

The Global Perspective: The Status of Paralegal Regulation Around the World

Lori J. Boris, RP[®], MnCP
Nilan Johnson Lewis PA
NFPA Regulation Committee Member

April 29, 2016
Newman University
Wichita, Kansas

NFPA - The Leader of the Paralegal Profession[®]



NATIONAL
FEDERATION
of
PARALEGAL
ASSOCIATIONS^{Inc.}
[®]

Presentation Preview/Roadmap

- * 1. Why is it important to learn what's happening in other parts of the world related to paralegal regulation?
- * 2. What's happening in:
 - * Canada
 - * England/Wales
 - * Norway
 - * Saudi Arabia
 - * South Africa
 - * Japan

What is a Paralegal

- * In the United States, the profession of paralegal still indicates those people doing substantive legal work under the direct supervision of a lawyer.
- * However, it's different in each state, and definitely different in other countries.
- * Most jurisdictions, both at home and internationally, recognize paralegals to some degree, but there is no international consistency re: definition, job-role, status, terms and conditions of employment, training, regulation or anything else, and each jurisdiction is unique.

What is our purpose here?

- * Through this presentation, we hope to give you a general overview of paralegal regulation around the world and compare and contrast it with what you experience in the United States and YOUR state, in particular.

Why do we care?

- * We might be able to:
 - * use what's worked in other countries as an example for the United States;
 - * avoid the mistakes other countries have made in regulating paralegals; and
 - * envision what's possible for the future of the paralegal profession in the United States.

Canada

- * Neighbor directly to the north – arguably will have the most effect on paralegal regulation in the United States.
- * As in the U.S., there is no “standard” in Canada, either, for the regulation of paralegals.
- * Each of Canada’s provinces has its own rules/policies for paralegal regulation.



Ontario

In Ontario, paralegals are licensed by the Law Society of Upper Canada, and it is the only jurisdiction in the Western Hemisphere where paralegals are licensed and regulated as officers of the court.

Ontario – Paralegal practice

- * Represent clients in matters like:
 - * traffic tickets;
 - * immigration;
 - * landlord/tenant disputes;
 - * labor law;
 - * small claims court; and
 - * special criminal matters.

Ontario – Rules

- * Paralegals are NOT permitted to represent clients in:
 - * Family court; or
 - * Wills and estates.
- * Paralegals licenced in Ontario have their own Paralegal Rules of Conduct and are disciplined under them. Rules include:
 - * Professionalism
 - * Advocacy for client
 - * Fees and Retainers
 - * Duty to the Administration of Justice

Ontario

- * On the Law Society of Upper Canada website, there are guidelines for paralegals to:
 - * set up their own practices;
 - * foster a client-paralegal relationship;
 - * Supervise employees; and
 - * Manage trust accounts and money.
- * The Law Society of Upper Canada website informs the public that in some instances, they may find a lawyer or paralegal to work with, but in other instances, only a lawyer can help them.



British Columbia

In June 2012, the “Benchers” approved rule changes allowing BC paralegals to perform additional duties, and clarifying what they are able to do, in an effort to help expand the public’s access to competent and affordable legal services.

British Columbia

- * In the “Code of Professional Conduct for BC,” a “paralegal” is defined as a trained professional working under the supervision of a lawyer.
- * A “designated paralegal” (“DP”) is a paralegal who can perform additional duties under a lawyer’s supervision. They can:
 - * Give legal advice to clients
 - * Give and receive undertakings (beginning January 1, 2013)
 - * Make limited tribunal and courtroom appearances (as part of a pilot project, beginning January 1, 2013)

British Columbia – Supervising Lawyers

- * Supervising lawyers will determine whether a paralegal is “designated.”
- * Lawyers can oversee a maximum of two (2) DPs at any given time (Law Society Rule 2-9.2);
- * Lawyers must be confident their DPs have the skills and training to perform the advanced functions, including training on court protocol and the duties of an officer of the court.

British Columbia – giving legal advice

- * Effective July 13, 2012, the Professional Conduct Handbook was amended to permit “DPs” to give legal advice and appear before a court or tribunal as permitted. They recommended that:
 - * Supervising lawyers should engage in file triage to determine whether the DP has sufficient experience and knowledge to give legal advice in a particular matter;
 - * In situations where the lawyer deems it appropriate, **the DP may give legal advice directly to a client.**

British Columbia – Pilot Project

- * Beginning January 1, 2013, the Law Society, the BC Supreme Court and the BC Provincial Court created a two-year pilot project giving DPs a limited right of appearance in court.
- * The goal was determining whether lawyer-supervised paralegals could competently perform procedural applications in court.
- * The pilot project ended in the Supreme Court on December 31, 2014, but the Provincial Court allowed the project to continue until October 1, 2015.
- * No results for the Pilot Project were found online.

Insurance

- * A DP is protected by the supervising lawyer's insurance policy, with the following caveats:
 - * A lawyer is responsible for mistakes made by employees supervised, so the lawyer's Policy responds and the lawyer bears the financial responsibility of any paid claim.
 - * As long as the DP acted within the scope of their duties under the lawyer's supervision, insurance coverage to defend a negligence claim will cover without a claim against the DP.

Giving and Receiving Undertakings

- * Non-lawyers are not allowed to give or accept undertakings (new matters) except at the direction and under the supervision of the lawyer responsible for the matter, and only if the non-lawyer divulges their non-lawyer status and communicates who the responsible lawyer will be.
- * The status of the non-lawyer must be communicated orally or in writing with clients, lawyers, public officials or the general public.



Alberta

Paralegals are not regulated by statute in Alberta and work under supervision of a lawyer or justice / judge.



Manitoba

Paralegals are not regulated in Manitoba. They are not required to become certified, pass an examination or meet minimum training/educational standards before entering the workforce. They may do work that otherwise would be performed by a lawyer, as long as they are directed to do so by a lawyer.



Saskatchewan

There is no formal regulation or formal requirements for education, training or examination in Saskatchewan. Paralegals may use on-the-job training or complete an educational program to begin their careers. Paralegals must work under direct supervision of an attorney and may not offer legal advice.



Quebec

The paralegal profession in Quebec is not regulated by the government, and paralegals may obtain education or find a job that provides on-the-job training to begin their careers. Paralegals must work under a lawyer's supervision, not provide legal advice and act ethically.

Quebec Notaries

- * In Quebec, paralegals may further their careers by becoming Quebec notaries, provided they have
 - * Earned a law degree;
 - * Completed an “articling” period; and
 - * Passed examination administered by the Chambre des notaries.
- * They may work in any area of law except litigation.



Nova Scotia Newfoundland Prince Edward Island New Brunswick

The paralegal profession in these provinces is unregulated. No license or certificate is required for paralegals to work legally. They must work under a lawyer's direct supervision and avoid anything that could be seen as unauthorized practice of law. They must not give legal advice.



England

England – Training and Qualifications

- * Paralegals are unregulated in England and are able to get jobs without having to be part of one of the associations' regulation programs.
- * One becomes a paralegal by getting a job as a paralegal.
- * An employer can hire someone off the street and call them a “paralegal” if they have no paralegal training at all.
- * One will have a better chance in securing a paralegal job, of course, if they earned high grades in high school and are computer literate.

England – Specialty Training

- * People often work as paralegals when they already have some legal background/exposure.
- * Some large firms expect their paralegals have a law degree and have completed their LPC (Legal Practice Course), whereas other firms would just care about the candidate's experience.
- * My source in London has a degree in business and economics, but always wanted to be a lawyer. She obtained a job as a legal secretary, which gave her enough exposure to law to become a paralegal. She's now studying to become a legal executive (type of lawyer), and needs three years of "qualifying experience," which her work as a paralegal provides for her.

England – licensed or registered paralegals?

- * There are a few organizations that self-regulate and self-govern:
 - * Institute of Paralegals
 - * National Association of Licensed Paralegals
- * My source had never seen a job advertise for a registered or licensed paralegal.

England – what can paralegals do?

- * Paralegals have absolute rights of audience in the Small Claims Court and the majority of Tribunals.
- * As long as they are representing their “solicitor” or qualified litigator employer, they have rights of audience on most interim application hearings in Chambers and family case applications.
- * THERE IS NO SUCH OFFENSE AS “UNAUTHORIZED PRACTICE OF LAW.”

England

- * In England, paralegals can also:
 - * Give legal advice, if supervised.
 - * Help clients prepare forms for filing, if they have enough experience.
 - * Whether they can negotiate a fee agreement depends on how the firm works and the paralegal's experience.
 - * They work in all areas of law

England – a Paralegal’s value

- * There are around 60,000 paralegals in England, and they are referred to as the “glue of the legal sector.”
- * They are perceived by clients as being a good value, but the client must be informed at the outset if a paralegal and not a solicitor will be carrying out most of the work.

England – other information

- * There is a wide variety of types of lawyers in England and Wales: solicitors, barristers, notaries, licensed conveyancers, legal executives and notaries.
- * Every law firm must be registered with the SRA (Solicitors Regulation Authority), and must follow their code of conduct which outlines ethical and professional standards. Although paralegals are not solicitors, the Code still applies to them.
- * It is up to each lawyer to determine how much supervision a paralegal requires, depending on the complexity of the case.
- * They cannot become a partner in a law firm, sign a check, or certify (sign) documents in their own name.



Norway

Norway – No such thing as a paralegal

- * In Norway, “paralegal” is not a profession, so is not regulated.
- * However, the Norwegian Bar Association does offer and regulate a course to become a “advokatassistent” – or “lawyer’s assistant.”
- * It is a program provided for secretaries working in law, but the profession has obtained certain value.
- * They are regulated “in a way,” but have no other rights or privileges.

Norway – Legal Advice

- * Registered Lawyers currently have a monopoly on giving legal advice.
 - * Interesting aside: Associates in Norway are not lawyers, and they can only practice under the supervision of a lawyer. You have to get your degree and then practice for a time to become a lawyer.
- * This monopoly is now under debate, and my source believes that the new law that will result from that debate will not sustain that monopoly.

Norway – Legal Advice, cont.

- * He says if the law is revised the way it's looking now, anyone will be able to give legal advice for a living.
- * They think it won't be a problem, because they still won't be able to call themselves lawyers, and hopefully won't consider giving such advice.
- * He also says that there are many professionals in other areas that give legal advice on a day-to-day basis, i.e. accountants.



Saudi Arabia

Saudi Arabia

- * The position of Paralegal is not recognized in the Kingdom of Saudi Arabia (KSA).
- * Some companies, such as Saudi Arabian National Oil Company (Saudi Aramco) have been utilizing paralegals for the past 5-6 years, and the local Saudi Practice group is now utilizing them, as well.
- * Because it was not recognized in KSA, there was no educational program available, so they were sent to the United States to be educated.

Saudi Arabia, cont.

- * Paralegals are not allowed to do anything apart from attorney supervision.
- * The only areas they're allowed to work in are those within their respective companies.
- * Attorneys can hire someone off the street if they wish and call them a paralegal.



South Africa

Paralegals in South Africa must have extensive knowledge of the law and administration of justice.

South Africa

- * A paralegal's duties in South Africa may include:
 - * assisting their employer's clients to solve legal problems;
 - * performing legal research;
 - * preparing cases for court;
 - * may work in Criminal, Civil Litigation, Wills and Estates, Dispute Resolution, Legal Advice, Property Law and Conveyancing, Legal Office Practice Management and Debt Collecting/Counseling.
 - * Employed by Legal Aid South Africa, big corporations, legal firms, government agencies, etc.



Japan

In Japan, there are judicial scriveners, which function similar to paralegals.

Japan

- * Scriveners perform legal work above the level of secretary but below attorneys.
- * They may be attached to an attorney's office or operate independently.
- * They may represent clients in some low-level matters, but not in more advanced stages.
- * They are regulated, and must pass an exam.



Questions? Thank you for attending!

**The National Federation of
Paralegal Associations, Inc.**
One Parkview Plaza, Suite 800
Oakbrook Terrace, IL 60181
Telephone: 847-686-2247
E-mail: info@paralegals.org



Bibliography

- * Interviews with:
 - * Shaun Pilcher (Saudi Arabia)
 - * Yelena Christensen, Faegre Bakers Daniel, London (England, Wales)
 - * Nancy Chavez, Canada
 - * Frederik Lund, Norway
- * <https://www.lsuc.on.ca/>
- * <https://en.wikipedia.org/wiki/Paralegal#Japan>