



Paralegal Scope of Practice Expansion

Appeals and Judicial Reviews

Submitted to: Law Society of Ontario

Submitted by: Ontario Bar Association

Date: June 5, 2025



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BAR ASSOCIATION
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Executive Summary

The OBA has reviewed the proposal for the expansion of paralegal scope of practice into appeals and judicial reviews of Small Claims Court and provincial tribunal proceedings and has a number of concerns with the proposal as currently drafted. The OBA supports a data-driven and informed analysis of the potential expansion of paralegal's scope of practice. The recent expansion through the Family Law Service Provider ("FLSP") program should be analyzed before considering further expansion, particularly in complex areas of appeals and judicial reviews.

We recommend:

1. Putting the proposed expansion on hold pending the analysis of outcomes and data from the FLSP program
2. Reengaging through a new consultation that:
 - a. Includes data from the FLSP program
 - b. Includes specifics about the proposed training component; and
 - c. Is more targeted as to the areas of expansion

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.



This submission was prepared and reviewed by members of the OBA's Administrative Law and Civil Litigation sections. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario. These members have extensive experience representing clients in appeals and judicial reviews from the Small Claims Courts and all provincial tribunals.

Comments & Recommendations

For the reasons that follow, the OBA suggests that before an expansion of paralegal's scope of activities as outlined in the proposal is implemented, there needs to be an analysis of outcomes and data from the FLSP program and a new consultation that includes this data as well as specifics about the proposed training program, and the proposed areas of expansion.

Complexity of Appeals and Judicial Reviews Requires Advanced Legal Training

Appeals and judicial reviews are a complex area of law distinct from initial hearings. At initial hearings, the focus is on presenting facts. At the appellate and judicial review level, representatives must interpret legal precedents, argue issues of law, engage in complicated legal analysis and research, maintain an up-to-date understanding of the ever-changing landscape of administrative law, and navigate highly specialized procedural requirements. This includes complex standard of review analysis, which continues to garner further appellate court attention including at the Supreme Court of Canada. The preparation and presentation of these matters require extensive legal training that is currently part of a lawyer's education and practice. These complexities are not part of the paralegal college curriculum and cannot be replicated with a short training program. Even within the bar, it is common to have trial lawyers who do not work on appeals and refer clients to an appellate specialized lawyer. While some lawyers do both – this is a recognition of the unique level of complexity and knowledge associated with appellate work (and JRs broadly) applicable to



all legal service providers, not just paralegals. This evidences a tension in one of the justifications in the proposal,

Appeals and judicial reviews are not part of the paralegal college curriculum. The proposal suggests that a training course should be developed in advance of an expansion of the paralegal scope of activities. There are no details on what this course would entail, how long it would be, what topics would be covered, or if there would be a shadowing or mentorship component. This information should be included in the consultation before a decision is made. It will be difficult or impossible to replicate the years of legal education and professional development that lawyers undertake in order to adequately represent clients in these complex matters. Appeals depend heavily on identifying appealable errors – a skill honed through years of legal education and practice, not short-term training modules.

Access Versus Adequacy & Public Confidence

Clients may not appreciate the distinction between lawyer and paralegal representation and may inadvertently face risks in the outcome of their cases. The additional leniency and assistance that courts give to self-represented litigants, as mandated by the Supreme Court of Canada, would be eliminated if an individual has a legal representative. Given that appeals and judicial reviews are not part of the paralegal college curriculum, and in that paralegals do not have the experience and training in this complex area, there is a concern that clients may not receive adequate representation and that this change could lead to confusion among the public regarding the quality and capabilities of legal professionals, eroding the distinction between lawyers and paralegals. This puts the LSO at risk of failing to meet its statutory obligation to regulate in the public interest and to protect the public by ensuring legal service providers meet the appropriate standards of competence. Increased access to justice must be achieved without the risk of compromising legal quality.



Ongoing Scope Expansion and the Need for Data

The expanded scope of practice for paralegals through the FLSP program is new. The required 4-month course through Fanshawe College is currently accepting applicants for September 2025. This is a new development that has not had adequate time or data to evaluate this proposal. Data needs to be collected and shared on the adequacy of representation, the frequency of negligence claims, the uptake in representation and other key markers.

The FLSP program needs a careful, evidence-based evaluation of its outcomes, which must precede any further scope of practice extensions. The LSO and the profession cannot make informed decisions on the success and challenges of scope expansion without data. Before considering additional scope expansions, there needs to be longitudinal data showing that previous expansions have improved legal outcomes without compromising quality.

The Scope of the Proposed Expansion Should be Tailored

Finally, in our view, a proposed expansion of this kind should be more targeted as to the tribunals to which it applies. An expansion into certain tribunals, like the Landlord and Tenant Board, are less concerning than an expansion into tribunals that require highly specialized knowledge, like the Health Professional Appeal and Review Board, for example. There are less concerns with paralegals potentially acting on Small Claims Court appeals. We note the pending increase to the Small Claims Court monetary threshold to \$50,000, which takes effect October 2025, meaning that more matters will fall within the Small Claims Court jurisdiction, and the monetary figures involved are more significant.



Recommendation

1. Put the proposed expansion on hold pending the analysis of outcomes and data from the FLSP program
2. Reengage through a new consultation that:
 - a) includes data from the FLSP program
 - b) includes specifics about the proposed training component; and
 - c) is more targeted as to the initial expansion

The expansion should be put on hold pending outcomes and data from the FLSP expansion necessary for informed decisions. Is the expansion having its intended impacts? Has the prevalence of self-represented litigants been reduced? Is the training adequate or are changes necessary, including potentially adding to the paralegal college curriculum? Without data, the LSO and bar are not able to analyze the success and needs of the FLSP program, let alone consider an additional expansion into highly technical and complex matters of appeals and judicial reviews.

Particulars are also necessary for the proposed training program to provide meaningful feedback. Indicating that a “training program would be developed in advance” of the expansion is insufficient. Is the training program intended to be offered through a college partnership like the FLSP? What is the duration of the course? What topics will be covered? Will there be a practical component? Depending on the outcomes from the FLSP program, it may be necessary to incorporate this into the paralegal college curriculum, rather than a training course. Details are necessary for meaningful consultation and informed decision-making.

The OBA would be pleased to discuss this further and answer any questions that you may have.