

# Non-Lawyer Criminal Legal Professional Roles and the Law Society of Alberta



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## Learning Outcomes

After completing this chapter, you will be able to:

- Differentiate between the roles commonly held by non-lawyer legal professionals in Alberta criminal law firms.
- Identify the role of independent paralegals, the legislation that allows non-lawyers to appear as agents for clients in Alberta, and the need for regulation of paralegals.
- Outline the Law Society of Alberta rules that relate to non-lawyer legal professionals working in a criminal law firm under the supervision of a responsible lawyer, including avoiding misrepresentation.

## Introduction

Non-lawyer legal professionals play a crucial role in criminal law firms. Criminal lawyers are typically referred to as “criminal trial lawyers,” which is an appropriate title since criminal lawyers spend most of their time at court or in trial. Due to a lawyer’s lack of available time to properly support or train legal assistants and paralegals, many tasks fall to these professionals in the lawyer’s absence without proper guidance. This can lead to communication errors and disorganization, which can have significant ramifications on clients. This text provides a guide for legal professionals using common criminal client file situations, from arrest to sentencing, in Alberta.

Because paralegals are not regulated in Alberta, it is difficult to provide explicit differences between the roles of a legal assistant and a paralegal. In practice, an individual may see a paralegal employed with standard legal assistant duties and vice versa. In addition, law firms typically hire office managers to conduct the work of legal assistants or paralegals. In rare cases, a receptionist might also have the responsibilities of a legal assistant. Since regulation of paralegals is not on the Law Society of Alberta’s radar, this presents a level of difficulty for job seekers as well as for law firms given the discrepancy between roles and responsibilities.

Many firms have minimal support staff, with smaller firms hiring only one or two legal professionals and larger firms hiring staff with a general ratio of 1:2 or 1:3 support staff to lawyers. Given the above, it is fair to assume that many legal professionals working at a firm are responsible for many tasks expected of each role, regardless of their employment title.

## Non-Lawyer Criminal Legal Professional Roles

There are four types of roles commonly held by legal professionals in criminal law firms. It is important to understand the loose definitions of each role since job postings or employment offers often use one of these titles in Alberta.

We’ll discuss the four roles in order of least responsibility to most. Again, keep in mind that many of these roles have overlapping tasks because of an undefined definition of what a paralegal’s tasks require in Alberta. We will discuss the role of an independent paralegal in the section following this one.

Table 1.1 provides an overview of the four common roles of legal professionals in criminal law firms and also independent paralegals.

**TABLE 1.1 Non-Lawyer Criminal Legal Professional Roles**

Role	Features and Responsibilities of the Role
<b>Receptionist</b>	<ul style="list-style-type: none"> <li>• Entry level</li> <li>• Clerical tasks (telephone calls, receipts, general correspondence)</li> </ul>
<b>Legal Assistant or Paralegal</b>	<ul style="list-style-type: none"> <li>• Manages client files from start to finish</li> <li>• Drafts court documents and correspondence with client</li> <li>• Oversees lawyer’s calendar</li> <li>• Requires knowledge of Alberta courts processes</li> <li>• Junior and senior roles</li> <li>• Varied paralegal roles depending on whether one works for the defence or with the Crown’s office</li> </ul>
<b>Office Manager</b>	<ul style="list-style-type: none"> <li>• Could have legal assistant responsibilities in addition to management responsibilities</li> <li>• Could have bookkeeping responsibilities in addition to legal assistant and management responsibilities</li> </ul>
<b>Bookkeeper</b>	<ul style="list-style-type: none"> <li>• Sometimes hired as contractors</li> <li>• Sometimes this is an additional task of the office manager</li> <li>• Sometimes this is an additional task of the legal assistant</li> </ul>
<b>Independent Paralegal</b>	<ul style="list-style-type: none"> <li>• Work outside of law firms</li> <li>• Can have any level of training—anyone can call themselves an independent paralegal</li> <li>• No ramifications if providing incompetent legal services</li> <li>• Work on quasi-criminal law matters</li> </ul>

## Receptionist

Although an entry-level role, the receptionist is integral to a law office because they handle incoming telephone calls and communicate directly with clients in person, which needs to be done effectively and professionally. The receptionist may also schedule client meetings for the lawyers in the office, draft receipts for legal fees received from clients, and handle incoming/outgoing correspondence through mail, facsimile, or by monitoring a general firm email account.

While Microsoft Teams or Zoom meetings gained popularity during the COVID-19 pandemic, contact through email and telephone continue to be incredibly important communication tools in a criminal law office. Many of a criminal law firm’s clientele will contact their lawyer from a correctional facility via telephone since they are (obviously) unable to meet with their lawyer in person at the office. The receptionist is responsible for monitoring and handling telephone calls among other communication methods, while also preparing appropriate phone messages for the respective lawyers.

## Legal Assistant

The criminal legal assistant is responsible for handling all client file management for their respective lawyer(s). This responsibility includes, among other things, drafting court documentation as per the lawyer’s instructions; drafting communications to clients, courts, Crown prosecutors, and/or co-counsel; and requesting disclosure. In many cases, the legal assistant will also be responsible for handling the tasks conducted by the receptionist, but with a higher level of expectation and knowledge of Alberta courts procedures.

Scheduling client meetings for later in a client’s case (i.e., prior to trial) requires an extensive understanding of the lawyer’s calendar and the criminal client file. We mentioned in the preface that failure to properly administer a lawyer’s calendar can have devastating consequences for the client. The receptionist may not have authority to add or edit entries to a lawyer’s calendar because of the consequences that *not* entering a client’s first appearance, bail hearing, trial, or sentencing date could have, both on the client and on the lawyer. The importance of calendar management will be discussed in Chapter 3.

Many legal assistants maintain their role under this title for the entirety of their career, with progressively more responsibilities from their initial employment as a “junior legal assistant” to a “senior legal assistant.” Those holding a senior title draft complex court documents with assistance from their respective lawyer(s) and may have more knowledge and responsibility for the law practice’s management in the lawyer’s absence.

The caveat to offering a loose definition for the role of a criminal legal assistant is that many law firms provide employment to individuals under the role of “legal assistant” but may only offer responsibilities to the individual consistent with the role of a receptionist, particularly for junior legal assistant titles. Further, many legal assistants also undertake bookkeeping responsibilities of the firm, which broadens the discrepancies between roles and responsibilities among legal support staff. The level of responsibility a legal assistant has within the firm is not just found in the employee’s job description but is also built on trust between the legal assistant and the lawyer(s). As stated earlier, the relationship between the lawyer and the legal assistant is interdependent, meaning that each person must trust and have confidence in the other that the tasks that must be completed are not only completed but done well. This relationship of trust is built upon strong communication skills and the ability of each person to perform their job accurately, with high quality, and in the best interests of the client.

Many students who receive post-secondary education in a legal assistant or paralegal studies program in Alberta begin their career by working in entry-level receptionist or junior legal assistant positions to learn proper procedure of criminal files before advancing. Most firms seek to hire support staff who have formal education in one of these programs, but not all firms do. This can be frustrating to many new graduates when they enter the workforce, as many of their colleagues may lack formal legal assistant or paralegal training yet hold seniority or management titles because those individuals received workplace training and have worked their way up in the firm.

### civil lawyers

lawyers who do not practise criminal law. Civil lawyers can practise in a variety of different areas of law, but they usually specialize in one or only a few areas. Civil law firms in Alberta are typically very large, with over 40–50 lawyers in one firm alone

### corporate lawyers

lawyers who handle legal business issues related to the formation of companies and how they are operated and managed. Lawyers working in corporate law tend to work in very large law firms (50+ lawyers)

## Office Managers and Bookkeepers

This text often refers to the office manager and bookkeeper roles in a criminal law firm as two different individuals. However, in practice, one person may hold both roles *in addition to* handling tasks typically assigned to a senior legal assistant, often while maintaining a formal title of legal assistant.

Most future legal professionals think that a law firm’s structure is similar to what has been shown in legal television shows—like *Suits*, for example. In the series *Suits*, the law firm spans an entire floor of a building, with offices upon offices filled with lawyers, articling students, and support staff. We are led to assume that this organization has well over 30–40 lawyers in their firm. In large firms that employ **civil lawyers** or **corporate lawyers** in Alberta, this structure is common, with differing levels of managers per department: hiring manager, manager of associates, managing partners,

finance manager, manager of legal assistants or paralegals, and so on. Therefore, a sole “office manager” role is simply not feasible for the number of employees required in a large civil or corporate law firm like that shown on the television show *Suits*.

However, *criminal* law firms in Alberta are structured differently, with large law firms operating with anywhere between 10–15 criminal defence lawyers and few support staff. Although there are a few large criminal law firms in Alberta, the vast majority of criminal defence lawyers work in a practice with five lawyers or less. Fewer lawyers practising in a firm therefore require less support staff and minimal, if any, management staff.

Given that so many criminal law firms operate with a small number of lawyers, why are the role of an office manager or bookkeeper singled out in this section when most individuals who work in the industry do not carry that title? *Here is why*: for future non-lawyer legal professionals who aim to work in a criminal law office, it is important to understand that the various tasks required of criminal legal professionals are not typically differentiated based on a résumé or job posting but are found within the umbrella term of “legal assistant.” There is room for increasing responsibilities within a criminal defence firm that may include management of administrative personnel, conducting firm payroll and basic bookkeeping duties in accordance with the **Law Society of Alberta rules** (which are contained in the Society’s *Code of Conduct*),<sup>1</sup> and day-to-day management of the practice under the supervision and direction of the responsible lawyer(s).

According to the rules of the Law Society of Alberta, every law firm must appoint a designated representative who is an active member of their society (i.e., a practising lawyer) to manage the law firm. Among many of the tasks required of the designated representative, they must ensure the law firm’s compliance with the Law Society of Alberta’s rules and oversee the management of the firm, which includes overseeing all employees—lawyers, articling students, and support staff (receptionists, legal assistants, bookkeeper, office manager, etc.)—*while also practising law*. In criminal law, this is difficult to do well.

Only lawyers can own a law firm in Canada. Non-lawyers with management expertise cannot open their own law firms. Rather, lawyers, who often have no business training or expertise, open their own law firms with an intent to practise law; however, many of them lack the knowledge (or drive) required to build and sustain a successful small business. It is likely for this reason that the Law Society of Alberta offers a significant number of practice management resources on their website to bridge the knowledge gap between knowing how to practise law and knowing how to manage a law firm. In many cases, hiring support staff to handle day-to-day management can alleviate the stress lawyers may feel from the need to best support their clients while also satisfying the Law Society’s practice management requirements and retaining employees.

A busy criminal defence lawyer spends a majority of their time in court and is therefore working outside of the office most days. This does not offer an opportunity to effectively manage their business in person, nor does it provide the time to handle the day-to-day management of their office, regardless of whether they can attend in person or not. This situation becomes particularly difficult when many

### Law Society of Alberta rules

the rules are specific regulations, responsibilities, and professional standards all lawyers are required to meet and uphold in Alberta

<sup>1</sup> Law Society of Alberta, *Code of Conduct* (30 November 2023), online (pdf): <<https://documents.lawsociety.ab.ca/wp-content/uploads/2017/01/14211909/Code.pdf>>.

criminal lawyers who own their firm handle all management and bookkeeping duties themselves. Those firms are notoriously mismanaged and often make clerical errors because of the managing lawyer's effort to reduce overhead costs by assuming those tasks themselves in lieu of delegating those tasks by hiring legal professionals such as an office manager or bookkeeper.

## Paralegals at the Crown Prosecutor's Office

While paralegals have larger roles working in Alberta Justice or the Public Prosecution Service of Canada in the Crown prosecutor's offices, paralegals in private criminal law firms are mostly non-existent. Tasks seen in the public sector for criminal paralegals may include meeting with and interviewing witnesses, clerical work like drafting court documents, and conducting research. Paralegals in the public sector may work on a range of different criminal cases or be assigned to specific types of complex cases—such as homicide cases, for example. Paralegals in Alberta typically work within a law firm under the supervision of a responsible lawyer, and although their role exists in the public sector under the umbrella of criminal law, paralegals are far more prevalent in civil litigation performing primarily clerical work through drafting memos, submissions, and pleadings; meeting with clients; and conducting legal research.

## Independent Paralegals

Defining the role of a paralegal is difficult, not only because of the lack of paralegal regulation in Alberta, but also because of the inconsistencies of paralegal regulation across Canada. As of the publication date of this text, the only province in Canada that regulates paralegals through its law society is Ontario. The rest of the provinces and territories lack any regulation of paralegals. However, Niki Sharma, KC, attorney general with British Columbia has planned significant reform with respect to the regulation of paralegals. The Law Society of Alberta introduced an innovation sandbox in 2021 with an opportunity for non-lawyers to apply for recognition from the organization to provide accessible and affordable legal services to the public, but as of 2023, the only approved participants have been technology providers for law firms—there are no paralegal regulations yet.<sup>2</sup> In contrast, the Law Society of British Columbia has used their innovation sandbox to issue “no action” letters to paralegals and other non-lawyer legal professionals who provide legal services in the form of legal advice or legal coaching in a variety of areas of law, allowing non-lawyer legal professionals to provide legal services with a promise from the Law Society that they will not act on any unauthorized practice of law violation for the individual named in the approval letter.<sup>3</sup>

There is a grey area in Alberta legislation that allows non-lawyer individuals to attend as **agents** on behalf of clients for quasi-criminal offences. Those agents who work outside of a law firm and operate without a responsible lawyer are considered independent paralegals. Prior to the passing of Bill C-75 in 2019 by the federal government, independent paralegals had the authority to represent defendants in criminal

### agents

a person paid for legal services but who is not a barrister and solicitor (i.e., not a member of the Law Society of Alberta) as defined by Frasham J in *R v Spiry*, 2005 ABPC 309

<sup>2</sup> Law Society of Alberta, “Approved Sandbox Participants,” online: <<https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/approved-participants>>.

<sup>3</sup> Law Society of British Columbia, “Approved Participants,” online: <<https://www.lawsociety.bc.ca/priorities/innovation-sandbox/approved-participants>>.

summary conviction proceedings if the maximum penalty was six months or less, *unless* the agent was authorized to do so under a provincially approved program, which would include a paralegal program (Government of Canada).<sup>4</sup> As the province of Alberta does not regulate paralegals, independent paralegals (and students at law, for that matter) cannot represent clients on criminal proceedings in Alberta courts.<sup>5</sup>

Due to the lack of paralegal regulation and inability to represent criminal clients, many independent paralegals represent those who have been charged with quasi-criminal offences. As criminal offences are violations of the *Criminal Code*,<sup>6</sup> which is federal legislation, quasi-criminal offences are violations of provincial or municipal legislation.<sup>7</sup> Examples of quasi-criminal offences are workplace health and safety issues, employment standards, traffic offences, and municipal by-law charges, to name a few.<sup>8</sup>

## The Need for Better Regulation of Alberta Paralegals

Access to justice in Alberta has been a growing issue for years, and access was even more difficult during the COVID-19 pandemic (courthouse lockdowns, public health restrictions, etc.). Combine this with a rising cost of living, and many individuals simply cannot afford a lawyer. An independent paralegal offers lower cost legal services but is not held accountable for their services in the same manner that a lawyer and member of the Law Society of Alberta is. In addition, there is also no recourse for review, complaint, or discipline of a paralegal. While independent paralegals may have the knowledge and experience necessary to perform tasks that are in the best interests of their clients, there is no standardized education or training program that qualifies an independent paralegal in Alberta.

*Anyone can claim to be an independent paralegal in Alberta, regardless of their education or experience.* In other words, if a client hires an independent paralegal to represent them for a quasi-criminal offence and that person does not attend in court on their behalf or provide any services after they have been hired and paid, there is no governing body for the client to report that individual to. This is concerning, because independent paralegals who offer legal services without upholding their commitment to the public are harming individuals with destructive consequences. Consider the following scenario:

An individual hires an independent paralegal (or legal agent) to appear in court on their behalf for a traffic offence on a part two traffic ticket, which requires a mandatory court appearance. On the court date, the independent paralegal fails to attend court. The provincial prosecutor notices the individual's absence and the absence of their paralegal when called on the docket list, and they request a warrant for the individual's arrest by the court. That

4 Government of Canada, "Legislative Background: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts to make consequential amendments to other Acts, as enacted (Bill C-75 in the 42nd Parliament)," online: <<https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html>>.

5 See *R v D'Arcy*, 2015 ABPC 6.

6 *Criminal Code*, RSC 1985, c C-46.

7 Maureen McGuire & Shelley Tkatch, "An Introduction to Criminal Law" (2012), online (pdf): *Legal Education Society of Alberta* <[https://lesaonline.org/samples/61820\\_00\\_p1.pdf](https://lesaonline.org/samples/61820_00_p1.pdf)>.

8 For a comprehensive list, see *Justice of the Peace Regulation*, AR/1999, s 3.

request is granted. The next day the individual is halfway through their shift at work when a police officer recognizes their full name from their name tag and arrests them in front of their employer for failing to attend court. Their employer promptly fires them from their job, and they are issued a charge for failing to attend court.

This scenario sounds outrageous and unrealistic, but situations like these are far more common than most who do not work in the legal industry realize. An individual who seeks out an independent paralegal because they cannot afford a lawyer's fees, but then receives inadequate service or a lack of service, faces an even larger financial burden and barrier or access to justice. This scenario also shows how one traffic matter can easily turn into further charges (failing to attend court), creating a domino effect and placing that individual at increased risk for future interactions with law enforcement or placing a significant financial burden on them that may push them into poverty.

## The Alberta Association of Professional Paralegals

The Alberta Association of Professional Paralegals (AAPP), an advocacy group for the regulation of paralegals in Alberta, recognizes these concerns, and the current president, Heidi Semkowich, states that the AAPP routinely receives complaints from the public regarding independent paralegals providing subpar legal services in Alberta.<sup>9</sup> However, the organization cannot offer a resolution because there is no regulation for paralegals, and thus they have no governance over the complaints. The AAPP has been advocating on behalf of legal support staff since 1981 and continues to advance the regulation of Alberta paralegals through specific education credentials and clarifying the roles of paralegals and legal assistants in the legal profession.<sup>10</sup> Much like how the Law Society of Alberta regulates the profession of lawyers, the AAPP hopes Alberta paralegals can be recognized for their skills, knowledge, and ability to fill the need for accessible legal support in an ethical, professional, and regulated manner, much like Ontario's paralegals.<sup>11</sup>

## Unauthorized Practice of Law

In general, an unauthorized practice of law involves giving legal advice, drafting legal documents, negotiating legal rights, and analyzing or interpreting the law.<sup>12</sup> However, the reality is that those tasks aren't necessarily black and white when non-lawyers are assisting lawyers in a busy law office—some of the lines of "who does what" can become blurred. While it is fairly obvious to detect an unauthorized practice of law in an independent paralegal practice, it is less obvious to the public when a legal assistant or other legal professional working in a criminal law firm may inadvertently find themselves placed in a predicament by their responsible lawyer(s).

9 Heidi Semkowich, "Regulating Paralegals in Alberta" (2022 July 25), online: *LawNow* <<https://www.lawnow.org/regulating-paralegals-in-alberta>>.

10 Alberta Association of Professional Paralegals, "What We Do," online: <<https://www.alberta-paralegal.com>>.

11 Semkowich, *supra* note 9.

12 Law Society of Alberta, "Unauthorized Practice of Law," online: <<https://www.lawsociety.ab.ca/regulation/unauthorized-practice-of-law>>



# Legislation, Rules, and Codes Regulating Authorized Practice of Law in Alberta

Let's first discuss the legislation surrounding the unauthorized practice of law in the *Legal Profession Act*,<sup>13</sup> which the Law Society of Alberta derives its authority from to oversee the legal profession in Alberta.

According to section 106(1), no person shall, unless the person is an active member of the Law Society of Alberta:

- (a) practise as a barrister or as a solicitor,
- (b) act as a barrister or as a solicitor in any court of civil or criminal jurisdiction,
- (c) commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or
- (d) settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort.

The Act further discusses a lawyer's misrepresentation in section 107:

- (1) No person shall, unless the person is an active member of the Society, hold out or represent that the person is an active member of the Society, or a person lawfully entitled to practise law or to carry on the practice or profession of a barrister or solicitor.
- (2) No person shall, unless the person is a member of the Society, hold out or represent that the person is a member of the Society or a barrister and solicitor.

To sum up both sections above, no one in Alberta can provide legal services, nor promote themselves as a lawyer, unless they are an active member (lawyer) of the Law Society of Alberta. Furthermore, although independent paralegals do represent individuals on quasi-criminal matters in court, section 2.23 of the *Alberta Rules of Court*<sup>14</sup> states the following regarding obtaining non-lawyer assistance before the court:

- (1) The Court may permit a person to assist a party before the Court in any manner and on any terms and conditions the Court considers appropriate.
- (2) Without limiting subrule (1), assistance may take the form of
  - (a) quiet suggestions,
  - (b) note-taking,
  - (c) support, or
  - (d) addressing the particular needs of a party.
- (3) Despite subrule (1), no assistance may be permitted
  - (a) that would contravene *section 106(1)* of the *Legal Profession Act*,
  - (b) if the assistance would or might be disruptive, or
  - (c) if the assistance would not meet the purpose and intention of these rules.

<sup>13</sup> RSA 2000, c L-8.

<sup>14</sup> Alta Reg 124/2010.

(4) This rule does not affect the discretion of the Court, subject to any limits imposed under the *Legal Profession Act*, to grant a right of audience to any agent, other than a lawyer, to speak on behalf of an individual or corporation.

We should note that this section applies only to civil proceedings in the Court of King’s Bench and does not apply to anything in the Court of Justice, nor in criminal or quasi-criminal proceedings. This legislation prevents non-lawyers from handling any legal matters in Alberta. Although we have discussed that independent paralegals conduct work for those seeking assistance on quasi-criminal matters, the law is clear that all *criminal* matters are to be handled solely by a lawyer.

As mentioned earlier, it is far easier to identify an unauthorized practice of law in an independent paralegal’s actions than it is within a busy criminal law office with lawyers. If a paralegal attempts to attend in the Court of Justice on behalf of a client for a criminal matter, the judge would ask the individual to leave due to the paralegal lacking the qualifications required to attend in the Court of Justice—they are not a lawyer.<sup>15</sup> In a busy criminal law office, it becomes difficult to recognize the instances where an action can slide into the “unauthorized practice of law” territory and how seemingly harmless requests by a criminal lawyer can place a legal assistant/non-lawyer legal professional in a difficult position. These situations may not be noticeable to the client, which can lead to a misunderstanding of the legal assistant’s role by both the assistant and the lawyer.

According to section 6.1-3 of the Law Society of Alberta’s *Code of Conduct*, lawyers must not permit their non-lawyer staff to:<sup>16</sup>

- (a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
- (b) give legal advice;
- (c) [exercise judgment in giving or accepting] undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;
- (d) act finally without reference to the lawyer in matters involving professional legal judgment;
- (e) be held out as a lawyer;
- (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above..., in a supporting role to the lawyer appearing in such proceedings [or authorized by law or the Rules of Court];
- ...
- (g) be remunerated on a sliding scale related to the earnings of the lawyer, unless the non-lawyer is an employee of the lawyer;
- (h) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

<sup>15</sup> See *Criminal Code*, ss 800 and 802.1.

<sup>16</sup> The following quoted rules are taken from the Federation of Law Societies of Canada’s *Model Code of Professional Conduct*, <<https://flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Model%20Code%20Oct%202022.pdf>>. The Law Society of Alberta’s *Code of Conduct*, *supra* note 1, includes small wording changes that appear here.

- (i) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
- (j) sign correspondence containing a legal opinion;
- (k) sign correspondence, unless
  - i. it is of a routine administrative nature,
  - ii. the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,
  - iii. the fact the person is a non-lawyer is disclosed, and
  - iv. the capacity in which the person signs the correspondence is indicated;
- l) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyers knowledge and direction;
- m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
- ...
- [(n) set fees].

### CONSIDER THIS ...

As you read through the list of tasks that a non-lawyer cannot conduct in a law office, what do you notice? Do you see any tasks that might be easy to overlook as a lawyer task versus a non-lawyer task?

## Avoiding Misrepresentation as a Legal Assistant

Law firms are high-stress environments, and lawyers hold an enormous amount of responsibility representing their clients. An individual who has been accused of an assault charge will require competent representation before the court, regardless of whether they were wrongly accused or if they were in the wrong. The lawyer must understand the law, analyze the issues in the case, and attend in court prepared to argue the facts of the case on behalf of their client. Furthermore, given the nature of the cases a law office handles, when mistakes are made people *literally* go to jail.

The legal assistant shoulders a very small portion of this burden through the handling of client documentation, monitoring the lawyer's schedule, ensuring court documents are drafted with accuracy and filed in accordance with deadlines, and assisting in client communication throughout the process. Although both jobs are incredibly important during the course of a criminal client case, *at no time* should the legal assistant be providing the client with legal advice, nor should they be drafting the contents of a court document that requires an analysis of the legal issues in the case.

The line between unauthorized practice of law (or a misrepresentation of a legal assistant's knowledge) and a simple task like relaying a message from the lawyer to the client can be blurred depending on how the assistant handles the communication.

Let's use a scenario as an example of misrepresentation and unauthorized practice of law. A legal assistant has been tasked to contact a client and explain to them that

the Crown prosecutor's office has offered them a resolution for a guilty plea to a drug trafficking offence where the individual would receive two years in jail. The telephone conversation might look something like this when an assistant is aware of the tasks they can and cannot conduct (as outlined in the list above from the *Code of Conduct*):

*Hiromi (Assistant): Hello, Rachel. Mr Noway has asked me to provide you with the contents of an offer letter for resolution of your drug trafficking offence. This would entail you entering a guilty plea to this offence. The resolution offer is as follows [Hiromi gives a description of the offer].*

*Rachel (Client): Is this a good offer? Like, do you think I should take it?*

*Hiromi: That's a great question for your lawyer. Would you like to schedule a meeting with Mr Noway to discuss this with him in person, virtually, or via telephone?*

*Rachel: I'd like to schedule a meeting for next Wednesday in person, if possible.*

*Hiromi: Mr Noway has 1:00 p.m. and 2:30 p.m. available for a meeting. Which time works best for you?*

*Rachel: 2:30 p.m. works.*

*Hiromi: Excellent. Do you have our firm's office address?*

*Rachel: Yes.*

*Hiromi: Great. Mr Noway will see you next Wednesday at 2:30 p.m. in the office to discuss the resolution offer. Feng will be in the office at that time to receipt any retainer funds that may be required on your file for completion of the matter.*

In this scenario the client asks the assistant whether the offer is "good." The assistant cannot answer that question because they cannot provide legal advice to a client as a non-lawyer. At the very most in this situation, and in accordance with section 6.1-3(a) above from the *Code of Conduct*, the assistant may take instructions from the client ("Yes, I would like to take that offer"), but cannot provide any guidance as to whether the offer is "good" and must relay the details of that conversation to the lawyer as soon as possible. For these conversations, drafting a memorandum to file or a short note to the lawyer (either digitally or handwritten) to document the conversation for the client file is important. This documentation maintains continuity, so the lawyer knows what client communication has occurred and can follow up with the client accordingly.

The above conversation between the client and the legal assistant could have gone in an alternative direction. Let's see how this situation might have been handled if things went a bit differently:

*Mr Noway has asked his assistant to call a client to tell them that he received an offer from the Crown prosecutor's office on the client's criminal file. This offer involves the client pleading guilty to the offence they have been charged with, resulting in a criminal record. Mr Noway asks his assistant to tell the client it's a good deal and that they should take it.*

*Hiromi: Hello, Rachel. Mr Noway has asked me to provide you with the contents of an offer letter for resolution of your drug trafficking offence. This would entail you entering a guilty plea to this offence. The resolution offer is as follows [Hiromi gives a description of the offer].*

*Rachel: Is this a good offer? Like, do you think I should take it?*

*Hiromi: Yes. Mr Noway states it is a good offer.*

*Rachel: Would I have a criminal record?*

*Hiromi: You would have a criminal record.*

*Rachel: But my friend hired Ms Franks as his lawyer for a similar charge and she got him off the charge. Why do I have to take this deal?*

*Hiromi: Our office has dealt with matters like yours before. There's no way you would win at trial. You should definitely take this deal. We had one case where it went to trial and the client received ten years in jail.*

*Rachel: Ten years! Wow. Ok, fine. I guess I should probably take the deal.*

*Hiromi: I need you to sign some documents indicating that you are willing to accept this offer. Can I email them to you for your signature?*

*Rachel: Sure.*

*Hiromi: Great. I'll send over those documents right away and once I have a date scheduled for you to enter the guilty plea in court, I'll let you know.*

*Rachel: Ok. Thanks, lawyer lady. Hey, by the way, my friend just got picked up by the police and they've been charged with trafficking or something. Can you guys help her?*

*Hiromi: Yes, for sure. What's your friend's name and their next court date? We'll ask Feng to open a file for her right now if you can have her call with retainer information.*

*Rachel: Great! Her name is Avril Roy and court is next Wednesday. She's currently in the Edmonton Remand Centre. I'll have her call you.*

*Hiromi: OK. We'll get things started on her file right away. Talk soon.*

*Rachel: Bye.*

## CONSIDER THIS ...

What parts of this conversation are concerning in relation to the rules set out in the Law Society of Alberta's Code of Conduct?

This conversation seems relatively innocent to a person who is unaware of the rules lawyers and non-lawyers must abide by according to the Law Society of Alberta. The assistant truly seems competent, and the client seemed satisfied with the conversation. The client was so satisfied, in fact, that she referred her friend to the law office! So,

let's break down where the conversation started to blur the lines between what an assistant can and cannot do, starting with this sentence:

*Hiromi: Our office has dealt with matters like yours before. There's no way you would win at trial. You should definitely take this deal. We had one case where it went to trial and the client received ten years in jail.*

*Rachel: Ten years! Wow. Ok, fine. I guess I should probably take the deal.*

Mr Noway advised the assistant that the Crown prosecutor's deal was "good." The assistant did tell the client that the deal was good, however, the assistant added more details to the conversation by offering the client advice by mentioning that there was no way she could "win" at trial. There are no guarantees that one will win or lose at trial, for a variety of factors, but discussion on that topic far extends the scope of this text. Regardless, the assistant provided legal advice (incorrect advice, at that) to the client on this issue, and only active lawyers are permitted to provide legal advice. In referencing the definition of "providing legal advice," the Law Society of Alberta states the following:

Only active lawyers are permitted to provide legal advice. Providing legal advice means applying the law [...] to a particular situation. It includes analysis and recommendations, usually for the purpose of assessing the legal interests, rights or responsibilities of a client or another person.<sup>17</sup>

Rather than relaying the message that Mr Noway wished the assistant to state to the client, the assistant added extra details to the message that veered into providing legal advice. Is it possible that the client is *unlikely* to "win" at trial? Perhaps, but that advice should be delivered to the client from the lawyer, not the assistant. The assistant does not have the training required to provide an accurate analysis of the law unless they have attended law school. Perhaps the client's friend hired Ms Franks as their lawyer to "get them off" a similar charge, or perhaps Mr Noway's office has handled a similar case where the client's outcome resulted in ten years jail. In other words, even if these statements are true, it is not the role of the assistant to make them. The facts of each case vary widely, and to provide advice based on the outcome of a case alone without having the legal training to appropriately analyze a criminal case is incredibly dangerous to both the client and the lawyer, who is responsible for their assistant's actions.

"A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions."<sup>18</sup>

Mr Noway is responsible for his assistant's actions, as per the Law Society of Alberta. Because of this, we can consider the legal assistant an extension of the responsible lawyer in all communications. By providing the client with inaccurate advice, a relationship between the lawyer and a client may become strained, which may lead to

<sup>17</sup> Law Society of Alberta, "Legal Research: Guidance for Inactive Lawyers," online: <<https://www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/legal-research-guidance-for-inactive-lawyers>>.

<sup>18</sup> Code of Conduct, *supra* note 1, s 6.1-1.

communication issues during the client's case. When communication issues arise between the lawyer and the client, not only can this impact the client's defence (the lawyer and client should be "on the same page"), in extreme cases it could result in a complaint to the Law Society of Alberta for the offence of failing to adequately supervise staff.

The example above is quite minor, but without appropriate correction or confirmation of the legal advice given to the client by the lawyer the client assumes the information to be correct because their lawyer's *office* told them so. This is a reasonable assumption for a client to make, because they expect the lawyer and their support staff to provide them with accurate information. Many complaints that arise due to a lawyer's conduct can be managed through appropriate communication strategies, and those strategies are developed by building a working relationship of trust and respect between the assistant and the lawyer, with everyone staying within their scope and competently working toward completing the tasks at hand.

We must give Mr Noway's assistant credit in this situation, though, because she was given an impossible task. How can an assistant possibly contact an individual who is expected to receive time in jail as a resolution offer (meaning the matter will not go to trial) and *not* be inundated with questions by the client? Who would willingly take an offer of jail time without asking a single question? The client might also ask questions if the resolution offer posed to them involved other requirements, such as a no contact order, forfeiting seized items, abiding by a curfew once released, and so on. All these examples are realities that the client must be appropriately advised about because the consequences may (or will) alter their life. The lawyer must confirm that the client understands what entering a guilty plea to a resolution offer means and the consequences that the plea will have on the client's life. The conditions for a court to accept a guilty plea are outlined in section 606 of the *Criminal Code* as follows:

A court may accept a plea of guilty only if it is satisfied that:

- (a) the accused is making the plea voluntarily;
- (b) the accused understands
  - (i) that the plea is an admission of the essential elements of the offence,
  - (i) the nature and consequences of the plea, and
  - (i) that the court is not bound by any agreement made between the accused and the prosecutor; and
- (c) the facts support the charge.

### CONSIDER THIS ...

As a future non-lawyer legal professional, do you feel qualified to answer these questions in the affirmative if questioned by a judge?

Would you feel confident that this section of the *Criminal Code* has been discussed in enough depth with the client (from the conversation above) to ask your lawyer to attend in front of a judge and confirm that these requirements and client understanding have been met?

In reality, these questions are superfluous. We already know the answers, and that's because the answers stem from avoiding these situations in the first place by non-lawyers not offering legal advice to clients. So here is our greatest "pro tip" to avoid veering into unauthorized practice of law territory and not getting into hot water from a request by a lawyer, client, or whomever a non-lawyer legal professional encounters:

### **"THAT'S A LAWYER QUESTION"**

When in doubt, the response "That's a lawyer question" will get any non-lawyer out of a lot of tricky situations. Non-lawyers can end up in difficult positions, either because of requests made by lawyers (junior lawyers who know no better, or senior lawyers who should know better) or through communication with clients. Even if the task being asked by the client is something the non-lawyer may know the answer to but isn't sure of (they have a gut feeling that answering the client's question is not appropriate), revert to the statement "That's a lawyer question." The legal professional should follow this statement up with proper business etiquette by offering to schedule a meeting between the client and the lawyer, or to take a phone message for the lawyer to contact the client. Generally, clients will understand the limitations of a non-lawyer's role and will respect that they have referred their query to the lawyer for a response. When in doubt, "That's a lawyer question."

Working in criminal law as a legal professional can desensitize legal professionals over time from the real stress that clients are faced with when they've been charged criminally. Daily office routines include knowing client names, their charges, the documents required to draft for their file, and the processes that must be followed by the court. While clients have come to the office because they have been charged with a crime, they are not necessarily bad people, nor have they been convicted of that crime (at least not yet, and they may never be!). It's not uncommon for legal assistants to ask one another which client file they're supposed to send a letter to: the Howell Steffen who has been accused of assaulting his partner, or the Mike Clemente who has been accused of killing his best friend? These conversations tend to be as casual as asking the other person what they want to order for lunch, but both of the accused in this situation are dealing with a stressful and potentially traumatic time in their life—they *do not do what legal professionals do every day*. It is easy to forget that most people do not understand the legal system, both the structure and the procedures, and how to best communicate with their representative. An individual accused of a crime may only deal with a criminal lawyer once in their life. Legal professionals handle these types of matters every day. Think about these examples and how each would sound to a client:

- "You need a lawyer for a domestic assault? Great, we'll set up a consultation with one of our lawyers."
- "You have a friend who has been charged with trafficking? Wonderful, which lawyer would you like to speak with for a consultation?"
- "You're calling from jail, but you'll be out soon, and you need to schedule an appointment with your lawyer? Great, what time works best for you?"



These are daily conversations for legal professionals, but they aren't for most clients. This is important to recognize in the context of avoiding giving legal advice and how it is a slippery slope. Clients will (most likely) trust the people they speak with in their lawyer's office, regardless of the accuracy of the "advice" given, and most likely clients will not recognize when a non-lawyer is acting outside their scope of knowledge. In other words, the client won't call a non-lawyer out on their inappropriate actions, and the lawyer most likely will not be in the office to catch it (remember, they're probably in court!). Non-lawyer legal professionals need to monitor their actions because no one else will do it for them, until it's too late and the client or lawyer is upset and it becomes a communication nightmare.

Referring back to the conversation between Hiromi, Mr Noway's assistant, and Rachel, the client, the last part of the conversation becomes particularly problematic because the assistant not only allows a misrepresentation by allowing the client to think they are a lawyer, but the assistant also accepts a new client file on behalf of the lawyer without speaking to the client directly. Here's the section of that conversation again:

*Hiromi: Great. I'll send over those documents right away and once I have a date scheduled for you to enter the guilty plea in court, I'll let you know.*

*Rachel: Ok. Thanks, lawyer lady. Hey, by the way, my friend just got picked up by the police and they've been charged with trafficking or something. Can you guys help her?*

*Hiromi: Yes, for sure. What's your friend's name and their next court date? We'll ask Feng to open a file for her right now if you can have her call with retainer information.*

*Rachel: Great! Her name is Avril Roy and court is next Wednesday. She's currently in the Edmonton Remand Centre. I'll have her call you.*

*Hiromi: OK. We'll get things started on her file right away. Talk soon.*

*Rachel: Bye.*

Recall that a non-lawyer cannot misrepresent themselves as a lawyer. Further, a non-lawyer cannot accept cases on behalf of the lawyer without approval first. If Mr Noway told the assistant that the client would be requesting him to represent her friend prior to the telephone conversation, the acceptance of the case on Mr Noway's behalf would have been acceptable. Since a conversation between the assistant and Mr Noway surrounding the acceptance of a new client file did not take place, we can assume that the assistant has effectively accepted the case without the lawyer knowing.

As can be seen from the examples listed above, it is imperative that the legal professional understand what actions they can and cannot do within the scope of their role. Understanding role restrictions reduces communication errors with the lawyer and reduces any chance of misunderstanding between the lawyer and their client. Just imagine Mr Noway's surprise when he hears that he's accepted a new trafficking file! Did Hiromi inquire about whether the trafficking is related to drugs or people? Perhaps Mr Noway does not represent individuals charged with trafficking people, or there is a conflict of interest on that new file. These aspects were not considered before Hiromi accepted the file on behalf of Mr Noway, which is a significant problem.

There are individuals who represent clients who claim they are lawyers whose actions obviously contravene the rules set out in the Law Society of Alberta's *Code of Conduct*. Those explicit actions are not what we have focused on in this section because no competent non-lawyer legal professional suggests they are a lawyer. We have instead focused on the grey area, or the "slippery slope," of unauthorized practice of law by providing examples showing how easy it is for one comment to quickly turn to two or more comments that veer into unauthorized practice of law territory by providing clients with legal advice or a legal professional inadvertently misrepresenting themselves as a lawyer.

## Summary

According to section 2.1-1 of the Law Society of Alberta's *Code of Conduct*, a lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public, and other members of the profession honourably and with integrity. As we discussed earlier in the chapter, the non-lawyer (legal assistant, paralegal, etc.) is an extension of their responsible lawyer(s). The non-lawyer's actions reflect upon the lawyer, as the lawyer is responsible for the actions taken by the non-lawyer.

All legal professionals must work within their scope and competency levels, but more importantly, as indicated in the Code, those actions must be taken with *integrity* so as not to destroy public confidence in the administration of justice. People will stop trusting lawyers if legal professionals are not providing quality professional services. A lawyer's level of respect (both in the legal industry and in the community) can be lost over the severe mishandling of a *single* client file, especially if the mishandling was conducted by their assistant. Furthermore, the mishandling of a client file (or the law firm's practice, for that matter) can reflect upon the reputation of all legal professional (i.e., non-lawyer) staff in a law office. Much like respect can erode for lawyers should more lawyers perform actions without integrity or competence, the same can be said for non-lawyers working in criminal law firms. As paralegals are not regulated in Alberta, it is imperative that individuals working in paralegal or legal assistant roles perform their responsibilities with competence and integrity so as not to affect the perspective of all non-lawyer legal professionals working in criminal law.

## KEY TERMS

agents, 6

corporate lawyers, 4

Law Society of Alberta rules, 5

civil lawyers, 4

## REVIEW QUESTIONS

### Short Answer Questions

1. What challenges might non-lawyer legal professionals face in criminal law firms, and how can these challenges affect the law office's operations and their clientele?
2. What are the implications of the lack of regulation for paralegals in Alberta, and how does it affect the roles they can undertake in the legal profession?
3. What are the main differences between paralegals working in private criminal law firms and those employed in the public sector, particularly in Crown prosecutor's offices?
4. In what ways can the line between authorized and unauthorized practice of law become blurred for non-lawyer legal professionals working in busy criminal law offices, and how can those situations lead to potential misunderstandings between the legal assistants, clients, and their responsible lawyers?
5. In which section of the Law Society of Alberta's *Code of Conduct* does the following statement appear? "A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions."

### Exercise

This exercise allows you to reflect on the information discussed in this chapter by comparing the differing roles in a criminal law firm, recognizing their importance, and how the actions taken by the individuals in those roles might affect the public perception of the Alberta justice system. The following scenario is fictional but is based on real events.

Miguel Alvarez is a criminal lawyer practising in Edmonton, Alberta. He is part of a law firm with five lawyers and two administrative staff. The administrative staff include one legal assistant named Tani Yuu and an office manager named Elisabeth Roth who also handles the bookkeeping for all lawyers at the firm.

One of Miguel's clients is currently in custody at the Edmonton Remand Centre. The office has

received his client's disclosure from the Crown prosecutor's office, and Miguel has reviewed that information. Miguel's client is interested in seeking a resolution offer from the Crown prosecutor regarding their weapons offences. As the client is currently in custody, Miguel's assistant, Tani, must inquire with the correctional facility about the amount of time his client has already spent in custody. Knowledge of time spent in custody will be crucial for Miguel to negotiate a potential resolution offer with the Crown prosecutor.

Tani telephones the Edmonton Remand Centre and speaks with someone in the records department. During that conversation, she provides Miguel's client's full name and date of birth; this information is required for the individual working in the records department to access the time Miguel's client has spent at the correctional facility. The individual working in records states that the client has spent 60 days in custody at their facility. Tani drafts an email to Miguel advising him of the contents of that conversation.

Miguel contacts the Crown prosecutor's office with a request for a resolution offer, with the understanding that his client has spent 60 days in custody already. It is Miguel's intent to apply the time his client has already served in custody to any further jail sentence his client may receive upon a resolution agreement. The Crown prosecutor provides a resolution offer to Miguel with an acknowledgment that Miguel's client has already spent 60 days in jail.

Now holding a resolution offer from the Crown prosecutor's office, Miguel contacts his client to explain the resolution offer and advises them that their 60 days in custody have been applied to the remaining sentence of 15 months. Miguel's client becomes very upset with Miguel. The client has spent the last YEAR in custody awaiting trial for these charges, not 60 days! Miguel becomes frustrated as well and calls his assistant, Tani, to figure out what happened.

Hearing that the information Tani provided to Miguel was incorrect, Tani became embarrassed (and frustrated, much like Miguel and the client) that the information she provided was incorrect. Tani contacted the Edmonton Remand Centre to find out the exact in-custody time for their client. Three or four phone calls later with management, Tani finally gets her answer: the client is right! They have been in custody for one year, and the person who advised them of the 60 days was wrong.

Miguel now needs to contact the Crown prosecutor to negotiate a new resolution offer and speak to his client to correct the misinformation received from the Edmonton Remand Centre records department.

Answer the following questions about the scenario presented.

1. How might this situation affect an individual's perspective of the Canadian justice system? Examine this from the perspective of the client, Miguel, and Tani.
2. How might the misinformation received from the records department reflect upon Miguel's reputation in the legal community? How might it affect the relationship between the lawyer and the client going forward?
3. After the amount of time served in custody was corrected, Miguel received another offer from the Crown prosecutor's office and has asked Tani to relay that information to his client. Tani telephones the client to provide that information to them. How might that conversation go, with Tani being mindful not to provide legal advice?
4. In general, how might Elisabeth and Tani's roles differ in the law office?