

Watch lawyers dance the limbo

The line that sums up the legal industry and its on-again fight with paralegals is: After all is said and done, much is said and little is done.

Changing the rules under which lawyers thrive, is like changing the Ten Commandments. In the lawyers' prayer book someplace is a commandment that says: The public shall not solve its problems by giving its money to anybody but a lawyer.

The high priest of the profession in Ontario, the Law Society of Upper Canada, has laid charges again under The Law Society Act, taking a run at two of the 1,000-plus paralegals operating in Ontario. One of them, **Maureen Boldt** of North Bay, has been through it many times. If the court appearances could be compared to rounds in a box-



Dave Brown
Brown's Beat

ing match, and I was a fight judge, my card would read Boldt-8, LSUC-1. With one round to go, the law society is battered, but there's still hope. Ms. Boldt is on the ropes. She is financially exhausted. The law society could win by a knock out.

The question that comes up now is about timing.

Why is the law society stepping back into the ring now, when the Harris government has commissioned retired Supreme Court of Canada judge **Peter Cory** to end the turf war and draw guidelines for who can do what? Early next year, Mr. Cory will hand in his recommendations and the problem should be resolved.

We move now from boxing to limbo dancing. Mr. Cory is being asked to set the level of the bar. (Pun intended.) If he sets it too high, there's a

chance one helluva lot of lawyers at the low end of the income scale are going to limbo under to the paralegal side. That would save them \$3,150 (plus tax) a year for professional insurance, and \$1,414 for mandatory membership in the Law Society of Upper Canada.

Being a stickler for detail, the law society will argue these figures fluctuate. For example lawyers practising criminal law and immigration law get a 40-per-cent reduction in insurance rates. If they screw up a case, their clients are seldom in a position to sue, being either in jail or a foreign country. They get fewer claims, so they get a break.

Insiders say the big fear is that with a membership in the 18,000 range, the society could lose a sizeable chunk of that list to paralegal work.

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It depends on how much work Mr. Cory will deem can be done by the first aid clinics where paralegals work, rather than the legal operating theatres called courtrooms.

It's ground that has been plowed before. In the '80s, the Peterson government sent out a task force headed by University of Windsor president Ron Ianni. It was last heard from around 1990. Its proposals are buried away someplace. Much was heard. Little was done.

The law society insists its interest is in protecting the public. The paralegal field is self-governing. Lawyers are closely governed and are insured for errors and omissions. Should a lawyer foul up, the client is covered. Not so with paralegals.

There's a glitch here. Lawyers regularly hire paralegals to do downscale legal work. Once contracted to a lawyer, the paralegal is covered under the lawyer's insurance. The lawyer bills at his/her rate, pays off the paralegal at the lower rate, and keeps the difference.

Are paralegals missing an opportunity here? Why don't they get together in groups of about 500, and contract under one lawyer?

In bouncing that idea off a few lawyers this week, the response was usually a gee-whiz catch in the speech pattern. Being lawyers they could come up with reasons, but I found none convincing.

While researching the lawyer/paralegal issue, an interesting comparison turned up in one of these columns written in 1996. (I love to quote a source I can trust.)

The same resistance to change was faced by Marshall Hall (1790-1857). He was the British physiologist who put his career on the line to put an end to the practice of bloodletting. Bleeding patients was the accepted method of treating "the vapors," a term that covered many unknown ills, including erratic behavior caused by high fever. Lowering the blood volume calmed the patient. It usually killed too.

The change in established procedure wasn't easy. Dr. Hall was shunned in medical circles, but kicked his way back in and eventually made his peers see the light.

Lawyers say they just follow rules. They don't make them. They also fight change. They need an insider like Dr. Hall to make them see the problem.

The client is being bled dry.

Dave Brown is the Citizen's senior editor. Read previous Dave Brown columns at www.ottawacitizen.com