The Law Society
of British Columbia

REPORT TO BENCHERS ON DELEGATION AND QUALIFICATIONS OF PARALEGALS

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Purpose of Report: **Discussion and Decision**

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I. INTRODUCTION

The Benchers considered the Paralegal Task Force Report dated October 27, 2003 at their meeting of November 14, 2003. The Benchers resolved to ask the Paralegal Task Force to consider revisions to Chapter 12 of the *Professional Conduct Handbook* to expand the range of services that could be delegated by lawyers to their non-lawyer employees. They also asked the Task Force to consider defining the qualifications of the non-lawyer employees to whom particular services could be delegated.

The Paralegal Task Force provided an interim report on that dual mandate to the Benchers at their meeting April 8, 2005. At the time, the Task Force was still in discussions with the Provincial Court about the role of paralegals on Provincial Court matters.

This is the Task Force's final report.

II. QUALIFICATIONS FOR PARALEGALS

The Benchers asked the Task Force to consider defining qualifications for non-lawyer employees to whom particular duties may be delegated. The Task Force considered setting out specific qualifications for such paralegals and also considered approving particular paralegal programs. However, in the Task Force's experience, paralegals who were suitable candidates for delegation of particular matters, did not all share the same background. The Task Force noted that paralegals in this province come from a variety of educational backgrounds and have quite varied experience. Some paralegals are qualified in only one area; some paralegals are qualified in several. Some have completed formal extensive paralegal programs; others may have little formal paralegal education but have extensive job experience and training in a given area.

The Task Force was of the view that the key to appropriate delegation was to require the lawyer to evaluate the non-lawyer employee's abilities to perform the duty to be delegated. In each case, the lawyer would be responsible and accountable for the decision.

The Task Force recognized that there may be concerns about lawyers who improperly delegate tasks to their non-lawyer employees. The Law Society's Discipline Committee has considered situations of lawyers delegating particular services to employees who were not qualified by education, training or experience to provide the service delegated. Accordingly, the Task Force concluded that the test for delegation to a paralegal should contain some objective elements by which to evaluate the lawyer's judgment to delegate work.

The Task Force considered various descriptions and definitions of paralegals. The Task Force adopted the following definition of "paralegal", which in its view contains objective elements coupled with flexibility: "A paralegal is a non-lawyer employee who is competent to carry out legal work that, in the paralegal's absence, would need to be done by the lawyer. A lawyer must be satisfied that the paralegal is competent by

determining that one or more of the paralegal's training, work experience, and education is sufficient for the paralegal to carry out the work delegated."

The Task Force is of the view that it is in the public interest that paralegals, like lawyers, maintain and improve their skills by taking courses and pursuing programs that are available in their practice area. The Task Force also notes that courses taken by the paralegal in the relevant practice area would be objective evidence of the paralegal's training and education for the work delegated.

III: THE TASK FORCE'S CONSIDERATIONS

The Task Force started with the proposition that it does not make economic sense to use lawyers for all legal services. Some cases, or some aspects of a case, do not warrant payment of a lawyer's fees where there is an economical alternative. An obvious example would be hiring a lawyer to act on a traffic violation ticket with a nominal fine. Another example would be hiring a lawyer to act on a Small Claims matter, particularly where the amount in issue is significantly less than the current $25,000 jurisdictional limit. Central to this discussion is the principle of proportionality: that the cost of legal services being delivered is proportionate to the amount in issue or the risk to the client.

The Task Force noted that the principle of proportionality has limitations. One such limitation is that the complexity of a case is not always tied to its dollar value. For example, a Small Claims Court matter where there is very little at risk from a monetary standpoint can still raise complex issues of fact and law. The Task Force thinks that the principle of proportionality is really nothing more than economic common sense for the consumer of legal services.

The Task Force considered that allowing paralegals employed and supervised by lawyers to provide some legal services is a way to deliver proportionate legal services to the public who wish to access legal assistance while at the same time ensuring that the consumer of legal services is protected. The lawyer will continue to be responsible for overseeing the services delivered by the paralegal. Because lawyers are responsible for all work entrusted to them, the services are regulated and insured.

The Task Force was of the view that the key to determining what services may be appropriately delegated to paralegal staff is to articulate principles which balance the risk in delegating certain services to paralegals with the benefit to the public in having access to those services. The key to making sure that the public is protected is to require the lawyer to supervise any work delegated and to delegate work only to employees whose training, education, and experience is appropriate to the work being delegated.

The Task Force also considered what is meant by a lawyer's supervision of a paralegal. The Task Force does not believe that supervision requires a lawyer to oversee or review every aspect of every task that a paralegal performs. Supervision of a paralegal requires the lawyer to provide the guidance and review appropriate to the paralegal's experience with similar matters and the complexity of the task. The degree of supervision of a particular paralegal will vary with time. For example, a paralegal newly hired by a lawyer will require significant supervision at the outset. However, when it becomes clear

that the paralegal understands and can competently perform the task and can identify for the lawyer any novel aspects to a particular matter, the lawyer's hands-on supervision can be reduced accordingly.

The Task Force wrestled with the concept of supervision of a paralegal appearing in a court or before an administrative tribunal when the lawyer is not present. The Task Force acknowledges that in such settings the supervision that the lawyer can provide is limited. A lawyer can and should review a matter with a paralegal before a proceeding to ensure that the paralegal is as prepared as possible for the proceeding but new issues can still arise. In these circumstances the paralegal may not be able to contact the lawyer about the new issue and the paralegal will have to proceed without guidance from the lawyer. The Task Force acknowledges that such situations will probably arise if paralegals are allowed to provide some representation before administrative tribunals or provincial courts. Not having a lawyer present to deal with all the issues that arise in a proceeding is a corollary of proportionality. The question is whether the risk to the client when this occurs is so great that such representation should never be allowed. As set out later in this paper, the Task Force concluded that, notwithstanding the risk, there are situations where paralegals should be permitted to provide legal services before administrative tribunals and courts.

IV. CHAPTER 12 OF THE PROFESSIONAL CONDUCT HANDBOOK

Chapter 12 of the *Professional Conduct Handbook* deals with the supervision of employees. Chapter 12 is attached as Appendix "A" to this Report. The Chapter contains a number of principles together with lists of services that may be delegated by lawyers to their employees and lists of what the lawyer must do personally.

A significant limitation on what may be delegated to a non-lawyer employee is Ruling 9(i) which prohibits a non-lawyer employee from appearing before any Court, Registrar, or administrative tribunal or at an examination for discovery, except in support of the lawyer.

The Task Force was of the view that some of the items contained in the list of services the lawyer must handle personally were not, in fact, always handled by the lawyer. For example, the Task Force noted that Ruling 9(b) specifies that only a lawyer can review a title search report. In the Task Force's experience, such reports are routinely reviewed by legal assistants with the legal assistant reporting on his or her review to the lawyer in charge. The Task Force concluded that the time was right to revise Chapter 12 in order to better reflect appropriate practice by lawyers. The Task Force has not produced a new Chapter 12. It has, however, developed principles for the delegation of work to paralegals. It has not developed principles for delegation of work to or supervision of other non-lawyer employees. If the principles articulated in this Report are adopted by the Benchers, Chapter 12 will have to be revised.

V. DISCUSSIONS WITH THE CHIEF JUDGE OF THE PROVINCIAL COURT

Members of the Task Force met with former Chief Judge Carol Baird Ellan and Associate Chief Judge Anthony Spence twice and with Chief Judge Hugh Stansfield twice to discuss the issue of paralegals employed by lawyers representing clients on Provincial Court matters. The discussions as they relate to particular types of matters are set out below. The Task Force also spent two half days observing cases in the Provincial Court (Small Claims Division).

VI. CONSIDERATION OF ACTIVITIES TO BE DELEGATED

The lists of activities in Chapter 12 of the *Professional Conduct Handbook* provided a starting point for the Task Force's discussions on what services could appropriately be delegated to paralegals. The Task Force considered the purpose in allowing delegation of some legal services to paralegals is to make legal services more affordable and, accordingly, more accessible to the public. The Task Force thought that a supervising lawyer should be guided by proportionality in delivering legal services, i.e. ensuring that the cost of services being delivered is proportionate to the complexity of the matter considered, the amounts in issue or the risks to the client, and the means of the client to pay for legal services.

(a) Solicitor's Services

The Task Force noted that a great deal of solicitor's work is currently done by non-lawyer employees working under the supervision of a lawyer. The Task Force discussed the appropriateness of having paralegal employees meet with clients in the absence of a lawyer to take instructions with respect to uncontested divorces, simple conveyances, simple wills, and other services that might be provided by a notary public. The Task Force is of the view that it is appropriate for lawyers' paralegals to provide services in relation to these matters where the issues are not complex and the amounts in question are not large, provided the matters are appropriately supervised by the lawyer.

Ruling 9(a) requires a lawyer to attend personally on a client to advise and take instructions on all substantive matters. The Task Force is of the view that there is a role for paralegal employees to attend on the client in the absence of a lawyer to take instructions on substantive matters in appropriate cases. Whether or not the case is appropriate will depend upon a number of things: the complexity of the case, the amounts in issue, the sophistication and expectations of the client, and the paralegal's training, work experience, and education.

(b) Small Claims Court Matters

The Task Force considered the provision of two different types of services by paralegals in relation to Small Claims Court matters: (i) preparation and organization of documents and witnesses prior to a hearing; and (ii) representation at a hearing.

The Provincial Court Judiciary was of the view that paralegals could be of real assistance to the parties and the Court by organizing a party's documents and assisting parties to

prepare their evidence. The Task Force agrees. In their view, paralegals should be entitled and encouraged to draft Small Claims documents and prepare matters for hearing in Small Claims Court.

The issue of allowing paralegals to represent parties in Small Claims proceedings was more contentious. The Chief Judge, former Chief Judge and Associate Chief Judge all expressed concerns about allowing paralegal representation in Small Claims matters. They noted that the issues in Small Claims Court are often as complex as in Supreme Court matters - the only difference is the amount in issue. The Chief Judge also pointed out that the Provincial Court Judiciary conducts thousands of trials in which the parties are unrepresented. He expressed a high level of confidence that Small Claims Judges ensure fairness and just results in those cases even though the parties are unrepresented.

The Task Force acknowledges that Provincial Court Judges are experienced in dealing with unrepresented parties and are confident that Judges take steps to ensure that the results are fair and just. The Task Force also acknowledges that Small Claims Court is designed for parties to appear without representation and that many people are comfortable appearing in Small Claims Court on that basis.

However, the Task Force believes that there are also some members of the public who, for a variety of reasons, do not wish to appear on Small Claims Court matters on their own. The Task Force considered that, for the most part, it is not economical for clients to retain lawyers in relation to Small Claims matters. The Task Force is of the view that allowing paralegals employed by lawyers to represent clients in Small Claims Court would enhance the public's right to affordable, trained, and regulated legal assistance. Prior to the trial, the supervising lawyer would be available to review and consider the issues raised in the smalls claims action and instruct a paralegal on how to conduct a matter. In all cases, the lawyer would be responsible for the matter and the client would thus be protected. Given the amounts in issue, the Task Force is of the view that the benefits to the public outweigh the risk to the public in being represented by a paralegal employed and supervised by a lawyer. It is a question of proportionality.

As the amount in issue increases, it makes more economic sense for a lawyer to provide the services. However, even at $50,000 (which the *Justice Modernization Statutes Amendment Act*, 2004, S.B.C. 2004 c. 65, provides may be declared, by regulation, to be the Small Claims jurisdictional limit), it may be uneconomic to hire a lawyer.

The Task Force agrees with the Chief and former Chief Judge and Associate Chief Judge that the issues in Small Claims matters can be complex. However, even when the issues are complex, it may be uneconomic to hire a lawyer to provide representation. The Task Force is of the view that it is important to provide the public with an economical, but nonetheless regulated, alternative to being represented in Court by a lawyer. The supervising lawyer would be responsible to determine whether, given a matter's complexity, delegation to the paralegal was appropriate, and to advise the client of the risks.

With respect to allowing lawyers' paralegals to represent parties in Small Claims proceedings, the Task Force notes that the *Small Claims Act* and *Rules* do not allow a party to be represented by a paralegal employed by a lawyer.

Rule 17(20) of the *Small Claims Rules* provides as follows:

> "**How the parties may be represented**
>
> (20) Any party who wishes to be represented in court may be represented by a lawyer or an articled student, or
>
> (a) if the party is a company, by a director, officer or authorized employee,
>
> (b) if the party is a partnership, by a partner or an authorized employee, or
>
> (c) if the party is using a business name, by the owner of the business or any authorized employee.

The Chief Judge indicated his view that Rule 17(20) describes those persons who are entitled, as of right, to represent a party in a proceeding. He notes that there is no barrier to any agent, including a paralegal, appearing in Court if permitted by the Judge. He indicated that the Provincial Court Judiciary would oppose any presumptive right of paralegals to appear in adjudicative proceedings. The Task Force agrees with the Provincial Court Judiciary that paralegals should not be allowed, as of right, to appear in adjudicative proceedings.

The Task Force notes, however, that it is likely that the Courts will only grant a privilege of audience only to those who do not, by appearing, breach the provisions of the *Legal Profession Act* [see e.g. *B.C. Telephone Company v. Rueben* [1982] 5 W.W.R. 428 (1982) 138 D.L.R. (3d) 549; *R. v. Dick*, 2002, BCCA 27; *Law Society of British Columbia et al. v. Constantini et al.* 2004 BCCA 279]. The *Legal Profession Act* prohibits non-lawyers from appearing in Court for a fee although a paralegal "employed by a practising lawyer. . . and who acts under the supervision of a practising lawyer" [s. 15(2)] does not breach the general prohibition against non-lawyers practising law.

As paralegals employed by lawyers are not included in Rule 17(20), if a paralegal is to represent a party in a Small Claims matter, it would be necessary for the paralegal or the employing lawyer to seek the Courts' permission for the paralegal to appear on behalf of a party.

The Task Force considered how such an application should be made – if the paralegal prepares for a trial but is refused audience on the day of the trial then either the matter would have to be adjourned or the client would have to proceed alone. The Task Force does not consider the uncertainty of that process to be in the best interests of the Court, the opposing party, the client, or the administration of justice.

The Task Force concludes that an application to allow a paralegal to act should not be made on the trial date. The Task Force is of the view that the Law Society should enter into discussions with the Court with a view to developing a Protocol for such applications. The Task Force envisions that the Protocol might provide that, prior to a hearing, the supervising lawyer would seek permission for the paralegal to appear for a party on a matter by writing to the Court. The letter to the Court should include the following:

- the reason(s) for the client to be represented;
- the qualifications of the paralegal; and
- the name and contact information of the supervising lawyer.

The Court could then determine, prior to the hearing, whether to grant the application, with or without conditions. Of course, any grant of privilege to appear is subject to the agents conducting themselves appropriately. If a paralegal who is granted a privilege of audience does not conduct him or herself appropriately, then the privilege would be lost. The Protocol could specify that any concerns about a paralegal should be brought to the supervising lawyer's attention. The Protocol could also provide that concerns about the supervising lawyer, including concerns about the adequacy of the lawyer's supervision of the paralegal, could be brought to the Law Society's attention.

(c) Criminal Matters – Provincial Court

The Task Force considered what representation, if any, could appropriately be delegated by a lawyer to a paralegal on criminal or quasi-criminal matters. The Task Force noted that sections 800 and 802 of the *Criminal Code*, which deal with summary convictions, allow for an accused to appear by agent. In *R. v. Romanowicz* [1999] O.J. 3191, the Ontario Court of Appeal found that those provisions allowed paid agents to act for an accused in summary conviction proceedings. British Columbia Courts have not yet determined whether *Romanowicz* applies in British Columbia.

The Task Force is of the view that paralegals ought not to act on behalf of clients with respect to an indictable offence, as the risks to the client upon conviction are significant and the issues are generally more complex.

Initially, the Task Force considered recommending that a lawyer be allowed to delegate representation of a client to his or her paralegal only on uncontested interlocutory matters or on summary conviction matters when, in the lawyer's opinion, the client faced no significant risk of imprisonment or of a fine exceeding the monetary jurisdiction of the Provincial Court. The Task Force thought that it was only appropriate for a lawyer to delegate a criminal or quasi-criminal matter to a paralegal where there was no risk that the client might be imprisoned or face a significant fine or other serious consequence (e.g. the loss of a driver's license). The former Chief Judge and Associate Chief Judge shared our concerns about paralegal representation in this area. They suggested that lawyers should only allow their paralegals to represent clients on "ticket offences" where there is no risk of imprisonment or significant fines or other serious consequences. They

noted that these are cases that the Chief Judge assigns to Sitting Justices of the Peace, who may not have been lawyers.

The Task Force agrees with and has adopted the former Chief Judge's suggestion that lawyers be allowed to delegate to their paralegals only those classes of cases that the Chief Judge assigns to Judicial Justices of the Peace, from time to time.

The Task Force believes that there are also uncontested interlocutory applications in criminal cases that proceed before Provincial Court Judges, which may be suitable for delegation by a lawyer to their paralegals provided that such applications do not bear on the liberty of an accused. For example, the Task Force believes it appropriate for a paralegal to appear on behalf of the lawyer to fix a date for trial.

The Task Force also considered whether lawyers should only be entitled to delegate adult criminal matters to paralegals. The Task Force is of the view that, given the limited delegation contemplated, delegation to a paralegal should not be restricted in that way.

The Task Force's comments on a non-lawyer's privilege of audience apply equally to this section. The Task Force believes that the Law Society and the Provincial Court Judiciary should set out a process whereby a lawyer can seek permission for a paralegal to appear for a client on a criminal matter in the Provincial Court. The Protocol could also specify those uncontested interlocutory applications which the Provincial Court and the Law Society believe are appropriate for delegation to a paralegal.

(d) Provincial Family Court Matters

The Task Force considered the issues that proceed in Provincial Family Court. The Task Force noted that many of the issues dealt with in Provincial Family Court are very serious ones which have major consequences for the clients. For example, custody, guardianship, and access are all matters dealt with in Provincial Family Court. These are many of the same issues in Supreme Court family matters. The Task Force concluded that there was only a very limited role for paralegal representation in Family Court. In Provincial Family Court matters, the Task Force concluded that lawyers should only allow their paralegals to represent clients on uncontested or consent applications. The former Chief Judge agreed with the Task Force's position on paralegal representation in Provincial Family Court matters. Once again, a Protocol with the Provincial Court, could set out the process for seeking permission for the paralegal to appear.

(e) Administrative Tribunals

The Task Force noted that some administrative tribunals allow non-lawyers to represent clients in proceedings before tribunals. They also noted that because of the provisions of Chapter 12 of the *Professional Conduct Handbook*, non-lawyers employed by lawyers may not represent clients in administrative hearings although if they were not employed by lawyers they could do so. Allowing paralegals employed by lawyers to represent clients before administrative tribunals would provide the public with access to paralegals who are regulated and supervised in their delivery of services.

The Task Force observed that the provincial government appears to be interested in allowing for increased representation by non-lawyers, as illustrated by the government's amendments to the *Workers Compensation Act* RSBC 1996 c. 492 as amended. In the case of the *Workers Compensation Act*, while non-lawyer representation is allowed, no regulatory scheme has been put in place to protect the public in the delivery of those services.

The Task Force is of the view that lawyers should be permitted to allow their paralegals to represent clients before administrative tribunals if permitted by the tribunals and not prohibited by law. The client is protected by having services delivered through a responsible lawyer. The client is in a better position than if he or she retains a "consultant" as the paralegal employed by a lawyer is supervised and the lawyer employer is regulated and insured and responsible for all work done by his or her employees.

(f) Supreme Court Matters

The Task Force considered whether paralegals should be allowed to provide representation in the Supreme Court and determined not to recommend any such representation at this time. The Task Force was of the view that it would be beneficial for both the Judiciary and the Law Society to have the benefit of the experience of having paralegals appear on Provincial Court and administrative matters before engaging in discussions about allowing paralegal representation on any Supreme Court matters. The Task Force also believes that there may be additional considerations for the Supreme Courts that do not apply to Provincial Courts. The Task Force concluded that if the experience with paralegals in the Provincial Courts is positive, in the future the Law Society may wish to consider approaching the Supreme Court about limited paralegal representation for Supreme Court matters.

VII. PRINCIPLES OF DELEGATION

(a) New Principles

The Task Force considered that Chapter 12 already contains a number of principles pursuant to which a lawyer can delegate services to a non-lawyer employee. The Task Force has revised the principles to accord with its conclusions that more services can appropriately be delegated to paralegals. The Task Force also concluded that lawyers should only be able to delegate advocacy functions to paralegals who met the definition and not to other non-lawyer employees.

Set out below are the principles of delegation to paralegals which the Task Force has developed:

"It is in the interests of the profession and the public in the efficient delivery of legal services that lawyers be permitted and encouraged to delegate legal tasks to their paralegals.

By delegating work to paralegals, lawyers can ensure the legal services they provide are delivered cost-effectively to clients. A "paralegal" in this context is a non-lawyer

employee who is competent to carry out legal work that, in the absence of a paralegal, would need to be done by a lawyer. A lawyer must be satisfied that the paralegal is competent by determining that one or more of the paralegal's training, work experience or education is sufficient for the paralegal to carry out the work delegated.

A lawyer who delegates work to paralegals should do so in accordance with the following principles:

1. A lawyer is responsible for all work delegated.

2. A lawyer must be satisfied that a paralegal is qualified to competently carry out the work delegated to the paralegal by one or more of education, training and work experience.

3. A lawyer must appropriately supervise and review the work of a paralegal taking into consideration that person's qualifications and skills and the tasks that the lawyer delegates.

4. The lawyer may, with the consent of the client, allow a paralegal to perform certain advocacy work on behalf of that client. Because a lawyer cannot directly supervise a paralegal's advocacy work, the delegation of such work is permitted only as follows:

   (a) A paralegal may, with the permission of the Court, represent a client in Provincial Court:

      (i) in the Small Claims Division;

      (ii) in criminal or quasi-criminal matters:

         a. on those uncontested interlocutory applications which the Chief Judge of the Provincial Court and the Law Society deem suitable for paralegal representation;

         b. on those hearings that the Chief Judge of the Provincial Court assigns to Judicial Justices of the Peace[1];

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[1] Pursuant to Chief Judge Baird Ellan's Assignment of Duties September 1, 2004 the following types of hearings are assigned to Judicial Justices of the Peace:

"(a) Hearings in respect of all provincial offences in which proceedings are commenced by ticket information;

(b) Hearings in respect of all traffic-related municipal bylaw offences;

(c) Hearings in respect of any traffic-related offence under the *Government Property Traffic Regulations* and *Airport Traffic Regulations* made pursuant to the *Government Property Traffic Act of Canada* (adult only)."

(iii) in the Family Division, only on consent or uncontested matters which the Chief Judge of the Provincial Court and the Law Society deem suitable for paralegal representation;

(b) A paralegal may represent a client on matters before administrative tribunals if permitted by the tribunal and not prohibited by legislation.

5. A paralegal must be identified as such in correspondence and documents that he or she signs, and in any appearance before a Court or tribunal on behalf of a client."

(b) Discussion

Many of the principles that are currently contained in Chapter 12 of the *Professional Conduct Handbook* are reflected in the revised principles set out above. The principles developed by the Task Force, however, are limited to the principles of delegation to paralegals. Delegation to and supervision of other non-lawyer employees are not included. If the Benchers adopt the principles, Chapter 12 would have to be revised. The significant changes on delegation to paralegals are highlighted in this section.

As in Chapter 12 of the *Professional Conduct Handbook*, the revised principles recognize the value of using paralegal employees in the delivery of legal services. The principles also repeat the overarching principle that a lawyer is responsible for all legal work which is performed by his or her employees.

While the determination that a paralegal is qualified for delegation of certain work is still left to the lawyer, the paralegal's qualifications now include reference to the paralegal's education as well as training and work experience. This makes it clear that formal education is one of the elements that a lawyer should take into account in considering whether the work should be delegated.

Under the revised principles, lawyers are still required to provide an appropriate level of supervision. Principle 4, however, recognizes that direct supervision is inconsistent with the expanded services that may be delegated to paralegals. Accordingly, the requirement for direct supervision is removed and the principle is revised to require appropriate supervision.

The revised principles do not contain the prohibition contained in Chapter 12 against a paralegal acting finally without reference to the lawyer in matters involving professional legal judgment. The Task Force is of the view that this limitation is inconsistent with advocacy functions performed by a paralegal and not always necessary in relation to solicitor's work that may be appropriately delegated to a paralegal as set out above.

The revised principles no longer contain the requirement that a lawyer maintain a direct relationship with the client. The revised principles recognize that some work may be largely conducted by paralegals dealing directly with the client.

The prohibition against paralegals giving legal advice has also been taken out of the revised principles. Paralegals who have conduct of a matter which the lawyer deems appropriate for delegation may be required to give advice to the client.

The Task Force also considered the prohibition against a non-lawyer employee giving or receiving undertakings [Ch. 12 Ruling 6(a)(ii)]. The Task Force noted that the lawyer would be responsible for the undertaking even if given by a non-lawyer employee.

In its Interim Report to the Benchers, the Task Force recommended that there be one exception to the general rule that lawyers be involved in the giving or receiving of undertakings. That exception would have allowed a paralegal to give or receive an undertaking in advocacy situations where the circumstances required it. However, the Benchers, at their April 2005 meeting, rejected that proposition. Accordingly, the Task Force reconsidered and has abandoned that recommendation. A paralegal's inability to give an undertaking in advocacy situations may cause some inefficiencies in the proceedings and may require supervising lawyers to make themselves available. However, the Task Force believes that inefficiency is proportional to maintaining the sanctity of a lawyer's undertaking.

Finally, the Task Force has not developed specific lists of tasks that paralegals can or cannot do as found in Chapter 12. While the Task Force is of the view that such lists are not necessary as the principles should determine what may or may not be done by a paralegal, they also recognize that members and their employees may find such lists helpful. The Task Force defers to the views of the Benchers and the Ethics Committee on that issue.

VIII. STEPS TO BE TAKEN

This report is placed before the Benchers for discussion and if accepted, the Task Force recommends that the Report be referred to the Ethics Committee so that Chapter 12 of the *Professional Conduct Handbook* can be revised in accordance with this Report. If the Benchers agree with the Task Force's recommendation with respect to paralegal representation on Provincial Court matters, then the Task Force recommends that this issue be referred to a Committee or Task Force of Benchers to work with the Chief Judge to develop a Protocol for paralegal appearances on Provincial Court matters.

APPENDIX "A"

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 12
SUPERVISION OF EMPLOYEES

Responsibility for all business entrusted to lawyer

1. A lawyer is completely responsible for all business entrusted to the lawyer. The lawyer must maintain personal and actual control and management of each of the lawyer's offices. While tasks and functions may be delegated to staff and assistants such as students, clerks and legal assistants, the lawyer must maintain direct supervision over each non-lawyer staff member.

[amended 05/00]

Matters requiring professional skill and judgement

2. A lawyer must ensure that all matters requiring a lawyer's professional skill and judgement are dealt with by a lawyer and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

[amended 05/00]

Signing correspondence

3. Letters on the letterhead of a law firm, when signed by a person other than a practising lawyer, must indicate the status or designation of the signing person for the information of the recipient.

[amended 05/00]

Legal assistants

4. There are many tasks that can be performed by a legal assistant working under the supervision of a lawyer. It is in the interests of the profession and the public for the delivery of more efficient, comprehensive and better quality legal services that the training and employment of legal assistants be encouraged.

[amended 05/00]

5. Subject to this chapter, a legal assistant may perform any task delegated and supervised by a lawyer, but the lawyer must maintain a direct relationship with the client and has full professional responsibility for the work.

[amended 05/00]

5.1 A lawyer may delegate tasks or functions to a legal assistant if

(a) the training and experience of the legal assistant is appropriate to protect the interests of the client, and

(b) provision is made for the professional legal judgement of the lawyer to be exercised whenever it is required.

[added 05/00]

6. Except as permitted under the *Legal Services Society Act*, section 9, a lawyer must not permit a legal assistant to:

(a) perform any function reserved to lawyers, including but not limited to

(i) giving legal advice,

(ii) giving or receiving undertakings, and

(iii) appearing in court or actively participating in legal proceedings on behalf of a client, except in a support role to the lawyer appearing in the proceedings,

(b) do anything that a lawyer is not permitted to do,

(c) act finally and without reference to the lawyer in matters involving professional legal judgement, or

(d) be held out as a lawyer, or be identified other than as a legal assistant when communicating with clients, lawyers, public officials or with the public generally.

[amended 05/00]

7. A lawyer who employs a legal assistant must ensure that the assistant is adequately trained and supervised for the tasks and functions delegated to the assistant.

[amended 05/00]

8.This rule is subject to Rule 5.1. It illustrates, but does not limit, the general effect of that rule. The following are examples of tasks and functions that legal assistants may perform with proper training and supervision:

(a) attending to all matters of routine administration,

(b) drafting or conducting routine correspondence,

(c) drafting documents, including closing documents and statements of accounts,

(d) drafting documentation and correspondence relating to corporate proceedings and corporate records, security instruments and contracts of all kinds, including closing documents and statements of account,

(e) collecting information and drafting documents, including wills, trust instruments and pleadings,

(f) preparing income tax, succession duty and estate tax returns and calculating such taxes and duties,

(g) drafting statements of account, including executors' accounts,

(h) attending to filings,

(i) researching legal questions,

(j) preparing memoranda,

(k) organizing documents and preparing briefs for litigation,

(l) conducting negotiations of claims and communicating directly to the client, provided that the lawyer reviews proposed terms before the legal assistant offers or accepts a settlement.

[amended 05/00]

9. The following are examples of tasks and functions that a lawyer must attend to personally and that legal assistants must not perform. This list illustrates, but does not limit, the general effect of Rule 6:

(a) attending on the client to advise and taking instructions on all substantive matters,

(b) reviewing title search reports,

(c) conducting all negotiations with third parties or their lawyers, except as permitted in Rule 8,

(d) reviewing documents before signing,

(e) attending on the client to review documents,

(f) reviewing and signing the title opinion and/or reporting letter to the client following registration,

(g) reviewing all written material prepared by the legal assistant before it leaves the lawyer's office, other than documents and correspondence relating to routine administration,

(h) signing all correspondence except as permitted in this chapter,

(i) attending at any hearing before the court, a registrar or an administrative tribunal or at any examination for discovery except in support of a lawyer also in attendance.

[added 05/00]

Real estate assistants

10. In Rules 10 to 12,

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show," in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

[added 10/04]

11. A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

[added 10/04]

12. A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with pre-printed information about the property prepared or approved by the lawyer.

[added 10/04]