

DIRECT SUPERVISION REQUIREMENTS

Implementation of the Legal Services Task Team Recommendations

December 2021

**Law Society
of Saskatchewan**

[Terms of Use](#)



BACKGROUND

- Legal Services Task Team Report
- 13 Recommendations
- Staged Implementation



THE LAW SOCIETY IS IMPLEMENTING RECOMMENDATIONS FROM THE LEGAL SERVICES TASK TEAM FINAL REPORT

LEGAL SERVICES TASK TEAM RATIONALE

- Access to legal services especially in **underserved markets / locations**
 - Affordability
 - Rural and remote communities
 - Find a lawyer willing / able
 - Services in own language / culture
- More **consumer choice**
 - Range of competent service providers
- Effective **regulation** of legal services
 - Clarity regarding unauthorized practice of law
 - Consideration for services not posing a risk
 - Greater flexibility in regulation and delivery of legal services

LAW SOCIETY OF SASKATCHEWAN STRATEGIC PLAN 2019-2022

- Demonstrate a commitment to improving access to legal services in regulatory structure, policies, and initiatives and support the provision of accessible legal services by Saskatchewan firms, lawyers, legal service providers, and other legal organizations
 - Reduce barriers to access to legal services caused by the Law Society's regulatory framework
 - Increase support to Saskatchewan firms, legal organizations, lawyers and legal service providers to diversify the service delivery methods used to provide legal services to underserved segments of the public
 - Increase collaboration with stakeholders to develop novel ways to address unmet legal needs

THERE ARE THIRTEEN RECOMMENDATIONS FOR IMPLEMENTATION

GOVERNMENT

- 1 - Modernize the legislation regulating the provision of legal services
- 2A - Define “practice of law” in the legislation; Provide the Law Society with the authority to define “legal information” in the Law Society Rules
- 5B - Amend the Act to relocate the list to the Rules so that the Law Society can amend the list
- 6A - *Amend the Act to allow for the creation of new categories of membership in the Law Society*
- 7A - *Amend the Act to: i) allow service providers to practise law with a limited license on a case-by-case basis; and ii) provide the Law Society with licensing authority*

LAW SOCIETY

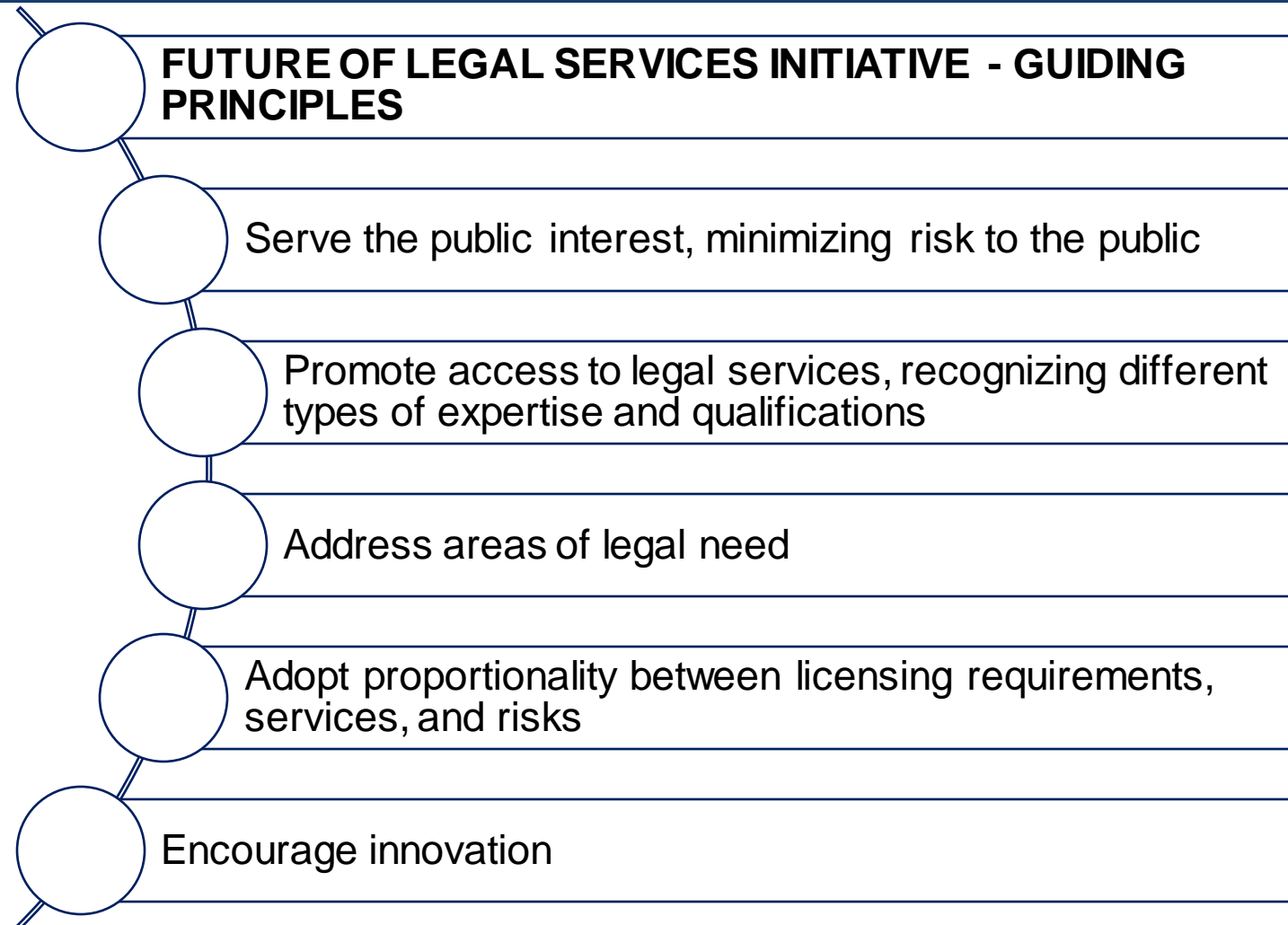
- 2B - Create guidelines to help the public
- 3 - Other than the provision of legal information, continue to regulate all other legal services to some degree
- 4 - **Examine the restrictions on direct supervision requirements for staff**
- 5A - Expand the list of exceptions [sic] to the prohibition against practicing law

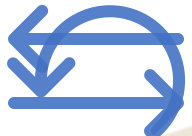
JOINT

- 6B - Enact subordinate legislation to create new categories of membership
- 7B - Enact principles to guide licensing
- 8 - Enact Rules, subject to Ministerial approval, to create a limited licensing process with appropriate and proportional licensing requirements
- 9 - Conduct or support pilot projects to experiment with certain types of limited licenses



A SERIES OF PRINCIPLES GUIDE IMPLEMENTATION OF THE RECOMMENDATIONS





THE RECOMMENDATIONS CREATE REGULATORY SPACE TO ADVANCE ACCESS TO LEGAL SERVICES

- Strict regulatory framework without a flexible structure

PAST – WHERE WE WERE

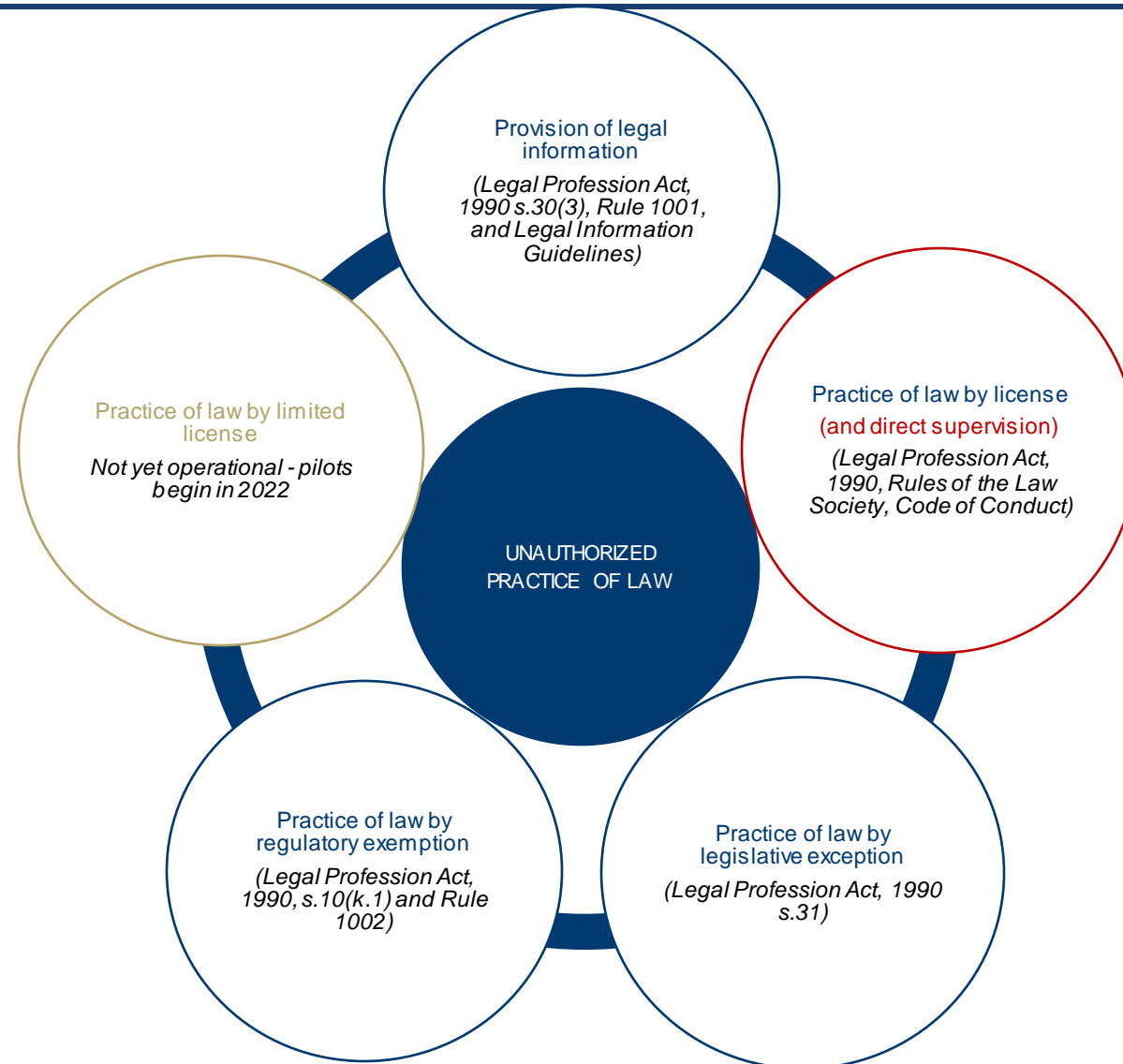
- Staged implementation of deregulation and reregulation to expand the scope of available legal service providers using risk-based assessment and review

PRESENT – WHERE WE ARE

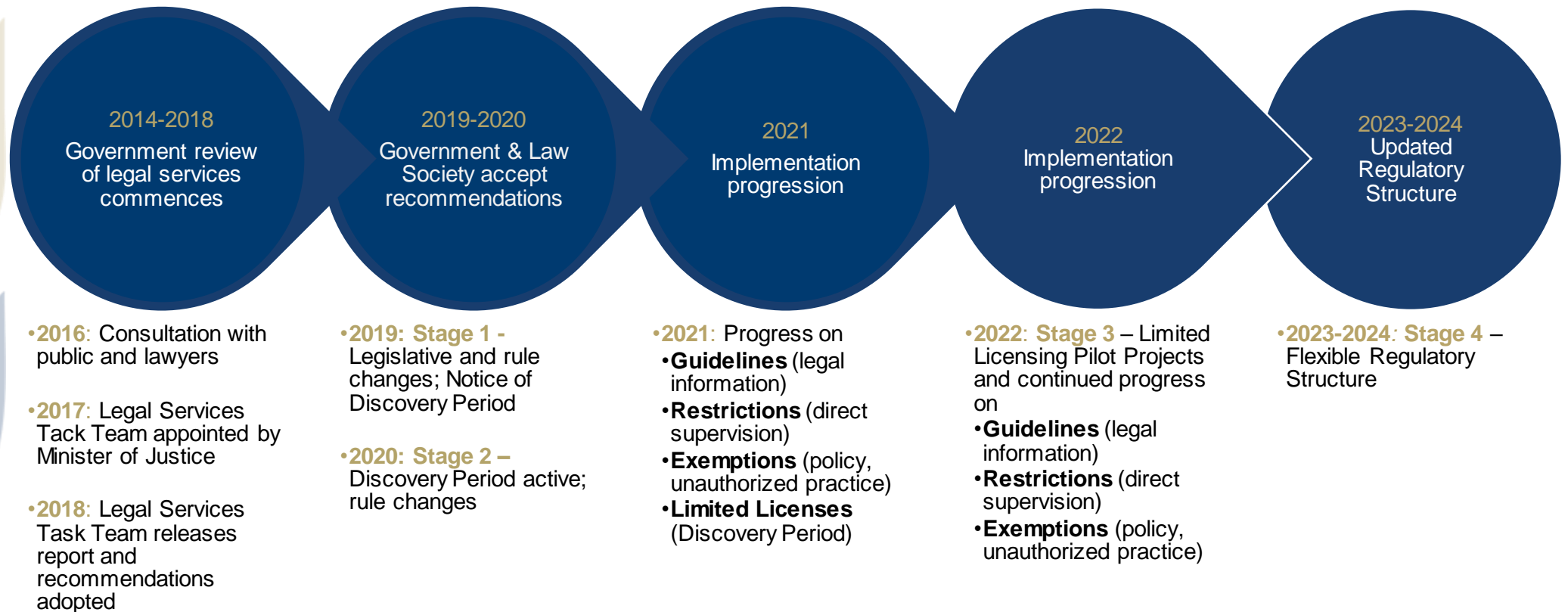
- 4 categories authorizing the practice of law
 - Lawyer + direct supervision
 - Exceptee
 - Exemptee
 - Limited Licensee
- + Legal Information Provider

FUTURE – WHERE WE ARE HEADED

THE RECOMMENDATIONS OUTLINE A FRAMEWORK THAT INCLUDES FUTURE LIMITED LICENSING



RECOMMENDATIONS ARE IMPLEMENTED IN A RESPONSIBLE & SUSTAINABLE MANNER IN STAGES



•**Informed by:** Legal Needs Assessment, Canadian Legal Problems Survey, and Discovery Period



DIRECT SUPERVISION REQUIREMENTS

- Current understanding
- Recommendation to deregulate
- Consultation



DIRECT SUPERVISION REQUIREMENTS – RECOMMENDATION 4

CONCLUSION: each lawyer supervising staff in Saskatchewan should be permitted to make their own determinations about staff persons' qualifications, knowing that they would ultimately be responsible for that work

- **RECOMMENDATION** to proceed with amendment to the Saskatchewan Code, focusing on permissive and effective direct supervision, with regulation of the supervising lawyer
- This permits a lawyer to delegate work and duties appropriately, according to the skills, training and good character of the supervisee
- This can help increase access to legal services and commentary could direct attention to this amendment in support of access to justice



•Examine the restrictions on direct supervision requirements of staff working under the supervision of a lawyer and consider where, subject to some parameters and limits, such as the lawyers liability and insurance obligations, this ability could be expanded.



DIRECT SUPERVISION - AVAILABLE DATA

- SLIA reports that matters involving delegation to a non-lawyer employee represented 1.9% of claims (35/1845) or 0.35% of the total paid out (\$99,186 out of \$28,673,497) since 1989
- Statistics Canada (2016) National Occupational Classification identifies 1370 paraprofessionals in the province

YEAR	LEGAL SECRETARIES / LEGAL ADMINISTRATIVE ASSISTANTS			PARALEGALS AND RELATED OCCUPATIONS		
	MALE	FEMALE	TOTAL	MALE	FEMALE	TOTAL
1996	15	750	765	85	275	360
2001	10	995	1005	80	360	445
2006	15	600	620	70	540	610
2016	-	-	1045	-	-	325
2021	-	-	-	-	-	-



DIRECT SUPERVISION – CODE OF CONDUCT I

- Saskatchewan Code of Conduct includes [section 6.1-1](#) whereby lawyers have direct supervisory requirements over their staff and permissions and restrictions on areas of work are detailed
- *“A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.”*

COMMENTARY ACCOMPANIES SECTION 6.1-1 - I

Commentary 1

- burden on the lawyer to educate a non-lawyer (*does not include students-at-law – section 6.1-2*) on duties assigned and review work at frequent intervals
- the extent of supervision depends on:
 - the type of legal matter
 - the degree of standardization and repetitiveness of the matter
 - the experience and specialized training of the non-lawyer
 - the particular matter in question

Commentaries 2 and 3

- all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work
- lawyers must ensure that no unauthorized person working under their supervision gives legal advice
- work may be delegated to a non-lawyer who has received specialized training or education and is competent to do independent work under the general supervision of a lawyer

COMMENTARY ACCOMPANIES SECTION 6.1-1 - II

Commentary 4

- *Private practice*: may permit a non-lawyer to perform tasks delegated and supervised so long as direct relationship with the client maintained
- *Legal Aid*: lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work

Commentary 5

- Subject to provisions of any statute, rule or court practice, the question of what a lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required

COMMENTARY ACCOMPANIES SECTION 6.1-1 - III

Commentary 6

- Functions are also elaborated affirmatively in four key areas:
 - Real estate
 - Corporate and commercial
 - Wills, trusts, and estates
 - Litigation

- *“conduct all negotiations with third parties or their lawyers except where the amount involved does not justify the cost of a lawyer's time”*

Commentary 6 continued

- Distinction between routine administration vs. substantive matters
 - client / third party interaction and negotiation
 - instruction on substantive matters
 - review / sign documents and correspondence
 - attend hearings before court / Registrar / tribunals and examinations for discovery

DIRECT SUPERVISION – CODE OF CONDUCT II

- Saskatchewan Code of Conduct includes [section 6.1-3](#) identifying a series of tasks a lawyer must not permit a non-lawyer to do
- *“A lawyer must not permit a non-lawyer to ... (a) ... (p)”*
 - *accept cases (except), give legal advice, fix fees, give or accept undertakings / trust conditions (except), act finally, be held out as a lawyer, appear in court or participate in formal legal proceedings, be named in a pleading, be remunerated on a sliding scale (unless), conduct negotiations (unless), take instructions (unless), sign legal opinions, sign correspondence (unless), forward documents (unless), perform duties of lawyers, or issue statements of account*

COMMENTARY ACCOMPANIES SECTION 6.1-3

Commentaries 1 and 2

- lawyer responsibility for undertakings and trust conditions
- appropriate identification of non-lawyers in communication

Commentary 3

- requirements for real estate transactions and electronic submission of documents

DIRECT SUPERVISION – DEREGULATION

- an approach that is more permissive, allowing individual lawyers and their staff to arrive at processes that best serve the interest of clients while providing adequate supervision
- facilitate delivery of legal services and reduce a regulatory barrier
- continue responsibility for supervision and regulation of the supervising lawyer

REINFORCED BY CBA FUTURES REPORT



FUTURES:
TRANSFORMING THE DELIVERY
OF LEGAL SERVICES IN CANADA



- Recommendation 10 of the report focused on effective (rather than direct) supervision of non-lawyers:
 - *The FLSC Model Code Direct Supervision rule should be revised to require effective supervision rather than direct supervision. The requirement of effective supervision would be satisfied either by direct supervision or by the establishment of a well-designed process, automated or not, which:*
 - a. *gathers all appropriate client information;*
 - b. *identifies for consideration and action by a lawyer:*
 - i. *issues requiring the legal expertise of a lawyer; and*
 - ii. *“red flags” indicating legal, ethical and other similar legal issues;*
 - c. *requires the lawyer to undertake tasks not permitted to be delegated to a non-lawyer;*
 - d. *provides for effective quality assurance; and*
 - e. *protects confidentiality and privilege.*

REINFORCED BY OTHER JURISDICTIONS – BRITISH COLUMBIA IDENTIFIES DESIGNATED PARALEGALS

HOME ▾ / SUPP ▾ / LAW OFFICE ADMINISTRATION ▾ / PARALEGALS

Paralegals



The Law Society encourages lawyers to make use of designated paralegals to provide lower cost, competently delivered legal services to clients who might otherwise not be able to afford the services of the lawyer.

A “designated paralegal” is a paralegal who can perform additional duties under a lawyer’s supervision:

- give legal advice to clients;
- appear before tribunals, as permitted, or at family law mediations.

CONSULTATION – DECEMBER 2021 TO JANUARY 2022

- Inviting consultation and feedback on amendment to the Code to focus on permissive and effective direct supervision
 - allowing lawyers to delegate work and duties appropriately, according to the skills, training and character of the supervisee
 - facilitating delivery of legal services
 - helping increase access to legal services
 - continuing responsibility for supervision and regulation of the supervising lawyer

CONSULTATION – SURVEY

<https://www.surveymonkey.com/r/QGWY8PW>

QUESTIONS FOR UNDERSTANDING - LAWYERS

- Volume of paraprofessionals
- Supervision
- Cost implications
- Ability to take on matters
- Factors for supervision
- Areas of law, specialization

QUESTIONS FOR UNDERSTANDING – PARAPROFESSIONALS

- Education
- Titles
- Areas of law

CONSULTATION – SURVEY

<https://www.surveymonkey.com/r/QGWY8PW>

QUESTIONS FOR DISCUSSION

- Some jurisdictions in Canada allow a designated legal assistant / paralegal to perform additional duties under a lawyer’s supervision such as: (a) give legal advice to clients; (b) appear before tribunals, as permitted. The supervising lawyer is responsible for the conduct of the designated staff member and designation is an active process whereby the supervising lawyer must decide whether the staff member has the skills, training and character to perform the enhanced functions allowed. Would you support these expanded parameters in Saskatchewan?
 - Yes
 - No
 - Don’t know
- [Section 6.1-3](#) of the Code of Conduct lists a series of restrictions on the activities of direct supervisees. Please indicate if you feel there are any restrictions necessary to effectively supervise staff, for instance, similar to a student-at-law. [Open-ended]
- Do you agree or disagree with this statement: *“Clients deserve new and cost-effective ways of receiving legal services, and this entails varying the rule on supervision of non-lawyers.”*
 - Agree
 - Disagree
 - Don’t know
- Do you agree or disagree with this statement: *“Each lawyer supervising staff in Saskatchewan should be permitted to make their own determinations about the staff person’s qualifications, knowing that they would ultimately be responsible for that work.”*
 - Agree
 - Disagree
 - Don’t know



ENGAGEMENT OPTIONS – ARTICLE, WEBINAR DISCUSSION, SURVEY, CONTACT LAW SOCIETY



Better connecting consumers of legal services to legal assistants / paralegals Future of Legal Services Committee

Given several important initiatives underway, the Future of Legal Services Committee is highlighting key information regarding access to justice and the work of the [Committee](#). Look for information to follow on continued next steps in implementing the Legal Services Task Team recommendations [report](#).

In this series of articles, the focus has been on connecting consumer of legal services to [lawyers](#) and [alternative legal service providers](#) effectively. In this article, the focus turns to connecting consumers of legal services and legal assistants / paralegals more effectively.



Approaches in different jurisdictions offer ideas for consideration in Saskatchewan. In particular, the parameters of the Law Society of British Columbia's approach to 'designated paralegals,' has attributes that can support greater independence of paraprofessionals working under the supervision of a lawyer in Saskatchewan. For instance, the scope and independence of a legal assistant or paralegal is specific to the staff person's level of skill and training and may not be the same as the parameters of another staff person's scope and degree of independence. Additionally, delegation is an active process whereby the supervising lawyer affords a staff person independence based on their skills, training, and character to perform enhanced functions.

A survey of lawyers and clients in British Columbia about the use of designated paralegals.

JOIN AN ONLINE WEBINAR DISCUSSION	COMPLETE A SURVEY (coming soon)	CONTACT THE LAW SOCIETY DIRECTLY
<ul style="list-style-type: none"> December 9, 2021 @ 12:00 PM January 12, 2022 @ 12:00 PM 	<ul style="list-style-type: none"> Survey for lawyers Survey for legal assistants / paralegals 	consultation@lawsociety.sk.ca

The policy basis for direct supervision is to ensure that legal work is completed properly and ethically so that clients receive competent and professional legal services. Commentary in the Code expands on the understanding of this arrangement and is more permissive:

- allowing lawyers to permit delegation of some tasks to a staff person working under their supervision; and
- setting out a list of activities that non-lawyers, even under the supervision of a lawyer, must not do.

The Task Team considered whether expanding the scope of practice and degree of independence for supervised staff such as legal assistants and paralegals working in law firms could enable lawyers to charge less for services, thereby increasing access to legal services and consumer choice. Importantly, some legal matters can be performed unsupervised by paralegals and legal assistants and this can benefit access to legal services and offer more affordable legal services.

12:00 PM

The Law Society looks forward to receiving feedback on taking forward permissive and effective regulation that permits a lawyer to delegate work and duties appropriately, according to the skills, training and character suitability of the supervised legal assistant or paralegal. This can help increase access to legal services and more effectively connect consumers of legal services and legal assistants / paralegals to support greater access to justice.

The Future of Legal Services Committee will continue to provide updates on important initiatives and invites comments and input at: consultation@lawsociety.sk.ca.

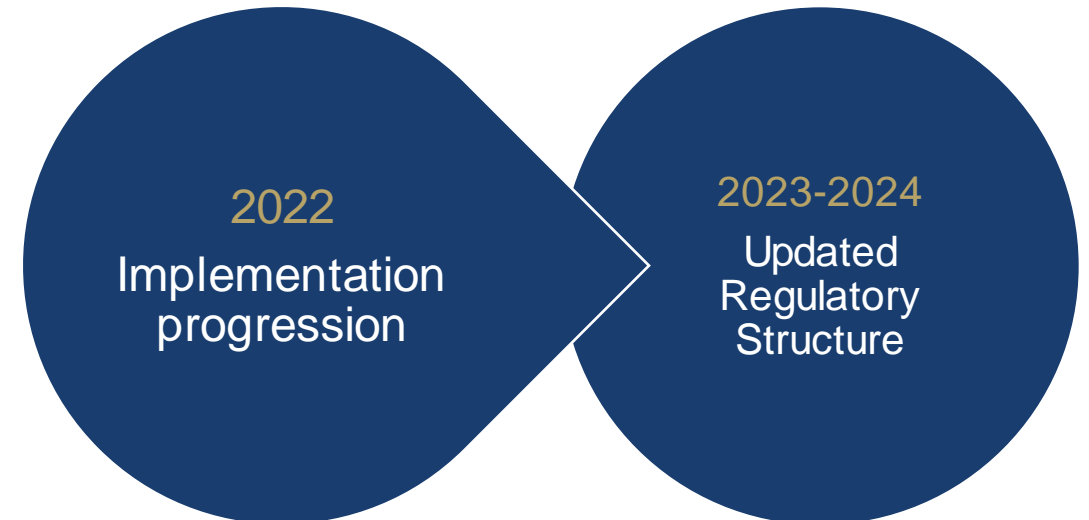
¹ See: Law Society of British Columbia, Designated Paralegal Survey 2015, available: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/DesignatedParalegalSurvey.pdf>

THE LAW SOCIETY CONTINUES NEXT STEPS TO IMPLEMENT THE RECOMMENDATIONS

ADDITIONAL OUTREACH AND ANALYSIS

- Finalize Discovery Period and disseminate Legal Information Guidelines
- **Consult on direct supervision** and limited licensing
- Analyze data and information
 - Discovery Period (Notice Forms)
 - Legal Needs Assessment
 - Canadian Legal Problems Survey
 - Relevant data from other justice stakeholders
 - Progress in other jurisdictions
 - Responses to consultations

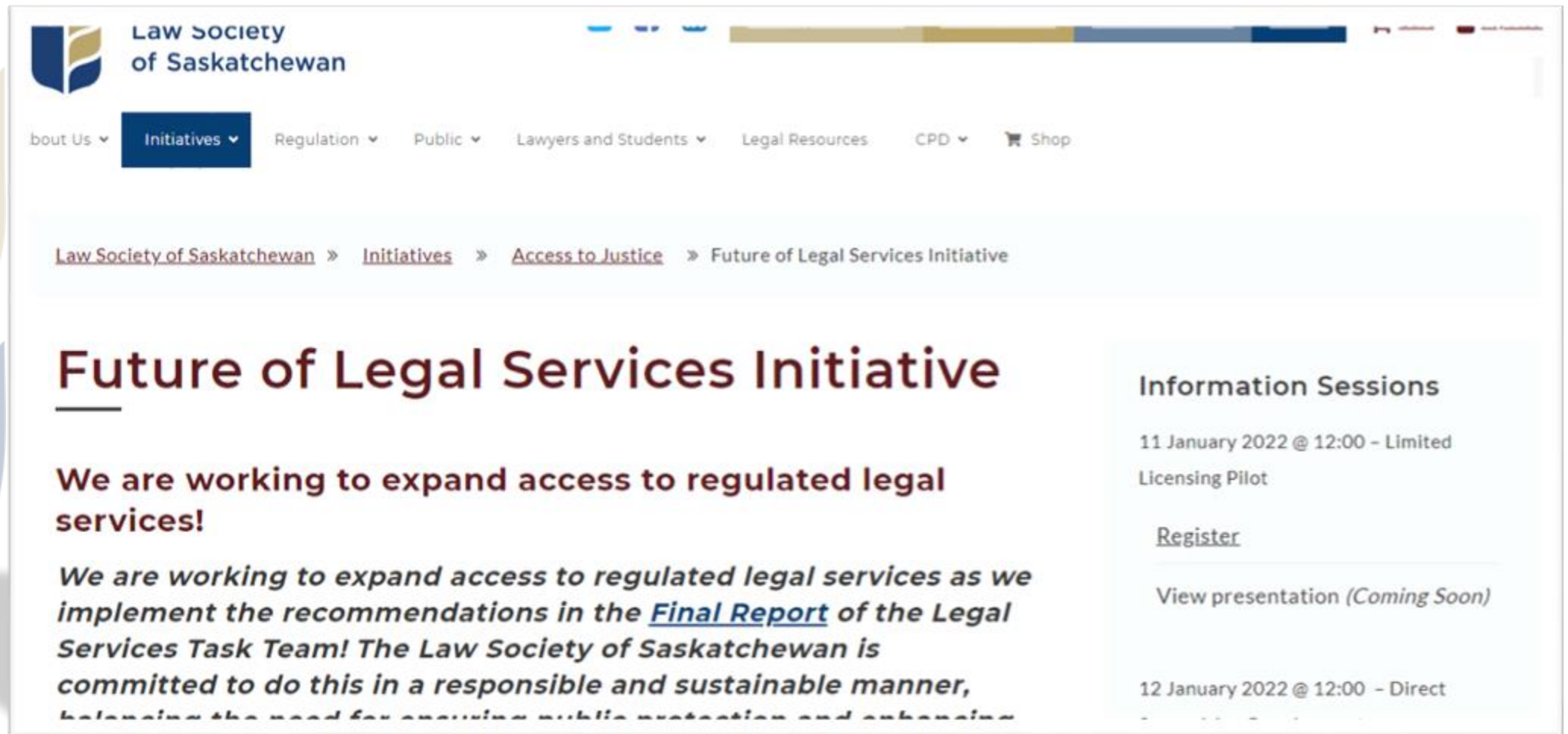
PROGRESS THE RECOMMENDATIONS



- **2022: Stage 3** – Limited Licensing Pilot Projects and continued progress on
 - **Guidelines** (legal information)
 - **Restrictions** (direct supervision)
 - **Exemptions** (policy, unauthorized practice)

- **2023-2024: Stage 4** – Flexible Regulatory Structure

INFORMATION ABOUT IMPLEMENTATION IS AVAILABLE ON THE LAW SOCIETY WEBSITE



The screenshot shows the Law Society of Saskatchewan website. The header includes the logo and navigation menu with 'Initiatives' highlighted. The breadcrumb trail reads: Law Society of Saskatchewan » Initiatives » Access to Justice » Future of Legal Services Initiative. The main heading is 'Future of Legal Services Initiative'. Below it, a bold statement reads: 'We are working to expand access to regulated legal services!'. A paragraph follows: 'We are working to expand access to regulated legal services as we implement the recommendations in the [Final Report](#) of the Legal Services Task Team! The Law Society of Saskatchewan is committed to do this in a responsible and sustainable manner, balancing the need for ensuring public protection and enhancing...'. On the right, an 'Information Sessions' section lists two events: '11 January 2022 @ 12:00 - Limited Licensing Pilot' with a 'Register' link, and '12 January 2022 @ 12:00 - Direct' with a 'View presentation (Coming Soon)' link.