



THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch

October 31, 2014

BY EMAIL: [avertlieb@maclaw.bc.ca](mailto:avertlieb@maclaw.bc.ca)

Art Vertlieb, QC, Life Bencher  
Chair of the Legal Services Regulatory Framework Task Force  
Law Society of British Columbia  
845 Cambie Street  
Vancouver, BC V6B 4Z9

Dear Mr. Vertlieb:

**Re: Legal Services Regulatory Framework Task Force**

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I write on behalf of the Canadian Bar Association (British Columbia Branch) (the “CBABC”).

The Canadian Bar Association nationally represents over 39,000 members and the CBABC has over 6,900 members. Its members practice law in many different areas and the CBABC has established 78 different Sections to provide a focus for lawyers who practise in similar areas to participate in continuing legal education, research and law reform.

The CBABC is pleased to offer its insight and assistance to the Law Society of British Columbia’s Legal Services Regulatory Framework Task Force (the “LSRFTF”).

The LSRFTF is to develop a regulatory framework by which legal service providers, who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest. In doing so, the LSRFTF is examining and identifying:

- areas of unmet need for legal services or advice;
- who are legal service providers other than lawyers or notaries who could provide legal services;
- legal practice areas suitable for the provision of legal services by non-lawyers;
- qualifications necessary for non-lawyers to provide legal services; and
- the regulatory framework for non-lawyers to provide legal services.

## Introduction

In our 2013 submission to Law Society Legal Services Providers Task Force, we recommended four foundational values that must be considered in decisions about making any changes to the regulation of legal service providers:

1. Independence of the Bar -- In essence, independence of the bar is critical to protect, and regulation through self-governance is a key element of independence of the bar.
2. Access to Justice – The bar has a leadership role to play in supporting innovations and improvements that increase access to justice, and coordinated steps involving other legal services providers could also play a significant role.
3. Effective Regulation – The Law Society of BC has historically proved an effective regulator of lawyers, and any changes must not diminish its ability to perform its role in ensuring the independence, integrity, honour and competence of BC lawyers.
4. Clarity of Roles – Any changes to regulatory structure must protect against public confusion about the types and limitations of services provided by any particular legal service provider.<sup>1</sup>

We stand by our recommendations today.

One fact hampering all legal stakeholders in Canada is that we do not know much about our justice system since data are not collected; we rely instead on anecdotal descriptions and not measurements. As a result, we recommend that flexibility and choice be built into any recommendations or strategies for the future regulation of legal service providers.

In November 2013, the national CBA Equal Justice Initiative released its report *Reaching equal justice: an invitation to envision and act* (the “CBA Equal Justice Report”).<sup>2</sup>

In August 2014, the national CBA Legal Futures Initiative, after over two years of consultation, research and analysis on the future legal marketplace in Canada, released its comprehensive report: *Futures: Transforming the Delivery of Legal Services in Canada* (the “CBA Legal Futures Report”).<sup>3</sup> The CBA Legal Futures Report provides a series of recommendations that can inform the LSRFTF’s work.

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<sup>1</sup> Submissions to the Law Society of British Columbia Legal Services Providers Task Force (October 18, 2013) available at: <http://cbabc.org/Advocacy/Submissions/2013/Submissions-to-the-Law-Society-of-British-Columbia>.

<sup>2</sup> Report available at: [http://www.cba.org/cba/equaljustice/secure\\_pdf/Equal-Justice-Report-eng.pdf](http://www.cba.org/cba/equaljustice/secure_pdf/Equal-Justice-Report-eng.pdf).

<sup>3</sup> Report available at: <http://www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf?ext=.pdf>.

### **Areas of unmet need for legal services or advice**

In 2011, after extensive public consultation, the Public Commission on Legal Aid found that the legal aid system in British Columbia is “failing needy individuals and families, the justice system, and our communities.”<sup>4</sup>

The areas of unmet needs for legal services or advice in the publicly funded legal aid system included:

- criminal law;
- child protection law;
- mental health law for persons involuntarily committed to a provincial health facility;
- refugees seeking asylum in British Columbia;
- family law; and
- poverty law.<sup>5</sup>

What was true in 2011 is, sadly, still true today. Despite positive work in the public legal aid system by the legal profession, the Law Society, the government and the public, the legal aid system in British Columbia is still failing and in need of reform.

Regarding unmet legal needs, the CBA Futures Report identified a strong trend:

If the Canadian legal profession cannot ensure that low- and middle-income Canadians have access to affordable, regional, and culturally competent legal services, someone else will. Similarly, if lawyers do not deliver services in ways that meet client expectations, someone else will.<sup>6</sup>

The areas of unmet needs for legal services or advice include:

- advising the public about more use of limited scope retainers;
- team delivery of legal services, including increased use of paralegals; and
- sustainable people law practices.<sup>7</sup>

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<sup>4</sup> *Foundation For Change: Report of the Public Commission on Legal Aid in British Columbia* by Leonard T. Doust, QC. (March 2011) at page 7, available at: [www.publiccommission.org/media/pdf/pcla\\_report\\_03\\_08\\_11.pdf](http://www.publiccommission.org/media/pdf/pcla_report_03_08_11.pdf).

<sup>5</sup> *Supra* at page 7.

<sup>6</sup> CBA Legal Futures Report at page 25.

<sup>7</sup> *Supra* at pages 94-97.

From a business perspective, Alternative Business Structures (ABSs) represent an unmet need. ABSs should be permitted, but only on a carefully regulated basis to protect the public and to lower legal costs for clients. The regulation of ABSs should include regulatory changes by the Law Society and the BC government to:

- allow fee sharing and referral fees to non-lawyers;<sup>8</sup>
- permit ownership of law firms by non-lawyers;<sup>9</sup> and
- permit investment in law firms by non-lawyers.<sup>10</sup>

Similarly, like ABSs, increased use of Multi-Disciplinary Practices (“MDPs”) should be made in order to meet current unmet needs.<sup>11</sup>

### **Legal service providers (not lawyers or notaries)**

Four major trends are seen as providing the impetus for change in the legal profession:

- globalization;
- technology;
- changing client expectations; and
- a growing lack of access to legal services.<sup>12</sup>

We see these trends being applicable as well to legal service providers who are not lawyers or notaries. While there are no measurable data on whom these legal service providers are, we have identified these common legal service providers in British Columbia:

- paralegals;
- arbitrators;
- mediators;
- parenting coordinators;
- tax accountants;
- financial planners;
- human resource consultants;
- pension benefits consultants;
- workers compensation consultants;
- government employed caseworkers;
- self-represented litigants;
- online service providers;

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<sup>8</sup> *Supra* at page 43.

<sup>9</sup> *Supra* at page 44.

<sup>10</sup> *Supra* at pages 33, 42 and 44.

<sup>11</sup> *Supra* at page 19 and 44.

<sup>12</sup> *Supra* at page 24.

- legal process outsourcers;
- immigration consultants; and
- patent and trademark agents.

For immigration consultants and patent and trademark agents, the Law Society and the BC government may be limited in their regulatory reform activities because of federal jurisdiction.

Outside of British Columbia, there are offshore law firms and legal process outsourcers providing legal services.<sup>13</sup>

### **Areas of legal practice suitable legal services by non-lawyers**

The CBABC has 78 sections and fora in 46 areas of legal practice.<sup>14</sup> Within these areas of legal practice, there may be identifiable aspects of the delivery of legal services which may be suitable for non-lawyers with the governing principle that these legal services will likely, in most circumstances, require the mentorship, supervision and direction of lawyers. This ensures that, as agents of positive change, we promote and facilitate that change in ways that affirm fundamental goals such as greater access to justice, meeting client needs, the independence of the bar and the protection of the public.

As noted above, the Public Commission on Legal Aid identified six areas where there is a current lack of representation. Given the current lack of representation in these areas, these would be areas to first explore whether non-lawyer legal service providers, with appropriate levels of training, could provide at least some of the services that the current legal market is not filling.

### **Qualifications necessary for non-lawyers**

The qualifications necessary for non-lawyers must be similar to lawyers. One model is to have educational providers train non-lawyer legal service providers in a similar way as has been done in other professions, for example, nurse practitioners in the medical field, hygienists in the dental field, and opticians in the ophthalmology field.<sup>15</sup>

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<sup>13</sup> *Supra* at page 19.

<sup>14</sup> See the CBABC Section's page at: <http://cbabc.org/Sections/About-Sections>.

<sup>15</sup> *Supra* at page 62.

## **Regulatory framework for non-lawyers to provide legal services**

In order for the public to be protected and access to justice provided, the regulatory framework for non-lawyers to provide legal services must be enhanced.

The CBA Legal Futures Report made a number of recommendations for what the regulatory framework could be and that could be applicable to British Columbia:

- permit ABSs, including non-lawyer investment in law firms, but only on a carefully regulated basis (Recommendation #4);<sup>16</sup>
- amend the Code of Professional Conduct for British Columbia (the “BC Code”) to permit fee-sharing with non-lawyers and paying referral fees to non-lawyers (Recommendation #5);<sup>17</sup>
- permit MDPs and ABSs to deliver non-legal services together with legal services (Recommendation #6);<sup>18</sup>
- amend the BC Code to provide for the independence of lawyers’ opinions (Recommendation #7);<sup>19</sup>
- require registration with the Law Society regarding compliance-based entity regulation (Recommendation #8);<sup>20</sup>
- require law firms and ABSs to comply and report on diversity (Recommendation #9);<sup>21</sup>
- amend the BC Code direct supervision rule to require effective, not direct supervision, of non-lawyers by lawyers (Recommendation #10);<sup>22</sup>
- ensure that the Law Society’s directors are both lawyers and non-lawyers (Recommendation #11);<sup>23</sup> and
- encourage educational providers to create parallel programs to educate legal service providers (Recommendation #21).<sup>24</sup>

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<sup>16</sup> *Supra* at page 42.

<sup>17</sup> *Supra* at page 43.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* at page 45.

<sup>20</sup> *Supra* at page 47.

<sup>21</sup> *Supra* at page 49.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Supra* at page 51.

<sup>24</sup> *Supra* at page 62.

**Conclusion**

We look forward to continuing the dialogue on this important Law Society initiative to ensure that British Columbians can have a diverse, vibrant and relevant legal profession in the face of major change. We also look forward to the ability to make further comment as your work develops.

Yours sincerely,

*(original signed by Alex Shorten)*

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cc

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