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Lawyers governing paralegals: recipe for disaster

Long-standing hostility between two groups does n't bode well

The much-heralded agreement among various legal and paralegal organizations to regulate the province's paralegal industry stands little chance of being implemented because the key player in the proposal the Ontario government was not represented at the negotiating table.

But even if the tentative pact ever sees the light of day in one form or the other, it could create havoc in the field of real estate conveyancing and expose the public to needless risk and expense.

After nine months of top-secret negotiations, a working group representing some of the province's lawyer and paralegal groups released a consultation document late last month. The document proposes introducing requirements for paralegals to be trained, educated, licensed and insured. In addition, they would have a code of conduct and a disciplinary procedure for governing their conduct.

Following the recommendations in the badly flawed May, 2000, report of retired Supreme Court Justice Peter Cory, the proposal would allow independent paralegals to make significant inroads in what has been for 200 years the exclusive territory of lawyers. None of this, in my opinion, serves the public interest.

But the most stunning requirement of the consultation document was that the Law Society of Upper Canada be the governing body of the province's independent paralegals a proposal that was met with scorn among many in both the legal and paralegal communities.

Setting up a governing body to regulate the paralegal profession would involve no small amount of regulatory staff establishing functioning programs for liability insurance, licensing, education, and discipline. In addition, a well-endowed compensation fund would have to be up and running on the first day of the new regime.

It is not difficult to imagine that the start-up costs for a paralegal regulatory system could easily cost several million dollars. This would be far beyond the ability of the province's estimated 800 to 1,200 independent paralegals to raise, and the province's lawyers are certainly not about to kick in any money to fund what many perceive to be the competition.

The big black hole in the paralegal consultation process is that the government was not represented at the negotiating table. Nowhere in the consultation document is there any hint at the set-up and operating costs of the proposed scheme, nor has there ever been any whisper from the government that it is willing to kick in any money at all.

It is a stretch of the imagination to envision the Ontario government coming up with the millions of dollars necessary to fund paralegal regulation, much less another huge chunk to inaugurate a fund (like the law society's \$20 million fund) which compensates clients of dishonest practitioners.

As a governor (bencher) of the Law Society of Upper Canada, I was present several years ago at the debates of Convocation, our governing body, when we made the wrenching decision to turn the Legal Aid plan back to the government, after we had created and operated it successfully for decades.

The decision was, in large, part prompted by the Ontario government's continuing failure to properly fund the Legal Aid scheme. Indeed, at the moment, I pay my car mechanic, plumber and computer technician higher rates than the government pays its Legal Aid lawyers.

Having just dumped Legal Aid back into the government's lap, why would the law society now want to take on the paralegals? I cannot imagine any scenario more doomed to failure than that one. The long-standing hostility of both groups to each other certainly does not bode well for the lawyers to govern paralegals or even work with them.

In a press release at the end of April, law society treasurer Vern Krishna praised the consultation document and said, "This is a tremendous step forward," but thousands of Ontario's lawyers would beg to differ. For the province's lawyers to govern its paralegals can only be described as a recipe for disaster.

Next week: Why the public is at risk if independent paralegals handle real estate transactions.