



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch



LEGAL PROFESSIONS REGULATORY MODERNIZATION

Response to Legal Professions
Regulatory Modernization
Intentions Paper

November 18, 2022

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Canadian Bar Association, BC Branch

The Canadian Bar Association (CBABC) represents over 7,600 lawyers, students, and judges in BC as a branch of the Canadian Bar Association (CBA), the largest national, legal professional association. Members of CBABC are dedicated to protecting the rule of law, the independence of the judiciary and the Bar, and improving laws, justice and legal systems and access to justice. We believe in equality, diversity and inclusiveness in the profession and in justice and legal systems and are committed to the process of reconciliation with Indigenous peoples.

CBABC members have unique insight into the BC justice system and the impact laws have on people. We are committed to the steady progress of our legal and justice systems and improved access for all British Columbians. Strategic and efficient operations in those systems can be achieved through careful analysis and innovation. Fair access to justice can be achieved by acting with sensitivity and courage to meet the needs of those who suffer most under those systems today.

Through a Board of Directors, 65 Sections, 20 committees and working groups, and member service programs, CBABC:

- Improves and promotes the knowledge, skills, ethical standards and well-being of members of the legal profession.
- Provides opportunities for members to connect and contribute to the legal community.
- Advocates on behalf of the profession based on members' professional, front-line experience.

The development of this submission was led by the Professional Issues Committee whose mandate is to monitor, develop policy and lead submissions on legal profession issues including the regulation of the legal profession, the licensing of alternative legal services providers, and the protection of solicitor-client privilege in British Columbia.

Members of this Committee from around British Columbia include:

Clare Jennings, Chair	Odette Dempsey-Caputo
Graeme Keirstead, KC	Jennifer Khor
Jacob Kojfman	Eric Ledding
Allen Soltan	Ann Tuck
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Executive Summary

In March 2022, the Ministry of Attorney General announced its plans to modernize the regulatory framework for legal services providers in British Columbia, with legislation to be introduced in Fall 2023. Following dialogue with the staff of existing regulators, the Law Society of British Columbia (Law Society), the Society of Notaries Public in British Columbia (Notaries), and a representative of the BC Paralegal Association (Paralegal Association), the Ministry presented an Intentions Paper on September 14, 2022.

The Intentions Paper asserted that reforms to the regulation of lawyers and notaries and the introduction of regulation of paralegals are required “to help make it easier for British Columbians to access legal services and advice”. The Ministry identified that as its first objective. Its second objective was that the governance framework for regulation would ensure that the public interest is paramount. The Ministry sought input from the public and the professionals who are subject to regulation now and in the future.

In October 2022, CBABC hosted a series of virtual and in-person Roundtables for lawyers, including CBABC members and non-members, to provide their views on the proposed reforms. CBABC also engaged its Provincial Council, a 75-member body of lawyers in all practice areas throughout British Columbia. Several of CBABC’s committees and working groups, including the Access to Justice Committee, discussed the Intentions Paper and provided input. CBABC’s submission is also informed by the engagement it undertook with lawyers in Spring 2022 on the [Report of a Governance Review of the Law Society of British Columbia, November 2021](#) to explore what governance changes could be made.

The Professional Issues Committee, which has a mandate to monitor and develop recommendations regarding regulation of lawyers, has been studying and discussing these principles for 18 months, and has been referring to the previous work of CBABC on these issues from the past 10 years. Most recently, the Committee met with the representatives of the BC Paralegals Association and BC Notaries Association. All of this study and engagement informs this submission.

CBABC has been a long-time supporter of a single regulator model to ensure efficiency and congruence in the regulation of lawyers, notaries and paralegals. However, that support is contingent on lawyers:

- maintaining independence and self-regulation; and
- setting strong parameters for:
 - the scope of practice
 - criteria for education and competencies
 - an effective investigation and discipline framework, and
 - the provision of satisfactory insurance coverage.

CBABC does not accept the premise that changes to regulation of lawyers, notaries and paralegals will impact access to legal services significantly, or in the magnitude that the Ministry asserts. We agree this is an opportunity to introduce some changes that will contribute to increasing access to legal services, but to assert that this “broad, more holistic approach to reform” will achieve a greater result than, for example, funding the family law legal aid system, or increasing funding for court services and technology, is an overstatement and an unrealistic assertion.

It is paramount that any reforms to the regulation of lawyers, notaries and paralegals preserve the independence of lawyers from regulation by government. The principle of self-regulation of lawyers must ensure that it is lawyers who make the governing decisions. The regulator (alongside associations and individuals) must retain the responsibility to protect the rule of law.

Throughout CBABC's engagement regarding the Intentions Paper, lawyers repeatedly emphasized that details and specifics matter. While CBABC shares some recommendations in response to the six broad categories for reform, to make meaningful, concrete contributions, CBABC should be included in continued development of the legislation, regulation and rules as more specific ideas emerge. Such engagement is essential to the self-regulation of lawyers.

Background

The Ministry's initiative comes at a time when the Law Society is maintaining and improving its regulatory framework. These include:

- Responding to the [Report of a Governance Review of the Law Society of British Columbia, November 2021](#)
- Establishing the [Indigenous Framework](#) to guide the Law Society's work in reconciliation
- Administering an [Innovation Sandbox](#) to explore possible alternative service provider models
- Maintaining public confidence in its well-regarded [Anti-Money Laundering](#) system
- Establishing the [LSBC Tribunal](#)
- Moving towards a [Competency-based System for Lawyer Licensing](#)

CBABC's engagement on these recent developments includes its [Submission on Self-Regulation and LSBC](#) during the course of the governance review, and its participation in the Cullen Commission on Anti-Money Laundering in British Columbia. CBABC is revising its Reconciliation Action Plan for release in January 2023 and has been developing its future submissions on law school curriculum, the licensing procedure and working conditions for articling students, and the Innovation Sandbox.

On the matter of the regulation of lawyers, notaries and paralegals, an issue that has been discussed at least over the past three decades, CBABC's submissions include:

- [The Future of Legal Services, Legal Practices, and the Legal Profession in British Columbia](#), provided to the Law Society on March 31, 2020
- [Family Law Legal Services Providers: Consultation Paper](#) provided to the Law Society on December 21, 2018 by the [Access to Justice Committee](#) and [Family Law Working Group](#)
- [External Review of Legal Aid Service Delivery in British Columbia](#) provided to Jamie McLaren, KC on November 23, 2018
- [The Civil Resolution Tribunal Amendment Act, 2018 \(Bill 22\)](#), provided to the Provincial Government of BC on May 8, 2018
- Submissions to the Law Society's Legal Services Providers Task Force in [2013](#) and [2014](#)
- Letter to the Honourable Shirley Bond regarding notaries' proposed changes to scope of practice in [2012](#) which includes the submission in 2010

CBA's Mission Statement includes the goal of improving access to justice. As outlined in CBABC's [Agenda for Justice 2021](#), improving access to justice is at the core of CBABC's advocacy initiatives. CBABC's access to justice advocacy is anchored by the authoritative report produced by CBA, [Reaching Equal Justice: An Invitation to Envision and Act](#) (2013).

Discussion

General Principles

Self-regulation

It is paramount that any reforms to the regulation of lawyers preserve the independence of lawyers from regulation by government. Without an independent profession, there can be no access to justice. Undue government interference in the regulation of the legal profession would hamper the ability of lawyers to advocate for their clients zealously and serve their clients effectively. More broadly, an independent legal profession is crucial because it allows lawyers to contribute to law reform, ensures a functional justice system, and allows the judiciary to maintain their independence; all of these roles are critical for a free and democratic society governed by the rule of law. The principle of self-regulation of lawyers must ensure that it is lawyers who make all governing decisions. As Justice Estey held in *AG Can v Law Society of BC*, [1982] 2 SCR 307 at 335-336, 1982 CanLII 29:

...the independence of the bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally.

The regulator (alongside associations and individuals) must retain the responsibility to protect the rule of law. These principles, fundamental to our democracy and essential to protecting citizens from government over-reach, are under threat throughout the world, including in British Columbia. One only needs to review the commentary of politicians and candidates for public service at all levels of government throughout the past year to see that the rule of law is not understood, and not protected by some of those individuals.

The Intentions Paper contains the assertion that the government is not proposing, and has no intention of proposing, changes that would interfere with the independence of lawyers or self-regulation. However, as the intentions are subsequently detailed, ideas such as removing the licensees' opportunity to bring resolutions to an annual general meeting, or a Board composition that does not contain a majority of lawyers, suggest that there is a difference in understanding of what independence and self-regulation mean with respect to the regulation of lawyers.

Access to Justice

Improving access to justice is a core part of CBABC's mandate. Both CBABC and its parent organization, CBA, have been involved in significant studies and made recommendations to address this complex issue such as [Foundation for Change](#) and [Reaching Equal Justice](#). CBABC is a member of Access to Justice BC and endorses the [Triple Aim approach](#) to addressing the issue.

As a professional association, CBABC has a number of ongoing and recent programs to improve access to justice, including:

- Rural Education and Access to Lawyers (REAL) – an initiative to place 2nd year law students for a summer in communities where there is a demand for legal services and few lawyers to provide those services, with the goal of having those students return to establish law practices
- A2J Tech Drive – an initiative to provide rural and Indigenous communities with pre-owned computer hardware from lawyers and law firms upgrading theirs, so that individuals in those communities are assisted to appear in courts and tribunals virtually, and access legal advice
- A2J Week BC – an annual program, now in its fifth year, to provide lawyers and other legal service providers with inspiration and guidance to change day-to-day legal systems to improve access to justice
- Continual advocacy to the courts and the Ministry’s Court Services Branch to modernize and simplify rules, procedures and processes to cut down on the steps required to access courts and tribunals, thereby reducing time and expense for clients
- [Agenda for Justice 2021](#) - our series of recommendations to the provincial government on legislative reform and policy funding. The recommendations include the request for government to restore legal aid funding in order to establish family law legal aid representation for low-income families

Since the implementation of the 7% provincial sales tax on legal services provided by lawyers, which was introduced with the rationale that the taxes collected would fund the legal aid system, CBABC has repeatedly called on the government to make good on the promise to use the funds collected to support the legal aid system. Government continues to refuse to do so, yet that step would provide thousands of British Columbians with access to legal advice and representation they otherwise cannot afford, enabling them to resolve child support and parenting disputes which form most of the family law matters in our courts.

CBABC does not accept the premise that changes to regulation of lawyers, notaries and paralegals will impact access to legal services significantly, or in the magnitude that the Ministry asserts in the Intentions Paper. We agree this is an opportunity to introduce some changes that will contribute to increasing access to legal services, but it is unrealistic and a significant overstatement to assert that this is the “broad, more holistic approach to reform” which will achieve greater results than, for example, funding the family law legal aid system.

Any professional providing legal services incurs the costs of running their business and contributing to British Columbia’s economy. These costs, including facility rental, information technology, employment of support staff and systems to comply with regulatory requirements, are by necessity covered by fees charged to clients. Should paralegals or others become regulated as independent legal professionals, they too will have these costs.

Furthermore, it seems that when discussing access to legal services and access to justice (terms which have multiple potential definitions and should be defined in the statute if they are going to be relied upon), it is asserted that the greatest need is in the areas of employment, tenancy, and family disputes. Family law disputes are acknowledged as the most challenging of those three areas because of the personal and immediate impact on individuals who are forced to make significant decisions when they are experiencing heightened emotions. It is an area of practice with a greater number of complaints about service. While the overwhelming majority of these are unfounded, this clearly demonstrates that

practitioners in this area must be properly qualified. It is also an area of the law which is more complex than is perhaps recognised by government or those who do not practice in the area.

CBABC has made previous submissions about the important role of lawyers in the area of family law and strongly cautioned against permitting other professionals, such as notaries, to engage in this area. Without repeating those submissions, which are noted in the Appendix, we point out that increasing the supply of professionals in family law is not a solution that will assist those individuals who are waiting for a lawyer or cannot afford a lawyer, unless those professionals have the education and appropriate apprenticeship/supervision to properly assist those clients. This inevitably means that they will also be charging fees to cover the costs of their training, their regulation, and their overhead, and passing those on to clients. There is no data indicating those costs will be less than what lawyers charge. Accordingly, there is no guarantee that increasing the supply of assistance from say, paralegals, will enable those who cannot afford services to access them from a new category of professionals. Further, there does not seem to be a supply of paralegals wishing to start family law service practices (see discussion under Flexible Licensing Framework).

In summary, access to legal services and access to justice and resolution of disputes are important issues to be addressed. Government, legal professionals, the regulator, educational institutions, not-for-profit organizations, courts and tribunals must keep working on this issue and make more progress together. Regulation of a new category of legal professionals who do not yet have the desire, education, or experience to step into a complex and demanding area of client service will not meaningfully address this concern and is not in the public interest.

Risk

Every time a member of the public places their trust in legal advice they have received from a lawyer or notary, there is a risk that their trust is wrongly placed, which can result in significant loss to the client. Lawyers and notaries are self-insuring, meaning they take on the collective risk that members of their professions might fall below practice standards, regardless of their shared education, articling training, and admissions exams. That self-insurance ought to continue.

However, the Intentions Paper does not address how the risk posed by paralegals or other professionals will be addressed. This is a very important consideration in regulation to protect the public.

The cost of premiums for insurance coverage is determined in part by a defined scope of practice and a predictable number of insureds in a category. Without certainty in those areas, it is very difficult to assess risk from an underwriting point of view. While information is limited, it appears that the number of paralegals seeking to have an independent scope of practice will be low to begin with, and it is therefore very unlikely that paralegals would be able to be self-insured. The same is true for “other” legal professionals. Accordingly, paralegals and others would need to secure private insurance (with potentially unpredictable coverage and premiums, given the limited information known about risk, and those costs passed on to their clients). Alternatively, all lawyers, notaries, paralegals and any others would need to be covered in one self-insured insurance program.

If all legal service providers are covered under the same insurance program or pool, the cost of insuring (and indemnifying) non-lawyer service providers will effectively be borne by lawyers, as our numbers are overwhelmingly greater than notaries and paralegals. Allowing non-lawyers to provide unsupervised legal

services to the public may increase access to legal services, but it also brings with it a potentially significant increase in risk to the public, and a corresponding increase in risk of professional liability claims. Lawyers, and by extension their clients, should not be forced to take on the cost of insuring other professionals.

The issue of risk and insurance is one which must be carefully considered in the development of the single regulator and before legislation is introduced. As noted throughout this submission, CBABC expects to be engaged in those conversations on behalf of lawyers.

Reconciliation

Pursuant to the *Declaration on the Rights of Indigenous Peoples Act*, the government should take all measures necessary to ensure that the proposed regulatory framework—in all respects—is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*. This duty has heightened importance in the present context given the justice system’s colonial history and the harms it has caused, and continues to cause, to Indigenous peoples. In addition, the proposed regulatory framework should assign the regulator a mandate to support reconciliation with Indigenous peoples, who have experienced, and continue to experience, heightened barriers to accessing justice.

CBABC expects that the Law Society’s [Indigenous Framework](#) will be considered in drafting the single statute and that the obligation for cultural competency training in Indigenous matters will continue.

Single Statute, Single Regulator

CBABC has long been a supporter of a single regulator model to ensure efficiency and congruence in the regulation of lawyers, notaries and paralegals. However, that support is contingent on lawyers:

- maintaining independence and self-regulation; and
- setting strong parameters for:
 - the scope of practice
 - criteria for education and competencies
 - an effective investigation and discipline framework, and
 - the provision of satisfactory insurance coverage.

Please refer to the documents listed in the Background section above.

Throughout the Intentions Paper, the Ministry refers to the obligation of the single regulator to regulate “legal services” and to ensure that there are sufficient available legal services for the public. CBABC does not agree that the single regulator should have a role in regulating legal services if that role goes beyond regulating the individuals and legal entities providing the legal services. For example, the regulator should not have a role in prescribing fees for legal services or limiting the number of legal service providers in an area.

Given that such major change was not readily apparent or specified in the Intentions Paper, CBABC’s submission does not address that concept. If the Ministry’s intention is to regulate services rather than

the professionals providing them, the Ministry should specify its intentions and CBABC will provide a separate submission on that issue.

In listing the benefits of a single statute and single regulator model, the Ministry says that “if the regulator has a clear mandate to facilitate access to legal services, [it] will be well positioned to identify gaps in underserved areas and to regulate in a manner that addresses those gaps”. To the extent that this suggests the government is walking away from its responsibility to provide publicly funded legal aid in high-needs areas (such as family disputes experienced by low-income people), or to consider how to encourage lawyers, notaries, and paralegals to work in small and rural communities, CBABC disagrees. It is not the role of the regulator, nor is it the responsibility of the lawyers, notaries, and other providers who fund the regulatory system to solve the broad, multi-faceted access to justice problem. As noted above, that responsibility falls on many shoulders.

Clear Mandate

In principle, CBABC agrees with Intentions 2.1 – 2.3. These core responsibilities should be narrowly interpreted and prioritized to avoid the regulator losing focus. For example, the core responsibility of setting standards for registration, also known as admission to practice, is a responsibility requiring immediate attention in light of reports of wide variance in articling conditions, identified gaps in knowledge and competencies upon entering articles, and the [mental health challenges](#) faced by new lawyers.

In reviewing this section of the Intentions Paper, lawyers had questions about the definition of “public interest”, “access to legal services”, and “effective legal professions”, and whether “guiding principles” should be in a statute. These terms have different meanings to different audiences and to the extent that they are to form part of the clear mandate, further explanation than that offered in the Intentions Paper is required.

Modernized Governance Framework

The composition of the single regulator’s Board depends on its responsibilities and the data available to the Board.

Lawyers have differing views of what the Board responsibilities should be. Most support the idea of a Board that sets strategic direction, ensures necessary resources, and provides oversight of the operations of the entity. If these were the roles of the Board, the individuals on it would not have a role in the regulatory operations such as program creation, regulatory compliance advice, or assessments or problem-solving during the licensing or admission to practice period (e.g., articling student interviews). Given that the single regulator will regulate over 17,000 professionals, it seems that the Board itself should not be involved in operational matters, in the way that it is to a limited extent now.

At present, many lawyers believe that, absent a Bencher who has personal experience with a specific issue or community, there is insufficient information available to the governing Board to inform its decisions. Therefore, the Board composition must reflect the make-up of the lawyers in the profession. This is evidenced by the call for candidates from among solicitors (who are under-represented on the current Law Society Board), by the campaign to elect more Indigenous Benchers, and by the vocal support for continued election by geography. If there was data about the nature of practice for small firms, large

firms, Indigenous, Black and other racialized¹ lawyers, small communities, large urban centres, different areas of practice, and different stages of career, then perhaps lawyers would be more supportive of a self-regulated governance model that did not adhere to the current framework. This data should be collected and available.

CBABC agrees that a smaller, more agile Board composition is required, to be consistent with effective and modern regulatory operations. A smaller Board would allow for meaningful discussion and debate when carrying out the Board's responsibilities. The regulator should establish a data gathering and disclosure methodology, including engagement with licensees through their respective professional associations, to bring information to the Board to guide its decision-making.

The majority of lawyers wish to retain a geographic model of representation. The geography and population distribution in British Columbia means that what legal services are delivered, to whom, and how, varies by geography. Since the regulation of legal professionals is at its core about the standards legal professionals must meet in delivering legal services, CBABC recommends that elections and appointments be distributed based on geography.

In considering the composition of the Board, CBABC notes that at the Law Society Board, there has been great progress to achieve inclusion of Indigenous, Black and other racialized lawyers and public appointees without having reserved seats for individuals from those communities. As noted in the Intentions Paper, women, who have historically been under-represented, are no longer under-represented. It is critical that the Board of the single regulator reflects the society it will protect and accordingly, through a combination of elections and appointments, care should be taken to achieve balance of those models.

The matter of Indigenous representation on the Board is significant and distinct in British Columbia from discussions of representation by other historically marginalized groups. Indigenous representation on the Board ensures that lawyers and the communities they serve benefit from a regulator that is cognizant of Indigenous cultural competencies. Indigenous lawyers, and the Indigenous communities that they serve, face unique issues directly stemming from systemic and historic racism and ongoing experiences of colonization. The incorporation of meaningful representation is an opportunity to set a new trajectory of reconciliation in the legal profession in BC.

CBABC has acknowledged with regret the role that the legal profession in BC has played in the perpetuation and application of laws that have had harmful impacts on Indigenous peoples. Indigenous peoples are entitled to access to justice and the implementation of the inherent rights set out in the *United Nation Declaration on the Rights of Indigenous Peoples*. British Columbia has specifically endorsed this trajectory in the *Declaration on the Rights of Indigenous Peoples Act*.

It is critically important for the regulator's Board to incorporate Indigenous perspectives in the regulation of a growing professional body. This cannot be achieved by education and data alone. A Board comprised of Indigenous and non-Indigenous lawyers, notaries, and paralegals can directly impact the perpetuation

¹ We acknowledge that there are different words that can be used to describe people's ethnic or cultural background and not everyone agrees what language should be used. Accordingly, we have adopted language of the BC Human Rights Commission, "Indigenous, Black and other racialized groups".

and application of reconciliation and access to justice. Indigenous representatives on the Board will be in a position to increase awareness about the application of Indigenous cultural competency initiatives.

In light of a smaller Board composition, as suggested in this case, it would benefit the Board to have at least one seat reserved for an Indigenous person. It is important to remember that the Indigenous population includes First Nations, Métis, and Inuit Peoples and that one Indigenous member cannot be expected to reflect the diversity in those populations. One need only refer to the *National Report on Truth and Reconciliation* to realize the necessary and life-changing impact the Board may have on Indigenous communities if it takes the opportunity to invite to the table, and meaningfully engage, Indigenous perspectives.

Another consideration for the Board composition is the inclusion of public and licensee involvement, and the distribution of licensee seats among the regulated professionals.

In order to ensure self-regulation, the majority of the Board must be licensees subject to regulation. Public appointees bring additional and important perspectives to Board discussions, and those public appointees can help “fill the gap” in areas such as the skill set, geographic regions, or identified underrepresented groups such as Indigenous, Black or other racialized individuals.

In particular, the majority of licensees on the Board must be lawyers. CBABC makes this submission for three reasons. First, lawyers have a fundamental obligation to uphold the rule of law. To meet this obligation, lawyers must remain independent and self-governing. To truly maintain self-regulation and the independence of the profession, a Board comprised of a majority of lawyers is required. Second, lawyers are trained and authorized to engage in the full scope of the practice of law. Notaries, paralegals, and others will be given a limited scope of that primary scope of practice. The limited training and experience of other practitioners will necessarily inhibit their ability to understand and properly regulate lawyers engaged in the full practice.

Finally, the distribution of professionals currently regulated is approximately 16,000 lawyers to 400 notaries. The number of paralegals to become regulated is unknown but is expected to be fewer than 500. Based on numbers alone, it can reasonably be anticipated that the issues for the Board’s determination will most often be about lawyers.

Accordingly, CBABC suggests the following distribution of Board positions of the single regulator as an example, notwithstanding its reflections about the regulation of paralegals noted in the next section:

Composition: 19 members

- 4 public members
- 2 notaries, with one from outside of Vancouver
- 2 paralegals, with one from outside of Vancouver
- 11 lawyers
 - 5 from Vancouver County
 - 2 from New Westminister County

- 1 from Victoria County
- 1 from Nanaimo County
- 1 from Thompson-Okanagan
- 1 from Northern and Eastern BC (from the current Prince Rupert, Cariboo and Kootenay Counties).

Flexible Licensing Framework

As noted above, CBABC understands it is the position of the Ministry that the new statute is intended to regulate the professionals who provide legal services, not the legal services themselves. Should the Ministry have a different intention, it should be transparent with the professionals, the current regulators and the public. This would then be an entirely different conversation and would require more time than is currently contemplated.

CBABC agrees that the “practice of law” should be defined in statute and is not aware of any problem that needs to be addressed by changing the current definition, other than to modernize the language. We also agree that notaries’ core scope of practice should continue to be defined, with a mechanism to potentially expand that scope without legislation. Any change, however, must only come after the regulator’s review of education, competencies, risk, increased insurance coverage, continuing professional development and the protection of the public.

Since March 2022, CBABC has inquired what proposed scope of practice is desired by paralegals, and whether they wish to be able to act independently without lawyer supervision (as in the case in Ontario). It is also unclear what education, competencies, standards, ethics, insurance, and fees are envisioned. We have not been able to obtain answers to these questions, which significantly hampers CBABC’s ability to make meaningful submissions on these issues. As stated in CBABC’s previous submissions in 2010, 2012, 2013 and 2014 with respect to the expanded scope of practice for notaries, all of these must be considered in order to provide appropriate public protection.

We have inquired as to the areas of practice in which independent paralegal work might be undertaken. There is little publicly available information about the use, effectiveness, and evaluation of the “designated paralegal” regulation through the Law Society. Anecdotal information indicates that there is a wide range of those who use the title “paralegal”, why, and what benefit that has brought to the public. There is also a wide range of views from paralegals on whether they want to be able to take on more responsibilities through direct client engagement and advocacy for clients in meetings, negotiations, mediations, tribunals or court. The informal collection of information suggests that the desire for such increased scope is limited.

Until it is clarified what proposal the BC Paralegal Association or others see for paralegals, CBABC does not recommend including such scope in a statute; rather, that the regulator make this issue a priority for examination. This is not intended as a criticism of the BC Paralegals Association; it is acknowledged that the BCPA is a voluntary membership association without staff and is entirely dependent on the goodwill and leadership of a small group of individuals, which is appreciated. Having the regulator undertake engagement, assessment and bring forward a proposal would likely assist with achieving clarity on the scope of practice, if any.

Notwithstanding this view that the scope of practice for paralegals should not be in the forthcoming statute, CBABC acknowledges that having a limited number (no more than 2) seats on the Board could assist in expanding and regulating the classes of professionals.

The Intentions Paper refers to a model of “case by case” granting of licenses proposed in the Intentions Paper. It is unclear what is meant by this. While the licensing framework should be sufficiently flexible to accommodate innovative ways of delivering affordable, high-quality legal services to the public, this must not mean regulation of legal professionals on an individualized basis. Members of the public and other legal professionals must be able to know, from the title of a regulated legal service provider, what qualifications they have been required to achieve and what services they are authorized to offer. Individuals, whether they be members of the public seeking assistance, or a professional determining who is on the other side of a file, should not have to individually look up each person to understand what it is they are allowed to do.

A new regulator of lawyers, notaries, paralegals, and others should also simplify the regulatory requirements required of those professionals to reduce the costs of compliance. The current system of regulation of lawyers is burdensome, whether evaluated by time taken to understand pages of regulations on a single topic, the technology used, or the personnel required to maintain the systems. Reducing the costs of *providing* legal services should in turn reduce the costs of *accessing* legal services.

Many of the Law Society’s regulations meet the public interest. For example, the regulations to combat anti-money laundering have recently been praised in the Cullen Commission’s Report on Anti-Money Laundering in British Columbia. This is not to say that there is not room for improvement. It would be beneficial for the Regulations to be reviewed, modernized, and simplified in order to manage actual and typical risks. That would reduce the financial burden on lawyers and law firms and thus reduce the overhead costs they may need to meet through client revenue. Where appropriate, based on a risk-benefit analysis, the provision of legal information and law-related assistance by certain individuals should be exempted from the framework or made subject to reduced requirements. Examples include Native Courtworkers, non-lawyer mediators, and community advocates. Finally, neither this flexible licensing framework nor any other aspect of the regulatory framework should deny or impede an individual’s ability to access a lawyer.

Effective Discipline Framework

CBABC notes that the Law Society has been making incremental, positive changes to its disciplinary framework, which was noted by Harry Cayton in the Report on the Governance Review. This progress towards modernization should continue and be adopted for all the professionals under the single regulator.

CBABC encourages all mechanisms that will allow the Law Society to address the licensees who have frequent encounters with the disciplinary process of the Law Society and create the highest risk. The profession, as well as the public, will have greater confidence in the Law Society disciplinary procedure when those individuals either correct their conduct or are removed from practice.

As further changes are contemplated, CBABC expects that lawyers will remain the majority on disciplinary panels involving lawyers. This is a core element of self-regulation, that the conduct of lawyers is evaluated and disciplined as appropriate by other lawyers.

Enhanced Focus on Public Interest

CBABC agrees that the responsibilities of a regulator should be separate from those of a professional association and that a regulator should act in an advocacy role in alignment with its legislation. We note that in the case of the proposed single regulator, this will include advocacy to protect and promote the rule of law.

CBABC is puzzled by the assertion that licensees should not be able to propose directions to the regulator. As one lawyer put it, the resolutions advanced by those new to the profession have drawn attention to critical issues such as diversity and inclusion, as well as the experiences of those recently admitted to practice. Without those resolutions, would the regulator have addressed those issues in a timely manner?

CBABC recommends that the Annual General Meeting should be retained as a mechanism to hear from the general public and the regulated licensees. There should, however, be a publicized methodology to screen proposed resolutions to ensure they address matters within the regulator's authority and that the public interest in the resolution is identified. This screening mechanism could be included in a form to be completed by licensees or the public wishing to bring forward a resolution.

Similarly, if there are public concerns with regulation, as opposed to a complaint about an individual legal service provider, there should be a publicized methodology to allow members of the public to bring forward such concerns to the regulator.

Next Steps

Throughout CBABC's engagement regarding the Intentions Paper, lawyers repeatedly emphasized that details and specifics matter. While CBABC shares some recommendations in response to the six broad categories for reform, to make meaningful, concrete contributions, CBABC should be included in continued development of the legislation, regulation and rules as more specific ideas emerge. Such engagement is essential to the self-regulation of lawyers. Continued engagement with the professional associations and their regulators will assist in avoiding unintended negative consequences, particularly when new concepts are introduced.

CBABC appreciated engaging directly with notaries and paralegals in preparing this submission. The more frequently that discussions can bring lawyers, notaries and paralegals together, the more likely it is that the hoped-for outcomes will be achieved.

Recommendations

CBABC makes the following specific recommendations and/or comments:

General Principles

Self-regulation

1. Any reforms to the regulation of lawyers should preserve the independence of lawyers from regulation by government.

Access to Justice

2. Changes to regulation of lawyers, notaries and paralegals will not impact access to legal services significantly, or in the magnitude that the Ministry asserts. Funding the family law legal aid system, for example, would achieve a greater result.
3. “Access to legal services” and “access to justice”, as terms with multiple definitions, should be defined in the statute if they are to be relied upon.
4. Increasing the supply of professionals in family law by permitting other professionals, such as notaries, to engage in this area is strongly cautioned against. Regulation of a new category of legal professionals who do not yet have the desire, education or experience to step into a complex and demanding area of client service will not meaningfully address access issues and is not in the public interest.

Risk

5. The issue of risk and insurance must be carefully considered in the development of the single regulator and before legislation is introduced.
6. Lawyers, and by extension their clients, should not be required to take on the cost of insuring other legal professionals.

Reconciliation

7. Pursuant to the *Declaration on the Rights of Indigenous Peoples Act*, the proposed regulatory framework should be consistent – in all respects – with the *United Nations Declaration on the Rights of Indigenous Peoples*.
8. The proposed regulatory framework should assign the regulator a mandate to support reconciliation with Indigenous peoples, who have experienced, and continue to experience,

heightened barriers to accessing justice. The Law Society's Indigenous Framework should be considered in drafting the single statute and the obligation for cultural competency training in Indigenous matters should continue.

Single Statute, Single Regulator

9. CBABC's support of the single regulator model is contingent on lawyers:
 - maintaining independence and self-regulation, and
 - setting strong parameters for:
 - the scope of practice,
 - criteria for education and competencies,
 - an effective investigation and discipline framework, and
 - the provision of satisfactory insurance coverage.
10. The single regulator should not have a role in regulating legal services if that role goes beyond regulating the individuals and legal entities providing the legal services.

Clear Mandate

11. The core responsibilities set out under Intentions 2.1-2.3 should be narrowly interpreted and prioritized to avoid the regulator losing focus.
12. Further clarity regarding the terms, "public interest", "access to legal services", "effective legal professions", and "guiding principles" is required.

Modernized Governance Framework

13. Data on the nature of practice for small firms, large firms, Indigenous, Black and other racialized lawyers, small communities, large urban centres, different areas of practice, and different stages of career should be collected and available. This would help ensure that there is sufficient information available to the Board to inform its decisions.
14. A smaller, more agile Board composition is needed, to be consistent with effective and modern regulatory operations, and should comprise a mix of appointed and elected members.
15. Geographic diversity on the Board should be maintained.

16. The representation of Indigenous, Black and other racialized individuals on the Board should continue to be prioritized.
17. In order to ensure self-regulation, the majority of the Board must be licensees subject to regulation, the majority of which should be lawyers.
18. The distribution of Board positions of the single regulator could, for example, comprise 19 members as follows:
 - 4 public members
 - 2 notaries, with one from outside of Vancouver
 - 2 paralegals, with one from outside of Vancouver
 - 11 lawyers
 - 5 from Vancouver County
 - 2 from New Westminister County
 - 1 from Victoria County
 - 1 from Nanaimo County
 - 1 from Thompson-Okanagan
 - 1 from Northern and Eastern BC (from the current Prince Rupert, Cariboo and Kootenay Counties).

Flexible Licensing Framework

19. The “practice of law” should be defined in statute, and the notaries’ core scope of practice should also continue to be defined, with a mechanism to potentially expand that scope without legislation. Any change, however, must only come after the regulator’s review of education, competencies, risk, increased insurance coverage, continuing professional development, and the protection of the public.
20. The paralegals’ scope of practice should be prioritized for examination by the regulator. Until further clarification, paralegals’ scope of practice should not be included in a statute.
21. The model of “case by case” granting of licenses should be clarified. While the licensing framework should be sufficiently flexible to accommodate innovative ways of delivering affordable, high-quality legal services to the public, this must not mean regulation of legal professionals on an individualized basis.
22. The regulatory requirements of lawyers, notaries, paralegals and others should be simplified, to reduce the costs of compliance. Where appropriate, based on a risk-benefit analysis, the provision

of legal information and law-related assistance by certain individuals should continue to be exempted from the framework or made subject to reduced requirements.

23. Neither this flexible licensing framework nor any other aspect of the regulatory framework should deny or impede an individual's ability to access a lawyer.

Effective Discipline Framework

24. The modernization of the Law Society's disciplinary framework should continue and be adopted for all professionals regulated under the single regulator.
25. All mechanisms that will allow the Law Society to address licensees who have frequent encounters with the Law Society disciplinary process, and thus create the highest risk, are encouraged.
26. Lawyers should remain the majority on disciplinary panels involving lawyers.

Enhanced Focus on Public Interest

27. The responsibilities of a regulator should be separate from those of a professional association, and a regulator should act in an advocacy role in alignment with its legislation.
28. The Annual General Meeting should be retained as a mechanism to hear from the general public and regulated licensees. There should, however, be a publicized methodology to screen proposed resolutions to ensure that they address matters within the regulator's authority and that the public interest in the resolution is identified.
29. If there are public concerns with regulation, as opposed to a complaint about an individual legal service provider, there should be a publicized methodology to allow members of the public to bring forward such concerns to the regulator.

Next steps

30. CBABC should be included in continued development of the legislation, regulation and rules as more specific ideas emerge. Such engagement is essential to the self-regulation of lawyers.

Reference Material

1. Action Committee on Access to Justice in Civil and Family Matters, "[Access to Civil & Family Justice: A Roadmap for Change](#)" (Ottawa: October 2013).
2. Deirdre Ahern, "[Regulators Nurturing Fintech Innovation: Global Evolution of the Regulatory Sandbox as Opportunity-Based Regulation](#)" (European Banking Institute, Working Paper Series No. 60, 2020).
3. CBABC, "[Agenda for Justice 2021](#)" (2021).
4. CBABC, [Submission on Self-Regulation and LSBC](#), provided to Harry Cayton on October 25, 2021.
5. CBABC, Submission on [The Future of Legal Services, Legal Practices, and the Legal Profession in British Columbia](#), provided to the LSBC on March 31, 2020.
6. CBABC, Submission regarding the [Family Law Legal Service Providers: Consultation Paper](#) provided to the LSBC on December 21, 2018.
7. CBABC, Submission regarding the [External Review of Legal Aid Service Delivery in British Columbia](#) provided to Jamie McLaren, KC on November 23, 2018.
8. CBABC, Submission on [The Civil Resolution Tribunal Amendment Act, 2018 \(Bill 22\)](#), provided to the Provincial Government of BC on May 8, 2018.
9. CBABC, [Letter to Art Vertlieb, QC, Life Bencher](#) (October 31, 2014).
10. CBABC, [Submission to LSBC's Legal Services Providers Task Force](#), provided on October 18, 2013
11. CBABC, [Letter to the Honourable Shirley Bond](#) (April 3, 2012).
12. CBA National, [Reaching Equal Justice: An Invitation to Envision and Act](#) (2013).
13. Harry Cayton, [Report of a Governance Review of the Law Society of British Columbia](#) (November, 2021).
14. The Honourable Thomas A. Cromwell, "[A Review of the Current Legal Landscape Keynote: Questions and Answers about Access to Justice](#)", 40 Man. L.J.1 (2017).
15. Yvon Dandurand & Jessica Jahn for A2JBC, [Access to Justice Triple Aim Measurement Framework](#) (2017).
16. Leonard T. Doust, KC, [Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia](#) (March, 2011).
17. Cristie Ford & Quinn Ashkenazy, "[The Legal Innovation Sandbox](#)" (forthcoming in the *American Journal of Comparative Law*, 2023).
18. The Law Society, "[Professional indemnity insurance overview](#)" (November 8, 2019).
19. The Law Society of British Columbia (Truth and Reconciliation Advisory Committee), [Indigenous Framework Report](#), (September 12, 2022).

20. The Law Society of British Columbia, "[Anti-Money Laundering](#)" (2022).
21. The Law Society of British Columbia, "[LSBC Tribunal](#)" (2022).
22. The Law Society of British Columbia, "[Innovation Sandbox](#)" (2022).
23. The Law Society of British Columbia (Lawyer Development Task Force), [Recommendation to Develop a Competence Based System for Lawyer Licensing](#) (September 9, 2022).
24. Brea Lowenberger et al., "Measuring Improvements in Access to Justice: Utilizing an A2J Measurement Framework for Comparative Justice Data Collection and Program Evaluation Across Canada" *Windsor Yearbook Access of Justice* (2021).
25. Clair McCashin, Alex Santos & Desiree Steele, "[Civil and Family Justice Metrics: Towards a Framework for Saskatchewan](#)" (The Sixth Annual Dean's Forum on Access to Justice and Dispute Resolution delivered at the College of Law, University of Saskatchewan, 6 March 2018).
26. Lisa Trabucco, "[The Regulation of Paralegals in Ontario: Increased Access to Justice?](#)" (Osgoode Hall Law School, 2021).
27. *AG Can v Law Society of BC*, [1982] 2 SCR 307 at 335-336, 1982 CanLII 29.
28. [Legal Profession Act](#) [SBC 1998] CHAPTER 9.
29. Université de Sherbrooke, [National Study on the Psychological Health Determinants of Legal Professionals in Canada](#) (October 2022).