these are based.[244]

According to Hwong, quantitative and qualitative research approaches "can complement each other in knowledge discovery."[245]

This chapter now turns to my research findings.

III. RESEARCH FINDINGS & DATA ANALYSIS

The research – WSIAT study and online survey – examined whether paralegal regulation has increased access to justice. The WSIAT study sought to empirically determine whether the use of paralegals as representatives at WSIAT increased post-regulation. If regulation increased the availability and therefore choice of legal service provider, it was expected the data would reveal a significant increase in paralegal representatives post-regulation. This study also sought to empirically test whether paralegals at this particular tribunal are more competent post-regulation. If the government's promise of paralegals' increased competence post-regulation, it was expected the data would reveal that paralegals obtained an increase in positive appeal outcomes post-regulation compared to consultants pre-regulation. Since the government promised regulated paralegals would be an affordable alternative to lawyers, it was expected the survey data would reveal that paralegals charge less than lawyers for their services. The WSIAT study employs quantitative analysis of an

[244] *Ibid* at 7-8. See also Webley, *supra* note 234 at 931.

[245] Hwong, *supra* note 91 at 196.

originally compiled dataset.[246] That study is combined with qualitative methods (an exploratory survey) to assist in understanding the findings of the WSIAT study and also to gather further data that the WSIAT study could not provide.

Three key findings emerge from this research which, collectively, do not support the government's promises that increased access to justice would result from regulation of paralegals, nor the Law Society's claims[247] that it has. At this particular tribunal, the data show, there was no statistically significant increase in the public's choice of paralegal representatives but, instead, a statistically significant increase in lawyer representatives over non-lawyer representatives. While the data show an increase in positive outcomes obtained by paralegals post-regulation, the finding is not statistically significant. While this is a positive result overall, the lack of statistical significance of an increase in competence post-regulation means it could be a random occurrence. In terms of cost, the survey data reveal that paralegals at WSIAT charge substantially less than lawyers for their services. These findings are specific to this tribunal over the time periods studied.

The data were analyzed and are presented here in the context of the three promises of paralegal regulation for increased access to justice, as defined in this dissertation – choice, competence, and cost.

A. Choice

Table 8 sets out the distribution of representative types at WSIAT, in both the pre- and post-2007 years of the study, by the number of appeals in which each representative type appeared for

[246] All data was analyzed using STATA/IC statistical analysis software.

[247] See Chapter 3, fn 7, herein.

the appellant. The data in this Table address whether paralegal regulation resulted in increased choice of paralegal representatives.

TABLE 8: WSIAT DATA: APPEAL TOTALS AND CHANGE BY REPRESENTATIVE TYPE

2004 – 2006			2015 - 2017			
Appellant Rep by Type	**Total Appeals**	**% of total appeals by Rep type**	**Appellant Rep by Type**	**Total Appeals**	**% of total appeals by Rep type**	**% CHANGE**
LAWYERS	**141**	19.97%	LAWYERS	**183**	25.63%	+ 5.66%
CONSULTANTS	**276**	39.09%	PARALEGALS	**307**	43%	+ 3.90%
OTHERS	**289**	40.93%	OTHERS	**224**	31.37%	- 9.56%
TOTAL	706	100%		714	100%	

As Table 8 reveals, there was an increase in paralegal representatives at WSIAT post-regulation (about 4%) compared to consultants prior.[248] What is more interesting, however, is that the data show that lawyer representatives increased by almost 6%, and other representatives decreased by almost 10%. For the purposes of analysis of the change in numbers, or choice of representative, the data can be simplified, as set out in Table 9, by showing total appeals by representative type both pre and post-regulation.

[248] Consistent with the WSIAT study, the survey data reveal that 31% of WSIAT paralegals believe there are more paralegal representatives at WSIAT post-regulation, while 11% believe there are less, and another 11% believe the number is about the same as it was pre-regulation. (For this question, 47% of respondents indicated they did not know or preferred not to answer.)

TABLE 9: WSIAT DATA: TOTAL APPEALS BY REPRESENTATIVE TYPE

	2004-06	2015-17	Total
Lawyers	141	183	324
Consultants/Paralegals	276	307	583
Others	289	224	513
Total	706	714	1,420

Analysis of the data in Table 9 reveals a statistically significant difference in the numbers of representatives by type post-regulation.[249]

The number of appeals by representative type were further analyzed by comparing only the total number of consultants/paralegals to lawyers, both pre- and post-regulation, as set out in Table 10.

[249] X^2 (2, *N* = 1,420) = 15.28, *p* = < .001. A p value of less than .05 is statistically significant, meaning the result in this analysis, the change in number of representative types, is not a random occurrence – it did not happen by chance.

In this chapter, all data analysis to determine statistical significance was conducted using a chi-square test. A chi-square test is used to determine association or relationship between two categorical variables, to examine whether two independent variables are independent of each other: Winthrop University Hospital, "What Exactly is a Chi-Square Test Doing?", online: <https://nyuwinthrop.org/wp-content/uploads/2019/08/chi-square-test.pdf#:~:text=What%20is%20a%20Chi-Square%20test%3F%20A%20Chi-Square%20test,is%20also%20known%20as%20theChi-Square%20test%20of%20independence>; Abhiraj Suresh, (27 November 2019), online, *Analytics Vidhya*: <https://www.analyticsvidhya.com/blog/2019/11/what-is-chi-square-test-how-it-works/>.

TABLE 10: TOTAL APPEALS BY REPRESENTATIVE TYPE: LAWYERS COMPARED TO CONSULTANTS/PARALEGALS

	2004-06	2015-17	Total
Lawyers	141	183	324
Consultants/Paralegals	276	307	583
Total	417	490	907

Analysis of the data in Table 10 reveals no statistical significance in the number of consultant/paralegal representatives compared to lawyer representatives post-regulation compared to pre-regulation.[250] This result does not support increased use of paralegal representatives compared to lawyer representatives at WSIAT post-regulation.

The data (in Table 9) were then analyzed to compare the total number of all non-lawyer representatives (consultants/paralegals and others) to lawyers, both pre- and post-regulation, as set out in Table 11.

TABLE 11: TOTAL APPEALS BY REPRESENTATIVE TYPE: LAWYERS COMPARED TO NON-LAWYERS

	2004-06	2015-17	Total
Lawyers	141	183	324
Consultants/Paralegals + Others	565	531	1,096
Total	706	714	1,420

[250] X^2 (1, N = 907) = 1.22, p = .26.

This analysis (consistent with the analysis comparing all representative types in Table 9), reveals that the increase in use of lawyers compared to the decrease in the use of non-lawyer representatives (both regulated and not) post-regulation is a statistically significant finding.[251] This is an unexpected result given the increased choice rationale of paralegal regulation. It is possible that some of the other representatives became licensed, which might explain, at least partially, the decrease in other representatives and increase in the use of paralegal representatives post-regulation. Significantly, the data demonstrate that post- paralegal regulation, appellants chose a lawyer rather than a paralegal to represent them in their WSIAT appeal to a statistically significant extent. This detectable pattern is not a positive result, but the data do not reveal the reason for this statistically significant increase in the use of lawyer representatives following the regulation of paralegals.

The government's promise of increased choice of non-lawyer legal service provision is, therefore, not seen in actual practice at WSIAT. Instead, the data show the government's promise is turned on its head. Regulated paralegals were not the increased choice at WSIAT post-regulation – lawyers were. Not only is this finding statistically significant, it is also significant from a policy perspective. Paralegal regulation was premised on increased access to non-lawyer legal service providers, but that is not borne out by this WSIAT study in terms of appellants' choice of representative.

[251] X^2 (1, N = 1,420) = 6.45, p = .01.

B. Competence

The complete dataset of outcomes by representative type is set out in Table 12. This part of the study focuses on outcomes obtained by appellant representative type (whether the appellant is a worker or employer)[252] since it is the appellant who bears the onus of proof. The data was not further broken down nor analyzed by appellant type (worker or employer) since the study revealed too few employer-initiated appeals. Table 12 shows that the percentage of positive outcomes obtained by each category of representative increased post-regulation and that paralegals achieved the greatest increase compared to pre-regulation outcomes obtained by consultants.

TABLE 12: WSIAT DATA: OUTCOMES BY REPRESENTATIVE TYPE

2004 – 2006				**2015 - 2017**				
Appellant Rep by Type	**Appeal Outcomes**		**% Positive Outcomes of total appeals**	**Appellant Rep by Type**	**Appeal Outcomes**		**% Positive Outcomes of total appeals**	**% points CHANGE**
LAWYERS	positive outcomes	**86**	60.99%	LAWYERS	positive outcomes	**115**	62.84%	+ 1.85%
	denied	55			denied	68		
	TOTAL	141			TOTAL	183		
CONSULTANTS	positive outcomes	**150**	54.35%	PARALEGALS	positive outcomes	**191**	62.21%	+ 7.87%
	denied	126			denied	116		
	TOTAL	276			TOTAL	307		
OTHERS	positive outcomes	**172**	59.52%	OTHERS	positive outcomes	**141**	62.95%	+ 3.43%
	denied	117			denied	83		
	TOTAL	289			TOTAL	224		
TOTAL	positive outcomes	**408**	57.79%	TOTAL	positive outcomes	**447**	62.61%	+ 4.81%
	denied	298			denied	267		
	TOTAL	706			TOTAL	714		

[252] In employer appeals, workers and their representatives are often not present because in many cases the issues do not concern the worker. Similarly, there are many worker appeals where employers and their representatives do not attend. This is seen in this study and appears to be the pattern at WSIAT. See, for example, *Annual Report 2005*, *supra* note 78 at 39; WSIAT, *Annual Report 2009* (2010) at 47, online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2009.pdf>.

i. Outcomes by Representative Type

The main focus of the data analysis of outcomes by representative type is on the change in outcomes obtained by paralegals post-regulation compared to consultants pre-regulation. But, for purposes of comparison, it is useful to also analyze the changes in outcomes obtained by all representative types.

a. Paralegals' Outcomes

The data were first analyzed to determine how outcomes obtained by paralegals post-regulation compared to outcomes obtained by consultants pre-regulation, as set out in Table 13. This analysis is central to this dissertation's research: whether regulation increased paralegal competence.

TABLE 13: PARALEGALS' OUTCOMES POST-2007 COMPARED TO CONSULTANTS' OUTCOMES PRE-2007

	Pre-2007	**Post-2007**	**Total**
Positive Outcomes	150	191	341
Denied	126	116	242
Total	276	307	583

While the data in Table 12 (WSIAT Data Outcomes) show paralegals achieved an increase (of almost 8 percentage points) in positive outcomes post-2007 compared to consultants prior, analysis of the data (in Table 13) indicates the increase is not statistically significant[253] – that is, it is a random

[253] X^2 (1, *N* = 583) = 3.70, *p* = .054. To be statistically significant, p value must be less than 0.05.

occurrence. To be clear, analysis of this data reveals no statistically significant difference in paralegal competence post-regulation, which is a critical finding – the conclusion is that, at WSIAT, actual practice falls short of the government's promise and the Law Society's claims of increased competence resulting from regulation. This lack of statistical significance is a critical finding.

Although this increase in positive outcomes is not statistically significant, it is on the margin of statistical significance. Given this result, an interesting question arises: What if the WSIAT study revealed slightly different results, for example, that paralegal representatives had obtained just *one more* positive outcome (and, correspondingly, one less appeal denied, where, the total number of appeals remained constant) post-regulation? The hypothetical data, as set out in Table 14, was analyzed.

TABLE 14: *HYPOTHETICAL* PARALEGALS' OUTCOMES POST-2007 COMPARED TO CONSULTANTS' OUTCOMES PRE-2007

	Pre-2007	**Post-2007**	**Total**
Positive Outcomes	150	***192***	***342***
Denied	126	***115***	***241***
Total	276	307	583

Analysis of this *hypothetical* data (adding just one more positive outcome than the study actually found) would result in a statistically significant finding.[254] That is, the analysis would reveal a detectable pattern and not a random occurrence. This suggests that if the WSIAT study is expanded and data collected for more years – another three years post-regulation, 2018 – 2020, for example –

[254] X^2 (1, N = 583) = 4.02, p = .045.

it is likely that analysis of the data would demonstrate a different and statistically significant result in outcomes obtained by paralegals post-regulation.

b. Lawyers' Outcomes

The data were then analyzed to compare lawyers' outcomes pre- and post-regulation as set out in Table 15. As Table 12 (WSIAT Data Outcomes) shows, lawyers obtained positive outcomes at a slightly higher rate (2 percentage points) in the post-regulation years.

TABLE 15: LAWYERS' OUTCOMES PRE AND POST-REGULATION

	Pre-2007	**Post-2007**	**Total**
Positive Outcomes	86	115	201
Denied	55	68	123
Total	141	183	324

The difference in lawyers' outcomes before and after regulation is not statistically significant,[255] which is not a surprising result. It would be expected that paralegal regulation would not have had any impact on lawyers' competence and, as this analysis confirms, it did not in the context of representation at WSIAT.

c. Others' Outcomes

For further comparison, the data (in Table 12) concerning outcomes obtained by others post-regulation compared to pre-regulation were analyzed, as set out in Table 16.

[255] X^2 (1, N = 324) = 0.11, p = .73.

TABLE 16: OTHERS' OUTCOMES PRE AND POST-REGULATION

	Pre-2007	Post-2007	Total
Positive Outcomes	172	141	313
Denied	117	83	200
Total	289	224	513

This analysis reveals no statistically significant change in positive outcomes obtained by others post-regulation compared to pre-regulation.[256] This is an expected result since the paralegal regulatory scheme did apply to representatives in the other category who were exempt from regulation.

d. All Non-lawyers' Outcomes

For further comparison, the data (in Table 12) concerning outcomes obtained by all non-lawyers (consultants/paralegals and others) post-regulation compared to pre-regulation were analyzed, as set out in Table 17.

TABLE 17: NON-LAWYERS' OUTCOMES PRE AND POST-REGULATION

	Pre-2007	Post-2007	Total
Positive Outcomes	322	332	654
Denied	243	199	442
Total	565	531	1,096

[256] X^2 (1, N = 513) = 0.62, p = .42.

This analysis reveals no statistically significant change in positive outcome obtained by all non-lawyers post-regulation compared to pre-regulation.[257]

ii. Outcomes Overall

The data in Table 12 (WSIAT Data Outcomes) show an overall increase of almost 5 percentage points in positive outcomes post-regulation compared to pre-regulation. To compare outcomes at WSIAT generally, analysis of the data set out in Table 18 was conducted.

TABLE 18: TOTAL WSIAT OUTCOMES COMPARISON

	Pre-2007	**Post-2007**	**Total**
Positive Outcomes	408	447	855
Denied	298	267	565
Total	706	714	1,420

The increase in overall positive outcomes post-regulation compared to pre-regulation is not statistically significant,[258] suggesting there was not a trend up or down of decision outcomes by this tribunal so as to be a potential influencer of outcomes by representative type either pre- or post-regulation.

The above analyses of outcomes by representative type leads to two further conclusions: 1) that the implementation of paralegal regulation is likely to have a greater long-term impact on paralegals than lawyers, and ultimately the public, in enhancing access to justice in terms of

[257] X^2 (1, N = 1,096) = 3.48, p = .06.

[258] X^2 (1, N = 1,420) = 3.43, p = .06.

competent legal service provider (cost of services would also be a factor, discussed in the next section); and 2) if more data concerning outcomes by representative type at WSIAT are collected for more years, it is likely that a detectable pattern will emerge. That is, the data will likely show a statistically significant increase in positive outcomes obtained by paralegals at WSIAT. Such a result, however, might be explained or at least qualified by paralegals' experience and expertise rather than paralegal regulation. Ultimately, the WSIAT study's findings demonstrate that more research is required in future.

iii. Outcomes: Paralegals Compared to Lawyers

It is useful to compare outcomes overall – that is, outcomes achieved by both paralegals post-regulation and consultants pre-regulation compared to outcomes achieved by lawyers – even though doing so does not directly address the focus of this research study: did regulation increase the choice and competence of paralegals? Comparing the data in this way provides insight into how paralegals fare in terms of positive outcomes achieved relative to lawyers.[259] The data in Table 12 (WSIAT Data Outcomes) reveal that post-regulation, paralegals obtained positive outcomes at almost the same rate as lawyers. For comparison, the data was first analyzed to compare paralegals' outcomes to lawyers' outcomes post-regulation, as shown in Table 19.

TABLE 19: OUTCOMES BY PARALEGALS COMPARED TO LAWYERS POST-2007

	Positive Outcomes	**Denied**	**Total**
Paralegals	191	116	307
Lawyers	115	68	183
Total	306	184	490

[259] See Laura K Abel, *supra* note 71 at 299: it is generally assumed that lawyer representation is a key indicator of fair and accurate outcomes.

The data show no statistically significant difference in outcomes obtained by paralegals compared to lawyers post-regulation.[260] From a competence perspective, data analysis reveal paralegals to be about as competent representatives as lawyers at WSIAT post-regulation. It is useful to similarly compare outcomes obtained by consultants pre-regulation to determine how they fared, unregulated, relative to lawyers. The data as set out in Table 20 were analyzed to compare consultants' outcomes to lawyers' outcomes pre-regulation.

TABLE 20: OUTCOMES BY CONSULTANTS COMPARED TO LAWYERS PRE-2007

	Positive Outcomes	Denied	Total
Consultants	150	126	276
Lawyers	86	55	141
Total	236	181	417

While the data in Table 12 (WSIAT Data Outcomes) show that pre-regulation, consultants obtained positive outcomes at a lower rate (about 7 percentage points) than lawyers did, the analysis of the data in Table 20 reveals that the difference in consultants' outcomes and lawyers' outcomes pre-regulation is not statistically significant.[261]

In the result, comparing outcomes obtained by lawyers compared to paralegals and consultants over the two time periods reveals that there is no statistically significant difference between positive outcomes obtained by lawyers compared to outcomes obtained by consultants pre-

[260] X^2 (1, N = 490) = 0.01, p = .89.

[261] X^2 (1, N = 417) = 1.67, p = .19.

regulation nor compared to outcomes obtained by paralegals post-regulation. This finding demonstrates that non-lawyers, whether regulated or not, are about as capable and competent as lawyers as representatives at WSIAT. This finding is consistent with previous studies by Genn & Genn, Moorhead et. al., Kritzer, and Carpenter et. al. that non-lawyer competence is attributable to experience and expertise rather professional qualification.[262]

To summarize, the WSIAT study reveals a few statistically significant findings about choice and competence: 1) Post-regulation, the use of lawyer representatives at WSIAT increased, and the use of paralegal representatives decreased; 2) Regulation did not increase paralegal competence. Both these findings are contrary to the government's promise of increased choice and competence and contrary to the Law Society's claims of increased competence; and 3) This study demonstrates non-lawyer competence compared to lawyer competence – that non-lawyers, whether regulated or not, are as competent as lawyers in representing appellants at WSIAT, both pre and post-regulation.

iv. Survey Findings

Survey participants were identified from the WSIAT data for the post-regulation years (2015 – 2017) and are referred to herein as "WSIAT paralegals." The survey revealed WSIAT paralegals' opinions about competence and data about their years of experience and expertise.

a. Opinions re: Paralegals' Competence

The overwhelming majority (93%) of WSIAT paralegals believe that since regulation, paralegals are as capable as, or more capable than, lawyers as representatives at WSIAT. By

[262] See Moorhead, "Lawyers and Others", *supra* note 44 at 799; Genn & Genn, *supra* note 144 at 245-247; Kritzer, *supra* note 72 at 77, 190, 201-203; Moorhead, Paterson & Sherr, *supra* note 74 at 795; Carpenter, Mark & Shanahan, *supra* note 72 at 1024.

comparison, 59% of paralegals surveyed believe that prior to regulation, paralegals were as capable as, or more capable than, lawyers. This seems to suggest that about a third of respondents believe that regulation has increased paralegals' competence at WSIAT relative to lawyers' competence. Paralegals' competence is borne out by the WSIAT study. A further or expanded study, of more post-regulation years, might reveal a statistically significant trend in positive outcomes obtained by paralegals post-regulation.

In addition, 67% of WSIAT paralegals believe that paralegals, generally, provide higher quality services as a result of being regulated, while 23% believe regulation has not resulted in higher quality services. The survey data do not disclose the basis for these opinions. It is possible they are based on direct knowledge of paralegals at WSIAT and/or the assumption that regulation actually ensures competence, as the Law Society claims that it has.

b. Experience and Expertise

These findings concerning competence and quality of paralegals' services are interesting in light of what the data reveal about the experience and expertise of WSIAT paralegals.[263] Their experience providing legal services in workplace safety and insurance (WSI) matters ranges from six to 35 years. More than 80% have over ten years' experience; more than 50% have over 20 years' experience. By way of expertise, the practice of the overwhelming majority (90%) of WSIAT paralegals

[263] "Experience" refers to accumulated knowledge; practical knowledge or skill from extensive participation (as in number of years) in a particular job or activity. "Expertise" refers to special or extensive skill, knowledge or judgement in a particular field acquired by practice; proficiency; speciality: Collins English Dictionary, online: <https://www.collinsdictionary.com/dictionary/english>.

is primarily (75% or more) WSI matters. (For 38% of WSIAT paralegals, their practice is exclusively WSI matters.) These paralegals – the 90% whose practice is primarily WSI matters – are considered *specialists* for the purposes of this research. In terms of clientele, the overwhelming majority (71%) of WSIAT paralegals represent workers.

In summary, experience and expertise, rather than regulation, might explain the increase in paralegals' positive outcomes and their competence compared to lawyers, consistent with the findings of previous studies of non-lawyer competence. Experience and expertise, or specialization, might also explain this study's findings about consultant/paralegal competence, especially if competence is defined in terms of substantive and procedural legal knowledge. This is particularly important since neither substantive nor procedural legal knowledge was included in the Law Society's paralegal licensing exam, and therefore not tested, until mid-2015.[264]

c. Specialists' Views of Paralegal Competence

The analysis reveals two particularly interesting findings concerning WSIAT paralegals' opinions about competence. The vast majority (95%) of *specialist* WSIAT paralegals believe that since regulation, paralegals are as capable or more capable than lawyers as WSIAT representatives; 64% of *specialists* believe that, before regulation, consultants were as capable as lawyers at WSIAT, suggesting a widespread belief among WSI specialist paralegals that regulation had a significant positive effect on paralegals' competence compared to lawyers' competence at WSIAT. This finding

[264] See Chapter 3, Part II, B, n 323. Paralegal licensing candidates are required to successfully complete a college paralegal diploma program in order to be eligible to write the licensing exam, and while the Law Society sets the curriculum and approves individual college programs, these programs are administered by third parties.

is generally consistent with the WSIAT study finding that both pre- and post-regulation, non-lawyers were about as capable as lawyers in obtaining positive outcomes at WSIAT.

C. Cost

Employing an exploratory approach, the online survey was conducted to gather information about the cost of paralegals' services and their billing practices, and also to raise potentially useful questions for future research into licensed paralegals' role in increasing access to justice in terms of the cost of services. This is not information that could be gleaned from the WSIAT study.

The online survey data reveal a range of fee rates and billing practices. An interesting finding is that the majority of WSIAT paralegals (57%) charge by contingency fee. The next most common billing method is the hourly rate followed by flat fees, and alternative billing arrangements such as union membership fees. This differs from lawyers who mostly bill hourly. Across Canada, almost 90% of lawyers charge by the billable hour, 63% use flat rates, and 34% rely on contingency fees.[265] The five most common factors that affect how WSIAT paralegals charge for their services are, starting with the one most cited, the time and effort involved, complexity or difficulty of the matter, the paralegal's experience and ability, type of matter, and the results or outcome obtained.

Analysis of the survey data explored relationships among fees and experience, client type, specialization and practice location. While one might reasonably expect fees to be higher with more

[265] Marg. Bruineman, "Steady Optimism: Lawyers Surveyed in Canadian Lawyer's 2019 Legal Fees Survey Say Fee Reductions Are Unlikely", *Canadian Lawyer* (8 April 2019) at 20, online: <www.canadianlawyermag.com/surveys-report/legal-fees/steady-optimism-2019-legal-fees-survey/276027> [Legal Fees Survey]. This finding is consistent with previous years 2017 & 2018. The author does not explain why the figures do not add up to 100%. Presumably most lawyers employ more than one billing method.

experience, as they are for lawyers,[266] that is not what analysis of the data reveal. Interestingly, there is no statistically significant relationship between years of experience and either the contingency fee or hourly rate charged, and no discernable patterns emerge from the data.

i. Contingency Fee

Contingency fee rates charged by WSIAT paralegals vary from less than 20% up to 40%, although the most common average contingency rate charged (by 42% of WSIAT paralegals) is in the 21-25% range. The second most common rate is 26-30%. The most common contingency rate charged by almost half of worker representatives is 21-25%, and the second most common rate charged is 26-30%. Most (87%) of WSIAT paralegals who charge a contingency fee are specialists.

ii. Hourly Rate

Hourly rates vary from less than $100 up to $300 per hour. The most common hourly rate, (charged by 30% of WSIAT paralegals) is between $151-200 per hour. The data also reveal, which is important for access to justice, that WSIAT paralegals charge workers less per hour than they charge employers. Most worker representatives charge up to $150 per hour. By contrast, three-quarters of employer representatives charge $150-250 per hour.

It is difficult to validate or compare the survey data concerning the cost of services since there is no published data, or none found, about the of cost paralegals' services, either for those who

[266] As the Legal Fees Survey reveals. A comment about experience is warranted. As this study shows, the experience of WSIAT paralegals is mostly WSI-specific experience, as most paralegals specialize in this area of law. Given the majority of survey participants appeared as representatives at WSIAT both pre- and post-regulation, most have many years of experience before regulation was implemented. For lawyers, years of experience is, or tends to be, measured from their year of licensing. So, in comparing experience in this survey between WSIAT paralegals and lawyers, that experience is not measured in the same way.

appear as representatives at WSIAT or generally. There is also no published data concerning fees charged by lawyers for WSIAT matters specifically. The only published data about lawyers' fees and billing practices is Canadian Lawyer magazine's annual Legal Fees Survey. The 2019 Survey is used as a comparator. It canvasses lawyers' fees by hourly rate (the only useful comparison to the WSIAT paralegals' survey data) across Canada by years of experience, practice setting and practice area, with employment and labour being the closest match to workplace safety and insurance matters.

To address the government's assurance that paralegal regulation would provide an affordable alternative to lawyers' services, the data from this study about the cost of paralegals' services is compared to lawyers' fees and billing practices as set out in the Canadian Lawyer's Annual Fees Survey for 2019.[267] Table 21 compares the hourly rates of paralegals to lawyers' hourly rates.

[267] Legal Fees Survey, *supra* note 266.

TABLE 21: HOURLY RATE COMPARISON: LAWYERS AND PARALEGALS

LAWYERS	Experience	PARALEGALS at WSIAT*
	11-20 years	
practice setting 1-4 lawyers	$348.82	$151-200 (most common, charged by 57% of paralegals with 11-20 years' experience)
Ontario	$401.60	
practice area: labour & employment	$447.62	
	20+ years	
practice setting 1-4 lawyers	$415.50	$100-150 (most common, charged by 44% of paralegals in 20+ years group)
Ontario	$497.74	
practice area: labour & employment	$447.62	
*Analysis of the data reveals no statistically significant relationship between hourly rate by practice setting. But the data do show that: 1) in the 1-4 practice setting: 55% of paralegals charge $100-200 per hour (not broken down by years of experience), and 2) Over 90% of paralegals' practice is concentrated (75% or more) on WSI matters.		

iii. Flat Fee

For those who charge a flat fee, it was, on average, less than $5,000 over their last three clients for the majority of WSIAT paralegals (89%) who charge by flat fee.

iv. Cost of Services Post-Regulation Compared to Pre-Regulation

The only survey data gathered about the cost of paralegals' services pre-regulation sought paralegals' opinion as to whether fees for WSI matters increased, decreased or remained the same

post-regulation. While 42% of WSIAT paralegals believe fees have increased since regulation; almost 20% believe fees have remained the same.[268]

v. Summary

The survey explored the cost of WSIAT paralegals' services. The most interesting findings that emerge are: 1) the contingency fee is the most common billing method; 2) the most common contingency fee rate is 21-25%; 3) neither the most experienced paralegals nor specialists necessarily charge more for their services than less experienced paralegals or those whose practice is less specialized; and 4) WSIAT paralegals charge a substantially less hourly rate than lawyers charge – the most common hourly rate charged by WSIAT paralegals is $151-200.

D. Other Findings: Practice Setting and Location

Beyond the focus of this dissertation's research questions, the survey data also reveal important findings with respect to paralegals' practice setting and location, which are relevant to access to justice policy concerns. The survey data reveal that over half (52%) of WSIAT paralegals practice on their own or with another paralegal or lawyer. The most common practice setting is as a sole practitioner (38%). In terms of location, the data reveal that 50% of WSIAT paralegals practice in the City of Toronto while the remainder are scattered throughout the province. Outside Toronto, the

[268] In hindsight, this question could have been more clearly worded. It asked paralegals if they believe that "since regulation was implemented" paralegals' fees have increased, decreased or remained the same. For clarity and to assist with data analysis, the question should have been differently worded to ask, "as a result of regulation" instead of "since".

next highest concentration of paralegals is in the Southwest region (19%), followed by Central South (14%) region.[269] The survey data also reveal that 43% of worker representatives practice in Toronto.[270]

IV. LIMITATIONS OF THE RESEARCH

As the data show, both workers and employers used a range of representative types for WSIAT appeals both before and after regulation. For the WSIAT study, the data was not further striated to compare outcomes in worker appeals and employer appeals. Employer appeals represent too small a sub-sample of the dataset (only 10%). This study also did not isolate and analyze as a separate category those appeals in which both a worker and employer representative appeared – in only 30% of decisions in the dataset both the worker and employer participated, and this was too small a sample to analyze.[271] Further research might be useful to examine the effect of representation by outcomes and representative type when both sides participate and are represented at an appeal.

This study cannot tell us why WSIAT appellants chose a lawyer over a paralegal representative post-regulation. It might be that the cost of licensing made paralegals a less affordable choice than they had been prior to regulation. Further research is required on this point.

---

[269] The data show there is at least one practising paralegal in every region in Ontario. The regions are the Law Society of Ontario's bencher electoral regions: *Law Society Act*, RSO 1990, c. L-8, By-law 3, s 6. Southwest region is composed of the counties of Elgin, Essex, Huron, Kent, Lambton, Middlesex, Oxford, and Perth; Central South region is composed of the County of Brant, and the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth, Niagara, and Waterloo: Law Society of Ontario, online: <https://lso.ca/about-lso/governance/bencher-election-2019/bencher-election-2015>.

[270] This might have implications for workers' access to paralegals for workplace safety and insurance matters elsewhere in Ontario. For the purposes of this research, choice has been discussed in terms of numbers (availability) but geographical location might also be a factor that should be considered in terms of access.

[271] See Table 7: WSIAT Study Data Collection Table, *infra.* In addition, one would need to consider multiple (over twenty) combinations of representatives, for example: lawyer on one side and consultant, lawyer, paralegal, OWA, OEA, union, or self on the other; and the same for consultant on one side, and paralegal on one side.

While outcomes are a reliable measure of service provider competence and quality of service, one must be cautious in drawing conclusions about the quality of representation and representative type from hearing outcomes. A focus on outcomes does not provide a full picture of the effectiveness of representation. The effectiveness of legal representation encompasses more than case outcomes.[272] As Albiston & Sandefur point out, randomized controlled trials that explore the impact of advocacy on outcomes "can tell us whether or not the representation improves outcomes, but they often provide little information about *why* representation mattered."[273] Advocate effectiveness involves a set of inter-related elements such as recognition of the core questions at issue, the quality of questioning of witnesses, and preparation of the client for a hearing.[274] Even the most effective advocate will not win every case as sometimes the facts or law, or both, are not favourable.[275] Other factors, including the evidence, the law, and the decision-maker, might also combine to affect outcomes.[276] Hyatt and Kralj found that in addition to type of representative, workers' compensation appeal outcomes can be influenced by issue type, injury type, the use of an interpreter, and

[272] Albiston & Sandefur, *supra* note 217 at 111.

[273] *Ibid* at 106.

[274] Kritzer, *supra* note 72 at 21.

[275] *Ibid.*

[276] Rehaag, *supra* note 138 at 84. Rehaag states: "For example, previous research indicates that gender (both of claimants and adjudicators), the identity of adjudicators, the adjudicator's political party of appointment, the region of the country in which claims are made, and various other factors affect refugee claim outcomes," referencing Sean Rehaag, "Do Women Judges Really Make a Difference? An Empirical Analysis of Gender and Outcomes in Refugee Determinations" (2011) 23:2 CJWL 627; Rhode, *supra* note 62 at 900.

adjudication or administrative changes.[277] Rehaag's research, and that of others, indicates that "myriad extra-legal factors" also drive outcomes.[278]

One must also be cautious in comparing outcomes obtained by non-lawyers to those obtained by lawyers, particularly at this tribunal where non-lawyer representatives have outnumbered lawyer representatives for most of its history. Is it correct to assume that it is lawyers' outcomes (and not the outcomes obtained by non-lawyers) that provide an accurate measure of the level of competence and quality of services required in this setting, at WSIAT? There is no such evidence.

The WSIAT study does not include as a variable representatives' years of experience (as a proxy for expertise or specialization) as that information is not available from the published WSIAT decisions database. In addition, this research also does not include client satisfaction as a measure of competence, quality, or access to justice, as some other studies of non-lawyer representation have. Client viewpoints, while important, reveal very little about key issues for quality, such as correct advice and appropriate help.[279] Reports from user groups may be useful for measuring consumer perceptions of professional competence, but they are of limited value to the researcher seeking some objective measure of quality.[280] Further, this study is limited in time. It provides only a snapshot of two time periods pre- and post-regulation at this particular tribunal. In addition, this research relies on published decisions and information reported by others and is therefore subject to any errors or

[277] Hyatt & Kralj, *supra* note 2 at 677-78.

[278] Rehaag, "Judicial Review", *supra* note 138 at 49-50. See also James Stribopoulos & Moin A Yahya, "Does A Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario" (2007) 45 Osgoode Hall L J 315 at 361; Hwong, *supra* note 91 at 194.

[279] Moorhead, Paterson & Sherr, *supra* note 74 at 785.

[280] Haller, *supra* note 224 at 221.

omissions contained within that record. Finally, there are inherent limitations in quantitative analysis in that some things cannot be understood by quantitative analysis alone.[281] According to Heise, there is much, particularly "the complex and nuanced," that eludes precise quantification and the empirical perspective is, after all, "only a tool."[282]

The survey relies on and assumes the accuracy of paralegals' self-reporting. In the absence of any other published data on the cost of paralegals' services, self-reported data is all that could be collected for analysis. The survey did not involve lawyers who appear as WSIAT and therefore gathered no data about the cost of their services at this particular tribunal nor for WSI work specifically. That would be an interesting future study arising out of this study. In addition, this survey is not concerned with the reasonableness of fees charged by WSIAT paralegals. Such data, for both paralegals' and lawyers' services, is elusive. As well as the two could be compared given the paucity of data about actual fees, paralegals' fees were compared to lawyers' fees as regulated paralegals were billed as an affordable alternative to lawyers.

V. CONCLUSION

In conclusion, this empirical research shows that paralegal regulation has done little to increase the use of paralegals as representatives at WSIAT. It has also done little, if anything, to increase the competence of paralegals, at least as measured by outcomes. The government's promises of increased availability and increased paralegal competence are not borne out by this research to a statistically significant extent. The Law Society's claim that paralegals are working to a

[281] Hwong, *supra* note 91 at 195.

[282] Heise, *supra* note 213 at 849.

higher standard of competence as a result of regulation is also not borne out by this research. In terms of cost, WSIAT paralegals charge less for their services than lawyers charge, but this is of little consequence given the increased use of lawyers over paralegals as WSIAT representatives since regulation. In the result, this research reveals that, contrary to the government's promise of regulation and the Law Society's claims of the success of the regulation of paralegals, increased access to justice has not been achieved and the Law Society's public interest justification for regulating paralegals has not been realized at this particular tribunal.

VI. REFLECTIONS & IMPLICATIONS

This research, importantly for access to justice, demonstrates that non-lawyer representatives, licensed or not, are effective in obtaining positive outcomes for their clients and, critically, are at least as capable as lawyers as representatives at WSIAT. This research also suggests that specialization and expertise are key factors that determine quality of representation and outcomes obtained. This is consistent with the findings of previous studies of non-lawyer representation. This research also indicates that WSIAT paralegals charge less than lawyers, despite little regulatory oversight of the cost of paralegals' services.

Of note, the survey reveals (but does not provide insight into why) that the most experienced and specialized WSIAT paralegals do not necessarily charge the highest rates for their services compared to less experienced and non-specialist paralegals. This might be because of the nature of WSI work – the complexity of the issues, clients' ability to pay, and/or the amounts at issue and that are recoverable.

The higher-than-average survey response rate is likely attributable to several factors: telephone contact with many of the WSIAT paralegals prior to sending out the survey; the salience of the topic to the participants; there has been no previous similar study; the survey was conducted for academic research; the survey's length; two reminders were sent to participants to complete the survey; and the participants were aware they were part of a select group and that their answers would be anonymized.

Informal discussions with several paralegals who were contacted by telephone to obtain their email address for the purpose of inviting them to participate in the online survey raise key questions about the cost of services in terms of access to justice. Should paralegals charge less for providing the same services as lawyers? This raises an interesting point about experience and specialization. Years of practice experience are often treated as a proxy for competence and quality services,[283] but the number of years of practice experience does not necessarily account for practice area or subject-matter specialization or expertise which rightly impact the cost of services. This leads to another key question: Should a lawyer who is a sole practitioner with a general practice (that includes WSI matters) who has been practising law for five years be compared, in terms of competence, to a paralegal who specializes in WSI matters and also has been practising in this area for five years? Should the specialist paralegal be expected to charge less than the generalist lawyer? If the paralegal charges more than the lawyer, because of her expertise, is access to justice enhanced (in terms of competence) and/or denied (in terms of cost)?

Future Studies Arising From the Empirical Research

[283] See Legal Fees Survey, *supra* note 266.

This research cannot answer all questions raised about paralegal regulation and access to justice – specifically choice, competence and the cost of services – and it does not address these features of access to justice beyond Ontario's Workplace Safety and Insurance Appeals Tribunal for the years studied. While this research is a start, its findings indicate the need for further quantitative and qualitative studies.

Two interesting questions for future study arise from the WSIAT study: 1) How do paralegals fare compared to self-represented appellants? and 2) How do paralegals fare compared to OWA/OEA advisers? Does OWA/OEA employment within the workers' compensation system result in any better or worse outcomes than WSIAT paralegals, particularly specialists, who work on their own? Since all newly-hired OWA and OEA reps must be licensed paralegals, a study focusing on the difference, if any, of paralegals compared to OWA/OEA advisers could also be conducted using a pre/post methodology which would allow for comparison of paralegals to both unlicensed and licensed OWA/OEA representatives at WSIAT. A couple key questions for future study arise from the survey: 1) What do WSI specialist lawyers at WSIAT charge for their services? and 2) Why are the rates charged by WSIAT paralegals not more comparable to lawyers' rates (assuming they are not, based on the data gleaned in this survey) based on their years of experience and WSI specialization and expertise? These are a few ways, arising from this study, in which further empirical research on access to justice in Ontario is required to, as Eisenberg puts it, inform policy makers and the public and enhance our understanding of the legal system.[284]

[284] Theodore Eisenberg, "Why Do Empirical Legal Scholarship?" (2004) 41 San Diego L Rev 1741 at 1746.

CHAPTER 6:
CONCLUSION

This dissertation set out to answer whether the regulation of paralegals in Ontario has increased access to justice, as the government promised it would and the Law Society claims it has. It is an important question for several reasons: 1) the regulatory scheme governing independent legal paraprofessionals was a first in North America; 2) the government gave the Law Society the authority to regulate paralegals despite the conclusions of government studies about the inherent conflict of interest in having the Law Society regulate other legal service providers; 3) the Law Society has offered little evidence to support its claims of the success of regulation; 4) there is no published, independent empirical research examining whether paralegal regulation has increased access to justice in Ontario; and (5) elsewhere in Canada, governments and law societies continue to grapple with whether, and how, to regulate legal paraprofessionals to enhance access to justice without the benefit, or guidance, of any empirical evidence about whether Ontario's model has done so. From this arise other questions: Is the Law Society's exercise of regulatory authority consistent with its public interest justification for taking on the role of regulator of paralegals? Does the Law Society's regulation of paralegals meet the regulator's statutory duties to facilitate access to justice and protect the public?

I advanced the hypothesis that paralegal regulation by the LSUC/LSO has done little to enhance access to justice, that there has been a failure of either institutional initiatives or effective governance to ensure increased choice *and* competence *and* affordable services. I hypothesized that the self-serving tendencies of self-regulation were exposed, even amplified, when the Law Society's mandate expanded to include the regulation of paralegals and that the legal profession's existing self-regulatory model provided an apt vehicle to control competitors and secured for the Law Society

increased control over the market for legal services. In the result, my hypothesis is borne out by this research.

The legal services landscape changed profoundly in Ontario in 2006, when the government introduced a paralegal regulatory scheme. It expanded the legal services market to include the delivery of legal services by licensed non-lawyers and it also expanded the Law Society's regulatory authority, and compounded and complicated the Law Society's self-regulatory status, giving it the authority to regulate others. But 2006 is not where this research, nor the Law Society, nor the issue of non-lawyer legal services provision, began. More than 200 years before, the Law Society of Upper Canada and Ontario's formal legal profession were born. The Law Society was created to establish for lawyers a learned and honourable profession and to serve the public interest as required. Its history reveals that the profession was divided by social and economic status, practice area, and clientele, but also united by a culture of professional privilege, prestige, power, and a state-granted monopoly (or claimed monopoly) over legal services. It was a history marked by protectionist tendencies and the power to control competitors. The legal profession long enjoyed enhanced status and prestige from its self-regulatory privilege gained by its specialized knowledge and skill. But the reality is that lawyers have never had exclusive right to provide all legal services in Ontario, and have always had to contend with lay practitioners who have long provided legal services both beyond and at the fringes of the Law Society's regulatory reach. The legal profession's history and culture, and market control, provide the theoretical framework for this dissertation's research and explain its findings arising from the Law Society's exercise of regulatory authority over paralegals.

Against this backdrop of Ontario's traditional legal profession steeped in a history of social and economic status and prestige, the independent paralegal profession emerged. The history of the

paralegal profession reveals a dual reality: lay practitioners or legal paraprofessionals were a permanent fixture of the legal services market, providing legal services (largely pursuant to statutory authority, both provincial and federal), and were recognized as legitimate providers of legal services particularly at lower courts and administrative tribunals. But as their practice became more entrenched in Ontario's legal services landscape, many were prosecuted by the Law Society for engaging in legal activities and providing legal services that came too close to lawyers' claimed exclusive practice. The road to paralegal regulation was, perhaps inevitably, marked by a clash of interests between lawyers and non-lawyers and a protracted power struggle as lawyers sought to preserve what they believed to be their rightful domain of lawyerly activity, self-regulatory privilege and professional monopoly. It is not difficult to see why two of the main hurdles to implementing paralegal regulation, over two decades, were 1) paralegals' scope of practice and 2) the choice of regulator. The Ontario government was intent on implementing paralegal regulation within an access to justice agenda and it wanted the Law Society to take on the role of regulator. But the LSUC, up to that point, had clearly expressed its lack of interest in doing so. For many years, the Law Society had prosecuted paralegals for unauthorized practice and claimed that they, as non-lawyers, could not adequately serve the public's legal needs. In short, the Law Society did not want to regulate paralegals.

It is here that market control theory does not adequately explain the LSUC's reluctance to regulate paralegals. If the Law Society's aim was to restrict and control competitors, it would be expected that it would have eagerly volunteered to regulate paralegals long before it agreed to do so – Ianni first recommended implementation of a paralegal regulatory scheme in 1990, followed by Cory J. in 2000. There were other concerns. Arguably, the LSUC did not want to be associated with

paraprofessionals, essentially for the simple reason they were not lawyers and could not possibly, it was argued, offer the same level of quality services. But there was another reason, it seems: embracing paraprofessionals and welcoming non-lawyers into the storied Law Society would tarnish its image and diminish the status and prestige of both the LSUC and the legal profession. Such concerns are more likely explained and understood within the dynamics of the legal profession's cultural history. When the Law Society finally agreed, ostensibly in the public interest, to take on the role of regulator there were other forces, particularly political ones, at play. It seems that a main reason the Law Society agreed to regulate paralegals is because the government asked it to. The Law Society recognized that a lack of paralegal regulation was not in the public interest, and that a single regulator, the LSUC, would best be able to provide effective and efficient regulation, given its history of regulating lawyers, and would avoid jurisdictional skirmishes among separate regulators. But the Law Society also agreed to take on the role of regulator of paralegals, in part at least, because the Attorney General insisted that it was in the public interest, as well as in the interest of the legal profession, to do so. The LSUC did not want to risk displeasing the government and the potential imposition of a super-regulator and loss of its self-regulatory privileges. The Law Society also wanted to have a main role in any paralegal regulatory scheme which it would have only as the regulator. LSUC Benchers were of the view that paralegals would gain credibility by being brought into the Law Society's regulatory fold given its high standards, "enormous prestige," and enviable reputation.[1] This perhaps explains why the Law Society's claims of the success of paralegal regulation arose in part from what it deemed paralegals' increased prestige and status as a result of being brought within

[1] Transcript of Debates, LSUC Convocation (22 January 2004), online: *Law Society of Upper Canada* <lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL-3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true>.

the Law Society's regulatory embrace, a claim that arguably exposes the Law Society's fixation with its own and reveals the broader social, political and cultural foundations of Canada's legal professionalism.[2] In short, wrapped up with the Law Society's public interest justification for regulating paralegals are also professional interest justifications – remaining in good favour with the government, retaining self-regulatory privilege, and a desire for expanded authority over the legal services market and competitors. The LSUC was thus guided, it seems, by both market control tendencies as well the dynamics of its cultural history.

The Ontario government implemented a paralegal regulatory scheme in 2006, promising that it would increase access to justice by providing consumers greater choice of competent legal service provider and make paralegals' services more affordable than lawyers' services. The legal profession's privilege of self-regulation expanded to include the regulation of self *and* others. In taking on the role of regulator of paralegals, the Law Society gained: 1) greater control over the market for legal services; 2) control over the provision of legal services by others, ostensibly to protect the public by ensuring standards of competence and professionalism and accountability, but it also enabled the LSUC an opportunity to seek to ensure that lawyers' traditional monopoly and superior status were preserved; and 3) the Law Society retained a favourable relationship with the government so as not to jeopardize its self-regulatory status. After the first five years of paralegal regulation, the LSUC claimed it to be a success and itself the right choice of regulator. Specifically, it claimed, paralegal regulation had increased access to justice. At issue in the Law Society's regulation of paralegals are competing concerns of occupational status, maintaining the legal profession's self-regulation,

[2] See W Wesley Pue, "Cowboy Jurists and the Making of Legal Professionalism" (2008) 45:5 Alta L Rev 29 at 52.

monopoly, and its public image, economic advantage, market control, anti-competitiveness, and consumer protection and the public's interest in access to justice.[3]

An examination of the Law Society's exercise of regulatory authority finds it deficient, and not in the public interest, in several ways. The most glaring and defining aspect of inadequate regulation is paralegal scope of practice which has barely expanded from the scope that existed before regulation and before the Law Society had any authority over it. The Law Society's manner of regulating also displays half-hearted regulation of competence and virtually no regulation of the cost of paralegals' services, and thus reveals self-serving, anti-competitive tendencies. In the result, this amounts to regulation in a manner that does not serve the public interest. The Law Society's exercise of regulatory authority that falls short of its statutory duties to regulate so as to facilitate access to justice and protect the public can best be explained by both market control and cultural history theories. Both inform and explain the Law Society's approach to regulating paralegal scope of practice – economic self-interest, anti-competitiveness, and concerns about status and superiority. The Law Society's absence of regulatory measures concerning paralegals' cost of services can also, arguably, be explained by both market control theory – as regulating the cost of paralegals' services would create demand for it to regulate the cost of all legal services, including lawyers' services – and by the cultural history of the profession in which lawyers seek to be defined by a commitment to competence, independence, and to public service as distinguished from being "mere" commercial actors.[4]

---

[3] Deborah L Rhode, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice" (1996) 1 J Inst for Study Legal Ethics 197 at 204.

[4] Scott L Cummings, "Introduction: What Good Are Lawyers?" in Scott L Cummings, ed *The Paradox of Professionalism – Lawyers and the Possibility of Justice* (New York: Cambridge University Press, 2011) at 1.

In regulating paralegals, then, the Law Society (and legal profession) gained in several respects: 1) increased control over others, particularly competitors; 2) almost sole responsibility to determine and administer the paralegal regulatory scheme including, importantly, paralegal scope of practice; 3) successful avoidance of the need to cede much if any of lawyers' share of the legal services market; 4) maintained a favourable relationship with the government; and 5) retained, with state support, its privilege of self-regulation. In short, the Law Society and legal profession lost little in taking on the role of regulator of paralegals and gained, through legislation, a dominant position over paralegals. It could be argued that paralegal regulation also benefitted paralegals who gained professional legitimacy and, perhaps, status and prestige through regulation by the Law Society. Paralegal regulation might also have benefitted the public who, ostensibly, have greater access to a broader range of competent and more affordable legal service providers. But the gains appear to fall mostly in favour of the Law Society and the interest of the legal profession rather than the public interest.

Elsewhere in Canada, non-lawyers provide a range of legal services, mostly pursuant to statutory authority, including the very statutes that regulate the legal profession. But given the access to justice crisis in Canada, in most jurisdictions it is recognized that regulatory innovation is required. Law societies tend to be viewed as the best choice of regulator of legal paraprofessionals, but their continuing and protracted resistance to implementing a regulatory scheme for independent paralegals exposes a well-entrenched historical/cultural and protectionist stance. Despite law societies' widespread recognition that something must be done to increase access to justice to meet the public's unmet legal needs, and that a greater role for non-lawyers might be a solution to the access to justice crisis, not one is yet prepared to allow paralegals to practice independently. Giving

law societies the power to determine how to regulate paralegals, including determining and defining paralegals' scope of practice, seems illogical and contrary to the public interest. Law societies are the very entities least capable of disinterested decision-making on the issue of regulating others – essentially, competitors. Governments' willingness to grant law societies expanded authority to regulate others ignores concerns about, and the reality of, the inherent conflict of interest that inevitably arises. This reinforces the close (and generally mutually beneficial) relationship between law societies and governments on whom law societies rely for the very authority they wield. In BC, a strain in that relationship appears to have prompted the government to act to force the Law Society to finally implement a paralegal regulatory scheme. (By contrast, the Law Society of Alberta takes a more liberal approach, leaving the unregulated non-lawyer legal services industry alone, to be "governed" by market forces and consumer protection legislation.) The lack of regulatory change, and an unwillingness by law societies to effect meaningful change through the regulation of paralegals and other independent non-lawyers, seems to be a common access to justice theme across Canada. There are other regulatory models, such as co-regulation governing the professions in Quebec and the health professions in Ontario, where professional bodies have some (but not full) self-regulatory privileges and are subject to an oversight body. This different approach to regulation, as governs the health professions, is based on restricted acts and risk of harm to the public and not the retention of traditional self-regulating monopolies, and might be a better approach to implement in regulating the provision of legal services, but it would severely diminish the power of law societies. Unlike the self-regulatory model governing the legal profession, the legislation governing the health professions contains a scope-of-practice model based on the principle that the sole purpose of regulation is to protect the public interest, not to enhance a profession's economic

power or raise its status.[5] But, governments and law societies do not appear willing to even consider such a model, perhaps for obvious reasons, preferring instead to retain the legal profession's self-regulatory privilege and give it expanded authority to control and dominate others – in short, to maintain the fox as keeper of the chickens.

The empirical studies of paralegals at WSIAT demonstrate that paralegal regulation has not resulted in increased access to justice, contrary to the Law Society's claims that it has. The two most striking and statistically significant findings are that regulation has not increased the public's choice of paralegal representatives but, instead, increased choice of lawyer representatives, and that regulation has not increased paralegal competence. But, importantly, the studies also demonstrate that non-lawyers are capable representatives and at least as competent as lawyers in achieving positive appeal outcomes at WSIAT, both before and after regulation was implemented, to a statistically significant extent. Further, the studies demonstrate that paralegals charge substantially less for their services than lawyers charge, suggesting they are a more cost-effective alternative than lawyers for WSIAT appellants. But these two latter findings, concerning overall competence both pre and post-regulation and the cost of services, have little to do with paralegal regulation. Ultimately, the research demonstrates that paralegals contribute to access to justice and, arguably, do so despite regulation by the Law Society rather than because of it. This research confirms that there is no rational basis to limit the practice of all legal tasks to lawyers and that non-lawyers are capable of successfully challenging the legal profession's claims to a monopoly.

[5] Health Professions Legislation Review, *Striking a New Balance: A Blueprint for the Regulation of Ontario's Health Professions* (Toronto: Queen's Printer, 1989) at 3.

Giving lawyers the authority to control paralegals was, for some, akin to assigning the fox to watch over the chickens. As one long-practicing paralegal argued prior to the implementation of regulation: "What better way to deal with the paralegal question can there be for lawyers in Ontario than to incorporate the independent paralegals under the control of the law society? ... the paralegals will be within the grasp of their old adversary, with no space in which … [to] wiggle to improve their lot."[6] It makes little sense, from a public policy perspective, for lawyers to police their own competitors under frameworks more responsive to professional self-interest than societal interests.[7] It is incumbent on the Law Society to regulate to facilitate access to justice. The regulation of paralegals is one vehicle through which that can be achieved. Lawyers and law societies must be "neither bystanders nor obstacles"[8] to ensuring and enhancing the public's need to increased access to justice , yet the Law Society of Ontario, as this dissertation's research shows, is an obstacle, and perhaps the main obstacle, to increased access to justice, because of both its self-regulating status and its exercise of regulatory authority over paralegals. Both market control and lawyers' cultural history theories explain why. Protectionism and anti-competitive behaviour are well ingrained in lawyers' cultural history and professionalization. This is particularly, but not only, manifest with respect to the issue of paralegal scope of practice. As Jordan Furlong explains, lawyers and judges have a long and deeply rooted sense of ownership and entitlement to the law and its institutions, and that

[6] Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard)*, 38-2, No JP-19 (5 September 2006).

[7] Deborah L Rhode, "What We Know and Need to Know about the Delivery of Legal Service by Non-lawyers" (2016) 67:2 SCL Rev 429. See also Deborah L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (New York: Oxford University Press, 2000) at 208.

[8] Joseph R Julin, "The Legal Profession: Education and Entry" in Roger D Blair & Stephen Rubin, eds, *Regulating the Professions: A Public Policy Symposium* (Lexington, MA: Lexington Books, 1980) 201 at 208, referenced in Soha Turfler, "A Model Definition of the Practice of Law: If Not Now, When? An Alternative Approach to Defining the Practice of Law" (2004) 61:4 Wash & Lee L R 1903.

possessiveness helps to explain the raw nature of their pushback to changes in the legal ecosystem. For Furlong, it is not about money so much but that "the very premise of a non-lawyer legal service provider is, for many lawyers and judges, a personal insult."[9] As Furlong puts it, lawyers interpret any attempt by non-lawyers to move into their space as a frontal attack on lawyers' sense of self-worth and professional virtue since lawyers invest so much of their personal worth in their professional identity.[10]

This dissertation concludes that the Law Society's regulation of paralegals has not increased access to justice. The main barriers are the self-regulatory model, compounded by the Law Society's expanded authority to regulate others, and the Law Society's exercise of regulatory authority. The Law Society's traditional self-regulatory model not only contains but also embroils both public and private interests. Expanded self-regulatory powers – the authority to regulate others who also provide legal services – seems undeniably and perhaps inevitably to expose the very weaknesses of self-regulation intended to be in the public interest. The regulation of paralegals in Ontario reveals the Law Society's propensity to favour professional interests over the public interest and to regulate to preserve its entrenched status, prestige, and self-regulatory privilege for its benefit more than in and for the public interest.

That paralegal regulation by the Law Society has not increased access to justice is contrary to the public interest. This conclusion is best explained by both market control and the legal profession's cultural history theories.

---

[9] Jordan Furlong, "Empathy for the Disrupted" (16 August 2019), online: <www.slaw.ca/2019/08/16/empathy-for-the-disrupted/>.

[10] *Ibid.*

Future Research

More empirical research is required. As discussed in Chapter 5, that regulation has not increased paralegal competence to a statistically significant extent, but is on the margin of statistical significance, the WSIAT study should be expanded over more years to explore if a detectable pattern of paralegal competence emerges.

It would be particularly interesting to conduct empirical research similar to the WSIAT study at other workers' compensation/workplace safety and insurance appeals tribunals elsewhere in Canada, forums where both lawyers and unregulated non-lawyers appear, and to compare the results to my Ontario WSIAT studies undertaken. It would be expected the data will demonstrate the effectiveness of unregulated non-lawyers' services and such data could be useful to other jurisdictions in Canada in determining if and how best to regulate paralegals to increase access to justice. Specifically, the studies would generate data about outcomes achieved by unlicensed non-lawyers compared to lawyers in each jurisdiction, how that compares to outcomes obtained by Ontario's licensed paralegals, and the cost of non-lawyers services in workplace safety and insurance matters elsewhere in Canada. A similar study could also be undertaken of the practice of regulated trademark and patent agents in Canada, for example, comparing quality of submissions/filings (presumably by error rates or the number of revisions/re-submissions required) of non-lawyer agents compared to lawyer agents in matters before the Office of the Registrar of Trademarks and the Patent Office.

Studies comparing outcomes by representative type could also be undertaken at other forums in Ontario where paralegals frequently appear, such as at Small Claims courts, Provincial Offences courts (HTA matters particularly), the Landlord and Tenant Board, License Appeals Tribunal, and Human Rights Tribunal of Ontario.

To conclude, this dissertation confirms that empirical research of government promises and institutional claims of success is essential. More is required, in the public interest and to enhance access to justice. As Stribopoulos and Yahya put it, long-standing assumptions that currently undergird our legal system are in need of empirical evaluation as future developments cannot rest on unsubstantiated assumptions and claims. Researchers must infuse legal and policy debates in Canada with the required empirical knowledge if our institutions are to evolve and mature.[11]

[11] James Stribopoulos & Moin A Yahya, "Does A Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario" (2007) 45 Osgoode Hall L J 315 at 363.

BIBLIOGRAPHY

JURISPRUDENCE

Ambrosi v Duckworth, 2011 BCSC 1582.

Canada (AG) v Law Society of British Columbia, [1982] 2 SCR 307.

Code of Conduct for Representatives (1999), 51 WSIATR 293.

Decision No. 42/17E, 2017 ONWSIAT 132.

Decision No. 43/04, 2004 ONWSIAT 187.

Decision No. 141/15I, 2015 ONWSIAT 236.

Decision No. 143/15 2015 ONWSIAT 1084.

Decision No. 185/07I, 2007 ONWSIAT 247.

Decision No. 200/17I, 2017 ONWSIAT 282.

Decision No. 213/14, 2016 ONWSIAT 2357.

Decision No. 370/15, 2017 ONWSIAT 2666.

Decision No. 571/15, 2015 ONWSIAT 2513

Decision No. 600/89, 1989 CanLII 1551 (ONWSIAT).

Decision No. 807/04, 2005 ONWSIAT 968.

Decision No. 811/15, 2015 ONWSIAT 1039.

Decision No. 893/11, 2015 ONWSIAT 1396.

Decision No. 952/99I, 1999 CanLII 16012 (ONWSIAT).

Decision No. 997/15, 2015 ONWSIAT 2123.

Decision No. 1074/15, 2016 ONWSIAT 1929.

Decision No. 1083/16, 2016 ONWSIAT 2044.

Decision No. 1096/11, 2015 ONWSIAT 2093.

Decision No. 1173/16, 2016 ONWSIAT 1783.

Decision No. 1393/17, 2017 ONWSIAT 1967.

Decision No. 1682/04, 2005 ONWSIAT 638.

Decision No. 1906/11, 2011 ONWSIAT 2361.

Decision No. 1907/04I, 2005 ONWSIAT 189.

Decision No. 1984/14, 2015 ONWSIAT 241.

Decision No. 2268/08I, 2009 ONWSIAT 970.

Decision No. 2307/12R, 2014 ONWSIAT 1211.

Decision No. 2566/15, 2017 ONWSIAT 83.

Equiprop Management Ltd v Harris (2000), 51 OR (3d) 496.

Green v Law Society of Manitoba, 2015 MBCA 67.

Groia v The Law Society of Upper Canada, 2016 ONCA 471.

Hearing Office Bail Hearings (Re), 2017 ABQB 74.

Law Society (British Columbia) v Lawrie (1991), 84 DLR (4th) 540.

Law Society of British Columbia v Mangat, 2001 SCC 67.

Law Society of British Columbia v Trinity Western University, 2018 SCC 32.

Law Society of New Brunswick v Ryan, 2003 SCC 20.

Law Society of Upper Canada v Brooks, 2015 ONLSTH 87.

Law Society of Upper Canada v Cairns, 2017 ONLSTH 8.

Law Society of Upper Canada v Canada (Minister of Citizenship and Immigration), 2008 FAC 243.

Law Society of Upper Canada v Castillo Garcia, 2017 ONLSTH 155.

Law Society of Upper Canada v Charalabidis, 2016 ONLSTH 194.

Law Society of Upper Canada v Djukic, 2016 ONLSTH 115.

Law Society of Upper Canada v Garth, 2015 ONLSTH 62.

Law Society of Upper Canada v Hohots, 2015 ONLSTH 72.

Law Society of Upper Canada v Kovtanuka, 2018 ONLSTH 2.

Law Society of Upper Canada v Latina, 2016 ONLSTH 192.

Law Society of Upper Canada v Lee, 2017 ONLSTH 210.

Law Society of Upper Canada v Nicholas, 2017 ONLSTH 37.

Law Society of upper Canada v Nicholson, 2015 ONLSTH 110.

Law Society of Upper Canada v Smith, 2015 ONLSTH 4.

Law Society of Upper Canada v Sokolowski, 2017 ONLSTH 54.

Law Society of Upper Canada v Spiegel, 2017 ONLSTH 188.

Law Society of Upper Canada v Spiegel, 2018 ONLSTA 13.

Law Society of Upper Canada v Webster-Clarke, 2017 ONLSTH 29.

LSUC v OPSEU, 2014 ONSC 270.

Pacer Enterprises Ltd v Cummings, 2004 ABCA 28.

Pearlman v Manitoba Law Society Judicial Committee, [1991] 2 SCR 869.

R v Cox, 2013 NSCA 140.

R v Engel and Seaway Divorcing Service (1976), 11 OR (2d) 343 (Prov Crt).

R v Lawrie and Pointts Ltd (1986), 58 OR (2d) 535 (Div Ct).

R v Lawrie and Pointts Ltd (1987), 59 OR (2d) 161 (CA).

R v Nicholson, 1979 Alta SCAD 54.

R v Romanowicz (1999), 45 OR (3d) 506 (CA).

R v Toutissani, 2008 ONCJ 139.

Re Men's Clothing Manufacturers Association of Ontario v Arthurs (1979), 22 LAC (2d) 328.

Re Men's Clothing Manufacturers Association of Ontario v Arthurs (1979), 26 OR (2d) 20 (Div Ct).

Re The Solicitors Act; Re Hood, [1942] OR 611 (HC).

R ex rel Smith v Mitchell, [1952] OR 896 (CA).

Rex ex rel Smith v Ott, [1950] OR 493.

Ryan v Law Society (New Brunswick), 2003 SCC 20.

The Law Society of British Columbia v Boyer, 2016 BCSC 342.

The Law Society of British Columbia v Parsons, 2015 BCSC 742.

Trinity Western University v Law Society of Upper Canada, 2018 SCC 33.

GOVERNMENT DOCUMENTS

Administrative Tribunal of Quebec, "Getting Help: Services of a lawyer" (last visited 20 March 2020), online: <www.taq.gouv.qc.ca/en/help/services-of-a-lawyer>.

Alberta Fair Practices Office (last visited 10 June 2020), online: <www.workeradvocates.ca>.

Alberta, Workers' Compensation Appeals Division, *Annual Report 2015-16* (Edmonton and Calgary: Appeals Commission, 2016) at 11, online (pdf): <www.appealscommission.ab.ca/Website%20Documents/AC%20AnnualReportFinal.pdf>.

"Bill 42, An Act to Regulate the Activities of Paralegal Agents, 1986", 2nd Reading, Ontario, Legislative Assembly, *Official Reports of Debates (Hansard)*, 33-2, No 40 (26 June 1986) (Terrence O'Connor).

Canada, Competition Bureau, *Self-regulated Professions: Balancing Competition and Regulation* (Ottawa: Industry Canada, 2007), online: <www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02523.html>.

British Columbia, Legislative Assembly, "Bill 57 — Attorney General Statutes Amendment Act, 2018 " First Reading, *Official Report of Debates (Hansard)*, 41-3, No 185 (20 November 2019) at 6505 (Hon D Eby), online (pdf): <www.leg.bc.ca/content/hansard/41st3rd/20181119pm-Hansard-n185.pdf>.

Canada, Competition Bureau, *Self-regulated Professions – Post-Study Assessment* (Ottawa: Industry Canada, 2011), online: <www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03407.html>.

Canada, Department of Justice, "Legislative Background: *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, as enacted

(Bill C-75 in the 42nd Parliament): Overview of Former Bill C-75" (last modified 6 September 2019), online: <www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html>.

Canada Revenue Agency, *Proposal – Registration of Tax Preparers Program, Consultation Paper* (17 January 2004) at 4, online (pdf): *Government of Canada* <www.cra-arc.gc.ca/gncy/cmplnc/rtpp-pipdr/cnslttnppr-eng.pdf>.

Canada Revenue Agency, "What We Heard – A report on the public consultation for the proposed Registration of Tax Preparers Program" (4 September 2014) at 3, online (pdf): *Government of Canada* <www.cra-arc.gc.ca/gncy/cmplnc/rtpp-pipdr/cnslttnppr-rslts-eng.pdf>.

Cory, Peter de C, *A Framework for Regulating Paralegal Practice in Ontario: Executive Summary and Recommendations* (Ontario: Ministry of the Attorney General, 2000).

The Court of Queen's Bench of Alberta, *Annual Report 2016 to 2017* (17 October 2017), online (pdf): <albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf?sfvrsn=593aac80_0>.

The Courts of Nova Scotia, *Nova Scotia Civil Procedure Rules* (6 June 2008), online (pdf): <www.courts.ns.ca/Civil_Procedure_Rules/cpr_docs/civil_procedure_rules_june_08_complete.pdf>.

The Courts of Nova Scotia, *Nova Scotia Provincial Court Rules* (1 January 2013), online (pdf): <www.courts.ns.ca/Provincial_Court/NSPC_I_rules_and_forms/NSPC_criminal_rules_12.11.pdf#1.1-1>.

Courts of Prince Edward Island, "Rules of Civil Procedure Rule 74: Small Claims Section" (1 September 2017), online (pdf): *Courts of PEI* <www.courts.pe.ca/sites/www.courts.pe.ca/files/Forms%20and%20Rules/a-rule74.pdf>.

Department of Justice Canada, *Legal Service Provision in Northern Canada –Summary of Research in the Northwest Territories, Nunavut, and the Yukon*, by Pauline de Jong (Ottawa: Government of Canada, 2004) at 6.3, online: <www.justice.gc.ca/eng/rp-pr/aj-ja/rr03_la15-rr03_aj15/index.html>.

Dowie, IR, Horace Krever & MC Urquhart, *Committee on the Healing Arts, Report* (Toronto: Queen's Printer, 1970).

Government of Canada, Department of Justice, Indigenous Courtwork Program (last updated 22 June 2017), online: <www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html>.

Government of Canada, "Frequently Asked Questions: College of Patent Agents and Trademark Agents" (last visited 9 April 2020), online: <www.ic.gc.ca/eic/site/693.nsf/eng/00167.html>.

Government of Canada, Immigration and Citizenship, "Learn about representatives" (last updated 16 May 2019), online: <www.cic.gc.ca/english/information/representative/rep-who.asp>.

"Government of Canada launches call for directors to oversee new College of Patent Agents and Trademark Agents as part of IP Strategy" (15 February 2019), online: *Cision* <www.newswire.ca/news-

releases/government-of-canada-launches-call-for-directors-to-oversee-new-college-of-patent-agents-and-trademark-agents-as-part-of-ip-strategy-892854987.html>.

Government of Canada, News Release, "Minister Bains appoints directors to oversee new college governing patent and trademark agents" (9 August 2019), online: <www.canada.ca/en/innovation-science-economic-development/news/2019/08/minister-bains-appoints-directors-to-oversee-new-college-governing-patent-and-trademark-agents.html>.

Government of Manitoba, News Release, "Manitoba Introduces Legislation That Would Improve Access to Legal Services" (9 March 2020), online: <https://news.gov.mb.ca/news/index.html?item=46922>.

Government of Yukon, News Release, 17-216, "Government of Yukon tables a new Legal Profession Act" (11 October 2017), online (pdf): <https://open.yukon.ca/data/sites/default/files/17-216.pdf>.

Health Professions Legislation Review, *Striking a New Balance: A Blueprint for the Regulation of Ontario's Health Professions* (Toronto: Queen's Printer, 1989).

Health Professions Regulatory Advisory Council, *Adjusting the Balance: A Review of the Regulated Health Professions Act* (Ontario: March 2001).

Health Professions Regulatory Advisory Council, *Paramedicine in Ontario: Consideration of the Application for the Regulation of Paramedics under the* Regulated Health Professions Act, 1991, Vol 1 (December 2013) (Chair: Thomas Corcoran) at 56.

House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, 35-1 (7 November 1995) at 1005 (Richard Tinsley), online: <www.ourcommons.ca/content/archives/committee/351/cits/evidence/98_95-11-07/cits98_blk-e.html#0.1.CITS98.000001.AA1005.A>.

House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 42-1, No 104 (17 September 2018), online: <www.ourcommons.ca/DocumentViewer/en/42-1/JUST/meeting-104/evidence>.

House of Commons, Standing Committee on Citizenship and Immigration, 42-1, No 157 (7 May 2019) at 18 (Ravi Jain), online (pdf): <www.ourcommons.ca/Content/Committee/421/CIMM/Evidence/EV10466590/CIMMEV157-E.PDF>.

House of Commons, Standing Committee on Citizenship and Immigration, *Starting Again: Improving Government Oversight of Immigration Consultants* (June 2017) (Chair: Boris Wrzesnewskyj).

Ianni, RW, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990).

Insurance Council of British Columbia, "About Us" (last visited 10 June 2020), online: <www.insurancecouncilofbc.com/about-us/>.

Intellectual Property Institute of Canada, "How to Become an Agent" (last visited 20 March 2020), online: <ipic.ca>.

Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity: Final Report* (Toronto: Law Commission of Ontario, February 2013), online (pdf): <www.lco-cdo.org/wp-content/uploads/2013/06/family-law-reform-final-report.pdf>.

Legal Aid Alberta, online: <www.legalaid.ab.ca>.

Legal Aid Manitoba, online: <www.legalaid.mb.ca>.

Legal Aid Ontario, online: <www.legalaid.on.ca/en/>.

Legal Aid Ontario, *Annual Report 2017-18* (Toronto: LAO, 7 September 2018), online (pdf): <www.legalaid.on.ca/wp-content/uploads/LAO-annual-report-2017-18-EN.pdf>.

Legal Aid Ontario, "LAO Paralegals Expand Scope of Services in Four Criminal Court" (25 August 2014), online: <www.legalaid.on.ca/en/news/newsarchive/1408-12_paralegalscope.asp>.

Legal Aid Ontario, "LAO's Paralegals Provide Full Range of Practice in Criminal Courts" (4 April 2016), online: <www.legalaid.on.ca/en/news/newsarchive/2016-04-04_paralegal-announcement.asp>.

Legal Aid Ontario, *Tariff and Billing Handbook* (October 2007), online (pdf): <www.legalaid.on.ca/wp-content/uploads/Tariff_Manual.pdf>.

Leal, Allan H, J Alex Corry & J Stefan Dupre, *The Report of the Professional Organizations Committee* (Toronto: Ministry of the Attorney General, 1980).

Letter from Chief Justices Heather J Smith & Lisa Maisonneuve to the Honourable Yasir Naqvi & Treasurer Paul B Schabas (26 May 2017) in *Family Law Services Review Report Call for Input: Organization Submissions* at 19, online (pdf): *LSO* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/f/flsrorsubmissions.pdf>.

Letter from Doug Downey, Attorney General for Ontario, to Malcolm Mercer, Treasurer of the Law Society of Ontario (11 July 2019) in Law Society of Ontario, Paralegal Standing Committee, *Bill C-75 Response* (11 September 2019), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2019/convocation-september-2019-paralegal-standing-committee-report.pdf>.

Ministry of Labour, Training and Skills Development (last updated 15 May 2020), online: <www.ontario.ca/page/ministry-labour>.

New Brunswick, *Legislative Review of Workers' Compensation: Workers' and Employers' Advocate Services in New Brunswick*, Discussion Paper (May 2015),_online (pdf): <www2.gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Promo/AdvocatesServices.pdf>.

Nova Scotia Barristers' Society, *Code of Professional Conduct*, Halifax: NSBS, 2017.

Nova Scotia Barristers' Society, *Legal Services Regulation Update*, Issue 5 (April 2016) at 3, online: <nsbs.org>.

Nova Scotia Barristers' Society, "Legislative Changes Required for Legal Services Regulation in

Nova Scotia" (November 2016) 35:7 The Society Record, online: <www.nsbs.org>.

Nova Scotia Barristers' Society, "Transforming Regulation: Legislative Changes" (Fall 2016) 35:2 The Society Record 13, online: <www.nsbs.org>.

Nova Scotia Human Rights Commission, *Annual Report 2015-2016* (last visited 23 March 2020), online (pdf): <humanrights.novascotia.ca/sites/default/files/16-45369%202015-16%20AnnRpt%20-%20for%20web.pdf>.

Nova Scotia Legal Aid, online: <www.nslegalaid.ca>.

Nova Scotia, Workers' Compensation Appeals Tribunal, *Annual Report for the Year Ending March 31, 2017* (WCAT, 2017) at 8-9, online (pdf): <wcat.novascotia.ca/annual-reports>.

Nova Scotia, Workers' Compensation Appeals Tribunal, *Annual Report for the Year Ending March 31, 2018* (WCT, 2018), online (pdf): <wcat.novascotia.ca/sites/default/files/documents/WCATAnnualReport2017.pdf>.

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 33-2, No 18 (22 May 1986) (Terrence O'Connor).

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 33-2, No 40 (26 June 1986) (Herbert Arnold Epp).

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 11 (27 October 2005) (Hon Michael Bryant).

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 103 (5 October 2006), online (pdf): <www.ola.org/sites/default/files/node-files/hansard/document/pdf/2006/2006-10/house-document-hansard-transcript-2-en-2006-10-05_pdfL103.pdf> (David Zimmer).

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 106 (12 October 2006).

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38-2, No 107B (16 October 2006).

Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard)*, 38-2, No JP-19 (5 September 2006).

Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard)*, 38-2, No JP-24 (13 September 2006) (Eileen Barnes).

Ontario, Legislative Assembly, Standing Committee on Social Development, *Official Records (Hansard: Committee Transcripts)*, 35-1 (6 August 1991), online: <www.ola.org/en/legislative-business/committees/social-development/parliament-35/transcript/committee-transcript-1991-aug-06>.

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 40-2, No 66 (1 October 2013), online: <www.ola.org/en/legislative-business/house-documents/parliament-40/session-2/2013-10-01/hansard#para586> (John Gerretsen).

Ontario, Ministry of the Attorney General, "Expanding Legal Services Options for Ontario Families" (9 February 2016), online: <www.attorneygeneral.jus.gov.on.ca/english/family/legal_services_consultation_paper.html>.

Ontario, Ministry of the Attorney General, *Family Legal Services Review*, Justice Annemarie E Bonkalo (Toronto: MAG, 31 December 2016), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/>.

Ontario, Ministry of the Attorney General, "Terms of Reference for Family Legal Services Review" (9 February 2016), online: <news.ontario.ca/mag/en/2016/02/terms-of-reference-for-family-legal-services-review.html>.

Ontario, Ministry of Health and Long-Term Care, *Report on the Integration of Primary Health Care Nurse Practitioners into the Province of Ontario* (2003), online (pdf): <www.health.gov.on.ca/en/common/ministry/publications/reports/nurseprac03/nurseprac03_mn.aspx>.

Ontario, Office of the Employer Adviser, "Business Plan 2019-2020 to 2021-2022" (2 April 2019), online (pdf): *OEA* <www.employeradviser.ca/wp-content/uploads/2019/05/OEA-Business-Plan-2019-2022-English-approved-Apr.2-2019.pdf>.

Ontario, Office of the Worker Adviser, "Business Plan 2018-19 to 2020-21" (15 February 2018), online (pdf): *OWA* <www.owa.gov.on.ca/en/about/Files/18%2002%2015%20%20%202018-19%20OWA%20Business%20Plan%20-%20.pdf>.

Ontario, The Ontario Public Service Careers, "Amended – Worker Adviser" (last modified 31 August 2018), online: <www.gojobs.gov.on.ca/Preview.aspx?JobID=113714>.

Ontario, *The Superior Court of Justice: Realizing Our Vision, Report for 2015 and 2016* (last visited 23 March 2020), online (pdf): <www.ontariocourts.ca/scj/files/annualreport/2015-2016.pdf>.

Ontario, Workplace Safety and Insurance Appeals Tribunal, *2016 Annual Report* (Toronto: WSIAT, 2017), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2016.pdf>.

Ontario, Workplace Safety and Insurance Appeals Tribunal, *2017 Annual Report* (Toronto: WSIAT, 2018), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2017.pdf>.

Public Legal Education and Information Service of New Brunswick, *Small Claims Court: A Guide for Claimants, Defendants and Third Parties* (April 2018), online (pdf): <www.legal-info-legale.nb.ca/en/uploads/file/pdfs/Small_Claims_EN.pdf>.

Quebec Interprofessional Council, "La mission du CIQ" (last visited 20 March 2020), online: <www.professions-quebec.org/fr/mission/>.

Real Estate Council of Ontario, "About" (last visited 5 May 2020), online: <www.reco.on.ca/about/>.

Saskatchewan, Workers' Compensation Board, *2017 Annual Report* (Regina: WCB, 2017), online (pdf): <www.wcbsask.com/wp-content/uploads/2018/03/2017-Annual-Report.pdf>.

Transportation Appeal Tribunal of Canada, *Annual Report 2016-2017* (19 May 2017), online (pdf): <www.tatc.gc.ca/a274/ar-ra-2016-17-eng.pdf>.

Weiler, Paul C, *Reshaping Workers' Compensation for Ontario* (November 1980) online: *Internet Archive* <www.archive.org/stream/reshapingworkers00weil/reshapingworkers00weil_djvu.txt>.

Workers' Compensation Appeals Tribunal, *First Report 1985-1986* (5 October 1986), online (pdf): *WSIAT* <www.wsiat.on.ca/english/publications/AnnualReport1985_1986.pdf>.

Workers' Compensation Appeals Tribunal, *Second Report 1986-1987* (1987), online (pdf): *WSIAT* <www.wsiat.on.ca/english/publications/AnnualReport1986_1987.pdf>.

Workers' Compensation Appeals Tribunal, *Third Report 1987-1988* (1988), online (pdf): *WSIAT* <www.wsiat.on.ca/english/publications/AnnualReport1987_1988.pdf>.

Workers' Compensation Appeals Tribunal, *Annual Report 1995 and 1996* (1997), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport1995_1996.pdf>.

Workplace Safety and Insurance Appeals Tribunal, "About WSIAT Decisions" (last modified May 2015), online: <www.wsiat.on.ca/english/decisions/index.htm>.

Workplace Safety and Insurance Appeals Tribunal, "Appeal Process" (last modified July 2014), online: <www.wsiat.on.ca/english/appeal/index.htm#hearing>.

Workplace Safety and Insurance Appeals Tribunal, "Archived Annual and Quarterly Reports" (last modified April 2015), online <www.wsiat.on.ca/english/about/annualQuarterlyReportsArchived.htm>.

Workplace Safety and Insurance Appeals Tribunal, "Best Practices for Representatives" (last modified January 2010), online: <www.wsiat.on.ca/english/forReps/bestPractices.htm>.

Workplace Safety and Insurance Appeals Tribunal, "Code of Conduct for Representatives" (last modified July 2019), online: <www.wsiat.on.ca/english/forReps/repCode.htm>.

Workplace Safety and Insurance Appeals Tribunal, "Open Data Catalogue: WSIAT Case Processing" (last modified March 2018), online: <www.wsiat.on.ca/OpenData/OpenData.htm>.

Workplace Safety and Insurance Appeals Tribunal, "Practice Directions" (last updated January 2020), online: <www.wsiat.on.ca/english/pd/index.htm>.

WSIAT, *Annual Report 1997* (1998), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport1997.pdf>.

WSIAT, *Annual Report 2001* (2002), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2001.pdf>.

WSIAT, *Annual Report 2004* (2005), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2004.pdf>.

WSIAT, *Annual Report 2005* (2006), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2005.pdf>.

WSIAT, *Annual Report 2006* (2007), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2006.pdf>.

WSIAT, *Annual Report 2008* (2009), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2008.pdf>.

WSIAT, *Annual Report 2009* (2010), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2009.pdf>.

WSIAT, *Annual Report 2015* (2016), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2015.pdf>.

WSIAT, *Annual Report 2016* (2017), online (pdf): <www.wsiat.on.ca/english/publications/AnnualReport2016.pdf>.

STATUTES

Access to Justice Act, 2006, SO 2006, c 21.

Act Respecting Industrial Accidents and Occupational Diseases, CQLR A-3.001.

Act Respecting the Barreau du Québec, CQLR c B-1.

Act to Establish the Administrative Labour Tribunal, CQLR T-15.1.

Administrative Tribunals Act, SBC 2004, c 45.

Aeronautics Act, RSC 1985, c A-2.

Agents Bonding and Insurance Regulation, Man Reg 105/90.

An Act for the better regulating the Practice of Law (UK), UC 1797 (37 Geo III) (1st Sess), c 13, online: *Canadian Research Knowledge Network* <www.canadiana.ca/view/oocihm.9_10042_2/23?r=0&s=1>.

An Act Respecting Solicitors, SO 1912, c 28.

An Act to amend the Law for the admission of Attornies, S Prov C 1857 (20 Vict), c 63.

An Act to Amend The Solicitors Act, SO 1940, c 26.

An Act to Authorize the Governor of Lieutenant-Governor to Licence Practitioners in the Law (UK), UC 1794 (34 Geo III), c 4.

An Act to Establish a Court for the Cognizance of Small Claims in each and every District of this Province (UK), UC 1794 (34 Geo III), c 3.

An Act to Establish a Superior Court of Civil and Criminal Jurisdiction, and to Regulate the Court of Appeal (UK), UC 1794 (34 Geo III), c 2.

Apprenticeship, Trade and Occupations Certification Regulations, RRNWT (Nu) 1990, c A-8.

Assessment and Planning Appeal Board Regulation, NB Reg 84-59.

Assistance Appeal Regulations, NS Reg 90/2001.

Bankruptcy and Insolvency Act, RSC 1985, c B-3.

Barristers Act, RSO 1950, c 31.

Bill 14, *An Act to Promote Access to Justice by Amending or Repealing Various Acts and by enacting the Legislation Act, 2006*, 2nd Sess, 38th Leg, Ontario, 2005 (assented to 19 October 2006), SO 2006, c 21.

Bill 42, *An Act to Regulate the Activities of Paralegal Agents, 1986*, 2nd Sess, 33rd Leg, Ontario, 1986 (first reading 22 May 1986).

Bill 57 – 2018*, Attorney General Statutes Amendment Act, 2018*, 3rd Sess, 41st Parl, British Columbia, 2018 (assented to 27 November 2018), SBC 2018, c 49.

Bill 111, *Modernizing Regulation of the Legal Profession Act, 2013*, 2nd Sess, 40th Parl, Ontario, 2013 (assented to 12 December 2013), SO 2013, c 17.

Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act*, 3rd Sess, 40th Parl, 2011 (assented to 23 March 2011), SO 2011, c 8.

Canada Shipping Act, 2001, SC 2001, c 26.

Canadian Forces Members and Veterans Re-establishment and Compensation Act, SC 2005, c 21.

Canadian International Trade Tribunal Act, RSC 1985, c 47 (4th Supp).

Chartered Professional Accountants of Ontario Act, 2017, SO 2017, c 8.

Chiropractic Act, 1991, SO 1991, c 21.

Civil Resolution Tribunal Act, SBC 2012, c 25.

Code of Civil Procedure, CQLR c-25.01.

Code of Professional Conduct and Discipline Regulations, PEI Reg EC142/10.

Code of Professional Conduct of Lawyers, CQLR c B-1.

College of Immigration and Citizenship Consultants Act, SC 2019, c 29, s 292.

College of Patent Agents and Trade-mark Agents Act, SC 2018, c 27.

Commissioners for Taking Affidavits Act, RSO 1990, c C.17.

Coroners Act, RSO 1990, c C.37.

Coroners Act, RSNWT 1988, c C-20.

Coroners Act, RSPEI 1988, c C-25.1.

Coroners Act, SBC 2007, c 15.

Court Agent Act, RSBC 1996, c 76.

Courts of Justice Act, RSO 1990, c C.43.

Criminal Code, RSC 1906, c 146.

Criminal Code, RSC 1985, c C- 46.

Crown Attorneys Act, RSO 1980, c 107.

Dental Hygiene Act, 1991, SO 1991, c 22.

Discipline Regulation, NB Reg 86-49.

Evidence Act, RSNWT 1988, c E-8.

Evidence Act, RSNWT (Nu) 1988, c E-8.

Financial Institutions Act, RSBC 1996, c 141.

Financial Services Regulatory Authority of Ontario Act, 2016, SO 2016, c 37.

Health Research Ethics Authority Act, SNL 2006, c H-1.2.

Highway Traffic Act, RSO 1990, c H.

Hospital Act, RSY 2002, c 111.

Immigration and Refugee Protection Act, SC 2001, c 27

Insurance Act, RSA 2000, c I-3.

Insurance Act, RSNWT 1988, c I-4, s 229.

Insurance Act, RSNWT(Nu) 1988, c I-4, s 229.

Insurance Act, RSY 2002, c 119.

Law Society Act, 1996, SNB 1996, c 89.

Law Society Act, 1999, SNL 1999, c L-9.1.

Law Society Act, SO 1912, c 26.

Law Society Act, 1970, RSO 1970, c 238.

Law Society Act, RSO 1990, c L.8.

Law Society Act, RSO 1990, c L.8, By-law 3, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/governance/by-laws/by-law-3.pdf>.

Law Society Act, RSO 1990, c L.8, By-law 4, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/by-law-4.pdf>.

Law Society Act, RSO 1990, c L.8, By-law 6, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/governance/by-laws/by-law-6-bilingual.pdf>.

Law Society Act, RSO 1990 c L.8, By-law 11, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/governance/by-laws/by-law-11-regulation-of-conduct-10-24-2019.pdf>.

Legal Aid Services Act, 1998, SO 1998 c 26.

Legal Profession Act, 1990, SS 1990-91, c L-10.1.

Legal Profession Act, CCSM c L107.

Legal Profession Act, RSA 2000, c L-8.

Legal Profession Act, RSNWT 1988, c L-2.

Legal Profession Act, RSNWT (Nu) 1988, c L-2.

Legal Profession Act, RSPEI 1988, c L-6.1.

Legal Profession Act, RSY 2002, c 134.

Legal Profession Act, SBC 1998, c 9.

Legal Profession Act, SNS 2004, c 28.

Legal Profession Act, 1990, SS 1990-91, c L-10.1.

Legal Profession Act, 2017, SY 2017, c 12.

Legal Services Act, 2007 (UK), c 29.

Liquor Act, RSY 2002, c 140.

Liquor Act, SNWT 2007, c 15.

Marine Transportation Security Act, SC 1994, c 40.

Medical Profession Act, RSNWT (Nu) 1988, c M-9.

Midwifery Act, 1991, SO 1991, c 31.

Midwifery Regulations, NS Reg 58/2009.

Notaries Act, CQLR c N-3.

Notaries Act, RSBC 1996, c 334.

Notaries Act, RSY 2002, c 158.

Notaries Public Act, RSNB 2011, c 197.

Nursing Act, 1991, SO 1991 c 32.

Occupational Health and Safety Act, RSO 1990, c O.1.

O Reg 114/99: Family Law Rules.

O Reg 386/12.

O Reg 626/00.

Paramedics Act, SNS 2015, c 33.

Patent Act, RSC 1985, c P-4.

Patent Rules, SOR/96-423.

Pension Act, RSC 1985, c P-6.

Police Act, RSO 1980, c 381.

Professional Code, CQLR c C-26.

Property Assessment and Taxation Act, RSNWT 1988, c P-10.

Provincial Offences Act, RSO 1990, c P. 33.

Provincial Offences Act, RSO 1980, c 400.

Public Servants Disclosure Protection Act, SC 2005 c 46.

Railway Safety Act, RSC 1985, c 32 (4th Supp).

Real Estate and Business Brokers Act, 2002, SO 2002, c 30.

Registered Nurses Act, SNS 2001, c 10.

Registered Nurses Profession Act, RSY 2002, c 194.

Registered Nurses Regulations, NS Reg 154/2016.

Regulated Health Professions Act, 1991, SO 1991, c 18.

Regulations Designating a Body for the Purposes of Paragraph 91(2)(c) of the Immigration and Refugee Protection Act, SOR/2011-142.

Residential Landlord and Tenant Act, SY 2012, c 20.

Resolute Bay Liquor Restriction Regulations, RRNWT (Nu) 1990, c L-46.

Royal Canadian Mounted Police Act, RSC 1985, c R-10.

Rules of the Supreme Court of the Northwest Territories, NWT Reg 010-96.

Small Claims Act, 1997, SS 1997, c S-50.11.

Small Claims Court Act, RSNS 1989, c 430.

Small Claims Rules, BC Reg 261/93.

Solicitors Act, 1940, c 26.

Status of the Artist Act, SC 1992, c 33.

Statutory Powers Procedure Act, RSO 1990, c S.22.

The Coroners Act, 1972, SO 1972, c 98.

The Landlord and Tenant Amendment Act, 1975, SO 1975, c 13.

The Mechanics' and Wage-Earners' Lien Act, SO 1910, c 69.

The Ontario Judicature Act, 1881, SO 1881, c 5.

The Statute Law Amendment Act, 1944, SO 1944, c 58.

The Statutory Powers Procedure Act, 1971, SO 1971, c 47.

Supreme Court of Yukon, *Summary Conviction Appeal Rules, 2009*, SI/2012-64.

Surveyors Act, RSO 1990, c S.29.

Tax Court of Canada Act, RSC 1985, c T-2.

Tax Court of Canada Rules (Informal Procedure), SOR/90-688b.

Territorial Court Civil Claims Rules, NWT Reg 122-2016.

The Health Disciplines Act, 1974, SO 1974, c 47.

The Small Claims Act, 2016, SS 2016, c S-50.12.

The Real Property Act, CCSM c R30.

The Workers Compensation Act, CCSM c W200.

Trade-marks Act, RSC 1985, c T-13.

Trade-marks Regulations, SOR/96-195.

Transportation Appeal Tribunal of Canada Act, SC 2001, c 29.

Veterans Review and Appeal Board Act, SC 1995, c 18.

War Veterans Allowance Act, RSC 1985, c W-3.

Workers Compensation Act, RSBC 1996, c 492.

Workers Compensation Act, RSPEI 1988, c W-7.1.

Workers' Compensation Act, RSO 1990, c W.11.

Workers' Compensation Act, SNS 1995-95, c 10.

Workers' Compensation Act, SNu 2007 c 15.

Workers' Compensation Act, SNWT 2007 c 21.

Workplace Safety and Insurance Act, 1997, SO 1997, c 16.

SECONDARY SOURCES

Professions

Abbott, Andrew, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago Press, 1988).

Arthurs, Harry W, Richard Weisman & Frederick H Zemans, "Canadian Lawyers – A Peculiar Professionalism" in Richard L Abel & Philip SC Lewis, eds, *Lawyers in Society: The Common Law World* (Oakland, CA: University of California Press, 1988) 123.

Becker, Howard S, "The Nature of a Profession" in Howard S Becker, ed, *Sociological Work: Method and Substance* (Chicago: Aldine Publishing, 1970) 87.

Becker, Howard S, ed, *Sociological Work: Method and Substance* (Chicago: Aldine Publishing, 1970).

Bryant, Michael J, Address (Speech to Convocation at the Law Society of Upper Canada delivered at Osgoode Hall, Toronto, 22 January 2004), Transcript of Debates, online: *Law Society of Upper Canada*

<lx07.lsuc.on.ca/view/action/singleViewer.do?dvs=1578936084063~323&locale=en_CA&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=10&application=DIGITOOL-3&forebear_coll=2411&frameId=1&usePid1=true&usePid2=true>.

Canadian Association of Legal Assistants, "About" (last visited 23 May 2020), online: *CAP* <caplegal.ca/en/about/>.

Cummings, Scott L, ed, *The Paradox of Professionalism – Lawyers and the Possibility of Justice* (New York: Cambridge University Press, 2011).

Cummings, Scott L, "What Good Are Lawyers?" in Scott L Cummings, ed, *The Paradox of Professionalism – Lawyers and the Possibility of Justice* (New York: Cambridge University Press, 2011) 1.

Freidson, Eliot, *Professionalism: The Third Logic* (Chicago: University of Chicago Press, 2001).

Freidson, Eliot, *Professional Powers – A Study of the Institutionalization of Formal Knowledge* (Chicago: University of Chicago Press, 1986).

Larson, Magali Sarfatti, *The Rise of Professionalism: A Sociological Analysis* (California: University of California Press, 1977).

Larson, Magali Sarfatti, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets* (New Brunswick, NJ: Transaction Publishers, 2013).

Lexico, "UK Dictionary: paraprofessional" (last visited 23 May 2020), online: <www.lexico.com/definition/paraprofessional>.

Lexico, "UK Dictionary: paralegal" (last visited 23 May 2020), online: <www.lexico.com/definition/paralegal>.

Pevato, Paul, "Should Law Societies 'Prosecute the Hell' Out of Independent Paralegal Firms?" (1991) 7 J L & Soc Pol'y 215.

Professional Regulation

Abel, Richard L, "England and Wales: A Comparison of Professional Projects of Barristers and Solicitors" in Richard L Abel & Philip SC Lewis, eds, *Lawyers in Society: The Common Law World* (Oakland, CA: University of California Press, 1988).

Abel, Richard L, *English Lawyers Between Market and State: The Politics of Professionalism* (Oxford: Oxford University Press, 2003).

Abel, Richard L, "Just Law?" in Scott L Cummings, ed, *The Paradox of Professionalism – Lawyers and the Possibility of Justice* (New York: Cambridge University Press, 2011) 298.

Abel, Richard L, "Lawyer Self-Regulation and the Public Interest" (2017) 20:1 Legal Ethics 115.

Abel, Richard L, "United States: The Contradictions of Professionalism" in Richard L Abel & Philip SC Lewis, eds, *Lawyers in Society: The Common Law World* (Oakland, CA: University of California Press, 1988).

Adams, Tracey L, "Attitudes to Independent Dental Hygiene Practice: Dentists and Dental Hygienists in Ontario," (2004) 70:8 J Cdn Dental Assoc 535.

Adams, Tracey L, "Dentistry and Medical Dominance" (1999) 48 Soc Science & Medicine 407.

Adams, Tracey L. "Professional Self-Regulation and the Public Interest in Canada" (Paper delivered at the ISA RC52 Interim Conference on Challenging Professionalism, The School of Economics and Management (ISEG), Lisbon, Portugal, 29 November 2013).

Adams, Tracey L, "The Changing Nature of Professional Regulation in Canada, 1867-1961" (Summer 2009) 33:2 Social Science History 217.

Appleby, Timothy, "Draft Legislation on Way to Regulate Ontario Paralegals", *Globe and Mail* (1 November 2004), online: <globeandmail.com>.

Arthurs, Harry W, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33:4 Alta L Rev 800.

Arthurs, Harry W, "Why Canadian Law Schools Do Not Teach Legal Ethics" in Kim Economides, ed, *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998).

Association of Canada Lands Surveyors (last visited 10 June 2020), online: *ACLS-ACTC* <www.acls-aatc.ca>.

Association des Parajuristes du Quebec, online: <www.parajuristequebec.ca/page-1739698>.

BC Legal Services Society, online: <www.lss.bc.ca>.

Atkey, Ronald G, "The Statutory Powers Procedure Act, 1971" (1972) 10:1 Osgoode Hall LJ 155.

Beardwood, Barbara, "The Loosening of Professional Boundaries and Restructuring: The Implications for Nursing and Medicine in Ontario, Canada" (1999) 21:3 Law & Policy 315.

British Columbia Human Rights Tribunal, *Annual Report 2015 – 2016* (Vancouver: BCHRT, 2016) at 8, online (pdf): <www.bchrt.bc.ca/shareddocs/annual_reports/2015-2016.pdf>.

Brown, Jennifer. "Quebec Paralegals Want Recognition From Barreau", *Canadian Lawyer* (19 November 2013), online: <www.canadianlawyermag.com/news/general/quebec-paralegals-want-recognition-from-barreau/272304>.

Bogart, WA, & Neil Vidmar, "An Empirical Profile of Independent Paralegals in The Province of Ontario" in RW Ianni, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990).

Brockman, Joan, "'Fortunate Enough to Obtain and Keep the Title of Profession': Self-Regulating Organizations and the Enforcement of Professional Monopolies" (1998) 41:4 Can Public Administration 587.

Brockman, Joan, "Dismantling of Fortifying Professional Monopolies? On *Regulating Professions and Occupations*" (1996) 24:2 Man LJ 301.

Buckley, Melina, *Innovative Approaches to the Provision of Legal Representation and Assistance to Litigants – An Issue Paper prepared for the CBA Systems of Civil Justice Task Force* (January 1996).

Cain, M, & C B Harrington, eds *Lawyers in a Postmodern World: Translation and Transgression* (Buckingham: Open University Press, 1994).

Canadian Association of Paralegals, "About CAP" (last visited 20 March 2020), online: <www.caplegal.ca/en/about/>.

Canadian Human Rights Commission, *Annual Report 2016* (Ottawa: Minister of Public Works and Government Services, 2017), online (pdf): <www.chrt-tcdp.gc.ca/transparency/AnnualReports/2016-ar/2016-en.pdf>.

Chartered Professional Accountants Canada, "About CPA Canada: Mission, Vision and Values of CPA Canada" (last visited 19 May 2020), online: *CPA Canada* <www.cpacanada.ca/en/the-cpa-profession/about-cpa-canada/mission-vision-and-values-of-cpa-canada>.

Cherniak, Cyndee Todgham, "General Procedure Cases Before The Tax Court of Canada and Not Hiring A Lawyer" (18 September 2011), online (blog): *The HST Blog* <www.thehstblog.com/tags/tax-court-of-canada/>.

Claridge, Thomas, "Paralegal groups concerned about regulation and accreditation", *The Lawyers Weekly* (1 February 2008).

Coburn, David, "State Authority, Medical Dominance, and Trends in the Regulation of the Health Professions: The Ontario Case" (1993) 37:7 Social Science & Medicine 129.

College of Midwives of Ontario, "About the College" (last visited 10 April 2020), online: <www.cmo.on.ca/about-the-college/>.

College of Nurses of Ontario, "About the College of Nurses of Ontario" (last updated 25 May 2017), online: <www.cno.org/en/what-is-cno/>.

College of Nurses of Ontario, "New RN Exam: Let's Get Back to the Facts" (11 March 2016), online: <www.cno.org/nclex-fact-sheet>.

College of Nurses of Ontario, "Nurse Practitioners" (last updated 25 November 2019), online: <www.cno.org/en/learn-about-standards-guidelines/educational-tools/nurse-practitioners/>.

Cooper, Jeremy, "What is Legal Competence?" (1991) 54 Mod L Rev 112.

Covert, Kim, "CBA submission: Lawyers, not immigration consultants, should represent newcomers", *CBA National Magazine* (3 January 2018), online: <nationalmagazine.ca>.

Covert, Kim, "College of Patent and Trademark Agents Need Not Regulate Lawyers", *CBA National Magazine* (9 April 2019), online: <www.nationalmagazine.ca/en-ca/articles/cba-influence/submissions/2019/college-of-patent-and-trademark-agents-need-not-re>.

Cronk, Eleanore, Canadian Bar Association, *Report of the Task Force on Systems of Civil Justice* (Ottawa: CBA, 1996).

Davidson, Terry, "Legal Aid Paralegals Not Qualified to Handle Risky Refugee Cases: Lawyer", *The Lawyer's Daily* (15 January 2019), online (pdf): <www.thelawyersdaily.ca/articles/9608/legal-aid-paralegals-not-qualified-to-handle-risky-refugee-cases-lawyer>.

Devlin, Richard F & Porter Heffernan, "The End(s) of Self-Regulation?" (2008) 45:5 Alta L Rev 169.

Douglas, Heather, "Is Doc Review Legal Work?", *SLAW* (13 January 2016), online: <www.slaw.ca/2016/01/13/is-doc-review-legal-work/>.

Economides, Kim, ed, *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998).

Evans, Robert G, & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982).

Federation of Law Societies of Canada, *Model Code of Professional Conduct* (last modified 19 October 2019), online (pdf): <flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>.

Friends of Muskoka Midwives, "History of Midwifery in Ontario" (last visited 10 April 2020), online: <www.friendsofmuskokamidwives.com/history-of-midwifery-in-ontario.html>.

Froese, Ian, "Legal Aid Manitoba Wants Non-lawyers Empowered to Argue Refugee Claims", *CBC News* (2 January 2019), online: <www.cbc.ca/news/canada/manitoba/legal-aid-manitoba-advocates-refugee-claimants-1.4952641>.

Furlong, Jordan, "Empathy for the Disrupted", *SLAW* (16 August 2019), online: <www.slaw.ca/2019/08/16/empathy-for-the-disrupted/>.

Geekie, DA, "Ontario's New Health Disciplines Act Extends Government Control, Increases Professional Accountability" (1975) 113 Canadian Medical Association J 446, online (pdf): <www.ncbi.nlm.nih.gov/pmc/articles/PMC1956654/pdf/canmedaj01542-0114.pdf>.

Glauser, Wendy, Mike Tierney & Michael Nolan, "Does Ontario Have Too Many Under-regulated Health Workers?" (31 March 2016), online (blog): *Healthy Debate* <http://healthydebate.ca/2016/03/topic/health-professional-regulation>.

Grimes, Kelly & Gabriela Prada. *Value of Physician Assistants: Understanding the Role of Physician Assistants Within Health Systems* (Ottawa: The Conference Board of Canada, 29 June 2016), online: <www.conferenceboard.ca/e-library/abstract.aspx?did=8107&AspxAutoDetectCookieSupport=1>.

Hadfield, Gillian K, & Deborah L Rhode, "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering" (2016) 67 Hastings L J 1191.

Hadfield, Gillian K, "Lawyers, Make Room for Non-Lawyers" (November 25, 2012), online: <http://works.bepress.com/ghadfield/50/>.

Hadfield, Gillian, "On Right-Regulating Legal Markets" (19 September 2011), online: *Truth on the Market* <truthonthemarket.com/2011/09/19/gillian-hadfield-on-right-regulating-legal-markets/>.

Hadfield, Gillian K, *Rules for a Flat World – Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (New York: Oxford University Press, 2017).

Haller, Linda, "Regulating the Professions" in Peter Cane & Herbert Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 216.

Hayos, Gabe, "Tax preparer standards: What do you think?" (11 April 2013), online (blog): *CPA Magazine Tax Blog* <www.cpacanada.ca/connecting-and-news/blogs/tax-blog/2013/04/tax-prepared-standards-what-do-you-think>.

Health Force Ontario, "Health Providers" (last updated 26 March 2019), online: www.healthforceontario.ca/en/Home/Health_Providers>.

Health Force Ontario, "Physician Assistants" (last updated 2 December 2019), online: <www.healthforceontario.ca/en/Home/Health_Providers/Physician_Assistants>.

Hirsch, Jeff, Law Society of Manitoba Communique (February 2010) (on file with the author).

Hodgins, Frank Egerton, *Report and Supporting Statements on Medical Education in Ontario* (Toronto: Ontario Commission on Medical Education, 1917).

Immigration Consultants of Canada Regulatory Council (last visited 10 June 2020), online: <iccrc-crcic.ca>.

Institute of Law Clerks of Ontario, "Who We Are" (last visited 9 January 2020), online: <www.ilco.on.ca/about-ilco/about-us/who-we-are>.

Julin, Joseph R, "The Legal Profession: Education and Entry" in Roger D Blair & Stephen Rubin, eds, *Regulating the Professions: A Public Policy Symposium* (Lexington, MA: Lexington Books, 1980) 201.

Letter from Chief Justices Heather J Smith & Lisa Maisonneuve to the Honourable Yasir Naqvi & Treasurer Paul B Schabas (26 May 2017) in *Family Law Services Review Report Call for Input: Organization Submissions* at 19, online (pdf): *LSO* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/f/flsrorsubmissions.pdf>.

Lehmann, John, "B.C. Puts End to Real Estate Self-Regulation", *The Globe and Mail* (29 June 2016), online: <www.theglobeandmail.com/real-estate/vancouver/bc-premier-christy-clark-says-change-coming-to-real-estate-industry/article30681945/>.

Lemmens, Trudo, & Kanksha Mahadevia Ghimire, "Regulation of Health Professions in Ontario: Self-Regulation with Statutory-Based Public Accountability" (2019) 19:3 J of Health L 124.

Letter from Barbara Caruso to Minister of Immigration, Refugees and Citizenship (8 December 2017), online (pdf): *CBA* <www.cba.org/CMSPages/GetFile.aspx?guid=51885453-08c7-4402-a35a-f05dab1f9960>.

Letter from Doug Downey, Attorney General for Ontario, to Malcolm Mercer, Treasurer of the Law Society of Ontario (11 July 2019) in Law Society of Ontario, Paralegal Standing Committee, *Bill C-75 Response* (11 September 2019), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2019/convocation-september-2019-paralegal-standing-committee-report.pdf>.

Macdonald, Roderick A, "Let Our Future Not Be Behind Us: The Legal Profession in Changing Times" (2001) 64 Sask L Rev 1.

Macfarlane, Julie, "2017 Could be the Year of the Paralegal – Or, Will #AltFacts Prevail?" (31 January 2017), online (blog): *NSRLP* <https://representingyourselfcanada.com/2017-could-be-the-year-of-the-paralegal-or-will-altfacts-prevail/>.

Macfarlane, Julie, "A Week of Contradictions: Why I Sometimes Feel Despair About the Profession I Love" (27 April 2016), online (blog): *NSRLP* <representingyourselfcanada.com/2016/04/27/>.

MacKenzie, Gavin, "Regulating Lawyer Competence and Quality of Service" (2008) 45:5 Alta L Rev 143.

Mackie, Richard, "Law Society Wants Control over Activities of Paralegals", *Globe and Mail* (24 September 2004), online: <globeandmail.com>.

Macnab, Aidan, "New Program Will Train Immigration and Citizenship Consultants", *Canadian Lawyer* (2 May 2019), online: <www.canadianlawyermag.com/legalfeeds/author/aidan-macnab/new-program-will-train-immigration-and-citizenship-consultants-17207/>.

Makin, Kirk, "Law Society Agrees to Police Paralegals", *Globe and Mail* (23 January 2004), online: <www.theglobeandmail.com/news/national/law-society-agrees-to-police-paralegals/article4086688/>.

Makin, Kirk, "Legal turf war: courting the enemy", *Globe and Mail* (10 June 2002), online: <globeandmail.com>.

Manitoba Real Estate Association (last visited 10 June 2020), online: <realestatemanitoba.com>.

Manitoba Law Reform Commission, *Regulating Professions and Occupations* (Winnipeg: Queen's Printer, October 1994), online (pdf): <www.manitobalawreform.ca/pubs/pdf/archives/84-full_report.pdf>.

McGinnis, John O & Russell G Pearce, "The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services" (2014) 82:6 Fordham L Rev 3041

McHale, Jerry, "Re: Family Law Legal Service Providers: Consultation Paper" (29 October 2018), online (pdf): *University of Victoria Law* <static1.squarespace.com/static/5532e526e4b097f30807e54d/t/5bff12ce8a922d66f5ee55af/1543443152742/JM-BCLS+FLSP+Response.pdf>.

McKiernan, Michael, "Paralegals in family law", *Canadian Lawyer* (19 March 2018), online: <www.canadianlawyermag.com/author/michael-mckiernan/paralegals-in-family-law-15386/>.

McKiernan, Michael, "Advocacy group says CBA proposal is anti-competitive", *Law Times* (12 March 2018), online: <www.lawtimesnews.com/author/michael-mckiernan/advocacy-group-says-cba-proposal-is-anti-competitive-15436/>.

McKiernan, Michael, "Update: Paralegals Call Truce Over Law Society Motion", *Law Times* (2 May 2010), online: <www.lawtimesnews.com/20100503762/headline-news/update-paralegals-call-truce-over-law-society-motion>.

McLachlin, Rt Hon Beverley, "Justice in Our Court and the Challenges We Face" (speech delivered at the Empire Club of Canada Addresses, Toronto, 8 March 2007), online: <speeches.empireclub.org/62973/data>.

McLachlin, Rt Hon Beverley, "Preserving Public Confidence in the Courts and the Legal Profession" (2003) 29:3 Man LJ 277.

Meilleur, Madison, Address (keynote remarks delivered at the Better Justice Together Conference, Toronto, 18 November 2014), online: <www.attorneygeneral.jus.gov.on.ca/english/better_justice/speech.php>.

Miedema, Adrian, "Government OHSA advisors must be licensed paralegals, court decides" (27 May 2014), online: *Canadian Occupational Health & Safety Law* <www.occupationalhealthandsafetylaw.com/government-ohsa-advisers-must-be-licenced-paralegals-court-decides>.

Ministry of Labour, Training and Skills Development (last updated 15 May 2020), online: <www.ontario.ca/page/ministry-labour>.

Mitchell, Ken, *White Paper on the Licensing and Governance of Paralegals: A Roadmap to Self-management of Paralegal Practitioners* (Paralegal Society of Ontario, 1 September 2006), online (pdf): *PSO* <www.parallaxparalegal.com/wp-content/uploads/2013/09/pso_whitepaper3.pdf>.

Moorhead, Richard, Alan Paterson & Avrom Sherr, "Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales" (2003) 37:4 Law & Soc'y Rev 765.

Morris, David, *Report to the Attorney General of Ontario – Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario Pursuant to Section 63.1 of the Law Society Act* (Toronto: Ontario Ministry of the Attorney General, Queen's Printer for Ontario, 2012), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.html>.

Mullin, Mallone, "Need for Ontario Midwives 'Past the Tipping Point,' say Pros", *CBC News* (17 June 2017), online: <www.cbc.ca/news/canada/sudbury/growing-demand-for-midwives-northern-ontario-1.4009366>.

Mysicka, Robert, *Who Watches the Watchmen? The Role of the Self-Regulator* (Toronto: CD Howe Institute Commentary No 416, 8 October 2014).

Neil, Martha, "Paralegals Sue Over Regulation By Canadian Bar Association", *ABA Journal* (23 January 2008), online: <www.abajournal.com/mobile/article/paralegals_sue_over_regulation_by_canadian_bar_association>.

Nevin, Dera J, "Is Document Review Legal Work?", *Canadian Lawyer* (1 September 2014), online: <www.canadianlawyermag.com/news/features/is-document-review-legal-work/269514>.

New Brunswick Real Estate Association (last visited 10 June 2020), online: <nbrea.ca>.

Newfoundland and Labrador, Workplace Health, Safety and Compensation Review Division, *Annual Performance Report 2016-17* (Mount Pearl, NL: WHSCRD, 2017), online (pdf): <www.gov.nl.ca/whscrd/files/publications/annualreports/2016_17_WHSCRD_AR.pdf>.

Noone, Mary Anne, "Paralegals and Legal Aid Organisations" (1988) 4 J L & Soc Pol'y 146.

Noone, Mary Anne, "Paralegals – in the Community's Interest?" in Julia Vernon and Francis Regan, eds, *Improving Access to Justice: The Future of Paralegal Professionals* (Canberra: Australian Institute of Criminology, 1990) 25.

Nurse Practitioners Association of Ontario, "About" (last updated 19 November 2019), online: <npao.org/about-npao/>.

O'Brien, Kathy, "Paramedics Will Not Become the Next Regulated Health Profession in Ontario" (21 March 2014), online: *DDO Health Law* <http://ddohealthlaw.com/paramedics-will-not-become-the-next-regulated-health-profession-in-ontario/>.

Ontario Association of Professional Searchers of Records, "What is OPASOR" (last visited 9 January 2020), online: <oapsor.ca/about-us>.

Orkin, Mark M, *Professional Autonomy and the Public Interest: A Study of the Law Society of Upper Canada* (D.Jur. Dissertation, York University, 1971) [unpublished].

ParalegalEDU.org, "How to Become a Paralegal in Nova Scotia" (last visited 9 January 2020), online: *ParalegalEDU.org* <www.paralegaledu.org/nova-scotia/>.

ParalegalEDU.org, "How to Become a Paralegal in Saskatchewan" (last visited 9 January 2020), online: <www.paralegaledu.org/saskatchewan/>.

"Paralegal Update: Paralegal scope of practice under review", *Ontario Lawyers Gazette* 15:1 (Spring 2011), online (pdf): <lawsocietygazette.ca/wp-content/uploads/2013/01/gazette-2011-01-spring.pdf>.

Parker, Christine, *Just Lawyers*: *Regulation and Access to Justice* (Oxford: Oxford University Press, 1999).

Parsons, Bruce, comment on David Giacalone, "Ontario paralegals to be regulated – by the Bar" (28 November 2006), online (blog): *shlep: the Self-Help Law Express* <blogs.harvard.edu/shlep/2006/11422ntarioario-paralegals-to-be-regulated-by-the-bar/>.

Passmore, Crispin, "The Solicitors Regulation Authority: Looking to the Future" (2016) 19:1 Legal Ethics 145.

Paton, Paul D, "Between a Rock and a Hard Place: The Future of Self-Regulation – Canada between the United States and the English/Australian Experience" (2008) J Professional Lawyer 87.

Pearson, John, "Canada's Legal Profession: Self-Regulating in the Public Interest?" (2015) 92:3 CBR 556.

Pink, Darrel, Nova Scotia Barristers' Society, "Memorandum to Council – Request for Amendments to the Legal Profession Act" (23 September 2016), online: <nsbs.org/council-materials>.

Prince Edward Island Real Estate Association (last visited 10 June 2020), online: <peirea.com>.

Quebec Interprofessional Council, "La mission du CIQ" (last visited 20 March 2020), online: <www.professions-quebec.org/fr/mission/>.

Pue, W Wesley, "Foxes, Henhouses, Unfathomable Mysteries, and the Sufferance of the People: A Review of *Regulating Professions and Occupations*" (1996) 24:2 Man LJ 283.

Raymer, Elizabeth, "LSBC Discontinues 'Paralegals in Court' Pilot", *Canadian Lawyer* (12 January 2017), online: <www.canadianlawyermag.com/legalfeeds/3631/lsbc-discontinues-paralegals-in-court-pilot.html>.

Rees, Victoria, Nova Scotia Barristers' Society, "Transforming Regulation and Governance in the Public Interest" (28 October 2013), online (pdf): <archives.nsbs.org/unpublished/81563.pdf>.

Rhode, Deborah L, *In the Interests of Justice: Reforming the Legal Profession* (New York: Oxford University Press, 2000).

Rhode, Deborah L, "Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions" (1981) 34:1 Stan L Rev 1.

Rhode, Deborah L, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice" (1996) 1 J Inst for Study Legal Ethics 197.

Rhode, Deborah L, "The Profession and the Public Interest" (2002) 54:6 Stan L Rev 1501.

Rhode, Deborah L, "What We Know and Need to Know about the Delivery of Legal Services by Non Lawyers" (2016) 67:2 SCL Rev 429.

Rhode, Deborah L & Alice Woolley, "Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada" (2012) 80:6 Fordham L Rev 2761.

"Rules and the paralegal", Editorial, *Globe and Mail* (14 May 2004), online: <www.globeandmail.com>.

Savino, Victor S, *Paralegalism in Canada: A Response to Unmet Needs in the Delivery of Legal* Services (LLM Thesis, Dalhousie University, 1976) [unpublished].

Saskatchewan Land Surveyors Association, "About the SLSA" (last visited 20 March 2020), online: <www.slsa.sk.ca/about_slsa.php>.

Schultze, Robert, "What does it mean to be a self-governing regulated profession?" (2007) 4:3 J Property Tax Assessment & Administration 41.

Semple, Noel, "Canada: Legal Services Regulation in Canada: *Plus C?a Change*?" in Andrew Boon, ed, *International Perspectives on the Regulation of Lawyers and Legal Services* (Oxford: Hart Publishing, 2017) 95.

Semple, Noel, *Legal Services Regulation at the Crossroads – Justitia's Legions* (Cheltenham, UK and Northampton, MA: Edward Elgar, 2015).

Semple, Noel, Russell G Pearce & Renee Newman Knake, "A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England and Wales, and North America" (2013) 16:2 Legal Ethics 258.

Shaked, Avner & John Sutton, "The Self-Regulating Profession" (1981) 48:2 Rev Economic Studies 217.

Sobie, Sherryll, "Dental Hygienists in Ontario: Their Changing Role and What it Means to You", *Toronto Star* (1 April 2012), online: <www.thestar.com>.

Society of Notaries Public of British Columbia, online: *Justice Education Society* <www.adminlawbc.ca/tribunals/professionals-associations/society-notaries-public-bc>.

Sorensen, Jean, "B.C. attorney general urges members to support alternative legal service providers", *Canadian Lawyer* (31 October 2018), online: <www.canadianlawyermag.com/resources/professional-regulation/b.c.-attorney-general-urges-members-to-support-alternative-legal-service-providers/275587>.

Sorensen, Jean, "B.C. lawyers vote to block licensed paralegals as AG pushes through legislation", *Canadian Lawyer* (5 December 2018), online: <www.canadianlawyermag.com/legalfeeds/bc-lawyers-vote-to-block-licensed-paralegals-as-ag-pushes-through-legislation-16580/>.

Sorensen, Jean, "LSBC establishes licensed paralegal task force", *Canadian Lawyer* (15 May 2019), online: <www.canadianlawyermag.com/resources/professional-regulation/lsbc-establishes-licensed-paralegal-task-force/276136>.

Stansbury, Doug, "Registration of Tax Preparers – An Idea Whose Time Has Come" (22 January 2014), online (blog): *On Target* <www.stansco.ca/2014/01/registration-of-tax-preparers-an-idea-whose-time-has-come/>.

Stephen, Frank H, Lawyers, Markets and Regulation (Cheltenham, UK: Edward Elgar Publishing, 2013).

Stigler, George J, "'The Theory of Economic Regulation' (1971) 2:1 *Bell Journal of Economics and Management Science* 3.

Susskind, Richard & Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (New York: Oxford University Press, 2015).

Swan, John, "Regulating Continuing Competence" in Evans, Robert G, & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 351.

Taddese, Yamri, "Lawyers Confused at Stance on Document Review", *Law Times* (23 March 2015), online: <www.lawtimesnews.com>.

Taddese, Yamri, "Paralegal Motion Withdrawn Hours Before Law Society AGM", *Canadian Lawyer* (8 May 2013), online: <www.canadianlawyermag.com/news/general/paralegal-motion-withdrawn-hours-before-law-society-agm/271984>.

Terry, Laurel S, Steve Mark & Tahlia Gordon, "Adopting Regulatory Objectives for the Legal Profession" (2012) 80:6 Fordham L Rev 2685.

The Court of Queen's Bench of Alberta, *Annual Report 2016 to 2017* (17 October 2017), online (pdf): <albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf?sfvrsn=593aac80_0>.

The Courts of Nova Scotia, *Nova Scotia Civil Procedure Rules* (6 June 2008), online (pdf): <www.courts.ns.ca/Civil_Procedure_Rules/cpr_docs/civil_procedure_rules_june_08_complete.pdf>.

The Courts of Nova Scotia, *Nova Scotia Provincial Court Rules* (1 January 2013), online (pdf): <www.courts.ns.ca/Provincial_Court/NSPC_I_rules_and_forms/NSPC_criminal_rules_12.11.pdf#1.1-1>.

The Society of Notaries Public of British Columbia (last visited 10 June 2020), online: *BC Notaries* <www.notaries.bc.ca>.

The Society of Notaries Public of British Columbia, "Services BC Notaries Provide" (last visited 10 June 2020), online: *BC Notaries* <www.notaries.bc.ca>.

Trabucco, Lisa, "Lawyers' Monopoly? Think Again: The Reality Of Non-Lawyer Legal Service Provision In Canada" (2018) 96:3 Can Bar Rev 460.

Trabucco, Lisa, "What Are We Waiting For? It's Time to Regulate Paralegals in Canada" (2018) 35 Windsor YB Access Just 149.

Trebilcock, Michael & Barry J Reiter, "Licensure in Law" in Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 66.

Trebilcock, Michael, "Regulating the Market for Legal Services" (2008) 45:5 Alta L Rev 215.

Trembath, Sean, "Could Alberta Judge's Ruling on RCMP Acting as Prosecutors Affect Saskatchewan?", *Saskatoon Star Phoenix* (21 February 2017), online: <http://thestarphoenix.com>.

Turfler, Soha, "A Model Definition of the Practice of Law: If Not Now, When? An Alternative Approach to Defining the Practice of Law" (2004) 61:4 Wash & Lee L R 1903.

Webb, Duncan, "Are Lawyers Regulatable?" (2008) 45:5 Alta L Rev 233.

Webb, Julian, "Turf Wars and Market Control: Competition and Complexity in the Market for Legal Services" (2004) 11:1-2 Intl J Leg Prof 81.

White, Heather, and Sarah Burton, "Agent Regulation: The Case of Emmerson Brando (AKA Arturo Nuosci, AKA Maverick Austin Maveric, AKA Landon Emmerson Brando)" (15 June 2015), online (blog): *ABlawg* <http://ablawg.ca>.

Williams, Bryan, "Abuse of Power by Self-governing Bodies" in *The Abuse of Power and the Role of an Independent Judicial System in Its Regulation and Control* (Special Lectures of the Law Society of Upper Canada, 1979).

Winkler, The Honourable Warren K, "Professionalism and Proportionality" (2009) 27 Advocates Soc J 6.

Woolley, Alice, "Regulation in Practice: The 'Ethical Economy' of Lawyer Regulation in Canada and a Case Study in Lawyer Deviance" (2012) 15:2 Legal Ethics 243.

Woolley, Alice, "Why Do We Regulate Lawyers?" in *Why Good Lawyers Matter*, eds David L Blaikie, Hon. Justice Thomas A Cromwell & Darrel Pink (Toronto: Irwin Law, 2012) 105.

Zemans, Frederick H, *Paralegals in Ontario: Research Report* (Professional Paralegal Association of Ontario, August 2004).

Access to Justice

Abel, Laura K, "Evidence-Based Access to Justice" (2009-2010) 13 U Pa J L & Soc Change 295.

Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013), online (pdf): *FLSC* <flsc.ca/wp-content/uploads/2014/10/ACCESSActionCommFinalReport2013.pdf>.

Agrast, Mark David, Juan Carlos Botero & Alejandro Ponce, *The World Justice Project Rule of Law Index, 2011* (Washington: World Justice Project, 2011), online (pdf): <worldjusticeproject.org/sites/default/files/documents/WJP_Rule_of_Law_Index_2011_Report.pdf>.

Alton, Michelle A, "Rethinking Fairness in Tribunal Adjudication to Best Promote Access to Justice" (2019) 32:3 Can J Admin L & Prac 151.

Bass, Julia H, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: The Law Society of Upper Canada, 2005).

Beg, Samreen & Lorne Sossin, "Should Legal Services Be Unbundled?" in Michael Trebilcock, Lorne Mitchell Sossin & Anthony Duggan, eds, *Middle Income Access to Civil Justice* (Toronto: University of Toronto Press, 2012) 198.

Bond, Jennifer, David Wiseman & Emily Bates, "The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector" (2016) 25:1 J Law & Soc Policy 1 at 11.

Boyd, John-Paul. "The Gloomy Future of Access to Family Justice in British Columbia: Outcomes of the Law Society's 2018 Annual General Meeting", *SLAW* (7 December 2018), online: <www.slaw.ca/2018/12/07/the-gloomy-future-of-access-to-family-justice-in-british-columbia-outcomes-of-the-law-societys-2018-annual-general-meeting/>.

Community Legal Assistance Society of BC, online: <www.clasbc.net>.

Devlin, Richard, "Bend Or Break: Enhancing the Responsibilities of Law Society to Promote Access to Justice" (2015) 38 Man LJ 119.

Devlin, Richard, "Breach of Contract?: The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession" (2002) 25:2 Dal LJ 335.

Davidson, Terry, "'Limited Practitioners'" Needed for Access to Justice in Manitoba , Says Official", *The Lawyers' Daily* (17 March 2020), online: <https://www.thelawyersdaily.ca/articles/18136>.

Dodek, Adam M, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008) 46:1 Osgoode Hall LJ 1.

Ellis, Ron, *Unjust by Design: Canada's Administrative Justice System* (Vancouver: UBC Press, 2013).

Environment and Land Tribunals Ontario, *2016-17 Annual Report* (Toronto: Queen's Printer for Ontario, 2017), online (pdf): <elto.gov.on.ca/wp-content/uploads/2018/05/2016-2017-ELTO-Annual-Report.pdf>.

Evans, Robert G, & Alan D Wolfson, "Cui Bono – Who Benefits from Improved Access to Legal Service?" in Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 3.

Freiberg, Arie, *Post-Adversarial and Post-Inquisitorial Justice: Transcending Traditional Penological Paradigms* (2010), online (pdf): *SSRN* <ssrn.com/abstract=no.1609468>.

Green, Samantha & Lorne Sossin, *Administrative Justice and Innovation: Beyond the Adversarial/Inquisitorial Dichotomy* (2011), online (pdf): *SSRN* <ssrn.com/abstract=1948761>.

Hathaway, James C, "Native Canadians and the Criminal Justice System: A Critical Examination of the Native Courtworker Program" (1984-1985) 49 Sask LR 201.

Littlewood, Paula & Stephen Crossland, "Alternative Legal Service Providers: Filling the Justice Gap" in Paul A Haskins, ed, *The Relevant Lawyer: Reimagining the Future of the Legal Profession* (American Bar Association, 2015) 25.

Lowenberger, Brea, "Recommendations from Dean's Forum Becoming a Reality: Law Society and Ministry of Justice seeking feedback on expanding the responsibilities of non-lawyer legal service providers in Saskatchewan" (17 May 2016), online (blog): *Legal Sourcery* <https://lsslib.wpcomstaging.com/2016/05/17/recommendations-from-deans-forum-becoming-a-reality-law-society-and-ministry-of-justice-seeking-feedback-on-expanding-the-responsibilities-of-non-lawyer-legal-service-providers-in-saskatchew/>.

Macdonald, Roderick A, "Access to Civil Justice" in Peter Cane & Herbert Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 492.

Macdonald, Roderick A, "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: The Law Society of Upper Canada, 2005) 19.

Macdonald, Roderick A, "Foundation Paper: Executive Summary" prepared for and forming part of Law Society of Upper Canada, Access to Justice Committee, *Report to Convocation* (Toronto: LSUC, 26 June 2003).

National Self-Represented Litigants Project, "Can BC Lead the Way on Paralegals?" (7 May 2019), online (podcast): *NSRLP* <representingyourselfcanada.com/can-bc-lead-the-way-on-paralegals/>.

National Self-Represented Litigants Project, "Carrot or Stick? Moving Forward in BC" (2 April 2019), online (podcast): *NSRLP* <representingyourselfcanada.com/carrot-or-stick-moving-forward-in-bc/>

Northwest Territories , "NWT Access to Justice Committee – Terms of Reference" (24 April 2014), online (pdf): <https://ajrndotco.files.wordpress.com/2016/06/tor-committee-final.pdf>.

Ontario Civil Legal Needs Project, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, May 2010).

Ontario Civil Legal Needs Project, *The Geography of Civil Legal Services in Ontario* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, November 2011) at 37-38, online (pdf): *LSO* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/g/geography_of_civil_legal_services_final_report_en_nov_18_2011.pdf>.

O'Reilly, Patricia Louise, *Health Care Practitioners: An Ontario Case Study in Policy Making* (Toronto: University of Toronto Press, 2000).

ParalegalEDU.org, "How to Become a Paralegal in Quebec" (last visited 9 April 2020), online: <www.paralegaledu.org/quebec/>.

Paterson, Alan & Avrom Sherr, "Quality, Clients and Legal Aid" (1992) 142 New LJ 783.

Rhode, Deborah L, *Access to Justice* (New York: Oxford University Press, 2004).

Rhode, Deborah L, "Whatever Happened to Access to Justice?" (2009) 42:4 Loy LA L Rev 869.

Sandefur, Rebecca L, "Access to Civil Justice and Race, Class and Gender Inequality" (2008) 34 Annual Rev Sociology 339.

Sandefur, Rebecca L, "Access to What?" (Winter 2019) 148:1 Daedalus 49, online: <www.mitpressjournals.org/doi/pdfplus/10.1162/daed_a_00534>.

Schmitz, Cristin, "Closing Gap in Legal Services in Major Challenge, Cromwell Warns", *The Lawyers Weekly* (21 October 2016), online: <www.lawyersweekly.ca/articles/3122>.

The Advocates' Society, "Response to Public Consultation: Expanding Legal Services Options for Ontario Families" (29 April 2016) in *Family Law Services Review Report Call for Input: Organization Submissions*, online (pdf): *LSO* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/f/flsrorsubmissions.pdf>.

Trebilcock, Michael, Lorne Sossin & Anthony Duggan, eds, *Middle Income Access to Civil Justice* (Toronto: University of Toronto Press, 2012).

Vernon, Julia, and Francis Regan, eds, *Improving Access to Justice: The Future of Paralegal Professionals* (Canberra: Australian Institute of Criminology, 1990).

Woolley, Alice, "Imperfect Duty: Lawyers' Obligation to Foster Access to Justice" (2008) 45:5 Alta L Rev 107.

Woolley, Alice & Trevor CW Farrow, "Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges" (2016) 3:3 Texas A&M L Rev 549.

World Justice Project, "WJP Rule of Law Index" (last visited 20 May 2020), online: <worldjusticeproject.org/rule-of-law-index/>.

Zemans, Frederick H, "The Non-lawyer as a Means of Providing Legal Services" in Robert G Evans & Michael J Trebilcock, eds, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 263.

Lawyers' History and Culture

Abel, Richard L & Philip SC Lewis, eds, *Lawyers in Society: The Common Law World* (Oakland, CA: University of California Press, 1988).

Aikins, Sir James, "The Legal Profession in Relation to Ethics, Education and Emolument" (1919) 55:11 Can LJ 335, online: *Canadiana* <www.canadiana.ca/view/oocihm.8_04911_884/15?r=0&s=1>.

Burrage, Michael, *Revolution and the Making of the Contemporary Legal Profession in England, France, and the United States* (New York: Oxford University Press, 2006).

Dodek, Adam M, "Lawyers, Guns, and Money: Lawyers and Power in Canadian Society" in *Why Good Lawyers Matter*, eds David L Blaikie, Hon. Justice Thomas A Cromwell & Darrel Pink (Toronto: Irwin Law, 2012) 57.

Federation of Law Societies of Canada, "About" (last visited 27 May 2020), online: <flsc.ca/about-us/>.

Flood, John A, & Frederick H Zemans, "Unauthorized Legal Practice Prosecutions and Independent Paralegals in Ontario and the United States" in RW Ianni, ed, *Report on the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) 176.

Gidney, RD, & WPJ Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1994).

Girard, Philip, "The Making of the Canadian Legal Profession: A Hybrid Heritage" (2014) 21:2 Intl J Leg Prof 145 at 150.

McQueen, Rob, "Together We Fall, Divided We Stand: The Victorian Legal Profession in Crisis 1890-1940" in W Wesley Pue & David Sugarman, eds, *Lawyers and Vampires: Cultural Histories of the Legal Professions* (London, UK: Hart Publishing, 2003) 293.

Moore, Christopher, *The Law Society of Upper Canada and Ontario's Lawyers: 1797 – 1997* (Toronto: University of Toronto Press, 1997).

Moorhead, Richard, "Lawyers and Other Legal Service Providers" in Peter Cane & Herbert Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 785.

Pue, W Wesley, "Cowboy Jurists and the Making of Legal Professionalism" (2008) 45:5 Alta L Rev 29.

Pue, W Wesley, "Cultural Projects and Structural Transformation in the Canadian Legal Profession" in W Wesley Pue & David Sugarman, eds, *Lawyers and Vampires: Cultural Histories of Legal Professions* (Portland, Or: Hart Publishing, 2003) 367.

Pue, W Wesley, & David Sugarman, eds, *Lawyers and Vampires: Cultural Histories of the Legal Professions* (London, UK: Hart Publishing, 2003).

Pue, W Wesley, *Lawyers' Empire: Legal Profession and Cultural Authority, 1780-1950* (Vancouver, BC: UBC Press, 2016).

Pue, W Wesley, "'Trajectories of Professionalism?': Legal Professionalism After Abel" (1990) 19:3 Man L J 384.

Riddell, William Renwick, *The Legal Profession in Upper Canada in its Early Periods* (Toronto: Law Society of Upper Canada, 1916).

Stager, David AA & Harry W Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990).

Sugarman, D, "Blurred Boundaries: The Overlapping Worlds of Law, Business and Politics" in M Cain & C B Harrington, eds *Lawyers in a Postmodern World: Translation and Transgression* (Buckingham: Open University Press, 1994) 105.

Sugarman, David & W Wesley Pue, "Introduction: Towards a Cultural History of Lawyers" in W Wesley Pue & David Sugarman, eds, *Lawyers and Vampires: Cultural Histories of the Legal Professions* (London, UK: Hart Publishing, 2003) 1.

Superior Court of Justice, "History of the Court" (last visited 25 May 2020), online: *Ontario Courts* <www.ontariocourts.ca/scj/about/history/>.

Susskind, Richard, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013).

Canadian Bar Association Documents

Canadian Bar Association, Committee to Respond to Bill 42: An Act to Regulate the Activities of Paralegal Agents, *Report to Council*, by Mary Jane Mossman (Toronto: CBA, 27 September 1986).

Canadian Bar Association, *Equal Justice: Balancing the Scales* (Ottawa: CBA, 2013), online (pdf): <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>.

Canadian Bar Association, *Immigration Consultants* (March 2017), online (pdf): <www.cba.org/CMSPages/GetFile.aspx?guid=d2ddcb44-166c-41c9-b0b7-02ffa3d4125c>.

Canadian Bar Association, "Immigration Law Section: Executive" (last visited 9 April 2020), online: <www.cba.org/Sections/Immigration-Law/Executive>.

Canadian Bar Association, "Membership & Benefits: Why CBA?" (last visited 25 May 2020), online: <cba.org/Membership/Why-CBA>.

Canadian Bar Association, Standing Committee on Access to Justice, *Access to Justice Metrics: Discussion Paper* (Ottawa: CBA, 2013), online (pdf): <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20%20Microsite/PDFs/Access_to_Justice_Metrics.pdf>.

Canadian Bar Association, *Submission to the Standing Committee on the Administration of Justice of the Legislative Assembly of Ontario Re: Bill 42 An Act to Regulate the Activities of Paralegal Agents* (27 May 1987).

Canadian Bar Association (British Columbia Branch), *Submissions of the Canadian Bar Association (British Columbia Branch) Access to Justice Committee to the Law Society of BC Regarding the Family Law Legal Service Providers: Consultation Paper* (21 December 2018), online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/Alternate/Consultation-feedback_2018-12-28.pdf>.

Canadian Bar Association, Ontario Branch, *Brief to the Professional Organizations Committee* (April 1979).

Canadian Bar Association Ontario, *Submission to the Ontario Task Force on Paralegals* (CBAO: February 1989).

Canadian Bar Association, "Who We Are: About Us" (last visited 25 May 2020), online: <cba.org/Who-We-Are/About-us>.

Canadian Bar Association, "Who We Are: History" (last visited 25 May 2020), online: <cba.org/Who-We-Are/About-us/History>.

Ontario Bar Association, "About Us: History" (last visited 25 May 2020), online: <www.oba.org/About-US/About-Us/History>.

Ontario Bar Association, Civil Litigation Section, Bill-14 Review Subcommittee, *Report to OBA Task Force on Paralegals, Executive and Section Chairs* (OBA: Amended First Position Paper, 27 February 2006).

Ontario Bar Association, "Comments on the Family Legal Services Review Report" (Toronto: CBA, 15 May 2017).

Law Society Documents & Reports

Kraft, David, John Willis, Stephanie Beattie & Armand Cousineau, "Five Year Review of Paralegal Regulation: Research Findings, Final Report for the Law Society of Upper Canada" (6 May 2012) in Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the* Law Society Act (Toronto: LSUC, June 2012), online (pdf): <lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf>.

Law Society of Alberta, "Alternative Delivery of Legal Services Final Report" (February 2012), online (pdf): *CBA* <www.cba.org/CBA/cle/PDF/JUST13_Paper_Billington.pdf>.

Law Society of Alberta, *Code of Conduct* (Calgary: LSA, 2017).

Law Society of Alberta, "Innovation in Regulation Task Force Update" (9 February 2017), online: <lawsociety.ab.ca/default/whats_new/2017/02/09/innovation-in-regulation-task-force-update>.

Law Society of Alberta, "Legal Profession Act Amendment Update" (22 March 2018), online: <www.lawsociety.ab.ca/legal-profession-act-amendment-update/>.

Law Society of Alberta, *The Rules of the Law Society of Alberta* (1 December 2016).

Law Society of British Columbia, *2015 Report on Performance*, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/ar/2015-AnnualReport.pdf>.

"Law Society of B.C. Proposes New Category of Legal Professionals", *CBC News* (16 April 2015), online: <www.cbc.ca/news/canada/british-columbia/law-society-of-b-c-proposes-new-category-of-legal-professionals-1.3035642>.

Law Society of British Columbia, Alternate Legal Service Provider Working Group, *Family Law Legal Service Providers: Consultation Paper* (LSBC, September 2018).

Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, Vancouver: LSBC, 2017.

Law Society of British Columbia, "Delivery of Legal Services Task Force Final Report" (1 October 2010), online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/legalservices-tf_2010.pdf>.

Law Society of British Columbia, "Designated Paralegal Initiative Improves Access to Lower Cost Legal Services" (13 January 2017), online: <www.lawsociety.bc.ca/about-us/news-and-publications/news/2017/designated-paralegal-initiative-improves-access-to/>.

Law Society of British Columbia, "Final Report of the Legal Service Providers Task Force" (6 December 2013), online (pdf):< www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesProvidersTF_finaf_2013.pdf>.

Law Society of British Columbia, "Lawyers – Practice Support and Resources – Paralegals" (last visited 4 April 2020), online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/>.

Law Society of British Columbia, "Paralegals – Part of the Access to Justice Solution", *Benchers' Bulletin* 3 (2012) at 12, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/bb_2012-03-fall.pdf>.

Law Society of British Columbia, "Report of the Legal Services Regulatory Framework Task Force" (5 December 2014), online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesRegulatoryFrameworkTF.pdf>.

Law Society of British Columbia, "Towards a New Regulatory Model – Report to the Benchers from the Futures Committee" (30 January 2008) at 2, online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Futures-2008.pdf>,

Law Society of British Columbia, "Unbundling Legal Services" (last visited 2 April 2020), online: <www.lawsociety.bc.ca/our-initiatives/access-to-justice/unbundling-legal-services/>.

Law Society of Manitoba, *2018 Annual Report* (2018), online (pdf): <https://lawsociety.mb.ca/wp-content/uploads/2019/07/2018-Annual-Report.pdf>.

Law Society of Manitoba, *2019 Annual Report* (2019), online (pdf): <www.lawsociety.mb.ca/publications/annual-reports/2019%20Annual%20Report.pdf/view>.

Law Society of Manitoba, *Code of Professional Conduct*, Winnipeg: LSM, 2011.

Law Society of Manitoba, *Communiqué 2.0* (June 2018), online (pdf): <https://lawsociety.mb.ca/wp-content/uploads/2019/07/LSM-June-2018v2.pdf>.

Law Society of Manitoba, *Rules of The Law Society of Manitoba* (31 October 2002).

Law Society of New Brunswick, *Code of Professional Conduct*, Fredericton: LSNB, 2017.

Law Society of Newfoundland and Labrador, *Code of Professional Conduct*, St. John's: LSNL, 2016.

Law Society of The Northwest Territories, "Access to Justice – Survey Results" (21 April 2015), online (pdf): <https://ajrndotco.files.wordpress.com/2016/06/survey-results-report-april-21.pdf >.

Law Society of Northwest Territories, *Model Code of Professional Conduct*, Yellowknife: LSNT, 2016.

Law Society of Nunavut, *Model Code of Professional Conduct*, Iqaluit: LSN, 2016

Law Society of Ontario, "About LSO" (last visited 5 May 2020), online: <lso.ca/about-lso >.

Law Society of Ontario, "About LSO: Benchers" (last visited 13 January 2020), online: <lso.ca/getdoc/0e016362-37d2-468e-bd77-e1cdcc75a4fa/benchers>.

Law Society of Ontario, "Administrative Policies Governing the Certified Specialist Program" (last visited 13 May 2020), online: <lso.ca/getdoc/56e68eeb-e725-456d-b796-fb3e48256b52/administrative-policies-governing-the-certified-sp>.

Law Society of Ontario, "Amendments to legislation make Law Society of Ontario name change official" (8 May 2018), online: <lso.ca/news-events/news/2018/amendments-to-legislation-make-law-society-of-onta>.

Law Society of Ontario, "Choosing the Right Legal Professional" (last visited 16 May 2020), online: <lso.ca/public-resources/choosing-the-right-legal-professional#what-are-the-general-guidelines-for-choosing-a-legal-professional—4>.

Law Society of Ontario, "Complaints about Legal Fees" (last visited 16 May 2020), online: <lso.ca/protecting-the-public/complaints/complaints-about-legal-fees?lang=en-ca>.

Law Society of Ontario, *Family Law Services Review Report Call for Input: Organization Submissions* (May 2017), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/f/flsrorsubmissions.pdf>.

Law Society of Ontario, "FAQ – Who Needs a License?" (last visited 5 May 2020), online: <lso.ca/becoming-licensed/paralegal-licensing-process/faqs>.

Law Society of Ontario, "History of the Law Society" (last visited 25 May 2020), online: <lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/research-themes/history-of-the-law-society>.

Law Society of Ontario, "If you are the Subject of a Complaint" (last visited 14 May 2020), online: <www.lso.ca/protecting-the-public/information-for-licensees/if-you-are-the-subject-of-a-complaint>.

Law Society of Ontario, "Law Society benchers approve action plan to improve access to justice for families via special licensing for paralegals and others" (1 December 2017), online: <lso.ca/news-

events/latest-news/latest-news-2017/law-society-benchers-approve-action-plan-to-improve-access-to-justice-for-families-via-special-licen>.

Law Society of Ontario, News Release, "Law Society's governing board votes to change the regulator's name to 'Law Society of Ontario'" (3 November 2017), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/n/new/news-name-change-nov-2-2017-en.pdf>.

Law Society of Ontario, "Paralegal Education Program Accreditation" (last visited 13 May 2020), online: <lso.ca/becoming-licensed/paralegal-licensing-process/paralegal-education-program-accreditation>.

Law Society of Ontario, "Paralegal Licensing Process – Licensing Examinations" (last visited 26 April 2020), online: <lso.ca/becoming-licensed/paralegal-licensing-process/licensing-examinations>.

Law Society of Ontario, *Paralegal Professional Conduct Guidelines*, Toronto: LSUC, 2014, online: <lso.ca/about-lso/legislation-rules/paralegal-professional-conduct-guidelines>.

Law Society of Ontario, *Paralegal Rules of Conduct*, Toronto: LSUC, 2007, online: <lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct>.

Law Society of Ontario, Paralegal Standing Committee, *Bill C-75 Response* (11 September 2019), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2019/convocation-september-2019-paralegal-standing-committee-report.pdf>.

Law Society of Ontario, Paralegal Standing Committee, *Convocation Minutes –Transcript of Debates* (11 September 2019), online: <http://lx07.lsuc.on.ca/R/QQQFKTRLSFYDS97EK5RSRQNJJ3UJYC3SB6NBXXKJ9MKHQI89A5-01880>.

Law Society of Ontario, Paralegal Standing Committee, *Ending Licensing Exemption for Injured Workers' Groups* (27 February 2020), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/about/convocation/convocation-february-2020-paralegalstandingcommittee-report.pdf>.

Law Society of Ontario, *Rules of Professional Conduct*, Toronto: LSUC, 2000, online: <lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>.

Law Society of Ontario, "The Complaints Process" (last visited 15 May 2020), online: <www.lso.ca/protecting-the-public/complaints/complaints-process>.

Law Society of Ontario, "The Law Society of Ontario in context: a chronology" (last visited 25 May 2020), online: <lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/chronology>.

Law Society of Prince Edward Island, *Code of Professional Conduct*, Charlottetown: LSPEI, 2016.

Law Society of Saskatchewan, *Code of Professional Conduct*, Regina: LSS, 2016.

Law Society of Saskatchewan, "Consultation Paper: Expanding the Classes of Legal Service Providers in Saskatchewan" (2016), online (pdf): <www.lawsociety.sk.ca/media/138207/ConsultationPaperApr2016.pdf>.

Law Society of Saskatchewan, "Survey – Expanding the Responsibilities of Non-lawyer Legal Service Providers – Open Until May 12, 2016" (21 April 2016), online (blog): *Legal Sourcery* <www.lawsociety.sk.ca/>.

Law Society of Upper Canada, *2008 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, *2011 Annual Report: Performance Highlights*, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/p/pe/performance-ar2011-en.pdf>.

Law Society of Upper Canada, *2012 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, *2012 Annual Report: Performance Highlights*, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/a/an/annual_report_2012_performance_en.pdf>.

Law Society of Upper Canada, *2013 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, *2015 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, "2015 Annual Report: 2015 Annual Report Data" (last visited 16 May 2020), online: <annualreport.lsuc.on.ca/2015/en/annual-report-data.html#TribunalsOpenedByTypeAndYear/>.

Law Society of Upper Canada, *2016 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, "2016 Annual Report: 2016 Annual Report Data" (last visited 16 May 2020), online: <annualreport.lsuc.on.ca/2016/en/annual-report-data.html#NewComplaintsByDiscipline>.

Law Society of Upper Canada, "2016 Annual Report: Key Trends – Licensing Statistics" (last visited 14 May 2020), online: <annualreport.lsuc.on.ca/2016/en/key-trends/licensing-statistics/>.

Law Society of Upper Canada, "2016 Annual Report: The Professions – Membership Statistics" (last visited 14 May 2020), online: <annualreport.lsuc.on.ca/2016/en/the-professions/membership-statistics.html>.

Law Society of Upper Canada, *2017 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, "2017 Annual Report: 2017 Annual Report Data" (last visited 16 May 2020), online: <annualreport.lso.ca/2017/en/annual-report-data.html#TypesOfAllegations>.

Law Society of Upper Canada, "2017 Annual Report: Key Trends & Accomplishments" (last visited 14 May 2020), online: <annualreport.lso.ca/2017/en/key-trends/regulating-the-professions/>.

Law Society of Upper Canada, "2017 Annual Report: Professions – Membership Statistics" (last visited 14 May 2020), online <annualreport.lso.ca/2017/en/the-professions/membership-statistics.html>.

Law Society of Upper Canada, *2018 Annual Report*, online: <lso.ca/about-lso/governance/annual-report>.

Law Society of Upper Canada, Access to Justice Committee, *Report to Convocation* (Toronto: LSUC, 26 June 2003).

Law Society of Upper Canada, Access to Justice Committee, *Report to Convocation* (Toronto: LSUC, 1 December 2017), online (pdf): <afccontario.ca/wp-content/uploads/2017/12/LSUC-Convocation-Access-to-Justice-committee-Report-Dec-1-17.pdf>

Law Society of Upper Canada, AM Rock, *Interim Report of the Special Committee on Paralegals and Access to Legal Services* (LSUC: June 1992).

Law Society of Upper Canada, "An Analysis of *A Framework for Regulating Paralegal Practice in Ontario*" (Toronto: LSUC, 24 July 2000).

Law Society of Upper Canada, *Benchers Bulletin* (1996) 4:5.

Law Society of Upper Canada, Diana Miles, *Proposal for Revisions to Paralegal Licensing Examination*, (Toronto: LSUC, October 2012)

Law Society of Upper Canada, Diana Miles, *Report on Competency Profile and Examination Development – Paralegal Licensing Exam* (Toronto: LSUC, March 2007).

Law Society of Upper Canada, "Governing in the Public Interest: Public Protection and Paralegal Services An Approach for Ontario" (Toronto: LSUC, 2004).

Law Society of Upper Canada, Government Relations Committee, *Report to Convocation* (LSUC: 22 January 2004).

Law Society of Upper Canada, Government Relations Committee, *Report to Convocation* (LSUC: 25 April 2002).

Law Society of Upper Canada, News Release, "Law Society Proposes New Model for Regulation of Legal Services" (23 September 2004).

Law Society of Upper Canada, News Release, "Law Society Welcomes Introduction of Legislation to Protect Consumers of Paralegal Services" (27 October 2005).

Law Society of Upper Canada, "Notice: Annual General Meeting – Motion" (26 March 2010), online: *Slidelegend* <slidelegend.com/motion-law-society-of-ontario_5b243b5e097c4710738b4570.html>.

Law Society of Upper Canada, "Paralegal Bencher Election 2014" (last visited 26 April 2020), online: <lso.ca/about-lso/governance/bencher-election-2019/paralegal-bencher-election-2014>.

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto:

LSUC, 29 March 2007), online: <www.yumpu.com/en/document/read/28834180/paralegal-standing-committee-report-the-law-society-of-upper->.

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto:

LSUC, 26 April 2007).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto:

LSUC, 28 June 2007).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto:

LSUC, 25 October 2007).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 21 February 2008).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 28 January 2010).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 29 June 2010).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 29 June 2010).

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 25 April 2013), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/protecting-the-public/convapr2013_paralegal.pdf>.

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 27 February 2014) Tab 5, online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convfeb2014_psc.pdf>.

Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 29 January 2015).

Law Society of Upper Canada, Paralegal Task Force, *Final Report* (Toronto: LSUC, March 2000).

Law Society of Upper Canada, Professional Development and Competence Department, *Report on Paralegal College Program Accreditation* (September 2010).

Law Society of Upper Canada, *Proposal for Reforms to Accreditation and Audit Framework for Paralegal Education Programs* (Toronto: LSUC, 13 February 2014).

Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the* Law Society Act (Toronto: LSUC, June 2012), online (pdf): <lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf>.

Law Society of Upper Canada, *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the* Law Society Act (Toronto: LSUC, June 2012), online (pdf): <lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf>.

Law Society of Upper Canada, *Report of the Treasurer's Advisory Group on Access to Justice Working Group – Report to Convocation* (Toronto: LSUC, 24 January 2014), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convjan2014_treasurersadvisorygroup.pdf>.

Law Society of Upper Canada, *Submission to Attorney General of Ontario on the Provision of Legal Services by Unsupervised Persons* (Toronto: LSUC, 3 October 1986).

Law Society of Upper Canada, *Submission to the Standing Committee on Citizenship and Immigration* (Toronto: LSUC, 1 November 2010).

Law Society of Upper Canada, *Task Force on Paralegal Regulation Report to Convocation* (Toronto: LSUC, 23 September 2004).

Law Society of Upper Canada, *Submission to the Task Force on Paralegals* (Toronto: LSUC, February 1989).

Law Society of Upper Canada, TAG – Treasurer's Advisory Group on Access to Justice, Karen Cohl, "Access to Justice Themes: 'Quotable Quotes'" (background paper for the Law Society of Ontario's Access to Justice Symposium, "Creating a Climate for Change", 29 October 2013), online (pdf): <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/q/quotable_quotes.pdf>.

Law Society of Upper Canada, *Treasurer's Report to Convocation* (Toronto: LSUC, 26 April 2012), online (pdf): <www.lawsocietygazette.ca/conv/convapr12-legal-needs-analysis.pdf>.

Law Society of Upper Canada, *Task Force on Paralegal Regulation Report to Convocation* (Toronto: LSUC, 23 September 2004).

Law Society of Upper Canada, *Treasurer's Report to Convocation* (Toronto: LSUC, 26 April 2012), online (pdf): <www.lawsocietygazette.ca/conv/convapr12-legal-needs-analysis.pdf>.

Law Society of Upper Canada, The Law Society Task Force on Paralegal Regulation, *Regulating Paralegals: A Proposed Approach, A Consultation Paper* (May 2004), online (pdf): <docplayer.net/10926567-Regulating-paralegals-a-proposed-approach.html>.

Law Society Tribunal, "Welcome to the Law Society Tribunal" (last visited 13 May 2020), online: <www.lawsocietytribunal.ca>.

Law Society of Yukon, *Code of Professional Conduct*, Whitehorse: LSY, 2016.

Law Society of Yukon, "Toward a New Legal Profession Act Policy Paper" (28 November 2011), online (pdf): <lawsocietyyukon.com/forms/policypapernovember2011.pdf>.

Letter from Linda J Wood, CEO Injured Workers Support Network, to Julia Bass (23 May 2007) in Law Society of Upper Canada, Paralegal Standing Committee, *Report to Convocation* (Toronto: LSUC, 28 June 2007).

"LSUC Sets Up Paralegal Committee", *Law Times* (27 November 2006), online: <www.lawtimesnews.com/news/general/lsuc-sets-up-paralegal-committee/259003>.

Not Just For Lawyers, "Kristin Dangerfield, CEO, The Law Society of Manitoba" (last visited 03 April 2020), online: <http://notjustforlawyers.com/kristen-dangerfield/>.

Saskatchewan Legal Services Task Team, "Final Report of the Legal Services Task Team" (14 August 2018), online (pdf): <www.lawsociety.sk.ca/media/395320/107840-legal_services_task_team_report_august_14-_2018-1.pdf>.

TAG: The Action Group on Access to Justice, "Legal Organizations and Access to Justice Activities in Ontario" (May 2014), online (pdf): *Law Society of Ontario* <lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/backgrounderonlegalorganizationsasofmay282014engfinal.pdf>.

Non-Lawyer Representatives

American Bar Association, *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* (Chicago: ABA, 1995).

Arthurs, Harry, *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System* (Toronto: Queen's Printer, 2012), online (pdf): <collections.ola.org/mon/26005/315866.pdf>.

CanLII, "Ontario Workplace Safety and Insurance Appeals Tribunal – 2004" (last visited 12 June 2020), online: <www.canlii.org/en/on/onwsiat/nav/date/2004/>

CanLII, "Ontario Workplace Safety and Insurance Appeals Tribunal – 2006" (last visited 12 June 2020), online: <www.canlii.org/en/on/onwsiat/nav/date/2006/>.

CanLII, "Ontario Workplace Safety and Insurance Appeals Tribunal – 2017" (last visited 12 June 2020), online: <www.canlii.org/en/on/onwsiat/nav/date/2017/>.

Cantrell, Deborah J, "The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers" (2004) 73:3 Fordham L Rev 883.

Carpenter, Anne E, Alyx Mark & Colleen F Shanahan, "Trial and Error: Lawyers and Nonlawyer Advocates" (2017) 42:4 Law & Soc Inquiry 1023.

Educaloi, "Legal Careers: Paralegal" (last visited 20 March 2020), online: <www.educaloi.qc.ca/en/youth/legal-careers/paralegal>.

Genn, Hazel, "Myth of the Simple, Cheap Alternative: Legal Brief", *The Times* (12 September 1989), online: <www.thetimes.co.uk>.

Hadfield, Gillian K, "The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law" (2014) 38 Int'l Rev L & Econ 49.

Kritzer, Herbert M, *Legal Advocacy: Lawyers and Nonlawyers at Work* (Ann Arbor, MI: University of Michigan Press, 1998).

Law Depot (last visited 10 June 2020), online: <www.lawdepot.ca>.

Law Society of Ontario, "Lawyer and Paralegal Director" (last visited 12 June 2020) online: <lso.ca/public-resources/finding-a-lawyer-or-paralegal/lawyer-and-paralegal-directory>.

LegalZoom, "Our Products & Services" (last visited 10 June 2020), online: <legalzoom.com/all-products.html>.

Macfarlane, Julie, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report* (May 2013), online (pdf): *NSRLP* <representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>.

Monsma, Karl & Richard Lempert, "The Value of Counsel: 20 Years of Representation before a Public Housing Eviction Board" (1992) 26:3 Law & Soc'y Rev 627.

Mullen, Tom, "Representation at Tribunals" (1990) 53:2 Mod L Rev 230.

Office of the Employer Adviser (last visited 11 June 2020), online: <www.employeradviser.ca/en/>.

Office of the Worker Adviser, "About the OWA" (last visited 11 June 2020), online: <www.owa.gov.on.ca/en/about/Pages/default.aspx>.

Ontario Paralegal Association, "About Us" (last visited 10 January 2020), online: <www.opaonline.ca>.

Ontario Paralegal Association, "Paralegal Directory" (last visited 12 June 2020), online: <opaonline.ca/paralegal/>.

Paralegal Society of Canada, "Home: History and Structure" (last visited 9 January 2020), online: <pscanada.ca>.

Prosecutors' Association of Ontario, "About" (last visited 25 May 2020), online: <prosecutors.on.ca/about/>.

Rocket Lawyer, "About Us" (last visited 10 June 2020), online: <www.rocketlawyer.com/about-us.rl>.

Sandefur, Rebecca L, "Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes" (2011) [unpublished].

Sandefur, Rebecca L, "The Impact of Counsel: An Analysis of Empirical Evidence" (2010) 9:1 Seattle J Social Justice 50.

Stager, David, "Economic Issues Relating to the Possible Introduction of Independent Paralegals in Ontario" in RW Ianni, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) 226.

Wiseman, David, "Paralegals, the Cost of Justice and Access to Justice: A Case Study of Residential Tenancy Disputes in Ottawa" (19 November 2013), online (pdf): <cfcj-fcjc.org/sites/default/files//Paralegals%2C%20the%20Cost%20of%20Justice%20and%20Access%20to%20Justice%20-%20A%20Case%20Study%20of%20Residential%20Tenancy%20Disputes%20in%20Ottawa.pdf>.

Wiseman, David, "Research Update: Paralegals, the Cost of Justice and Access to Justice: A Case Study of Residential Tenancy Disputes in Ottawa" (29 June 2016), online (blog): *CFCJ* <www.cfcj-fcjc.org/a2jblog>.

Wonder Legal (last visited 10 June 2020), online: <www.wonder.legal>.

Empirical Legal Studies

Albiston, Catherine R & Rebecca L Sandefur, "Expanding the Empirical Study of Access to Justice" (2013) Wis L Rev 101.

Bogart, WA & Neil Vidmar, "An Empirical Profile of Independent Paralegals in the Province of Ontario" in RW Ianni, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990).

Boyd, Christina L, "In Defense of Empirical Legal Studies" (2015) 63:2 Buff L Rev 363.

Bruineman, Marg., "Steady Optimism: Lawyers Surveyed in Canadian Lawyer's 2019 Legal Fees Survey Say Fee Reductions Are Unlikely", *Canadian Lawyer* (8 April 2019), online: <www.canadianlawyermag.com/surveys-report/legal-fees/steady-optimism-2019-legal-fees-survey/276027>.

Cane, Peter & Herbert M Kritzer, eds, *Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010)

Deutskens, Elisabeth, Ko de Ruyter, Mark Wetzels & Paul Oosterveld, "Response Rate and Response Quality of Internet-Based Surveys: An Experimental Study" (2004) 15:1 Marketing Letters 21.

Eisenberg, Theodore, "Why Do Empirical Legal Scholarship?" (2004) 41:4 San Diego L Rev 1741.

Epstein, Lee & Andrew D Martin, "Quantitative Approaches to Empirical Legal Research" in Peter Cane & Herbert M Kritzer, eds, *Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 913.

Epstein, Lee & Gary King, "The Rules of Inference" (2002) 69:1 Chicago L Rev 1.

Fan, Weimiao & Zheng Yan, "Factors Affecting Response Rates of the Web Survey: A Systematic Review" (2010) 26:2 Computers in Human Behavior 132.

Greiner, James D, "The New Legal Empiricism & Its Application to Access-to-Justice Inquiries" (Winter 2019) 148:1 Daedalus 64, online: <www.amacad.org/publication/new-legal-empiricism-its-application-access-justice-inquiries>.

Heise, Michael, "The Past, Present and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism" (2002) 4 U Ill L Rev 827.

Hwong, Thaddeus, "An Exploration of Influences of Sociodemographic Characteristics of Supreme Court Justices in Judicial Decision-Making in Income Tax Cases, 1920-2003" (2009) 33:1 Man L J 151.

Hyatt, Douglas & Boris Kralj, "The Impact of Representation and Other Factors on the Outcomes of Employee-Initiated Workers' Compensation Appeals" (2000) 53:4 Industrial & Labor Relations Rev.

Johnson, Janet Buttolph & Richard A Joslyn, *Political Science Research Methods*, 3rd ed (Washington, DC: CQ Press, 1995).

Kritzer, "Conclusion: 'Research is a Messy Business' – An Archeology of the Craft of Sociological Research" in Simon Halliday & Patrick Schmidt, *Conducting Law and Society Research: Reflections on Methods and Practices* (New York: Cambridge University Press, 2009) 264.

Lindemann, Nigel, "What's the Average Survey Response Rate?" (8 August 2019), online (blog): *SurveyAnyplace* <surveyanyplace.com.average-survey-response-rate/>.

Mason, Jennifer, *Qualitative Researching*, 2nd ed (London, UK: Sage Publications, 2002).

Mehta, R & E Sivadas, "Comparing response rates and response content in mail versus electronic surveys" (1995) 4:37 Journal of the Market Research Society 429.

Nard, Craig Allen, "Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and Profession" (1995) 30 Wake Forest L Rev 347.

Rehaag, Sean, "Do Women Judges Really Make a Difference? An Empirical Analysis of Gender and Outcomes in Refugee Determinations" (2011) 23:2 CJWL 627.

Rehaag, Sean, "The Role of Counsel in Canada's Refugee Determinations System: An Empirical Assessment" (2011) 49:1 Osgoode Hall L J 71.

Sandefur, Rebecca L, "The Impact of Counsel: An Analysis of Empirical Evidence" (2010) 9:1 Seattle J Soc Justice 51.

Sheehan, Kim Bartel, "E-mail Survey Response Rates: A Review" (2001) 6:2 J Computer-Mediated Communication, online: *Wiley* <onlinelibrary.wiley.com/doi/full/10.1111/j.1083-6101.2001.tb00117.x>.

Sossin, Lorne & Steven J Hoffman, "The Elusive Search for Accountability: Evaluating Adjudicative Tribunals" (2010) 28 Windsor YB Access Just 343.

Stribopoulos, James & Moin A Yahya, "Does A Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario" (2007) 45 Osgoode Hall L J 315.

Trubek, David M, "Where the Action Is: Critical Legal Studies and Empiricism" (1984) 36:1 Stan Law Rev 575.

University of Windsor, "Qualtrics Surveys", online: <uwindsor.teamdynamix.com/TDClient/1975/Portal/Requests/ServiceDet?ID=9524>.

Webley, Lisa, "Qualitative Approaches to Empirical Legal Research" in Peter Cane & Herbert Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 927.

APPENDICES

APPENDIX A: Survey Questions

Survey: Paralegal Regulation and Access to Justice in Ontario: Cost & Quality of Paralegal Services

Welcome to this research study!
Your participation is much appreciated.
Please answer all of the following questions.
The survey should take approximately 10 to 15 minutes to complete.

Study Name:
Paralegal Regulation and Access to Justice in Ontario: Cost and Quality of Paralegal Services

Researcher:
Lisa Trabucco, PhD Candidate, Osgoode Hall Law School, York University [contact info deleted].

Purpose of the Research: I am a PhD student at Osgoode Hall Law School, York University (as well as a lawyer and assistant professor in the Faculty of Law, University of Windsor [contact info deleted]) conducting research into the regulation of paralegals and access to justice in Ontario, and more particularly, the cost and quality of services provided by paralegals who appear (or have appeared) as representatives at the Workplace Safety and Insurance Appeals Tribunal. I invite you to participate in this study which is intended to gather data about paralegals' fees and billing practices as well as opinions about the quality and cost of paralegals' services in workplace safety and insurance matters. Your participation would be very much appreciated. In my research to date, I have tracked hearing outcomes by representative type at WSIAT both before and after regulation was implemented in 2007. The data I collected indicates that you are a licensed paralegal and represented a party in a proceeding at WSIAT during the years 2015 – 2017. Given your experience at WSIAT, I invite you to participate in an online survey. The survey consists of 24 questions and should take you about 10 to 15 minutes to complete.

Risks and Discomforts: I do not foresee any risks or discomfort from your participation in the research study (online survey).

Benefits of the Research and Benefits to You: The data from this survey will inform my broader dissertation research which focuses on paralegal regulation as an access to justice initiative. The results of my research will be of value to the Ontario government and the Law Society of Ontario as well as governments, law societies and bar associations in Canada (and elsewhere) with respect to non-lawyer legal services delivery, the regulation of paralegals, scope of practice, and access to justice.

Voluntary Participation and Withdrawal: Your participation in the study is completely voluntary and you may choose to stop participating at any time. Your decision not to volunteer, to stop

participating, or to refuse to answer particular questions will not influence the nature of the ongoing relationship you may have with the researcher, or the nature of your relationship with York University either now, or in the future.

Confidentiality: Your answers to the survey questions will be collected via an online survey conducted through survey software which will anonymize all participants' responses. You will not be identified, and I will not know which responses belong to each participant. The data obtained will be safely stored on a USB in a locked cabinet and only the principal researcher will have access to this information. The data will be safely stored until December 2025, after which it will be deleted. The results of the survey will be reported in my PhD dissertation and likely thereafter published in a scholarly journal. My findings might also be presented at scholarly conferences. The data will, at all times, remain anonymous and there will be no release of individual information, only the aggregate data. I would be pleased to provide you with a copy of my report of the study's results. Unless you choose otherwise, all information you supply during the research will be held in confidence and unless you specifically indicate your consent, your name will not appear in any report or publication of the research. Confidentiality will be provided to the fullest extent possible by law. I acknowledge that the host of the online survey (Qualtrics) may automatically collect participant data without your knowledge (i.e., IP addresses). Although this information may be provided or made accessible to me, it will not be used or saved without your consent. Further, because this project employs e-based collection techniques, data may be subject to access by third parties as a result of various security legislation now in place in many countries and thus the confidentiality and privacy of data cannot be guaranteed during web-based transmission.

Questions About the Research? If you have any questions about the research in general or your role in this study, please feel free to contact me at [contact info deleted] or my supervisors Faisal Bhabha [contact info deleted] or Harry Arthurs [contact info deleted]. You may also contact the Director of the Graduate Program in Law at [contact info deleted].

This research has received ethics review and approval by the Delegated Ethics Review Committee, which is delegated authority to review research ethics protocols by the Human Participants Review Sub-Committee, York University's Ethics Review Board, and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process, or about your rights as a participant in the study, please contact the Sr. Manager & Policy Advisor for the Office of Research Ethics, 5th Floor, Kaneff Tower, York University [contact info deleted].

By clicking the button below, you acknowledge that your participation in the study is voluntary, you are 18 years of age, and that you are aware that you may choose to terminate your participation in the study at any time and for any reason.

Please note that this survey will be best displayed on a laptop or desktop computer. Some features may be less compatible for use on a mobile device.

Q1 Do you consent to participate in this research survey?

- ○ I consent, begin the study
- ○ I do not consent, I do not wish to participate

Q2 Over what period of time have you assisted clients with workplace safety and insurance matters?

- ○ Before 2007 only
- ○ After 2007 only
- ○ Both before and after 2007
- ○ I have never assisted clients with workplace safety and insurance matters

Q3 When have you represented a party in a proceeding at WSIAT?

- ○ Before regulation was implemented in 2007
- ○ Since regulation was implemented in 2007
- ○ Both before and since regulation was implemented in 2007
- ○ I have never represented a party at WSIAT
- ○ Don't know/prefer not to answer

Q4 How many times have you represented a party at WSIAT in the last five years?

- ○ Less than 5 times
- ○ 5 – 10 times
- ○ 11 – 15 times
- ○ More than 15 times
- ○ Don't know/prefer not to answer

Q5 Do you believe that, since regulation was implemented in 2007, there are

- ○ More paralegal representatives at WSIAT than there were before regulation
- ○ Less paralegal representatives at WSIAT than there were before regulation
- ○ About the same number of paralegal representatives at WSIAT than there were before regulation
- ○ Don't know/prefer not to answer

Q6 Do you believe that, since regulation was implemented in 2007, paralegals

- ○ Appear more often for workers than for employers
- ○ Appear more often for employers than for workers
- ○ Appear for workers and employers about equally
- ○ Don't know/prefer not to answer

Q7 Do you believe that, before regulation was implemented in 2007, paralegals

- ○ Appeared more often for workers than for employers
- ○ Appeared more often for employers than for workers
- ○ Appeared for workers and employers about equally
- ○ Don't know/prefer not to answer

Q8 Do you believe that, since regulation was implemented in 2007, most paralegal representatives at WSIAT are generally

- ○ As capable as lawyers in representing a party
- ○ Not as capable as lawyers in representing a party
- ○ More capable than lawyers in representing a party
- ○ Don't know/prefer not to answer

Q9 Do you believe that, before regulation was implemented in 2007, most paralegal representatives at WSIAT were generally

- ○ As capable as lawyers in representing a party
- ○ Not as capable as lawyers in representing a party
- ○ More capable than lawyers in representing a party
- ○ Don't know/prefer not to answer

Q10 Do you believe the services that paralegals provide are, generally, of higher quality as a result of paralegals being regulated?

- ○ Yes
- ○ No
- ○ Don't know/prefer not to answer

Q11 Do you believe that, since regulation was implemented in 2007, paralegal representatives at WSIAT

- ○ Achieve successful outcomes (that is, appeal allowed or appeal allowed in part) in more cases than they did before regulation
- ○ Achieve successful outcomes (that is, appeal allowed or appeal allowed in part) in fewer cases than they did before regulation
- ○ Achieve successful outcomes (that is, appeal allowed or appeal allowed in part) in about the same number of cases as they did before regulation
- ○ Don't know/prefer not to answer

Q12 Do you believe that, since regulation was implemented in 2007, the fees charged by paralegals for workplace safety and insurance matters have generally

- ○ Increased compared to before regulation
- ○ Decreased compared to before regulation
- ○ Remained the same as before regulation
- ○ Don't know/prefer not to answer

Q13 In your overall practice, how do you (or does your firm) charge for your services? Choose the closest percentage for each.

	not applicable	up to 25%	26 - 50%	51 - 75%	76 - 100%
Hourly	○	○	○	○	○
Flat fee	○	○	○	○	○
Contingency fee	○	○	○	○	○
Alternative fee arrangements	○	○	○	○	○

Q14 Please specify any **alternative fee arrangements**

_____

_____

_____

_____

_____

Q15 Please indicate which of the following most accurately reflects your **hourly** rate?

- ○ less than $100 per hour
- ○ $100 - 150
- ○ $151 - 200
- ○ $201 - 250
- ○ $251 - 300
- ○ More than $300 per hour
- ○ Don't know/prefer not to answer

Q16 Please indicate the average **flat fee** amount you charged per client over your last three (3) WSIAT matters:

- ○ less than $5,000
- ○ $5,000 - 10,000
- ○ $10,001 - 20,000
- ○ $20,001 - 30,000
- ○ More than $30,000
- ○ Don't know/prefer not to answer

Q17 Please indicate the average **contingency fee** rate you charged per client over your last three (3) WSIAT matters:

- ○ less than 20%
- ○ 21 - 25%
- ○ 26 - 30%
- ○ 31 - 40%
- ○ More than 40%
- ○ Don't know/prefer not to answer

Q18 Please indicate which of the following factors influence the fees you charge for a workplace safety and insurance/WSIAT matter. Please check all that apply.

- ☐ Time and effort involved
- ☐ Type of matter
- ☐ Complexity or difficulty of matter
- ☐ Importance of matter to client
- ☐ Client expectation
- ☐ Whether special skill required
- ☐ Your experience and ability
- ☐ Results or outcome obtained
- ☐ Inflation and/or Overhead
- ☐ Fees charged by other paralegals in same practice area
- ☐ Fees charged by other paralegals in same geographical area
- ☐ Other: Please indicate _____
- ☐ Don't know/prefer not to answer

Q19 When did you start providing legal services in workplace safety and insurance matters?

- ○ before 1980
- ○ 1981
- ○ 1982
- ○ 1983
- ○ 1984
- ○ 1985
- ○ 1986
- ○ 1987
- ○ 1988
- ○ 1989
- ○ 1990
- ○ 1991
- ○ 1992
- ○ 1993
- ○ 1994
- ○ 1995
- ○ 1996
- ○ 1997
- ○ 1998
- ○ 1999

- ○ 2000
- ○ 2001
- ○ 2002
- ○ 2003
- ○ 2004
- ○ 2005
- ○ 2006
- ○ 2007
- ○ 2008
- ○ 2009
- ○ 2010
- ○ 2011
- ○ 2012
- ○ 2013
- ○ 2014
- ○ 2015
- ○ 2016
- ○ 2017
- ○ Don't know/prefer not to answer

Q20 In the past five years, how much of your overall practice has involved workplace safety and insurance matters?

- ○ 1 - 25%
- ○ 26 - 50%
- ○ 51 - 75%
- ○ 75 - 100%
- ○ My practice over the past five years has been exclusively workplace safety and insurance matters
- ○ None at all

Q21 Who do you mainly represent in workplace safety and insurance matters?

- ○ Workers
- ○ Employers
- ○ Both workers and employers about equally
- ○ Don’t know/prefer not to answer

Q22 In what year did you obtain your paralegal (P1) licence?

- ○ 2007
- ○ 2008
- ○ 2009
- ○ 2010
- ○ 2011
- ○ 2012
- ○ 2013
- ○ 2014
- ○ 2015
- ○ 2016
- ○ 2017

Q23 Which of the following best describes your practice setting?

- ○ 1 paralegal (sole practice)
- ○ 2 paralegals and/or lawyers in a firm
- ○ 3 paralegals and/or lawyers in a firm
- ○ 4 paralegals and/or lawyers in a firm
- ○ 5 paralegals and/or lawyers in a firm
- ○ 6 – 10 paralegals and/or lawyers in a firm
- ○ 11 – 25 paralegals and/or lawyers in a firm
- ○ 26 – 50 paralegals and/or lawyers in a firm
- ○ 51+ paralegals and/or lawyers in a firm
- ○ Government
- ○ In-house
- ○ Legal clinic
- ○ OTHER: Please indicate _____

Q24 In what region in Ontario do you mainly provide legal services? (Based on Law Society of Ontario bencher electoral regions, Please refer to the following file for reference) LSO electoral regions

- ○ City of Toronto
- ○ Northwest
- ○ Northeast
- ○ East
- ○ Central East
- ○ Central West
- ○ Central South
- ○ Southwest