

- proofreading and revising a document that affects the legal interests of a person.

The *Act* limits the authority to practice law to members of the Law Society in good standing, professional corporations, students-at-law and properly supervised law students. The *Act* also sets out some important exemptions for, *inter alia*, self-represented litigants, public officers exercising their duty, and persons who do not hold themselves out as a lawyer and provide services under the supervision of a qualified Law Society member. In spite of these exemptions, a large group of individuals in society are prohibited from providing help to others in matters relating to legal obligations and/or rights. For instance, in contrast to laws in many other Canadian provinces, the *Act* appears to exclude people – including family, friends and neighbours – and community organizations from providing any legal support or advocacy assistance even without any expectation or requirement of a fee or reward.¹

Many people find manoeuvring through the complex legal system on their own a daunting task. In an ideal world, everyone in need of legal assistance would be able to avail him- or herself of a thoroughly-trained professional with full insurance, institutional support and oversight. However, the reality of access to legal services in New Brunswick, as in the rest of Canada, is far from this ideal. As the legal aid system is overstretched and under-inclusive, the only practical choice for many individuals who face linguistic, cultural and financial barriers in accessing the law is either to seek unpaid help from alternative sources or to receive no help at all. The ban on free legal services provided by community members or organizations effectively results in less help for those in need.

The CCLA therefore strongly urges the New Brunswick Government and the Law Society of New Brunswick to amend the *Law Society Act, 1996* and its associated rules¹ so as to exempt

¹ The equivalent legislative provisions in most other provinces either narrowly define the "practice of law" to include only activities performed in the expectation or receipt of a fee or reward, or stipulate free legal services as a specific exemption from the general prohibition against practicing law without a license. See e.g., *Legal Profession Act*, S.B.C. 1998, c. 9, s. 1(1) ("In this Act ... 'practice of law' ... does not include (h) any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed."); *Legal Profession Act, 1990*, S.S. 1990-91, c. L-10.1, s. 30(1) ("No person, other than a member who holds a certificate, shall ... (b) advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law of Saskatchewan or of any jurisdiction outside Saskatchewan ..."); *Legal Profession Act*, C.C.S.M. c. L107, s. 20(3) ("A person who does any of the following, directly or indirectly, for or in the expectation of a fee or reward is deemed to be carrying on the practice of law ..."); *Legal Profession Act*, S.N.S. 2004, c. 28, s. 16(2) ("No person shall carry on the practice of law in the Province for fee, gain, reward or other direct or indirect compensation ..."); *Legal Profession Act*, R.S.P.E.I. 1988, c. L-6.1, s. 21(1) ("The practice or profession of a barrister, solicitor or attorney includes ... the holding out to the public or the doing by any person, for fee, gain, reward or otherwise, directly or indirectly, of any of the following things ..."). In a couple of other provinces, although not constituting a general exemption, provision of legal services without a fee is exempted from legal prohibition in some specific circumstances. See e.g., *Law Society Act*, R.S.O. 1990, c. L.8, By-law 4, s. 30(1) (the by-law exempts individuals from providing legal services without a license if, *inter alia*, acting for friend, neighbour or family without receiving or expectations to receive any compensation); *Law Society Act, 1999*, S.N.L. 1999, c. L-9.1, s. 76(1) ("A person, other than a member in good standing or a professional law corporation holding a valid licence, shall not engage in the practice of law, except ... (b) a person drawing, preparing, revising or settling a testamentary document or a document pertaining to real or personal property or a document that is intended to be enforceable by law or to have a legal effect for his or her own use, or for others without receiving or expecting to receive a fee, gain, reward or benefit").

individuals and groups who provide legal services free of charge from the general prohibition on the practice of law. Not only will such reforms improve access to justice in the province, but the government and the law society may also still be able to protect consumers and enforce basic ethical standards relating to the provision of legal services by retaining some supervisory jurisdiction over individuals and organizations that habitually provide free legal services. In fact, if such amendments are adopted, the CCLA would encourage the government and the Law Society to proactively engage in discussions with community groups regarding how to facilitate the ethical provision of free legal information and support.

In addition to free legal services offered by individuals and groups, some politicians and advocates have argued that paraprofessionals who provide paid legal services should also be given the authority to practice law so long as they are adequately regulated. For example, in introducing the *Access to Justice Act, 2006* that sought to regulate paralegals in Ontario, the province's Attorney General at the time, Michael Bryant, suggested that "[t]he regulation of paralegals would increase access to justice by giving consumers a choice in the qualified legal services they use, while protecting those who receive legal advice from non-lawyers."² Of course, the decision to adopt a similar paralegal regulatory scheme in New Brunswick is one for the government and the Law Society. Nevertheless, the CCLA stresses that the access to justice implications must be a paramount concern in such a decision-making process.

We greatly appreciate your attention to this matter and look forward to your reply.

Sincerely,



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² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, No. 11 (27 October 2005) at 494 (Michael Bryant).