



Final Report of the Legal Service Providers Task Force

Legal Service Providers Task Force

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Executive Summary

1. The Legal Service Providers Task Force was created in the late fall of 2012 to examine issues arising from Strategic Plan Initiative 1-1(c), which is to examine whether the Law Society should regulate just lawyers or whether it should regulate all legal service providers.
2. The topic of Law Society credentialing or regulating other groups of legal service providers – and in particular paralegals – is not new. It has been discussed several times over the past 25 years.
3. In the past decade, however, new developments have taken place. Primary amongst these is the regulation of paralegals that has been successfully undertaken by the Law Society of Upper Canada.
4. Other jurisdictions have also taken, or are taking, steps to permit the provision of regulated legal services by groups other than lawyers. This has taken place in England, where groups such as conveyancers and “legal executives” provide authorised legal services alongside barristers and solicitors. Each group is separately regulated, although, since 2007, a government appointed body, the Legal Services Board, oversees each of the “front-line regulators.” Washington State has also recently created “limited licence legal practitioners” under the authority of the Washington State Supreme Court.
5. Notaries public provide a limited scope of regulated legal services in British Columbia in addition to lawyers. Relevant to the Task Force’s work was an expression of desire by the Attorney General that the Society of Notaries Public and the Law Society work through issues concerning appropriate scope of practice and regulatory models for legal service providers that best protect the public while improving access to legal services.
6. In addition, the Law Society itself has expanded the scope of legal service that can be provided by “designated paralegals” under the supervision of a lawyer. At the time decisions were made to this end, the topic of paralegal credentialing and regulation were left open for future discussion.
7. The Task Force as created by the Benchers to address these issues reflects various viewpoints external to the Law Society in the hope that a consensus could be reached on various points under discussion and thus includes Benchers as well as members of the Canadian Bar Association, Society of Notaries Public, and BC Paralegals Association.
8. The Task Force was given a specific mandate to consider various previous work undertaken by the Law Society, to examine processes in other jurisdictions, to examine public interest considerations concerning the regulation of non-lawyer legal service providers and whether, if they were permitted, the Law Society should undertake that regulation (as well as what implications that may have on Law Society operations), and to consider whether regulation of

non-lawyer legal service providers would improve access to law-related services for the public. After completing these tasks, the Task Force was asked to make a recommendation to the Benchers about whether the Law Society should continue to regulate lawyers in British Columbia, or whether it should take steps to implement the regulation of other legal service providers.

9. The Task Force, in undertaking its work, reached a number of conclusions:
 - a. It is in the public interest that legal service providers other than lawyers and notaries should be regulated unless operating under the supervision of a lawyer or other regulated legal service provider such as a notary public;
 - b. A single regulator of legal services is the preferable model (rather than distinct regulators for different groups of legal service providers);
 - c. If there is to be a single regulator of legal service providers, the Law Society is the logical regulator body;
 - d. Creating some method to provide “paralegals” who have met prescribed educational and practical standards with a certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. Further, the regulation of non-lawyer, non-notary legal service providers of limited scope legal services should be included in the purview of a single regulator of legal services and that the Law Society should move to create a process by which that can take place. Other groups should not be regulated by such a body at this time.
 - e. There is no certainty that a single-model regulator of a number of different groups of legal service providers will improve access to justice, and it is uncertain that one would be able to create empirical evidence to prove this end. There is no way to find the answer without trying it, and the Task Force therefore concludes that it should be tried.
10. On the basis of its conclusions, the Task Force formulated three recommendations:
 - (1) That the Law Society seek to merge regulatory operations with the Society of Notaries Public of British Columbia with the result that the Law Society would become the regulator of both lawyers and notaries in the province, and that the Law Society otherwise continue to maintain the same object and duties as set out in section 3 of the *Legal Profession Act*, modified as necessary to achieve the recommended end;
 - (2) That a program be created by which the regulator of legal services could provide paralegals who have met specific, prescribed education and/or training standards with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as “certified paralegals.” A regulated legal service

provider would not be permitted to hold out as a “certified paralegal” any person who had not obtained a certificate.

- (3) That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.
11. Each of these recommendations is a first step toward an end result, and, if approved by the Benchers, each will require further work, analysis, collaboration and consultation with other interested parties. The Task Force recognizes the possibility that such further analysis could disclose reasons to discontinue efforts to implement one or more of its “in principle” recommendations if the consequences identified are assessed to outweigh the benefits as proposed and explained in this Report.
12. Amongst other considerations, the impact on the public right of lawyer independence, the effect on Law Society operations, and how the Agreement on Internal Trade may be engaged by the recommendations all need to be addressed.
13. Quite apart from the considerations above, negotiations with various groups such as the Society of Notaries Public, paralegal groups, and post-secondary institutions that provide education for legal service providers would need to take place and work will need to be undertaken to develop a framework for the scope of practice of other legal service providers.
14. The Task Force outlines what next steps it envisages are needed to follow through on its recommendations at the end of this Report

Recommendations

15. The Task Force makes three recommendations.

- (1) That the Law Society seek to merge regulatory operations with the Society of Notaries Public of British Columbia with the result that the Law Society would become the regulator of both lawyers and notaries in the province, and that the Law Society otherwise continue to maintain the same object and duties as set out in section 3 of the *Legal Profession Act*, modified as necessary to achieve the recommended end;
- (2) That a program be created by which the regulator of legal services could provide paralegals who have met specific, prescribed education and/or training standards with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as “certified paralegals.” A regulated legal service provider would not be permitted to hold out as a “certified paralegal” any person who had not obtained a certificate.
- (3) That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.

16. Each recommendation is in effect a decision in principle. Much further work, consultation and negotiation would be required should the recommendations be adopted by the Benchers.

Introduction

The Issue Under Consideration

17. The Law Society has since its inception in 1869 regulated barristers and solicitors, the two branches of the legal profession that are commonly referred to as “lawyers.” In British Columbia, there is no longer a separation between these branches. All lawyers in British Columbia are both barristers and solicitors. All lawyers in British Columbia also have and may exercise all the powers, rights, duties and privileges of the office of notary public.¹
18. Generally speaking, the practice of law (as that term is defined in s. 1 of the *Legal Profession Act* S.B.C. 1998 c. 9) is restricted to practising lawyers. But section 15 of that Act does permit some exceptions, such as employees supervised by a practising lawyer, lawyers from other provinces, and practitioners of foreign law who hold a permit or who are in BC practising only temporarily.
19. In addition to the exceptions in the *Legal Profession Act*, various other statutes permit others to engage in some of what constitutes the practice of law. Members of the Society of Notaries Public of British Columbia (the Notaries Society) are permitted to provide certain services by virtue of s. 18 of the *Notaries Act* R.S.B.C. 1996 c. 334 and the “lawful practice of a notary public” is in fact excluded from the definition of “practice of law” in the *Legal Profession Act*. Section 94(4) of the *Workers Compensation Act* R.S.B.C. 1996 c. 492 provides for workers’ and employers’ advisers to provide advice about claims, and specifically states that they need not be members of the Law Society to do so, and s. 94.1 permits the use of lay advocates, who are specifically exempted by that section from the provisions of s. 15 of the *Legal Profession Act*. Some other legislative regimes, particularly in administrative law areas, permit *non-lawyers* to provide some legal services.²
20. Others who are not lawyers, or who would not otherwise be exempted from the s. 15 prohibition on practising law, also provide legal services for a fee. While the provision of fee-based service from such persons generally constitutes an offence under the *Legal Profession Act*³ as constituting the “unauthorised practice of law,” the Law Society exercises discretion in deciding whether it is in the public interest to pursue each and every unauthorised practice matter.

¹ See s. 14 *Legal Profession Act*, S.B.C. 1998 c. 9

² Other examples include patent and trade mark agents, immigration consultants, and insurance adjusters licensed under the *Financial Institutions Act* carrying on the usual business of an insurance adjuster. See also the *Court Agent Act*, R.S.B.C.1996 c. 76

³ See s. 85(1)(a), *Legal Profession Act*

21. Consequently, what arises is an uneven regulatory landscape that gives rise to the question: how should the practice of law be regulated? Given that individuals other than lawyers can practise law in BC, should there be joint or separate regulation of these individuals? Should other groups be added to those who are currently permitted to practise law in the Province? If so, should they be regulated, and if so by whom? Should the Law Society remain as the regulator of *lawyers* or should it become the regulator of a larger group of *legal service providers*?

Creating the Task Force

22. At the 2011 Benchers retreat, the future of legal regulation in British Columbia was discussed at some length. In particular, the Benchers debated whether the Law Society should seek to expand the scope of who it regulates. Should it confine its regulatory responsibilities to regulate only lawyers, or should it expand those responsibilities to include regulating other non-lawyer legal service providers? No consensus on those questions was reached at the time, but a decision was made to explore the issues in the Law Society's subsequent Strategic Plan.

23. As a result, the Law Society's current Strategic Plan therefore includes, as Initiative 1-1(c) the following:

Examine whether the Law Society should regulate just lawyers or whether it should regulate all legal service providers.

24. At the same time, a number of other events were taking place that were relevant to the discussion. These included:
 - a. discussions amongst the Attorney General, the Notaries Society, the Law Society and Canadian Bar Association (BC Branch) concerning the Notaries Society's request for an expanded scope of practice and modernization of their governing legislation. The Attorney General did not act on the Notaries Society's request, instead expressing the hope that the Notaries Society and the Law Society could work through issues concerning appropriate scope of practice and regulatory models for legal service providers that best protect the public while improving access to legal services;
 - b. the Law Society's own developing reforms for expanding the permitted roles of articled students and paralegals working under the supervision of a lawyer, which had left the topic of paralegal credentialing and regulation open for future discussion.

25. The Benchers decided that consideration of Initiative 1-1(c) of the Strategic Plan warranted the creation of a task force to examine the issues and report back to the Benchers. Recognizing that the issues under consideration had a considerable external focus, the membership of the Task Force was established to reflect various external viewpoints, with the

hope that a consensus could be reached on the points under discussion. A decision was made as well to appoint a member of the public, who was not a member of any of the most directly interested parties, in order to bring a perspective not aligned to any one profession's interest in the subject.

26. The Task Force as appointed is comprised as follows:

Bruce LeRose, QC, Chair (Law Society Life Bencher)

Ken Walker QC, Vice Chair (Law Society Second Vice President, 2013)

Godfrey Archbold (President, Land Title Survey Authority)

Satwinder Bains (Appointed Bencher)

John Eastwood (2013 President, Society of Notaries Public)

Carmen Marolla (Vice President, BC Paralegal Association)

Kerry Simmons (2012 -13 President, Canadian Bar Association – BC Branch).

Wayne Robertson, QC, Executive Director of the Law Foundation of British Columbia also participated in Task Force meetings starting in September 2013.

Task Force Mandate

27. The Benchers established the following mandate for the Task Force:

- (1) consider previous work at the Law Society on the regulation of non-lawyers;
- (2) consider and report on legal service regulatory regimes in other jurisdictions where the regulation extends to non-lawyers;
- (3) consider and report on the implications for Law Society operations on regulating non-lawyers;
- (4) consider and report on whether it is in the public interest that non-lawyer legal service providers be regulated and if so, whether it is in the public interest that the Law Society should be that regulator;
- (5) consider and report on whether the recognition and regulation of non-lawyer legal service providers would improve access to law-related services for the public;

- (6) make a recommendation to the Benchers about whether the Law Society should continue to regulate only lawyers in British Columbia or whether it should take steps to implement the regulation of other legal service providers.
28. The Task Force will address each of the points raised in the mandate throughout the body of this Final Report. Points 4 and 5 were addressed in a preliminary way in the Task Force's Interim Report issued in July 2013, but will be expanded upon here in light of the consultation and further debate of the Task Force.

Background

29. Some of the topics under consideration are not new to the Law Society.⁴ In particular, the question of paralegal regulation and credentialing was discussed as far back as 1989. At that time, the Paralegalism Subcommittee recommended against the creation of a separate, new paralegal profession,⁵ but did recommend that certification of paralegals (legal assistants) was in the best interest of the public, legal assistants and the profession generally.⁶ The Benchers adopted those recommendations and asked that a certification program be developed.
30. Regulation of groups other than paralegals was also considered by the Paralegalism Committee in 1989. Notaries were observed at that time to be well-established, and a recommendation was made that the Law Society approach the Society of Notaries Public with a view to negotiating an agreement for the integration of notaries public into the legal profession as lawyers having restricted practice licences. This recommendation did not proceed. This issue does not appear to have been considered since.
31. In the early 1990s, as part of the discussion for a new *Legal Profession Act*, the Law Society asked that an amendment be included to allow it to certify and regulate paralegals. However, the request was not granted by the government at the time.
32. In 1995 the Benchers reconsidered the proposal for certification of paralegals and discontinued the initiative due to concerns about recovering the costs of the certification scheme.
33. Starting again in 2000, the Benchers created the Paralegal Working Group (later the Paralegal Task Force). In 2002 that Task Force recommended the adoption of a system for paralegal

⁴ A more detailed review of the history of the consideration given by the Law Society to this subject can be found in the *Report to the Benchers by the Paralegal Working Group*, December 20, 2000, available on the Law Society's website.

⁵ *Paralegals in the Delivery of Legal Services Part I. A Report of the Paralegalism Subcommittee*, October 1989

⁶ *Paralegals in the Delivery of Legal Services Part II: Legal Assistants. A Report of the Paralegalism Subcommittee* September 1989

certification and for the creation of a Standing Committee on Paralegals to deal with accreditation issues and to explore the introduction of a regulatory regime. At the same time, the Task Force recommended an expansion of services that properly trained paralegals working under the supervision of a lawyer could perform.

34. A proposed certification scheme was circulated for comment in 2003 for paralegals working under lawyer supervision. The Benchers did not however approve the proposal, instead recommending that changes to then Chapter 12 of the *Professional Conduct Handbook* be explored to expand the range of services a supervised paralegal could provide. A final report was prepared in 2006,⁷ and input from other Law Society Committees was sought. In early 2007, the Benchers referred to the Regulatory Policy Committee the issue of setting standard qualifications for paralegals. That Committee agreed on a staged approach to developing a credentialing program to assist lawyers in the supervision of paralegals by:
 - a. Specifying the necessary credentials of paralegals before a lawyer may delegate to them specified services; and
 - b. Setting out guidelines for lawyers' assistance as to what may constitute acceptable credentials for a paralegal who is to be assigned any certain tasks.
35. By this time, however, the further exploration of the issue of permitting independent, stand-alone paralegals to provide some legal services was no longer being discussed.
36. However, in January 2008, the Futures Committee released its report entitled "Towards a New Regulatory Model." The report stated at page 2:

The strategic policy question is whether the current regulatory arrangements, in which lawyers have the exclusive right to practise law, facilitate or present a barrier to access to legal services and access to justice, or would the public have greater access to justice if some non-lawyers are permitted to provide some legal services? An ancillary question is who would regulate non-lawyers who provide legal services? If those questions are examined in a systematic and principled way, then the Law Society can either defend the status quo or advocate for progressive change on public interest grounds... The discussions in 2007 proceeded on the premise that a complete reservation of the practice of law to lawyers cannot be maintained.

37. The Futures Committee's report gave rise to the discussions at the 2008 Benchers retreat, which generated the discussion of initiatives, including the eventual analysis of the topic before this Task Force. The Futures Committee report also gave rise to specific initiatives on

⁷ Paralegal Task Force *Report to Benchers on Delegation and Qualification of Paralegals*, April 2006
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the Law Society's 2009-2011 Strategic Plan that ultimately led to the creation of the Delivery of Legal Services Task Force and the creation of the "Designated Paralegal" initiative.⁸

38. By that time, independent paralegals in Ontario had come under the direct regulation of the Law Society of Upper Canada, marking a new venture in the regulation of legal professionals. The situation was somewhat thrust upon the Law Society of Upper Canada due to the existence of unregulated paralegals who had for some considerable time provided stand alone legal services on various matters (a situation that has never existed in BC), and the Ontario government reached a political decision that this state of affairs could not persist. The Law Society of Upper Canada was asked to take on the regulatory responsibilities, and the *Law Society Act* R.S.O. 1990 c. L.8 was amended accordingly to permit the practice of law by various "licensees" (either lawyers or paralegals, depending on the licence obtained) in 2006.

Task Force Process

39. The Task Force began its process by reviewing the considerable research on legal regulation, including materials relating to past Law Society consideration of paralegal regulation and certification. It considered the work and the reports discussed in the section above, and drew what lessons it could from the detailed work already done. It concluded that the issue needed resolution.
40. The materials compiled by the Task Force also included statistics, surveys, reports, and academic articles from Canada and other jurisdictions. It also reviewed materials setting out the approach to legal professional regulation in Alberta, Ontario, and Quebec, and (outside of Canada) examined models in Washington State, England and Wales, and Denmark.
41. The development of regulation of paralegals by the Law Society of Upper Canada has already been referred to. The Task Force understands that the joint regulation has been reported to be working well. In the report on a five-year review of paralegal regulation⁹, it was noted that the introduction of paralegal regulation by the Law Society was "by any objective measure....a remarkable success." It further reported that research commissioned by the Law Society indicated that paralegals were generally satisfied with the regulatory framework, and the satisfaction levels were generally high among members of the public who have consumed paralegal services.
42. Quebec was reviewed because it maintains two branches of its legal professionals. These two branches have some common educational requirements (including the requirement of a

⁸ *Delivery of Legal Services Task Force Final Report*, October 1, 2010

⁹ Report to the Attorney General of Ontario: Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario Pursuant to Section 63.1 of the *Law Society Act*, November 2012.

degree in civil law). However, the two branches are separately regulated, although the *Code des Professions* governs both the Barreau du Quebec (which regulates avocats) and the Chambre de Notaires du Quebec (which regulates notaires). Further, both the Chambre and the Barreau fall under the jurisdiction of the Office des Professions.

43. Washington State was reviewed to take consideration of the Supreme Court order that created a category of limited licence legal technicians who are permitted to provide a limited range of legal services that were previously reserved for lawyers.¹⁰ The rule is designed to assist otherwise self-represented litigants better navigate the court system.
44. England and Wales was reviewed due to the considerable regulatory reform that has occurred there in the past decade. The *Legal Services Act 2007*, c. 29 brought about a new regulatory structure in England and Wales that was intended to simplify the regulatory maze consumers faced. The review allowed the Task Force to consider a system with multiple regulators all operating under the supervision of an oversight regulator (the Legal Services Board). The 2007 reforms have been the subject of much criticism and recently, as part of a government review, many are calling for the current model to be overhauled.
45. Denmark was examined because it provides a counterpoint to the discussion on regulation. Anyone in Denmark is permitted to practise law, even for a fee, subject to certain exceptions with respect to court appearances in the superior courts. However, only members of the Danish Law Society (the Advokatsamfundet) are permitted to use the title of “advokat” (lawyer). All persons who have qualified for a licence as a lawyer automatically become members of the Advokatsamfundet and are regulated by that body. Other people who provide legal advice, but who are not lawyers, cannot use the title “advokat” and are not regulated. Clients therefore have a choice – they can obtain the legal services of a qualified, regulated and insured professional, or they can take their chances with anyone else.
46. The Task Force also reviewed the current initiative that is bringing the Chartered Accountants, Certified General Accountants and Certified Management Accountants together under a single designation of Chartered Professional Accountants. The initiative seeks to harmonize standards of education and regulation and to streamline the number of regulatory bodies overseeing the delivery of accounting services. The initiative recognizes the evolution of the various accounting professions and how the public interest is better served by harmonizing standards. In addition, the professions recognized the increasingly global nature of their practices and that Canada would fall behind if it maintained a patchwork of regulatory standards in the accounting world.

¹⁰ The Supreme Court of Washington, In the Matter of the Adoption of New APR 28 – Limited Practice Rule for Limited License Legal Technicians Order N0. 25700-A-1005, filed June 15, 2012

47. The Task Force released its Interim Report in July 2013 in which it addressed its preliminary discussion on whether it was in the public interest that non-lawyer legal service providers be regulated and, if so, whether the Law Society should be the regulator, and whether the recognition and regulation of non-lawyer legal service providers would improve access to law-related service for the public (items 4 and 5 of its mandate). It also outlined possible advantages and disadvantages of a single regulator model for different groups of legal professionals.
48. The Interim Report recommended a period of consultation on a set of questions¹¹ arising from its work to that point in time in order to seek the views of interested parties and the public at large about whether legal service professionals other than lawyers should be regulated, who such providers should be, and what model of regulation might be preferred
49. Consultations took place through September and early October 2013 around the province, and through an on-line questionnaire posted on the Law Society's website. The Notaries Society also engaged in consultations of its members. A summary of the results of each consultation is attached as the Appendix to this report.
50. The Committee subsequently met to discuss the results of the consultations and to discuss what recommendations it could make on the basis of the work it has been able to accomplish during its existence. That discussion has resulted in this report and recommendations.

¹¹ The questions were as follows:

1. Should legal service providers other than lawyers and notaries be regulated?
2. If you think legal service providers other than lawyers and notaries should be regulated, which additional legal service providers?
3. Should legal service providers be regulated by a single regulator or should each profession be regulated by a distinct regulator?
4. If you think legal service providers should be regulated by a single regulator, who should the regulator be?

Analysis and Conclusions

Public Interest

51. The issues under consideration by the Task Force are significant. The mandate given to the Task Force invites a consideration of issues that could dramatically change the way legal services in British Columbia have been provided and regulated for almost 150 years.
52. The starting point for the Task Force was the premise upon which the Futures Committee based its discussion leading to its 2008 report: that a complete reservation of the practice of law to lawyers cannot be maintained. In fact, of course, the Task Force recognizes that this “complete reservation” has never really existed in BC in any event, as discussed above.
53. However, the point is important. Some groups other than lawyers can and do now provide legal services. Some are regulated and some are not. Moreover, the Task Force believes, the likelihood that other groups or individuals will seek to provide legal services will increase in light of the perceived high cost of legal services.
54. Consequently, the Task Force accepts that people other than lawyers will continue to provide legal services in the province. The Task Force accepts that there may be room to extend some types of legal services that are currently reserved to lawyers to other groups. However, this needs to proceed in a manner that protects the interest of the public. It also needs to protect the public interest in a broader sense to ensure that the justice system is not compromised by a plethora of service providers regulated to different standards.
55. In both in-person consultations and through feedback on the online survey and written submissions, the Task Force heard that providers of legal services should be regulated. There was a variety of opinion as to which types of legal service providers ought to be regulated. The predominant reasons favouring regulation was a need to protect the public from unqualified individuals providing legal services and to give the public some recourse to a system for resolving complaints about the quality of the services received. It was recognized by some, including in the written submission of the Canadian Bar Association BC Branch, that non-lawyers who provide legal services under the supervision of a lawyer (or a regulated legal service provider such as a notary public) need not be regulated, as the regulation of the person responsible for supervising the non-lawyer provides adequate protection to the public.

Conclusion

56. *The Task Force concludes that it is in the public interest that legal service providers other than lawyers and notaries should be regulated unless operating under the supervision of a lawyer or other regulated service provider such as a notary public.*

A Single Regulator of Legal Services

57. The Task Force concluded that “public interest” is not capable of a neat definition that will apply in all circumstances. Rather, it is varied and context specific. This conclusion suggests that a single regulator of legal services with a mandate to act in the public interest might be better able to apply a more consistent application of the “public interest” to the various contexts in which it would arise because that single regulator would be examining the totality of the legal services landscape. Multiple regulators might be expected to apply conflicting or inconsistent standards.
58. The Interim Report set out potential advantages and disadvantages of a single regulator model and of a multiple regulator model. The feedback from the consultation served to affirm that list and add to it.
59. The key advantages to a single regulatory model include having credentials, standards, and disciplinary systems that are logically reconciled as between the various providers of legal services. It is not in the public interest to permit two different legal professionals to provide the same service to the public but have them subject to different standards of professional responsibility and regulatory oversight. The potential for public confusion was seen to be reduced by a single regulatory model and a single regulator was seen to be better able to improve public trust in the administration of justice. A single regulator was seen to be better able to increase the types of services various professions could provide.
60. The Task Force also believes that the economies of scale that can be realised through a single regulator of legal services is a key advantage of a single regulator model. It is, simply put, more economically efficient to regulate legal service providers through one organization than it is to have to create multiple governance structures and regulatory bureaucracies, particularly when the same or similar services are being regulated. Not only does this duplication risk the creation of differing standards, it costs more to the system as a whole and is therefore difficult to justify.
61. The Task Force concluded that the key advantages of a multiple regulator model include less potential for confusion on the part of the public between the identities of various legal service providers as distinct professions. There is less risk of actual or perceived conflicts of interest on the part of the regulator when it does not need to balance competing professions under one roof. Multiple regulators may foster greater innovation through competition than might be the case in a single regulatory model. A multiple regulatory system insulates each profession from the special interests of the other and consequently can focus on protecting the public interest rather than managing potential disputes between different categories of membership.
62. The survey results suggested an overall preference, by a 60% - 40% margin, for a single regulator of legal services. The Task Force notes, however, that a consultation undertaken by the Notaries Society of its members showed no clear majority for a single regulator. 43% of

notaries who responded preferred each legal service provider to have its own regulating body. 35% of respondents preferred a single regulator. However, the response in favour of a single regulator increased to 62% if notaries were able to achieve an expanded scope of service through that single regulator.

63. The Task Force weighed the advantages of each model carefully against how it considered the public interest would best be served. The ability for a single regulator with an appropriate governance structure to assess the public interest in relation to the legal profession as a whole, rather than to only a constituent part of it, was an attractive feature to the Task Force. It would allow, for instance, a single regulating body to plan more effectively by being able to assess, from a profession-wide perspective, as to what level of competence and standards were needed for particular legal services, rather than having multiple groups advocate in their own self-interest as to what those standards should be.
64. Moreover, a single regulator model would be able to avoid competing standards being set for similar types of services that might be common to more than one group of professionals. The Task Force was concerned that the possibility of competing regulatory frameworks created too much of a risk of driving standards down in order to gain competitive advantages for particular professional groups, a result that would not be in the public interest. While it is possible that multiple regulators could continuously challenge each other to create higher standards, overall the Task Force concluded that a single regulator acting in the public interest by regulating all professionals would be better able to set appropriate standards. Competing standards would also risk public confusion as to what the appropriate standard should be.
65. Further, the Task Force believes that no matter how well-intentioned a regulator of a discrete group of legal professionals is, there is always a *perception* that the regulator acts to some degree in the interest of those professionals that it regulates. The Task Force believes that a single regulator of all, or of at least several groups of, legal professionals would be better able to overcome this perception because it would not be tied as clearly to any single group.
66. A single regulator also presents a clearer model to the public, who can seek redress for concerns about competency or conduct from a single body.

Conclusion

67. *On balance, the Task Force concludes that a single regulator of legal services is the preferable model.*

Who Should the Single Regulator Be?

68. If one regulator is the better model for legal service regulation, who should that regulator be?

69. The response to the Law Society consultation indicated that a majority of participants suggests that if there were to be one regulator of legal services, the Law Society should be that regulator. Other suggestions were made that a new body should be created, “independent” of any of the professions, and one suggested that a sub-committee of the Supreme Court (akin to American models) be created. On the other hand, the Task Force notes that the survey conducted by the Notaries Society discloses that only 7% of notaries who responded believed the Law Society should be the regulator in a single regulator model. Notaries preferred an “independent” regulator.
70. The Task Force deliberated which model it considered best.
71. Both the Law Society and the Society of Notaries Public have regulated their members for a considerable period of time and each has considerable expertise in regulatory matters.
72. The Law Society’s mandate, however, is a broader one that is specifically required to consider the public interest, and the Law Society, unlike that of the Notaries, is solely a regulatory body. It has no mandate to represent the interests of its members except insofar as it is needed to ensure its members fulfil their duties in the practice of law. The Law Society has a mandate beyond regulation, as well, as it is required to “protect the public interest in the administration of justice” in a number of general ways that position it as an organization that might reasonably be expected to look at public rights and interests in the system in a way that the Notaries currently cannot.
73. Moreover, the Law Society currently has more robust legislation that allows it to regulate more effectively. The Notaries Society seeks amendments to its governing legislation to emulate many of the powers that the Law Society now has. Consequently, of the two bodies, the Law Society is better equipped to regulate those to whom it can accord membership.
74. A new body would be costly to start up and would likely have to re-create in any event the regulatory authority already existing with the Law Society.
75. The Task Force recognizes that the Law Society has been the regulator of lawyers for well over a century, and concern might exist that the influence of lawyers would dominate the single regulator model if the Law Society were to be the regulator. This concern is reflected in survey results, with calls for a single regulator to be “independent” of any current group of legal professionals.
76. The Task Force cannot agree to suggestions that the government set up a single regulator. The “independence of the bar” is a principle of fundamental justice¹², and while the effects on such independence will have to be analysed more closely after decisions are made about

¹² *Federation of Law Societies of Canada v. Canada (Attorney General)* 2013 BCCA 147 DM412325

which model of regulation to pursue, the Task Force is well aware that a government-appointed regulator body for lawyers would contravene that independence at the most basic levels.

77. The Task Force believes that, while the “Law Society” may now be associated with lawyers, moving that organization to being a single regulator for more than one group of providers should mean that the Law Society need not continue to be associated with only lawyers. Indeed, it is possible that as a regulator of no single group of legal professionals, it could better be viewed by the public as an independent body that exists to protect the public interest in the administration of justice.
78. The Task Force therefore recognizes that changes to the governance structure of the Law Society would likely be necessary should it be the single regulator, and these changes would need to address the concerns raised by those in the consultation who advocated for a body “independent” of any particular profession.

Conclusion

79. *On balance, the Task Force concludes that the Law Society is the logical regulator body if there is to be one regulator of legal services.*

Who Should Be Regulated?

80. If there is a single regulator, should it regulate legal service providers other than lawyers and notaries?
81. The Task Force has concluded that it is in the public interest that non-lawyer (and, by extension, non-notary) legal service providers should be regulated. Which other legal service providers should be included?
82. The Task Force discussed this issue in a general way. It noted that the consultation response strongly indicated a preference for the regulation of paralegals, although again, the sample size of the consultation has to be considered, as does the fact that participants who identified themselves as “paralegals” constituted a large percentage of those who replied.
83. The Task Force wrestled with a definition of “paralegal”. Currently there is no definition. This means that some people who have a great deal of practical experience and education from post-secondary institutions that offer specialized education and training for paralegals call themselves paralegals, while at the same time others with no such education or experience use the same title.
84. Some ability for the regulator of legal services to identify qualifications or experience that would allow for a designation of title would assist in giving a better meaning to “paralegal.”

However, the Task Force also believes that *regulation* of individuals (as opposed to a certification recognizing the achievement of, for example, educational criteria) who are acting strictly under supervision of a regulated professional is unnecessary and could add needless expense to the cost of the legal services provided.

85. On the other hand, the Task Force supports the idea of developing a regulatory framework that would allow for the creation of new categories of legal service providers to be in the public interest, which would be regulated through the single-regulator model. The level of qualification and the scope of the legal services that this group would be enabled to provide will need, of course, to be determined. The Task Force believes that the proper scope of legal services can be assessed by the single regulator to maximize areas of need that are currently under-served, or not served at all, by regulated legal service professionals, and can therefore be designed to improve overall access to legal services.
86. With regard to other groups identified in the consultation, the Task Force believes that they ought not to be included in a regulatory model at this time. Doing so may have adverse consequences on the viability of some models, such as the community advocates who are under some supervision through the Law Foundation. Regulation of arbitrators may need consideration at some time, but as they perform an adjudicative function the Task Force is unsure if a legal *service* provider regulator is appropriate for them. Mediators are often considered to be performing legal services (although the definition of “practice of law” does not include mediation), and certainly *lawyers* who act as mediators need to be regulated by the Law Society. The Task Force also noted that commissioners might require some form of regulation. However, the Task Force concluded that consideration of the regulation of other legal service providers should be deferred for now. It is possible that the development of a regulatory framework referred to above could encompass the types of services provided by these groups, but that is something that the Task Force believes will have to be assessed at a later date.
87. The Task Force recognizes that beginning the process of examining the regulation of non-lawyer legal service providers by a single regulator by taking smaller steps may lead to a more successful end program of expanded regulation. It believes that the most effective course of action is to start the process by creating a single-regulatory model for the two currently separately regulated branches of the legal profession (lawyers and notaries), and by developing a regulatory framework through that single regulator by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest. It is possible that some of the other groups identified in the consultation may, in fact, fall within the parameters of the new group.

Conclusion

88. *The Task Force concludes creating some method to provide “paralegals” who have met prescribed educational and practical standards with a certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. The Task Force also concludes that the regulation of non-lawyer, non-notary legal service providers of limited scope legal services should be included in the purview of a single regulator of legal services and that the Law Society should move to create a process by which that can take place. Other groups should not be regulated by such a body at this time.*

Improving Access to Justice

89. The Task Force was asked to examine whether recognition and regulation of non-lawyer legal service providers would improve access to law-related services for the public. Access to legal services remains a topic of much discussion and concern, as evidenced in the recently released Canadian Bar Association summary of its report entitled “Reaching Equal Justice: an Invitation to Envision and Act” and the Report of the Action Committee on Access to Justice in Civil and Family Matters entitled “Access to Civil & Family Justice: A Roadmap for Change.”
90. This topic was addressed in the Interim report. A significant challenge to the Task Force in examining this topic is that it found no empirical studies that analyze how forms of legal service regulation affect access to legal services. The academic articles reviewed by the Task Force confirmed this general lack of data. Nevertheless, the Task Force also attempted to discern how regulation in general, and a single regulatory model in particular, might improve access to legal services.
91. There are some examples demonstrating how access to justice may be improved by permitting an expansion of services to a new group of service provider. England, in 1985, removed conveyancing from legal services reserved to solicitors, and a new group of conveyancers was created. A separate regulatory body was created for this group. There is some evidence that suggests that the cost of conveyancing decreased in England in the following years. However, adding another regulatory body simply added to the plethora of legal regulators already existing in England, which ultimately led to the recommendation in the Clementi report¹³ a decade and a half later to create a single body responsible for regulation of legal service providers in England to reduce the “regulatory maze” that existed.
92. The Task Force recognized that access to legal services is a concern for regulators of the legal profession and other legal system stakeholders and that changes are necessary. But the Task

¹³ Clementi, Sir David *Review of the Regulatory Framework for Legal Services in England and Wales* December, 2004

Force also recognized the tension between the desirability of empirical evidence to support change and the difficulty of ever changing if empirical evidence were a necessary prerequisite.

93. The Task Force discussed past access initiatives of the Law Society, such as providing insurance coverage for pro bono legal services, modifying the rules of professional conduct to facilitate limited scope legal services, and expanding the roles of articulated students and paralegals to improve access to lower cost, competently delivered legal services. These initiatives removed regulatory barriers in the market for legal services.
94. The Task Force noted that it has no direct evidence to date whether these initiatives have improved access to legal services. However, the common element of each of the initiatives is that there is an elimination or modification of regulatory barriers to services being provided. The Task Force also noted that regulation is necessary to ensure that standards are established and followed. In any regulatory model, therefore, there is a tension between attempting to maximize access to the regulated services while also providing assurances that services are provided by competent and ethical professionals.
95. The Task Force discussed the concept that a regulator can seek to facilitate greater access through policy reforms. It is then up to the market place to embrace or reject the reforms.
96. Regulatory reforms in other jurisdictions that the Task Force has examined are intended, in part, to maximize choice to the public in an effort to close the “access to justice gap”¹⁴ but have recognized that the result is not certain. In Washington State, for example, the Supreme Court order that authorizes limited license legal technicians stated:

No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.¹⁵

97. It seems to the Task Force that it is *possible* that access will be improved if other groups of legal service providers besides lawyers are permitted to provide an increased scope of legal services. This seems to be the conclusion of the Futures Committee from 2008. Areas of

¹⁴ “The difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income Americans is the “justice gap.” Legal Services Corporation, Documenting the Justice Gap in America: *The Current Unmet Civil Legal Needs of Low-Income Americans* (September 2009).

¹⁵ Footnote 10 above

legal need, for example, that are currently not served by lawyers *might* be served by other groups.

98. In Ontario, the Law Society of Upper Canada submitted its five year review of the new regulatory paradigm to the Attorney General of Ontario in 2012. The regulatory regime has largely been viewed as a success by the Law Society and the Ontario government. The report expresses the view that access to justice has been improved.¹⁶
99. The Task Force recognizes, however, that no one form of regulation has a monopoly on improving access to legal services or facilitating access to justice, nor does amending the model of regulation constitute a complete solution to the issues relating to problems with access to legal services.
100. In order for access to justice benefits to derive from a regulator it is necessary for the regulator to have a commitment as part of its mandate and policy vision to improve the public's access to legal services. The regulator must then act on that vision. This is true whether one is dealing with a single regulator, or multiple regulators.
101. On balance, however, the Task Force believes that a single-regulator model is preferable to create a policy model by which access to legal services may be improved, for the reasons expressed above. A single regulator of all legal professionals is, the Task Force believes, better able to assess public needs for legal services across the entire profession and will be better able to develop appropriate responses that best serve the public interest.

Conclusion

102. *The Task Force cannot conclude with certainty that a single-model regulator of a number of different groups of legal service providers will improve access to justice, and is uncertain that one would be able to create empirical evidence to prove this end. However, as in Washington State, there is no way to find the answer without trying it. The Task Force concludes that it should be tried.*

¹⁶ Footnote 9, above
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Recommendations and Discussion

103. On the basis of the conclusions it has reached, the Task Force makes three recommendations. It considers these recommendations logically follow from its conclusions, recognizing that each recommendation is a first step toward an end result, and each will require further work, analysis and consultation.
104. It may be that further consideration will unearth reasons to discontinue efforts to implement any recommendation. However, the Task Force is confident that these recommendations are worth pursuing to improve regulation of legal service providers in BC in the public interest.
105. The Task Force makes these recommendations, as well, with an aspiration that they will assist in improving access to legal services, recognizing that it is unable to point to any studies or evidence that guarantee such a result. However, by creating new models for the regulation and provision of legal services, the Task Force hopes that it can set the stage for improved access to legal services.

Recommendation 1

That the Law Society seek to merge regulatory operations with the Society of Notaries Public with the result that the Law Society would become the regulator of both lawyers and notaries in the province, and that the Law Society otherwise continue to maintain the same object and duties as set out in section 3 of the Legal Profession Act, modified as necessary to achieve the recommended end.

106. This recommendation follows from the Task Force's conclusion that a single-regulator model for legal service providers ought to be pursued, and that the single regulator ought to be the Law Society.
107. As the Law Society is a public interest organization and not an advocacy or representative organization, the Task Force contemplates that any advocacy or representative functions now provided by the Notaries Society would not be included in scope of the regulatory operations of the merged organization. Advocacy or representative functions for notaries would be the responsibility of some other organization for the notaries, in much the same way as the Canadian Bar Association provides a representative function for lawyers.
108. The legal services provided by notaries are services that can be provided by lawyers. Proper protection of the public interest warrants a similar regulatory regime where two groups of service providers are able to provide the same service. Otherwise, a risk exists that the same legal service will be regulated differently or to a different standard. There is no good rationale for maintaining a system that preserves that risk.

109. A common regulatory regime for lawyers and notaries should work to enhance the public perception of and confidence in the legal profession generally, as well. The public could be assured that every legal service provider will have consistent ethical standards, regulation, insurance programs, complaint processes, and will have met a standard of competence necessary for the service provided. Clients will receive the same level of service meeting the same ethical and regulatory standards regardless of which provider they choose. The “regulatory maze” identified in England that was inimical to professional regulation in that jurisdiction will be avoided.
110. The Task Force is unsure how this recommendation will be received by the membership of either Society. It recognizes the governance concerns inherent in merging an organization of many thousands with that of a few hundred. Some of these concerns were raised in the consultation process, and they will need to be addressed in the development of appropriate governance processes acceptable to both organizations.
111. The Task Force is aware that this recommendation presents both philosophical and logistical challenges. The government would have to agree to and implement a number of legislative amendments in order for the recommendation to be implemented. The scope, governance and merger of the operations and assets of the two organizations will all have to be negotiated. Other organizations, such as the Law Foundation and the Notary Foundation will have views on the merger. The Task Force, therefore, views its recommendation as aspirational and recognizes that in seeking to merge operations with the Notaries Society, there are a number of hurdles that will have to be cleared before any merger occurs.

Recommendation 2

That a program be created by which the regulator of legal services could provide paralegals who have met specific, prescribed education and/or training standards with a certificate that would allow such persons to be held out by regulated legal service providers for whom they work as “certified paralegals.” A regulated legal service provider would not be permitted to hold out as a “certified paralegal” any person who had not obtained a certificate.

112. This recommendation follows from the Task Force’s conclusion that creating some method to provide “paralegals” with some form of certification would assist greatly in giving definition to that function when working under the supervision of a lawyer. It is also a recognition that much study has been given to the subject over the past 25 years, and that the idea of certifying paralegals within or through the Law Society is not new.
113. A resolution to develop a program to certify paralegals was passed in 1990, and work was undertaken over the next few years by the Certification of Legal Assistants Committee. That work was, however, terminated by the Benchers in 1995. Instead, the Benchers began working on identifying options that would educate the profession on the appropriate recognition and use of paralegals.

114. In 2002 the Paralegals Task Force again recommended that the Law Society adopt a system for certifying paralegals who met good character and education requirements. A draft certification scheme was developed. However, again, it was not approved. Instead, the Benchers decided to focus on revising Chapter 12 of the *Handbook* to expand the range of services that could be performed by paralegals.
115. Despite the rejection of these recommendations on previous occasions, the Task Force believes that creating a method by which paralegals can obtain certification from the Law Society ought to be recommended again.
116. The work of paralegals, and the available education for paralegals working under a lawyer's supervision continues to evolve.
117. Education programs at post-secondary institutions have become quite sophisticated. Much of the material studied is not dissimilar to that studied in law school. At least one university¹⁷ offers a degree program that gives the successful candidate a "Bachelor of Legal Studies (Paralegal)" degree upon completion.
118. Many paralegals take on a high degree of responsibility for drafting documents, acting much like lawyers in meeting clients, taking instructions and preparing materials.
119. Further, the Law Society now permits "designated paralegals" to provide a very wide scope of supervised legal services, including, where permitted, making court appearances.
120. The Task Force believes it is in the public interest to encourage those who wish to assist in the provision of legal services to be credited for education and experience that they have gathered. Because there is no occupational definition of "paralegal," anyone can currently use that title regardless of their education or experience. The Task Force does not believe that this is in the interest of those who have educational qualifications and experience, which can benefit the public by better ensuring that the materials prepared by such paralegals are of a high quality. Nor does it assist the public when dealing with such persons, as the public is currently unable to ascertain from the appellation of "paralegal" exactly what level of skill or experience the paralegal has, and whether the cost of the provision of those services is commensurate with the qualifications of the provider.
121. The Task Force therefore believes that it is in the public interest to educate and qualify paralegals to a set standard if individuals choose to do so. Encouraging the continued improvement in the level of learning amongst paralegals and recognizing that standard in some relevant way is in the public interest.

¹⁷ Capilano University, North Vancouver. See <http://www.capilanou.ca/paralegal/Bachelor-of-Legal-Studies-Paralegal/>
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122. If the Law Society is considering expanding the use of designated paralegals at any time in the future, a group of educated, experienced paralegals will be needed. Encouraging candidates to achieve those qualifications is advised.
123. The Task Force believes that this can be done by giving those who have achieved qualifications (that will need to be established) some designation for having done so. This will accomplish a number of benefits:
- It will distinguish paralegals who have met established criteria from those who have not;
 - It will provide tangible recognition for those demonstrating adherence to high ethical standards
 - It will encourage the expanded use of paralegals by lawyers who can rely on the knowledge and professionalism of the paralegal
 - It should assist the legal profession in providing cost effective legal services to the public;
 - It will assist lawyers in choosing who to hire to assist them in providing legal services, and, the Task Force expects, in determining who could be a “designated paralegal;”
 - It will allow members of the public to know that people with whom they are dealing in connection with their legal matters have achieved a standard of education and experience.
124. The Task Force recognizes that there may be costs should this recommendation be implemented, and the work of the Law Society Credentials Department could be increased, depending on the type of model created. However, the Task Force also believes that the recommendation is capable of being implemented without statutory amendment, provided there is no intention that paralegals who meet the certificate requirements will become “members” of the Law Society.
125. Rather, the proposal could be dealt with through the marketing rules. Individuals and entities over which the Law Society has regulatory authority would be unable to hold out any employee as a “certified” paralegal (or whatever term is agreed upon) unless that employee had met the certification requirements. It is also possible that the proposal could be dealt with through rules governing the provision of legal services by law firms, which is now permitted by the *Legal Profession Act*.
126. Work will therefore need to take place to develop the appropriate certification requirements and processes.

Recommendation 3

That the Law Society develop a regulatory framework by which other existing providers of legal services, or new stand-alone groups who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.

127. The creation of a separate group of independent paralegals to provide stand-alone, unsupervised legal services has been considered and rejected before in the 1990s and 2000s.¹⁸
128. Times are different now, however. For example, it has been demonstrated in Ontario that independent paralegals regulated by the Law Society can have a place in the legal profession. Not all legal services can be delivered by such persons, but some appropriate level can. Other jurisdictions have also incorporated groups other than “lawyers” (that is, those who have received a law degree and have qualified to practise law as lawyers) into the provision of legal services in different ways.
129. The Task Force believes that there is merit in allowing clients a choice of service providers for some services, *provided that those service providers are appropriately qualified and regulated.*
130. The Task Force, for example, noted that the Futures Committee in its 2008 Report concluded that legal services should be reserved to lawyers where the power of the state is brought to bear on an individual’s liberty or other constitutionally protected freedom, or when what was at stake in a matter was of sufficient magnitude that the education, skills, and professional obligations of a lawyer is needed to protect against the consequences of an adverse outcome.
131. That same Committee concluded that “it is in the public interest to expand the range of permissible choices of paid legal service providers to enable a reasonably informed person to obtain the service of a provider *who is adequately regulated with respect to any or all of training, accreditation, conduct, supervision and insurance*, and who can provide services of a quality and at a cost commensurate to the individual and societal interests at stake in a given legal matter.” (emphasis added).
132. It follows that this Task Force agrees with the conclusions of the Futures Committee, provided that the regulation is undertaken in an appropriate manner by a single legal services regulator that can act in the public interest to ascertain the appropriate level of qualifications and standards having regard to the legal profession as a whole.

¹⁸ See, for example, Part II of the *Paralegal Task Force Report: Report to Benchers on Paralegals*, October 27, 2003 and *Paralegals in the delivery of Legal Services Part I A report of the Paralegalism Subcommittee* October 1989 (in which the Subcommittee recommended restrictive rights for independent paralegals but did not address issues of paralegal regulation)

133. Competency standards and the determination of the appropriate level of legal services that can be offered by other groups of legal service providers is therefore critically important to ensure the public is protected against incompetent or unethical service, and to ensure that there is some manner by which competence or conduct can be corrected or sanctioned in the event there are meritorious complaints against regulated individuals.

134. As noted by the Supreme Court of Washington in its order adopting the limited practice rule for limited licence legal technicians:

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Limited License Legal Technicians are not lawyers. . . But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

135. The Task Force believes that the creation of standards, set and regulated by the Law Society as the single regulator of legal service providers, through which a group of stand-alone legal service providers can be created can serve the public interest by creating access to legal services in areas that notaries cannot yet offer, and in areas in which lawyers no longer routinely offer, legal services.

136. The Task Force believes that a great deal of thought and consideration will need to be given by the Law Society when investigating the creation of this framework, however, and it should not be viewed as a *fait accompli*. It will require the development of a framework around which existing or new groups of legal service providers can be recognized and credentialed, as well as a framework for determining the scope of practice for such groups of service providers. This latter issue will involve, the Task Force believes, an assessment of a framework to address how educational standards would be rationalised with the scope of services to be provided.

137. The work contemplated by this recommendation might therefore be viewed as creating a framework for the liberalization of regulatory requirements to permit the Law Society to better respond to future initiatives and needs for the provision of legal services.

Next Steps

138. As noted above, the Task Force considers that each of its recommendations is a first step toward an end result, and each will require further work, analysis, collaboration and consultation with other interested parties.
139. In particular, further work on each of the recommendations will require a more detailed examination of the implications of any action to be undertaken on Law Society operations or on its mandate. The Task Force has not, in the time frame it has been given to operate, had the ability to analyse every topic related to, and implication that may arise from, its recommendations. Increasing the number of legal service providers that could be regulated by the Law Society would be expected to have operational consequences in both the credentialing and professional conduct/disciplinary functions of the organization. These have not been examined.
140. The effects of this recommendation on lawyer independence have not been analysed. The independence of the bar is a principle of fundamental justice.¹⁹ It is therefore important to understand whether the public's right to retain legal advice from an independent lawyer is affected by regulating legal service providers other than lawyers. The Task Force understands that the topic is on the agenda of the Rule of Law and Lawyer Independence Advisory Committee, who are awaiting the recommendations of this Committee in order to be able to analyse that subject having reference to what is recommended.
141. The Agreement on Internal Trade (AIT) is another important consideration. The AIT is an agreement between the provinces and the federal government that provides for the streamlining and harmonization of regulations and standards. Its purpose is to reduce and eliminate, as much as possible, barriers to the free movement of persons, goods, services, and investment within Canada. It applies to regulated professions. Consequently, the effect of regulating other legal services providers under the auspices of the Law Society could engage considerations under the AIT, and these will need to be analysed.
142. In its December 20, 2000 Report to the Benchers,²⁰ the Paralegal Task Force referenced the AIT and reported that it had sought advice on what impact that agreement might have on the ability of the Law Society to regulate independent paralegals more restrictively than might be the case in other provinces. The advice received then was that consumer protection provisions would likely permit *bona fide* Law Society restrictions. Given the passage of time since it was received, this Task Force believes that this advice should be re-examined before further steps are taken relying on it.

¹⁹ See note 6, above

²⁰ See footnote 3 above

143. The Task Force is mindful that it has not provided any comprehensive assessment of the implications for Law Society operations of any of its recommendations, as contemplated by item 3 of its mandate.
144. In considering this aspect of its mandate, the Task Force was faced with the difficulty of assessing the implications of an unknown model or program and concluded that it was not possible to provide much assistance to the Benchers on the operational implications without the detailed work that the Task Force expects will form the next phase if the Benchers agree with the Task Force “in principle” recommendations.
145. Accordingly, providing the Benchers adopt the Task Force’s recommendations, the Task Force suggests that a significant element of the mandate of any further work be the development of a comprehensive model to be accompanied by a full operational analysis of the implications on the Law Society’s operations and mandate by regulating more than just lawyers. As stated earlier, the Task Force is mindful that this further work could disclose reasons to discontinue efforts to implement one or more of the original “in principle” decisions if the consequences of such implications are assessed to outweigh the benefits of the recommendations as proposed and explained in this Report.
146. With these overarching considerations in mind, the Task Force suggests “next steps” on each of its recommendation as follow.

Recommendation 1

147. The Task Force’s first recommendation will require the agreement of the Notaries Society, the agreement of the government to legislative amendments, and will involve detailed negotiations regarding the terms of merger.
148. The Task Force expects that the work involved in this task will be time-consuming and will require the commitment of senior levels of staff in order to be successful.
149. To that end, the Task Force recommends that the Law Society create a working group that involves senior management as well as members of the Executive Committee, and preferably a member of the Presidential “ladder.” The Task Force expects that some similar group would be created by the Notaries Society and that both such groups would need to negotiate, discuss and resolve the various issues that will arise in the course of implementing such a merger before the terms of any merger are finally approved.

Recommendation 2

150. The second recommendation will require determining the appropriate criteria to be met by paralegals seeking certification from the Law Society.

151. The Task Force recommends the creation of a working group comprising Law Society staff, and recommends that this group meet with paralegal organizations and post-secondary institutions that offer degree, diploma or certificate programs through which paralegals can obtain academic and practical training.
152. The working group should develop criteria for obtaining certification, and make recommendations to the benchers concerning the process by which such certification could be obtained, as well as recommendations concerning any continuing requirements (such as continuing education) that would need to be met in order to maintain certification.

Recommendation 3

153. This recommendation involves developing a regulatory framework by which other existing providers of legal services, or new stand-alone groups, who are neither lawyers nor notaries, could provide credentialed and regulated legal services in the public interest.
154. The Task Force believes that the Law Society will need to give a considerable amount of thought about how to create this framework. Therefore, the Task Force recommends the creation of a task force to develop a framework around which existing or new groups of legal service providers can be, for example, recognized and credentialed, as well as a framework for determining the scope of practice for such groups of service providers. This latter issue will involve, the Task Force believes, an assessment of a framework to address how educational standards would be rationalised with the scope of services to be provided.

Appendix

Legal Service Providers Task Force: Summary of Consultations

The Legal Service Providers Task Force engaged in a consultation process, the highlights of which are summarized in this document. This document is not a stand-alone document and should be read in conjunction with the final report of the Legal Service Providers Task Force for proper context.

The Task Force held in person consultations on the following dates. With the exception of the September 6th consultation, all meetings were open to all who wished to attend:

- September 6, 2013 in Vancouver and by webinar with members of the British Columbia Paralegal Association;
- September 9, 2013 in Vancouver;
- September 16, 2013 in Victoria;
- September 18, 2013 in Prince George.

An online survey was hosted on the Law Society website from mid-August to October 14, 2013.

The results of these meetings, along with the results of the online survey, can be captured in numerical terms of how people answered questions, whereas the other consultations cannot. For example, the consultation in Prince George consisted of a meeting with three local lawyers, and was more conversational than an effort to poll responses to the survey. However, in composite the consultations and survey give some perspective on the work of the Task Force and the question of whether it is in the public interest to move towards a model of a single regulator of legal services.

In addition to the consultations noted above, the Task Force received a few written submissions from lawyers, a paralegal, and the Canadian Bar Association BC Branch.

Task Force member John Eastwood, President of the Society of Notaries Public, undertook through that organization extensive consultation with its membership at 14 Chapter meetings. A summary of that consultation follows at the end of this report.

Key Feedback from the Consultation and Submissions

The vast majority of feedback recognized the need for non-lawyers and non-notaries who are providing legal services directly to the public and without supervision to be regulated. There was some variance as to who should be included in such regulation, but the dominant theme in the call for regulation was the need to protect the public from people who lack proper training and oversight from providing legal services to the public. The feedback from the CBA suggested that if a non-lawyer is providing services under the supervision of a lawyer, sufficient public protection exists through the regulation of the lawyer and there is no additional benefit in credentialing and

directly regulating the employee. In fact, some concern about increased costs and the potential adverse impact on access to justice was noted.

With respect to categories of which free-standing legal service providers ought to be regulated, the views were wide-ranging. As the Task Force is not proposing a roadmap for such future credentialing and regulation at this time, the details suggestions are not captured here.

With respect to the question of whether there should be a single regulator or multiple regulators of legal services, the answers varied and there was a smaller majority favouring a single regulatory approach. What emerged are the following themes:

- Those who favoured a single regulator expressed the view it allows for a more stable platform for delivering consistent credentials, rules, ethical standards and discipline process. It was seen to be less confusing to the public and affords greater protection.
- Those who favoured multiple regulators felt that approach provides greater choice by not centralizing authority within a single body. Competition was seen to be fostered through a multiple model approach and potential risks of conflicting interests avoided.
- Although a majority favoured a single regulator approach the same is not true of the feedback from consultations with the notaries. Amongst those sessions approximately 67% favoured what could be categorized as “co-regulation” or “multiple regulators”. The concern raised by notaries was the loss of autonomy of the profession if it were subsumed within a regulatory structure designed by and dominated (in terms of representation) by lawyers.

The question of who should be the single regulator sought to determine, *if* there were to be a single regulator, who should be that regulator. As such, feedback was provided by people who felt there should be a single regulator but also by people who preferred a multiple regulator approach. The answer to this question largely depended on who you asked. In the Law Society online survey 82% felt that the Law Society ought to be the regulator. In the consultations of the notaries, the strong feedback was that if there were to be a single regulator (remembering that this was not the preferred approach for notaries) that it be a new body and only 7% felt it should be the Law Society. This discrepancy highlights the importance of engaging in robust consultations and dialogue with notaries and lawyers if the project moves forward. What the feedback recognizes is that it is difficult to comment on the merit of either model without being able to see what the proposed model looks like.

It should be noted that some of the feedback pointed out that, to the extent improving access to justice is an important part of any justification to move to a new model of regulation, no existing regulatory body has made quantifiable strides to improve access. Consequently, it is difficult to argue in favour of one regulator over another unless new models of regulation and policies for improving access are proposed.

The results of the Law Society’s online survey were:

1. Should legal service providers other than lawyers and notaries be regulated?

Response	Chart	Percentage	Count
Yes		87%	138
No		13%	20
Total Responses			158

2. If you think legal service providers other than lawyers and notaries should be regulated, which additional legal service providers?

Response	Chart	Percentage	Count
Paralegals		93%	132
Mediators		66%	94
Arbitrators		70%	99
Native court workers		49%	69
Other (please specify)		23%	32
Total Responses			142

3. Should legal service providers be regulated by a single regulator or should each profession be regulated by a distinct regulator?

Response	Chart	Percentage	Count
Single regulator for all providers		60%	89
Distinct regulator for each (or some) providers		40%	60
Total Responses			149

4. If you think legal service providers should be regulated by ONE single regulator, who should the regulator be?

Response	Chart	Percentage	Count
Law Society of British Columbia		82%	102
Society of Notaries Public of BC		0%	0
Other (please specify)		18%	22
Total Responses			124

Please choose the selection below that best describes your profession.

Response	Chart	Percentage	Count
Lawyer		30%	47
Notary public		2%	3
Paralegal		59%	92
Mediator, arbitrator or native court worker		0%	0
Other legal service provider		4%	6
I do not provide legal services		6%	9
Total Responses			157

Society of Notaries Public Survey Analysis – Summary – October 2013

Number of Respondents to Survey: 137

Question 1

Respondents: 137

Should other legal service providers be regulated?

Yes: 94.2% No: 5.8%

91 Respondents made comments.

Comments can be categorized into three categories:

For standard rules, guidelines, codes of conduct, education	32.4%
For protection of the public	36.7%
Other (Generally better access to services)	5.1%

Question 2

Respondents: 129

If yes to question 1, who should be regulated?

Comments can be categorized into the following categories:

Commissioners	51%
Mediators/Arbitrators	58%
Mortgage Brokers	5%
Paralegals	65%
Realtors	3%
Accountants	18%
Court Workers	29%
Immigration Consultants	17%

Title Insurers	47%
Trust Companies	4%
Everyone who provides legal services	24%

Question 3

Respondents: 134

Should there be one single regulator, or should each have their own?

Comments categorized in four areas:

Single Regulator	35%
Each have their own	43%
2 Regulators with oversight	24%
Don't know	3%

Question 4

Respondents: 110

If sole regulator, who?

Comments can be categorized in 6 areas:

Law Society as sole Regulator	7%
Independent Regulator	51%
Government	15%
Not sole regulator	25%
Notary Society as Regulator	4%
Wayne Braid as Regulator	3%

Question 5

Respondents: 133

If Notaries were given expanded powers, would you support sole regulator?

Yes: 62.4% No. 37.6%

103 respondents made comments.

Comments can be categorized 5 ways:

New powers is the only reason for support	12%
Still no to sole regulator	26%
Yes, but not the Law Society	50%
This would be blackmail	6%
No Position	6%

Question 6

Respondents: 128

Would you support co-regulation?

Yes: 64.8% No: 35.2%

128 respondents made comments.

Comments can be categorized in 4 ways:

Maybe (not enough info to give reason)	37%
Yes, with equal representation	37%
No position	6%
No	17%

Question 7

Respondents: 117

Would you prefer the current model of regulation under the *Notaries Act*?

Yes: 54% No 46%

91 made comments.

Comments can be categorized in 5 ways:

Change must be approved by membership vote	1%
Need distinction and separation	16%
Works well now, don't change it	13%
Probably not an option	23%
Must change to get more powers	38%
