

# Paralegals (Romanowicz)

## BACKGROUND

- Romanowicz was convicted of a *Criminal Code* offence, being represented at trial by a paralegal expert. His summary conviction appeal, raising the role of the trial judge in ensuring competence of or forbidding representation by a paralegal agent, and the entitlement of an agent to represent a defendant in a summary proceeding, was dismissed. This was appealed to the Ontario Court of Appeal.
- The CBA's interest is premised on CBA resolutions calling for the effective training, supervision and regulation of paralegals.
- An intervention was requested by CBA-O, to be conducted by the Branch. While the CBA Public Interest Intervention Policy prefers interventions at the highest level of appeal, the issues in this case were considered to warrant a national intervention.
- In August 1998, CBA Council called for an amendment to *Criminal Code* section 800, that non-lawyers acting for remuneration not be permitted to represent defendants in summary conviction proceedings.

## CURRENT STATUS

- In August 1999, the Court of Appeal held that it is constitutionally legitimate for a paralegal to appear in criminal courts on Crown-election offences where the Crown has elected to proceed summarily. Further, there is no constitutional right to effective representation where an accused chooses to be represented by an agent who is not a lawyer. Trial judges should satisfy themselves that the accused's choice of representation was an informed one, but that there is no mandatory obligation on a trial judge to conduct a competency inquiry.
- The Court issued a strongly-worded attempt to prod the government to enact rules and regulations governing the education and abilities of paralegals. The CBA continues to pursue this approach with federal, provincial and territorial Attorneys General.
- Bill C-15, reintroduced in March 2001, prohibits agents from acting for remuneration in summary conviction offences with a maximum penalty of greater than six months, unless agents are authorized under a provincially approved program. As part of Bill C-15A, this provision received Royal Assent in June 2002 (S.C. 2002, c.13).
- OBA responded to *Framework for Regulating Paralegal Practice in Ontario*, a report by former SCC Justice Cory commissioned by the Ontario Government. Cory recommended, *inter alia*, that only licensed paralegals be permitted to appear in criminal matters, and then only on a limited number of summary conviction matters.
- Ontario's *Access to Justice Act* expanded the Law Society's mandate as of May 2007 to include independent paralegals. OBA's Task Force on Paralegals supported the Law Society of Upper

Canada regulating paralegals in Ontario, but recommended amendments to enhance public protection when engaging legal services.

#### **NEXT STEPS**

- L&LR staff will monitor national initiatives relating to the unauthorized practice of law, and will provide assistance on request to Branches working on initiatives to regulate paralegals in their jurisdictions.