



Ontario
Paralegal
Association

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Preface

This submission has been developed by the OPA's Law Society of Ontario and Government Relations Committee. OPA members participating in this submission include paralegals representing a wide range of clients whose rights and interests are engaged by the critical issues at play in Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*. This submission has been reviewed by the Board of Directors and approved as a public statement of the OPA.

The Ontario Paralegal Association (the "OPA") appreciates the opportunity to make this submission to the Standing Committee on Justice and Human Rights (the "Committee") in respect of Bill C-75. It is the position of the OPA that the Bill will, among other things, undermine efforts for access to justice for Canadians as a whole, and that further consultation with stakeholders should take place. Further, if the Bill becomes law, we propose that provisions be made for paralegals in Ontario to represent individuals in matters that do not proceed by indictment, thus resulting in the expansion of paralegal scope of practice in the province.

The OPA

The OPA is the largest professional association of licensed paralegals in Ontario. Our members work tirelessly in their careers to provide legal representation and improved access to justice for all Ontarians. From sole proprietors in Timmins to large-firm paralegals on Bay Street, Toronto, our members strive to continuously update and educate themselves on issues facing Canadians to better serve their communities. Our monthly continuing professional development seminars keep our paralegals informed and current with issues facing the contemporary Canadian. Ontario paralegals work hard to advocate for the public and ensure high professional standards. As the OPA, our mandate is:

- To listen to the concerns and to represent the interests of its members throughout the Province of Ontario.
- To bring forth these concerns and to make representations and act as liaison to other professional associations, the Law Society of Ontario, all levels of government and such other bodies as may be appropriate to ensure that the interests and concerns of practicing paralegals throughout the province are effectively heard.
- To ensure that the public interest is advanced and served in all activities of this association.

- To serve the legal profession and the people of Ontario in the pursuit of excellence through the delivery of legal services.

During the period of consultation available for this submission, the OPA sought input from our paralegal members, paralegal student members, faculty in the private career and community colleges, and the public with concerns regarding proposed access to justice in Ontario.

Bill C-75 Background and Overview and the OPA Position

Bill C-75 and Access to Justice

On March 29, 2018, the Federal government introduced Bill C-75; this Bill would amend the *Criminal Code*, the *Youth Criminal Justice Act* and other Acts. Guised under the concept of reducing delays in the criminal justice system and making it more modern and efficient. Bill C-75 proposes broad changes, many of which have disproportionate impacts on groups that are over-represented in Canada's criminal justice system, in particular Indigenous persons and individuals from vulnerable populations, including persons with mental illness and addictions.

Among other things, the proposed Bill would:

- Reclassify indictable offences that are punishable by 10 years imprisonment or less so they are punishable both as indictable or summary offences;
- Standardize the maximum penalty of imprisonment for all summary conviction offences to 2 years less a day; and,
- Extend the limitation period for commencing proceedings for summary conviction offences from 6 to 12 months.

Reclassification of Indictable Offences and s. 12 of the *Charter*

Indictable offences in the *Criminal Code* are currently punishable by a maximum penalty of 10 years or less. The result of hybridization is that those offences could now be prosecuted either as an indictable offence or as a summary conviction offence. This requires amendments to offences throughout the *Criminal Code*. The Bill would also increase the default maximum penalty to two years less a day for all summary conviction offences; the maximum fine that could be imposed for summary conviction offences would remain \$5,000. In some cases, this would mean that the available maximum penalty of imprisonment on summary conviction would be increased because those offences are currently subject to a maximum penalty of imprisonment of less than two years less a day, for example six or 18 months.

These changes have the potential to engage section 12 of the *Canadian Charter of Rights and Freedoms*, which protects against cruel and unusual treatment or punishment. Their application

may result in the imposition of a higher sentence for an offender who commits an offence after the coming into force of the provisions than for an offender who commits the same offence and is sentenced prior to the amendments coming into force.

Standardization of Maximum Penalties

Some of the offences that would be hybridized, or whose summary conviction penalty would be standardized, carry mandatory minimum penalties ranging from mandatory fines to mandatory terms of imprisonment. Section 255 of the *Criminal Code* provides mandatory minimum fines and mandatory terms of imprisonment for the offences of impaired driving and failure to comply with a valid demand. The minimum penalties range from a fine of \$1,000 for a first offence, to imprisonment for not less than 30 days for a second offence, to 120 days imprisonment for each subsequent offence. The Bill seeks to increase the maximum penalty of imprisonment on summary conviction from 18 months to two years less a day.

This Bill also seeks to amend the *Criminal Code* transportation offences, including impaired driving offences. If enacted, new mandatory minimum penalties would be introduced. These new penalties include mandatory minimum fines for first offences of driving with a high blood alcohol concentration in the form of a \$1,500 fine for a driver with a blood alcohol concentration of 120 mgs of alcohol per 100 ml of blood and a \$2,000 fine for a driver with a blood alcohol concentration of 160 mgs of alcohol per 100 ml of blood, or for a driver who refuses to comply with a valid demand.

Mandatory minimum sentencing provisions have the potential to engage section 12 of the *Charter*, which protects against cruel and unusual treatment or punishment, because they have the potential to require departures from the general principle of proportionality in sentencing. When there are mandatory minimum penalties, the judge's ability to fashion a sentence that is fit and proportionate in the circumstances may be limited.

These proposed changes not only impose harsher sentences for crimes, which do not warrant them, they also limit an individual's access to justice. Access to justice is defined by the United Nations as "*the ability of people to seek and obtain a remedy through formal or informal institutions of justice...*"¹ Essentially, access to justice means that people have access to the resources and services necessary to deal with legal matters.

¹ United Nations Office on Drugs and Crime, *Improving access to justice: extending the reach of sustainable development agenda*, (September 1, 2018) Online: http://www.un.org/esa/ffd/wp-content/uploads/2016/01/Improving-access-to-justice_UNODC_IATF-Issue-Brief.pdf

Evidence and the *Charter*

Clause 278 would allow for the introduction of certain evidence by police officers in written form. This is a departure from the typical approach to evidence in criminal proceedings, especially trials, which involves evidence introduced through oral testimony and an opportunity for cross-examination.

Clause 265 would allow routine police evidence, if otherwise admissible through testimony, to be admitted into evidence in criminal proceedings by way of affidavit or solemn declaration.

Clause 294 would establish that transcripts of police evidence are admissible in criminal trials, where that evidence had been given in the presence of the accused at a *voir dire* or preliminary inquiry on the same charge. Police notes would essentially be taken *as is* and the defendant would not be able to dispute any of that evidence.

Clauses 278 and 294 would potentially engage sections 7 and 11(b) of the *Charter*, mainly the right to a fair trial and to make full answer and defence.

Current State of the Licensed Paralegal Profession in Ontario

The professionalization of Ontario's paralegal sector over the last decade is marked by success. In 2007, Ontario became the first Canadian jurisdiction to regulate paralegals,² and the first and only jurisdiction in Canada where paralegals are licensed to work independent of lawyers. Paralegals are licensed by the Law Society to provide legal services within a permitted scope of practice as part of the government's broader policy to enhance access to justice.

In order to become a licensed paralegal in Ontario, a candidate must complete an approved paralegal program at a college, pass the Law Society paralegal licensing exam and be of good character.³ Once licensed, a paralegal can represent clients and practice in⁴:

- Small Claims Court;
- Ontario Court of Justice under the *Provincial Offences Act*;
- Summary conviction offences under the *Criminal Code of Canada*, where maximum penalty does not exceed six months' imprisonment and/or a \$5,000 fine; and
- Before administrative tribunals, including the Financial Services Commission of Ontario.

Within the current scope of practice for paralegals, a licensed paralegal can:

² *Paralegal Regulation in Ontario*, Online: Ministry of the Attorney General <<https://news.ontario.ca/mag/en/2009/03/paralegal-regulation-in-ontario.html>>

³ *Paralegal Licensing Process*, Online: Law Society of Ontario <<http://www.lsuc.on.ca/licensingprocessparalegal/>>

⁴ *Paralegal Licensing Process FAQ*, Online: Law Society of Ontario <<http://www.lsuc.on.ca/licensingprocessparalegal.aspx?id=2147491230>>

- Give legal advice concerning legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding;
- Draft or assist with drafting documents for use in a proceeding; and
- Negotiate on behalf of a person who is a party to a proceeding.⁵

Licensed paralegals are active in the governance of the Law Society of Ontario. Five paralegal benchers are elected to the Paralegal Standing Committee and work with lawyer and lay benchers to develop policies related to paralegal licensing, regulation and professional conduct and competence.⁶ All five paralegals serve as Convocation benchers.⁷

Under the *Law Society Act*, a mandatory five-year review was required to assess paralegal regulation. In David Morris's 2012 report, *Five-Year Review of Paralegal Regulation in Ontario*, he stated that, "It is appropriate to view the first five years of regulation as the *introduction* of regulation – of getting the mechanics of it firmly established. By any objective measure, the introduction has been a **remarkable success**."⁸

Licensed paralegals have integrated successfully within this new regulatory scheme. We are providing greater access to justice to Ontarians in an affordable way, while delivering greater efficiency in the court system as more litigants turn to us rather than self-represent without any legal assistance. Licensed paralegals are in a position to help alleviate the growing access to justice concerns and provide Ontarians with more options to address their legal needs.

Support for Expanding the Scope of Practice

Over the past several years, multiple reports have explored the possibility of expanding the scope of practice for licensed paralegals in Ontario to offer certain legal services to clients and offer enhanced access to justice for low- and middle-income people. There is a growing consensus that licensed paralegals have a role to play to address these pressing access concerns.

In the 2012 *Five-Year Review of Paralegal Regulation in Ontario*, author David Morris was cautious with respect to expanded scope of practice. He recommended that the Law Society actively pursue the broadening of scope to facilitate enhanced access to justice, but that this be linked to enhanced paralegal education, training and professional conduct. Morris also

⁵ Ibid

⁶ *Benchers*, Online: Law Society of Ontario <<http://www.lsuc.on.ca/with.aspx?id=1136>>

⁷ *Paralegal Bencher Election 2014*, Online: Law Society of Ontario <<https://www.lsuc.on.ca/paralegal-election-2014/>>

⁸ David J. Morris MBA, *Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario*, Online: Ministry of the Attorney General <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/Morris_five_year_review-ENG.pdf>

recommended the consideration of sub-classes of paralegal licenses for areas of law that currently fall outside of the scope of practice. Specialized training would be required to acquire these licenses.⁹ If Bill C-75 were to become law in Canada, the OPA strongly recommends that any province with a licensing regime for paralegals, in the interests of access to justice, add provisions for the expansion of paralegal scope to include representation of persons charged with offences not elected to proceed by indictment.

The OPA expects that the Law Society would oversee any expansion of the scope of practice for licensed paralegals to include expanded criminal law matters. The OPA looks forward to continuing to work collaboratively with the Law Society to set the requirements for practicing expanded areas of criminal law and to update the Paralegal Code of Conduct to take into account the expanded scope of practice, should the changes proposed in Bill C-75 come to fruition.

[Bill C-75, Access to Justice and the Paralegal Profession](#)

As above, currently, paralegals are permitted by the Law Society of Ontario, as part of their scope of practice, to represent individuals on summary conviction offences where the maximum penalty does not exceed six months' imprisonment and /or a \$5,000 fine. If Bill C-75 is passed into law, it will have a detrimental effect on an accused's access to justice as it will limit their access to affordable representation. Individuals would be left to either retain a lawyer or represent themselves, keeping in mind that Legal Aid would not be available for most persons charged with these types of offences, and that lawyers are unaffordable for many Ontarians.

It's extremely difficult for most people to navigate a complicated system that has been designed for legal professionals, not laypeople. Considering that many Canadians face additional hurdles to justice, challenges such as education, language, mental health, addiction and cultural literacy, excluding the option of a paralegal for an accused is damaging. Contrary to the intended purpose of this Bill, the changes proposed would cause considerable delays in the administration of justice, self-represented individuals would essentially need to be guided throughout the process, and would be allotted more flexibility, which in itself would cause significant delays.

[Further Impacts on Access to Justice in Canada](#)

Low- and middle-income Canadians face significant barriers to accessing affordable legal services and fairness in the justice system.

A median income earner in Ontario, for instance, who makes \$31,800 annually, can face daunting legal fees. In the 2013 report by the Action Committee on Access to Justice in Civil and Family

⁹ Ibid

Matters and the 2018 *Canadian Lawyer Legal Fees Survey*, published by the *Canadian Lawyer Magazine*, the steep fees for criminal legal services nationally and in Ontario are detailed as follows:

Type of Proceeding	National Fees	Ontario Fees
Summary Criminal Offence (1 day trial)	\$2,501 - \$3,500	\$5,501- \$6,000 plus
Bail Hearing	\$500 - \$1,000	\$500 - \$1,500
Criminal Offence (1 day trial)	\$9,001 – 10,000	\$6,001-\$8,000
Simple Plea of Guilt	\$500 - \$1,000	\$2,001 - \$3,000
Contested matter (day-long trial/contested plea)	\$4,000 - \$5,000	\$5,001 - \$8,000
Longer trial (longer than 7 days)	\$57,001-\$60,000	\$57,001-\$60,000

These fees place a massive burden on low- and middle-income earners and it is no surprise that individuals choose to self-represent. Licensed paralegals can and do help close this gap by offering affordable legal services to clients.

Conclusion

The OPA appreciates the opportunity to present this submission and expresses interest in an invitation to make oral submissions. While we commend the attention the Legislature has provided to these matters, it is our position that Bill C-75, although well-intentioned, undermines access to justice for Canadians as a whole and for this reason should continue to a second reading. In the alternative, the OPA recommends paralegal scope be expanded, as described above.