



IMPORTANT BULLETIN – PARALEGAL LEGISLATION

June 17, 2008

If you are a planner who appears before the Ontario Municipal Board, this is important information you need to know.

Bill 14, which amended the *Law Society Act*, was recently passed to protect the public interest in these matters. As a planner, you may be required to obtain a licence under the amended *Law Society Act* in order to offer services that the Law Society considers paralegal services. These services involve any situation in which you are required to represent the interests of another person or entity.

We've provided some background information here, but if you need more details, check with www.lsuc.on.ca/paralegals.¹

When planners offer professional opinions and recommendations, they are giving advice that may have legal ramifications. The Law Society of Upper Canada (LSUC) regards some of these situations as *the provision of legal services by non-lawyers*.

Planners conduct research and provide independent opinions and recommendations and "advocate" the substance and basis for those conclusions in the course of giving expert testimony. The LSUC does not consider provision of expert testimony as a legal service requiring a licence.

What the Law Society is concerned about is the practice of one person representing the interests of another person. The Law Society regards any such representation as a form of "legal service." In its view, anyone who represents the legal interests of others must be one of the following:

- a lawyer;
- the holder of a Class P1 licence;
- a member of a short list of exempted organizations, which includes OPPI (but with some caveats).

To **obtain a P1 licence**, an individual must satisfactorily complete the licensing requirements set by the Law Society. **Penalties for disregarding it can be as high as \$25,000 on a first offence.**

Provisional or Full Members of OPPI who conduct their practice in a manner consistent with the specific terms set by the legislation are exempt. There is little distinction in the legislation between public and private sector planners. The exemption is for members who:

¹ Planners who are not OPPI members should consult a lawyer to find out if their role in a particular matter would be considered the provision of "legal services."

- appear only **occasionally** as agents for other parties before tribunals (for example, the Ontario Municipal Board ("OMB"); the Assessment Review Board ("ARB"); Conservation Review Board ("CRB"), Environmental Review Tribunal ("ERT"); perform legal services **only** as part of the provision of their primary expertise as planners);
- do not appear **regularly** as agents;
- do not appear in front of any other tribunal or court, such as, for example, the Workplace Safety and Insurance Board (WSIB) or traffic court (under the Provincial Offences Act).

OPPI planners who perform representational and **advocacy** services – as opposed to providing expert witness testimony before tribunals – and who **frequently** do so, rather than "occasionally," will require a Class P1 licence from the Law Society.

Under the legislation, courts and tribunals can develop their own policies and procedures. For example, members of the Ontario Municipal Board may ask a non-lawyer advocate or agent, who is appearing before them, for his or her credentials (either a Class P1 licence or evidence of an exemption) before allowing that person to speak for someone else. (Proof of membership in OPPI is a member's annual fee receipt.)

In the end, it will be up to the Law Society to determine if it should investigate and eventually prosecute an individual for the unauthorized provision of legal services, based on a complaint or other evidence of such activity.

In 2009, the Law Society will review all the exemptions, including that of OPPI, to determine whether their exemption is still appropriate.

The following questions and answers, prepared by OPPI's legal counsel, may help you in determining your position under this new legislation.

Q. 1 What is paralegal licensing?

- A. The Ontario Legislature has recently amended the *Law Society Act* to regulate and license persons who provide "legal services," but who are not lawyers licensed to practice law in Ontario. Persons who provide "legal services" and who are not lawyers must hold a Class P1 licence, unless they are eligible for an exemption set out in By-law 4 of the Law Society of Upper Canada.

The Class P1 licence is issued by the Law Society following a program of education and an examination.

Q. 2 What are "legal services"?

- A. Under the legislation, "legal services" are defined broadly. They constitute almost any form of advice, representation, document drafting, or application submission undertaken by an individual for, or on behalf of, another individual or corporation.

A person provides legal services if he or she provides services that involve the application of legal principles and judgment with regard to the circumstances or objectives of a person (see S.1(5) and (6) of the *Law Society Act*).

Q. 3 Do planners offer or perform “legal services” of the type that require a paralegal Class P1 licence or an exemption?

- A. **Yes they do.** Planners complete application forms, lobby for proponents, negotiate settlements, draft legislation, mediate among different parties, and represent clients, often in pre-hearings or hearings, where issues are scoped or decisions are made that affect the rights, interests, or privileges of the persons they represent. These activities fall within the scope of “legal services.” Some activities involve taking the role of agent, advocate, or representative in a way that can affect the legal rights of the person or corporation being represented and are therefore subject to this legislation.

As has been noted, OPPI is exempt and the OPPI exemption permits these activities to continue, **but only as a part of the member’s normal scope of practice as a planner.**

Q. 4 What is the “problem” that the legislation is supposed to solve?

- A. Citizens often need assistance to participate in legal processes. Not all citizens fully understand all the many different laws that apply to them, or have the opportunity to acquire the necessary legal knowledge, so they seek advice from those more knowledgeable to advance, maintain, or defend their individual rights or privileges. Some of these issues relate to legal interests in real property.

Recently, the emergence of advisors who provide representation, application submission, and processing services has created a situation in which unregulated advisors, some of whom do not have formal academic professional qualifications or appropriate experience, are operating without any accountability or oversight.

Paralegal licensing is an effort to ensure that those who offer such services meet a base standard of education and competence and abide by a code of ethics. By defining such activities as constituting “legal services” and requiring a Class P1 licence for non-lawyers, the *Law Society Act* seeks to protect the public interest.

Q. 5 Who has to be licensed?

- A. Persons who are not lawyers who offer “legal services” are subject to the paralegal Class P1 licensing requirements. At first, such persons were “grandfathered” and allowed to continue their activities, but now the legislation is in full effect and all such persons must be licensed or be exempt from the requirements.

Q. 6 What are the requirements of a Class P1 licence?

- A. An individual who is not a lawyer but who offers some limited legal services must obtain a paralegal Class P1 licence through a program of training, fees, and examinations. The process is explained on the website of the Law Society of Upper Canada, under the information on By-law 4. For exemptions from the licensing requirement, see s. 30 of By-law 4: www.lsuc.on.ca/paralegals

Q. 7 What if I am neither exempt nor the holder of a paralegal licence and I provide legal services? (This applies to planners who are not members of OPPI, or OPPI members who appear frequently before tribunals and have not obtained their Class P1 license.)

- A. Both the *Law Society Act* and By-law 4 of the Law Society of Upper Canada specify penalties for those who offer legal services without a licence. Under the Act, such persons will be fined:
- (a) up to \$25,000 for a first offence;
 - (b) up to \$50,000 for each subsequent offence.

In addition, providing legal services without a licence can lead to civil claims for damages and the denial of individual or corporate insurance claims, due to the failure to obey the law respecting obtaining the required Class P1 licence.

If an OPPI member exceeds the scope of the exemption afforded by their membership and offers full-time "legal services" as an agent or representative for individuals or corporations, he or she may be subject to OPPI disciplinary action or prosecution under the Act.

Q. 8 What is the reason for requiring paralegal licensing?

- A. Paralegal licensing is intended to protect individuals whose legal rights may be affected by the actions of a paralegal. Licensing paralegals is intended to ensure that those who represent the legal rights of others are competent, accredited, accountable individuals.

Q. 9 Why are OPPI members exempt from the requirement of holding a paralegal licence?

- A. The professional disciplinary processes of the exempt professional groups, such as OPPI, are deemed to protect the public interest, so these groups are **partially** exempted from the licensing requirement.

These organizations offer programs of continuing education as well as insurance that ensure that each member consistently demonstrates competence, timeliness and accountability in the work that he or she performs. OPPI's Discipline Committee and Code of Professional Practice are additional remedies to which the public can resort to ensure that members provide responsible and professional services. Internal discipline procedures are the hallmark of regulated professions. The Law Society of Upper Canada recognizes that paralegal licensing would duplicate the protections to the public already met by a planner's membership in OPPI.

As already noted, the OPPI exemption is not absolute.

OPPI's exemption will be reviewed in 2009.

All the exemptions, including that for OPPI, will be reviewed in 2009 to determine whether the exemption remains appropriate and should continue. The onus is on OPPI members to uphold OPPI's professional standards of practice in order to

ensure a continuation of this exemption. Planners who are not members of OPPI are required to obtain a paralegal licence if their work amounts to the offering of "legal services." Those who do not will risk enforcement charges or, possibly, tribunal sanctions.

Q. 10 If I offer expert testimony before a court or tribunal, is that advocacy, and am I obliged to have a paralegal licence or an exemption?

- A. No. Expert testimony is not characterized by the Law Society as a "legal service." Moreover, there are already longstanding mechanisms used in courts and tribunals for challenging and verifying the qualifications of those who provide expert testimony. The Law Society's enforcement efforts relate to individuals who act as representatives or agents for other individuals or entities.

Q. 11 Can I obtain a Class P1 licence even if I am a member in good standing of OPPI and I hold an exemption through OPPI?

- A. Yes. OPPI members who appear frequently as agents before tribunals and act on behalf of others **must** obtain the Class P1 licence. Although licence holders may have to reconcile conflicting ethical codes and different enforcement rights, the holder of a Class P1 licence will be protected even in the event that the OPPI exemption is removed.

Q. 12 Am I in any danger of exceeding the coverage provided by the exemption if I perform legal services of a nature or kind outside the usual scope of planning work?

- A. As noted above, the OPPI exemption is not absolute. It is subject to review and is conditional on an individual's demonstrating that his or her practice is diverse and does not consist mostly of representing clients or acting as their agent. The conditions of the OPPI exemption are:
1. Member appearances before tribunals as agents for individuals are only occasional. Members of OPPI who provide advocacy (agent) services as a major part of their occupation must be licensed.
 2. Services are provided in conjunction with the member's primary professional services of providing planning research and advice.
 3. Advisory work in a planner's primary area of expertise is not the provision of "legal services."
 4. Members do not appear as agents representing a party and arguing cases before other tribunals or courts.
 5. The OPPI exemption will be monitored for any resulting concerns.

All the exemptions, including that of OPPI, will be reviewed in 2009 to determine whether the exemption from paralegal licensing remains appropriate and should continue. The onus is on OPPI members to uphold OPPI's professional standards of practice in order to ensure a continuation of this exemption.

Q. 13 How is OPPI planning to maintain the benefit to its members of the exemption that it holds from the requirement to hold a paralegal Class P1 licence?

- A. OPPI believes that its structure and organizational initiatives reflect a high level of awareness of the responsibilities of its membership to respect the rights of individuals, protect the public interest, and not exceed the proper scope of planning services. OPPI is taking three steps to maintain its exemption:
1. OPPI is reviewing its educational and membership criteria to ensure a consistent and high level of practical expertise in all facets of the planning profession for existing and new members.
 2. OPPI monitors the practices of its members. OPPI has a Code of Professional Practice and Practice Standards. OPPI monitors its Professional Code of Practice and the procedures of the Discipline Committee to ensure that OPPI's self-regulatory standards provide a rigorous OPPI forum for preventing or curtailing potential abuse. OPPI's oversight of professional standards includes continuing dialogue with the Law Society of Upper Canada and the boards, agencies, and commissions in front of which OPPI members practise.

Planning practices that rely predominantly on the provision of "legal services" are as much a risk to the OPPI exemption as a whole as they are to individual members. Individual proceedings before the OPPI Discipline Committee or charges under the *Law Society Act* are useful and appropriate enforcement tools. OPPI as an organization sees its role as maintaining an accredited self-regulated professional body and promotes, maintains and regulates high standards of professional planning practices and ethical behaviour. This includes ensuring that its membership exemption is not jeopardized by member activities that contravene the conditions of the exemption.