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**From:** Zelia Pereira <ZPereira@Iso.ca>  
**Sent:** Monday, January 24, 2022 4:06 PM  
**To:** Minister / Ministre (IRCC)  
**Cc:** Jones.Mike; lisa.jorgensen@justice.gc.ca; kyle@mccrealaw.ca; srotstein@osc.gov.on.ca  
**Subject:** Proposed amendment to s. 91 of the Immigration and Refugee Protection Act  
**Attachments:** Letter to Minister, Sean Fraser (Response CBA Immigration Letter) Jan.24.2022.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see the attached letter from Law Society Treasurer, Teresa Donnelly.

### Zelia Pereira

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Barreau  
de l'Ontario

January 24, 2022

**Sent by email: [minister@cic.gc.ca](mailto:minister@cic.gc.ca)**

**Office of the Treasurer**

Osgoode Hall

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The Honourable Sean Fraser, P.C. M.P.  
Minister of Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Dear Minister Fraser,

**Re: Proposed amendment to s. 91 of the *Immigration and Refugee Protection Act***

I am writing on behalf of the Law Society of Ontario (the Law Society) with respect to the Canadian Bar Association (CBA) letter dated December 17, 2021. In its letter, the CBA requests that the Government of Canada amend s. 91 of the *Immigration and Refugee Protection Act* (IRPA) to remove paralegals from the categories of persons who may represent or advise a person in connection with the submission of an expression of interest under subsection 10.1(3) or a proceeding or application under the IRPA.<sup>1</sup>

We do not believe that the amendment proposed by the CBA is advisable. If the Government were to proceed with the amendment proposed by the CBA, it would have the following effects:

1. Licensed paralegals who are currently representing and advising parties before the Immigration and Refugee Board (IRB) would be required to either stop providing those services or seek accreditation with the College of Immigration and Citizenship Consultants (the College).
2. A legitimate option for representation at the IRB would be eliminated, thereby limiting access to justice for those appearing before the IRB, many of whom are extremely vulnerable individuals and belong to marginalized groups.

**The Law Society**

The Law Society regulates, licenses and disciplines Ontario's more than 55,000 lawyers and over 9,000 licensed paralegals pursuant to the *Law Society Act* and the Law Society's rules, regulations and guidelines. We have a statutory duty to ensure that our licensees meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide. In fulfilling our statutory mandate, the Law Society has statutory duties to protect the public interest, maintain and advance the cause of justice and the rule of law, facilitate access to justice for the people of Ontario, and act in a timely, open and efficient manner.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c.27, s. 91(2)(b)  
<https://laws.justice.gc.ca/eng/acts/i-2.5/page-11.html#h-275485>.

## History of Licensed Paralegals in Ontario

Since 2007 licensed paralegals have been able to independently provide certain legal services in Ontario as prescribed by the Law Society in By-Law 4.2 Pursuant to By-Law 4, paralegals are licensed to independently advise and represent a party before the Small Claims Court; the Ontario Court of Justice for *Provincial Offences Act* matters and some summary conviction matters; and tribunals established under an Act of the Legislature of Ontario or an Act of Parliament. Paralegal scope of practice in immigration matters is set out below.

The Law Society's licensure is designed to ensure that paralegals have the necessary skills, knowledge and attributes to deliver the services within their defined scope of practice. Licensed paralegals must meet academic and field placement requirements from a paralegal education program accredited by the Law Society and offered at a college approved by -Ontario's Ministry of Training, Colleges and Universities. All colleges seeking to offer paralegal education must apply to the Law Society for accreditation and are audited every five years. Further, the Law Society specifies the minimum instructional hours and mandatory courses in substantive law, which cover the essential elements of procedural and substantive legal services practice, as well as ethical and responsible practice, certain other compulsory legal courses, which relate to legal accounting and computer applications, and a field placement.

Like lawyers, paralegals must also pass a comprehensive licensing examination and be deemed of good character to qualify for licensure. The Law Society's licensing examination is competency based and assesses a paralegal's knowledge of substantive and procedural law and ethical and professional responsibilities that have the most direct impact on the protection of the public and the provision of effective legal services. Licensed paralegals are also subject to ongoing regulation that includes possible auditing and discipline, and universal requirements, such as completing annual reporting, participating in annual continuing professional development, and carrying liability insurance.

Finally, the Law Society has robust regulatory, investigative and disciplinary measures in place for licensees who engage in professional misconduct or conduct unbecoming a licensee.

## Diversity in the Paralegal Profession

As you know, many refugees and immigrants who appear before the IRB do not speak English or French, and are completely unaware of their rights or Canada's legal processes. Additionally, many come from places with authoritarian regimes with corrupt justice systems and suffer from trauma because of the hardships they have faced in their home countries. Refugees are in desperate need of multilingual and multicultural licensed legal representatives who can quickly develop positive relationships with their clients. In this context, diversity of the paralegal profession is particularly helpful to effective representation of diverse clients with diverse needs.

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2 Law Society of Ontario By-Law 4, s. 6 <https://lso.ca/about-lso/legislation-rules/by-laws/by-law-4>.

The diversity of licensed paralegals is reflective of the Ontario population: 39.8% of licenced paralegals in Ontario are racialized and 66% of all paralegals are women.<sup>3</sup> In contrast, Ontario's lawyers are a less diverse population: 23.7% of lawyers in Ontario are racialized and 56.7% of lawyers are women.<sup>4</sup> The proposed amendment would reduce the diversity of available legal representation, to the detriment of the parties and the IRB as a whole.

It is our experience that diverse representation improves the provision of legal services for all clients, but particularly those who are vulnerable or belong to historically marginalized groups – groups that may regularly need services at the IRB. Further, parties appearing at the IRB must feel confident that their voices will be heard, and the diversity of legal representation at the IRB plays a key role in ensuring this.

## The IRPA

Section 91 of the IRPA authorizes any member in good standing of a law society of a province, including a paralegal, to represent or advise a person for consideration — or offer to do so — in connection with the submission of an expression of interest under subsection 10.1(3) or a proceeding or application of the IRPA.<sup>5</sup>

Section 91 of the IRPA is a clear, concise provision that leaves no room for interpretation. It responds to submissions that the Law Society made to the Standing Committee on Citizenship and Immigration when it was considering Bill C-35, an Act to amend the *Immigration and Refugee Protection Act*. The transcript reveals that committee members had an accurate description of paralegals including their scope, training and regulation while reviewing and considering the legislation.<sup>6</sup>

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<sup>3</sup> Further information regarding paralegal demographic diversity can be found on the Law Society website at [https://lawsocietyontario.azureedge.net/media/iso/media/paralegal/snapshot-paralegals2019\\_eng-aoda.pdf](https://lawsocietyontario.azureedge.net/media/iso/media/paralegal/snapshot-paralegals2019_eng-aoda.pdf)

<sup>4</sup> Further information regarding lawyer demographic diversity can be found on the Law Society website at [https://lawsocietyontario.azureedge.net/media/iso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyers2019\\_eng-aoda.pdf](https://lawsocietyontario.azureedge.net/media/iso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyers2019_eng-aoda.pdf)

<sup>5</sup> IRPA, s. 91(2)

<sup>6</sup> See [Transcript of the meeting of the House of Commons Committee on Citizenship and Immigration](#), November 1, 2010. “paralegals providing legal services in Ontario can only be licensed if they have completed an accredited community college program. The law society accredits the programs. We've done extensive research into the competencies required, which we can discuss if questions are asked.

In addition to that, paralegals must satisfy other criteria. As with the lawyers we license, they must all be of good character. They must pass a licensing examination that tests different competencies than the competencies required under the accredited college programs. They are required, under those licensing exams, to focus on the issues of professional responsibility, ethics, and so on.

In addition, paralegals, once licensed, must abide by the paralegal rules of conduct, which are very similar to the lawyers' rules of professional conduct. If they handle and hold client funds, they must maintain a trust account. As with our lawyers, they are subject to spot audits of their books and records. Also, they must cooperate with reviews of their practices.

Beginning in January 2011, they will also be required to take 12 hours per year of continuing professional development education. They will be suspended from providing legal services--suspended from their practice, if you will--if they don't complete that education over the course of that year. They

While s. 91 of the IRPA permits licensed paralegals to provide a broad scope of services,<sup>7</sup> the Law Society's By-Law 4 limits this scope to advising and representing parties in proceedings before the IRB. These services are consistent with the other services that paralegals are licensed to provide and the inclusion of these services in the paralegal scope recognizes that many paralegals have a great deal of expertise representing parties at tribunal proceedings.

If paralegals want to provide services set out in s. 91 of the IRPA beyond what is permitted in By-Law 4, they are required to be licensed by the College of Immigration and Citizenship Consultants. Accreditation and licensing with the College requires completion of the same mandatory diploma program in immigration and citizenship law at Queen's University<sup>8</sup> that immigration consultants must complete.

For all of the reasons above, we recommend that the Government maintain s. 91 of the IRPA in its current form. If the Government intends to consider the amendment proposed by the CBA, we would ask that the Law Society be included in the necessary consultations that would occur.

Thank you for considering our comments. If you have any questions regarding this matter, please do not hesitate to contact me.

Yours truly,



Teresa Donnelly  
Treasurer

Copies:

Mike Jones, Office of the Minister of Immigration, Refugees and Citizenship  
Lisa Jorgensen, Office of the Minister of Justice and Attorney General of Canada  
Kyle Hyndman, Chair, CBA Immigration Law Section  
Steven Rotstein, President, CBA

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would be reinstated once they have completed it. To maintain a licence, they need to have insurance of \$1 million--\$2 million in the aggregate.

The law society also operates a compensation fund. If a client has been subject to dishonest action on the part of the paralegal, there is compensation provided by the law society; for example, in the instance of fraud.

The law society of course has an established discipline process. We discipline paralegals as well as lawyers in the event that there are issues with their conduct, competence, or capacity, and we also prosecute unauthorized practice."

<sup>7</sup> IRPA, s. 91(2)

<sup>8</sup> The Université de Montréal was recently announced as the French-language provider.