LAWYERS' MONOPOLY? THINK AGAIN: THE REALITY OF NON-LAWYER LEGAL SERVICE PROVISION IN CANADA

Lisa Trabucco*

The statutes that govern the legal profession across the country reserve the practice of law for lawyers, giving rise to lawyers' claim to a monopoly over legal services. However, those same statutes, and many others, also allow non-lawyers to engage in practice-of-law activities. Non-lawyers provide legal assistance, advice, and representation across Canada in a range of settings. The privilege of self-regulation imposes on law societies a duty to govern in the public interest. The public interest is often cited to support lawyers' monopoly, which is a useless fiction. Arguments by lawyers to restrict or limit non-lawyers' provision of legal services are essentially quality arguments. This article asserts that lawyers' claims for a monopoly are inconsistent with both the extent and quality of non-lawyer legal service provision in Canada.

Les lois qui régissent la profession juridique au Canada réservent la pratique du droit aux avocats. Cela suscite chez ces derniers la revendication d'un monopole sur la prestation des services juridiques. Cependant, ces mêmes lois, ainsi que plusieurs autres, autorisent également les personnes n'ayant pas le statut d'avocat à fournir, dans certains contextes, une assistance, des conseils et une représentation juridiques partout au Canada. Le privilège de l'autoréglementation impose aux barreaux une obligation de se réglementer, et ce, dans l'intérêt public. Ce principe fréquemment cité pour appuyer la revendication de leur monopole par les avocats s'avère pourtant une fiction parfaitement vaine. Les arguments avancés par les avocats pour restreindre ou limiter la prestation de services juridiques par des personnes n'ayant pas ce statut sont essentiellement fondés sur la qualité des services offerts. Dans cet article, l'auteure soutient que les revendications du monopole par les avocats sont contraires tant à la portée qu'à la qualité de la prestation de services juridiques offerts par des personnes n'ayant pas le statut d'avocat au Canada.

Contents

* Visiting Assistant Professor, Faculty of Law, University of Windsor.

1. Introduction

The provincial and territorial statutes that govern the legal profession in Canada restrict the practice of law to lawyers, giving rise to lawyers' claims of a monopoly over legal services. These statutes also require law societies to regulate in the public interest. Lawyers cite the public interest as reason to restrict non-lawyer provision of legal services. These arguments are quality-based—that only lawyers are competent enough to provide certain legal services, and the public must be protected from incompetence. Non-lawyers, both regulated and unregulated, provide a broad range of legal services in Canada. There is nothing new in this. Lawyers' continued claims for the restriction of non-lawyer provision of legal services are also not new, yet they persist. These claims raise the question as to whether non-lawyers are capable of providing quality legal services. The breadth of statutory authority for non-lawyer representation and the range of non-lawyer legal service providers in Canada arguably answer this question in the affirmative. Somewhat surprisingly, there is little research into the quality or effectiveness of non-lawyers' legal service provision in Canada. Yet there is evidence of such. Alberta, for example, boasts a robust non-lawyer legal services industry. One way to attempt to measure quality is to compare professional misconduct cases concerning both paralegals and lawyers through law society disciplinary hearings in Ontario.

The first part of this paper considers lawyers' current claims for a monopoly over certain legal services and a restriction on non-lawyer legal service provision. The second part provides a snapshot of statutory authority for non-lawyer practice and the broad range of non-lawyer legal services provision in Canada. The third part examines the quality and effectiveness of non-lawyer legal service providers. This paper concludes by arguing that lawyers' monopoly is a useless fiction, and that lawyers' calls for a restriction on non-lawyer practice from a quality perspective are not based on evidence as much as protectionist, monopolistic sentiments.

2. Lawyers' Claims for a Monopoly

Many believe that legal advice and representation must remain the purview of lawyers.[1]

[1] See the following submissions to Ontario, Ministry of the Attorney General, Justice Annemarie E Bonkalo, *Family Legal Services Review*, (Ottawa: MAG, 31 December 2016), online: <www.lsuc.on.ca/family-law-review/> at Family Law Services Review Call for

Yet legislation allows otherwise. The same statutes that purportedly grant lawyers a monopoly over legal services also allow a range of non-lawyers to engage in practice-of-law activities, without lawyer supervision. Other statutes—federal, provincial, and territorial—also permit independent non-lawyer provision of legal services. The reality is that non-lawyers provide a range of legal services in Canada—services that go beyond legal information and guidance, and include legal advice and representation. The Supreme Court of Canada has recognized that representation by non-lawyers before federal tribunals involves some aspect of the traditional practice of law.[2] The reality is that while lawyers claim a monopoly over legal services, non-lawyers across the country, not just in Ontario where paralegals[3] are licensed, are authorized to engage in practice-of-law activities.

Ontario's family court rules, for example, allow a party to be represented by a non-lawyer.[4] A non-lawyer may appear as a representative in Family Court in Newfoundland and Labrador,[5] and a lay assistant may speak on behalf of another person at trial or a hearing at the Supreme Court of Nova Scotia, Family Division.[6] In Ontario, paralegals' scope of practice does not currently extend to family law matters, but soon will. In British Columbia, designated paralegals—paralegals who are allowed to perform additional duties under a lawyer's supervision—may appear at family law mediations to assist clients.[7]

Input: Organization Submissions [Organization Submissions], online: <lso.ca/uploadedFiles/FLSRORSubmissions.pdf>: Letter from Association of Ontario Judges (17 May 2017) at 7–9, cited in Organization Submissions at 2; Letter from Chief Justices Heather J Smith & Lisa Maisonneuve, (26 May 2017), cited in Organization Submissions at 19 [Smith CJ & Maisonneuve CJ]; Letter from Ontario Court of Justice Chief Justice Lisa Maisonneuve, (26 May 2017) at 23, cited in Organization Submissions at 20; Letter from Association of Ontario Judges, by Justice Jon-Jo A Douglas, (29 April 2016) at 14, cited in Organization Submissions at 31; Letter from County of Carleton Law Association, by C Jill Alexander et al, (15 May 2017), cited in Organization Submissions at 50; Letter from Family Lawyers' Association, cited in Organization Submissions at 78.

2 *Law Society of British Columbia v Mangat*, 2001 SCC 67 at para 56, [2001] 3 SCR 113 [*Mangat*].

3 Paralegal is the term used in Ontario that refers to Class P licensees of the Law Society of Ontario. A paralegal may provide legal services within a defined scope of practice independently: *Law Society Act*, RSO 1990, c L.8, s 1(5) and By-Law 4 [Ontario *Law Society Act*].

4 *Family Law Rules*, O Reg 114/99, s 4.

5 *Provincial Court Family Rules*, *2007*, NLR 28/07, s 5.04.

6 *Nova Scotia Civil Procedure Rules*, 2009, s 34.08(1). See also *R v Cox*, 2013 NSCA 140 at para 22, 1067 APR 168.

7 Law Society of British Columbia, online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/paralegals/>; Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, (Vancouver: LSBC, 2017) ch 6.1-3.3: In BC, a lawyer may permit a designated paralegal who works under the lawyer's

Throughout Canada, non-lawyers provide legal services mostly unregulated. Lawyers in Canada do not have a monopoly over legal services—what they have is an exclusive right to practise law.[8] The *practice of law* includes giving legal advice, drafting legal documents, carrying on an action or claim, preparing and filing documents, negotiating another's legal rights or responsibilities, settling a claim or demand for damages, appearing as counsel or advocate, representing a person before an adjudicative body, performing any legal work or service for a fee or reward, and more generally, applying legal principles and legal judgment.[9] But this exclusivity of practice suggests a skewed reality. Others are also permitted, and do, engage in such activities. Every statute governing the legal profession across Canada contains exceptions and exemptions to the practice of law, which both mark the limits of law societies' regulatory reach and allow a range of non-lawyers to provide legal services. The *provision of legal services* is defined as conduct that involves the application of legal principles and legal judgment.[10] More specifically, a person provides legal services if he or she gives advice with respect to or negotiates a person's legal interests, rights or responsibilities, drafts a document that relates to a legal matter, and represents a person before an adjudicative body.[11] Representation involves a determination of what documents to serve or file, and engaging in any conduct necessary for the proceeding.[12] There is little substantive difference between the practice of law and the provision of legal services. It is a matter of statutory language and scope of permitted activities, but both require the application of legal principles and legal judgment.

---

supervision and has "the necessary skill and experience" to give legal advice, represent clients before a court or tribunal, or represent clients at a family law mediation.

8 *Legal Profession Act*, SBC 1998, c 9, s 15(1) [BC *Legal Profession Act*]; *Legal Profession Act*, RSA 2000, c L-8, s 106 [Alberta *Legal Profession Act*]; *Legal Profession Act, 1990*, SS 1990-91, c L-10.1, s 30 [Saskatchewan *Legal Profession Act*]; *Legal Profession Act*, CCSM c L107, s 20(1) [Manitoba *Legal Profession Act*]; *Law Society Act, 1996*, SNB 1996, c 89, s 33 [New Brunswick *Law Society Act*]; *Legal Profession Act*, SNS 2004, c 28, s 16(2) [Nova Scotia *Legal Profession Act*]; *Legal Profession Act*, RSPEI 1988, c L-6.1, s 20 [PEI *Legal Profession Act*]; *Law Society Act, 1999*, SNL 1999, c L-9.1, s 33 [Newfoundland & Labrador *Law Society Act*]; *Legal Profession Act*, RSNWT 1988, c L-2, s 68 [NWT *Legal Profession Act*]; *Legal Profession Act*, RSY 2002, c 134, s 1 [Yukon *Legal Profession Act*]; *Legal Profession Act*, RSNWT (Nu) 1988, c L-2, s 68 [Nunavut *Legal Profession Act*].

9 See e.g. BC *Legal Profession Act*, *supra* note 8, s 1; Manitoba *Legal Profession Act*, *supra* note 8, s 20; Nova Scotia *Legal Profession Act*, *supra* note 8, s 16; New Brunswick *Law Society Act*, *supra* note 8, s 1; Newfoundland & Labrador *Law Society Act*, *supra* note 8, s 2; PEI *Legal Profession Act*, *supra* note 8, s 21; Saskatchewan *Legal Profession Act*, *supra* note 8, s 30.

10 Ontario *Law Society Act*, *supra* note 3, s 1(5).

11 *Ibid* at s 1(6).

12 *Ibid* at s 1(7). See also *Mangat*, *supra* note 2 at para 32.

The same statutes that govern the legal profession, and pursuant to which lawyers like to claim a monopoly, also require law societies to regulate in the public interest.[13] Saskatchewan's *Legal Profession Act*, for example, stipulates that protection of the public takes priority over the interests of a member of the law society.[14] It is the Law Society of Yukon's "overriding duty", and the Law Society of British Columbia's "object and duty", to uphold and protect the public interest in the administration of justice.[15] The Federation of Law Societies' *Model Code* recognizes that self-regulatory powers have been granted to the legal profession on the understanding that the profession will exercise those powers in the public interest.[16] The courts have clearly stated that statutes that grant law societies the power to self-regulate are not designed to preserve a monopoly for the members of the law society,[17] and the Supreme Court of Canada has held that a law society's paramount role is to protect the interests of the public.[18]

Over thirty years ago, Professor Mary Jane Mossman argued the lawyers' monopoly was a fallacy, and that attempting to preserve the appearance of a monopoly for lawyers over all legal services would be contrary to the public interest in affordable legal services.[19] Yet still, such arguments persist. Recent developments concerning the provision of legal services by non-lawyers provide two examples of lawyers' continued claims of a monopoly, or at least for restricting the practice of non-lawyers. Such claims are invariably grounded in the public interest.

---

13 BC *Legal Profession Act*, *supra* note 8, s 3; Alberta *Legal Profession Act*, *supra* note 8, s 49(1); Saskatchewan *Legal Profession Act*, *supra* note 8, s 3.1; Manitoba *Legal Profession Act*, *supra* note 8, s 3(1); Nova Scotia *Legal Profession Act*, *supra* note 8, s 4(1); New Brunswick *Law Society Act*, *supra* note 8, s 5; PEI *Legal Profession Act*, *supra* note 8, s 4; Newfoundland & Labrador *Law Society Act*, *supra* note 8, s 18(1.1); NWT *Legal Profession Act*, RSNWT 1988, c L-2, s 22(a); Nunavut *Legal Profession Act*, *supra* note 8, s 22(a); Yukon *Legal Profession Act*, *supra* note 8, s 3; Ontario *Law Society Act*, *supra* note 10, s 4.2; *Professional Code*, CQLR c C-26, s 23.

14 Saskatchewan *Legal Profession Act*, *supra* note 8, s 3.2.

15 Yukon *Legal Profession Act*, *supra* note 8, s 3(a); BC *Legal Profession Act*, *supra* note 8, s 3.

16 Federation of Law Societies of Canada, *Model Code of Professional Conduct* (as amended 14 March 2017) at 8, online: <flsc.ca/national-initiatives/model-code-of-professional-conduct/>.

17 *Green v Law Society of Manitoba*, 2015 MBCA 67 at para 12, 386 DLR (4th) 511, aff'd 2017 SCC 20, [2017] 1 SCR 360. See also *Law Society (British Columbia) v Lawrie* (1991), 84 DLR (4th) 540, 59 BCLR (2d) 1 at para 13 (CA).

18 *Ryan v Law Society (New Brunswick)*, 2003 SCC 20 at para 36, [2003] 1 SCR 247.

19 Canadian Bar Association, "Committee to Respond to Bill 42: An Act to Regulate the Activities of Paralegal Agents", by Mary Jane Mossman (Toronto: CBA, 27 September 1986) at 26.

In Ontario, some family lawyers and others are of the view that paralegals should be restricted to providing only legal information and guidance[20] or completing only delegated work under lawyer supervision.[21] Despite the Ontario Bar Association's submissions to Ontario's Family Legal Services Review that only lawyers should provide family law services,[22] Justice Bonkalo disagreed, ultimately recommending that paralegals be permitted to provide some family services without lawyer supervision.[23] As a result, the Law Society of Ontario ("LSO") has decided to expand paralegals' scope of practice that will allow those with a specialized licence to provide specified legal services in family law matters.[24] Yet the family bar's resistance to allow non-lawyers to share its exclusive practice area persists.[25] Many lawyers argue that anything less than a law degree is inadequate preparation for the complexities of family law.[26] Professor Julie Macfarlane, whose 2013 national study of self-represented litigants found that more than half of litigants involved in family law applications before the courts in Ontario were self-represented, mainly because of an inability to afford a lawyer,[27] attributes the family bar's "tremendous resistance to loosening [their] grip" to the "underlying … culture … that says lawyers have to have their hands around everything."[28] Perhaps the family bar's continued opposition is not surprising given Justice Bonkalo's view that only licensed and independent paralegals can offer meaningful competition to lawyers.[29] Given the number of self-represented family law litigants in

---

20 Ontario Bar Association, "Comments on the Family Legal Services Review Report", (Toronto: CBA, 15 May 2017) at 4–6; Smith CJ & Maisonneuve CJ, *supra* note 1.

21 Letter from The Advocates' Society, "Response to Public Consultation: Expanding Legal Services Options for Ontario Families", (29 April 2016), cited in Organizational Submissions, *supra* note 1, 421 at 434.

22 Letter from Ontario Bar Association, "Comments on the Family Legal Services Review Report", (15 May 2017), cited in Organizational Submissions, *supra* note 1, 304 at 304.

23 Ontario, Ministry of the Attorney General, *Family Legal Services Review*, Justice Annemarie E Bonkalo (Toronto: MAG, 31 December 2016), s 4.2(b) [FLSR Report], online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/>.

24 Law Society of Ontario, "Law Society Benchers Approve Action Plan to Improve Access to Justice for Families Via Special Licensing for Paralegals and Others" (Toronto: LSO, 1 December 2017), online: <www.lsuc.on.ca/newsarchives.aspx?id=2147485737&cid=2147504309>.

25 Michael McKiernan, "Paralegals in Family Law", *Canadian Lawyer*, (19 March 2018) [McKiernan, "Paralegals"], online: <www.canadianlawyermag.com/author/michael-mckiernan/paralegals-in-family-law-15386/>.

26 *Ibid.*

27 Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants—Final Report* (May 2013) at 33 [Macfarlane NSRLP].

28 McKiernan, "Paralegals", *supra* note 25.

29 FLSR Report, *supra* note 23, s 4.2(b).

Canada, lawyers' opposition to paralegals providing any family law services independent of lawyer supervision smacks of heavy-handed protectionism that does little to serve the public interest.

At the federal level, immigration consultants are regulated non-lawyers authorized by statute to provide legal services in immigration and refugee matters.[30] The Supreme Court of Canada has endorsed this role for non-lawyers despite a provincial law society's objections.[31] The *Immigration and Refugee Protection Act* ("*IRPA*") requires anyone who is not a lawyer or licensed by a law society or Chambre des notaires du Québec, and who provides Canadian immigration or citizenship advice or representation for a fee or other consideration, to be a member in good standing of the Immigration Consultants of Canada Regulatory Council ("ICCRC"). Since 2011, regulated immigration consultants have been authorized by statute to provide advice and representation in immigration and refugee matters.[32] Despite this, the Canadian Bar Association ("CBA") argues that non-lawyers should not be allowed, for compensation, to represent or advise on immigration and refugee matters. The CBA insists that its call for the elimination of independent non-lawyer practice is about competence and quality services.[33] The CBA's position stems from concerns about the ICCRC's regulatory framework's lack of adequate oversight and protection of the public.[34] The House of Commons Standing Committee on Citizenship and Immigration in 2017 conducted a study of the legal, regulatory, and disciplinary frameworks governing immigration, refugee, and citizenship consultant and paralegal practitioners.[35] The Committee has recommended the creation of a new independent, public-interest regulatory body that maintains high ethical standards so as to "preserve the integrity of the system" and protect the public[36] and a new regulatory scheme with "more rigorous than current standards."[37] The Committee further recommended "[t]hat the new regulatory body develop a system of tiered licensing" for immigration consultants.[38] It is significant that the Committee did not recommend

---

30 Immigration Consultants of Canada Regulatory Council [ICCRC], online: <iccrc-crcic.ca>; *Immigration and Refugee Protection Act*, SC 2001, c 27, s 91 [*IRPA*].

31 *Mangat*, *supra* note 2.

32 ICCRC, *supra* note 30; *IRPA*, *supra* note 30.

33 Michael McKiernan, "Advocacy Group Says CBA Proposal is Anti-Competitive", *Lawyer's Weekly* (12 March 2018), online: <www.lawtimesnews.com/author/michael-mckiernan/advocacy-group-says-cba-proposal-is-anti-competitive-15436/>.

34 Standing Committee on Citizenship and Immigration, "Starting Again: Improving Government Oversight of Immigration Consultants", by Boris Wrzesnewskyj, 42nd Parl, 1st Sess (Ottawa: House of Commons, June 2017) at 3, 14 [Standing Committee, *Starting Again*].

35 *Ibid* at 3.

36 *Ibid* at 32, Recommendation 1.

37 *Ibid* at 32–33, Recommendations 1, 4.

38 *Ibid* at 33, Recommendation 5.

that regulated non-lawyers be restricted from providing or no longer be authorized to provide immigration and refugee legal services. However, the CBA made submissions to the Standing Committee recommending just that.[39] Yet despite the Committee's recommendations, which endorse an ongoing role for non-lawyers, the CBA continues to persist in its pursuit of lawyers' monopoly in immigration and refugee matters and to argue that only lawyers who are members in good standing of a law society and Quebec notaries should be allowed, for compensation, to represent or advise on immigration and refugee matters.[40] The CBA proposes that the *IRPA* should be amended accordingly, and further, that immigration consultants could be allowed work under lawyer supervision.[41]

3. Reality: The Extent of Non-lawyer Legal Services Provision

For centuries, non-lawyers have encroached on the traditional legal profession. They have long existed as a less expensive alternative to lawyers and to meet otherwise unmet legal needs.[42] Non-lawyer agents were first authorized to act in summary conviction proceedings pursuant to the *Criminal Code* in 1906,[43] and in small claims matters before Division Courts in Ontario in 1872.[44] When British Columbia became a province in 1871, the number of lawyers there were few, which led to the enactment in 1873 of "An Act Respecting Practitioners in the County Courts and other inferior Courts" that entitled any person, even a person who had not been admitted as an attorney or barrister by the Supreme or any other court of British Columbia, to appear in lower courts as the attorney or advocate of a party to a proceeding.[45] The purpose of that statute lives on in BC's *Court Agent Act*,[46] which allows non-lawyers to engage in practice-of-law activities in places where lawyers are scarce.[47] In 1942, Justice Urquhart of

---

39 Canadian Bar Association, "Immigration Consultants", (Ottawa: CBA Immigration Law Section, March 2017) at 7, 11, online: <www.cba.org/CMSPages/GetFile.aspx?guid=d2ddcb44-166c-41c9-b0b7-02ffa3d4125c>.

40 Letter from Canadian Bar Association Immigration Law Section to Minister of Immigration, Refugees and Citizenship (8 December 2017), online: <www.cba.org/CMSPages/GetFile.aspx?guid=51885453-08c7-4402-a35a-f05dab1f9960>.

41 Kim Covert, "CBA Submission: Lawyers, Not Immigration Consultants, Should Represent Newcomers" CBA National Magazine (3 January 2018), online: <nationalmagazine.ca>.

42 *R v Lawrie and Pointts Ltd* (1987), 59 OR (2d) 161, CCC (3d) 549 (CA) [*Lawrie*].

43 *Ibid.*

44 *Ibid.*

45 See *Law Society (British Columbia) v Lawrie* (1991), 84 DLR (4th) 540, 59 BCLR (2d) 1 (CA) at paras 24–26.

46 RSBC 1996, c 76.

47 *Ibid.* The Act entitles any registered voter in a judicial district to appear in Provincial or Supreme Court as "the attorney and advocate" of any party to a proceeding but only in locations where there are less than two members of the law society in actual practice.

the Ontario High Court of Justice commented on the thousands of dollars' worth of business "taken from lawyers" by real estate agents, notaries public, insurance agents, and others.[48]

In Ontario, paralegals have been regulated by the law society since 2007. The emergence of an expanded independent paralegal profession in Ontario, however, likely dates back to around the mid-1960s.[49] Christopher Moore states that as paralegal services began probing the borders of the professional monopoly, the legal profession found it could not take for granted its insulation against competition from beyond the profession.[50]

Following the Court of Appeal for Ontario's decision in 1987 in which the law society did not secure a conviction against Brian Lawrie (a former police officer and non-lawyer who started a business, Pointts, representing clients in highway traffic matters as "agent" pursuant to the *Provincial Offences Act*),[51] the law society had to accept the existence of independent paralegal activities but would continue, acting in the public interest it claimed, to question paralegals' competence and oppose expansion of the non-lawyer legal services industry.[52] The Court of Appeal for Ontario's decision effectively caused rapid growth of the non-lawyer legal services industry, leading to the regulation of paralegals in Ontario twenty years later.

Cases involving the prosecution of non-lawyers for unauthorized practice illustrate lawyers' pursuit of a monopoly and reveal the blurred boundary between the practice of law and the provision of legal services. The Court of Appeal of Alberta has held that the right of audience conferred upon an agent does not authorize the agent to assist in preparing, issuing, and filing documents related to ongoing litigation, as these activities fall within the practice of law.[53] Yet the Supreme Court of Canada has held that representation includes document preparation and advice in relation to a proceeding.[54] More recently, the British Columbia Supreme Court has drawn the line between merely assisting a party by appearing to speak on his

---

48 *Re The Solicitors Act; Re Hood*, [1942] OR 611, [1942] 4 DLR 505 (HC).

49 RW Ianni, *Report of the Task Force on Paralegals* (Toronto: Ontario Ministry of the Attorney General, 1990) at 11 [Ianni Report].

50 Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1797—1997* (Toronto: University of Toronto Press, 1997) at 317.

51 *Lawrie*, *supra* note 42.

52 See Law Society of Upper Canada, *Submission to Attorney General of Ontario on the Provision of Legal Services by Unsupervised Persons* (Toronto: LSUC, October 1986); Law Society of Upper Canada, *Submission to the Task Force on Paralegals* (Toronto: LSUC, February 1989).

53 *Pacer Enterprises Ltd v Cummings*, 2004 ABCA 28 at paras 14, 18, 26 Alta LR (4th) 241.

54 *Mangat*, *supra* note 2 at para 32.

or her behalf at a hearing free of charge, and taking on the prosecution or defense of a proceeding. The latter constitutes the practice of law, particularly it seems, if one charges a fee for services .[55]

Across Canada, the statutes that govern the legal profession contain both *exceptions* to the practice of law—activities that would otherwise constitute the practice of law but do not in certain circumstances—and *exemptions* that allow others to engage in practice-of-law activities. In addition, numerous other statutes in all jurisdictions authorize non-lawyer representation before courts and administrative tribunals. Pursuant to the *Legal Profession Acts* of British Columbia, Northwest Territories, Nunavut, and Yukon, activities that would otherwise constitute the practice of law do not when performed for free—not in expectation of a fee, gain, or reward.[56] Free or for a fee has little to do with the nature or quality of the work, but rather preserves for lawyers the ability to earn an income from such activities and restrict non-lawyer competitors' ability to earn an income from the same activities. Other jurisdictions more explicitly endorse non-lawyer practice. In Manitoba, the *Legal Profession Act* specifically authorizes a non-lawyer to act as agent on behalf of, or provide legal advice to, another person in highway traffic and other provincial court matters.[57] In addition, the statute makes communications between the agent and her client privileged "in the same manner and to the same extent as communication between a lawyer and his or her client."[58] In Saskatchewan, exceptions to unauthorized practice allow a member of a police force to appear for the Crown before a Provincial Court judge or justice of the peace, and a government employee to prosecute summary conviction cases.[59] In Ontario, licensed paralegals may provide legal services with respect to small claims matters, provincial court matters for provincial offences and summary conviction offences under the *Criminal Code*, and before administrative tribunals.[60] But even in Ontario, where paralegals are regulated, the same statute that governs lawyers and paralegals also permits unregulated non-lawyers to provide legal services, some independently. Exempt from law society licensing are: an employee who provides legal services only on behalf of his or her employer, a person who is employed by a legal clinic funded by Legal Aid Ontario, an employee of a not-for-profit organization established for the purpose of providing

---

55 *The Law Society of British Columbia v Boyer*, 2016 BCSC 342 at para 29, [2016] BCWLD 2424; *The Law Society of BC v Parsons*, 2015 BCSC 742 at para 38, [2015] BCWLD 4560.

56 NWT *Legal Profession Act*, *supra* note 8, s 1; Yukon *Legal Profession Act*, *supra* note 8, s 1; BC *Legal Profession Act*, *supra* note 8, s 1; Nunavut *Legal Profession Act*, *supra* note 8, s 1.

57 Manitoba *Legal Profession Act*, *supra* note 8, s 40(1).

58 *Ibid*, s 41.

59 Saskatchewan *Legal Profession Act*, *supra* note 8, s 31.

60 Ontario *Law Society Act*, *supra* note 3 at By-law 4.

legal services, a family member, a person acting for a friend or neighbour without compensation, a worker adviser and employer adviser, a volunteer at an injured workers group, an employee or volunteer representative of a trade union, a member of provincial parliament, and a member of the Human Resources Professionals Association of Ontario.[61]

Non-lawyers who are permitted to provide legal services in Canada fall into three general categories—those who work under lawyer supervision; those who provide legal services independently and in many jurisdictions unregulated; and other professionals who provide legal services in the ordinary course of their work. Most of the following provide legal services under varying degrees of lawyer supervision: legal assistants, law clerks, paralegals outside Ontario, designated paralegals in BC, a *parajuriste* or *technicien juridique* in Quebec, articling students and law students, community advocates and community workers, and corporate employees.[62] Then there are those who provide representation and advocacy services independently before an adjudicative body, including court and tribunal agents, RCMP and other police officers, immigration consultants, worker and employer advisors, Indigenous courtworkers, and trade union employees.[63] In addition, other professionals or members of occupational groups provide some legal services in the ordinary course of their work, many of whom are regulated by their own professional bodies. These include notaries public, patent agents, trademark agents, real estate agents, insurance adjusters, land surveyors, and chartered professional accountants.[64]

---

61 *Ibid* at By-law 4, ss 30–32.

62 Saskatchewan *Legal Profession Act, supra* note 8, s 31; BC *Legal Profession Act,* supra note 8, s 15(2); Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, (Vancouver: LSBC, 2017) ch 6.1-3.1 [*BC Code*]; Alberta *Legal Profession Act*, *supra* note 8, s 106(2); Manitoba *Legal Profession Act*, *supra* note 8, s 20(4); Nova Scotia *Legal Profession Act*, *supra* note 8, s 16(4); PEI *Legal Profession Act*, *supra* note 8, s 21(4); New Brunswick *Law Society Act*, *supra* note 8, s 33(2); Community Legal Assistance Society of BC, online: <www.clasbc.net>.

63 Saskatchewan *Legal Profession Act*, *supra* note 8, s 31; *BC Code*, *supra* note 62, ch 6.1-2; Manitoba *Legal Profession Act*, *supra* note 8, s 20(4); PEI *Legal Profession Act*, *supra* note 8, s 21(2); NWT *Legal Profession Act*, *supra* note 8, s 68; Nunavut *Legal Profession Act*, *supra* note 8, s 68; Nova Scotia *Legal Profession Act*, *supra* note 8, s 16(4).

64 Saskatchewan Land Surveyors Association, online: <www.slsa.sk.ca/about_slsa.php>; Association of Canada Lands Surveyors, online: <www.acls-aatc.ca/en>. See e.g. *Notaries Public Act*, RSNB 2011, c 197; *Evidence Act*, RSNWT 1988, c E-8, s 83; *Evidence Act*, RSNWT (Nu) 1988, c E-8, s 83; *Notaries Act*, RSY 2002, c 158; The Society of Notaries Public of British Columbia, online: <www.notaries.bc.ca>; *Notaries Act*, RSBC 1996, c 334, ss 28, 55; New Brunswick Real Estate Association, online: <nbrea.ca>; Prince Edward Island Real Estate Association, online: <peirea.com>; Manitoba Real Estate Association, online: <realestatemanitoba.com>; *Financial Institutions Act*, RSBC 1996, c 141, ss 168, 179, 180, online: <www.welcomebc.ca/Work-or-Study-in-B-C/Job-

The following canvasses the extent of independent non-lawyer provision of legal services, specifically regarding representation, in Canada.

Court agents and others may represent a party in many jurisdictions. Agents are permitted to represent parties at small claims courts and in civil matters claiming up to $35,000, in matters involving highway traffic, and other provincial offences.[65] Quebec's *Code of Civil Procedure* permits a mandatary to represent a person for the recovery of small claims,[66] while the state, legal persons, partnerships and associations, and other groups may be represented by a non-lawyer who is an officer or employee "in their sole service."[67] In the Tax Court of Canada, an agent—such as an accountant or bookkeeper—may represent parties to an appeal under the *Income Tax Act*.[68] The *Criminal Code* allows non-lawyer agents to represent persons charged with summary conviction offences where the term of imprisonment upon conviction is not more than six months, and to examine and cross-examine witnesses as agent for either the defendant or prosecutor.[69] In the Supreme Court of Northwest Territories, the court may grant audience to any individual if the court considers it appropriate to do so in the interests of justice.[70] An agent may represent a party on a summary conviction appeal

---

profiles-for-immigrants/Insurance-Adjustor>; *Insurance Act*, RSA 2000, c I-3, s 2 [Alberta *Insurance Act*]; *Insurance Act*, RSNWT (Nu) 1988, c I-4, s 229 [Nunavut *Insurance Act*]; *Insurance Act*, RSNWT 1988, c I-4, s 229 [NWT *Insurance Act*]; *Insurance Act*, RSY 2002, c 119, s 242 [Yukon *Insurance Act*]; Intellectual Property Institute of Canada, online: <ipic.ca>: Types of Agents, <www.ipic.ca/english/ip-assistance/types-of-agents/types-of-agents.html>; *Trade-marks Act*, RSC 1985, c T-13, s 28(2). See also *Trade-marks Regulations*, SOR/96-195, s 18; *Patent Act*, RSC 1985, c P-4, s 15. See also *Patent Rules*, SOR/96-423, s 12.

65 *Territorial Court Civil Claims Rules*, NWT Reg 122-2016, s 22(20); *Small Claims Rules*, BC Reg 261/93, R 7; *Small Claims Act, 1997*, SS 1997, c S-50.11, ss 7.1 & 29. (This Act will be replaced by *Small Claims Act, 2016*, and specifically ss 12 and 33 (Sask Legislative Assembly, Bill 28)); Public Legal Education and Information Service of New Brunswick, *Small Claims Court: A Guide for Claimants, Defendants and Third Parties* (March 2014), online: <www.legal-info-legale.nb.ca/en/uploads/file/pdfs/Small_Claims_EN.pdf>; New Brunswick Regulation 2012-103 under the *Small Claims Act* (OC 2012-383), s 27; *Small Claims Court Act*, RSNS 1989, c 430, s 16; Nova Scotia Provincial Court Rules, Rule 1.1 (effective 1 January 2013), online: <www.courts.ns.ca/Provincial_Court/NSPC_criminal_rules_forms.htm>; Supreme Court of Prince Edward Island, *Annotated Rules of Civil Procedure*, Rule 74 (Small Claims Section), ss 4.01, 4.02, 7.01, 9, 10.01, online: <www.courts.pe.ca/supreme/index.php?number=1003816>; *Highway Traffic Act*, RSPEI 1988, c H-5, s 264.3(4).

66 *Code of Civil Procedure*, CQLR C-25.01, s 88.

67 *Ibid*, s 542.

68 *Tax Court of Canada Act*, RSC 1985, c T-2, s 18.14; *Tax Court of Canada Rules (Informal Procedure)* (SOR/90-688b) s 5; Cyndee Todgham Cherniak, "General Procedure Cases Before The Tax Court of Canada and Not Hiring A Lawyer" (18 September 2011), *The HST Blog* (blog), online: <www.thehstblog.com/tags/tax-court-of-canada/>.

69 *Criminal Code*, RSC 1985, c C-46, ss 785, 800(2), 802(2), 802.1.

70 *Rules of the Supreme Court of the Northwest Territories*, NWT Reg 010-96, s 7(4).

in Yukon Supreme Court.[71] The Supreme Court of British Columbia may allow a non-lawyer agent to appear before it depending on the agent's skill, ability, competence, and character.[72]

In some jurisdictions, RCMP officers act as agents of the Crown in criminal proceedings. Until mid-2017, for example, a police officer represented the Crown in the majority of first-appearance bail hearings.[73] In 2015, approximately 60,000 arrests in Alberta resulted in Hearing Office bail hearings before a justice of the peace that were conducted by police prosecutors.[74] In some jurisdictions, particularly in remote areas of Saskatchewan, RCMP officers appear in Provincial Court in the role of prosecutor on mainly routine matters such as making elections about whether to proceed by summary conviction or indictment, and speaking to the release of an accused.[75] Sometimes RCMP officers conduct basic traffic offence trials.[76] It is also common for RCMP officers to represent the Crown at bail hearings.[77]

Indigenous courtworkers provide services in most jurisdictions in Canada.[78] Federal support of the courtworker program commenced in 1969 with a legal service orientation[79] to help Indigenous people in conflict with the criminal justice system.[80] Courtworkers serve as a liaison between criminal justice officials and Indigenous peoples and communities by advocating for Indigenous peoples before the courts.[81] Courtworkers negotiate settlements with the Crown, enter pleas, speak to sentence, and also provide support, advice, and representation in non-criminal matters including family,

---

71 Supreme Court of Yukon, *Summary Conviction Appeal Rules, 2009*, SI/2012-64, s 2(1).

72 See e.g. *Ambrosi v Duckworth*, 2011 BCSC 1582, [2012] BCWLD 4797.

73 *Hearing Office Bail Hearings (Re)*, 2017 ABQB 74 at para 28, [2017] AWLD 1402.

74 *Ibid* at para 8.

75 Sean Trembath, "Could Alberta Judge's Ruling on RCMP Acting as Prosecutors Affect Saskatchewan?", *Saskatoon Star Phoenix* (21 February 2017), online: <thestarphoenix.com>.

76 *Ibid*.

77 *Ibid*.

78 Government of Canada, Department of Justice, Indigenous Courtwork Program, online: <www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html?pedisable=false> [Courtwork Program] (until mid-2017, the program was referred to as the Aboriginal Courtwork Program). The Indigenous Courtwork Program operates in every province and territory except PEI, Newfoundland and Labrador, and New Brunswick.

79 James C Hathaway, "Native Canadians and the Criminal Justice System: A Critical Examination of the Native Courtworker Program" (1984–1985) 49:2 Sask LR 201 at 201–02.

80 Courtwork Program, *supra* note 78.

81 *Ibid*.

juvenile, and civil legal matters.[82] The vast majority of clients in Justice of the Peace courts in NWT and Nunavut are represented by courtworkers.[83] More than 180 courtworkers provide services to approximately 60,000 Indigenous clients in over 450 communities each year.[84]

It is worth noting that the extensive role afforded non-lawyers in the courts, particularly in the territories, is a direct result of the scarcity of lawyers in those jurisdictions—where non-lawyer provision of legal services is required to address otherwise unmet needs. In such jurisdictions, then, non-lawyers do not infringe on lawyers' practices. It is interesting to note that lawyers did not object to courtworkers taking on an advocacy role,[85] which belies the public interest (and protection) basis of lawyers' claims arguments for a monopoly over legal services. If non-lawyers are allowed and admittedly capable of providing legal services in rural and remote communities where lawyers are scarce, why are they not capable of providing the same services in urban centers where lawyers are many? Geography or proximity to lawyers has little to do with non-lawyers' ability to provide legal services. The longevity of the Indigenous courtworker program, and its expansion into civil matters, suggests not only a demand for such legal services but also, arguably, a lack of harm (or at least a lack of evidence of harm).

Non-lawyers also appear as representatives before administrative tribunals in Canada. The Federal Court of Appeal recognizes that representation by non-lawyers is a common feature of administrative adjudication.[86]

Worker advisors and employer advisors provide legal assistance, advice, and representation to injured workers and employers, respectively. Pursuant to workers compensation legislation in each jurisdiction, worker and employer advisors appear before workers compensation boards and appeal tribunals.[87] Worker, employer, and appeals advisors are generally

---

82 Hathaway, *supra* note 79 at 217–19; Canada, *Legal Service Provision in Northern Canada—Summary of Research in the Northwest Territories, Nunavut, and the Yukon*, by Pauline de Jong (Ottawa: Government of Canada, 2004) at 6.3, online: <www.justice.gc.ca/eng/rp-pr/aj-ja/rr03_la15-rr03_aj15/index.html> [De Jong].

83 De Jong, *supra* note 82 at 7.2.

84 *Ibid.*

85 Hathaway, *supra* note 79 at 215, 219.

86 *Law Society of Upper Canada v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 243 at para 8, [2009] 2 FCR 466 [*LSUC v Canada*]

87 *Workers Compensation Act*, RSBC 1996, c 492, s 94; *Workers Compensation Act*, RSPEI 1988, c W-7.1, s 85; *Workers' Compensation Act*, SNWT 2007, c 21, s 109; *Workers' Compensation Act*, SNu 2007, c 15, s 109; *The Workers Compensation Act*, CCSM, c W200,

government employees who provide assistance, advice, and representation to clients for free. By so doing, they fall under an exception to the practice of law.[88] In Alberta, appeals advisors are certified in tribunal administrative justice and are specialists in interpreting and applying the workers' compensation legislation and Workers' Compensation Board policies.[89] Non-lawyer representatives out-numbered lawyer representatives before workers' compensation appeal tribunals in Alberta,[90] Saskatchewan,[91] Nova Scotia,[92] Newfoundland and Labrador,[93] and Ontario[94] over the last few years.

In addition to regulated Canadian immigration consultants, who may provide immigration or citizenship advice and representation for a fee or other consideration,[95] other non-lawyers, such as family members, friends, and other third parties, may provide the same services but only

---

s 180(2). *Workers' Compensation Act*, SNS 1995-95, c 10, ss 260–61. Province of New Brunswick, *Legislative Review of Workers' Compensation: Workers' and Employers' Advocate Services in New Brunswick*, Discussion Paper (May 2015), online: <www2.gnb.ca/content/gnb/en/services/services_renderer.15396.html>.

88 See e.g. BC *Legal Profession Act*, *supra* note 8, s 1(1) for a definition of "practice of law"; See also *supra* note 56.

89 Alberta, Office of Appeals Advisor, online: <www.workeradvocates.ca>.

90 Alberta, Workers' Compensation Appeals Division, *Annual Report 2015–16* (Edmonton and Calgary: Appeals Commission, 2016) at 11, online: <www.appealscommission.ab.ca/Website%20Documents/AC%20AnnualReportFinal.pdf>.

91 Saskatchewan, Workers' Compensation Board, *2017 Annual Report* (Regina: WCB, 2017) at 15, online: <www.wcbsask.com/wp-content/uploads/2018/03/2017-Annual-Report.pdf>. Non-lawyer representatives out-numbered lawyer representatives in each year from 2013 through 2017.

92 Nova Scotia, Workers' Compensation Appeals Tribunal, *Annual Report for the Year Ending March 31, 2018* (WCT, 2018) at 9, online: <wcat.novascotia.ca/sites/default/files/documents/WCATAnnualReport2017.pdf>; *Annual Report for the Year Ending March 31, 2017* (WCAT, 2017) at 8–9, online: <wcat.novascotia.ca/annual-reports>.

93 Newfoundland and Labrador, Workplace Health, Safety and Compensation Review Division, *Annual Performance Report 2016–17* (Mount Pearl, NFL: WHSCRD, 2017) at 27, online: <www.gov.nl.ca/whscrd/publications/annualreports/2016_17_WHSCRD_AR.pdf>.

94 Ontario, Workplace Safety and Insurance Appeals Tribunal, *2017 Annual Report* (Toronto: WSIAT, 2018) at 49, online: <www.wsiat.on.ca/english/publications/AnnualReport2017.pdf>; *2016 Annual Report* (Toronto: WSIAT, 2017) at 49, online: <www.wsiat.on.ca/english/publications/AnnualReport2016.pdf>.

95 *Immigration and Refugee Protection Act*, SC 2001, c 27, s 91; *Regulations Designating a Body for the Purposes of Paragraph 91(2)(c) of the Immigration and Refugee Protection Act*, SOR/2011-142. See also Immigration Consultants of Canada Regulatory Council, online: <iccrc-crcic.info>.

free of charge.[96] There are over 4,300 regulated immigration consultants in Canada.[97]

Non-lawyers are permitted to act as representatives before a number of other administrative bodies across the country.[98] These include a coroner's inquest in BC, PEI, and Nunavut,[99] the BC's Civil Resolution Tribunal,[100] and in New Brunswick at a discipline hearing under the *Police Act*[101] and at the Assessment and Planning Appeal Board.[102] In Nova Scotia, a union representative may appear at a hearing concerning the professional conduct of a registered nurse or nurse practitioner[103] and represent a paramedic before an investigative committee or hearing panel of the College of Paramedics.[104] In addition, someone other than legal counsel may represent a midwife before that profession's regulatory college[105] and an appellant before an appeal board established pursuant to the *Employment Support and Income Assistance Act*.[106] A police officer in PEI has the right to the advice and assistance of a fellow officer, Police Association representative, or union representative throughout his or her disciplinary process.[107] Before the Health Research Ethics Board of Newfoundland and Labrador, a principal investigator who requests reconsideration of a decision of the board or a research ethics body may be represented by a person of his or her choice.[108] In NWT, an agent may represent an applicant for a license before the Liquor Licensing Board, and a director or officer of a corporation that applies for a licence may represent the corporation.[109] In addition, an agent may represent a person at a property assessment hearing before a Municipal or Territorial Board of Revision or the Assessment Appeal Tribunal.[110] In

---

96 Government of Canada, Immigration and Citizenship, online: <www.cic.gc.ca/english/information/representative/rep-who.asp>.

97 Immigration Consultants of Canada Regulatory Council (ICCRC), *Annual Report 2017*, (Burlington, ON: ICCRC, 2017) at 7, online: <iccrc-crcic.ca/about-us/publications/annual-reports/>.

98 See e.g. *Administrative Tribunals Act*, SBC 2004, c 45, s 32; Nova Scotia *Legal Profession Act*, s 16(4).

99 *Coroners Act*, SBC 2007, c 15, s 31; *Coroners Act*, RSPEI 1988, c C-25.1, s 34(2); *Coroners Act*, RSNWT 1988, c C-20, ss 40, 41.

100 *Civil Resolution Tribunal Act*, SBC 2012, c 25, s 20;

101 *Discipline Regulation*, NB Reg 86-49, s 1.

102 *Assessment and Planning Appeal Board Regulation*, NB Reg 84-59, s 6.

103 *Registered Nurses Regulations*, NS Reg 154/2016, s 70. See also *Registered Nurses Act*, SNS 2001, c 10, ss 16, 35, 36, 41, 43.

104 *Paramedics Act*, SNS 2015 c 33, ss 56, 70.

105 *Midwifery Regulations*, NS Reg 58/2009, s 41.

106 *Assistance Appeal Regulations*, NS Reg 90/2001, s 11(1)(a).

107 *Code of Professional Conduct and Discipline Regulations*, PEI Reg EC142/10, s 18.

108 *Health Research Ethics Authority Act*, SNL 2006, c H-1.2, s 13.

109 *Liquor Act*, SNWT 2007, c 15, ss 1, 8(2)–(3).

110 *Property Assessment and Taxation Act*, RSNWT 1988, c P-10, ss 44(2), 65(2).

Nunavut, a non-lawyer may represent a person before the Resolute Bay Alcohol Education Committee considering an application for permission to purchase or possess liquor or make beer or wine in a restricted area,[111] a complainant or accused medical practitioner before a Board of Inquiry under the *Medical Inquiry Act*,[112] and a person at a property assessment and taxation hearing before the Territorial Board of Revision.[113] An appellant appearing before the Apprenticeship, Trade and Occupations Certification Board of Nunavut may be represented by a person of his or her choice.[114] In Yukon, an agent may represent a nurse before a discipline committee of the Yukon Registered Nurses Association,[115] act as a representative at a hearing before the Yukon Liquor Corporation Board,[116] represent a party to an appeal before the Hospital Privileges Appeal Board,[117] and represent a party to any dispute resolution proceeding held under the *Residential Landlord and Tenant Act*.[118]

There is a dearth of evidence about non-lawyer representation in Canada in the courts and administrative tribunals. Some tribunals publish statistics concerning representative type, but many do not.[119] At hearings before the BC Human Rights Tribunal from 2015–16, for example, non-lawyer agents represented 10% of complainants and 10% of respondents.[120] It seems curious, given the history and breadth of authorized non-lawyer representation, that the extent of non-lawyer representation it is not tracked,

---

111 *Resolute Bay Liquor Restriction Regulations*, RRNWT (Nu) 1990, c L-46, s 17(2).

112 *Medical Profession Act*, RSNWT (Nu) 1988, c M-9, s 35.

113 *Property Assessment and Taxation Act*, RSNWT 1988, c P-10, s 44(2).

114 *Apprenticeship, Trade and Occupations Certification Regulations*, RRNWT (Nu) 1990, c A-8, s 47.1(3).

115 *Registered Nurses Profession Act*, s 31(3).

116 *Liquor Act*, RSY 2002, c 140, ss 35(7) & (8).

117 *Hospital Act*, RSY 2002, c 111, s 21(4).

118 *Residential Landlord and Tenant Act*, SY 2012, c 20, s 80(3).

119 A search of the following online (conducted by the author on 6 July 2018) found no statistics about non-lawyer representatives: *The Ontario Superior Court of Justice: Realizing Our Vision, Report for 2015 and 2016*, online: <www.ontariocourts.ca/scj/files/annualreport/2015-2016.pdf>; *Environment and Land Tribunals Ontario: 2016–17 Annual Report*, online: <elto.gov.on.ca/wp-content/uploads/2018/05/2016-2017-ELTO-Annual-Report.pdf>; Transportation Appeal Tribunal of Canada, *Annual Report: 2016–2017*, online: <www.tatc.gc.ca/a274/ar-ra-2016-17-eng.pdf>; Canadian Human Rights Commission, *People First: The Canadian Human Rights Commission's 2016 Annual Report to Parliament*, online: <chrc-ccdp.gc.ca/eng/content/annual-report-2016>; Nova Scotia Human Rights Commission, *Annual Report: 2015–2016*, online: <humanrights.novascotia.ca/sites/default/files/16-45369%202015-16%20AnnRpt%20-%20for%20web.pdf>; The Court of Queen's Bench of Alberta, *Annual Report: 2016 to 2017*, online: <albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf?sfvrsn=593aac80_0>.

120 British Columbia, Human Rights Tribunal, *Annual Report 2015–2016*, (Vancouver: BCHRT, 2016), online: <www.bchrt.bc.ca/shareddocs/annual_reports/2015-2016.pdf> at 8.

or if tracked, is not publicly available. It would not be difficult to do so. Professor David Wiseman has studied representation at the Landlord and Tenant Board of Eastern Ontario. His research reveals that the majority of landlord representatives are non-lawyers—licensed paralegals and others including employees and agents of corporate landlord entities. In each of the five years studied, more than 50% of landlord representatives were non-lawyers (excluding self-represented), while less than 20% were lawyers.[121] A study of non-lawyer representatives tied to outcomes at Ontario's Workplace Safety and Insurance Appeals Tribunal both before and after paralegal regulation was implemented in 2007 is currently being undertaken.[122]

Non-lawyer representatives are also permitted to appear before federal tribunals, including the Veterans Review and Appeal Board,[123] the Canadian International Trade Tribunal,[124] the Public Servants Disclosure Protection Tribunal,[125] the Transportation Appeal Tribunal of Canada,[126] and the Canada Industrial Relations Board.[127] Pursuant to the *Royal Canadian Mounted Police Act*, a representative other than counsel may represent any person whose conduct or affairs are being investigated by a board of inquiry.[128] In all proceedings under the *Pension Act*, an applicant may be represented by a service bureau of a veterans' organization or by any other representative of the applicant's choice.[129] The Supreme Court of Canada has held that authorization of non-lawyer representation before administrative bodies acknowledges the expertise of non-lawyers.[130]

---

121 David Wiseman, "Research Update: Paralegals, the Cost of Justice and Access to Justice: A Case Study of Residential Tenancy Disputes in Ottawa" (29 June 2016), online: <www.cfcj-fcjc.org/a2jblog>.

122 A study of representative type tied to outcomes at the WSIAT of Ontario is the focus of the author's doctoral dissertation (in progress).

123 *Veterans Review and Appeal Board Act*, SC 1995, c 18, s 35. The Board has full and exclusive jurisdiction to hear, determine, and deal with all applications for review that may be made to the Board under the *Pension Act* or the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*: s 18, and to hear, determine, and deal with all appeals that may be made to the Board under the *War Veterans Allowance Act*: s 26.

124 *Canadian International Trade Tribunal Act*, RSC 1985, c 47 (4th Supp), as amended, s 31.

125 *Public Servants Disclosure Protection Act*, SC 2005, c 46, s 21.6(1).

126 *Transportation Appeal Tribunal of Canada Act*, SC 2001, c 29, s 15(3). The Tribunal has jurisdiction in respect of reviews and appeals as expressly provided for under the *Aeronautics Act*, the *Canada Shipping Act, 2001*, the *Marine Transportation Security Act*, the *Railway Safety Act* and any other federal Act regarding transportation: s 2(2).

127 *Status of the Artist Act*, SC 1992, c 33, as amended, s 19(3).

128 *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, s 24.1(4).

129 *Pension Act*, RSC 1985, c P-6, s 88. The Pension Act is an Act to provide pensions and other benefits to or in respect of members of the Canadian naval, army and air forces and of the Canadian Forces.

130 *Mangat*, *supra* note 2 at para 56.

Many other professionals provide a range of legal services that require knowledge and application of legal principles as well as legal judgment in the ordinary course of their work, outside the traditional legal system and independent of lawyer supervision. Land surveyors are public officers who "must preserve in all their work, the judicial mind and impartial attitude of an arbitrator rather than the bias of an advocate."[131] Canada Lands Surveyors, who survey in the three Canadian Territories as well as in Federal Parks, on Aboriginal reserves, or on and under the surface of Canada's oceans, must hold a licence to practise from the Association of Canada Lands Surveyors, the national licensing body.[132] Land surveyors in the provinces are provincially regulated. Notaries do much the same work as lawyers do.[133] British Columbia's notaries are self-regulating and provide non-contentious legal services relating to the purchase and sale of a business, contracts, health care declarations, insurance loss declarations, notarization of documents, real estate transfers, wills preparation, and powers of attorney.[134] Real estate agents and salespersons are licensed in each jurisdiction in which they carry on business.[135] Insurance adjusters, who act for a claimant and negotiate the settlement of a claim for loss or damage under a contract of insurance, are regulated by provincial governing bodies.[136] In the territories, though, a licensed insurance adjuster's scope of practice is limited. Only a barrister or solicitor acting in the usual course of their profession may negotiate or attempt to negotiate on behalf of a claimant, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury or death or damage to property.[137] It appears, then, that an insurance adjuster may only do so for free. This restriction does not suggest that an insurance adjuster is not competent to so act, but is simply prohibited from making money from performing an activity that has been reserved for lawyers.

---

131 Saskatchewan Land Surveyors Association, online: <www.slsa.sk.ca/about_slsa.php>.

132 Association of Canada Lands Surveyors, online: <www.acls-aatc.ca/en>.

133 See e.g. *Notaries Public Act*, RSNB 2011, c 197; *Evidence Act*, RSNWT 1988, c E-8, s 83; *Evidence Act*, RSNWT (Nu) 1988, c E-8, s 83; *Notaries Act*, RSY 2002, c 158.

134 The Society of Notaries Public of British Columbia, online: <www.notaries.bc.ca>; *Notaries Act*, RSBC 1996, c 334, ss 28 & 55.

135 See e.g. New Brunswick Real Estate Association, online: <nbrea.ca>; Prince Edward Island Real Estate Association, online: <peirea.com>; Manitoba Real Estate Association, online: <realestatemanitoba.com>.

136 See e.g. *Financial Institutions Act*, RSBC 1996, c 141, ss 168, 179, 180, & online: <www.welcomebc.ca/Work-or-Study-in-B-C/Job-profiles-for-immigrants/Insurance-Adjustor>; Alberta *Insurance Act*, *supra* note 64, s 2.

137 Nunavut *Insurance Act*, *supra* note 64, s 229; NWT *Insurance Act*, *supra* note 64, s 229; Yukon *Insurance Act*, *supra* note 64, s 242.

4. Reality: The Quality of Non-lawyer Legal Services Provision

The question relevant to non-lawyer legal service providers is not whether non-lawyers are as good as lawyers but instead, whether non-lawyers can (and do) provide quality services in the matters in which they provide those services.

There are few studies in Canada that examine the effectiveness, as in quality, of non-lawyers who provide legal services. A study of independent paralegals in Ontario found that they provided quality legal services and representation in a range of areas including highway traffic offences, immigration and divorce matters, workers' compensation applications, landlord and tenant issues, and small claims matters.[138] But a five-year study of Canada's refugee determination system raised concerns about the overall quality of representation provided by immigration consultants. Professor Sean Rehaag's study also found, however, many examples of "extremely well qualified and conscientious" immigration consultants who had long provided excellent representation before the Refugee Protection Division of the Immigration and Refugee Board of Canada.[139] While Rehaag's study demonstrated that claimants succeed more often when they are represented by lawyers than by immigration consultants, it also demonstrated that claimants were nonetheless significantly better off with immigration consultants than unrepresented.[140] Rehaag's study also noted concerns about the regulatory scheme governing immigration consultants,[141] which is about to be overhauled.[142] In Alberta, the unregulated non-lawyer legal services industry is robust and expanding, and there is wide availability of independent non-lawyer legal services that meet consumer need and demand.[143] The law society is of the view that consumers should be free to choose the form of legal service delivery, including unlicensed service providers.[144] Research reveals that Albertans have found good value in, and the majority is satisfied with, the services provided by non-lawyers.[145] The independent non-lawyer legal services industry expanded 230% between 2000 and 2009—as of 2009, there were approximately 900 independent and unregulated non-lawyers providing legal services to the public for a

---

138 WA Bogart & Neil Vidmar, "An Empirical Profile of Independent Paralegals in the Province of Ontario" in Ianni Report, *supra* note 49 at 145.

139 Sean Rehaag, "The Role of Counsel in Canada's Refugee Determinations System: An Empirical Assessment" (2011) 49:1 Osgoode Hall LJ 71 at 111 [Rehaag].

140 *Ibid*.

141 *Ibid* at 108.

142 Standing Committee, *Starting Again*, *supra* notes 34, 36, 37.

143 Law Society of Alberta, *Alternative Delivery of Legal Services: Final Report*, February 2012 (Law Society of Alberta, 2012) at 1, 24 [ADLS].

144 *Ibid* at 23.

145 *Ibid* at 14.

fee.[146] Those services include legal advice, representation before courts and tribunals, document drafting, and filling out forms.[147] The Law Society of Alberta is of the view that independent non-lawyers fill the gaps in the legal services marketplace for low-complexity, low-risk matters.[148]

Elsewhere, in Washington State, since 2015 limited license legal technicians ("LLLTs") have provided, independent of lawyers, assistance with legal process and the preparation of legal forms.[149] The program has been deemed a success. Preliminary evaluation reveals that LLLTs provide competent assistance, that consumers have found LLLTs' legal assistance to be valuable and well worth the cost, and that legal outcomes were improved through use of the services of LLLTs.[150] In addition to providing quality legal services, LLLTs do not compete directly with lawyers.[151] Not surprisingly, lawyers and bar associations opposed implementation of the LLLT program in part because, it was argued, LLLTs would threaten lawyers' practice.[152] In adopting practice rule APR 28—which implemented the LLLT program—in 2012,[153] Chief Justice Madsen of the Washington Supreme Court asserted that protecting the monopoly status of attorneys in any practice area is not a legitimate objective.[154]

Information concerning misconduct or sanctions against non-lawyer representatives in the courts and tribunals in which they are authorized to operate are difficult to find or simply do not exist, mostly because they lack oversight by a professional regulator. Law societies have no power to discipline non-lawyers,[155] and law societies' prosecutions of non-lawyers for the unauthorized practice of law do not address the quality of representation or services provided.[156] There is also scant evidence that lawyers are more effective or trustworthy than non-lawyer providers of certain legal

146 *Ibid* at 15.

147 *Ibid* at 16.

148 *Ibid* at 18.

149 Benjamin P Cooper, "Access to Justice Without Lawyers" (2014) 47:1 Akron L Rev 205 at 217–18; Rebecca L Sandefur & Thomas M Clarke, "Preliminary Evaluation of the Washington State Limited License Legal Technician Program" (March 2017) at 3 [Sandefur & Clarke]. LLLTs are licensed by the Washington Supreme Court. They are prohibited from acting as representatives in court proceedings and negotiating legal rights and responsibilities: Brooks Holland, "The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice" (2013) 82 Miss LJ SUPRA 75 at 112.

150 Sandefur & Clarke, *supra* note 149 at 3, 9.

151 *Ibid* at 15.

152 Holland, *supra* note 149 at 107–09.

153 *Ibid* at 111.

154 *Ibid* at 114.

155 *LSUC v Canada*, *supra* note 86 at para 7.

156 Noel Semple, "A Third Revolution in Family Dispute Resolution: Accessible Legal Professionalism" (2017) 34:1 Windsor YB Access Just 130 at 137.

services.[157] The comparison, Leslie Levin argues, should be between lawyers and non-lawyer providers who are subject to discipline if they engage in misconduct.[158] Professional discipline matters in Ontario, where the LSO regulates both lawyers and paralegals, offer a measure of quality or competence. Law Society Tribunal disciplinary hearing decisions provide a comparison of paralegals' conduct compared to lawyers' conduct, relative to the number of each class of licensee. For the years 2016, 2017, and the first half of 2018, 398 out of a total 520 decisions of the Law Society Tribunal concerned professional misconduct.[159] About 12% (less than 50) of the 398 professional misconduct decisions concerned paralegals. The proportion of paralegal matters is slightly less than the proportion of paralegal LSO membership over the same time period—paralegals comprised 14% of law society licensees.[160] A review of the decisions with respect to both paralegals and lawyers reveals a variety of "professional misconduct" matters including incompetence, misappropriation of funds, mortgage and real estate, fraud and dishonesty, integrity and civility, conduct unbecoming including criminal charges and convictions, sexual relationships and sexual harassment, failure to properly service clients, practicing outside paralegal scope of practice, good character, a failure to respond to or cooperate with the law society, and good character.[161]

The number of paralegal professional misconduct matters compared to lawyer misconduct matters at hearings was proportionately no greater than the number of paralegal licensees relative to lawyer licensees. Further, the range of matters was similar for both lawyers and paralegals.[162] This

---

157 Leslie C Levin, "The Monopoly Myth and Other Tales about the Superiority of Lawyers" (2014) 82:6 Fordham L Rev 2611 at 2613, but see Rehaag, *supra* note 139.

158 *Ibid* at 2630.

159 I searched Law Society Tribunal decisions through CanLII, online: <canlii.org>, on July 1, 2018. My search produced a total of 520 decisions of the LST from January 1, 2016 to June 30, 2018. A further search using the keywords "professional misconduct" turned up 398 decisions in the same time period. I then manually reviewed the search results and found that 46 concerned paralegals [Search].

160 LSO Annual Report 2016 and LSO Annual Report 2017, online: <lsuc.on.ca>. In 2016, law society membership was comprised of more than 50,000 lawyers and 8,200 paralegals. In 2017, membership was comprised of more than 52,000 lawyers and more than 8,600 paralegals. For both years, lawyers accounted for 86% and paralegals 14% of members.

161 Search, *supra* note 159.

162 Although a full exploration of the types of matters that constituted professional misconduct and were the subject of LST decisions (for the period January 1, 2016 to June 30, 2018) is beyond the scope of this paper, the author's manual review, *supra* note 160 (also conducted July 7, 2018): About half of the paralegal matters concerned good character (a pre-licensing issue), failure to respond to or cooperate with the law society, and a failure to properly serve clients (including a failure to fulfill undertakings or comply with a court order). Approximately another 12 paralegal matters dealt with misappropriation of funds, fraud and dishonesty (such as making false and misleading statements with respect to a

suggests that the professionalism and competence of regulated paralegals is about equal to, and certainly no less than, that of lawyers, or at least that paralegal conduct is the subject of disciplinary hearings to roughly the same extent that lawyer conduct is. Both Harry Arthurs and Alice Woolley have argued that law societies, generally, fail to regulate the full scope of unethical behaviour or the variety of lawyers (and licensed paralegals can be included here) who actually act unethically.[163] Woolley's study of discipline cases across Canada revealed what Arthurs had previously suggested—that law societies appear to care most about morally unambiguous behaviour such as mishandling trust funds, dishonesty or deceit, failures in practice, and violation of law society regulatory requirements,[164] which accords with my findings above. Despite this—that law societies fail to regulate the full scope of unethical or unprofessional behaviour—and accepting that the LSO's discipline hearing matters do not represent the full range or number of professional conduct matters worthy of sanction, this shortcoming in Law Society Tribunal hearing matters dealing with professional misconduct would impact both lawyer and paralegal discipline matters that reach a hearing to roughly the same extent.

5. Conclusion

A lawyer's monopoly over all legal services is not consistent with either the broad range of statutory authority or the reality of non-lawyer provision of legal services in Canada. The extent of legal services provided by non-lawyers in Canada renders the lawyers' monopoly a useless fiction,[165] and refutes the validity of lawyers' claims for restrictions on non-lawyer practice, particularly with respect to family law matters in Ontario and immigration and refugee matters. Moreover, the lack of evidence of any greater issues of professional misconduct worthy of a discipline hearing involving paralegals compared to lawyers in Ontario weakens lawyers' continuing arguments against independent non-lawyer legal service provision. The federal government's recommendation to continue to allow regulated immigration consultants to provide services in immigration and refugee matters, and the LSO's decision to expand paralegals' scope of practice to include some family law matters, reinforce the legitimacy of non-lawyer legal services provision and the acceptable quality of those services, generally, in Canada.

---

claim for benefits, entering an unauthorized guilty plea, and improperly commissioning an affidavit), and criminal charges/convictions.

163 Alice Woolley, "Regulation in Practice: The 'Ethical Economy' of Lawyer Regulation in Canada and a Case Study in Lawyer Deviance" (2012) 15:2 Legal Ethics 243 at 249.

164 *Ibid* at 248–49.

165 This phrase is borrowed from the Health Professions Legislation Review, *Striking a New Balance: A Blueprint for the Regulation of Ontario's Health Professions* (Toronto: Queen's Printer, 1989) at 14.

It thus appears clear that non-lawyer legal services providers can and have successfully both challenged and overcome lawyers' claims of a monopoly and weakened their calls for a restriction of non-lawyer practice. Perhaps it is time, finally, for lawyers to let go of their perceived rightful stranglehold over legal services. As one family lawyer suggests, it is time to loosen the reins.[166] With so many people unrepresented in Canada, it is inevitable that non-lawyers will be afforded more independent practice, and lawyers need to adjust to that reality.[167]

---

166 Leisha Murphy, a partner at Connect Family Law in Vancouver, as quoted in McKiernan, "Paralegals", *supra* note 25.

167 *Ibid*.