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By Email

Monday, July 19, 2004

Law Society Paralegal Task Force
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
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Dear Members of the Task Force:

**RE: Submission in Response to the Consultation Paper:
*Regulating Paralegals: A Proposed Approach***

The Iranian Canadian Lawyers' Association ("ICLA") is pleased to respond to a request by the Law Society of Upper Canada for written submissions relating to the consultation paper, *Regulating Paralegals: A Proposed Approach* ("Consultation Paper").

I. Overview of Submission

Iranian Canadians are a relatively new immigrant community in Canada. Due to cultural and linguistic differences, the majority of new Iranian Canadians seeking legal services are unaware of the distinction between the types of work that can be performed by paralegals as compared to lawyers. Many paralegals, aware of this phenomenon, have targeted the Iranian Canadian community with misleading advertising. This, coupled with the unregulated nature of paralegal practice in Ontario, has put Iranian Canadians especially at risk as consumers. Accordingly, we call on the Law Society, in collaboration with the Ministry of the Attorney General, to take immediate action to regulate paralegals in Ontario.

II. ICLA's Mandate

Before undertaking to respond more fully to the matters discussed in the Consultation Paper, it is important to briefly outline ICLA's mandate. ICLA is a legal advocacy group

that was formed in November 2002 by a group of like-minded lawyers and law students of Iranian heritage.

The establishment of ICLA was in part a necessary corollary of the burgeoning community of lawyers of Iranian heritage throughout Canada. One of the primary objectives of ICLA is to raise public awareness in and advocate for issues affecting the Iranian Canadian community.

The increased presence of paralegals in the community is a matter of particular saliency for ICLA because of the confusion that often exists among many new Iranian Canadians about the difference in the function of paralegals as compared to lawyers. ICLA recently formed a paralegal committee¹ to address this issue. As part of that process, the ICLA paralegal committee has undertaken to review and respond to the recent *Consultation Paper* prepared by the Law Society.

III. Background

The increased presence of paralegals in the Iranian Canadian community must be viewed in its proper contextual framework. This framework has invariably been shaped by the significant increase in immigration of Iranians to Canada, and in particular to Ontario, over the last two decades. During this period, the number of individuals of Iranian heritage in Ontario has increased with the vast majority being first generation Canadians.

As with many immigrant groups, many new Iranians in Canada have, for both cultural and linguistic reasons, felt most comfortable seeking legal advice from their fellow Iranians. Yet, due to the fact that Iranian Canadians are a relatively new immigrant community in Canada, they are disproportionately unrepresented in the legal profession.² Paralegals have invariably filled that vacuum by advertising to Iranian Canadians in local Iranian language newspapers.

At first glance, this would seem to be advantageous to the Iranian Canadian community as paralegals can play a useful access to justice role. However, there has never been a way to ensure that the paralegals are competent to serve the needs of the Iranian Canadian community. As the *Consultation Paper* has rightfully asserted, the increased access to justice role of paralegals “is not sustainable until and unless paralegals are, like lawyers, governed by a regulatory body mandated to govern the public interest”.

ICLA has set out below, some specific matters of concern about paralegals as they affect the Iranian Canadian community.

¹ Mr. Ali Ghiassi (associate at Appleton & Associates), Ms. Meysa Maleki (associate at Gluckstein & Associates), Ms. Maryam Mohajer (associate at Torys LLP) and Ms. Atoosa Mahdavian (partner at Aird & Berlis LLP).

² This is beginning to change as the children of the first generation Iranian immigrants have been educated in Canada and are enrolling in Canadian law schools in record numbers.

IV. Misleading Paralegal Advertising

1. Paralegal “Law Offices”

The legal system in Iran is based on the civil law tradition. Legal representation in Iran, particularly in a court of law, is the exclusive domain of lawyers. Paralegals do not exist and in fact, there is no equivalent Iranian word for the term “paralegal”. As such, it is understandable that a majority of new Iranians in Canada would be unaware of the function of a paralegal.

This confusion is exasperated by misleading advertisement by some paralegals in local Iranian language newspapers. These advertisements are often printed in both English and in Iranian (“Persian”). Due to language barriers, the Persian portion of these advertisements target new Iranian Canadians. The advertisements are usually prefaced by introducing the paralegal in Persian: “*Daftareh Hooghooghi*”, which translates in English: “The Law Office”. Given that there are no paralegals in Iran, the common usage of the word “The Law Office” can only refer to lawyers. Although technically the advertisement may not be a violation of the *Law Society Act* because the person is not holding him/herself out to be a barrister or solicitor, effectively, the target of the advertising, (ie, a new Iranian Canadian) may sufficiently be confused.

2. Immigration Consultants

ICLA also has concerns when it comes to paralegals working as immigration consultants. Immigration consultants advertise in Iranian Language newspapers in both English and Persian. Usually, the English version will specifically state that the individual is an “Immigration Consultant”. Interestingly however, the Persian version of the advertisement usually will refer to the person’s practice as “*Daftareh Hooghooghi va Mohajerat*”, which translates into “Immigration Law Offices”. The correct Persian expression for an “Immigration Consultant Office” is “*Daftareh Moshaverati Oumour Mohajerai*”. Rarely, if ever, do the advertisements use the word “*Moshaver*”, which is the correct word in Persian for “consultant”.

Again, although the person may not be technically holding him/herself as a lawyer, in actuality, new Iranian Canadians reading the Persian version of the advertising would not know that the paralegal is a consultant, and as such, unregulated. This confusion is shaped by both linguistic and cultural differences.

ICLA is aware that recent changes to the *Immigration and Refugee Protection Act* have imposed new requirements on paralegals working as immigration consultants. However, more has to be done. In particular, ICLA proposes that to the extent that the Law Society has jurisdiction to regulate immigration consultants, it should do so by expanding the definition of the term, paralegal, to include individuals who hold themselves out to be “consultants”.

V. Prohibiting Paralegals From Acting as Solicitors

ICLA is pleased to see that the *Consultation Paper* has recommended that paralegals not be authorized to conduct solicitors' work. Our experience in the Iranian Canadian community indicates that there is no evidence of scarcity of lawyers doing solicitors' work. In fact, the contrary is true. There are plenty of lawyers in the Iranian Canadian community who are currently practicing as solicitors. These numbers will only increase with the new influx of law students of Iranian heritage who have been, or soon will be, called to the Ontario Bar.

Many of the members of ICLA have expressed concern that non-lawyers in the Iranian Canadian community have engaged in solicitor-type services, such as real estate transactions, in violation of the *Law Society Act*. In fact, a member was recently involved in a case where a paralegal (a real estate agent by training) had engaged in the unauthorized use of proceeds from a sale of a matrimonial home. This matter ended up before the courts, by way of a motion brought by the ICLA member, on behalf of his client, seeking the release of the said sale proceeds. The Superior Court of Ontario granted an order directing the paralegal to release the funds. We will be happy to provide a copy of the order and the motion materials in the event the Task Force requires same for its review and consideration.

ICLA believes that any proposal respecting an arrangement to allow a paralegal to perform solicitors' work in affiliation with a solicitor will be problematic as policing same will be close to impossible.

VI. Assessment of Accounts of Paralegals

One of the concerns that ICLA has about the current practice of paralegals in the Iranian Canadian community is that there is no effective way to monitor whether paralegals are charging reasonable rates for their services. This issue is particularly salient because many clients are relatively new to Canada and are unaware of what constitutes fair market value for work performed. As such, they are especially at risk as consumers.

The regulation of paralegals must go hand-in-hand with the ability of a client to assess the reasonability of a paralegal's rates. As such, ICLA is of the opinion that the assessment procedure and the tariffs should apply to paralegals as they do to lawyers.

VII. ICLA's Endorsement of Licensing Procedure

ICLA endorses the licencing procedure for paralegals as recommended by the Task Force in the *Consultation Paper*. It is our position that a licensing procedure would better ensure that paralegals acquire the necessary level of knowledge and skill when servicing the public.

VIII. Paralegals Should be Licensed in Particular Practice Areas

ICLA also endorses the suggestion by the Task Force of adopting the limited licensing option for paralegals. Having said that, should an individual, who has already been received accreditation and been licenced in one practice area, wish to practice in more than one practice area, he or she should have the option of completing a separate licensing examination.

The foregoing are some of the thoughts and comments ICLA has with respect to this very important issue. We would be delighted to meet with the Task Force to further discuss this matter or in the event the Task Force has any questions or concerns. Feel free to contact any one of the members of the paralegal committee of ICLA:

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We thank you for your time and look forward to hearing from you.

Yours very truly,

ICLA Paralegal Task Force

cc: F. Fielding, Esq.