

## **Consultation Leads to Code of Conduct Amendments to Better Connect Consumers of Legal Services to Paraprofessionals**

*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](#), [alternative legal service providers](#), and [paraprofessionals](#) effectively. This article provides updated information following consultation with respect to paraprofessionals or specifically the legal assistants / paralegals who are directly supervised by practicing lawyers.

### **Background**

In December 2021, the Law Society initiated consultation on the role of legal assistants and paralegals in Saskatchewan with consideration to advancing amendments to the Saskatchewan Code of Conduct relating to direct supervision. We invited feedback and input from lawyers and legal assistants and paralegals on this important topic as well as from the Saskatchewan Lawyers Insurance Association (SLIA).

During December 2021 and January 2022, 133 lawyers and paraprofessionals participated in two online [information and feedback sessions](#) and 324 completed an online survey, which is just under a ten percent participation rate for lawyers and paraprofessional respondents based on best available data:

- 189 completes from lawyers (9.41% participation based on the distribution list of 2,008); and
- 135 completes from paraprofessionals (9.85% participation based on understanding of 1,370 paraprofessionals in Saskatchewan (2016 census)).

### **Survey Findings**

**FAST FACT**  
***A majority of lawyer respondents (76%) identified that utilizing paraprofessionals helps deliver legal services at a lower cost to clients.***

A majority of lawyer respondents (76%) identified that utilizing paraprofessionals helps deliver legal services at a lower cost to clients and with the help of paraprofessionals, 30% have taken on matters they otherwise may not have due to a clients' inability to pay. Factors informing supervision are in line with what is identified in the Code of Conduct with additional insights such as: workload; intelligence, loyalty, trust worthiness, and reliability; unique needs of the client as a result of high level of conflict; risk associated with the matter; and complexity of issues.

Paraprofessionals identified their education and training as predominately on the job training (63%) and certificate courses (48%) while (4%) reported no formal education or legal administration degrees. In detailing educational qualifications, a human justice degree was often cited as well as degrees related to administration or business.

Paraprofessionals indicated their areas of work fairly equally (30%) across real estate, corporate and commercial, wills, trusts and estates, and litigation but identified significant other work as well (50%). Lawyers indicated paraprofessionals were working most in real estate matters (63%), corporate commercial (44%), wills, trusts and estates (37%), and litigation (24%) with less focus on other areas (25%). Lawyers and paraprofessionals collectively highlighted additional contributions, sometimes specialized, including: administrative law; alternative dispute resolution; criminal and prosecutions;

family and child protection; fee collection; insolvency and foreclosure; labour and employment; and traffic matters.

## **FAST FACTS**

***A majority of lawyers (64%) felt they should be able to make their own determinations about delegation to their staff knowing they would ultimately be responsible for the work. A majority of paraprofessionals (75%) supported expanded parameters and agreed (82%) that this should be at the discretion of supervising lawyers.***

Lawyers who supported expanded parameters (30%) or didn't know (25%) were collectively more but individually less than lawyers who did not support expanded parameters (46%) which is an important indication. However, 44% of lawyer respondents agreed with the statement that clients deserve new and cost-effective ways of receiving legal services, and this entails varying the rule on supervision of non-lawyers. 35% of lawyer respondents disagreed with this statement and 21% did not know. Overall, 64% of lawyers felt they should be able to make their own determinations about their staff knowing they would ultimately be responsible for the work while 26% disagreed and 11% did not know.

Importantly, the majority of paraprofessionals (75%) supported expanded parameters and agreed (65%) with varying supervision of non-lawyers, with 82% also agreeing that this should be at the discretion of supervising lawyers.

### **Feedback from Saskatchewan Lawyers' Insurance Association**

SLIA detailed 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. Lawyer's mandatory liability coverage insures against errors in the rendering of Professional Services and Professional Services means services normally provided or supervised by a lawyer within the scope of the usual lawyer-client relationship. With respect to the proposed amendments, SLIA emphasized that the work of all staff to whom tasks are delegated is to be supervised by the lawyer. To the extent SLIA has seen claims arise from tasks delegated to non-lawyers, the claims arise mainly from the failure of the lawyer to review the work of the staff person thoroughly, or in some instances at all. With greater delegation of tasks to staff, lawyers should be even more diligent in their ultimate supervision of the work and their review of the work product.

### **Approved amendments to the Code of Conduct**

The Future of Legal Services Committee and Board of the Law Society reviewed the consultation findings carefully and in line with the Legal Services Task Team report, concluded that amendment to the Saskatchewan Code of Conduct to focus on permissive and effective direct supervision was warranted, with continued regulation of the supervising lawyer. Several conclusions were noted:

- there is majority support from paraprofessionals for expanded parameters and from lawyers for determining in their discretion, what tasks to delegate based on their staff's qualifications; and
- liability coverage may, but is not likely, to be significantly impacted, provided delegated services remain within professional services normally provided or supervised by a lawyer within the scope of the usual lawyer-client relationship and lawyers maintain supervisory diligence.

As a result, the amendments to the Saskatchewan Code of Conduct are as follows:

<b>Section 3.6-1</b>	Commentary 1 amended to reinforce that what is fair and reasonable with respect to fees includes consideration for work undertaken by non-lawyer staff / paraprofessionals.
<b>Section 6.1-1</b>	Commentary 1 amended to reflect that the extent of supervision should encompass additional elements including workload, the demonstrated ethics, trustworthiness, and reliability of the non-lawyer, and risk/complexity of the matter. Commentary 5 amended and 6 removed to reinforce that all work delegated should adhere to whether the professional and legal judgment of the lawyer is required.
<b>Section 6.1-3</b>	Section elements partially removed and elaborated to permit delegation at a lawyer's discretion with the exception of legal advice and professional legal judgment, trust undertakings (with exceptions), and activities that lawyers may also not undertake.

These amendments to the Code of Conduct allow greater flexibility for staff working under the supervision of a lawyer to provide delegated legal services without extension to providing legal advice, trust undertakings, or making legal argument and it is important to have in mind the following parameters:

<b>Lawyer responsibility</b>	A lawyer maintains complete professional responsibility for all professional services and business entrusted to them and must supervise staff and assistants to whom the lawyer delegates particular tasks and functions.
<b>Lawyer responsibility - education</b>	The responsibility to educate staff remains with the lawyer and the extent of supervision depends on: <ul style="list-style-type: none"> <li>• the type of legal matter and particular matter in question;</li> <li>• the degree of standardization and repetitiveness of the matter;</li> <li>• the experience and specialized training of the non-lawyer working on the matter; and</li> <li>• any additional factors which include workload, ability, demonstrated ethics, trustworthiness and reliability of the non-lawyer, and risk/complexity of the matter.</li> </ul>
<b>Lawyer responsibility - review</b>	A lawyer must review the non-lawyer's work at appropriate intervals, maintain a direct relationship with the client and ensure that no unauthorized person working under their supervision: <ul style="list-style-type: none"> <li>• gives legal advice;</li> <li>• gives or accepts trust conditions;</li> <li>• acts in matters requiring professional legal judgment;</li> <li>• undertakes duties that only lawyers may perform; or</li> <li>• performs things that lawyers themselves may not do.</li> </ul>
<b>Lawyer responsibility - billing</b>	Lawyers have parallel professional responsibilities for reasonable fees and billing practices, avoiding hidden fees, making legal services available efficiently and conveniently, and not using means that are false or misleading in offering legal services and not otherwise bringing the profession or the administration of justice into disrepute. There remains professional ethical responsibility in the Code of Conduct: <ul style="list-style-type: none"> <li>• for reasonable fees and billing practices (3.6-1);</li> <li>• making legal services available efficiently and conveniently (4.1-1); and</li> <li>• not using means that are false or misleading in offering legal services and not otherwise bringing the profession or the administration of justice into disrepute (4.1-2).</li> </ul>

## Conclusion

Importantly, under the new amendments, lawyers maintain responsibility for all delegation at their discretion – it is not mandatory but rather possible to expand delegation in appropriate instances where the skills, knowledge, and experience of staff so permit.

It also remains at the discretion of individual law firms, lawyers, and their staff to assign titles such as legal assistant or paralegal and there is no common educational standard or approach within Saskatchewan to application and use of these terms but lawyers are required to supervise staff within their employ, regardless of title.

Permitting additional practice of law activities by paraprofessionals under the supervision of a lawyer is an important change and contributes to:

- efficiencies in the practice of law;
- reduced costs for clients;
- greater access to legal services for the public; and
- effective delivery of legal services.

With the introduction of the amendments to the Code of Conduct, the Law Society is hosting a Continuing Professional Development workshop series focused on the benefits of appropriate delegation for both lawyers and clients and avoiding pitfalls.

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