

WHAT HAVE WE LEARNED ABOUT THE DELIVERY OF LEGAL SERVICES?

Research indicates that Alberta already enjoys wide availability of legal services delivered by independent paralegals that meets identified consumer need and demand.

Our inquiry does suggest, however, that consumers would benefit from increased understanding of activities that constitute the practice of law, and which should therefore only be handled by a practicing lawyer. This could be accomplished with a clearer definition of the practice of law.

Some of the research data confirmed the assumptions made when the Project began such as:

- The independent non-lawyer legal services marketplace is mostly unregulated however, general consumer protection legislation (*Fair Trading Act; Criminal Code of Canada*) and the unauthorized practice of law provisions in the *Legal Profession Act* provide some measure of protection in this industry.
- There are no standards of education, insurance, code of professional conduct or other client protections in place for independent non-lawyer legal service delivery.
- There are no training programs offered in Alberta to educate and train independent non-lawyers in the legal services that are delivered in this sector.
- There may be instances that the public is placed at risk by non-lawyer legal service delivery.
- Low income Albertans experience the availability of legal services differently than those with an ability to pay for legal services.
- There are high needs areas where cost is a barrier for low income Albertans particularly in the area of family law.

Some of the data provided new insights and surprises that helped a great deal in informing the propositions such as:

- Generally, those able to pay for legal services provided by a lawyer are happy with those services and would retain a lawyer in the future for a serious or difficult to resolve legal problem
- Many lawyers are providing access to low income Albertans through reduced fee arrangements, pro bono legal service and limited scope retainers
- There is a tremendously wide variety of legal services already provided to the public by independent non-lawyer agents for a fee.
- The marketplace has filled in the gaps in service for low complexity low risk legal services.
- The number of independent non-lawyer agents providing these services has seen tremendous growth in the past decade.
- Alberta has the largest per capita independent non-lawyer legal service industry in Canada.
- The unregulated independent non-lawyer legal services industry has grown in Alberta due to more stringent regulatory environments in BC (unauthorized practice of law prosecutions) and Ontario (paralegal regulation).

LawSocietyofAlberta

Alternate Delivery of Legal Services Enhances Access to Justice



The full reports of the Alternate Delivery of Legal Services Committee are posted on the Law Society's website at

www.lawsociety.ab.ca



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INTEREST

If you wish to follow up with the Law Society of Alberta on its programs or policy development work related to retention and re-engagement, please do not hesitate to contact: Susan Billington, QC, Policy and Program Counsel at Susan.Billington@lawsociety.ab.ca

In 2009, the Law Society was asked by the Minister of Justice, Alberta Government to explore alternate delivery of legal services to further the goal of enhancing access to justice for Albertans.

Nearly three years later, the Alternate Delivery of Legal Services Committee has almost completed its work. The Committee explored the proposition that:

It would be good public policy if non-lawyers were more generally entitled to deliver legal services, thus increasing the supply of legal services, and making legal services more accessible to all Albertans.

In testing this proposition, various research methodologies were undertaken by independent research consultants including: a general consumer survey of legal services usage and attitudes, a survey of the legal profession (both conducted by Ipsos Reid), an industry profile of non-lawyer legal service delivery, and legal research on the definition of the practice of law.

RECOMMENDATIONS ARISING FROM PROJECT

To continue to support and facilitate the expansion of legal services by non-lawyers under the supervision of a lawyer in areas of high need for low income Albertans particularly in the government and not-for-profit sectors (such as the Student Legal Services Family Law Chambers project).

To pursue a definition of the practice of law with the Department of Justice based on the key principles enumerated in the Alternate Delivery of Legal Services report for amendment to the Legal Profession Act so that Albertans can choose the appropriate legal services.

In Fall 2011, the Benchers adopted the broad recommendations above

CONSUMER LEGAL USAGE SURVEY

Generally, for most Albertans there is a high degree of satisfaction with lawyer service delivery (78%) and Albertans find good value in services delivered by lawyers (91%).

- Most legal services are delivered to individual Albertans by lawyers in sole practice or by firms of less than 10 lawyers.
- Likewise, for those legal services delivered by non-lawyers, Albertans have found good value and are almost as happy (69%). Services delivered by non-lawyers are lower complexity and lower risk services.
- Consumers have indicated they would rather have services of a lawyer for those matters that are perceived to be more complex and higher risk to them and 90% indicated they would be likely to hire a lawyer when faced with a legal problem in the future.
- Albertans report using the services of lawyers for a wide range of matters including: real estate transactions (84%), wills and estates (78%), family relationship problems (59%), small business issues (54%), personal injury (46%) and crime related matters (40%).
- The cost of a having a lawyer is perceived to be too high, however, polling data indicates that the average mean cost differential on the final bill to the client from a lawyer and a non-lawyer providing legal services was not substantially different, at approx. \$350.

- Low income Albertans (\$50,000 or under) experience the legal system differently than those who can afford the services of a lawyer, and low income Albertans are more likely to have experienced more than one legal difficulty (except for real estate and wills/estates issues).
- Approximately 71% of self-represented litigants indicated that they preferred to self-represent and would not have chosen to be represented by a lawyer.
- For Albertans involved in court proceedings or a hearing (regardless of the outcome), 69% were satisfied with their experience with only 14% saying they were dissatisfied.
- Over ½ of the legal profession (54%) provide some pro bono legal service to individual Albertans; 74% of lawyers outside of Edmonton and Calgary have provided pro bono legal services.
- Most lawyers (86%) have provided legal services to clients on a reduced fee basis. .
- Limited scope retainers were identified as a method of reducing legal costs by 62% of lawyers. Approximately 56% of total lawyer respondents report that they offer legal services to clients on a limited scope retainers and for lawyers in small firms of under 10 lawyers, 66% have provided limited scope retainers to their clients

INDUSTRY PROFILE OF NON-LAWYERS

Alberta's independent non-lawyer legal services industry is expanding. Between 2000 and 2009 the industry has increased by 230%. Through the analysis of high quality existing data bases, a realistic estimate is that there are currently 545 independent non-lawyer legal service delivery establishments with approximately 900 independent non-lawyers providing legal services to the public for a fee.

- The independent non-lawyer legal services industry is predominantly made up of small businesses. In 2009, 94% of Alberta's independent non-lawyer legal establishments had 4 or fewer employees. Almost 70% are a single self-employed owner-operator.
- Alberta's overall non-lawyer legal services industry (providing legal services for a fee) is an emerging and expanding industry. It comprises both non-lawyers delivering services under the supervision of a lawyer and independent non-lawyer agents. Together these two categories indicate that the number of non-lawyers providing legal services in Alberta increased by 447% between 1990 and 2009 (from 1,700 to 9300).
- There are more independent non-lawyers who provide legal services in Alberta than in any other Canadian province except Ontario; and per capita, there are more independent non-lawyers providing legal services in Alberta than in any other province.