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October 23 2004

Laurels to paralegal report; e-learning darts

It's darts and laurels time for the Law Society of Upper Canada, the governing body of the legal profession in Ontario. This week, the organization gets one of each. The laurel: Last month, the society's governing body (of which I am an elected member) voted 43 to 4 to approve the recommendation of a task force report on a proposal for governing paralegals in the province.

To me, the most significant aspect of the report was the absence of any suggestion that independent, unsupervised paralegals would be allowed to handle real estate transactions.

The Law Society's report has now been forwarded to Ontario Attorney-General Michael Bryant for legislative action. In January, Bryant attended a meeting of the Law Society board, and asked the society to take on the role of governing paralegals.

His visit was intended to put an end to four years of debate, which followed the release of a badly flawed report by retired Supreme Court Justice Peter Cory.

Among Cory's recommendations to the government of the day was one which would have allowed licensed, regulated paralegals to act for a vendor in the sale of residential property that was either debt-free or subject to only one mortgage.

Cory made the recommendation without considering the mechanics of trust fund protection, negligence insurance, resolving complex title problems, legal education or enforcing undertakings to rectify titles.

The latest Law Society recommendations would restrict the scope of paralegal activity to those areas in which paralegals are currently involved such as small claims courts, tribunals like the Assessment Review Board and the Ontario Rental Housing Tribunal, and certain provincial offences like those in traffic court.

Licensed paralegals would have to show good character, and complete a college program approved by the Law Society or prove that they are entitled to be grandfathered. Paralegals would be governed by a committee of the Law Society and would have to maintain errors and omissions insurance as well as a compensation fund for clients of wayward members.

Initially it was intended that the costs of operating the paralegal governing body be shared by paralegals and government, but it appears that Ontario lawyers will be making a significant contribution to the costs.

At the same time that the Law Society is moving ahead with plans for paralegal regulation, it is proceeding with plans to abolish the teaching portion of the bar admission course and replace it with e-learning, and a couple of multiple-choice exams leading to the call to the bar.

For this reason, I award the Law Society a "dart."

At present, graduates of Ontario law schools have to complete an 18-week academic program where they are taught the fundamentals and skills necessary to practise law. A 10-month articling program follows this if the students can find an apprentice job in a very tight market for would-be lawyers.

The theory of the bar admission course is that law schools are more focused on teaching the theory of law rather than the mechanics of practice.

It's one thing to understand the basics of real estate law, for example, but it's a different matter for a new graduate to handle a real estate transaction without exposure to the teaching talents of real estate practitioners who have been teaching real estate skills at the Bar Admission course.

I agree with Marilyn Pilkington, a former Law Society bencher (board member) and past dean of Osgoode Hall Law School, who has expressed her belief that the society should not abandon the teaching of practical skills.

And I agree with my bencher colleague Gary Lloyd Gottlieb, a prominent Toronto sole practitioner. Gottlieb says that lawyers need utilitarian training before entering the rigours of private law practice.

He believes that the Law Society is acting under the illusion that the law schools will fill the vacuum created by eliminating the bar admission course teaching program, and that students can learn the mechanics and skills necessary for practising law from Internet courses and by U.S.-style cram schools.

What are your opinions? Email your comments to me and to newhomes@thestar.ca.

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