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 Bradley A. Newby
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 Alexander H. Northey
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 Carey Veinotte
 Art Vertlieb, QC
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 Joel Whysall
 Loreen Williams
 Gary J. Wilson
 Louisa M. Winn
 So Yin Woo
 David K. Wotherspoon
 Darcy Wray
 Don Yule, QC ❖

In memoriam

WITH REGRET, THE Law Society reports the passing of the following members during 2014:

Manfred G.L. Angene
 Don P. Baron
 A.B.B. Carrothers, QC
 Kenneth C.K. Chen
 Clinton W. Foote
 H. Patrick Glenn
 H. Bjorn Hareid
 G. Jack Harris, QC
 Frederick H. Herbert, QC
 J. David Houston
 Beverley D. Hoy
 Dick Lester
 Kelly MacDonald
 Brian W.F. McLoughlin, QC
 James H. Noble
 Julie L. Owen
 George W. Owen, QC
 Andrew Pavey
 Gilbert R. Schmitt, QC
 Henry A. Smith
 Mark J. Steinberg
 Kelvin R. Stephens
 James G. Stewart
 Jacob J. Talstra
 Benjamin B. Trevino, QC
 Ross D. Tunnicliffe ❖

Taking steps to make justice more accessible

CONSISTENT WITH OUR goal of ensuring the public has better access to legal services, the Law Society is taking steps to expand how legal services are provided in this province. This proposed change in the structure of British Columbia's legal profession will create an opportunity for certain legal service providers to deliver additional types of legal services. Areas of legal need that are currently not served, or are only partially served by lawyers, will be met by other legal service providers, enhancing access to justice for all British Columbians.

Other Canadian provinces have already taken steps in this direction. In Ontario, the Law Society of Upper Canada regulates both lawyers and independent paralegals, ensuring that they meet appropriate standards of learning, and professional competence and conduct. Under that system, lawyers are licensed to provide any legal advice or service, while paralegals are licensed to provide legal advice in limited areas of legal services.

Changes of this nature are taking place outside of Canada as well. South of the BC border, Washington State has a new class of legal professionals called "limited

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license legal technicians." The Washington State Bar has authorized this new category of legal professional to advise and assist clients on specific areas of law once they have met certain educational requirements.

This spring, the Law Society of BC will begin the groundwork for seeking legislative amendments to the *Legal Profession Act* to permit the Law Society to establish, credential and regulate categories of legal service providers to provide certain legal services. This step follows a recommendation in the report from the Legal Services Regulatory Framework Task Force, chaired by former President Art Vertlieb, QC. The report was adopted by the Benchers in December 2014.

"Access to justice is a big issue, obviously, and I want to see the Law Society

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continue the important work that has been done to increase the availability of affordable legal services," says Vertlieb. "The increased scope of practice for designated paralegals in BC is one of the most significant achievements by the Benchers in the past few years, and now it is time for the next step in the process." Vertlieb played a pivotal role in championing the expanded scope of duties that can be performed by paralegals and articulated students.

"Taking the step of establishing different categories of legal service providers is the way forward," agrees Michael Lucas, Manager of Policy and Legal Services. "This will provide greater alternatives in the provision of legal advice and services in BC."

Lucas has worked for the Law Society for 20 years and has seen discussions

around the expansion of the Law Society's regulatory oversight ebb and flow, but he says the conversation has now moved to the forefront due to a changing regulatory environment.

"Over the last five or six years, there's been greater recognition within the profession that there are problems with access to justice that simply can't be solved without changing the rubric under which legal services are provided," Lucas said.

As the Canadian Bar Association noted in its recent report on trends and issues in the future of legal services, "To the extent that legal services are only allowed to be provided by lawyers, regulation of lawyers is effective regulation of legal services. But it is increasingly clear that some legal services are not necessarily best delivered by lawyers or law firms... This evolution in the marketplace suggests that consideration must be given to whether the nature of legal regulation must change to ensure client protection and protection of the administration of justice and rule of law. The regulation of paralegals in Ontario is one example."¹

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– Art Vertlieb, QC

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¹ *The Future of Legal Services in Canada: Trends and Issues*, June 2013 © Canadian Bar Association, page 37.



point all evidence points to the fact that for many people, the system is not working the way it needs to work," says Vertlieb. "As the Law Society, we have a duty to improve access to justice, to help ensure everyone in BC is able to access the legal services they require."

An earlier Law Society of BC report, *The Final Report of the Legal Service*

Providers Task Force, adopted by the Benchers in 2013, identified the need to adjust the scope of regulation to include categories of legal service providers, and to credential and regulate those providers. The report concluded that all legal service providers, not just lawyers and notaries, should be regulated and that a single regulator is the preferred model. It also

concluded that, if there is to be one regulator of legal services, then the Law Society is the logical regulatory body. The third recommendation was that the Law Society develop a regulatory framework under which existing providers of legal services, and new stand-alone groups, could provide credentialed and regulated legal services in the public interest.

The Benchers established the Legal Services Regulatory Framework Task Force in April 2014 to follow up on the third recommendation. After it was struck, the

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task force engaged in even more extensive research, undertaking a series of in-person consultations as well as consultations with the courts, administrative tribunals, other regulatory bodies, and groups that are already utilizing some non-lawyer assistance, such as the Legal Services Society.

The report analyzes legal needs, identifies categories of legal professionals who might be able to meet needs in specific areas, and suggests what sort of services might be provided. The task force also recommended that the new classes of legal service providers should only be able to provide legal services within a limited scope, concluding that they should be

The report notes that the full scope of permitted advocacy services will need to be decided through further consultations with the courts and administrative tribunals, lawyers, notaries and law schools.

permitted to provide legal information and advice, assist in drafting, filling out forms, coaching, and interpreting substantive and procedural law, and with some limitations, be permitted to provide advocacy services.

The report notes that the full scope of

permitted advocacy services will need to be decided through further consultations with the courts and administrative tribunals, lawyers, notaries and law schools. Those discussions will play a significant role in deciding what type of appearances, if any, ought to be permitted. With that in mind, the task force suggests, as a starting point for discussion, that properly credentialed and regulated professionals in any new class of legal service provider be permitted to offer advocacy services before administrative tribunals, in 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.

However, the task force recognized the importance of ensuring that legal advice is given by individuals who have studied the law and are trained in its application. The public interest in the administration of justice would not be well served if these new categories of legal service providers were not educated and credentialed to provide those legal services: "There is no

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point in creating a system that enables people to retain uninformed legal advice," the report states, "as that advice will in most cases exacerbate already existing legal problems."

Vertlieb points out the complexity of the task. "We've got to decide, how much education do you need?" he said. "That's not going to be simple. We would have to develop the framework for credentials, which would cover what training you would need to provide the services we've identified you can do." Professional standards would also need to be developed and implemented, together with a regime for regulation.

Before the framework can be established, the *Legal Profession Act* must be amended. Currently, discussions are underway with staff in the Ministry of Justice



Art Vertlieb, QC



Michael Lucas

in connection with the materials necessary for government consideration of the request for a legislative amendment, and it is hoped the amendments will be on the legislative agenda in 2016.

"I'm very pleased with this approach," Vertlieb said. "When we started this project,

"Throughout the process, we have demonstrated our commitment to act in the public interest, and to ensuring that the public is well served in the governance of the legal profession."

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it was clear a change in the regulation of the profession was necessary to address access to justice issues. These measures set a direction that will begin to address this problem. Throughout the process, we have demonstrated our commitment to act in the public interest, and to ensuring that the public is well served in the governance of the legal profession." ❖