December 20, 2000

Report to the Benchers by the Paralegal Working Group

The Law Society
of British Columbia

Members

Jo Ann Carmichael ,Q.C. (Chair)
Robert Gourlay, Q.C.
Margot Spence
Diane Turner

Staff

Alan Treleaven
Carmel Wiseman

The Law Society of British Columbia
8th Floor, 845 Cambie Street
Vancouver, B.C. V6B 4Z9
Telephone: (604) 669-2533
Fax: (604) 669-5232
TTY: (604) 443-5700
www.lawsociety.bc.ca

TABLE OF CONTENTS

Executive Summary ---------- 1

Paralegal Working Group Report

- Introduction ---------- 3
- Terminology ---------- 3
- Current Situation in B.C. ---------- 3
- Law Society Research on Legal Assistants ---------- 5
- Bencher Deliberations 1994 to 1996 ---------- 7
- Recent Related Reports ---------- 7
- Agreement on Internal Trade ---------- 15
- Representation Agreement Act ---------- 16
- Discussion ---------- 17
- Next Steps ---------- 19

List of Appendices ---------- 20

Appendix A ---------- 21

Appendix B ---------- 31

Appendix C ---------- 34

Appendix D ---------- 36

Appendix E ---------- 47

Appendix F ---------- 49

Appendix G ---------- 52

Appendix H ---------- 58

Appendix I ---------- 59

EXECUTIVE SUMMARY

The Paralegal Working Group was struck by the Futures Task Force to consider the situation of paralegals in British Columbia. *[Note that on February 2, 2001 the name of the Paralegal Working Group was changed to the Paralegals Task Force.]* The Working Group has considered the role of non-lawyers who provide legal services both within law firms and independently. Unlike in Ontario, there does not appear at this time to be significant pressure to expand or institutionalize the role of independent paralegals.

There is some inconsistency around the use of the term "paralegal". The Working Group has adopted the term *paralegal* for those who work independently of lawyers, and *legal assistant* for those who work under the supervision of lawyers.

In 1989, the Paralegalism Subcommittee addressed concerns relating to paralegals. It identified the situation as being fundamentally different in Ontario and B.C. In Ontario, the 1985 POINTTS decision of the Provincial Court found that, within the statutory context of Ontario, paid agents could act in provincial offences cases. That decision was upheld by the Court of Appeal, and had the effect of legitimizing activities of non-lawyers acting under several Ontario statutes where "agents" are permitted. In B.C., however, the Supreme Court ruled that POINTTS was engaged in the unauthorized practice of law, contrary to s.77 of the former *Barristers and Solicitors Act*, by defending a person charged with a *Motor Vehicle Act* offence. The Court noted that non-lawyers are prohibited by s.77 from "appearing as counsel or advocate" and "giving legal advice."

The 1989 Subcommittee concluded in Part I of its *Report* that a new class of independent legal service provider would only be in the public interest if either the legal service provider attains a high standard of competency or the legal service involves low risk of harm. The 1989 Subcommittee recommended against a new independent paralegal profession, because it could not "achieve the diagnostic competency required of an independent practitioner," and given the cost of regulation.

The 1989 Subcommittee also viewed notaries as a class of independent paralegal, and concluded: "We cannot condone the continuation of a parallel legal profession such as the Society of Notaries Public which markets its members to the public as a provider of legal services, yet has lower standards than those that are met and adhered to by members of the Law Society. This is misleading and unfair to the public."

Part I of the 1989 *Report* was considered by the Benchers, and there was some discussion of a proposed public consultation. The public consultation did not, however, proceed.

Part II of the 1989 *Report* focused on the role and potential regulation of legal assistants working under the supervision of a lawyer. The 1989 Subcommittee endorsed certification of legal assistants as being in the interest of the public, legal assistants and the legal profession. A qualified legal assistant would receive the designation "Certified Legal Assistant," and complete a qualification scheme combining approved courses, prescribed experience and examinations.

The Benchers approved Part II of the 1989 *Report,* and requested the design of a certification program. In February 1995 the Benchers reconsidered the proposed program and discontinued it. Bencher concerns included cost estimates ranging between approximately $50,000 and $200,000 per year, and a forecast that there would be little likelihood of cost recovery from registrants.

In Ontario, the *Cory Report* was submitted to the Attorney General on May 31, 2000. The *Report* noted that the presence of independent paralegals in Ontario has steadily increased, and that they play an important role in delivery of legal services. The *Report* concluded that independent paralegals have a significant role to play in increasing public access to legal services, and recommended that independent paralegals be subject to a regulatory scheme for the protection of the public and for the proper functioning of courts, boards and tribunals. The first step would be to ensure that paralegals are competent, by prescribing a minimum level of education, examinations, and a good character requirement. A new governing body would ensure that independent paralegals have an errors and omissions insurance policy, that a compensation fund be established and that there be a system of discipline. Independent paralegals would be authorized to practise in specified areas, and on a strictly confined basis. It is anticipated that new paralegal legislation will be introduced in the Ontario legislature during 2001.

The *Agreement on Internal Trade* is an agreement among the federal, provincial and territorial governments to reduce barriers to the free movement of people, goods, services and investment within Canada. Provisions promote labour mobility by removing barriers of residency, certification and professional standards within individual provinces, to enable qualified workers, such as lawyers, chartered accountants, construction workers and tradespeople, to practise their occupations anywhere in Canada. There are provisions that permit provinces to limit inter-provincial mobility based on legitimate consumer protection needs. An informal legal opinion is that these provisions likely preserve the Law Society's ability to regulate independent paralegals more restrictively than might be the case in other provinces, based on consumer protection.

The Paralegal Working Group is considering a number of options, including:

1. *Maintenance of the status quo,*
2. *Maintenance of the status quo, with expansion of legal assistant functions,*
3. *Certified legal assistants, regulated through their supervising lawyer,*
4. *Certified legal assistants, individually regulated,*
5. *Independent paralegals offering clearly defined limited services,*
6. *Independent, accredited, regulated paralegals.*

The Paralegal Working Group requests further direction as to which, if any, of these options, or other options, should be further researched, developed and assessed.

PARALEGAL WORKING GROUP REPORT TO THE BENCHERS

1. Introduction

The Paralegal Working Group was struck by the Futures Task Force to consider the current situation of paralegals in British Columbia, and to report to with information and recommendations.

The Paralegal Working Group has been considering the role of non-lawyers who provide legal services both within law firms and independently. Unlike in Ontario, there does not appear to be significant pressure to expand or institutionalize the role of independent paralegals at this time. This situation could, however, change.

The Paralegal Working Group met on October 4, 18 and 31, on November 22, and on December 13, 2000. This *Report* includes background information and analysis, particularly in relation to British Columbia, and invites further direction.

2. Terminology

There is some inconsistency around the use of the term "paralegal". In October 1989, the Law Society's *Report of the Paralegalism Subcommittee* adopted the term *paralegals* for those who work independently of lawyers and *legal assistants* for those who work under the supervision of lawyers. For purpose of this discussion, this Preliminary Report adopts the same distinction. (In practice, however, the term paralegal is frequently used to identify individuals working within law firms)

3. Current Situation in B.C.

(See Appendix A for excerpts from the relevant legislation.)

(a) Paralegals

In B.C., apart from the Society of Notaries Public, there is no organized group of paralegals. Furthermore, there appears to be no push from legal assistants or any of their voluntary associations for a system of independent paralegals. However, at any given time, there are non-lawyers in B.C. who are practising law as independent paralegals, including independent paralegals from Ontario coming to B.C. and commencing legal practice. Because this constitutes unauthorized practice, the Law Society's Unauthorized Practice Department deals with each of these routinely. The Law Society seeks to bring to an end unauthorized practice by either having the non-lawyer agree to cease (as evidenced by an undertaking) or, if there is no agreement, by obtaining an injunction.

The Unauthorized Practice Department receives approximately 100 new complaints of unauthorized practice every year. Between 1/3 and 1/2 are closed without any action being taken because the complaint is unfounded or unprovable.

Some action is taken on the balance. For example, for files closed in 2000, the action taken when there has been some evidence of unauthorized practice was as follows:

cease and desist letter	10
undertaking to stop practising	15
injunction	4
consent order	2
contempt order	1

The Unauthorized Practice Department has also received a few inquiries from paralegals about setting up independent practices in B.C. At least two have asked whether B.C. will be making legislative changes to allow independent paralegals. One inquiry specifically referred to the *Cory Report*.

(b) Legal Assistants

In B.C., there are a significant number of legal assistants providing legal services under the supervision of a lawyer. (A 1994 Law Society survey concluded that there were approximately 1,500 legal assistants in B.C., based on a definition of "legal assistant" as a person who does the work that would be done by a lawyer if a legal assistant is not available.)

Legal assistants' training and background vary, with some completing institutional legal assistant programs and others being trained on the job in law firms. (See s.4(a), below.) Many are members of one of the voluntary associations of legal assistants such as the B.C. Association of Legal Assistants, which has 217 members, including 70 student members.

While there does not appear to be any impetus from legal assistants to become independent paralegals, legal assistants are interested in professional recognition. In 1997, after unsuccessfully endeavouring to persuade the Law Society to begin certifying legal assistants, the B.C. Association of Legal Assistants applied to the B.C. Ministry of Finance and Corporate Relations for occupational title protection of the title "Registered Legal Assistant." The application was made by 120 legal assistants. The application was denied by letter of September 15, 1997, with the following advice:

> Interested parties have raised some concerns as to the percentage of members the society represents throughout the province along with weak membership requirements for admission.
>
> You may wish to contact the Law Society of B.C. to assist the society in strengthening the above concerns and reapply for occupational title protection at a later date.

By letters of December 9, 1997 and May 13, 1998, the B.C. Association of Legal Assistants encouraged the Law Society to continue working with the Association on enhancing the role of legal assistants.

(c) Public Demand / Use of Non-lawyers

The Law Society, in 1998, commissioned Environics Research Group to conduct a study of the way the legal profession was perceived in B.C. (See Appendix B for the relevant survey excerpts.) Out of the 604 people, 26% reported having been in a situation in the previous year where legal advice or services could have been useful but for which they did not seek the services of a lawyer, with 8% turning to a non-lawyer and 18% not obtaining any kind of legal assistance. The survey also disclosed that out of the 262 people, 15% decided to retain a non-lawyer in the previous year to provide legal advice or services. The primary reasons for using a non-lawyer were concern about expense (63%), belief that the issue was not sufficiently serious (11%), belief that the non-lawyer had more expertise (9%), dissatisfaction with lawyers (7%), and preference for a notary (5%). While the survey is a limited one, it does suggest some demand for provision of legal services by non-lawyers, motivated most often by expense.

4. Law Society Research on Legal Assistants

(a) Report of Western Management Consultants (1991)

The 1991 Western Management Consultants' study reported that there were between 1,300 and 2,000 legal assistants in B.C., with 41% having their services billed separately by their employers. The larger the law firm, the greater likelihood they employed legal assistants. The three most common practice areas in which legal assistants were working were real estate/conveyancing (25%), personal injury litigation (15%), corporate/commercial (15%), general litigation (8%) and family law (6%). The survey showed 48% of legal assistants having completed some kind of post-secondary education, with 13% holding a diploma from a legal assistant program and 16% from a legal secretary program. (For a fuller summary, see Appendix C.)

(b) Report of Sigma Evaluation and Training Resources Inc., 1993

The 1993 research conducted by the Law Society and Sigma Evaluation and Training Resources Inc. indicated that the following tasks were being done by legal assistants. The percentage refers to the percentage of legal assistants participating in the research who reported that they were performing the tasks on a daily or weekly basis.

SIGMA CHART

• Fact Investigation, Analysis and Organization		
1.	Obtains instructions and files from lawyers and others	97%
2.	Obtains information from clients and others	97%
3.	Analyzes information	100%
4.	Organizes information	100%
• Planning and Problem Identification		
1.	Identifies client's and lawyer's objectives	97%
2.	Formulates a strategy and work plan	89%
3.	Considers limits of expertise	92%
4.	Makes decisions and judgment calls	100%
• Legal Research		25%
• Drafting and Writing		
1.	Writes correspondence	94%
2.	Drafts documents	100%
3.	Writes reports	47%
• Interpersonal Relations		
1.	Deals with people	100%
2.	Coordinates work and cooperates with others	100%
• Organization and Management		
1.	Allocates time, effort and other resources	100%
2.	Maintains office systems	36%
• Professional Responsibility and Development		
1.	Identifies conflicts and limits of authority	72%
2.	Maintains professional development	40%

5. Bencher Deliberations, 1994 to 1996

(See Appendix D for the relevant Bencher Minutes from 1994 to 1996.)

(a) 1994

On December 2, 1994 the Benchers discussed certification of legal assistants, and decided to refer the matter to the Carver Implementation Committee and to the staff with instructions to provide additional information to the Benchers.

(b) 1995

On February 3, 1995, the Benchers decided that the Law Society would "not involve itself in the certification of legal assistants at this time," and that staff would bring to the Benchers a series of options for educating lawyers on the recognition and use of legal assistants.

(c) 1996

On April 12, 1996, the Benchers discussed referring the issue of certification of legal assistants to the Competency Committee. After a straw vote, the motion was withdrawn.

On May 10 1996, the Benchers voted to refer to the Competency Committee, for its consideration, possible amendments to Chapter 12 of *the Professional Conduct Handbook* (supervision of legal assistants), and the following program ideas:

- publishing information for lawyers about the economics and use of legal assistants
- developing continuing education courses for lawyers on how to use legal assistants
- developing continuing education courses for legal assistants
- promoting use of legal assistants
- promoting recognition of legal assistants through certification or a similar vehicle delivered by a third party.

6. Recent Related Reports

(a) Paralegalism Subcommittee Report: Part I (October 1989)

The 1989 Paralegalism Subcommittee, chaired by Brian Wallace, addressed concerns relating to the influence of paralegals in the justice system and on the

practice of law, and made recommendations relating to the possible regulation of legal assistants and paralegals.

The 1989 Subcommittee identified the situation as fundamentally different in Ontario and B.C. In Ontario, the 1985 POINTTS decision of the Provincial Court found that, within the statutory context of Ontario, paid agents could properly act in provincial offences cases. The POINTTS decision was ultimately upheld by the Court of Appeal and had the effect of legitimizing the activities of non-lawyers acting under several other Ontario statutes where "agents" are permitted.

In B.C., however, the Supreme Court ruled that POINTTS was engaged in the unauthorized practice of law, contrary to s.77 of the former *Barristers and Solicitors Act*, by defending a person charged with a *Motor Vehicle Act* offence. The Court noted that non-lawyers are prohibited by s.77 from "appearing as counsel or advocate" and "giving legal advice."

The 1989 Subcommittee declared itself unable to produce an accurate picture of consumer demand for independent paralegal services, the extent of harm caused by paralegals, or the actual level of paralegal activity, as it had not commissioned significant empirical research. The 1989 Subcommittee was mindful, however, that following developments in Ontario and California, members of the B.C. public might see the day when independent paralegals would be viewed as a viable, cheaper alternative to lawyers.

The 1989 Subcommittee considered its guidepost for the study of paralegals to be the public interest. The public interest in the provision of legal services was identified as having seven components:

- that services be performed competently
- that appropriate services be performed
- that services be performed ethically
- that services be performed by the person of choice
- that services be performed expeditiously
- that services be performed efficiently and cost-effectively
- that services be financially secured.

The 1989 Subcommittee concluded that creating a new class of independent legal service provider ought only to be seen as in the public interest if either the legal service provider attains a high standard of competency, or the legal service involves a low risk of harm. The 1989 Subcommittee recommended against a new independent paralegal profession, given the fact that it could not "achieve the

diagnostic competency required of an independent practitioner" and given the cost of regulation. For there to be a low risk of harm, the 1989 Subcommittee determined that a service must involve a low potential monetary loss, a potential loss affecting only the person requesting the service, and no loss of liberty.

In the context of low risk of harm, the 1989 Subcommittee reviewed several substantive areas of law to determine what skills and knowledge are essential to competently perform the legal services, and whether a low risk of harm exists. The 1989 Subcommittee made recommendations on a very restrictive basis in the following areas of practice:

- Wills – no role for independent paralegals
- Probate and Estate Administration – highly restricted role
- Real Property Transactions – no role
- Corporate and Commercial Law – no role
- Family Law – highly restricted role
- Administrative Law – highly restricted role
- Immigration Law – no role, but recommends consultation with the Federal Government
- *Motor Vehicle Act* Offences – highly restricted role
- Debt Collection – highly restricted role.

The 1989 Subcommittee viewed notaries as being a class of independent paralegal, and concluded: "We cannot condone the continuation of a parallel legal profession such as the Society of Notaries Public which markets its members to the public as a provider of legal services, yet has lower standards than those that are met and adhered to by members of the Law Society. This is misleading and unfair to the public." The 1989 Subcommittee proposed that all future notaries be appointed by the provincial government to provide strictly notarial services and be excluded from providing the broader services currently provided, including those in the areas of Wills and Real Property. As a compromise for existing notaries, the 1989 Subcommittee proposed that they be made members of the Law Society as solicitors with the right to practise law restricted to functions they are permitted to perform under the *Notaries Act*. The compromise would include a requirement that the existing notaries complete a comprehensive program of education and testing created by the Law Society in order to verify their competency.

In instances where the 1989 Subcommittee recommended restrictive rights for independent paralegals, it did not go on to address issues of regulation of paralegals.

The *Report* was discussed by the Benchers, and there was some discussion of a proposed public consultation. The public consultation did not, however, proceed.

The 1989 Subcommittee endorsed the continuing role of legal assistants working under lawyer supervision, under the guidelines in the *Professional Conduct Handbook*, and discussed their role in Part II of the *Report*.

(b) Paralegalism Subcommittee Report: Part II (September 1989)

The Part II *Report* focused on the role and potential regulation of legal assistants working under the supervision of a lawyer. The 1989 Subcommittee endorsed certification of legal assistants as being in the interests of the public, legal assistants and the legal profession. In so doing, it noted concerns relating to cost of a certification program and possible detrimental impact on availability of positions for articling students and junior lawyers, but made its recommendations nevertheless.

The 1989 Subcommittee recommended as follows:

- that the Law Society institute a program to certify legal assistants
- that certification be in respect of a level of knowledge higher than the minimum level of knowledge
- that certification be tied to qualifications, supervision and ethical guidelines determined by the Law Society
- that the certification program be primarily or wholly financed by the legal assistants seeking certification.

The 1989 Subcommittee concluded that a candidate for certification should:

- possess substantive and procedural knowledge
- have work experience performing legal assistant duties
- be of good character and repute
- be prepared to give the Law Society an undertaking to abide by the provisions of the *Legal Profession Act*, the *Rules*, the *Professional Conduct Handbook*, and any other rules or policies set by the Benchers.

The qualified legal assistant would receive the designation "Certified Legal Assistant," and would be required to complete a qualification scheme combining approved courses, prescribed experience and examinations.

The Benchers approved the Part II *Report* on January 5, 1990, and requested the design of a potential certification program. There was consultation with legal assistants, and implementation work done, at an approximate cost of $100,000. The Benchers did not move on to approve and establish a certification program, and in February 1995 reconsidered the proposed program and discontinued it. Bencher concerns included cost estimates cost ranging between approximately $50,000 and $200,000 per year, and forecasts that there would be little likelihood of recovery from registrants. (See Appendix D.)

(c) Burnyeat Report (September 25, 1990)

A 1990 Law Society Committee, chaired by Grant Burnyeat, prepared its *Report* of September 25, 1990, entitled *The Proposed Expansion of Notaries' Practice*, in response to a request from the Society of Notaries Public to expand its jurisdiction and number of seals.

The 1990 Committee concluded that the former *Legal Profession Act* recognizes the public need for substantial professional training of those who provide legal services to the public, and that this policy is sound and should be maintained to protect the public interest. The 1990 Committee was critical of the proposal because it failed to demonstrate an understanding of what knowledge and skill are required to provide legal services in the areas of estate probate and incorporation, and to offer an education program to ensure competence of the notaries. Moreover, the 1990 Committee could find no evidence that there was a public need for an increase in the number of notaries in the province.

The Benchers approved the *Report*, and the provincial government consequently denied the Society of Notaries Public's request.

(d) LSUC Report of the Paralegal Task Force (March 24, 2000)

The Law Society of Upper Canada retained Professors John McCamus and Patrick Monahan as advisers and an organization, The Strategic Council, to conduct a comprehensive review of the current state of independent paralegal practices in Ontario. The comprehensive empirical research comprised interviews of 250 paralegal users, a telephone survey of 200 paralegal practitioners, 25 personal interviews with groups involved in the administration of justice (judges, tribunal adjudicators, hearing officers, Crown Attorneys) and 20 personal interviews with stakeholders (community colleges, ethnic/immigrant associations, financial institutions, credit counselling services). The Strategic Council study provided clear evidence of a broad range of legal services currently being provided by independent paralegals in Ontario. The LSUC Task Force concluded that it is realistic to assume that some proportion of the legal services include the

provision of legal advice and would infringe the statutory monopoly conferred upon the legal profession.

The LSUC Task Force recommended that paralegals be prohibited entirely from incorporating businesses, giving legal advice on business matters, practising in the areas of wills and estates, powers of attorney, family law, personal injury claims, settlements and statutory accidents benefits, real estate law, in the context of *Criminal Code* offences and interim judicial release applications, and representing persons charged under the *Provincial Offences Act* where the possible penalty on conviction is imprisonment or a fine above a specified monetary limit. In the area of immigration, subject to the decision of the Supreme Court of Canada, Ontario would apply whatever regime is adopted for independent paralegal regulation in relation to similar tribunals.

With the exception of work in the areas of mediation, title-searching (but not providing opinions on or certifications of title), credit counselling, debt collections (regulated by the *Collection Agencies Act*) and a small number of other very narrow functions, the LSUC Task Force focused primarily on regulation of paralegals appearing before tribunals.

The LSUC Task Force concluded that a system of "tribunal accreditation" should form the basis of a regulatory scheme, with either the LSUC or an entity referred to as the "Ontario Legal Services Corporation" serving as the Central Accreditation Office. The LSUC Task Force assessed the advantages and disadvantages of its proposed Tribunal Accreditation Model, and then briefly considered the advantages and disadvantages of other models.

Detailed analysis of the Tribunal Accreditation Model is reproduced in Appendix E, and detailed analysis of other models is reproduced in Appendix F.

(e) Cory Report (May 31, 2000)

The *Cory Report* was prepared for the Attorney General of Ontario, to explore the role of independent paralegals in Ontario and to make recommendations. The *Cory Report* noted that the presence of independent paralegals in Ontario has steadily increased, and that they now play an important role in delivery of legal services, particularly before boards and tribunals and in court on provincial offences. The *Cory Report* concluded that independent paralegals have a significant role to play in increasing the public's access to legal services.

The *Cory Report* concluded that the activities of independent paralegals must be subject to a regulatory scheme for the protection of the public and for the proper functioning of courts, boards and tribunals. The first step would be to ensure that paralegals are competent, by prescribing a minimum level of education, completion of examinations, and a good character requirement. A new governing body would ensure that all independent paralegals have an errors and omissions

insurance policy and that a compensation fund be established. Independent paralegals would be required to provide and have executed a retainer letter that clearly indicates to each client that the paralegal is not a lawyer, that the paralegal is limited as to the extent of the advice that can be given, and that the client may have the paralegal's accounts assessed. The new governing body would establish a system of discipline.

Independent paralegals would be authorized to practise in a number of areas, and on a strictly confined basis:

- appearances before specified specialized boards and tribunals after passing related examinations
- appearances in Small Claims Court and in court on provincial offences
- appearances on some very narrowly specified appeals
- simple wills, as defined
- powers of attorney and living wills
- family law in uncontested divorce proceedings, as very narrowly defined
- residential real estate, acting for the vendor in very narrow circumstances
- criminal law in very narrow circumstances
- swearing affidavits.

The 55 recommendations and two additional suggestions are reproduced in Appendix F.

(f) LSUC Response to the Cory Report (July 24, 2000)

The Law Society of Upper Canada responded to the *Cory Report* in its own report entitled *An Analysis of a Framework for Regulating Paralegal Practice in Ontario*. It identified two themes in the *Cory Report*: public protection and access to justice. The Law Society concluded that issues relating to paralegal practice should be resolved having regard only to protection of the public, for three reasons:

- Available anecdotal evidence concerning access to justice provides no clear sense as to why certain sectors of the population are being denied access to justice, and so it is not clear that permitting paralegals to practise would resolve the problem of lack of access to justice.

- Results of extensive empirical research conducted by the Law Society confirm that the question of whether paralegals play a role in facilitating access to justice is not one that comes with an easy answer, that only a minority of individuals choose a paralegal for reason of price, and that in most cases a greater proportion of individuals, including those using paralegals, would prefer to use lawyers.

- Resolving any problems of lack of access to justice by permitting independent paralegals to practise would at best establish a two-tiered justice system, as no amount of education and training short of that undertaken by lawyers can enable a paralegal to bring to a client's problem the knowledge, skills and abilities of a lawyer. The Law Society agreed that paralegal practice in Ontario should be regulated, and that the regulation scheme should include a system of licensing, educational and training requirements, good character, professional liability insurance, adherence to professional conduct rules, a standard retainer letter disclosing limits on the paralegal's right to practise, a compensation fund to reimburse clients, and a system for assessing paralegal's bills. The Law Society also proposed that licensed paralegals be required, as a pre-condition to licensure, to pass special examinations in each area in which the paralegal practises law. The Law Society specifically disagreed with the following recommendations in the *Cory Report*:

  ◊ Disagreed that a separate class of "secondary licences" be created for paralegal practice before specialized boards and tribunals.

  ◊ Disagreed that paralegals be permitted to practise before the Financial Services Commission of Ontario (Dispute Resolution Group).

  ◊ Disagreed that paralegals be permitted to appear on an appeal in the first instance from a decision of the Ontario Rental Housing Tribunal. (The Society would permit licensed paralegals to appear on an appeal from a decision of a provincial board or tribunal only if the appeal is on a question of fact alone and the appeal was to another board or tribunal or the Ontario Court of Justice.)

  ◊ Disagreed that licensed paralegals be permitted to appear at the first level of appeal from decisions of the Small Claims Court.

  ◊ Disagreed that licensed paralegals be permitted to prosecute and defend provincial offences in the Ontario Court of Justice and to appear at the first level of appeal from a conviction or acquittal on a provincial offence. (The Society would permit licensed paralegals to practise in *Provincial Offences Act* matters only when the penalty being sought is not imprisonment or a fine greater than the monetary limit that may be claimed in a Small Claims Court proceeding. The Society would permit

licensed paralegals to appear on an appeal only if the appeal is on a question of fact alone and the appeal was to the Ontario Court of Justice.)

- ◊ Disagreed that licensed paralegals be authorized to appear as duty paralegals in the Ontario Court of Justice and, if future policy makes it possible, in the Superior Court of Justice.

- ◊ Disagreed that licensed paralegals be authorized to prepare and file the necessary papers and to do all that is required in completing an uncontested divorce in specified circumstances.

- ◊ Disagreed that licensed paralegals be authorized to draw a simple will in specified circumstances.

- ◊ Disagreed that licensed paralegals be authorized to advise regarding powers of attorney and living wills, to prepare these documents and to have them executed.

- ◊ Disagreed that licensed paralegals be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

- ◊ Disagreed that licensed paralegals be authorized to undertake the simple incorporation of private companies.

The Law Society took the position that before independent paralegals are permitted to become self-regulating, there must be a full public debate on the merits.

Nonetheless, it is expected that the Attorney General will introduce new paralegal legislation in the Ontario legislature in 2001.

7. Agreement on Internal Trade

The Agreement on Internal Trade is an agreement among the federal, provincial and territorial governments to reduce and eliminate barriers to the free movement of people, goods, services and investment within Canada. It came into effect on July 1, 1995, with a schedule for implementation. The Agreement seeks to enhance the competitiveness of Canadian business and to facilitate work mobility for tradespeople and professionals in a manner that maintains the protection of the environment and of Canadian consumers.

Specific provisions promote labour mobility by removing barriers of residency, certification and professional standards within individual provinces, to enable qualified workers, such as chartered accountants, lawyers, construction workers and tradespeople, to practise their occupations anywhere in Canada.

There are provisions that permit provinces to limit inter-provincial mobility based on legitimate consumer protection needs, although the tenor of the Agreement is one of verifying that such limits are bona fide and as minimal as reasonably possible.

The Paralegal Working Group has sought legal advice on what impact the Agreement might have on the ability of the Law Society to regulate independent paralegals more restrictively than might be the case in other provinces, and has been advised that the consumer protection provisions would likely permit *bona fide* Law Society restrictions.

8. *Representation Agreement Act*

The *Representation Agreement Act* provides for two types of representation agreement:

> "General Agreements" made under s.9 of the *Act*, and
>
> "Limited Agreements" made under s.7.

"General Agreements" covers a broad range of decision-making affecting health and personal care, and property and financial matters, which currently can only be made in consultation with a lawyer. A "Limited Agreement" is confined to a narrower range of health and personal care decisions and covering only routine financial matters, which currently do not require involvement of a lawyer.

On September 25, 2000 the British Columbia Ministry of the Attorney General announced that notaries will be designated as a prescribed class of persons under s.9 of the *Act*, and the *Notaries Act* will be amended to include a reference to representation agreements as a responsibility of notaries. These changes are not yet implemented. No other class of persons would be designated under the *Act*. Those notaries who wish to be approved to consult on section 9 agreements will be required to take a mandatory training course or a competency examination as a pre-requisite to approval. (Lawyers continue to be entitled to provide legal services under the *Act*.)

The Report from which the legislation flows identifies the essential competencies of a person designated as a consultant under s.9 of the *Act* as including the ability to do the following:

- evaluate a person's incapability
- understand the implications of naming a person as a representative
- understand instructions, directions or conditions made under s.9 agreements regarding personal care, financial matters, health care and legal affairs
- do so in a professional, objective and independent manner.

The Paralegal Working Group is of the view that this expanded role for notaries is undesirable, in that the public interest is not well-served by permitting notaries, with their

minimal qualifications, to provide legal advice that is potentially very complex. The problem mirrors the debate in Ontario around the role of independent paralegals.

9. Discussion

(a) Paralegals

The current role of independent paralegals, including the related law, appears to be much different in B.C. than in Ontario. Unlike in Ontario, as described in the *Cory Report*, independent paralegals in B.C. are not extensively involved in the practice of law, and there appears to be no significant demand for change. There are apparently few independent paralegals active in B.C. To expand the role of independent paralegals, simply based on the rationale in the *Cory Report*, would import an Ontario proposal into a very different B.C. situation. Moreover, it is important to ensure that the public continue to benefit from the protections, provided by the *Legal Profession Act*, against inferior legal services.

Even with the kind of education and regulatory scheme proposed by the *Cory Report*, it is important to consider whether in B.C. we should have a two-tiered system of legal services, with the lower tier services being provided by independent paralegals qualified to provide limited services.

(b) Legal Assistants

The Paralegal Working Group has spent some time considering an expansion of the role of the supervised legal assistant. Expanded rights could be meaningful, so that the legal assistant would, within the employ of the law firm, be entitled to perform a broader, more independent role than presently permitted. It would be necessary to develop a detailed list of those expanded rights, anticipating that the list would include such functions as appearing in Small Claims Court, minor criminal matters, handling debt collections, appearing before specified administrative tribunals, and handling residential tenancy disputes. (For other examples, see Appendix H.) With effective education, training and regulation, the public could be well served by legal assistants providing legal services for which they are uniquely qualified. Lawyers would be able to introduce new efficiencies into their law practices, which could benefit both clients and the profession.

In considering the potential for an expanded role for supervised legal assistants, the following might be explored further:

- a revised legal assistant "job description", including revision to Chapter 12 of the *Professional Conduct Handbook*
- a prescribed education program
- a prescribed workplace (law firm) training program

- a prescribed examination and assessment program
- a scheme for the certification of legal assistants by the Law Society or by a third party
- a scheme for regulation of legal assistants, including one or more of a complaints and discipline mechanism, an insurance program, a special compensation fund, and a code of professional conduct
- how to fund the administration of a new legal assistants' regime.

(c) Options

The Paralegal Working Group has identified a number of options, including:

1. *Maintenance of the status quo*: Express prohibition against independent paralegals practising law (ss. 1(1) and 15 of the *Legal Profession Act*) would continue. Legal assistants would continue to provide services in accordance with Chapter 12 of the *Professional Conduct Handbook*.

2. *Maintenance of the status quo, with expansion of legal assistant functions*: Express prohibition against independent paralegals practising law would continue. Chapter 12 of the *Professional Conduct Handbook* would be revised to allow legal assistants to provide expanded services under the supervision of a lawyer. It would be essential to consult effectively with members and legal assistants on the specifics of such an expansion.

3. *Certified legal assistants, regulated through their supervising lawyer*: Express prohibition against independent paralegals practising law would continue. This option introduces a new system of certified legal assistants, employed and supervised by lawyers, with expanded rights, subject to a system of Law Society accreditation. Regulation would continue, as at present, to be through the Law Society's regulation of the supervising lawyer rather than regulating the legal assistant directly.

4. *Certified legal assistants, individually regulated*: Express prohibition against independent paralegals practising law would continue. This option introduces a new system of certified legal assistants, employed and supervised by lawyers, with expanded rights, subject to a system of Law Society accreditation and regulation, including possibly one or more of their own code of professional conduct, insurance, special compensation fund, and complaints and discipline mechanisms. (For a brief analysis of insurance issues, see Appendix I.)

5. *Independent paralegals offering clearly defined, limited services*: Express prohibition against independent paralegals practising law would continue

but with the exception of clearly defined narrow functions such as those recommended in the *Paralegalism Subcommittee Report: Part I (October 1989)* including potentially:

– representation before tribunals where lay representation is well-established and the representatives have obtained a level of expertise, and where clients are generally sophisticated consumers of legal services, or where monetary risk is low and no loss of liberty can occur.

– representation in Provincial Court in minor *Motor Vehicle Act* cases (no possible imprisonment or suspension or loss of driving privileges), and on other provincial statutory offences where there is a low monetary loss and no loss of liberty.

– debt collection agencies in Small Claims Court prosecuting or defending a liquidated claim. (This would also require a change to the Small Claims Rules.)

With respect to either option 3 or 4 , there might also be amendments to the Professional Conduct Handbook to permit certified legal assistants to make similar appearances.

There would be no regulatory scheme for independent paralegals other than the Law Society's Unauthorized Practice Department continuing to fulfil its role in guarding against the unauthorized practice of law.

6. *Independent, accredited, regulated paralegals*: This option introduces a new regime of independent paralegals with clearly prescribed rights and limitations, and subject to a scheme of accreditation and regulation administered by either the Law Society or a new entity.

10) Next Steps

The Paralegal Working Group requests direction as to which, if any, of the options, or other options, should be further researched, developed and assessed.

APPENDICES

APPENDIX A: Excerpts from the following relevant legislation:

- *Legal Profession Act*, section 1 ("practice of law"), 14 and 15
- *Professional Conduct Handbook*, Chapter 12
- *Notaries Act*, section 18
- *Representation Agreement Act*, section 9

APPENDIX B: Excerpts from *Perceptions of the Legal Professions in British Columbia* (Environics, December 1998).

APPENDIX C: Western Management Consultants' Report (1991), Summary

APPENDIX D: Bencher Minutes (1994–1996)

APPENDIX E: From L.S.U.C. *Report of the Paralegal Task Force*, pages 19–21 (March 24, 2000)

APPENDIX F: From L.S.U.C. *Report of the Paralegal Task Force*, pages 22–24 (March 24, 2000)

APPENDIX G: From *Cory Report*, Executive Summary (May 31, 2000)

APPENDIX H: Discussion: Possible Expanded Role for Legal Assistants in Criminal Matters

APPENDIX I: Discussion: Insurance Implications of Expanded Role for Legal Assistants

APPENDIX A

Legal Profession Act

Section 1 ("practice of law"), 14 and 15

Definitions

1 (1) In this Act:

"practice of law" includes

(a) appearing as counsel or advocate,

(b) drawing, revising or settling

(i) a petition, memorandum or articles under the *Company Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,

(ii) a document for use in a proceeding, judicial or extrajudicial,

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,

(iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,

(c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,

(d) agreeing to place at the disposal of another person the services of a lawyer,

(e) giving legal advice,

(f) making an offer to do anything referred to in paragraphs (a) to (e), and

(g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

(h) any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,

(i) the drawing, revising or settling of an instrument by a public officer in the course of the officer's duty,

(j) the lawful practice of a notary public,

(k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or

(l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

Members

14 (1) The Benchers may make rules to do any of the following:

(a) establish categories of members;

(b) determine the rights and privileges associated with categories of members;

(c) set the annual fee for categories of members other than practising lawyers;

(d) determine whether or not a person is a member in good standing of the society.

(2) A member in good standing of the society is an officer of all courts of British Columbia.

(3) A practising lawyer is entitled to use the style and title of "Notary Public in and for the Province of British Columbia," and has and may exercise all the powers, rights, duties and privileges of the office of notary public.

Authority to practise law

15 (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except

(a) person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,

(b) as permitted by the *Court Agent Act*,

(c) an articled student, to the extent permitted by the Benchers,

(d) an individual or articled student referred to in section 9 of the *Legal Services Society Act*, to the extent permitted under that Act,

(e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section, and

(f) a practitioner of foreign law holding a permit under section 17 (1) (a), to the extent permitted under that section.

(2) A person who is employed by a practising lawyer, a law firm, a law corporation or the government and who acts under the supervision of a practising lawyer does not contravene subsection (1).

(3) A person must not do any act described in paragraphs (a) to (g) of the definition of "practice of law" in section 1 (1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if

(a) the person is a member or former member of the society who is suspended or has been disbarred, or who, as a result of disciplinary proceedings, has resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings, or

(b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.

(4) A person must not falsely represent himself, herself or any other person as being

(a) a lawyer,

(b) an articled student, a student-at-law or a law clerk, or

(c) a person referred to in subsection (1) (e) or (f).

(5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court, in the person’s own name or in the name of another person.

(6) The Benchers may make rules prohibiting lawyers from facilitating or participating in the practice of law by persons who are not authorized to practise law.

APPENDIX A

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 12 SUPERVISION OF EMPLOYEES

Responsibility for all business entrusted to lawyer

1. A lawyer is completely responsible for all business entrusted to the lawyer. The lawyer must maintain personal and actual control and management of each of the lawyer's offices. While tasks and functions may be delegated to staff and assistants such as students, clerks and legal assistants, the lawyer must maintain direct supervision over each non-lawyer staff member.

[amended 05/00]

Matters requiring professional skill and judgement

2. A lawyer must ensure that all matters requiring a lawyer's professional skill and judgement are dealt with by a lawyer and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

[amended 05/00]

Signing correspondence

3. Letters on the letterhead of a law firm, when signed by a person other than a practising lawyer, must indicate the status or designation of the signing person for the information of the recipient.

[amended 05/00]

Legal assistants

4. There are many tasks that can be performed by a legal assistant working under the supervision of a lawyer. It is in the interests of the profession and the public for the delivery of more efficient, comprehensive and better quality legal services that the training and employment of legal assistants be encouraged.

[amended 05/00]

5. Subject to this chapter, a legal assistant may perform any task delegated and supervised by a lawyer, but the lawyer must maintain a direct relationship with the client and has full professional responsibility for the work.

[amended 05/00]

5.1 A lawyer may delegate tasks or functions to a legal assistant if

(a) the training and experience of the legal assistant is appropriate to protect

the interests of the client, and

(b) provision is made for the professional legal judgement of the lawyer to be exercised whenever it is required.

[added 05/00]

6. Except as permitted under the *Legal Services Society Act*, section 9, a lawyer must not permit a legal assistant to:

(a) perform any function reserved to lawyers, including but not limited to

(i) giving legal advice,

(ii) giving or receiving undertakings, and

(iii) appearing in court or actively participating in legal proceedings on behalf of a client, except in a support role to the lawyer appearing in the proceedings,

(b) do anything that a lawyer is not permitted to do,

(c) act finally and without reference to the lawyer in matters involving professional legal judgement, or

(d) be held out as a lawyer, or be identified other than as a legal assistant when communicating with clients, lawyers, public officials or with the public generally.

[amended 05/00]

7. A lawyer who employs a legal assistant must ensure that the assistant is adequately trained and supervised for the tasks and functions delegated to the assistant.

[amended 05/00]

8. This rule is subject to Rule 5.1. It illustrates, but does not limit, the general effect of that rule.
The following are examples of tasks and functions that legal assistants may perform with proper training and supervision:

(a) attending to all matters of routine administration,

(b) drafting or conducting routine correspondence,

(c) drafting documents, including closing documents and statements of accounts,

(d) drafting documentation and correspondence relating to corporate proceedings and corporate records, security instruments and contracts of

all kinds, including closing documents and statements of account,

(e) collecting information and drafting documents, including wills, trust instruments and pleadings,

(f) preparing income tax, succession duty and estate tax returns and calculating such taxes and duties,

(g) drafting statements of account, including executors_ accounts,

(h) attending to filings,

(i) researching legal questions,

(j) preparing memoranda,

(k) organizing documents and preparing briefs for litigation,

(l) conducting negotiations of claims and communicating directly to the client, provided that the lawyer reviews proposed terms before the legal assistant offers or accepts a settlement.

[amended 05/00]

9. The following are examples of tasks and functions that a lawyer must attend to personally and that legal assistants must not perform. This list illustrates, but does not limit, the general effect of Rule 6:

(a) attending on the client to advise and taking instructions on all substantive matters,

(b) reviewing title search reports,

(c) conducting all negotiations with third parties or their lawyers, except as permitted in Rule 8,

(d) reviewing documents before signing,

(e) attending on the client to review documents,

(f) reviewing and signing the title opinion and/or reporting letter to the client following registration,

(g) reviewing all written material prepared by the legal assistant before it leaves the lawyer's office, other than documents and correspondence relating to routine administration,

(h) signing all correspondence except as permitted in this chapter,

(i) attending at any hearing before the court, a registrar or an administrative tribunal or at any examination for discovery except in support of a lawyer also in attendance.

[added 05/00]

APPENDIX A

NOTARIES ACT

[RSBC 1996] CHAPTER 334

Section 18

Rights and powers of members

18 A member enrolled and in good standing may do the following:

(a) draw instruments relating to property which are intended, permitted or required to be registered, recorded or filed in a registry or other public office, contracts, charter parties and other mercantile instruments in British Columbia;

(b) draw and supervise the execution of wills

(i) by which the testator directs the testator's estate to be distributed immediately on death,

(ii) that provide that if the beneficiaries named in the will predecease the testator, there is a gift over to alternative beneficiaries vesting immediately on the death of the testator, or

(iii) that provide for the assets of the deceased to vest in the beneficiary or beneficiaries as members of a class not later than the date when the beneficiary or beneficiaries or the youngest of the class attains majority;

(c) attest or protest all commercial or other instruments brought before the member for attestation or public protestation;

(d) draw affidavits, affirmations or statutory declarations that may or are required to be administered, sworn, affirmed or made by the law of British Columbia, another province of Canada, Canada or another country;

(e) administer oaths;

(f) perform the duties authorized by an Act.

APPENDIX A

REPRESENTATION AGREEMENT ACT

[RSBC 1996] CHAPTER 405

Section 9

Other provisions

9 (1) In a representation agreement, an adult may also authorize his or her representative to do any or all of the following:

(a) physically restrain, move or manage the adult, or have the adult physically restrained, moved or managed, when necessary and despite the objections of the adult;

(b) give consent, in the circumstances specified in the agreement, to specified kinds of health care, even though the adult is refusing to give consent at the time the health care is provided;

(c) refuse consent to specified kinds of health care, including life-supporting care or treatment;

(d) give consent to specified kinds of health care, including one or more of the kinds of health care prescribed under section 34 (2) (f) of the *Health Care (Consent) and Care Facility (Admission) Act;*

(e) accept a facility care proposal under the *Health Care (Consent) and Care Facility (Admission) Act* for the adult's admission to any kind of care facility;

(f) make arrangements for the temporary care, education and financial support of

(i) the adult's minor children, and

(ii) any other persons who are cared for or supported by the adult;

(g) conduct the adult's business or dispose of or manage the adult's assets that are not managed under section 7 (1) (b);

(h) invest the adult's assets, in the manner specified in the agreement, in investments that a trustee is not authorized to make under the *Trustee Act;*

(i) undertake any other specified task, or make any other specified decision, that is not prohibited by law.

(2) A provision in a representation agreement that authorizes a representative to do anything described in subsection (1) is invalid unless

(a) the adult authorizing the representative consults with one of the following about the provision:

(i) a member of the Law Society of British Columbia;

(ii) anyone who belongs to a prescribed class of persons, and

(b) the person who is consulted completes a certificate in the prescribed form.

1993-67-9.

APPENDIX B

Excerpts from *Perceptions of the Legal Professions in British Columbia*

(Environics, December 1998).

(1) Question 24

Over the past year was there any situation where legal advice or services could have been useful to you but you did not seek the assistance of a lawyer?

Responses: 604

Yes: 26% No: 73%

Environics' Commentary

There may be a substantial amount of untapped demand for legal services in British Columbia. Participants in the telephone survey were asked if they had been in a situation in the last year where legal advice or services could have been useful, but they did not seek the services of a lawyer. Although three-quarters of British Columbians (73 percent) said no, a significant percentage (26 percent) said yes.

Responses to this question are consistent across all demographic and attitudinal segmentations, with only a few exceptions. For example, more people 65 years of age and over (86 percent) did not feel they had been in a situation in the last year where legal advice or services could have been useful. In contrast, almost one-third (31 percent) of university graduates had been in a situation where legal advice or services could have been useful. As well, one-third (33 percent) of those living on Vancouver Island/Coast responded positively to this question.

As mentioned earlier, only 8 percent of British Columbians who were in a situation where legal advice could have been helpful turned to non-lawyers for legal advice or services. This means that 18 percent of British Columbians had a perceived need for legal services in the past year but did not turn to a professional, of whatever stripe, for assistance.

While cost may be the primary deterrent for this group, there is also a recognition that preventive action may result in savings down the road. As well, this untapped market may not have confidence that legal services may be of assistance in a number of everyday situations – from negotiating a lease to setting up a small business.

As the Law Society examines the road ahead for the legal profession in British Columbia, it may wish to examine how to reach out to this untapped market for legal services.

(2) Question 25

Over the past year, did you decide to use a non lawyer instead of a lawyer to provide you with legal advice or services?

Responses: 262

Yes: 15% No: 84% Don't know: 1%

Motivation to Use Non-Lawyer

Concerns about expense	63%
Issue not serious enough	11%
Another advisor had more expertise	9%
Dissatisfactions with lawyers	7%
Preferred notary	5%
Other advisor closer (proximity)	3%
Personal relations with other advisor	3%
Lack of access to lawyer	3%
Don't know	1%

(3) Question 26

Why did you decide not to use a lawyer in this situation?

Responses: 262

Motivation to Use Non-Lawyer

Concerns about expense	63%
Issue not serious enough	11%
Another advisor had more expertise	9%
Dissatisfactions with lawyers	7%
Preferred notary	5%
Other advisor closer (proximity)	3%
Personal relations with other advisor	3%
Lack of access to lawyer	3%
Don't know	1%

Environics' Commentary

The use of non-lawyers was also examined in the telephone survey. Only one-sixth of British Columbians (15 percent) decided to retain the use of a non-lawyers to provide legal advice or services over the past year.

Once again, responses are consistent across most demographic groups with a few notable exceptions. One-quarter people 51 to 65 years of age (25 percent) stated that they retained a non-

lawyer in the last year. As well, just under one-third (30 percent) of those who were in a situation where legal advice or services could have been used, or eight percent of the total population, retained a non-lawyer within the same period.

The motivation for not using a lawyer in this situation was predominately concern about expense. This and other motivations are outlined in the above chart.

Motivations for men and Women regarding the use of non-lawyers are different. Men (70 Percent) are more concerned about expense than women (57 percent). Men also seem to have greater access to non-legal advisors with expertise (14 percent) than do women (4 percent). As well, women (10 percent) are twice as likely as men (5 percent) to feel that the situation was "not serious enough to require a lawyer."

Expense was seen as a more significant deterrent to using a lawyer for people 18 to 34 years of age than any other age group – four out of five people (82 percent) in this age group gave this reason. As age increases, concern about expenses declines as a deterrent to obtaining legal advice or services.

APPENDIX C

Western Management Consultants' Report (1991)

(Summary from *Benchers' Bulletin* April – May 1972, page 5)

Law Society profiles legal assistants

There are between 1,300 and 2,000 legal assistants in B.C. — one legal assistant to every three or four lawyers — and 41% have their services billed separately by their employers, according to a study conducted late last year for the Law Society by Western Management Consultants of Vancouver.

The study is the first step toward the development of a Law Society legal assistant certification program — earlier endorsed by the Benchers — that will encourage high standards of knowledge, proficiency and ethics among legal assistants. The program is intended to enhance public confidence that legal services are delivered competently and cost-effectively through use of paralegal staff under the professional supervision of lawyers. Certification should also assist law firms in hiring and in delegating responsibilities.

Under the Legal Assistant Certification Committee, Western Management Consultants carried out the 1991 survey to identify the number of legal assistants in the province, their areas of practice and the qualifications they possess. A follow-up study planned for 1992 will identify the job functions and responsibilities actually discharged by legal assistants.

There were 793 law firms, corporations, government departments and community advocacy associations that participated in the mail-in survey, a response rate of 42.3% which the consultants report as "highly satisfactory." Law firms made up 86% of respondents.

Of the 793 organizations, 281(35%) report they employ legal assistants, the vast majority of whom (88%) work in law firms. A further 6% of legal assistants work in community advocacy associations, 3% in industry or associations, and 3% in Crown corporations or government departments.

Because of the potential for wide variation in the meaning and use of the job title "legal assistant," the questionnaire was specifically designed to identify legal assistants according to how employers use the term, and also according to a specific definition. Based on a text adopted by the American Bar Association, the specific definition reads:

> *A Legal Assistant is a person who, under the ultimate direction and supervision of a lawyer, performs substantive legal work requiring sufficient knowledge of legal concepts such that, absent such Assistant, the lawyer would perform the work.*

Of the 281 organizations employing legal assistants, 246 (88%) say they employ legal assistants who come within this definition. From their data, the consultants estimate there are between 1,300 and 1,800 legal assistants in B.C., and between 1,500 and 2,000 if some less restrictive definition is applied.

Even within firms and other organizations employing the restricted definition, actual position titles vary. "Legal assistant" is most common, followed by "conveyancer" and "paralegal."

The larger the law firm, the greater the likelihood that they employ legal assistants. 21% of sole practitioners report having legal assistants, compared to 82% of law firms with 10-24 lawyers, and 100% of law firms with over 25 lawyers. Of the 547 firms that do not employ legal assistants, 59% cite lack of sufficient work as a reason; 17% state they do not believe in the use of legal assistants; 4% have no qualified individuals, and 4% note they cannot bill for the work. Other firms report they already employ highly qualified secretarial staff, or use law students and associates for these functions.

Slightly more than one-third of legal assistants work in two or more practice areas. The data suggest a pattern of somewhat greater specialization within law firms as compared to other types of organizations,

Western Management reports. Whereas 71% of legal assistants in law firms work in one area, 66% of legal assistants overall work in one area.

“The larger the law firm, the more likely that legal assistants work in one specific area of law,” says Western Management. “Conversely, the smaller the law firm, the more likely that legal assistants work in several areas .~. [M]ore than one third (36%) of legal assistants employed by sole practitioners work in four or more areas.

The three most common areas of law in which legal assistants work are real estate/conveyancing (25%), personal injury litigation (15%), and corporate/commercial (15%), followed by general litigation (8%) and family law (6%).

The survey shows that 48% of legal assistants falling within the survey definition have completed some type of post-secondary education: 7% have a university degree; 13% have a diploma from a legal assistant program; 7% have both a legal assistant diploma and a university degree or other post-secondary education; 16% have a diploma from a legal secretary program; and 5% have both a legal secretary diploma and a university degree or other post-secondary education.

Relevant work experience is most frequently identified among qualifications demanded by firms employing legal assistants; fewer require formal education. “Slightly more than half (52%) of the organizations which employ legal assistants, as the position was defined in the survey, have no minimum education requirements when hiring entry-level legal assistants,” Western Management reports. “Only 19% of respondents indicated that they require diplomas from a legal assistant program ... 96% of employers which stipulated this requirement were law firms.”

[A] much higher proportion of law firms with more than 25 lawyers on staff ... [43%] reported that they require entry-level legal assistants to possess a diploma or certificate from a legal assistant program,” the Western Management report states.

The Western Management survey report is available at $10 a copy (prepaid) by writing to: Legal Assistant Certification Committee, The Law Society of British Columbia, 845 Cambie Street, Vancouver, B.C. V6B 4Z9.

APPENDIX D

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

COMMITTEE: Benchers

DATE: December 2, 1994

PRESENT:	R.T.C. Johnston, Q.C.	E.M. Reid, Q.C.
	G.D. Burnyeat, Q.C.	J.S. Shackell
	H.R. Berge	D.A. Silversides, Q.C.
	C.O.D. Branson, Q.C.	R.S. Tretiak
	T.L. Brown, Q.C.	B.B. Trevino, Q.C.
	L.T. Doust, Q.C.	W.M. Trotter, Q.C.
	A. Howard	A.E. Vanderburgh, Q.C.
	G.J. Lecovin	K.F. Warner
	N.A. MacDonald	P.D. Warner
	J.M. MacIntyre, Q.C.	A.P. Watt
	S.A. Moore	J. Webster
	R.C.C. Peck, Q.C.	W.T. Wilson, Q.C.
NOT PRESENT:	K.F. Nordlinger, Q.C.	T.M. McEwan
	M. Martin	G.L.F. Somers, Q.C.
STAFF PRESENT:	B.F. Ralph, Q.C.	D.F. Thompson
	J.D. Ziskrout	M.F. Fitzgerald
	J.G. Hoskins	A. Whitcombe
GUESTS:	Deputy Attorney General Brian Neal, Q.C.	
	Richard Margetts	
	Dean Lynn Smith, Q.C., Faculty of Law, University of British Columbia	
	Dean David Cohen, Faculty of Law, University of Victoria	

4. CARVER IMPLEMENTATION COMMITTEE

Mr. Silversides reported on the history of the issue of paralegals and the work done on past committees. They had found that there were two types of paralegals, those who are employed by law firms and work under the supervision of lawyers and those who establish themselves as independent businesses delivering legal services. It was considered that the Law Society may have a role in approving legal assistants as qualified to be employed by law firms. A committee on the certification of legal assistants was struck, took surveys of legal assistants in law firms and did other preparatory work over a period of a few years. With the advent of the Carver process, the operation of that committee was suspended at the beginning of 1994. The Benchers were now to be given an opportunity to discuss whether the work of that committee should continue to its conclusion.

The Carver Implementation Committee had looked at the work of the Certification of Legal Assistants Committee in light of the ends established to date by the Benchers and found that there was no specific end that would apply directly to it. Benchers were given four options: finding that there was no direct interest of the Law Society in legal assistants, interpreting the existing mission statement and ends as including concerns about the work of legal assistants in seeking a "public well-served," revising the mission statement to include accessibility and affordability of legal services as a principal aim of the Law Society, or revising the ends statements to include affordability and accessibility or specifically referring to legal assistants.

It was moved (Brown/Watt) that the Law Society has no direct interest in the work of legal assistants.

Mr. Trotter said that it will cause problems in the future if the Benchers duck the issue of certification of legal assistants now. He said that legal assistants would aspire to independence from the Law Society and form their own self-governing group if the Benchers do not take some initiative. He described the public interest in regulation of paralegals who are not trained or skilled at diagnosis of legal problems, although they can do relatively routine procedures. The Law Society should seek to bring paralegals under the aegis of members of the Law Society.

Mr. Burnyeat urged the Benchers to resist the trend in the health professions of establishing more and more independent self-governing professional groups in the same area. He supported either interpreting the mission statement to include an interest in legal assistants or amending it to make that interest explicit.

In answer to a question, Ms. Fitzgerald reported that there is no other law society in Canada certifying legal assistants. In the United States there is a national organization of legal assistants with voluntary participation at the level of about 5%.

Ms. MacDonald reported that legal assistants in British Columbia are strongly committed to certification. She predicted that, if the Law Society does not continue with its program, they will set one up independently. She said the Law Society should be in a leadership position in this matter. Mr. Branson, however, said that involvement in the certification of legal assistants would dilute the power of the Law Society. He said that the current power of the Law Society is sufficient to regulate the work of legal assistants through its authority over the members who employ them. It was reported that dental technicians, who are now certified by the College of Dental Surgeons, are taking steps to form their own professional governing body.

Ms. Brown raised the question of certification of long-standing legal assistants without academic credentials but with long experience in law firms. She questioned whether the program would entitle the certified legal assistant to higher pay. She predicted that certification of legal assistants by the Law Society would give them credibility and lead to paralegals operating outside of law firms.

Mr. Lecovin indicated that middle-income people are not well served by the legal profession since the fees are too high for them to afford and they do not qualify for legal aid. Independent legal assistants would be a form of competition with lawyers. Unless the Law Society takes steps to control the situation, legal assistants will operate outside of law firms and in competition with them.

Mr. Wilson inquired as to the cost of the proposed program. He indicated that there could be significant costs and that the Law Society cannot expect gratitude in return.

In answer to questions, Ms. Fitzgerald indicated that there was one full-time program for legal assistants in British Columbia — a two-year program at Capilano College. There are also part-time programs at Capilano College and Vancouver Community College. In addition, legal secretary courses that border on paralegalism exist, including one starting in Trail. The curriculum of the Capilano College full-time program, she said, consists of hard law and legal research that is something like a watered-down version of the law school program. The part-time program concentrates on practical skills.

Mr. Silversides raised the issue of whether law firms should be able to bill out the time of paralegals to clients. Also, should lawyers have some indication of the standards of the individuals that they are hiring in legal assistant positions? He reported that legal assistants themselves are pushing for the Law Society to get into this program. He said that they are anxious for recognition and will very likely go out and do their own certification program if the Law Society declines to do so.

Ms. Moore reminded the Benchers of the motion, which she opposed because she felt that the Law Society does have an interest in the work of legal assistants. The question of whether the Law Society should enter into a certification program was not part of the motion and should be decided at a later date. The question to be decided was the general proposition of whether there was an interest in legal assistants.

Mr. Webster raised the question of the public interest in the work of legal assistants. He wanted to know what benefit a client receives from the delivery of specific legal services directly to the public.

Mr. Ralph reminded the Benchers that, in the 1995 budget documents, it was estimated that the cost to continue the Certification of Legal Assistants Committee in 1995 would have been $65,000. That figure was not included in the budget for 1995, and it was not among the additions made at the Bencher meeting in July. He also reminded the Benchers that the Law Society has requested specific legislation authorizing the certification of legal assistants, perhaps out of an abundance of caution rather than legal necessity, for several years, and successive governments and attorneys general have turned down the request. This has happened most recently this year. He also said the discussion was important in terms of identifying an end related to this program. He asked the Benchers to clarify what they want to achieve in this area.

Mr. Trevino said that he thought more information was needed for this discussion. It was moved (Trevino/Trotter) to refer the matter to the Carver Implementation Committee and the appropriate staff with instruction to provide additional information to the Benchers. The motion was carried. Additional information requested included an outline of the legal assistant courses being offered and the length of the programs, information on the experience in the United States, alternative methods of certification of legal assistants and the cost of continuing the project.

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

COMMITTEE: Benchers

DATE: February 3, 1995

PRESENT:	G.D. Burnyeat, Q.C.	T.M. McEwan
	K.F. Nordlinger, Q.C.	S.A. Moore
	B.B. Trevino, Q.C.	E.M. Reid, Q.C.
	H.R. Berge	J.S. Shackell
	T.L. Brown, Q.C.	R.S. Tretiak
	A. Howard	A.E. Vanderburgh, Q.C.
	G.J. Lecovin	K.F. Warner
	N.A. MacDonald	P.D. Warner
	J.M. MacIntyre, Q.C.	A.P. Watt
	R.S. Margetts	J. Webster
	M. Martin	W.T. Wilson, Q.C.
NOT PRESENT:	C.O.D. Branson, Q.C.	D.A. Silversides, Q.C.
	L.T. Doust, Q.C.	G.L.F. Somers, Q.C.
	R.C.C. Peck, Q.C.	W.M. Trotter, Q.C.
STAFF PRESENT:	B.F. Ralph, Q.C.	J. Eamer-Goult (item #3 only)
	J.D. Ziskrout	M.F. Fitzgerald
	J.G. Hoskins	J.S. Olsen
	B. Bachop (item #4 only)	D.F. Thompson
	B. Chong	
GUEST:	Peter D. Fairey, Continuing Legal Education	

8. CERTIFICATION OF LEGAL ASSISTANTS

Mr. Thompson introduced a report prepared by himself and Ms. Fitzgerald. He reminded the Benchers that they had considered the issue in December, 1994. The discussion had been referred to the Carver Implementation Committee and staff for additional information.

Mr. Thompson described the history of the Certification of Legal Assistants Committee, which had begun in 1989, but was not provided for in the Law Society budget for 1995. The question for the Benchers to consider was whether the Committee should proceed with its work. The Committee to date had researched the question of legal assistants in British Columbia and considered options for dealing with legal assistants. The Committee had spent about $60,000 in direct expenses, together with approximately $40,000 worth of staff time.

Mr. Thompson reviewed some of the reasons for a certification system. The first reason discussed was to maintain a unified legal profession, with legal assistants

working under the auspices of a law firm, rather than as independent paralegals. Ms. Brown pointed out that registered nurses are governed separately from doctors, who do not appear to want to take over that responsibility. Mr. Thompson noted that there were over a dozen separate health care professional bodies that the government is attempting to bring under an umbrella organization.

He suggested the analogy of the dentists, who have accredited oral hygienists in the past. The hygienists have now broken off into another group.

The second reason was the prevention of unauthorized practice. The support of the position of legal assistants within law firms was expected to discourage them from setting up practice on their own. Ms. Brown disagreed. She said that certification by the Law Society would make it more likely that legal assistants would claim the ability to practise without supervision. She noted that there are existing remedies for unauthorized practice of law. Mr. Webster wanted to know why legal assistants should not be permitted to set up their own shop if they could do work just as good at less expense. Mr. Tretiak noted the example of the notaries, who are paralegals allowed to provide legal services unsupervised in certain limited areas. The result is their agitation to expand their areas of practice.

Mr. Thompson said that legal assistants within law firms would permit those firms to provide legal services at an affordable cost and keep those law firms competitive. Ms. Brown said that many law firms do not currently bill the work of legal assistants directly to the clients. If they did so, it would actually increase the cost to the clients. Mr. Webster said that lawyers fear qualified legal assistants might lead to their losing their monopoly on the practice of law. Mr. Lecovin said that lawyers are pricing themselves out of the market for the middle class. Unless lawyers are prepared to provide legal services at an affordable cost, government will step in and allow notaries to provide more services or give legal assistants the power to practise without supervision. Mr. Berge said that legal assistants are much better trained and qualified than notaries public. Certification by the Law Society would legitimize their setting themselves up to do what notaries already do and make a problem for lawyers that they do not need. Mr. McEwan noted that Selkirk College in his district is producing 30 graduates a year, about four times the number needed to fill vacancies in the area. Mr. Margetts said that certification of legal assistants is inevitable. Legal assistants are capable of doing a number of things that constitute the practice of law. The Law Society should position itself to have significant input in the accreditation process when it comes about. Mr. P. Warner said that the Law Society could support the education of legal assistants and contribute to lowering legal costs to the middle class without necessarily entering into a certification program. He quoted from the results of a survey taken by the CBA Notaries Committee which showed that legal services performed by notaries were not necessarily significantly less expensive than the same services performed by lawyers.

Ms. Moore said there are two separate questions to be answered in this discussion. The first is whether the Law Society has any role in the question of governance of legal assistants. If there is a role for the Law Society, the second question is what that role should be.

It was moved (Wilson/K. Warner) that the Law Society not involve itself in the certification of legal assistants at this time. Mr. Wilson said that the ten reasons contained in the staff report were not reasons for certifying legal assistants, but reasons why lawyers might employ legal assistants, which they already do. The *Legal Profession Act* and the *Professional Conduct Handbook* cover the responsibility of lawyers in employing legal assistants. Little extra benefit would be obtained from certification. He was concerned that a scheme could not be set up that would cover both legal assistants trained in a college program and those trained within law firms. Once certified legal assistants were created, there would be a tendency to splintering of delivery of legal services. Mr. Berge said that there would be a geographical bias in the certification program, with the majority concentrated in the Lower Mainland.

In answer to a question regarding the pressure on the Law Society to certify legal assistants, Mr. Thompson reported that certification was recommended to the Benchers in the Paralegalism Report, and some expectation on the part of legal assistants themselves had been raised, since they had been included on the Committee and others were involved in the detailed support work for the Committee. Ms. Fitzgerald reported that she receives frequent phone calls from legal assistants concerning the progress of the certification program.

Ms. Moore was concerned that legal assistants and graduates of the college diploma programs would organize themselves and petition for recognition of a quasi-professional organization from some body other than the Law Society. If that were a realistic possibility, that could work against the interests of the Law Society.

Mr. Thompson reported on the tension between the two groups of legal assistants, those who have graduated from college programs and those who have been trained through experience in law firms. A certification program would have to address the concerns of both with having their qualifications recognized. Mr. Margetts suggested that the Institute of Law Clerks of Ontario be investigated, along with the situation in Australia. Ms. McDonald reported on the situation of legal assistants in large law firms. She said that there was an expectation that the Law Society would do something about recognizing qualifications of legal assistants. She said that the issue is not going to go away and would proceed, whether with the Law Society or with government. Ms. Nordlinger recalled that the Certification of Legal Assistants Committee had been established at a time when there was pressure from paralegals setting up practices outside of law firms. The thought at the time was that a certification program would prevent that from happening on a larger scale. She now favoured a middle-of-the-road position that would recognize legal assistants without a certification program. Mr. Maclntyre said that it was unlikely that the government would establish another independent paralegal profession when notaries public already exist. He noted that the notaries would oppose recognition of a parallel group. The motion was carried.

It was suggested that some message should be given to legal assistants beyond the end of the certification program. It was moved (Trevino/Moore) that staff

bring to the Benchers a series of such options as may be identified to educate the profession on the appropriate recognition and use of legal assistants.

Ms. Howard said that the motion would give little comfort to the concerns of legal assistants. They are looking for status that would give some recognition to their qualifications, and possibly to membership in an organization of individuals with similar interests and job responsibilities. Mr. Trevino suggested that the staff would look at the possibility of using the Continuing Legal

Education Society and the *Benchers' Bulletin* for discussion helpful to legal assistants and lawyers in this area. He expected staff to give a creative response to the motion. Ms. Reid suggested that a report on legal assistants should be sensitive to differences in economic power, glass ceilings and pink ghettos and like issues. Mr. McEwan said that the Benchers should not think that this discussion and the previous motion would prevent a certification program for legal assistants. That is probably inevitable and the legal assistants, being highly motivated and persistent, may well succeed. The Benchers have decided that the Law Society will not participate in that program. It is possible that the legal assistants may decide to speak to the Notaries' Society as an alternative to the Law Society.

Ms. Nordlinger suggested the amendment of the motion by deleting the word "appropriate." By consent, that amendment was accepted. The motion as amended was carried.

The Benchers then took straw votes to set priorities among the various reasons for proceeding with a program on legal assistants. The following are those priorities in the order set by the
Benchers:

1. to ensure legal assistants are qualified and practise ethically,
2. to provide affordable legal services to the public and keep law firms competitive,
3. to maintain a "unified profession,"
4. to prevent unauthorized practice,
5. to ensure adherence to the *Professional Conduct Handbook*, ch. 12, "Supervision of Employees",
6. to make sure that legal assistants' work is insured,
7. to influence legal assistant education,
8. to maintain a strategic position for the legal profession,
9. to ensure that clients understand who is providing legal services, and
10. to assist law firms in hiring.

THE LAW SOCIETY OF BRITISH COLUMBIA

MEETING: Benchers

DATE: April 12, 1996

PRESENT:

K.F. Nordlinger, Q.C.
B.B. Trevino, Q.C.
H.R. Berge
R.D. Diebolt, Q.C.
L.T. Doust, Q.C.
D.W. Gibbons, Q.C. (morning only)
R.C. Gibbs
A. Howard
P.J. Keighley
G.J. Lecovin
N. MacDonald, Q.C. (afternoon only)
R.S. Margetts
T.M. McEwan
R.C.C. Peck, Q.C. (morning only)
E.M. Reid, Q.C.
G.R. Toews
R.S. Tretiak
W.M. Trotter, Q.C.
K.F. Warner
P.D. Warner
W.T. Wilson, Q.C.
B.D. Woolley (morning only)

NOT PRESENT:

T.L. Brown, Q.C.
K.P. Jensen
L.A. Loo, Q.C
M. Martin
J.S. Shackell

STAFF PRESENT:

B.F. Ralph, Q.C.
J.D. Ziskrout
J.G. Hoskins
M. Fitzgerald (morning only)
F.S. Folk (morning only)
A. Lieberman (morning only)
J. Olsen
N. Stajkowski (item 8 only)
D. Thompson (morning only)

GUESTS:

Honourable Ujjal Dosanjh, Q.C., Attorney General (item 1 only)
Stephen Owen, Q.C., Deputy Attorney General (morning only)
Gordon McPherson, Executive Assistant to the Attorney General (item 1 only)
Prof. Lyman Robinson, Q.C., Faculty of Law, University of Victoria (morning only)
Gordon Turriff, Canadian Bar Association (morning only)
Pinder K. Cheema, Legal Services Society (morning only)
Denise Bellamy, President, Federation of Law Societies (morning only)
Brian J. Wallace, Q.C., Director, Federation of Law Societies (morning only)
Grant D. Burnyeat, Q.C. (morning only)

4. LEGAL ASSISTANTS

Mr. Thompson reviewed the history of this issue, including the 1989 report of the Paralegalism Committee that recommended the establishment of a certification program for legal assistants working in law firms. A committee was then struck to implement the recommendation, and about $100,000 was spent on the project. In February, 1995 the Benchers reconsidered the project and decided to discontinue it. Among the Benchers' concerns at that time was the cost, which was estimated to be about $200,000 per year with little recovery from registrants.

At that time, the Benchers asked staff to make a report on how the Law Society might best educate members of the profession on the appropriate use of legal assistants. In the meantime, legal assistants are investigating different means of establishing their own certification program. Mr. Thompson also referred to Chapter 12 of the *Professional Conduct Handbook* which regulates the supervision of legal assistants by lawyers.

Mr. Gibbs said that certification of legal assistants would fill a regulatory vacuum and was clearly within the objects and duties of the Law Society. He pointed out that the Law Society also regulated legal assistants indirectly through regulation of members who employ legal assistants and through the unauthorized practice aspects of the Law Society.

It was moved (Gibbs/Trotter) to refer the matter to the Competency Committee for further development before the issue is returned to the Benchers.

Mr. Berge suggested that the motion be amended to include that the Competency Committee should consider changes to the standards for the supervision of legal assistants as set out in Chapter 12 of the *Professional Conduct Handbook*. By consent, that amendment was accepted.

In answer to a question, Ms. Fitzgerald said that it had become harder for legal assistants trained in formal programs to find employment, but there are not a large number of legal assistants looking for work. Mr. Wilson noted the large cost of a certification program for legal assistants and pointed out the differences between legal assistants who have completed a formal program and those who are educated through experience. Mr. P. Warner was in favour of referring the matter to the Competency Committee, but was not in favour of reopening the question of certification. Mr. Berge was concerned that some legal assistants could open freestanding businesses and even hire lawyers to comply with the *Professional Conduct Handbook* and *Legal Profession Act*. He said that the requirements of Chapter 12 were pretty loose and should be reexamined. Mr. Diebolt said some issues could extend beyond the scope of the Competency Committee to include, for example, liability insurance issues. Mr. Woolley said that the Competency Committee should not be examining the issue of certification since that had already been decided by the Benchers.

A straw vote was taken in which the Benchers voted against asking the Competency Committee to consider all of the relevant options, including the certification of legal assistants. The motion as amended was then withdrawn with the consent of the meeting.

It was moved (P. Warner/Wilson) that, activities involving legal assistants being a competency issue, the matter be referred to the Competency Committee for consideration during its program planning discussions and that the Committee be directed to consider Chapter 12 of the *Professional Conduct Handbook* and the following possible education programs:

(a) publishing information for lawyers describing the economics and use of legal assistants;

(b) developing continuing education courses for lawyers about how to use legal assistants;

(c) developing more continuing education courses designed to improve the ability of legal assistants to support the provision of legal services;

(d) promoting the use of legal assistants through contact with lawyers, legal assistants and clients; and

(e) promoting the recognition of legal assistants through a certification program or some similar vehicle delivered by a third party.

Ms. Reid said that the Benchers should have before them the minutes of the meeting at which it was decided not to proceed with the certification project.

It was moved (Reid/Tretiak) to postpone discussion of the motion until the next meeting. The motion to postpone was carried.

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING:	Benchers	
DATE:	May 10, 1996	
PRESENT:	K.F. Nordlinger, Q.C. B.B. Trevino, Q.C. T.L. Brown, Q.C. H.R. Berge R.D. Diebolt, Q.C. D.W. Gibbons, Q.C. R.C. Gibbs A. Howard K.P. Jensen P.J. Keighley L.A. Loo, Q.C	R.S. Margetts M. Martin T.M. McEwan R.C.C. Peck, Q.C. (morning only) J.S. Shackell W.M. Trotter, Q.C. K.F. Warner P.D. Warner W.T. Wilson, Q.C. B.D. Woolley
NOT PRESENT:	L.T. Doust, Q.C. G.J. Lecovin N. MacDonald, Q.C.	E.M. Reid, Q.C. G.R. Toews R.S. Tretiak
STAFF PRESENT:	B.F. Ralph, Q.C. J.D. Ziskrout J.G. Hoskins K. Archibald, summer student I.R. Doddington A.M. Hammond (item 5 only)	S. Jakab-Hancock (item 5 only) S. James (item 3 only) J. Olsen (morning only) D.L. Palmer (item 5 only) E. Ritchie (item 5 only) D.F. Thompson
GUESTS:	Sandra Yasin (item 3 only) Gordon Alteman (item 5 only)	

4. RECOGNITION OF LEGAL ASSISTANTS

It was moved (Wilson/Brown) to consider the following motion which was postponed from the April meeting for discussion at this meeting:

> It was moved (P. Warner/Wilson) that, activities involving legal assistants being a competency issue, the matter be referred to the Competency Committee for consideration during its program planning discussions and that the Committee be directed to consider Chapter 12 of the *Professional Conduct Handbook* and the following possible education programs:
>
> (a) publishing information for lawyers describing the economics and use of legal. assistants;

(b) developing continuing education courses for lawyers about how to use legal assistants;

(c) developing more continuing education courses designed to improve the ability of legal assistants to support the provision of legal services;

(d) promoting the use of legal assistants through contact with lawyers, legal assistants and clients; and

(e) promoting the recognition of legal assistants through a certification program or sonic similar vehicle delivered by a third party.

The motion to consider the motion was carried and the main motion was carried.

JGH/dmf
May 30, 1996

APPENDIX E

From L.S.U.C. *Report of the Paralegal Task Force*, pages 19-21 (March 24, 2000)

Tribunal Accreditation Model

The various courts or administrative agencies would establish the required qualifications based on the particular kind of knowledge or background necessary for representation by non-lawyers before that tribunal. As such, there would no need for a "one-size fits all" approach, it would be possible for different courts or tribunals to establish different kinds of accreditation requirements. There would be no need for the tribunal to impose any restrictions on the right to representation by non-lawyers if, in the tribunal's view, the costs of such restrictions outweighed the benefits to be derived from regulation.

A central organization would administer the regulatory regime. The Law Society would be involved in the central organization. The Task Force's two models differ with respect to the degree of Law society involvement. Under the Law Society of Upper Canada-centred tribunal accreditation model, the Law Society has a dominant role in the regulatory regime. Under the Ontario Legal Services Corporation-centred tribunal accreditation model, the Law Society has a minor participatory role.

To accommocate this approach, provincial statutes that provide for representation by agent would be amended to provide for representation by "accredited agent", with the applicable qualifications to be established by the court or tribunal before whom the agent proposes to practise. Accreditation would be required for any non-lawyer agent who wished to appear, or who wished to file documents, including assisting in the prepartion of documents to be filed, with any tribunal that permits the appearance of agents.

(a) Overall Advantages

(i) A significant degree of flexibility that will permit the development of tailored accreditation standards;

(ii) Avoidance of a "one size fits all" accreditation;

(iii) Avoidance of paralegals incurring the expenses of a more general accreditation;

(iv) Requirement of agents to demonstrate that they were properly accredited before filing documents or appearing before tribunals;

(v) Permitting various tribunals to take control of their own processes;

(vi) Allowing tribunal adjudicators and judges, who are best placed, to make the difficult value choices involved in paralegal regulation;

(vii) Enhancing the credibility of those paralegals who are deemed qualified as providers of legal services before the particular tribunal; and

(viii) Capturing the majority of paralegals currently operating in Ontario.

(b) Possible Overall Disadvantages

(i) Imposes on tribunals and courts the burden of establishing standards and practices;

(ii) Costs to the stakeholders and the administration of justice; and

(iii) Not unilaterally resolve the problem of the unauthorized practice of law outside courts and tribunals.

(c) Advantages Of LSUC Centred Tribunal Accreditation

(i) The Law Society has a long and established record of effective regulation of those persons qualified to deliver legal services to the public.

(ii) The Law Society has an existing regulatory infrastructure in place to regulate legal service providers.

(iii) Bringing paralegal regulation within the umbrella of the Law Society would preserve the independence of the legal profession.

(iv) Costs of an accreditation system administered by the Law Society would be based on a fee for service to tribunals and to agents who seek accreditation. Costs associated with the tribunal accreditation model would not be borne by members of the Law Society.

(d) Advantages Of OLSC Centred Tribunal Accreditation

(i) The central accreditation office located outside of LSUC might make the structure more palatable to paralegals.

(ii) Permit LSUC to have continued involvement in the regulation of paralegals, without the necessity of playing a dominant role.

(iii) The OLSC would be independent of direct government control so as to preserve, at least to some extent, the independence of paralegals acting as advocates before the relevant tribunals.

(iv) Costs of this accreditation system would be based on a fee for service to tribunals and agents who seek accreditation.

(e) Disadvantages Of OLSC Centred Tribunal Accreditation

The principal disadvantage with this regulatory option is the need to establish a new body that, for an initial period at least, would require public funding.

APPENDIX F

From L.S.U.C. *Report of the Paralegal Task Force*, pages 22-24 (March 24, 2000)

Other Models

(a) Status Quo Model: Advantages And Disadvantages

There are a number of overriding shortcomings with the status quo. Foremost is the fact that paralegals are practising law in areas of high risk to the consumer, and where many are clearly not competent to act. The status quo is unacceptable. The question is not whether to regulate paralegals, but how.

(b) Requiring Paralegals To Practise Under The Supervision Of A Lawyer

(i) **Advantages**

— This would ensure that non-lawyers receive adequate supervision and training to perform the tasks delegated to them.

— The solicitor-client relationship would be protected by solicitor-client privilege.

— The client would be protected, as well, by all of the other consumer protection features.

(ii) **Disadvantages**

— As there appears to be consumer demand for unsupervised paralegals, it may be difficult to persuade responsible decision-makers that a reform of this kind is necessary or in the public interest.

— It would be necessary to amend all those statutes, both federal and provincial, that currently permit non-lawyers to appear before various courts and tribunals for fee paying clients. The existence of consumer demand for unsupervised paralegals may make governments reluctant to undertake this measure.

(c) Licensing By The Law Society

(i) **Advantages**

— The Law Society has a long and established record of effective regulation.

— The Law Society has an existing regulatory infrastructure in place.

— This would ensure that thee Law Society maintains control over the definition of the practice of law.

— This would shelter paralegal practice within the independence of the legal profession.

— There would be a perceived conflict of interest between the interests of the Law Society and that of paralegals.

— It is unlikely that paralegals would regard regulation by the Law Society as legitimate.

(d) Regulation By Government Ministry

(i) **Advantages**

— It builds on an existing infrastructure within the Ministry of Consumer and Commercial Relations.

— It has been applied by government successfully in a wide variety of contexts.

(ii) **Disadvantages**

— It assumes that because paralegal services in certain kinds of areas pose a risk to the public and should be regulated, paralegal service providers should all be subject to the same general kind of regulation.

(e) Regulation By Legal Services Corporation

(i) **Advantages**

— The advantages of regulating paralegals within such a body are related to the legitimacy of the structure for the various stakeholders and accountability to the public.

(ii) **Disadvantages**

— It creates a new corporation to serve as an accreditation, regulatory and disciplinary body, which may require legislative amendments.

— The ongoing cost of maintaining expertise and administrative capacity to carry out the mandate of a legal services corporation may be prohibitive.

(f) Paralegal Self-Regulation

(i) **Advantages**

A recent paper prepared by the Ministry of Consumer and Commercial Relations outlines the advantages associated with self-management and self-regulation. These advantages include:

— lower costs from the point of view of government;

— certain industry associations may see self-management as a means of enforcing high standards in their industry and maintaining regulatory efficiency;

— a competitive economy requires flexible governance strategies that do not impede business planning; and

— self-management can offer faster, more flexible responses to rapid developments in the marketplace, such as changing technology.

(ii) **Disadvantages**

The major disadvantages of self-regulation relate to the fact that the paralegal industry displays few, if any, of the characteristics associated with a 'mature' industry, as that term is used by the Ministry of Consumer and Commercial Relations.

APPENDIX G

From *Cory Report*, Executive Summary (May 31, 2000)

Recommendations 1 to 5: Chapter II General Education and Good Character Requirements of Paralegals

1. A system should be established for the regulation and licensing of independent paralegals who wish to work in the permissible areas of practice.

2. All paralegals applying for a licence must be of "good character" as the Law Society of Upper Canada has defined that term.

3. Once the courses and curriculum at the accredited community colleges have been approved by the governing body, the following licensing requirements will be in effect:

   (1) paralegals must successfully complete a two-year program provided by an accredited community college;

   (2) the curriculum for the two-year accredited community college program will be fixed by the governing body of paralegals in consultation with the members of the faculties of the community colleges, justices of the Ontario Court of Justice, members of boards and tribunals, and the Law Society of Upper Canada; and

   (3) upon completion of the two-year accredited community college program, all graduating paralegals will spend three months in a mentoring program, and mentoring may be provided by a lawyer or licensed paralegal with five years of experience; alternatively, it may be attained by monitoring the public proceedings of a specialized board or tribunal with its consent for a period of three months.

4. Those who have practised under the supervision of a lawyer or as independent paralegals for at least two years prior to January 1, 2000 will qualify as "grandfathers" for a licence; they will not be required to complete the two-year accredited community college program.

5. Once the special examinations for paralegals have been approved by the governing body, those who qualify as "grandfathers" will have to pass the special examinations to demonstrate their competency to work in any of the permissible areas of practice and to appear before specialized and non-specialized boards and tribunals and specified courts.

Recommendations 6 to 16: Chapter III The Provision of Protection for the Public

6. The governing body should develop a code of conduct to which all licensed paralegals must adhere, which to the greatest extent possible resembles the code of conduct prepared by the law Society of Upper Canada for its members.

7. The code of conduct for licensed paralegals should include a provision that information obtained by a licensed paralegal from a client in the course of providing services to the client must be held in the strictest of confidence and not be divulged unless authorized by the client or required by an order of a court.

8. A procedure for disciplining licensed paralegals should be developed.

9. The procedure for discipline should include, until the paralegal organization becomes self-regulatory, a panel consisting of three members: one lawyer; one licensed paralegal; and one member of the public to review complaints.

10. The discipline panel should be authorized to impose an appropriate punishment, including licence suspension or revocation, fine and reprimand, or any other disposition that it deems appropriate.

11. There should be provision for an appeal of the decision of the discipline panel to the governing body or to the Divisional Court; the appellate body should be authorized to adopt, rescind or vary the decision of the discipline body as it sees fit and impose such sanctions as it deems appropriate.

12. Errors and omissions insurance should be carried by all licensed paralegals.

13. A compensation fund should be established by the governing body.

14. Whenever requested and wherever possible the services of licensed paralegals should be made available in the French language.

15. A process for assessing the accounts of licensed paralegals should be developed by the governing body.

16. All licensed paralegals should use a standard retainer letter which clearly indicates that the licensed paralegal is not a lawyer; that the paralegal is only authorized to practise in specified areas; that advice given to the client must be limited to those areas in which the paralegal is authorized to practise; and that the client may have the bill assessed.

Recommendations 17 to 33: Chapter IV Areas of Permissible Practice - Provincial Boards and Tribunals

17. Wherever the empowering statute of any board or tribunal provides that parties may appear by agent, only licensed qualified paralegals should be authorized to appear.

18. All licensed paralegals appearing before a specialized board or tribunal should be required to either pass a special examination which demonstrates their competence in the work of the particular specialized board or be recommended by a specialized board or tribunal for a secondary licence.

19. The secondary licence should be valid for one year and be renewable annually, and the licensed paralegal should be restricted to appearances before the specified board or tribunal.

20. A paralegal who obtained his or her licence after having completed a program in an accredited community college should be authorized to appear before any non-specialized board or tribunal.

21. "Grandfathered" licensed paralegals should be required to pass a general examination respecting administrative tribunals in order to appear before non-specialized boards. However, a "grandfathered" licensed paralegal who has passed an examination to appear before one specialized board should not be required to pass a further examination to appear before non-specialized boards and tribunals.

22. Costs may be awarded to parties who are represented by licensed paralegals before provincial boards and tribunals and where the licensed paralegal is authorized to appear on the first level of appeal from a decision of a board or tribunal, before those appeal courts.

23. Boards and tribunals should be authorized to order costs against a licensed paralegal if his or her conduct is extremely disruptive, misleading, mendacious or unscrupulous.

24. Boards and tribunals should be authorized to expel a licensed paralegal on a temporary basis where the behaviour of the licensed paralegal is incompetent, dishonest or disruptive.

25. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Rental Housing Tribunal.

26. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal in the first instance from the Ontario Rental Housing Tribunal.

27. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to both assist injured parties in preparing their accident claim forms and to participate in the mediation and arbitration work of the Dispute Resolution Group of the Financial Services Commission of Ontario.

28. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear on an appeal before the Director of the Dispute Resolution Group of the Financial Services Commission of Ontario.

29. Section 398 of the Insurance Act should be amended to permit authorized licensed paralegals to appear before the Dispute Resolution Group of the Financial Services Commission of Ontario.

30. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Labour Relations Board.

31. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Workplace Safety and Insurance Appeals Tribunal.

32. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the Ontario Municipal Board.

33. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before any other specialized board or tribunal of the Province of Ontario.

Recommendations 34 to 36: Chapter VI Areas of Permissible Practice - Small Claims Court

34. Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Small Claims Court.

35. Licensed paralegals who are qualified to appear in the Small Claims Court should be authorized to take an appeal at the first level from a decision of that Court.

36. Clients represented by licensed paralegals should be entitled to costs in the Small Claims Court or on the first level of appeal from the Court.

Recommendations 37 to 38: Chapter VII Permissible Areas of Practice - Provincial Offences

37. Licensed paralegals duly qualified by passing a special examination should be authorized to appear and prosecute and defend provincial offences in the Ontario Court of Justice.

38. Licensed paralegals duly qualified by passing a special examination should be authorized to appear at the first level of appeal from a conviction or acquittal on a provincial offence in the Ontario Court of Justice and their clients on such appeals may be awarded costs.

Recommendations 39: Chapter VIII Areas of Permissible Practice - Criminal Offences and Criminal Pardons

39. Licensed paralegals duly qualified by passing a special examination should be authorized to appear in the Ontario Court of Justice only in the following specified Criminal Code summary conviction offences:

- vagrancy;
- fraudulently obtaining food, beverage or accommodation;
- fraudulently obtaining transportation;
- using slugs and tokens;
- defacing coins;
- duty to safeguard on ice;
- failure to keep watch on person towed;
- falsifying employment record; and
- nudity in a public place.

Recommendations 40 to 41: Chapter IX Areas of Permissible Practice - Family Law and Change of Name Applications

40. Licensed paralegals duly qualified by passing a special examination should be authorized to appear as duty paralegals in the Ontario Court of Justice and, if future regulations make it permissible, in the Superior Court of Justice.

41. Licensed paralegals duly qualified by passing a special examination should be authorized to prepare and file the necessary papers and to do all that is required in completing an uncontested divorced in circumstances which meet the following conditions:

(a) where the parties have no children and no significant assets or the assets are jointly held, and where there is no need for, or there is no issue outstanding as to, spousal support and there are no outstanding collateral issues (for example, division of pensions);

(b) where the parties have a separation agreement resolving all collateral issues with a certificate of independent legal advice executed within one year of the commencement of the divorce action; and

(c) where there is a court order resolving all of the ancillary issues granted within one year of the commencement of the divorce action.

Recommendations 42 to 46: Chapter X Areas of Permissible Practice - Wills, Powers of Attorney, Living Wills and Commissioner for Oaths

42. Licensed paralegals should be authorized to draw a simple will in the following circumstances:

(a) where the assets consist of no more than the matrimonial home, bank accounts, life insurance policies, RRSPs, annuities and personal chattels; and

(b) where the distribution of those assets is straightforward, for example, all to a spouse and if the spouse should predecease the testator, or if there is no spouse, to be divided in equal shares per stirpes among the children.

43. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to prepare a "simple" will as set out above.

44. Licensed qualified paralegals should be authorized to advise regarding powers of attorney and living wills, to prepare these documents and have them executed.

45. Licensed paralegals should be authorized to administer oaths and take affidavits.

46. Upon their attaining a licence, paralegals should be issued a seal under the Commissioners for Taking Affidavits Act, which indicates that they are licensed paralegals and are commissioners for filing affidavits in and for the courts in Ontario.

Recommendations 47 to 48: Chapter XI Areas of Permissible Practice - Real Estate

47. Licensed paralegals should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

48. "Grandfathered" paralegals duly qualified by passing a special examination should be authorized to act for a vendor on the sale of a residential property that is either clear of any mortgage encumbrances or subject to only one mortgage.

Recommendations 49 to 53: Chapter XII How Should Paralegals Be Governed?

49. The Province of Ontario should enact legislation for the regulation of licensed paralegals and delegate to a corporation which functions independently of the Law Society of Upper Canada and the Government of Ontario the responsibility of regulating paralegal practice.

50. The board of the corporation should be composed of 15 persons, and in the interim period during which the board becomes fully functional, the following appointment process should be in effect:

(a) four members representing the Attorney General of Ontario should be appointed by the Attorney General of Ontario;

(b) four members representing the public should be appointed the Attorney General of Ontario;

(c) four members representing independent paralegals should be appointed by the Attorney General of Ontario;

(d) two members of the Law Society of Upper Canada should be appointed by the Attorney General of Ontario; and

(e) one independent chairperson should be appointed by the Attorney General of Ontario.

51. Once the board is fully functional:

(a) the four members representing the independent paralegals should be elected from their membership instead of being appointed by the Attorney General of Ontario;

(b) two additional members representing licensed paralegals should be elected from their membership, and

(b) the four members representing the Attorney General of Ontario should be reduced to two members.

52. The enabling legislation should provide that it is an offence for licensed paralegals to practise outside the areas specifically authorized for them.

53. Where a licensed paralegal practises outside specifically authorized areas, the governing body should refer the mater to the Attorney General of Ontario for prosecution.

Additions

54. Licensed paralegals should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

55. "Grandfathered" paralegals, duly qualified by passing a special examination should be authorized to undertake the simple incorporation of private companies, where, for example, there is only one shareholder and one class of shares.

Suggestions 1 to 2: Chapter V Areas Permissible Practice - Immigration and Refugee Board of Canada

1. Licensed paralegals duly qualified, whether by passing a special examination or by holding a secondary licence, should be authorized to appear before the three divisions of the Immigration and Refugee Board of Canada in Ontario, namely the Convention Refugee Determination Division, the Immigration Appeal Division and Adjudication Division.

2. The Immigration and Refugee Board of Canada should require agents appearing before them in Ontario to provide them with the evidence that they are licensed and have passed the special examination the Immigration and Refugee Board of Canada

APPENDIX H

Discussion: Possible Expanded Role for Legal Assistants in Criminal Matters

Possibilities in criminal matters include:

1. First Appearance – Very little happens at this appearance, often because the Crown is not in a position to disclose all materials to the Defence in order for them to set a trial date.

2. Interim Appearance – Simple attendances to adjourn to a date when an arraignment can be done.

3. Arraignment Hearing – This is the point at which the plea is entered, an Arraignment Report is filed and a trial date is fixed (unless a guilty plea is entered and a date is set for sentencing).

4. Setting of trial date – Once the Arraignment Hearing is completed, in most jurisdictions the trial date is set in the trial coordinator's office. Consequently, there are actually two separate appearances on the Arraignment Hearing date, which can often be quite time-consuming.

5. Trial Confirmation Hearing – This is the point at which the client and lawyer normally attend to say that the lawyer is prepared to proceed to trial. A Trial Readiness Certificate is filed and therefore the lawyer's attendance is not really required if there are no outstanding issues. A legal assistant could easily file that documentation in court and appear for the lawyer with the client.

There are issues about whether the legal assistant might appear as agent for the lawyer as well as for the accused person in summary conviction matters, and there would be numerous instances when, if leave were obtained in advance, the client need not attend.

It would be helpful to consult with the Criminal Bar around the use of legal assistants for the above appearances.

APPENDIX I

Discussion: Insurance Implications of Expanded Role for Legal Assistants

The present insurance policy covers individual lawyers and their support staff for errors made in rendering "professional services" for others. Support staff, including legal assistants, are covered under the individual lawyer's policy if they are employed by the lawyer, acting within the scope of their duties, and acting under the supervision of and in a supporting role to the insured lawyer. (If the legal assistant is in a contractual arrangement that is not tantamount to employment, such as contracting separately with a number of different lawyers, the present insurance policy does not provide coverage. When such an issue arises, the Lawyers Insurance Fund reviews the circumstances and, if satisfied that the relationship is tantamount to employment, the legal assistant is considered to be "employed" for purposes of coverage.)

A revision to Chapter 12 of the *Professional Conduct Handbook* giving legal assistants expanded authority may increase the risk of error on the part of some legal assistants. There are different approaches to insuring the risk. One option would be to expand the existing policy to include activities that are neither supervised by nor dependent on an insured lawyer. Under this option, the risk of increased exposure could be borne by the insured lawyer by way of additional premium or shared by all lawyers. The other option would be to require legal assistants to buy insurance themselves.

The means by which the Law Society might choose to expand the role of legal assistants could influence the means by which the Lawyers Insurance Fund would manage the cost consequences of any increased risk. For example, if the Law Society were to implement a scheme of certified legal assistants, each legal assistant could be required to carry insurance, either purchased from the Lawyers Insurance Fund or on the commercial market. Individual premiums would be considerably less than those currently paid by lawyers, and likely less than 50%.

Alternatively, if the Law Society were to expand the role of legal assistants but not implement a certification scheme, requiring legal assistants to carry their own insurance would present administrative challenges. For instance, there would be considerable difficulty distinguishing legal assistants from those providing other support staff services.

Under either scheme, the risk of the increased exposure could be passed on to the insured lawyer by way of an additional premium or spread among all insured lawyers consistent with the manner in which the program is presently underwritten.

If the Law Society were to authorize a regime of independent paralegals, it would be in the public interest to require those paralegals to carry insurance providing the same protection that exists under the Law Society insurance policy for lawyers.