



BC PARALEGAL ASSOCIATION

PO Box 75561
RPO Edgemont Village
North Vancouver, BC V7R 4X1

December 31, 2018

Law Society of British Columbia
845 Cambie Street
Vancouver, BC
V6B 4Z9

VIA EMAIL consultation2018@lsbc.org

Dear Sirs:

Re: Family Law Legal Service Providers: Consultation Paper

This letter is submitted on behalf of the BC Paralegal Association (the BCPA) in response to the Family Law Legal Service Providers: Consultation Paper (the Consultation Paper) prepared by the Alternate Legal Service Providers Working Group.

The BCPA is a not-for-profit organization made up of over 900+ paralegals, paralegal students and industry related organizations in British Columbia and run by a board of volunteers. The BCPA was formed in 1979 to promote the growth and professional development, continuing education and networking of paralegals in British Columbia. Our goal is to support and advocate for the paralegal profession.

A. Previous Work done by the Law Society of British Columbia

The proposal of legal services being provided by non-lawyers is not a new concept. The BCPA believes it is important to keep in mind the previous work done by the Legal Services Providers Task Force and the Legal Services Regulatory Framework Task Force. In the report dated December 6, 2013, the Legal Services Providers Task Force made five conclusions, as follows:

1. It is in the public interest that legal service providers other than lawyers and notaries should be regulated unless operating under the supervision of a lawyer or other regulated legal service provider such as a notary public.
2. A single regulator of legal services is the preferable model (rather than distinct regulators for different groups of legal service providers).
3. If there is to be a single regulator of legal service providers, the Law Society is the logical regulator body.
4. Creating some method to provide "paralegals" who have met prescribed educational and practical standards with a certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. Further, the regulation of non-lawyer, non-notary legal service providers of limited scope legal services should be included in the purview of a single regulator of legal services and that the Law Society should move to create a process by which that can take place. Other groups should not be regulated by such a body at this time.
5. There is no certainty that a single-model regulator of a number of different groups of legal service providers will improve access to justice, and it is uncertain that one would



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be able to create empirical evidence to prove this end. There is no way to find the answer without trying it, and the Task Force therefore concludes that it should be tried.

(emphasis added)

As a result of the conclusions, one of the recommendations of the Legal Services Providers Task Force was "That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest." That report was unanimously approved by the Benchers.

In the report dated December 5, 2014 by the Legal Services Regulatory Framework Task Force, a recommendation was made that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice. That report was unanimously adopted by the Benchers.

The BCPA participated in both the Legal Service Providers Task Force and the Legal Services Regulatory Framework Task Force. The BCPA also worked with the Law Society on other initiatives including access to justice and the designated paralegal as we believe a collaborative effort is necessary from all stakeholders on the issue of access to justice.

B. The Consultation Paper

The BCPA is supportive of initiatives aimed at increasing access to justice and is pleased to see that the Law Society has outlined the concepts of alternate legal service providers in the Consultation Paper released in September 2018, along with the proposed framework. It is the BCPA's position that paralegals play a key role in providing an affordable alternative by offering trained and skilled legal services to the public at a reduced hourly rate. As indicated in the Consultation Paper, "The purpose of the consultation is to provide the Benchers with input that can be refined to ensure the end product advances the object of improving access to affordable, competently delivered legal services in an area of need, while maintaining public interest in the administration of justice."

It is helpful to note that the *Code of Professional Conduct* describes a "paralegal" as a non-lawyer who is a trained professional working under the supervision of a lawyer and that a lawyer may employ as a paralegal a person who possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer; possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and carries out his or her work in a competent and ethical manner.

There is much criticism amongst lawyers about alternate legal service providers providing a lower quality of legal services. It is important to keep in mind, as stated in the Consultation Report, that it will be necessary to complete an education and training program approved by the Law Society, which would be "tailored to ensure the provider is able to provide legal services within the scope of the limited license in a competent and professional manner." The



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Consultation Paper also indicates that as the education process is developed, there will be further opportunity to provide feedback.

On the topic of education, it may be useful to consider the process to become a paralegal in Ontario. This requires completion of a two year college program by an accredited school. The Law Society of Ontario outlines the curriculum and a review of the curriculum is performed every five years. It also requires a period of articling as well as a written licensing exam. While the BCPA is not providing any specific suggestion on length of education in these submissions, it should be noted that an educational program of similar duration in family law would allow an alternate legal service provider to become extremely well-educated and trained in that one specific area of law, which is more than what is required of articulated students in BC, given that family law is an elective course in law school. It is anticipated that part of the education and training would include how to identify when an issue arises that is outside of the limited scope and we would anticipate that alternate legal service providers would have a mandatory obligation of continuing professional development based on a set number of hours per year, to be determined by the Law Society.

The BCPA suggests that what has been done in other jurisdictions with non-lawyer legal service providers should not be overlooked. It has been established by other jurisdictions that paralegals and other legal service providers can be properly trained to competently discharge some legal tasks. Paralegals in Ontario have been regulated for over ten years. While they have been permitted to work in the areas of small claims court, traffic court, minor criminal matters and tribunal work, Ontario is now expanding the scope to permit paralegals to provide some form of family law legal services. Additionally, Washington State has created Limited Licensed Legal Technicians (LLLTs), which permit LLLTs to assist in family law matters. Since 2003, Arizona has had Legal Document Preparers (LDPs) who can prepare or provide legal documents in matters relating to divorce, separation, paternity, custody, child support and parenting time. In Utah, the creation of Licensed Paralegal Practitioners (LPPs) has been approved by the Utah Supreme Court and LPPs will be able to work on temporary separation, divorce, paternity, cohabitant abuse, civil stalking, custody/support and name changes in a scope similar to what is included as Schedule A to the Consultation Paper.

In terms of the framework proposed in Schedule A of the Consultation Paper, it should be noted that some of the items identified are tasks that are already being performed by paralegals and designated paralegals, albeit under the supervision of a lawyer. The BCPA states that paralegals have a solid foundation in which to further build on and are in an excellent position to offer affordable legal services to the public. Practical experience in the legal field over years of specialized work should not be overlooked. There is also a “common sense” approach that is inherited through years of experience by family law paralegals that plays a critical role in decision making when managing a family law case, which includes:

1. Relationship building with clients. Typically, the client’s first point of contact is to call the paralegal. A paralegal is often dealing with conflicts that arise on a file, and is able to address a client’s concern and diffuse misunderstandings when they exist.
2. Solid communication skills and the ability to comfort and diffuse escalating emotions of a client.



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3. Management of file and ability to use common sense through years of specialized experience working in family law, and understanding which material facts must be gathered from the client to present a client's claim.
4. Understanding the legal issues of a family law case but most importantly, understanding when a lawyer needs to be consulted for challenging issues that must be addressed by a lawyer.
5. Skills in legal research, ability to understand the substantive law and procedural law, the common law and the *Supreme Court Family Rules*.
6. Drafting court documents for purposes of chambers applications, summary trial, including trial and/or appeal work.
7. Specialized experience in the area of family law offers a solid foundation to paralegals.

Years of experience in a specialized field such as family law provides a paralegal with a high-level capacity to assist clients and perform tasks outlined in Schedule A of the Consultation Paper, as will be detailed below. Also, once education and training requirements have been established by the Law Society for alternate legal service providers, this will add to the established skills and knowledge that paralegals have been gained through practical experience and mentorship.

Keeping in mind that the object is to improve access to legal services, we respond to paragraph 21 of the Consultation Paper as follows:

- What do you like or dislike about the framework outlined in Schedule A?

As indicated above, paralegals and designated paralegals currently perform some of the identified items in Schedule A, which we have summarized in Schedule A to these submissions. Accordingly, we believe that paralegals who have been performing these types of services have a solid foundation for becoming alternate legal service providers. The BCPA is in support of alternate legal service providers being regulated, which provides protection to the public.

- Is the framework likely to achieve the desired outcomes? If not, how might it be modified to achieve the outcomes?

In order to achieve increasing access to justice, it will be necessary for alternate legal service providers to charge less than lawyers. An alternate legal service provider is not a lawyer, so it makes sense their rate be reflective of that, similar to how a paralegal does not charge the hourly rate of a lawyer. Further, perhaps at least initially, alternate legal service providers would have to consider ways in which to keep overhead costs to a minimum whether by offering mobile services, working from home or having a virtual office. As is expanded on below, we know that licensing paralegals has worked in Ontario, a system which has been in place for ten years. However, as set out the Legal Service Providers Task Force report indicates, there is no way to find out the answer without trying it.



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- Does the framework miss any types of legal services that you consider should be included?

The framework does not miss any types of legal services that we consider should be included.

- Does the framework include any legal services you think should be excluded?

We do not believe the framework offers legal services that should be excluded.

- Should the service providers be "officers of the court"?

It is recognized that the proposed framework does not include alternate legal service providers appearing in court, except in a McKenzie Friend-like role. However, if consideration is given to allowing alternate legal service providers to attend court on limited matters similar to articulated students, they should be "officers of the court".

- Is there a broader possible scope of practice, not contained in the framework that is appropriate for alternate legal professionals who are engaged in collaborative or non-adversarial processes?

This question likely requires further exploration. Collaborative files can involve family corporations and/or family trusts and other exceptions in the framework, which is outside of the alternate legal service provider limited scope.

- What services contained in the framework are the most complex and fraught with risk of significant and/or enduring harm to the client (or their children) if not performed by an experienced lawyer? How are those risks mitigated now where they are performed by less experienced lawyers?

The matters that are complex and fraught with risk are those listed in the exceptions. What needs to be remembered is that any matter that goes to court or trial is outside of the scope of an alternate legal service provider. For example, a contested custody matter that is scheduled for trial or a summary trial to determine a payor's income. These are not within the scope and can only be handled by a lawyer. In family law matter, it is not uncommon for trial dates to be set at a very early stage in the proceedings and often at the judicial case conference stage. Those types of matters would continue to be handled by lawyers, as they are now. As mentioned above, it is anticipated that the education and training would include how to identify when an issue arises that is outside of the limited scope.

- Should the proposed new service providers be subject to the same (or similar) professional conduct/ethical responsibilities as lawyers? Should they be subject to the CBA Best Practice Guidelines for lawyers practising family law?



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The BCPA believes that alternate legal service providers should be subject to the same (or similar) professional conduct/ethical responsibilities as lawyers, similar to paralegals in Ontario being subject to the Paralegal Rules of Conduct¹. Alternate legal service providers should also be subject to the CBA Best Practice Guidelines.

- Are there any other reforms to the provision of family law legal services that could be addressed through the use of alternate legal service professionals?

In the event the Benchers reject the recommendations of the Alternate Legal Service Providers Working Group, the work should not be abandoned completely. Other variations of the proposed framework and scope should be considered.

Comment has been made that there is no evidence that the cost of alternate legal service providers will be less than lawyers. It may again be useful to look at Ontario. The licensing fees for paralegals in Ontario is approximately half of what a lawyer pays (paralegals pay approximately \$1,000 per year). Insurance for paralegals in Ontario is considerably less than that of lawyers, given their scope is limited. In terms of hourly rates, the offices of Precision Paralegal Services LLP² have paralegals that generally charge \$80 per hour (for less than seven years experience) and paralegals that generally charge \$95 per hour (for over seven years experience). Further, we understand that paralegals in Ontario also perform flat rate services, as do LDPs in Arizona. Along the same lines are non-lawyer mediators, who charge less than a mediator who is a lawyer. The reality is that if alternate legal service providers charge the same as lawyers, there will be no benefit to the public and this will not assist in addressing the unmet need. Further, it is most likely that a client would choose a lawyer over an alternate legal service provider, if the rates are the same.

We are aware that there is also concern that alternate legal service providers will take work away from lawyers. With respect, we disagree this will take work away from lawyers. The population that would engage alternate legal service providers are the British Columbians who are middle to moderate class; the individuals that cannot afford lawyers but who do not qualify for legal aid. It seems reasonable to expect that British Columbians who can afford to retain lawyers will continue to do so.

The BCPA disagrees with any suggestion to simply abandon the work being done by the Alternate Legal Service Providers Working Group. As indicated in the report dated December 5, 2014 by the Legal Services Regulatory Framework Task Force, "What is unlikely to change over that time, however, is the pressing need in our society to help British Columbians have better access to justice." It appears that many lawyers are critical of the proposed framework and indicate it is broader than other jurisdictions. It has been suggested in other submissions that there be further consideration, consultation and research. It should be noted that the Legal Services Regulatory Framework Task Force consulted with lawyers and other legal service providers in 2014 and sought input as to the areas where there is the greatest need and whether it is desirable to create new classes of legal license that would permit properly

¹ Law Society of Ontario, Paralegal Rules of Conduct, online <http://lso.ca>

² Precision Paralegal Services LLP, online <http://www.precisionparalegal.ca>



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credentialed and regulated service providers to fill those roles. Only 58 responses were received. Given the written submissions posted online and the attendance at the Law Society's Annual General Meeting, lawyers are now engaged in this process. The BCPA hopes that the Law Society will continue with efforts towards alternate legal service providers to define the scope, and not simply abandon the process altogether.

The BCPA was pleased to hear of the introduction of the *Attorney General Statutes Amendment Act, 2018*, into the legislative assembly on November 19, 2018 which includes amendments to the *Legal Profession Act* to expand the types of professionals to be able to provide legal services to the public to include "licensed paralegals", who would be permitted to provide a limited scope of services. We are also aware that at the Annual General Meeting on December 4, 2018, an amended Resolution was passed directing the Benchers to request that the provincial government not pass regulations to bring the licensed paralegal amendments into force until the Benchers have had more time to complete their consultations regarding licensed paralegals and not to authorize licensed paralegals to practice family law under the authority provided in the amendments to the *Legal Profession Act*. Again, the BCPA hopes that the Law Society will consider the previous reports and the conclusions and recommendations made, when considering the Resolution passed at the Annual General Meeting. It is the BCPA's hope that the legislation pertaining to "licensed paralegals" is enacted. The issue of regulation and licensing of paralegals in BC has a long history. Given the access to justice crisis in BC and now that the government has taken the steps with the amendments to the *Legal Profession Act*, it's time to move forward with this.

The BCPA is extremely happy to see that the Law Society is taking steps to be proactive by releasing the Consultation Paper, and to increase access to justice for British Columbians who are currently unable to afford professional legal assistance. The BCPA would like to be involved in establishing the framework for education and regulation as part of a plan for alternate legal service providers.

Not one option alone will solve the access to justice problem in BC. The BCPA's position is that paralegals play a key role in facilitating improved access to justice and being *part* of the solution. Change is not easy and is often resisted, but is a constant in every professional field and law is no different. With proper education and training and regulation, the BCPA believes paralegals wishing to become alternate legal service providers can provide access to affordable, competently delivered legal services in an area of need, while maintaining public interest in the administration of justice.

Respectfully submitted,

BC PARALEGAL ASSOCIATION

Per: MICHELE ROSS
President



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Schedule A

Activity in proposed scope of Schedule A to Consultation Paper	Current Paralegal Tasks	Comments
Establish a contractual relationship with a client not represented by a lawyer or with a client who is represented by a lawyer where the client consents	Paralegals have operational carriage of a file and are an integral part of a relationship with a client.	Based on a paralegal's experience dealing with multiple clients, this is a task that can be successfully achieved by a paralegal as an alternate legal service provider.
Conduct client interviews to understand client objectives and obtain relevant facts.	Interviewing clients and fact gathering are tasks performed by paralegals.	A paralegal as an alternate legal service provider can successfully perform this task.
Advise a client about available legal options (including about retainer a lawyer where the matter appears to be beyond the scope of permitted activities)	Based on legal education and experience, paralegals can provide legal information to clients about legal options available. In addition, designated paralegals can also provide legal advice.	A paralegal as an alternate legal service provider can successfully perform this task.
Take instructions to begin legal process, including advising about and deciding on which forms to use and completing forms and organizing service for the client	Paralegals accept instructions from established clients if the supervising lawyer approves before work commences. Paralegals draft pleadings and complete court forms for clients, as well as organize service.	A paralegal as an alternate legal service provider can successfully perform this task.
Communicate with another party's representative, or with another party where unrepresented.	Paralegals often communicate with another party's representative or an unrepresented party under the supervision of a lawyer.	A paralegal as an alternate legal service provider can successfully perform this task.
Advise about the anticipated course of legal proceedings, including where and when the client may need a lawyer to become involved.	Paralegals communicate with clients about the anticipated course of legal proceedings, under the supervision of a lawyer. Given education and experience, paralegals have an understanding of when a lawyer may need to become involved.	A paralegal as an alternate legal service provider can successfully perform this task.



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Activity in proposed scope of Schedule A to Consultation Paper	Current Paralegal Tasks	Comments
Attend at mediations within the scope of permitted activities.	Under the scope of designated paralegals, this is a task that designated paralegals can do.	A paralegal as an alternate legal service provider can successfully perform this task.
Act as mediator.	Paralegals and designated paralegals can act as mediators, provided they complete the necessary education and training.	Upon completion of required education and training, a paralegal as an alternate legal service provider can successfully perform of this task.
Prepare orders within the scope of permitted activities.	Paralegals have extensive drafting experience and prepare orders.	A paralegal as an alternate legal service provider can successfully perform this task.
Advise about how agreements or court orders may affect a client's rights and obligations.	Designated paralegals are permitted to give legal advice.	A paralegal as an alternate legal service provider can successfully perform this task.
Refer matters beyond scope of permitted activities to a lawyer.	Paralegals have a solid understanding of when matters need to be referred to a lawyer and currently follow this procedure.	A paralegal as an alternate legal service provider can successfully perform this task.
Accept referrals within scope of permitted activities.	Not applicable	A paralegal as an alternate legal service provider can successfully perform this task.
Represent a client in settlement discussions and prepare settlement agreements and orders incorporating settlement within scope of permitted activities.	Paralegals are involved with settlement discussions and prepare settlement agreements with a lawyer's supervision.	With proper education and training, a paralegal as an alternate legal service could successfully perform this task.
Give and receive undertakings.	Paralegals can offer or accept a lawyer's undertaking with specific instructions about a specific undertaking on a specific file, over which the lawyer is exercising sufficient supervision.	With the proper education and training, a paralegal as an alternate legal service provider could give and receive undertakings.



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Activity in proposed scope of Schedule A to Consultation Paper	Current Paralegal Tasks	Comments
Operate a trust account.	Paralegals are not permitted to operate a trust account.	With the proper education and training, a paralegal as an alternate legal service provider could operate a trust account, similar to that of paralegals in Ontario.
Enforce orders.	Paralegals are involved with preparing documents to enforce orders, with a lawyer's supervision.	A paralegal as an alternate legal service provider can successfully perform this task.

We have confidence that paralegals as alternate legal service providers could perform the above noted tasks; however, any of the above that require appearance in court would be outside of the limited scope based on the proposed framework.