The Law Society of British Columbia

Report of the Legal Services Regulatory Framework Task Force

Art Vertlieb, QC (Chair)
David Crossin, QC (Vice-Chair)
Satwinder Bains
Jeevyn Dhaliwal
Lee Ongman
Karey Brooks
Nancy Carter
Dean Crawford
Carmen Marolla
Wayne Robertson, QC
Ken Sherk

December 5, 2014

Prepared for: Benchers

Prepared by: Michael Lucas and Doug Munro
Policy and Legal Services Department

Purpose: Decision

DM595094

Table of Contents

Executive Summary

1. In December 2013 the Benchers unanimously approved the report of the Legal Service Providers Task Force. That report, building on past work of the Law Society and a range of legal needs studies, recognized that in order to address unmet and underserved legal needs in our society the time had come to explore in more detail a liberalization of the market place concerning who can practice law.

2. This Task Force was created to follow up on the third recommendation in the Legal Service Providers Task Force Report. It was given the mandate (set out below in the body of this Report) to provide a framework for the expansion of legal service providers. The mandate can roughly be divided into two components: mandate items (a)-(c) focus on identifying the unmet need in society, who provides legal services, and what new services might be created to provide the public more options for getting legal help. Mandate items (d)-(f) focus on developing credentialing and regulatory schemes to govern those new services.

3. While the Benchers have already endorsed the idea of expanding the category of who can practice law, they did so without a detailed exploration of what that might theoretically encompass. This report attempts to fill in some of the detail by examining in particular mandate items (a)-(c). It follows the research already conducted by the Law Society on his subject, and examines legal needs studies both provincially and nationally to get a sense as to where unmet legal needs exist, and to identify where there are underserved areas of legal practice, and what might be done to address them. It has supplemented this research by engaging in preliminary consultation with courts, other regulatory bodies, and groups that are already utilizing some non-lawyer assistance, such as the Legal Services Society.

4. As a result of its work, the Task Force recommends that the initial areas of practice in which new classes of legal service providers could be permitted to practice should include:

    a. family law;

    b. employment law;

    c. debtor/creditor law;

    d. advocacy before administrative tribunals (subject to further discussion with administrative tribunals);

    e. advocacy in Small Claims Court (subject to further discussions with the Provincial Court);

    f. Traffic Court infractions in Provincial Court;

g. representation at mediations and arbitrations.

5. The Task Force has also concluded that the public interest in the administration of justice would not be well serviced if these new categories of legal service providers were not, in some manner, credentialed and regulated to provide legal services. There must be some standards to the services provided. There is no point in creating a system that enables people to retain uninformed legal advice, as that advice will in most cases exacerbate already existing legal problems.

6. The Task Force therefore concludes that these new providers of legal services must in some fashion be credentialed and regulated, and agrees with the recommendations of the Legal Service Providers Task Force that the Law Society should be the regulator of legal services.

7. However, the Task Force has recognized that in order to create, credential and regulate new categories of non-lawyer legal service providers, an amendment to the *Legal Profession Act* would likely be necessary. The Task Force therefore also recommends that the Benchers seek such an amendment in order to enable the Law Society to establish new classes of legal service providers to engage in the practice of law (as that term is defined in the legislation), set the credentialing requirements for such individuals, and to regulate their legal practice. This Report sets out some of the policy rationale for a legislative amendment.

8. Because the work that would be required in order to properly discharge mandate items (d)-(f) will require extensive consultation with a wide range of knowledgeable stakeholders, it is premature and potentially inappropriate to engage those groups until it is determined whether a legislative amendment is possible. The Task Force therefore recommends that those three items of the mandate be considered more fully at a later date.

Recommendations

9. The Task Force recommends that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice.

10. While some further consideration needs to be given before final recommendations can be made, the Task Force recommends that the initial areas of practice in which new classes of legal service providers could be permitted to practice should include:

    a. family law;

    b. employment law;

    c. debtor/creditor law;

    d. advocacy before administrative tribunals (subject to further discussion with administrative tribunals);

    e. advocacy in Small Claims Court (subject to further discussions with the Provincial Court);

    f. Traffic Court infractions in Provincial Court;

    g. representation at mediations and arbitrations.

11. The specific types of services that new categories of legal service providers should be permitted to offer in each area must still be ascertained, and will be subject to several variables. This issue is discussed further in Part IV, below.

I. Introduction

The Issue for Consideration

12. The Benchers are asked to consider the Task Force's recommendation to seek a legislative amendment to the *Legal Profession Act*, S.B.C. 1998 c. 9 to permit the Law Society to develop a credentialing and regulatory scheme for new classes of legal service providers to engage in the practice of law.

13. This report focuses on items (a)-(c) of the Task Force's mandate.[1] The Task Force considers that items (a)-(c) establish the threshold question that has to be answered, first by the Benchers, and then by government: *is it in the public interest for the Law Society to have the authority to create, and regulate, new categories of legal service providers to engage in the practice of law, in order to provide the public greater options when it comes to accessing legal services?* If the concept is rejected, it would be unnecessary to develop any new credentialing and regulatory schemes. Consequently, this report only addresses mandate items (d)-(f) in an introductory fashion.

14. If the Benchers agree that a legislative amendment should be sought, staff will work toward refining the material to be provided to the government by spring 2015, in order that it can be considered by the government for the 2016 legislative cycle. If, on the other hand, the Benchers decide that a legislative amendment should not be sought, the work of the Task Force would be concluded.

Creating the Task Force

15. The Task Force has the following members:

    Art Vertlieb, QC (Chair)
    David Crossin, QC (Vice-chair)
    Satwinder Bains
    Jeevyn Dhaliwal
    Lee Ongman
    Karey Brooks
    Nancy Carter
    Dean Crawford
    Carmen Marolla
    Wayne Robertson, QC
    Ken Sherk

[1] See Paragraph 18.

16. The Task Force was constituted to bring diverse professional perspectives to its work and to have a wide knowledge base for assessing the mandate through the lens of the public interest.

Background

17. On December 6, 2013 the Benchers unanimously adopted the report of the Legal Service Providers Task Force. That report contained three recommendations, including the following recommendation that gave rise to this Task Force:

> *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.*

18. At their April 11, 2014 meeting, the Benchers resolved:

> *…to create the Legal Services Regulatory Framework Task Force, and to endow that body with the mandate to 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. Specifically, the Task Force should:*
>
> *(a) identify areas of unmet needs for legal services or advice;*
>
> *(b) identify who in British Columbia and elsewhere, besides lawyers and notaries, currently provide legal services and assess the current value and skill that those providers bring to their work;*
>
> *(c) identify areas of legal practice suitable for the provision of legal services by non-lawyers;*
>
> *(d) identify the qualifications necessary for non-lawyers to be able to provide such services;*
>
> *(e) make recommendations to the Benchers for a regulatory framework to:*
>
> *(i) credential non-lawyers to provide legal services in discrete areas of practice;*
>
> *(ii) set standards for the provision of such services; and*
>
> *(f) ensure that the framework developed is consistent with a unified regulatory regime for legal services.*

19. This Task Force is the most recent in a series of Law Society initiatives that have the goal of improving the public's access to legal services. In each instance the work on the various initiatives has sought to balance the public interest of improving access to more affordable legal services with the value of ensuring that legal service providers are properly qualified and regulated. The history of that prior work is set out in detail in the final reports of the Legal Service Providers Task Force, and the Delivery of Legal Services Task Force, and is therefore not duplicated here.[2]

20. The mandate of the Law Society, established in s. 3 of the *Legal Profession Act,* includes the following:

> *It is the object and duty of the society to uphold and protect the public interest in the administration of justice by*
>
> *(a) preserving and protecting the rights and freedoms of all persons;*
>
> *(d) regulating the practice of law.*

21. There are several ways by which the rights and freedoms of people can be preserved and protected, including by facilitating access to the services of skilled legal professionals. This can be accomplished by reducing barriers to accessing existing service providers, but it can also be accomplished by creating new categories of legal service providers. The Task Force believes that the threshold question is whether the public needs access to new categories of legal service providers to improve access to legal advice. This requires assessing what services exist and determining the extent to which the public can access these services. To the extent the current market for legal services falls short of addressing public need, it is possible to identify the foundation on which the case for creating new categories of legal service providers must rest.

II. Task Force Process

22. The Task Force held eight meetings, engaged in extensive research, and undertook a series of in-person consultations as well as two online consultations.

23. The Task Force started with a review of core materials from past Law Society initiatives in order to understand the history that led to the creation of the Task Force. The Task Force then set a work plan in place, revisiting it from time to time as circumstances warranted.

24. The Task Force set the object of reporting to the Benchers in a timeframe that would allow the Law Society to make the case to government in 2015 for a legislative amendment

[2] Those reports, and others are available at: http://www.lawsociety.bc.ca/page.cfm?cid=99&t=Committee-and-Task-Force-Reports.

permitting it to regulate and credential new classes of legal service providers. There were a number of reasons for setting an ambitious timeline, but chief among them were the following.

25. Firstly, the other major initiative that arose from the Legal Service Providers Task Force was the recommendation that the Law Society and the Society of Notaries Public of BC work toward consolidating their regulatory structures, such that the Law Society would regulate both lawyers and notaries. That work is taking place separate from the work of the Task Force, but if it were to conclude in an agreement between the two governing bodies, that agreement would ultimately require statutory amendments. The Task Force wanted to ensure that its work was completed by the time the work regarding a regulatory merger with the notaries was complete to increase the chance the Law Society is able to present a comprehensive legislative reform proposal to the government.

26. Secondly, the impetus behind any recommendation to create new categories of legal service provider must be founded in the access to justice needs of British Columbians. The access to justice problem in British Columbia is well documented and immediate.[3] Recognizing that any recommendations of this Task Force will take a number of years to put into effect before the first properly trained new class of licensees would be available to the public also favoured setting an ambitious timeline so that unmet and underserved legal needs do not become a systemic part of our society.[4]

27. While these factors influenced the Task Force's decision to focus on mandate items (a)-(c), the Task Force concluded that if one were unable to make the case of the need for new categories of legal services, and provide some illustration of the types of services that were being contemplated, it would be unwise to develop a credentialing and regulatory structure on speculation. The only qualification the Task Force places on this observation is the recognition that the public interest requires not merely access to affordable legal services, but competently delivered legal services. Therefore, the model of credentialing and regulation is important to the ultimate goal of meeting public need. However, it is secondary to the question of whether the market place needs new classes of legal service providers.

---

[3] For a sample of the numerous reports on point, see: Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (October 2013); the Canadian Bar Association, *reaching equal justice report: an invitation to envision and act* (November 2013); Leonard T. Doust, Q.C., Report of the Public Commission on Legal Aid in British Columbia, *Foundation for Change* (March 2011); Dr. Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013); Carol McEown, Law Foundation of British Columbia, *Civil Legal Needs Research Report* (2nd Edition, March 2009); Law Society of British Columbia, Ipsos Reid, *Legal Services In BC Final Report* (September 2009).

[4] The Task Force considers that it required time to properly assess the matter, then it would take time for a legislative amendment, following which, regulatory and credentialing structures would have to be created, and finally, courses developed and staffed before the first class of future licensees even began their journey.

28. In order to answer mandate items (a)-(c) the Task Force reviewed legal needs literature for British Columbia and other jurisdictions, as well as past Law Society reports. The Task Force supplemented this research with consultations with the following:

    Chief Justice of British Columbia
    Chief Justice of the Supreme Court
    Chief Judge Crabtree and Associate Chief Judges Phillips and Gill of the Provincial Court of British Columbia
    Circle of Chairs of BC Administrative Tribunals
    The Canadian Bar Association, BC Branch
    Law Society of Upper Canada
    Washington State Bar Association
    Law Foundation of British Columbia
    Legal Services Society
    Community Legal Assistance Society
    Lawyers and other legal service providers
    The Public

29. Some of the consultations were in person, and others relied on feedback to consultation documents.

30. Following the consultations, the Task Force synthesized its research and formulated its recommendations based on its analysis of the materials it had read, the feedback it received during consultations, and the discussions that took place at its meetings.

III. Research and Consultation

31. The research and consultation of the Task Force confirmed the findings of the Legal Service Providers Task Force, the Delivery of Legal Services Task Force, the Unbundling of Legal Services Task Force, and numerous external reports, studies and academic articles that the present market for legal services fails to meet the legal needs of a vast majority of the population.

32. While statistics vary, findings are consistent that approximately 85% of people with a legal problem will not receive assistance from a lawyer. In some cases this is due to a personal choice of the individual to "go it alone", in some cases it is because the individual fails to recognize the problem as being "legal" in nature, and in many cases it is because people believe they cannot afford a lawyer or have determined that they cannot afford a lawyer. The

consistent findings are that the market, as presently constituted, is not adequately serving the public.[5]

33. The recognition of this market failure led to the Task Force being charged with exploring the concept of creating new categories of legal service providers. The mandate expressly requires consideration of unmet legal needs, so the Task Force decided to supplement its literature review with consultations. A detailed summary of the consultations and feedback is set out in Appendix 1 and the consultation questions are set out in Appendix 2.[6] A brief summary of the consultations and feedback is set out in this section of the report.

34. The Task Force held in-person meetings with the Chief Justice of British Columbia, the Chief Justice of the Supreme Court, the Chief Judge and two Associate Chief Judges of the Provincial Court of British Columbia, and representatives of the Circle of Chairs of Administrative Tribunals, the Community Legal Assistance Society ("CLAS"), the Law Foundation of British Columbia, the Legal Services Society ("LSS"), the Law Society of Upper Canada and the Washington State Bar Association. In addition, the Task Force posted online consultations for legal service providers[7] and for members of the public.[8] The Task Force also received feedback from Mediate British Columbia and the Canadian Bar Association (BC Branch).

35. The consultations provided a wide range of feedback. What was almost universally acknowledged was that there are unmet and underserved legal needs in our society and that the public would benefit from greater access to legal advice, assistance with preparing and interpreting documents, and advocacy services. There was less unanimity as to whether people other than lawyers ought to provide such services and if they are allowed to do so, what the exact scope of those services ought to be.

36. Because the feedback in favour of developing a more expansive model of regulated legal service provider outweighed the feedback against the proposition, the majority of this report explores the range of what might be possible. However, in order to give voice to the concerns that were identified both by members of the Task Force and through the consultation process, the report also contains a section entitled "Words of Caution", which sets out the key concerns that need to be considered.

---

[5] This is not an indictment of the many lawyers who provide legal services to people across broad economic spectra, including to the middle class and people of modest means. It is a reflection on the broad operation of the market to meet the public need for affordable legal services.

[6] It is important to recognize that the Legal Service Providers Task Force, which gave rise to the creation of this Task Force, also engaged in consultations with the public and the profession and took that feedback into account prior to recommending the Law Society proceed with this project. As a result, the nature of the recent consultations was to identify the type of legal needs that exist and whether creating a new class of trained service provider to address that need makes sense.

[7] Fifty-eight people provided feedback.

[8] Twelve people provided feedback.

37. Amongst the adjudicative bodies the Task Force consulted with, there was a spectrum of views as to the need for non-lawyer advocates.[9] Non-lawyer advocacy in the Provincial Court, provided it was subjected to proper training and regulation, could benefit areas of general civil litigation and Traffic Tickets. On the other hand, the need for non-lawyer representation in the Court of Appeal and the Supreme Court is less pronounced, and there was a sense that, unless regulated to a very high degree, it was possible it could create harm.

38. The Circle of Chairs of Administrative Tribunals was far more explicit in support of the concept of establishing new classes of legal service provider and the desirability of having people who appear before administrative tribunals receive legal assistance. While uncertainty existed as to the potential market for such services, the Chairs of the various tribunals spoke of the general lack of lawyer advocacy that occurs before the tribunals now, and how both the parties and the tribunals themselves would benefit from having properly trained advocates.

39. Consultations with CLAS, the Law Foundation, and LSS confirmed the vast gap in unmet legal needs that exists between the wealthy and those of modest means who receive some subsidized and pro bono legal assistance. This access to justice gap could be served, in part, by liberalizing restrictions on who can practice law. The consultations provided greater insight into the work that is performed by paralegals at mental health panel reviews and by community advocates throughout British Columbia. In areas that lawyers largely do not now serve, alternative services have cropped up to begin to address some of the unmet legal need. These services, however, do not operate in the free market. In addition to confirming the potential benefit of expanding the free market for legal services, these consultations also cautioned that over-regulation would harm the efficient operation of legal services directed at the poor and disenfranchised.

40. The feedback from Mediate BC was essentially in the form of seeking clarification as to the scope of the project. The essence of the feedback was a concern that the Law Society not seek to expand its regulatory regime to regulate mediators and arbitrators.

41. The feedback from the CBA (BC Branch), reiterated its submission to the Legal Service Providers Task Force that any reforms would need to ensure lawyer independence is preserved, access to justice is enhanced, regulation is effective and the public understands the scope of roles permitted by various classes of service provider. The CBA (BC Branch) reminded the Task Force of the types of unmet legal need identified in the CBA report *Foundations for Change*.[10] This includes: *criminal law, child protection, mental health law for those involuntarily committed at a provincial health facility, refugees seeking asylum in BC, poverty law and family law.*

---

[9] As is noted elsewhere in the report, including Appendix 1, the consultations with the courts in particular were preliminary in nature and the summaries contained in this report are not intended to reflect final determination of the issue by the court.

[10] See fn. 3.

42. The CBA (BC Branch) suggested that "there may be identifiable aspects of the delivery of legal services which may be suitable for non-lawyers with the governing principle that these legal services will likely, in most circumstances, require the mentorship, supervision and direction of lawyers."

43. The online survey of legal service providers recognized unmet and underserved need for assistance filling out legal forms, legal advice, representation before a court or tribunal or at a private dispute resolution process (such as a mediation or arbitration). When it came to the question of which of these services a new class of regulated professional ought to be able to provide, the feedback still favoured assistance with filling out forms but dropped off steadily, with providing legal advice and appearing before a court being favoured by less than a third of the respondents.

44. The online survey of the public generated a different result than that of legal professionals, in terms of both the percentage of people who felt the listed services required greater access and the large majority who favoured expanding the model of who was permitted to provide those services beyond the *status quo.*

45. Caution is required in considering both of the online surveys, as the respective sample sizes are very small. The legal service providers' survey generated 58 responses and the public survey only 12. To the extent the public survey is consistent with the various provincial and national legal needs surveys that sampled much larger portions of the public, some guidance can be taken, but the legal service providers response rate is simply too low to consider it a statistically accurate reflection of how legal service providers *en mass* would view the questions.

46. In forming its recommendation, the Task Force took into account the feedback it heard from all sources, including reflecting on the past work of the Law Society on this issue and a wide range of legal needs studies.

IV. Analysis

1. Opening Comments

47. Access to justice and access to legal services are problems that have existed for decades in varying degrees.

48. Access to the legal system – to legal advice, to seek justice – is crucial to any society that, like Canada, is based on the rule of law. As stated recently in a report for the International Bar Association:

> The importance of access to justice cannot be overstated. Access to justice is fundamental to the establishment and maintenance of the rule of law, because it enables people to have their voices heard and to exercise their legal rights, whether those rights derive from constitutions, statutes, the common law or international instruments. Access to justice is an indispensible factor in promoting empowerment and securing access to equal human dignity. Moreover, a mutually supportive link exists between, on the one hand, improving, facilitating and expanding individual and collective access to law and justice, and, on the other hand, economic and social development.[11]

49. Access to legal services and to justice is best accomplished where there is access to qualified, and regulated, providers of legal services. Law is complex. Ensuring that legal advice is given by individuals who have studied the law and are trained in its application is important. There is no point in creating a system that enables people to access uninformed legal advice, because more often than not, that advice will simply lead to further legal problems.

50. By and large, lawyers are currently the predominant providers of paid legal services. Lawyers are well-educated, credentialed, and regulated both as to competence and conduct. However, it is clear that not everyone can afford to retain a lawyer when faced with the need for legal advice. It is also clear that, as it is expensive to become a lawyer, some areas of practice in which advice is needed are simply uneconomical for lawyers to provide legal services. It can therefore be very difficult to find a lawyer to provide advice in some areas of practice.

51. If there is an unmet need for legal services, and lawyers are the only group that can provide legal services, then either lawyers have to review the way they offer services or some other group or groups will need to be trained to provide services to meet those areas of unmet need. Otherwise, "access to justice" becomes a meaningless ideal to a large segment of the population. This could have significant consequences on the maintenance of the rule of law.

[11] *International Access to Justice: Barriers and Solutions* Bingham Centre for the Rule of Law, October 2014.

52. The Task Force has been very aware of the link between its mandate and the need to develop ways to improve access. Expanding the market of legal service providers is one method of addressing access concerns. Expanding the market will not, however, by itself solve the access to justice problem. There will be individuals who (as discussed below) will still not be able to afford the services of new categories of legal service providers that may be created.

53. Moreover, expanding the market of service providers must not come at a cost of harming the public's ability to obtain helpful advice. An unregulated market, leaving the public to assess the value of the services they have contracted, is not in the overall public interest, as is elaborated on in the section below.

2. Public Interest

54. At each stage of its analysis the Task Force has considered whether establishing new classes of legal service provider is in the public interest. The Task Force recognizes that implementing such a proposal will likely be viewed by some legal service providers as a bad idea for reasons of principle, and will be opposed by others out of a desire to prevent competition in the market place. Other legal service providers will welcome the reforms if they achieve the desired object of improving access to justice. External opinions are important to consider, but the Benchers ultimately must be guided by their determination of what is in the public interest.

55. When analysing the public interest in connection with the mandate given to the Task Force, two essential elements must be considered.

56. **First**, does the existing model of reserving the right to practise law to lawyers (with few exceptions) contribute to the access to justice problem by creating a market place in which a sizeable portion of the public cannot afford lawyers' services, while simultaneously limiting competition from other service providers?[12] If the answer to that question is *yes*,[13] then s. 3 of the *Legal Profession Act* requires that the Benchers take steps to improve the public's access to legal services. **Second**, how is the public protected properly in a model that expands permitted practice of law to non-lawyers?

57. The Task Force has explored information gathered in the course of its research to assess whether creating new classes of legal service provider might improve access to justice.

---

[12] The reasons why the services are unaffordable are complex. This is not an expression of moral blameworthiness for lawyers charging fees that the market can support.

[13] In its 2008 report *"Towards a New Regulatory Model"* the Law Society's Futures Committee reached a consensus that "it is in the public interest to expand the range of permissible choices of paid legal service provider to enable a reasonably informed person to obtain the services 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 matter."

Importantly, the Task Force noted that the 2009 IPSOS Reid survey[14] found that about 66% of British Columbians experienced at least one serious and difficult to resolve problem in the three year period preceding the survey. Despite this, 70% seek *no* assistance in trying to resolve the problem, preferring to "go it alone" rather than to seek the services of a professional. The three main reasons for seeking no assistance were: (1) legal assistance was not required or necessary, (2) legal assistance was too costly, and (3) legal assistance was too difficult to access.

58. In fact, the survey indicated that of the 30% who do seek assistance with their legal problems, only half (15% of the total surveyed) sought assistance from a lawyer. Those who sought help from someone who was not a lawyer[15] did so because of a desire to avoid court, as well as the expectation that non-lawyers are cheaper than lawyers. Most respondents who sought assistance from a lawyer had a monetary gain or loss at stake of, on average, $121,000, while those who sought help from a non-lawyer had at stake, on average, $47,000.

59. The main reason people seek no assistance is because they did not consider they needed help with their problem. However, cost and not knowing how to obtain assistance were also key indicators. An English study has suggested that while most "inaction" in dealing with a legal problem is "rational inaction," (that is, people make rational choices about whether to seek representation or not depending on a number of variables) "a significant minority of cases of inaction are characterised by helplessness or powerlessness[16]" and that "cost (or at least perceived cost) is evidently an important factor in decisions concerning sources of help."[17]

60. Further, the IPSOS Reid survey indicates that a lack of knowledge was the most difficult issue for respondents to overcome in resolving legal problems. This was broken down into (1) not knowing what to do, (2) thinking nothing could be done, and (3) being uncertain of their rights.

61. The Task Force, after considering these findings, believes that it is reasonable to conclude that if access could be provided to non-lawyer legal service providers in areas of law that created high(er) incidence of legal problems for British Columbians, or for which lack of legal assistance was most disruptive to people's lives or leads to a cascading of other problems,[18] people would be more likely to seek some assistance or advice and thereby be better informed of their options about what could be done to address their problem. They may still choose to do nothing, but at least then their choice would be a better informed one.

---

[14] IPSOS Reid *Legal Services in BC* 2009

[15] "Non-lawyers" includes non-lawyers currently permitted to practice in some areas of law, other professionals such as accountants or health professionals, family, friends, government offices and the internet. It also likely includes others who would be engaging in unauthorised practice of law.

[16] Pleasance and Balmer *How People Resolve 'Legal' Problems* 2014 pgs 2-3

[17] *Ibid*, p. 5

[18] Be they legal, social, health related, etc.

On the other hand, they may be better guided about the range of options available, what rights are involved, and what it may be worth to them to pursue the matter with proper assistance.

62. The Task Force therefore concludes that it is in the public interest to permit non-lawyer legal service providers to provide certain legal services. It believes this conclusion will increase the number of people who seek legal advice by targeting the 70% of British Columbians who do not do so now, as well as at least some of the 15% who seek advice from non-lawyers now (recognizing that some of this advice comes from unregulated providers with no training or qualifications).

63. The Task Force does not, however, suggest it is in the public interest for there to be a completely unregulated market of non-lawyer legal service providers. Public protection arises from ensuring that people who provide legal services are properly trained, regulated, and carry liability insurance in circumstances where the absence of such safeguards create an unacceptable level of risk. The discussions about the types of legal services that new classes of service providers ought to be able to provide are frequently challenged by the absence of having created the education, regulation and liability schemes. A default position for many people is to express concern and suggest limits on what non-lawyer legal service providers ought to be able to do on the basis of the argument that the matters that need to be addressed are too complex for non-lawyers. This was a frequent refrain in previous examinations by the Law Society concerning the credentialing of paralegals.

64. The Task Force suggests that the better way to approach concerns about new classes of legal service provider is to start by identifying what legal services the public needs but to which it does not currently have adequate access. The identification of this gap creates the moral imperative to act. The next stage will be to identify the training that is required to ensure that non-lawyer providers can competently provide those services and to create courses to train people to the expected standard. This requires consultation with education providers and practitioners. It provides an opportunity to take the best of our current approach to legal education and also push forward to address gaps in the current model of legal education. As that work is being done, the regulatory and insurance framework for new categories of providers can be developed. However, as noted, it is premature to engage in the work of credentials and regulation frameworks unless the Benchers are convinced that the public's access to justice requires opening up the market place for legal services.[19] Concerns about existing levels of (or lack of) competency of non-lawyer service providers ought not to dictate the answer, as those concerns are properly addressed by creating the credentials and regulatory schemes addressing these categories of provider.

[19] It is important to note that, by unanimously accepting the findings of the Legal Service Providers Task Force, the Benchers have endorsed the concept that the market for regulated legal services needs to be expanded, so the question is how wide that door ought to be opened, rather than whether the door need be opened at all.

65. If the Benchers are convinced that creating new categories of legal service providers is in the public interest, and have some sense of the areas of practice that are being contemplated for these providers, the next step is to seek a legislative amendment to permit the Law Society to develop the credentialing and regulatory scheme for such a change. If the government agrees to such a scheme, in-depth work will be required to identify the specific types of legal services that the public requires and the type of training that is necessary to provide those services in a competent manner. A regulatory and governance scheme would also have to be developed at that time.

66. Although the Task Force's mandate contemplates that the Law Society should develop the regulatory scheme rather than create another regulatory body to take on that role, the Task Force spent some time considering whether the Law Society was the right body to act as regulator of all legal service providers. In this discussion, the Task Force was largely guided by the work of the Legal Service Providers Task Force, which came to the conclusion that the Law Society was the proper body to assume control of the regulatory functions of lawyers and notaries, should those functions be merged under the head of a single organization.

67. Much like the Legal Service Providers Task Force, the Task Force rejected the approach that exists in England where there are multiple legal service regulatory bodies operating under an omnibus regulator, or the approach in British Columbia of the regulation of the many health care providers, all operating under the aegis of an omnibus regulator. In order to best ensure consistency of standards and provide maximum transparency for the public regarding how legal services are regulated in British Columbia, the Task Force agrees with the Legal Service Providers Task Force that the Law Society is the proper body to regulate new classes of legal service providers who are engaged in the practice of law.

3. Areas of Practice in Which the Public Would Benefit from Greater Access to Legal Service Providers

68. In this section of the report, the Task Force identifies where it believes the public would be best served by expanding access to new categories of legal service providers. This section must be read with the qualification that the details of what those services will be and the training necessary to be credentialed to provide the services will need to be worked out following necessary amendments to the *Legal Profession Act.* The concepts that follow are, therefore, preliminary in nature and not conclusive of what the final model would look like.

69. In this section the Task Force also attempts to identify some boundaries to the concept. In other words, despite some areas of law having unmet need, there are some services that might

reasonably remain reserved to lawyers[20] and there are some services that might not require any credentialing or regulation at all.

70. It is also important to be realistic about the potential scope of such reforms to improve what is broadly termed an "access to justice crisis." There are many reasons why legal needs go unmet or are underserved. Not all of the reasons relate to the fees lawyers or notaries charge for their services. While a more open market may reduce the cost of some services, some legal needs will still not be able to be met by free market services, particularly for those whose income does not permit them to afford even the reduced rate. Addressing the poverty level of Canadians or the reduced amounts of disposable income that many commentators have identified[21] is not, however, within the scope of this Report. There are also some basic services that the public would benefit from, but which do not require the level of education or regulatory oversight that lawyers are subject to. The scope for these reforms then, must fall within that area that requires some level of credentialing and regulation in order to protect the public, but which can be accomplished at a sufficiently discounted cost to pursuing licensing as a lawyer.

71. In order to address the appropriate areas of practice for new categories of legal service providers, it is essential to start from the question *what legal services does the public need?* rather than *should anyone other than lawyers be able to provide the legal services the public needs?* By framing the question through the lens of public need, we are better able to focus on the rationale of the exercise. We will also be better able to later consider what type of training is required to meet those needs.

72. Approaching the problem from a blank slate, rather than a defence of the *status quo*, makes it possible to identify the services that are not being adequately met and what type of training is *necessary* in order to provide such services. For many people this question will be difficult to answer because the specifics of the type of training that would create the base-line of competence has yet to be established. Others, though, will see this as an opportunity to design legal education in a modern, streamlined way, making the best use of the existing model for training lawyers while introducing innovative, client-centred models of training to better ensure people are receiving the services they need.

---

[20] In other words, there may be some services that any amount of legal training short of becoming a lawyer is deemed insufficient in order to protect the public.

[21] In addition to the various legal needs surveys referenced in this report, see, Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System,* 98 Mich. L. Rev. 953 1999-2000; Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 129 Fordham Urb. L.J. Vol. XXXVII, where the author notes at p. 133 "Indeed, we could say that the utter lack of attention to the size and vitality of the legal markets serving ordinary individuals in the conduct of their everyday lives in a law-thick world is itself testament to how the profession has defined these markets out of existence." Hadfield notes how the absence of data makes analysis of how the market is serving or failing the ordinary legal needs of people difficult.

73. Based on its research and discussion the Task Force has concluded that family law, debtor/creditor law, and employment law are three areas of law in which there is unmet and underserved public need in obtaining legal services. This list is not exhaustive of all the unmet and underserved legal need, but each of these three areas of law is one that represents a common problem and for which legal needs surveys have identified unmet need. In addition, each is an area that can be very disruptive to the people who experience the problems and have adverse ripple effects into communities and society at large.

74. In addition to these discrete areas, the Task Force has also concluded that establishing some capacity for a new class of legal professional to provide advocacy services before administrative tribunals and in small claims court is desirable. This categories of service are described below, and some additional observations are contained in the "Words of Caution" section of the report.

(a) Family Law

75. Family law is frequently identified as an area of need in legal need surveys and this was consistent with the perceptions of Task Force members. While questions may exist as to the propriety of having non-lawyers represent family law clients in court, the reality is there are many services that can be provided preparatory to a court appearance or to help people resolve matters outside of court. The government has been engaged in comprehensive reform of family law in the past decade, attempting to modernize this important area of law.

76. Family law is an area of practice in which non-lawyers already play an important role, and there is a growing appreciation that the traditional adversarial approach to conflict resolution is harmful in many family disputes. Due to the underlying emotional, financial and non-legal issues that can exist in family disputes, there is a growing acceptance of the utility of non-lawyer professional services. Part of what has to be considered, therefore, is whether it makes sense to supplement the training of these professionals with targeted legal training in order to enable them to provide a broader suite of services to people experiencing family disputes. It has been observed that "The growing gap of family law practitioners fundamentally impacts the right of those that already have little to no access to legal representation when faced with complex family law matters."[22] This gap can have particularly adverse impact on women and children as well as people of modest means.

77. Family law has seen the rise of mediation, collaborative family law practitioners, changes to the rules of court, best practice guidelines for family law lawyers, the need for training in screening for family violence and a recalibration of the policy objectives in this area. During

[22] Zara Suleman, *Not with a ten-foot pole: Law Students' Perceptions of Family Law Practice* (West Coast LEAF: January 2009) at p. 34.

this time of reform it is appropriate to consider how to train people to best serve the public and consider what new services can be established to meet these objectives.

78. Family law is complex and can have a profound impact on current and future generations of families. If family law is to be considered as an area to establish new classes of legal service providers, it will require careful consideration as to the education and training requirements. There are a range of services that fall within the scope of family law, and they range in complexity. The scope of services that will be permitted must be carefully aligned with the training and regulation in order to ensure the public is well served.

(b) Employment Law

79. As central as family law issues can be to the lives of the individual and communities, so too are issues arising in areas of employment law. Employment disputes often involve an imbalance of power and loss of employment can cascade into other problems (such as family and debt). In many respects, employment is intimately tied to an individual's identity because employment is the principal means by which we interact with our society and economy. A host of opportunities and obligations arise from employment. The loss of employment is not merely of significant impact to the individual involved or the employer, abstracted to the national level the rate of unemployment is an important indicator of the overall health of our economy. Both at the individual level and at the societal level, therefore, it is important that issues related to employment be resolved in as efficient and fair a manner as possible. Legal need studies suggest that employment law problems rank highly in frequency of problems faced by British Columbians, and are perceived as problems that are disruptive, important to resolve, and that legal assistance would improve outcome. Moreover, the perception is that resolutions with current resources available are perceived to be relatively unfair. [23]

80. The Task Force is of the view employment law merits detailed consideration as an area for expanded legal services.

(c) Debtor/Creditor Law

81. Debtor and creditor matters are areas where public need has been consistently identified. We live in a society where many people struggle to get by. One would be hard pressed to read the news for any extended period of time and not see concerns raised about the levels of debt Canadians possess. Like employment and family law issues, debt impacts both the individual and society in profound ways. It is important to recognize that both the rights of the debtor and creditor are at issue, and each party should have access to the services of a properly trained and credentialed professional. The Task Force considered that, with additional training, credit and debt counsellors (for example) might be able to take on additional useful

[23] IPSOS Reid *Legal Services in BC* September 2009.

roles, such as providing legal advice and representation services in small claims court or in an alternate dispute resolution forum.

(d) Advocacy before Administrative Tribunals

82. The Task Force is of the view that having properly trained advocates assisting people before administrative tribunals is also an area of need. From its consultation with the Circle of Chairs, the Task Force heard about the pressing need for properly trained advocates to assist people appearing before tribunals. From the perspective of the Chairs, the need for skilled advocates goes to the fundamental issue of having a fair hearing. Even though administrative tribunals were established to create a separate adjudicative system from the courts, the issues that arise can be complex and the implications of those issues on people's lives can be profound. To the extent that advocacy before administrative tribunals is an underrepresented area of practice for lawyers, action is required.

83. There are a range of areas of law that merit exploration based on legal need and which can involve tribunals. In addition to employment law, there are the areas of mental health law and poverty law (which encompasses a range of practice areas) that represent unmet and underserved need. These areas were also identified in the submission the Task Force received from the Canadian Bar Association BC Branch,[24] and the British Columbia legal needs materials the Task Force considered.

84. The exact range of tribunals before which a non-lawyer advocate should be permitted to appear need to be determined, but this should be done as part of further consultations with the Administrative Tribunals, and with particular reference to the education and training the advocates receive.

85. When the Benchers approved the creation of designated paralegals as a class of legal professional who could give legal advice and appear before a court or tribunal (as permitted by those bodies), they did so in part on the basis that the proper question to ask is whether it is better to receive legal advice or advocacy from a designate paralegal or to go without professional legal assistance.[25] The same paradigm is true in the case of establishing new classes of legally trained and regulated professionals: the Task Force is of the view the public is better served by having access to such services than it is having to "go it alone" simply because they are unable to access the market for legal services as it now exists.

[24] Letter from Alex Shorten, President of the Canadian Bar Association BC Branch, to Art Vertlieb, QC (October 31, 2014).

[25] This recognizes that comparing the designated paralegal to the services of a lawyer is not the right comparator, provided the designated paralegal can provide the services at a competent level.

(e) Advocacy in Small Claims Court

86. In its preliminary discussions with the Chief Judge and Associate Chief Judges of the Provincial Court, the Task Force heard that there could be a benefit in having assistance in general civil litigation. As noted elsewhere, this was a preliminary discussion and is not conclusive of the issue or the final view of the Court. The exact scope of an advocacy role for a new class of legal service provider in Small Claims Court will be dependent on the detail and ultimately will require further consultation with the Court to better identify the key areas of unmet need and the exact types of services that would better serve the public, and facilitate the efficient and fair operation of the Court. The Task Force identifies advocacy in Small Claims as an area of need, but one, like advocacy before administrative tribunals, that requires further consultations to ensure the proper scope of practice is identified and the requisite training and regulation is established.

(f) Traffic Court – Provincial Court

87. The Task Force also heard from its discussions with the Chief Judge and Associate Chief Judges that non-lawyer advocacy for matters involving Traffic Court might also be worth exploring, provided an appropriate education and regulatory scheme could be developed. The Task Force also noted from its discussions with the Law Society of Upper Canada that advocacy in by law matters is an area of practice permitted for paralegals regulated by that Law Society.

88. Surveys that the Task Force has reviewed do not seem to suggest that people in British Columbia raise concerns about a lack of access to legal services in Traffic Court, and the Task Force has not researched why this is so. Given however that it is an area of practice that the Provincial Court considers is worth consideration for non-lawyer advocacy, and given that there is an apparently successful model for paralegal advocates in this area of practice in Ontario, the task force considers that it is worth further consideration.

(g) Acting as Counsel at Mediations and Arbitrations

89. In the same way that there ought to be some expansion of an advocacy role before administrative tribunals and in Small Claims Court, the Task Force is of the view that there ought to be an advocacy role permitted at mediations and arbitrations within the areas of practice that are permitted under the limited scope license.

90. In order for this to be beneficial, the new class of legal professional would need to receive specific training in respect to how mediations and arbitrations work. The reality is that mediators and arbitrators are not required to be lawyers, though lawyers do perform those roles. If we accept that non-lawyers can discharge the duty of mediators and arbitrators in a

competent fashion once properly trained, it follows that non-lawyers when properly trained and regulated can act as counsel at mediations and arbitrations.

(h) Discussion

91. There are other areas of practice for which there are unmet and underserved legal needs. The Task Force, however, suggests starting with the areas identified above for several reasons.

92. Because the ability to obtain a limited licence to practice law in the areas of law and dispute resolution *fora* identified must be contingent on satisfying an education and training regime that is commensurate with the services permitted under the licence, it is important to recognize that "family law" covers a great deal more than what the uninitiated observer might consider. To be properly trained to provide legal advice in family law matters and to provide some representation services requires some exposure to a wide array of legal principles beyond what most people consider "family" issues (e.g. tax, trusts, wills and estates, conflict resolution, screening for family violence, to name a few). In light of this, it is expected that the training would be such that the service provider might be able to provide advice on these discrete sub-issues outside the family law context. Whether such an expanded license is in the public interest can always be determined at a later date. The key will be to properly train the people to provide the permitted services and, as is the case with the training for Limited License Legal Technicians, to train them to identify issues that lie outside the scope of their limited licence.

93. The other reason the Task Force prefers focusing on discrete core areas is that there is no guarantee that the market will respond to the introduction of a new category of service providers in a manner that will improve access to justice. The risk that it will not have a measurable impact can become magnified if the license is too expansive and diffuse. In other words, the Task Force prefers a narrower focus of areas of law with a broader license for the types of services provided, than a broader focus of areas of law with a more restricted license for the types of services provided. In order for there to be a notable improvement in the market place it is essential that the cost of becoming accredited and the cost of regulation allows for a lower cost legal service to be brought to the market.

4. Types of Services New Categories of Legal Service Providers Should be Permitted to Perform

94. Having addressed the areas of practice in which the public could benefit from access to new categories of legal service providers, the next issue to address is *what types of services ought a new category of legal service provider be able to perform in these areas?*

95. The answer to this question is dependent on the training that the legal service providers receive and the regulatory system to which they are subject. As such, it is important to

understand that the Task Force's conclusions in this regard, as well as the areas of law that should be covered, are contingent on the development of a proper credentialing and regulatory regime being developed. The creation of such schemes is contingent on getting the legislative authority to develop such regime. The Task Force sets out its thoughts in this section in order to provide the Benchers a better understanding of what should be considered in asking government for a legislative amendment.

96. The new classes of legal service providers should be able to practice law (as that term is defined in the *Legal Profession Act*) within the limited scope that is identified. They should be permitted to provide legal information and advice, assist in drafting, filling out forms, coaching, interpreting substantive and procedural law, and with some limitations, be permitted to provide advocacy services.

97. The full scope of permitted advocacy services will need to be determined through further consultations with the courts and administrative tribunals, lawyers, notaries and law schools while the credentialing requirements are being developed. As noted, those discussions will play a significant role in determining what type of appearances, if any, ought to be permitted. With that qualification in mind, the Task Force suggests, as a starting point for discussion, that properly credentialed and regulated professionals in the new class also be permitted to provide advocacy services before administrative tribunals, small claims court, and before mediators and arbitrators, in areas of law covered by their licence and within the jurisdiction of the dispute resolution forum to hear.

98. If the Law Society is successful in obtaining the legislative amendment recommended by this Task Force, other work that is underway (such as the potential merger of regulatory functions between the Law Society and the Society of Notaries Public), will also play an important role, as will any analysis of the potential to certify paralegals based on educational experience. These issues will be relevant because in considering the training necessary for an expanded scope of services to non-lawyer legal service providers, it is logical to examine the Masters of Applied Legal Studies at Simon Fraser University and, for example, the paralegal programs at Capilano University, and consider what additional courses graduates of those programs might be able to take under the new scheme in order to be able to provide the services contemplated under the new licence. That analysis can only take place once the proposed credentialing scheme is developed, but it has the potential to improve access by expanding what notaries and credentialed paralegals are permitted to do, in addition to developing a new class of service provider.

99. The discussions that will take place in developing such a scheme can consider whether limits might be placed on matters based on factors such as the amount in dispute, whether the matter involves children or vulnerable people, etc. The issue will be to balance the sufficiency of the training with the risk to the public. For the time being, the Task Force does not recommend exploring a broader licence to include appearances before the Supreme Court

or Court of Appeal. That having been said, once the reforms have been set out in specific detail it will be important to approach the Courts to seek further input as to the potential for appearances at the Supreme Court and Court of Appeal

100. Placing some limitations on the scope of services is prudent because it balances the need to protect the public with the reality that the mere act of liberating part of the market for paid legal services will not, absent a host of other reforms, solve the broad access to justice problem that exists in our society.

101. If the Benchers endorse the recommendation in this report, and legislation is amended to give the Law Society the authority to establish new classes of legal service provider(s) to meet unmet and underserved legal needs, the education requirements and the scope of practice will take concerted effort and consultations to develop properly. That process will necessarily require Bencher approval for the final form of the model. In this respect it is similar to the work on regulation of law firms. At the inception of that work, the Benchers saw the need for the legislative amendment to have the authority to regulate firms. The details of such a model were not before the Benchers, or government, at the time that legislative change was sought. What was understood was the policy argument for the need for that authority. That work is now underway and the Benchers will have the opportunity to discuss the proper form of those rules. The same is true of the process the Benchers are asked to endorse here. The ultimate form, both in terms of detail and scope, will likely be different than what the Task Force has set out in this Report. What is unlikely to change over that time, however, is the pressing need in our society to help British Columbians have better access to justice.

5. Independence of the Legal Profession

102. The independence of the legal profession is fundamental to the way in which the legal system ought to operate[26]. One of the great and often unrecognized strengths of Canadian society is the existence of an independent bar. An independent and competent Bar has long been an essential part of our legal system[27]. Because of that independence, lawyers are available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens.[28]

103. The right to independent advice from a legal professional who owes a paramount duty to his or her client, free from influence from other sources, is a fundamental public right in Canadian society. The Task Force realises that it is necessary to ensure that lawyer

[26] *Federation of Law Societies of Canada v. Canada (Attorney General)* 2013 BCCA 147
[27] *Lavallee, Rackell & Heintz v. Canada (Attorney General)* [2002] 3 S.C.R. 143 at 187
[28] *Omineca Enterprises Ltd. V. British Columbia (Minister of Forests)* (1993), 85 B.C.L.R. (2d) (BCCA) per McEachern C.J.B.C. (dissenting in part for unrelated reasons).

independence is preserved if non-lawyer legal professionals are to be permitted to provide legal services.[29]

104. The Law Society has advocated repeatedly over the past number of years that lawyer independence is best protected through a system of self-governance and, indeed, this is a position that has judicial recognition.[30] Such a system most clearly distances legal professionals from the state, thereby assuring the public of lawyers' independence and freedom from conflicts with the state. The determination of who is permitted to practise law, and who can be prevented from continuing to practise law, should not be left to those who could abuse such power for their own gain. If lawyers were not, for example, governed and regulated in a manner independent of the state, clients could not be assured that their lawyer would be providing them with independent representation, particularly if the client's case required a direct challenge to the state's authority. The state could abuse a power of licensing or disciplining such counsel to its own end if lawyers were not self-regulating.

105. The Task Force has not fully considered the implications of how expanding the market of legal service providers to include non-lawyers will affect the independence of lawyers. The Task Force's preliminary view is that, provided the legal profession remains self-governing, its independence should be maintained. It will remain to the regulator – assumed to be the Law Society – to set standards for licensing and conduct of legal service providers, including any new categories of legal service providers that may be created. The independent regulator will set standards for competence and conduct in practice for such practices. Some questions – such as the applicability of solicitor-client privilege to advice provided by non-lawyers who are regulated by the Law Society – will need to be worked out. It is possible that some will argue that different considerations apply to legal service providers who are not lawyers. The Task Force believes that, provided these categories of new service providers are properly trained and regulated by the same body that sets standards for training and regulation of lawyers, then the same considerations of independence can be brought to bear on their activities. If that is not the case, however, the standards of education and regulation for lawyers will not change, and therefore *lawyer* independence should be preserved as a public right.

106. The Task Force considers that the case for independence of legal advice from non-lawyer legal service providers may be improved if their regulation is undertaken by the Law Society, as similar standards of ethics, conduct and function within the justice system can be established, which could justify the independence of commonly-regulated legal service providers. If, on the other hand, categories of non-lawyer legal service providers were created and regulated by government, independence of the overall legal profession would be compromised.

---

[29] This point was specifically raised as well in the submissions to the Task Force from the CBA (BC Branch)

[30] See, for example, *A.G. Can. v. Law Society of B.C* [1982] 2S.C.R. 307 at 335, *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17 at paragraph 1

107. It appears that the licensing of paralegals by the Law Society of Upper Canada has not adversely affected the maintenance of lawyer independence in Ontario, and the Task Force takes some comfort from this.

108. However, this is a subject that the Task Force urges remain on any list of issues to consider as this project moves forward. If lawyer independence is at risk of being compromised by the licensing of categories of non-lawyer legal service providers, the Task Force urges that the proposal be reconsidered.

6. Words of Caution

109. In the course of its consultation, the Task Force received some feedback that expressed the need for caution and some feedback that rejected the premise that creating a new category of legal service provider is in the public interest. In this section of the Report the Task Force summarizes the main concerns that were identified. It is important to consider these cautions as they may inform the Benchers decision whether to request a legislative amendment and, if so, the scope of what might be requested.

110. From consultations and the Task Force's own analysis there were three main cautions that were identified: 1) the potential adverse economic impact of creating new categories of legal service providers; 2) the complexity of legal matters; and 3) the risk of over-regulation.

111. Some legal service providers expressed concern that the current market for providing legal services is very difficult and that proposals for a model that would create more competition would be harmful to existing legal service providers being able to continue providing needed services to the public. Much as public need cannot be viewed in a one size fits all fashion, legal service providers have vastly different incomes. There is a risk that creating new categories of legal service providers will create competition for legal services not only in areas of unmet need[31] but for underserved and for *served* areas as well.

112. The concern about competition may be viewed in at least two ways. The purely protectionist view is such that existing service providers do not want to have to compete with new service providers, necessitating a consideration of how to adjust their prices to provide the public more options because they want to preserve the *status quo*. From a public interest perspective this concern cannot be the Benchers' concern, as the Benchers are tasked with upholding the public interest in the administration of justice. If an expansion of legal services to non-lawyer legal services providers is in the public interest, the fact that it creates competition with existing legal services providers is extraneous to the consideration.

113. The second view is more expansive. It contemplates that competition from lower cost limited licensed legal service providers can have the effect of cannibalizing core areas of practice for

[31] By the definition there ought not be competition for unmet need as it is not being served.

legal service providers who are already operating at the margins in order to serve the public. So, for example, sole practitioners who are generalists might be able to sustain their practices by providing certain "bread and butter" services, which, if lost to a service provider that could offer the services at even lower costs, might drive the sole practitioner out of business, thereby removing other legal services from the community. In other words, there could be unintended consequences to the loss of the generalist services in favour of opening the market to discrete lower cost services particularly in small communities where not many lawyers are present.

114. The Task Force observes that the broader question of economics remain unknown to it. It has been generally recognized that but for a few studies and academic articles, there is an absence of detailed empirical data on the economics of providing legal services or the market for those services. It is therefore difficult to quantify the potential benefit to accessing legal services or the potential economic harm. Whether one rejects or accepts the concern, one is essentially taking a leap of faith regarding how they have weighed the risk and reward of either expanding the market or refusing to do so.

115. Another concern that was identified was the argument that because legal issues are so complex, only a lawyer should be able to engage in the practice of law. The Task Force believes that such a caution has to be contingent on the type of training the new category of legal service provider is ultimately subject to and the regulatory scheme that is put in place to protect the public.

116. It is important to bear in mind that lawyers in British Columbia are not subject to a standardized educational experience. Lawyers will have different undergraduate degrees, will have attended different law schools and, with the exception of first year law, will have taken considerably different courses when compared to each other. Further, lawyers have no standardised articling experience, and undertake different continuing professional development experiences. Yet, once licensed to practice law, lawyers are entitled to practice in any area of law and the *BC Code* leaves it to lawyers to self-assess competence to provide the services. The principal safeguard is the professional requirement that a lawyer should not practice in an area of law in which he or she is not familiar.

117. To accept the argument that law is too complex for anyone but a lawyer to practice is to accept the reasoning that non-lawyers cannot be taught to do some of the things that, at present, only lawyers are permitted to do. From the Futures Committee report to the Benchers, to the Delivery of Legal Services Task Force through the Legal Service Providers Task Force, the Benchers of the Law Society have adopted a more expansive view that this Task Force now echoes. Creating new categories of legal service providers can only be in the public interest if the service providers are properly trained and regulated. The training must be tailored to equip the professionals to provide the services permitted under the scope of the

limited license. If that is done, then for those services it would be illogical to say that only a lawyer is equipped to provide them.

118. In discussing the concept of complexity, the Task Force recognized that some legal matters might justify a reservation of practice to lawyers, such as complex matters of substantive or procedural law, or where there is a significant risk of harm to the client – such as the deprivation of liberty - if the services were negligently performed. Such limitations could, of course, be subject to review at a later date.

119. The Task Force paid particular attention to the concept of complexity in considering whether there is a role for non-lawyer advocates in Small Claims Court. Small Claims Court can involve a wide range of legal matters, and just because the monetary value of the issues is capped does not mean that the issues at stake are not complex or the consequences are not profound for the individuals involved. Because of this the Task Force recognized that further exploration of a right to act as counsel in Small Claims Court requires further consultations. At the heart of the matter is identifying what skills are required to properly train an individual to assist a client and also be capable of understanding the boundaries of the professional's capacity to provide value to the client.

120. The third major concern that the Task Force was alerted to was the risk of over-regulation. The unifying theme from this feedback was that there are certain legal services that do not fall within the current definition of the practice of law, such as mediators, arbitrators, and people who are providing legal services without expectation of a fee or reward from the person to whom the service is provided. The latter category can include community advocates and employees of clinics that provide social-legal services free of charge.

121. Information obtained from consultations with the Law Foundation, LSS, and CLAS does not suggest that there is a problem with the model that has given rise to community advocates funded through the Law Foundation, or other similar models. Nor does there seem to be a current problem or risk to the public with the model under which mediators and arbitrators operate. If problems or risks develop in the future, the matter can be reconsidered to determine if the definition of "practice of law" should be expanded to include some or all of these groups. The object of this Report, having adopted the proposition in the Legal Service Providers Task Force report that an expansion of legal service providers is warranted, is to determine what services within the practice of law can be expanded either to existing service providers or to new categories, contingent on them satisfying the identified credentials and regulatory requirements.

122. The Task Force does not recommend an expansion of the definition of the practice of law to capture service providers that are currently excluded for the purposes of bringing those individuals under the regulatory authority of the Law Society.

V. Conclusion

123. The mandate for this Task Force was created to follow up on the third recommendation from the Legal Service Providers Task Force Report from December 2013. That report recognized that in order to address unmet and underserved legal needs in our society, the time had come to explore in more detail a liberalization of the market place concerning who can practice law. Consequently, the mandate for this Task Force was to provide a framework for that expansion.

124. The Task Force decided to divide its mandate into two components.

125. The consideration of the first three aspects of the mandate, which forms the focus of this report, was to identify the unmet legal needs and to assess what new services might be created to provide the public more options for getting legal help.

126. The Task Force affirms that there are unmet legal needs and underserved areas of practice on which the public currently struggles to obtain access to lawyers. The Task Force has concluded that access could be improved in these areas of unmet or underserved areas of practice. In particular, the Task Force has identified family law, employment law, debtor/creditor law, advocacy before administrative tribunals, advocacy in Small Claims Court, and representation at mediations and arbitrations as areas of law in which new categories of legal service providers could improve public access to legal services.

127. The Task Force has also concluded that the public interest in the administration of justice would not be well serviced if these new categories of legal service providers were not, in some manner, credentialed and regulated to provide legal services. There must be some standards to the services provided. There is no point in creating a system that enables people to retain uninformed legal advice, as that advice will in most cases exacerbate already existing legal problems.

128. The Task Force therefore concludes that these new providers of legal services must in some fashion be credentialed and regulated, and agrees with the recommendations of the Legal Service Providers Task Force that the Law Society should be the regulator of legal services.

129. In order for the Law Society to create, credential and regulate these new categories of non-lawyer legal service providers, this Task Force believes that legislative amendments to the *Legal Profession Act* are necessary. Therefore, this Task Force recommends that the Benchers seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of law, set the credentialing requirements for such individuals, and regulate their legal practice.

130. The policy basis for the request for a legislative amendment is contained in the Task Force's report.

131. The Task Force has determined not to address the final three aspects of the mandate at this time. Those considerations focus on developing credentialing and regulatory schemes to govern the new services proposed above. It is likely premature to develop a system of credentialing and regulating new providers of legal services until the Benchers have approved recommendations of the Task Force as to the need for such providers, and areas of practice in which the public would benefit from new providers of legal services. As the Task Force believes a legislative amendment would be advisable to permit the Law Society to credential and regulate these new providers of legal services, the Task Force believes that it should be ascertained whether an amendment is likely before programs are developed concerning credentialing and regulation.

VI. Next Steps

132. If the Benchers adopt the recommendation in this Report, the next steps will be for staff to develop the materials to be provided to government in spring 2015 for consideration of an amendment to the *Legal Profession Act*. The Task Force should be kept active for the purposes of overseeing this work.

133. If the government grants the legislative amendment, the Benchers will need to consider what group is best equipped to oversee the work on mandate items (d)-(f). That work will of necessity require very specialized skills from those involved and it would be appropriate at that time to consider how, if at all, the constituency of the Task Force might be amended to provide the best oversight for that work.

134. If the Benchers reject the recommendation in this report, the Task Force ought to be dissolved.

135. If a legislative amendment is not forthcoming, the Benchers will need to consider the reasons for the rejection and whether future work on such a concept is merited.

Appendix 1: Consultation Summaries

Consultations with the Courts

1. The Task Force met with the Honourable Chief Justice Bauman of the Court of Appeal for British Columbia, the Honourable Chief Justice Hinkson of the British Columbia Supreme Court, and the Honourable Chief Judge Crabtree, the Honourable Associate Chief Judge Phillips, and the Honourable Associate Chief Judge Gill of the Provincial Court of British Columbia. It is important to recognize that the meetings were preliminary in nature and that the views of the judges consulted do not represent formal positions of the courts, nor do they capture the views of all judges of the courts. That said, the meetings were extremely useful for the purpose of exploring the concepts the Task Force is looking at and to get some preliminary feedback as to where areas of unmet need exist from the perspective of the courts.

2. From the preliminary feedback received, the Task Force understands that the areas of criminal law and family disputes could benefit from the assistance of non-lawyers, although the extent to which their advocacy in the superior courts would be of assistance is open to some debate. Family disputes, for example, is an area of law that is undergoing considerable reform and is often fraught with emotional issues and can impact future generations of families. In light of this, the feedback from the Supreme Court suggested it is more difficult to see non-lawyer advocates as being helpful and it is possible to create more harm than good unless significant education and training is contemplated.

3. The Task Force understands that the skills of honesty, candour, common sense, and proper training are generally considered essential to effective advocacy. Lawyers are officers of the court, and this allows the court to place some trust in lawyers. Advocates must be able to narrow issues and the court needs to be able to trust the representations the advocates make.

4. Moreover, properly trained, highly skilled advocates are critical to maintaining the development of the common law, and there is a danger that some may view a move towards non-lawyer advocates as detrimental to the development of the law through effective advocacy. Having said that, there was some recognition that new approaches are needed and that properly trained non-lawyers could assist with file and document organization, both of which are essential to effective use of courts, as well as at case management conferences.

5. Furthermore, it was noted that courts, and especially the Court of Appeal, sit at the end of a long process and the court is not privy to a great deal of the preparation work that may have taken place along the way. This makes it difficult for judges to identify where along the way properly trained non-lawyers might be able to provide useful help. It would ultimately be easier for the court to consider the final work product of the Law Society that sets out in more detail the specific services non-lawyers could provide, and make comments at that time.

6. From the consultations conducted of the courts, the Task Force believes that the greater need for skilled advocates to assist people who would otherwise be self-represented because they are unable to afford lawyers can be found in the Provincial Court to address the problem of the rising trend of self-representation.

7. The Task Force took from these consultations the sense that, in Provincial Court, general civil law matters and Traffic Court would be areas worth exploring for the use of non-lawyer advocates, if an education and regulatory scheme could be developed for new categories of such advocates. The wide array of non-legal skills that a family law practitioner should be versed in, in order to provide quality service to a client, may make it more difficult to envision effective use of non-lawyer advocacy. General civil law might be viewed as less technical and seems to have fewer supports in place for self-represented litigants than does family law.

8. The Task Force was grateful for the input from the courts. If the Benchers decide to move forward with the project and seek a legislative amendment, and if the government grants such a request, it will be important to follow up with the courts as the details of any new licensing scheme are developed in order to benefit from the perspectives of the Province's judiciary.

Consultation with the Circle of Chairs

9. The Task Force met with the Circle of Chairs of BC Administrative Tribunals. This meeting involved receiving feedback from the chairs of 26 administrative tribunals.

10. The feedback the Task Force received was overwhelmingly in favour of creating new categories of legal service providers who could be trained and regulated in a manner that would permit them to provide competent representation before administrative tribunals. A real access to justice problem was seen to exist with the lack of representation that exists in many tribunals, particularly those in which one party is represented by counsel and the other is not.

11. The feedback also included reference to the importance of simplifying processes so that they can be navigated quickly and at low cost to the user. This is an important adjunct to the concept of finding ways to improve access to advocates.

12. The consultation with the Circle of Chairs strongly supported the need for advocates who appear before administrative tribunals to be properly trained and regulated. Skilled representation is important to ensuring a fair result. In many cases, lawyers are not appearing as advocates for parties appealing before Tribunals, so there is a gap in the market place. Some question exists as to how much of a market can exist given the limited means of many people, but that may ultimately be a question of business practices and economics rather than a question of whether it is in the public interest that advocates who appear before tribunals be properly credentialed and regulated.

Consultation with the Law Foundation of British Columbia and the Legal Services Society

13. The Task Force held a meeting where Task Force member Wayne Robertson, QC provided information as to legal needs as identified by the work of the Law Foundation, and where Mark Benton, QC provided input as to legal needs as identified by the Legal Services Society. At that meeting Mr. Robertson and Mr. Benton were asked for their perspective as to the need for creating new categories of legal service providers to address unmet and underserved legal services in British Columbia.

14. This consultation was extremely important because between the Legal Services Society and the Law Foundation of British Columbia there exists decades of knowledge about the legal needs of British Columbians, distilled from on the ground services, to the funding of community advocates and justice projects, to comprehensive legal needs research. The meeting confirmed much of the Task Force's existing research, but added important details.

15. There is an access to justice / access to legal services problem that exists in British Columbia and much of the world. While the cost of legal services is part of the problem, current research suggests the problem is more nuanced than mere cost alone. To date, no one appears to have solved the difficult problem of how to improve access for people who fall between the level of state subsidized legal services and the wealthy who can more easily afford legal services on their own. The closer people get to the margins of poverty and into a state of poverty, the more serious legal problems they face. Moreover, there is a greater likelihood that their legal problems will cluster with other legal problems and ultimately cascade into other problems (e.g. unemployment, health, etc.).

16. The Task Force was cautioned against over-regulation. There are many services that would be of benefit to people that fall short of acting as an advocate or providing legal advice in the traditional sense of providing an opinion on substantive or procedural law, and for which regulation might act as an impediment by increasing cost of operation and imposing compliance schemes on service providers.

17. Mr. Benton suggested that access to justice can encompass (at least) four broad objectives for people: 1) an awareness of rights, entitlements, obligations and responsibilities, 2) an awareness of ways to avoid or resolve legal problems, 3) the ability to effectively access resolution systems and procedures, and 4) the ability to effectively participate in resolution processes in order to achieve just outcomes. The solutions for objects 1 and 2 are likely different than the solutions for objects 3 and 4.

18. Mr. Benton said that the work of the Task Force is important and challenging. There is room to innovate to address the unmet and underserved legal needs in society, but the efforts must be careful so as to not impose regulation where none is required.

19. Mr. Robertson provided an overview of the community advocates program.[32] This program arose following the Law Foundation having engaged in a poverty law needs assessment. From this assessment, it determined that people mostly want face-to-face assistance. A model was created to try to ensure that people in communities of 10,000 or more had to travel no farther than 50 km to obtain the assistance of an advocate. There are 72 full or part time community advocates funded by the Law Foundation, and student law clinics. Beyond this, there are 20-40 non-funded advocates. They work in 33 communities.

20. There are three tiers of service: 1) information and referral (under 30 minutes), 2) advice and summary help (under 2 hours) and 3) full representation (over 2 hours). The Law Foundation has provided $9 million in the past two years and 125,000 people have been helped.

21. Community advocates have a range of backgrounds. Of the 76 advocates: 16 have law degrees (three from outside Canada), 42 have university degrees, eight have college education, nine have completed high school, and one is unknown. As there is no formal certificate for poverty law, the Law Foundation developed a course. Since inception in 2007, 76 advocates have completed the program. The Law Foundation also has a credentials review process for applications of exceptional skill who might qualify without taking the course. Continuing professional development is required and there is a 3 day course each year, run jointly by the Law Foundation and the LSS. The Law Foundation also provides funding to support advocates taking other CPD.

22. Supervision of an advocate by a lawyer is a condition of grants from the Law Foundation. There are a variety of review processes but they are usually tailored to the experience of the advocate. The Law Foundation funds a full time lawyer at Community Legal Assistance whose job it is to be available to all community advocates funded by the Foundation.

23. Mr. Robertson explained that reporting is required, including a monthly statement detailing the type of help and level of service. The Law Foundation is interested in outcomes, so it interviewed 3500 clients as well as the advocates themselves, to cross reference feedback. Over 80% of clients said their problem was solved. Over 90% were satisfied. The next phase is to have experienced poverty law lawyers do file reviews.

24. The model of Community Advocates demonstrates how unmet legal needs can be addressed through creative models. In this case, training and CPD are combined with lawyer oversight and quality assurance standards by the granting body. The question is whether the types of services might be expanded out into the market place, and whether additional credentialing

[32] It is important to observe that Mr. Robertson made a similar presentation to the Legal Service Providers Task Force in September 2013 and that task force made the recommendation that gave rise to this task force. The distinction is that the prior task force was considering whether it was in the public interest to create new categories of legal service provider and this task force is considering, with greater specificity, what types of services the public might benefit from.

and the presence of regulation would allow for similar services to have a broader reach than to people living in poverty, and be able to function in the absence of supervision.

Consultation with Community Legal Assistance Society

25. The Task Force met with David Mossop, QC, former counsel at Community Legal Assistance Society ("CLAS"), to hear about legal needs in the area of poverty law. At first blush it might appear that focusing on unmet and underserved legal need in the area of poverty law is counter-intuitive to a consideration of whether opening up the market for legal services is in the public interest. However, it is important to recognize that the organizations that provide legal services to people living in poverty face considerable financial strain, and it is possible that specially trained non-lawyer service providers may assist poverty law services in meeting the public need, while stretching their budgets farther.

26. Mr. Mossop explained the work CLAS does in the area of mental health, disability, human rights, and most recently, its support of the network of Law Foundation funded community advocates. The work that is most relevant to the review of the Task Force is that performed by paralegals who represent people who are subject to involuntary detainment under the *Mental Health Act.*[33] Most of these paralegals were either former Legal Services Society paralegals or people with criminology degrees. The paralegals are trained, but they have a fair measure of independence in that they are making submissions directly to a panel that determines whether the detained individual gets released. The detained individuals often have limited capacity and their liberty is at stake, so the work is important and challenging. Despite this, Mr. Mossop indicated the paralegals do good work and he felt comfortable that there is room to expand legal services to include non-lawyers providing there is proper education and skills training. Mr. Mossop suggested one possibility is requiring some form of apprenticing with a lawyer, particularly to impart some of the ethical teachings that are important to the practice of law.

27. The CLAS paralegals who are mental health advocates do important work. The nature of this work is such that, to the extent it occurs, it is performed through social services such as those provided by CLAS or by lawyers acting pro bono. While these are not free-market services, they are legal skills that are transferable and, given that people's liberty is at stake, quite important. The CLAS model involves a team operating under one roof, so lawyers are available to the paralegals as required, but the skills the CLAS trained paralegals possess are not contingent on their being part of a team that involves lawyers.

[33] RSBC, 1996, c. 288.

Consultation with the Law Society of Upper Canada and the Washington State Bar Association

28. The Task Force met with Paralegal Benchers Cathy Corsetti, Brian Lawrie, together with Julia Bass, Policy Counsel from the Law Society of Upper Canada, and also with Paula Littlewood, Executive Director of the Washington State Bar, and Steve Crossland, Chair, Limited License Legal Technician Board.[34] This consultation was of particular importance because Ontario and Washington State are the only two jurisdictions in North America that have moved to open up legal services by creating new categories of regulated legal service provider.[35]

29. In Ontario, since May 2007, the Law Society of Upper Canada has been responsible for licensing and credentialing paralegals. This includes a regulatory scheme for paralegals and the involvement of paralegal Benchers in the governance of the Society. Prior to that, paralegals in Ontario were unregulated and not subject to any credentialing scheme or required to carry insurance. The decision to credential and regulate paralegals in Ontario arose in response to the presence of an unregulated marketplace where paralegals were providing a range of legal services. In this respect the move towards regulation is slightly different than the work the Task Force is engaged in. In Ontario, the emphasis was on protecting the public from an unregulated legal service provider. In British Columbia, the focus is on expanding access to justice in a manner that best serves the public interest.

30. Paralegals in Ontario are permitted to engage in advocacy work in small claims court, criminal matters that carry a maximum sentence of six months incarceration, and before administrative tribunals. Paralegals commonly represent clients in landlord/tenant matters (mostly landlords), and traffic tickets. There are approximately 6000 licensed paralegals in Ontario. They are able to work with a lawyer or independent of a lawyer and do not require supervision by a lawyer if they are providing the services permitted under the Law Society by-laws.

31. When the Law Society of Upper Canada undertook to credential and regulate paralegals, it was met with strong resistance from lawyers. Resistance to regulation has generally abated, although efforts to expand paralegal practice into other areas such as family law have met with concentrated opposition from the family bar. This opposition will ultimately have to be considered in light of s. 4.2 of the *Law Society Act* that states "The Society has a duty to facilitate access to justice for the people of Ontario."

32. The situation in Washington State is similar, but has some notable differences. In Washington State the Supreme Court is responsible for regulating lawyers. It has delegated some functions to the Washington State Bar Association, but ultimately it is the Court that is responsible. Over the past 12 years the Supreme Court has been concerned about the inability of many

[34] Mr. Crossland also chaired the Practice of Law Board, appointed by the Washington State Supreme Court.

[35] California is at the early stages of exploring an approach similar to that in Washington.

people to access the services of lawyers due to cost and unavailability of services, so it tasked the State Bar Association with coming up with solutions.

33. A decade of research and consultation ultimately led to the recommendation of a new class of legal service provider called a Limited License Legal Technician ("LLLT"), and the Supreme Court adopted a rule in 2013 for the creation of this type of service provider. The Court has started by instructing the LLLTs to be trained to deal with select matters in family law, but the model is sufficiently flexible that over time new categories of legal services can be added to the scheme.

34. LLLTs must complete 90 credit hours of college, of which 45 credits must be in the courses identified by the Bar Association. These courses were created in conjunction with the four ABA approved state law schools, which now also teach LLLTs. While the local bar strongly opposed the measures, there has been an increasing trend of cooperation to help the Bar Association ensure LLLTs are properly trained and regulated. The feedback the Task Force received is that some lawyers are starting to recognize that there is room in the market for complimentary legal service providers, such that lawyers are freed up to deal with the more difficult legal issues and LLLTs can deal with lower threshold matters at a lower cost, and then refer clients to lawyers for matters that are outside the LLLTs' jurisdiction. How this will work in the market place will start to be better understood starting 2015, when the first cohort of LLLTs graduates and receives the license to practice law in limited capacity.

35. The representatives from Washington State pointed out that while enrollment in law schools has dropped by about 30% in recent years, the LLLT programs have waiting lists. Firstly, it takes about half as much schooling to obtain an LLLT as it does a JD, and secondly the total cost of an LLLT is about $15,000 versus an average of approximately $100,000 for a JD. The fact that LLLTs are not able to provide all the services a lawyer can provide, coupled with the lower cost of obtaining the license, leads to the assumption that their services will be delivered at a lower cost, thereby improving access to justice.

Consultation with Lawyers and Other Legal Service Providers

36. The Task Force posted a consultation document on the Law Society website to give legal service providers (lawyers, notaries and other legal professionals) an opportunity to provide input as to the Task Force's work. As of the end of the consultation, the survey had 58 responses. This is a very small sample size so should not be read as predictive of the larger population, but the feedback is nevertheless informative.

37. The feedback from legal service providers generally recognized the public would benefit from greater access to more affordable services in filling out legal forms, legal advice, and representation before a court or tribunal or at a private dispute resolution process. When asked the specific question as to what services new types of credentialed service providers should be permitted in order to provide greater choice to the public, the numbers dropped.

38. The survey questions were answered as follow.[36]

39. **Question 1:** *What types of legal services should the public have easier and more affordable access to?*

    a. Help filing out legal forms = 45 of 58;

    b. Legal advice = 38 of 58;

    c. Representation before a court or tribunal = 34 of 58;

    d. Representation at a private dispute resolution process, such as mediation or arbitration = 41 of 58.

40. **Question 2:** *If new types of legal service providers were to be credentialed to provide the public with more choice in the marketplace, what types of services do you think they should be able to provide?*

    a. Representing people before a court = 13 of 58;

    b. Representing people before a tribunal =23 of 58;

    c. Representing people at a mediation = 32 of 58;

    d. Representing people at an arbitration = 22 of 58;

    e. Providing legal advice to a client = 17 of 58;

    f. Assisting a client to fill out legal forms = 41 of 58;

    g. None of the above = 9 of 58.

41. With respect to the question, *What areas of law do you think would benefit most by allowing for new categories of legal service providers and why?* family law was by far the most identified area of law where legal service providers saw the need for greater access to the public.[37] Criminal law and small claims matters were also identified by more than one respondent.

42. With respect to the question, *What areas of law do you think would benefit least by allowing for new categories of legal services providers and why?* the responses did not lead to clear categories. However, the most common themes were not to permit appearances in Supreme

[36] Single responses are not noted.

[37] Note that this should be read in conjunction with the view that assisting with forms and alternative dispute resolution was viewed far more favourably than appearing in court.

Court, representation in matters where liberty was at stake or where the matter was complex (be it commercial, family, intellectual property or otherwise).

Consultation with the Public

43. The Task Force posted a consultation document on the Law Society website to give members of the public an opportunity to provide input as to the Task Force's work. The sample size of the public survey was 12, so it is not a statistically significant sample size. The feedback the Task Force received indicated a much greater willingness to see new classes of service provider appear in court or provide legal advice.

44. When asked why they chose not to hire a legal service provider, cost was identified as the primary reason. Concerns about the cost of the legal services that are available in the present market is consistent with much of the legal needs research, and with the findings of past Law Society task forces.

45. Although the feedback to the online consultation was too limited to draw conclusions, the Task Force observes that the numerous legal needs surveys it, and its predecessor Task Force, considered all point to a significant justice gap between people who are accessing the current market and those who receive subsidized legal services.

46. With respect to the question, *If new types of legal service providers were created to provide the public with more choice in the marketplace, what types of services do you think they should be able to provide?* the answers were:

    a. Representing people before a court = 8 of 12;

    b. Representing people before a tribunal = 8 of 12;

    c. Representing people at a mediation = 9 of 12;

    d. Representing people at an arbitration = 11 of 12;

    e. Providing legal advice to a client = 11 of 12;

    f. Assisting a person to fill out legal forms = 12 of 12.

Appendix 2: Consultation Documents

The form of the various consultation questions are set out below.

Consultation with the Courts and Tribunals

Consultation Questions

The Task Force is seeking input from courts and tribunals as to the areas of greatest need for skilled advocates and input as to whether it is desirable to create new classes of legal license that would permit properly credentialed and regulated service providers to fill those advocacy roles. As courts and tribunals control their processes, the Task Force is seeking input at the developmental stage to ensure that its recommendations to the Benchers, and ultimately the Law Society's recommendation to government, reflect the needs of British Columbia's courts and tribunals.

Question 1:

Recognizing that not everyone who needs to appear before a court or tribunal can afford the services of a lawyer, are you in favour of creating new classes of trained and regulated legal service providers to provide discrete categories of representation before you?

Question 2:

How regularly do parties seek assistance from a non-lawyer advocate, friend, or relation in matters in your court?

Question 3:

What skills and professional qualities do you think an advocate must possess in order to provide "good service?"

Question 4:

What, in your view, are the types of matters that most require legal representation by a person who is properly trained and regulated? Do litigants before your court appear to be underserved (or abandoned) by regulated legal service providers in any of the types of matters you have identified?

Question 5:

Are there areas of law that you think would benefit most by allowing for new categories of legal service providers?

Question 6:

Conversely, are there areas of law that you think would benefit least by allowing for new categories of legal service providers?

Question 7:

If the government were to amend the *Legal Profession Act* to permit the Law Society to create new categories of regulated legal service provider, including developing credentials and a regulatory scheme, are you prepared to work with the Law Society to identify the necessary training for advocates who could be licensed to appear before you?

Consultation with representatives from the Law Society of Upper Canada and the Washington State Bar Association

Question 1: What have been the benefits of expanding the market place to permit legal service providers other than lawyers?

Question 2: What, if any, roadblocks did you encounter as you developed your model of regulation of non-lawyer legal service providers? In particular, how did lawyers react to the proposal, and how did you address any issues or concerns raised by lawyers? Were there any other groups that you needed to address specifically in connection with your proposal?

Question 3: What, if any, problems have you encountered with expanding the market place to permit legal service providers other than lawyers?

Question 4: What types of legal services are non-lawyers permitted to provide in your jurisdiction?

Question 5: Are you considering expanding the scope of legal services non-lawyers are permitted to provide? If so, what policy rational have you identified in favour of such expansion?

Question 6: If you were to create new classes of legal services non-lawyers could provide, what types of legal services do you think the public would benefit most from, and why?

Question 7: Has the regulation of non-lawyer legal service providers improved access to legal services in your jurisdiction?

Consultation with Legal Services Providers (online)

Question 1: What types of legal services should the public have easier and more affordable access to:

- Help filling out legal forms;

- Legal advice;
- Representation before a court or tribunal;
- Representation at a private dispute resolution process, such as mediation or arbitration.

Question 2: If new types of legal service providers were to be credentialed to provide the public with more choice in the market place, what types of services do you think they should be able to provide:

- Representing people before a court;
- Representing people before a tribunal;
- Representing people at a mediation;
- Representing people at an arbitration;
- Providing legal advice to a client;
- Assisting a client to fill out legal forms;
- Other. Please specify _____;
- None of the above.

Question 3: What areas of law do you think would benefit most by allowing for new categories of legal service providers?

- Why?

Question 4: What areas of law do you think would benefit least by allowing for new categories of legal service providers?

- Why?

Question 5: Please identify your profession.

- Lawyer
- Notary Public
- Paralegal
- Mediator

- Arbitrator
- Parenting Coordinator
- Community Advocate
- Other (please specify)

Question 6: How many legal professionals work in your firm?

- Sole practitioner
- Small firm (2 - 5)
- Medium firm (6 - 25)
- Large firm (25+)

Consultation with the Public (online)

Question 1: Have you ever sought help from a professional who provides legal services?

- Yes/No?

Question 1a: If yes, which type of professional?

- Lawyer
- Notary
- Other (please specify) _____

Question 2: Have you ever needed legal assistance, but have chosen, upon consideration, not to hire a legal services professional?

Question 2a: If so, why did you choose not to hire a legal services professional?

Question 2b: What was the nature of the problem?

- Employment issue
- Creditor / Debt
- Social services benefits
- Human rights complaint

- Immigration
- Personal Injury
- Family Dispute / Relationship Breakdown
- Residential tenancy
- Business services
- Tax
- Wills / Estates
- Other (specify: _____)

Question 3: What type of services did you obtain from the service provider?

- Acting as an advocate before a court, a tribunal or at a mediation or arbitration;
- Giving legal advice (but not representing you before a court, tribunal, at a mediation or arbitration);
- Assisting with the preparation of documents, such as a will, a conveyance, a contract, etc.;
- Other (specify) _____.

Question 4: What type of help do you want from a legal service professional?

- Legal advice
- Legal information
- Advocacy services (e.g. appearing in court)
- Drafting legal documents
- Interpreting legal documents
- Other (specify) _____

Question 5: What types of legal services should the public have easier and more affordable access to:

- Help filling out legal forms;
- Legal advice;
- Representation before a court or tribunal;
- Representation at a private dispute resolution process, such as mediation or arbitration;
- Other (specify) _____.

Question 6: If new types of legal service providers were created to provide the public with more choice in the market place, what types of services do you think they should be able to provide:

- Representing people before a court;
- Representing people before a tribunal;
- Representing people at a mediation;
- Representing people at an arbitration;
- Providing legal advice to a client;
- Assisting a client to fill out legal forms;
- Other (specify) _____;
- None of the above.