

# **Consultation Paper: Examining the Provision of Legal Services in Saskatchewan**

**August 2017**

## **I. Background**

In the fall of 2015, the Law Society and the Ministry determined to jointly begin exploring the possibility of allowing non-lawyers to provide some level of legal services. They began informal discussions with individual paralegals and their associations to better understand the current market of alternate legal service providers. Some information was gathered from other jurisdictions and from the current environment in Saskatchewan.

In May of 2016, the Ministry and the Law Society conducted two surveys: one of legal service providers in the province, which included both lawyers and other providers, and one of the public. The surveys were aimed at obtaining information about the way that legal services are provided in the province. The survey stated that the results would inform a broader exploration of ways to expand legal services that can be provided by legal professionals other than lawyers in order to improve public access to legal services in Saskatchewan.

To carry the work of this project forward, the Ministry and Law Society have put together a Task Team of individuals interested in contributing and bringing forward recommendations regarding the expansion of legal services in the province. Over the course of the fall of 2017, the Task Team is engaging in consultation with a range of interested stakeholders.

## **II. Rationale for the Project**

Professional regulation with respect to legal services has been undergoing a great deal of change around the world, prompting the question of who may, or ought, to provide legal services. Other jurisdictions, including Ontario, British Columbia, Nova Scotia, Washington State, Utah, and New York State, have opened up the provision of some legal services to other professionals, each taking a different approach in doing so.

The Law Society and the Ministry have agreed that being proactive with respect to this issue will result in the best possible outcome for the Saskatchewan public, the legal profession, and other service providers. If we do not engage with the questions surrounding the authority to provide legal services, these issues are likely to be resolved by the courts, the legislature, or the marketplace in ways that might not consider stakeholder interests and concerns. This section explores the reasons why the Ministry and the Law Society have decided to explore this issue.

### **a. Access to Justice**

Access to justice is a pressing issue affecting the Canadian legal system today. Many individuals find they are either: 1) unable to afford to retain a lawyer; 2) unable to find a lawyer who practices in remote locations around the province; or 3) unable to find a lawyer who is competent or willing to practice in the required area of law. Some individuals facing legal problems end up representing themselves or forgoing a legal resolution altogether. Individuals attempting to deal with their legal issues on their own often do so with great difficulty. Having some assistance from an alternate service provider could prove beneficial – both to ensure compliance with the law and legal procedure and to improve the outcome they are able to achieve.

Many prominent national organizations have written high profile reports on the issue of access to justice, and many of these reports encourage those in the legal profession to look at expanding the scope of legal service providers. The Law Society and the Ministry share a common interest in improving access to justice to the benefit of the public.

#### **b. More Consumer Choice**

Some professions deliver services through a team approach with multiple professionals engaging the client at various points based on the level of expertise required (e.g. medicine, dentistry). Some professions permit the customer to choose the level of services required or desired, and the associated level of risk they are willing to accept (e.g. accounting). In law, consumers have limited choice.

Some legal commentators suggest a multiple licensing approach would be effective in law, allowing for more than one class of licensee to provide legal services. These commentators have opined that this approach has the potential to increase competition and reduce prices while maintaining quality assurance and protecting the public. Other commentators acknowledge that, depending on the regulatory regime, there is no guarantee new occupational groups would compete enough to drive prices down – restricted spheres of practice could reduce or eliminate competition altogether. Nevertheless, commentators suggest that expanding the market of legal service providers increases the likelihood of existing gaps in service being filled, especially in particular areas of law or geography where the current supply does not meet demand.

#### **c. Effective Regulation of Legal Services**

*The Legal Profession Act, 1990* (the “Act”) restricts the provision of legal services to members of the bar (lawyers and articling students) by providing that no other person may “advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law”. However, there is little clarity on how broad this prohibition is or what constitutes “work or service” for its purposes. The Act provides very little guidance to the public, service providers, and the Law Society about what type of services related to law might be performed by those who are not lawyers.

Due to a high demand for legal services, many organizations and individuals attempt to meet their clients’ needs by providing legal information and assistance where it is otherwise not available. Similarly, court staff and other justice insiders are regularly called upon by the public to offer assistance with forms and matters of pleading or procedure. Other professionals (such as accountants, financial or estate planners, human resource managers, etc.) regularly provide services that could be classified as legal services.

The intent of the restriction against unauthorised practice is to protect the public from the risk posed by persons holding themselves out to be lawyers who are not appropriately trained, insured, or regulated. It is the duty of the Law Society to enforce the restriction against unauthorized practice in the public interest. It is arguable that it is in the public’s greater interest for these services provided by near-to-law professionals and organizations to be appropriately supported rather than prohibited altogether, as otherwise many members of the public would be left with no assistance at all.

What is generally permitted by such service providers and what is prohibited is often characterized as a distinction between legal information and legal advice, the former being

general in nature and not tailored to an individual's specific circumstances. However, in many contexts, this distinction is difficult to define and navigate, requiring service providers to make constant determinations about what is or is not permitted. Lack of clarity can cause some organizations to favor an overly cautious approach, which can stifle innovation in addressing access to justice and limit availability of valuable information for the public. Indeed, less general but more contextualized information is often more valuable to individuals, particularly those who are trying to navigate the legal system on their own. It is important to find an appropriate balance between meeting public need and protecting the public from harm.

### **III. Issues and Options for the Task Team to Address**

The Task Team has been appointed to examine the issue of allowing non-lawyers to provide some legal services in Saskatchewan and to make recommendations to the Benchers and the Minister about the appropriate role (if any) of non-lawyers in the provision of legal services. In carrying out its mandate, the Task Team will consider a wide range of possible approaches and will keep the public interest central to its determination.

In carrying out its mandate, the Task Team will consider whether any types of service or areas of law should be deregulated altogether and/or whether a new class or multiple classes of legal service provider should be established and permitted to provide some services. If any new classes of legal service provider are recommended, the Task Team will also need to make recommendations with respect to the associated scope of practice and appropriate regulatory structure that should apply.

#### **a. Scope of Practice**

If the Task Team recommends allowing non-lawyers to provide some legal services in Saskatchewan, the Task Team may consider reserving certain legal services or areas of law to the exclusive domain of lawyers, while opening up others to one or more classes of new legal service providers. The Task Team could also consider identifying specific tasks that a new class or classes of legal service provider could perform or areas of law in which they could practice. The Task Team may also make recommendations with respect to varying degrees of independence for one or more new classes of service provider. For example, depending on the task or area of law, it may be recommended that some new service providers be permitted to practice unsupervised, while other tasks, areas of law, or class of new legal service provider be supervised by a lawyer.

#### **b. Regulation**

If the Task Team recommends creating a new class or classes of legal service provider, it will also need to consider whether the class should be subject to regulation and, if so, who the regulator should be. The Task Team could recommend expanding the Law Society's scope of regulation to include any new class or classes of legal service provider. The Task Team could recommend that the government assume responsibility for regulating any new class or legal service provider within existing consumer protection structures. The Task Team could also recommend that a separate body be established to regulate any new class or classes of legal service provider, whether as a self-regulated profession or externally regulated.

If you would like to make a submission on this topic, please direct it to [LSTaskTeam@gov.sk.ca](mailto:LSTaskTeam@gov.sk.ca).