

Public consultation on improving public access to legal services in Saskatchewan

Background

A Task Team of individuals from the Ministry of Justice and the Law Society of Saskatchewan is seeking public input on how legal services can be provided by professionals other than lawyers in order to improve public access to legal services in Saskatchewan.

In the fall of 2015, the Task Team had informal discussions with individual paralegals and their associations to better understand the current market of alternate legal service providers. Information was gathered from other jurisdictions and from the current environment for legal services in Saskatchewan. In May of 2016, surveys with legal service providers in the province (lawyers and other providers) and with the public were used to gather information about how legal services are provided in the province.

Over the course of the fall of 2017, the Task Team is now engaging in additional consultation with a range of interested stakeholders for developing and bringing forward recommendations for the expansion of legal services in the province.

Professional regulation with respect to legal services has been undergoing a great deal of change in other jurisdictions. Ontario, British Columbia, Nova Scotia, Washington State, Utah, and New York State, have opened up the provision of some legal services to other professionals.

Making recommendations now that reflect stakeholders interest will result in the best possible outcome for the Saskatchewan public, the legal profession, and other service providers rather than waiting for the issues to be resolved by the courts, the legislature, or the marketplace.

Why Government is Exploring This Now

Access to Justice

Improving access to justice is a pressing issue; many individuals are either unable to afford a lawyer, find one in if they live in remote locations around the province; or find one competent or willing to practice in the required area of law. Individuals trying to deal with their legal issues on their own often do so with great difficulty or they may not try to get a legal resolution at all. Assistance from an alternate service provider could help ensure compliance with the law and legal procedure and to improve the outcomes for citizens. Many prominent national organizations have written high profile reports on the issue of access to justice, and many of these reports encourage those in the legal profession to look at expanding the scope of legal service providers.

Limited consumer choice

People currently have limited choice for legal services. Expanding the market of legal service providers increases the likelihood of existing gaps in service being filled, especially in particular areas of law or geography where the current supply does not meet demand. Some professions deliver services through a team approach with multiple professionals engaging the client at various points based on the level of expertise required (e.g. medicine, dentistry). Some professions permit the customer to choose the level of services required or desired, and the associated level of risk they are willing to accept (e.g. accounting). Some legal commentators suggest a multiple licensing approach would be effective in law, allowing for more than one class of licensee to provide legal services and this approach has the potential to increase competition and reduce prices while maintaining quality assurance and protecting the public. Other commentators acknowledge there is no guarantee new occupational groups would compete enough to drive prices down; restricted spheres of practice could reduce or eliminate competition altogether.

Need for more effective regulation

Existing laws are unclear on guiding the public, service providers, and the Law Society about what type of work or services related to law might be performed by those who are not lawyers. Due to a high demand for legal services, many organizations and individuals try to meet their clients' needs by providing legal information and assistance where it is otherwise not available. There is a need for more effective regulation of legal services.

The Legal Profession Act, 1990 (the "Act") restricts the provision of legal services to members of the bar (lawyers and articling students) by providing that no other person may "advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law". However, there is little clarity on how broad this prohibition is or what constitutes "work or service" for its purposes.

Court staff and other justice insiders are regularly called upon by the public to offer assistance with forms and matters of pleading or procedure. Other professionals (such as accountants, financial or estate planners, human resource managers, etc.) regularly provide services that could be classified as legal services.

The intent of the restriction against unauthorized practice is to protect the public from the risk posed by persons holding themselves out to be lawyers who are not appropriately trained, insured, or regulated. It is the duty of the Law Society to enforce the restriction against unauthorized practice in the public interest. It is arguable that it is in the public's greater interest for these services provided by near-to-law professionals and organizations to be appropriately supported rather than prohibited altogether, as otherwise many members of the public would be left with no assistance at all.

What is generally permitted by such service providers and what is prohibited is often characterized as a distinction between legal information and legal advice, the former being general in nature and not tailored to an individual's specific circumstances. However, in many contexts, this distinction is difficult to define and navigate, requiring service providers to make constant determinations about what is or is not permitted. Lack of clarity can cause some organizations to favor an overly cautious approach, which can stifle innovation in addressing access to justice and limit availability of valuable information for the public. Indeed, less general but more contextualized information is often more valuable to individuals, particularly those who are trying to navigate the legal system on their own. It is important to find an appropriate balance between meeting public need and protecting the public from harm.

Role of the Task Team

The Task Team has been appointed to examine the issue of allowing service providers other than lawyers to provide some legal services in Saskatchewan and to make recommendations to the Law Society Benchers (WHAT IS A BENCHER?) and the Minister of Justice about the appropriate role (if any) of non-lawyers in the provision of legal services. In making their recommendations, the Task Team will consider the public interest and a wide range of possible approaches to:

- determine what types of services or areas of law, if any, should be deregulated altogether and/or whether a new class or classes of legal service providers should be permitted to provide some services.
- make recommendations with respect to the associated scope of practice and appropriate regulatory structure that should apply if new classes of legal services are recommended.

Scope of Practice

If the Task Team recommends allowing non-lawyers to provide some legal services in Saskatchewan, the Task Team may consider reserving certain legal services or areas of law to the exclusive domain of lawyers, while opening up others to one or more classes of new legal service providers. The Task Team could also consider identifying specific tasks that a new class or classes of legal service provider could perform or areas of law in which they could practice. The Task Team may also make recommendations with respect to varying degrees of independence for one or more new classes of service provider. For example, depending on the task or area of law, some new service providers may be permitted to practice unsupervised, while other tasks, areas of law, or class of new legal service provider be supervised by a lawyer.

Regulation

If the Task Team recommends creating a new class or classes of legal service provider, it will also need to consider whether the class should be subject to regulation and, if so, who the regulator should be. The Task Team could recommend expanding the Law Society's scope of regulation to include any new class or classes of legal service provider. The Task Team could recommend that the government assume responsibility for regulating any new class or legal service provider within existing consumer protection structures. The Task Team could also recommend that a separate body be established to regulate any new class or classes of legal service provider, whether as a self-regulated profession or externally regulated.