



Impact of the Law Society of Upper Canada's Licensing Regime on Community Agencies



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Legal Information not Legal Advice

- This presentation contains general legal information
- The law, programs/policies can vary
- This is not a substitute for legal advice
- If you have a question or problem, please contact us, your local legal clinic or a lawyer

Introduction

- On May 1, 2007, the Law Society of Upper Canada became responsible for regulating the paralegal profession in Ontario.
- Effective October 31, 2007, anyone in Ontario providing legal services must be licensed (lawyer or paralegal), unless not captured by the *Law Society Act* or exempt by a Law Society by-law.

What *Can* a Licensed Paralegal Do?

Paralegals can provide proceeding-related services in:

- Small Claims Court
- Ontario Court of Justice, under the *Provincial Offences Act*
- Summary conviction court, under the *Criminal Code*
- Administrative tribunals, including the specific *Insurance Act* matters.

By-Law #4, section 6(1).

What *Can't* a Licensed Paralegal Do?

- Paralegals are not permitted to appear in Family Court.
- Other than under the supervision of a lawyer, paralegals may not provide legal services that only a lawyer may provide, such as drafting wills or handling real estate transactions or estates.

Services By Non-Licensees

- See section 1(8) of the *Law Society Act* for those not captured by the *Act*, and Parts IV and V of By-Law # 4 for those exempt under the by-laws.
 - The Law Society Act is at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm
 - By-Law #4 is at <http://www.lsuc.on.ca/regulation/a/by-laws/bylaw4/>

Not Captured By *Law Society Act* (Not require a license)

- **1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.**
- 2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.
- 3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.
- 4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.
- 5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws.

Scope of Activity

Not Captured by *Law Society Act*

- The scope of practice is addressed in each exemption.
- Section 1(8)1 *may* apply to some community workers (see first point on previous slide).
- If the community worker is **governed by an Act** that regulates their activities they can provide legal services, as long they are acting in the **normal course** of their profession or occupation.

Exempt Under By-Law #4: (Not require a license)

- In-house paralegals employed by a single employer, such as municipal prosecutors
- Persons who are not in the business of providing legal services and occasionally provide assistance to a friend or relative for no fee
- Articling students, law students working in student legal aid services' societies, or as part of Pro Bono Students Canada.
- Employees of legal clinics funded by Legal Aid Ontario
- Employees of not-for-profit organizations established to provide legal services, provided they meet certain criteria
- Staff of the Office of the Worker Adviser
- Staff of the Office of the Employer Adviser
- Constituency Assistants working in MPP offices

Exempt Under By-Law #4: (Not require a license)

- Aboriginal Courtwork Program Workers
- Injured Workers Services (funded by Workplace Safety and Insurance Board)
- Certain Trade union representatives, and certain Ontario Federation of Labour staff and consultants
- Members of (subject to certain restrictions): the Human Resources Professions of Ontario; the Ontario Professional Planners Institute; the Board of Canadian Registered Safety Professionals and the Appraisal Institute of Canada

By-Law #4 Partial Exemption

- The most important exemption for community workers is found in By-Law #4, Part IV, section 28(2).

28. For the purposes of this Act, the following persons shall be deemed **not to be practising law or providing legal services:**

2. A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

Scope of Activity

By-Law #4, Part V

- Those exempt under section 30 of By-Law#4 can provide legal services that paralegals can provide (generally not applicable to community agencies).
- Scope of practice is specifically addressed under sections 31 & 32 (generally not applicable to community agencies).

Scope of Activity

By-Law 4, Part IV, Section 28 (2)

- This partial exemption applies to the majority of community workers (most workers are not governed under another Act – see slide 6, first point).
- As long as it is in the **normal course** of the job, can provide legal services **except representing in a proceeding before adjudicative bodies.**

Scope of Activity

By-Law #4 Partial Exemption

- Even if in the “**normal course**” of job, based on the *Act*’s definition of “**representation in a proceeding**” many community workers can no longer appear before, or assist clients in preparing documents for, adjudicative bodies such as courts and tribunals.

Provision of Legal Services

Law Society Act, ss. 1(5) & (6)

- (5) *A person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.*
- (6) *Includes:*
- 1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.*
 - *2. Selects, drafts, completes or revises, on behalf of a person,*
 - i. a document that affects a person's interests in or rights to or in real or personal property,*
 - *ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,*
 - *iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,*
 - *iv. a document that relates to a matter under the Bankruptcy and Insolvency Act (Canada),*
 - *v. a document that relates to the custody of or access to children,*
 - *vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or*
 - *vii. a document for use in a proceeding before an adjudicative body.*
 - *3. Represents a person in a proceeding before an adjudicative body.*
 - *4. Negotiates the legal interests, rights or responsibilities of a person. 2006, c. 21, Sched. C, s. 2 (10).*

Representation in a Proceeding

Law Society Act, section 1(7)

- Section 1(7) of the Act states the following shall be considered to be representing a person in a proceeding:
 - 1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.
 - 2. Conducting an examination for discovery.
 - 3. Engaging in any other conduct necessary to the conduct of the proceeding.

By-Law #4 Partial Exemption Conclusion

- As the definition of “**representing in a proceeding**” is so broad, unless such workers become licensed or can somehow fit into another exemption, they are unable to do almost everything related to a proceeding.
- This includes assistance with social assistance internal reviews, landlord and tenant board matters, human rights claims.

By-Law #4 Partial Exemption

Conclusion

- Workers *should* be able to provide other legal services than “representing in a proceeding,” as long as it is in the “normal course” of their job (see slide 14).
- The Law Society, however, has indicated that the partial exemption was **not** intended to allow workers to assist with wills and/or powers of attorney.

Non-Licensee Requirement

- Non-licensees must specify the areas of law and the legal services they are authorized to provide (*Law Society Act*, section 26.1 (6) & (7)).

Penalties

- There are penalties for providing unauthorized legal services.
 - *Up to \$25,000 for a first offence.*
 - *Up to \$50,000 for each subsequent offence.*
- 2-year limitation, from date of alleged offence, for prosecutions.

Law Society Act, sections 26.2.

Review of Exemptions

By-Law #4

- Section 33 mandates a review of the exemptions in sections 30, 31 and 32 by May 1, 2009.
- Note that the “partial exemption” is not mandated to be reviewed.

Law Society Contact Information

- More information about the new licensing regime is available from the Law Society of Upper Canada:

www.lsuc.on.ca

Toronto area: 416-947-3300

Toll-free: 1-800-668-7380

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