



September 2, 2009

The Hon. Doug Lewis,
Law Society of Upper Canada
Paralegal Committee
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Mr. Lewis:

Thank you for including the Ontario Bar Association in the Law Society of Upper Canada's consultations this summer regarding the possible amendments of the by-laws for paralegal exemptions.

Many volunteers representing our various practice sections have met and developed recommendations pertaining to implementing changes to some of the identified exemption provisions (attached) as requested during our presentation.

The OBA would recommend that, should the Paralegal Standing Committee recommend elimination of any exemptions, a grandfathering provision with respect to the elimination of any exemption be included, such period to be determined by the Law Society of Upper Canada.

I would also convey that our members do not recommend any changes to the in-house counsel exemption at this time.

Yours sincerely,

Carole Brown
President

Steven Rosenhek
Chair
Paralegal Task Force

Ontario Bar Association Recommendations for amending Paralegal Exemptions

1. We recommend that the By-laws provide greater clarity as to when a regulated professional is "acting in the normal course of carrying on a profession or occupation governed by another Act." For example, no exemption should apply to a nurse engaged in providing what are clearly legal services, such as representing a party in a proceeding before an administrative tribunal.

2. We recommend that exemptions for standard-settings organizations should be allowed only in those circumstances where the member has appropriate qualifications. Exemptions should not be granted only on the basis of membership in a standard-setting organization, but rather based on qualifications. For example, the Human Resources Professionals Association (HRPA) exemption is open to any member of the HRPA irrespective of whether the member has a CHRP designation. Those with CHRP designations who are members of HRPA should be exempt, but not those who are simply members of HRPA.

We also recommend that persons who fall under the exemption for regulated professionals or the exemption for one of the non-regulated occupational organizations (for example, HRPA) be required to file annually an application with the Law Society of Upper Canada (LSUC) for an "exemption number". That application would contain information to allow the LSUC to establish that the basic requirements for exemption are met (such as their CHRP designation). This would also allow the LSUC to determine whether individuals falling within these categories are avoiding the requirements for licensure for activities broader than their qualifications should allow. Tribunals should be encouraged to require that such individuals supply their exemption number (much the way that the LSUC member number must be supplied for lawyers). This should only apply to professional and occupational organization exemptions. This should not apply to those with union, in-house or other specified worker organization exemptions that would be obvious to their respective administrative tribunals. Nor should it apply to "friends" who appear infrequently, and for whom it would be onerous to seek this exemption in advance of appearing).

3. We recommend that those tribunals, **with sufficient resources to enable them to do so**, be requested to provide an annual or semi-annual report to the LSUC identifying exempted representatives falling within professional and occupational organization exemptions by name, exemption number and number of matters in which they appear. (We note that the LSUC would not be in a position to require that such reporting take place. We also note that these actions could give rise to legal issues with respect to the collection and disclosure of personal information). From that information, then, the LSUC could determine whether the exemption is appropriate or should be restricted. We underline that this request should be made only to those tribunals who have the resources to do so. We anticipate this would mean permanent administrative tribunals with a provincial scope. On the other hand, more informal and *ad hoc* administrative bodies such as Discipline Committees and Identification, Placement and Review Committees (under the

Education Act), and committees of adjustment in the municipal area, would not have the resources to deal with the administrative burdens this would impose. Please note that OBA does not purport to speak on behalf of such tribunals.

We also recommend that those tribunals **with sufficient resources to enable them to do so**, also be requested to collate the number of attendances by those exempted as "friends" for the benefit to the LSUC on an annual or semi-annual basis. In this regard, the LSUC could provide some guidance as to the maximum number of annual appearances before a tribunal. The LSUC could also request a report of that information based on a threshold number of annual appearances for the exempted "friends" or in respect of individuals who otherwise appears to be in contravention of an exemption under Bylaw 4. We would suggest that the reports include all names which are similar, to capture situations where "friends" are using different first names or initials to avoid detection.

4. We recommend that a definition of "occasionally" be set out in the context of the "friend" exemption. The *Law Society Act* contains a definition of "occasionally" with respect to the practice of law of less than 100 days per year in one set of circumstances (Bylaw 4, section 43) and elsewhere as being on not more than 10 matters and for no more than 20 days (section 47). These limits would not be appropriate for the the "friend" exemption for paralegals, but the definitions in the *Law Society Act* highlight the confusion that may have been inadvertently created. In our view, an appropriate definition that applies to paralegals should be set out in the Bylaws.

5. We recommend that the language in the "friend" exemption in Bylaw 4 be broadened to state "...to a friend or relative for no fee or other consideration." We understand that the current wording of the Bylaw ("for no fee") allows abuse. For example, we have been informed that that certain immigration consultants who regularly appear as "friends" claim that they do not receive a "fee" for attendance, even though they may require their "clients" to purchase books or written materials at substantial cost in exchange for their assistance.

6. We recommend that the language in Bylaw 4, which exempts trade union representatives should not extend to those individuals who are independent contractors marketing representation services to trade union clients.

7. We recommend that committees of adjustment and property standard committees, and all committees appointed by municipalities, be excluded from the definition of "adjudicative tribunals", on the basis of a strong access to justice argument. It is not always practical for property owners themselves to attend before such committees. In the case of these committees, it is often more practical for the property owner to send their engineer, architect or designer, whose services they already require in order to obtain a building permit, to appear before the committee to seek the necessary variances or lot adjustments on their behalf. These agents would then provide the technical evidence to the committee in order to assist them in making their decision. There is often

no direct or cross examination or legal arguments presented and in most cases, there is no swearing in of witnesses. The consumer protection element is maintained by the appeal rights to the Ontario Municipal Board or the Superior Court of Justice, as the case may be, where appeals are *de novo*. However, there are some municipally-created committees from whose decisions there is not an easy avenue for appeal. In other words, such committees may be making final decisions respecting persons' rights. In those cases where such committee (or the municipality creating such committee) deems it necessary to protect those with matters before it, rules of practice and procedure may be drafted to ensure that representing persons benefit from an appropriate level of consumer protection and are either self-represented or represented by a licensee. Therefore, we also recommend that where a municipality creates a committee or other body that would otherwise fall under the definition of "adjudicative tribunals", that the LSUC state that the rules of practice and/or procedure for such committee or other body may provide that those appearing on behalf of other parties cannot avail themselves of certain exceptions contained in By-law 4.