

Time to expand paralegal rights?

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As law associations have begun welcoming them into their ranks, paralegals are yet again seeking to expand the scope of their practice in a new motion that's stirring up controversy ahead of its discussion at the Law Society of Upper Canada's annual general meeting in May.

The motion will ask the law society to create a task force to research the possibility of an expanded scope of practice for paralegals in areas including, but not limited to, immigration and family law as well as construction liens. The task force would look into "establishing the education, training, experience, and other necessary qualifications" that would allow paralegals to practise in those areas with a broader capacity.

Paralegals have proposed similar motions in the past. Toronto paralegal Marshall Yarmus, who's again spearheading the motion, says the law society had previously expressed a commitment to study the matter but has so far done little to address it.

Family and immigration law groups are already expressing their vehement opposition to a motion they say will dilute the standards in their practice areas. "We're really, seriously concerned about public protection," says Victoria Starr, chairwoman of the Family Lawyers Association, who's expressing alarm about the quality of family law services paralegals would provide.

"Often, family law cases are far more complex than they look at first blush and so there is a tendency to oversimplify the issues, the rights, and everything involved in the case," she says.

She adds: "This isn't about lawyers making money or paralegals making money. This isn't about turf. This is about protecting the public." Prior to regulation by the law society, paralegals were able to act in uncontested divorces. Now, all family law work they do has to be under the supervision of a lawyer, something Yarmus says needs to change.

"I still get a lot of requests from people for different family law matters," he says. "Some of those things paralegals were able to do prior to regulation."

When it comes to immigration law, "the law society still takes the position that paralegals should be restricted to tribunals" despite a federal amendment that allows licensed paralegals to prepare documents for cases outside the jurisdiction of tribunals, says Yarmus.

"Really, what we're asking them to do is to review . . . what has to be done to allow us to expand into these areas of practice . . . to allow us to fully practise in them," says Yarmus.

"This motion wouldn't be brought had the law society followed through with its commitment three years ago to study these areas of practice," he says.

Lawyer Raoul Boulakia, a member of the executive of the Refugee Lawyers Association, says it's "disturbing" that the law society would consider a motion like this one.

"It really trivializes what we do," says Boulakia.

"Having refugees represented at the refugee board or the Refugee Appeal Division by non-lawyers is very risky for the refugee claimants. It basically means they're being represented by someone who is not going to be able to assert their procedural rights or even many of the legal concepts."

Asked if any training could equip paralegals to practise immigration law, Boulakia replies: "Yeah, that would be law school."

Lawyers, he adds, "don't just take a refresher course and go out and represent people."

The federal government's green light for paralegals to handle immigration matters deserves some scrutiny, Boulakia continues, noting authorities don't necessarily want refugees to succeed in their applications.

The Ontario Bar Association's citizenship and immigration law section also has concerns. Immigration clients are a vulnerable group who deserve stringent protection, says Lainie Appleby, chairwoman of the OBA group.

"Immigration and refugee law is deceptively complex," she said last week.

"There is sometimes a false impression that it is a *pro forma* process when, in fact, a high degree of expertise and careful judgment is required to complete the paperwork in the best interests of clients. For example, preparing immigration applications requires analytical and forward-looking strategic thinking as is acquired in law school."

When it comes to ensuring the quality of practice, "the law society should not be a less stringent option to the federal regulator," she added. "We are confident that the law society may eventually catch up, but the focus must be on putting the current house in order rather than expansion."

The new motion references the 2012 report by David Morris that raised the idea of training paralegals to work in areas of the law that now fall outside their scope of practice.

But according to the Family Lawyers Association, such a move would do little to advance the cause of access to justice.

"There is no reason to believe that paralegals will charge a whole lot less than lawyers," says Starr, who argues the real solution is to increase legal aid funding.

The motion calls on the law society to create a committee within 30 days. While Starr calls the time frame unrealistic, John Tzanis, president of the Paralegal Society of Ontario, says it shows the urgency of the matter. Questions related to paralegals languished on the backburner last year when the articling debate took the spotlight, he says.

"This has to move a little quicker, it has to be a priority," he says. In addition to the law society, the Paralegal Society of Ontario will also be talking to Legal Aid Ontario about the possibility of giving certificates to paralegals for immigration matters, says Tzanis.

"If you take a look at the budget crunches that are occurring within legal aid, this is, I think, a very, very good solution."

Allowing paralegals to practise more broadly will also create opportunities for graduates facing limited job opportunities, Tzanis adds.

"We have 700 to 800 students graduating every single year and where are we going to provide areas of practice for these people? Are they just going to be coming out and competing with paralegals that are already struggling?"

The debate arises as paralegals can now rub shoulders with lawyers at two more Ontario law associations. The Halton County Law Association and the Waterloo Law Association both amended their bylaws recently to allow paralegals to become members and join the board of directors.

Halton association president Laura Oliver says the move makes sense as paralegals are now subject to law society regulation. But their inclusion, she adds, is also about creating a more harmonious relationship between lawyers and paralegals.

"I think there should be some amount of collegiality between the two professions," she says.

"We are regulated by the same body and we are two different professions, but that doesn't mean that we have to be in competition with one another."

Not all lawyers have been keen on sharing their law association with paralegals, notes Oliver, who calls the issue a controversial one.



"This isn't about lawyers making money or paralegals making money. This isn't about turf. This is about protecting the public," says Victoria Starr. Photo: Robin Kuniski

"Suffice it to say, I've seen some debates that have been quite offensive," she says.

"There appears to be some perception about ethics that I don't necessarily think is restricted to paralegals," she adds.

Some of the tension between lawyers and paralegals stems from the adversarial relationship that's been building up between the two professions, says Tzanis. He calls the law associations' moves the first step in breaking down a culture of mutual animosity. "For years since we've been licensed, it's almost like we've been adversaries," he says.

"There's been suspicion and there's been acrimony with respect to the two professions whether or not they're in competition with each other, whether they're colleagues or not."

Part of the problem is also "a matter of respect," he adds.

From where they can put their coats and stretch their legs to how the courts treat them, paralegals feel slighted by a culture of privilege that constantly puts them beneath lawyers, he says.

"I think what happens is lawyers feel there is a certain privilege in being a lawyer that paralegals don't have and that's something that I think irks paralegals, bothers paralegals," says Tzanis.

Paralegals' inclusion in law associations is the first step to breaking down some of the relationship issues that exist between the two professions, he adds.

Both the Halton and Waterloo associations will each reserve one seat on the board of directors for a paralegal. Ottawa's County of Carleton Law Association has already given paralegals full membership rights.

So far, only a handful of paralegals are members of the Waterloo association, says president Clarke Melville.

Lawyers in the region "have embraced" paralegals' inclusion, he notes. Paralegals have full membership rights, he says, adding that creating different privileges for the two professions is "a ridiculous, complicated, and unnecessary exercise."

For more, see "[Paralegals call truce over law society motion.](#)"