



LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCAATION ON DECEMBER 1, 2022

That Convocation:

1. Approve the proposal for a family legal services provider ("FLSP") licence as set out in the Treasurer's Report attached.
2. If the FLSP licence is approved, approve the requirement that the Access to Justice Committee review the FLSP licence, within three years from its implementation, to determine the impact of the FLSP licence on access to justice, and report to Convocation.

Date: November 9, 2022

A handwritten signature in blue ink, appearing to read 'Cathy Corsetti', written over a horizontal line.

Cathy Corsetti

Moving the Motion

A handwritten signature in blue ink, appearing to read 'Doug Wellman', written over a horizontal line.

Doug Wellman

Seconding the Motion



Law Society
of Ontario

Barreau
de l'Ontario

Treasurer's Report to the Access to Justice Committee

For Information

Report on Family Legal Services Provider Licence

November 9, 2022

Authored by the Policy Department

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Purpose

The purpose of this report is to inform the Access to Justice Committee and Convocation about a proposal made by the Superior Court of Ontario (SCJ) and the Ontario Court of Justice (OCJ) regarding their preferred scope of practice for a Family Legal Service Provider license.

Context

Family Law Action Plan

Pursuant to the Family Law Action Plan approved by Convocation in December 2017, the Access to Justice Committee, supported by Law Society staff and the Family Law Working Group, engaged in research, consultation, and study to determine the appropriate scope of practice for a license enabling paralegals to offer some family law legal services. This license is entitled the Family Legal Service Provider (FLSP) license.

Access to Justice Committee's Report to Convocation

In January 2022, the Committee prepared its Report on Family Legal Services Provider Licence (the "A2J Report"). The Committee considered four possible models for the FLSP licence: the Consultation Model, the Narrow Model, the Intermediate Model and the Recommended Model. Further details regarding each model can be found in the **A2J Report**.

The A2J Report was made public approximately four weeks before the scheduled Convocation debate of February 24, 2022. After publication of the A2J Report, it became clear that the Recommended Model was controversial and would not have the support of the judiciary. The judiciary's support for the FLSP license is necessary, given Rule 4(1) of the Family Law Rules, which provides:

- 4(1) A party may,
 - (a) act in person;
 - (b) be represented by a lawyer; or
 - (c) be represented by a person who is not a lawyer, but only if the court gives permission in advance.

Then-Treasurer Teresa Donnelly removed the A2J Report from the February agenda of Convocation and initiated direct communication with the SCJ and the OCJ to discuss a scope of practice for the FLSP license. These discussions continued with Treasurer Jacqueline Horvat and resulted in a proposal made by letter dated October 18, 2022, to Treasurer Horvat from Chief Justices Morawetz and Maisonneuve. The content of this letter was subsequently clarified by the provision of a chart. The letter and chart are attached to this report as **Appendix A**.

The Proposal

The proposed model is similar to the Narrow Model outlined in the A2J report. This model includes completing applications for divorce and motions to change for child support, based on the payor's "line 150/T4 slip" income, and dealing with the Family Responsibility Office. Income determination issues, such as self-employment or the imputation of income, are not included. The proposed scope includes court appearances on motions to change, but not those related to income determination issues.

The proposed details are as follows:

Area	Inside Scope	Out of Scope
Process Navigation	<ul style="list-style-type: none"> Providing process navigation and informing the client of applicable court procedures, including filing deadlines 	
Divorce Filing of domestic contracts; Change of Name	<ul style="list-style-type: none"> Completing the application for joint/uncontested divorces Preparing the necessary filings Preparing the necessary application 	<ul style="list-style-type: none"> Annulments Claims for corollary relief and motions to sever the divorce from corollary relief Where a party resides outside of Canada
Motions to change – child support	<ul style="list-style-type: none"> Completing the paperwork and arguing in court motions to change child support, where income can be determined in accordance with an employer issued T4 slip and line 150 income 	<ul style="list-style-type: none"> Special and extraordinary expenses Deviations from child support amounts defined in the Child Support Guidelines (e.g., incomes over \$150,000, undue hardship, shared parenting arrangements, children over the age of majority, special provisions) Income determination issues, including third-party experts Where a party resides or is earning income outside of Canada
Enforcement	<ul style="list-style-type: none"> Responding to proceedings to enforce support payments, subject to the above limitations 	<ul style="list-style-type: none"> Motions for warrants for committal

	re: any related motions to change	
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Education and Training

Since the above scope is similar to the scope of the Narrow Model, the training program is expected to be virtually the same as that of the Narrow Model, that is: an estimated 13 weeks or three months on a full-time basis to support approximately 98 competencies. Enabling competencies are the knowledge, skills, and abilities that will allow an FLSP to safely and effectively perform the activities that fall within scope. The proposed training program can be found at **Appendix B** and the proposed competencies are set out in **Appendix C**.



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Jacqueline Horvat
Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

October 18, 2022

Dear Treasurer Horvat,

We are writing with respect to the LSO's Access to Justice Committee's Report on Family Legal Service Provider Licence. Thank you for consulting with us about this issue.

After consultation with our judiciary, our position is that the permitted scope of practice should be based on the narrow model suggested in the motion contemplated for discussion at Convocation's February 2022 meeting, except for motions to change child support that include special and extraordinary expenses. Because of the complexity that may accompany these determinations, we are of the view that they should not be included in the proposed scope of practice.

We note that the narrow model includes joint and uncontested divorces and not motions to sever corollary relief claims from a divorce. For clarity, we are of the view that the scope should also explicitly exclude any claims for corollary relief that are made in connection with either pleading.

In implementing this licence, consideration may need to be given regarding what steps the professional is required to take if and when out of scope activities arise. It is anticipated that these details, along with any other necessary changes to Rule 4, would need to be considered by the Family Rules Committee sufficiently in advance of implementation.



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It is our position that working together, the Courts and the LSO have found a way forward to develop a provider license that will improve access to justice and serve the needs of vulnerable family law clients.

Thank you.

Yours truly,

Geoffrey B. Morawetz
Chief Justice
Superior Court of Justice

Lise Maisonneuve
Chief Justice
Ontario Court of Justice

Area	Inside Scope	Out of Scope
Process Navigation	Providing process navigation and informing the client of applicable court procedures, including filing deadlines	
Divorce	Completing the application for joint/uncontested divorces	Annulments - Claims for corollary relief and motions to sever the divorce from corollary relief - Where a party resides outside of Canada
Filing of domestic contracts	Preparing the necessary filings	
Change of Name	Preparing the necessary application	
Motions to change – child support	- Completing the paperwork and arguing in court motions to change child support, where income can be determined in accordance with an employer issued T4 slip and line 150 income	- Special and extraordinary expenses - Deviations from child support amounts defined in the Child Support Guidelines (e.g., incomes over \$150,000, undue hardship, shared parenting arrangements, children over the age of majority, special provisions) - Income determination issues, including third-party experts - Where a party resides or is earning income outside of Canada
Enforcement	- Responding to proceedings to enforce support payments, subject to the above limitations re: any related motions to change	- Motions for warrants for committal

Appendix B: Training Program

- Minimum of 260 mandatory instructional hours¹ to support approximately 98 competencies² – estimated at a minimum of 13 weeks or approximately three months on a full-time basis (20 instructional hours per week) or six months on a part-time basis (ten instructional hours per week).³
- Field Placement (including simulated placements): Proposals for placements within the submissions included durations of two weeks to ten weeks. With a narrower scope, rather than a placement, a brief period of one to two weeks of job shadowing a family lawyer could follow or be part of the training program.
- Topics for courses are presented below and may be combined into courses as the selected education provider(s) deems appropriate.

Topics and related competencies in brackets		Number of Competencies	Minimum Instructional Hours
1	Family Violence (7)	7	20
2.	Knowledge of the Law (18)	21	55
	Understanding Substantive Areas Outside of Scope Outside of Scope ⁴ (3)		
3.	Divorce (9)	13	35

¹ The minimum instructional hours were calculated using a weighting methodology and taking into account the average number of instructional hours per competency under the Law Society's Paralegal Education Program Accreditation Policy, and in some cases, the number was rounded up or down. The Paralegal Education Program Education Policy requires a minimum of 710 instructional hours, consisting of 590 hours in mandatory coursework and 120 hours in elective coursework to support 306 entry-level paralegal competencies, which equals an average of approximately 2.7 hours per competency. The framework for the training program proposed within the Consultation Paper included a weighting exercise to reflect that some competencies may be able to taught in a shorter time span, while other competencies are iterative and will require additional teaching time.

² Competencies would need to be reviewed and finalized in conjunction with the selected education provider(s). The number of competencies would heavily influence the length of training program, with the actual duration and format to be finalized working together education provider(s).

³ The duration, format, and structure of the training program would be fully determined in conjunction with the selected education provider(s).

⁴ Competencies would need to be revised such that the FLSP is able to identify the legal issues, recognize that they are out of scope, and decline to act or continue to act if a dispute arises. The first competency proposed would be developing a basic understanding of the legal principles within the areas outside of scope, the second would be developing a broad understanding of the prohibitions, and the third would be upon recognizing a matter is out of scope, declining to act or continuing to act, and referring the matter to a lawyer, if appropriate. While in-depth knowledge of the various areas of law may not be required, a basic understanding of the law, concepts, procedures, etc. should be taught.

Change of Name (4)		
4.	Child Support (10)	18
	Financial Disclosure (5)	45
	FRO (Family Responsibility Office (3)	
5	Indigenous Issues in Family Law (4)	4
6.	Court Processes and Family Law Procedure ⁵ :	11
	- Variations, Review and Motions to Change (2)	
	- Motions and Temporary Relief Proceedings (4)	
	- Motions to Change (3)	
	- Costs (2)	
7	Alternative Dispute Resolution (6)	6
8	Ethics and Professionalism (13)	18
	Practice Management Issues (5)	50
TOTALS:		98
		260

⁵ Some competencies related to court procedures necessary to support process navigation are included under Knowledge of the Law. To avoid double-counting, those competencies were only included once.

Appendix C: Competencies

CODE	FLSP COMPETENCY STATEMENT
1.0	ETHICS AND PROFESSIONAL RESPONSIBILITY
1.1	Ethics and Professionalism
1.1.1	identifies the instructing client and the client's role in the matter (e.g., parent, spouse, family member, multiple parties, authority to bind, authority to communicate).
1.1.2	recognizes, and is sensitive to, the client's circumstances, special needs, and intellectual capacity (e.g., diversity, language, levels of literacy, socioeconomic status, disability, health).
1.1.3	develops appropriate communication strategies for the client, recognizing the unique nature of family law (e.g., manages vulnerable or high-need client, does not become personally invested in a client or client matter, communicates in a timely and effective manner, copies the client on correspondence, and obtains approval of drafts).
1.1.4	manages and updates the client's expectations with respect to processes, timeframes, results, and costs.
1.1.5	understands the impact of involving third-party authorities, such as police or a Children's Aid Society, and the duty to report.
1.1.6	demonstrates civility and professionalism in dealings with others, especially in high conflict situations (e.g., establishing and respecting boundaries, deescalating conflict, respecting courtroom etiquette, consenting to reasonable requests for adjournments and time extensions).
1.1.7	fulfills obligations related to dealing with unrepresented persons.
1.1.8	recognizes situations that constitute a conflict of interest or potential conflict of interest (e.g., receiving cold calls/emails, representing opposing parties in a dispute, having a close personal or sexual relationship with a client or a personal financial interest in a client's affairs, representing or responding to third parties, acting against former clients; transferring firms, doing business with a client).
1.1.9	takes appropriate action in situations where an actual or potential conflict of interest is identified (e.g., declines to act, establishes reasonable measures to ensure non-disclosure of confidential information, advises the client of the consequences if a potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified, withdraws when appropriate).
1.1.10	recognizes issues arising from joint retainers and fulfils duties accordingly (e.g., required disclosure prior to accepting the retainer, communication issues, obligations if a conflict develops that cannot be resolved, joint applications for divorce).
1.1.11	understands the meaning and enforceability of undertakings and trust conditions, fulfils all undertakings and trust conditions, and does not give an undertaking or agree to a trust condition that cannot be fulfilled.
1.1.12	manages monies held in trust and client property in accordance with Law Society requirements.
1.1.13	understands diversity (e.g., culture, religion, nationality) and its potential impact in family law matters (e.g., religious barriers, advice on barriers to remarriage, parenting).
2.0	KNOWLEDGE OF THE LAW
2.1	Legislation, Regulations, Guidelines, Practice Directions, & Case Law

2.1.14	understands the organization of the federal and provincial court systems and the Unified Family Court.
2.1.15	understands jurisdiction and the appropriate forum.
2.1.16	understands the <i>Divorce Act</i> , regulations, and related case law.
2.1.17	understands the <i>Family Law Act</i> , regulations, and related case law.
2.1.18	understands the <i>Child Support Guidelines</i> (federal and provincial) and related case law.
2.1.19	understands the <i>Spousal Support Advisory Guidelines</i> and related case law.
2.1.20	understands the <i>Children's Law Reform Act</i> , regulations, and related case law.
2.1.21	understands the <i>Family Law Rules</i> and related case law.
2.1.22	understands the <i>Ontario Disability Support Program Act</i> and the <i>Ontario Works Act</i> , regulations, and related case law.
2.1.23	understands the federal and provincial <i>Income Tax Act</i> , regulations, interpretation bulletins, and related case law applicable to family law matters (e.g., deductibility of spousal support, child care expense deduction, child tax benefits, tuition tax credits).
2.1.24	understands the <i>Partition Act</i> , regulations, and related case law applicable to family law matters.
2.1.25	understands the <i>Insurance Act</i> , regulations, and related case law applicable to family law matters (e.g., designation of beneficiaries).
2.1.26	understands the <i>Change of Name Act</i> , regulations, and related case law.
2.1.27	understands the <i>Succession Law Reform Act</i> , regulations, and related case law (e.g., effect of separation or divorce on inheritance rights).
2.1.28	understands relevant statutes, regulations, and related case law applicable to family law matters (e.g., <i>Evidence Act</i> (Ontario), <i>Canada Evidence Act</i> , <i>Limitations Act, 2002</i> , <i>Rules of Civil Procedure</i> , <i>Courts of Justice Act</i> (e.g., interests, costs, jurisdictional limitations (<i>parens patriae</i>), family court, Children's Lawyer), <i>Civil Marriage Act</i> , <i>Arbitration Act, 1991</i> , <i>Canada Pension Plan</i> (credit splitting provisions)).
2.1.29	understands enforcement statutes, regulations, and related case law (e.g., <i>Family Orders and Agreements Enforcement Assistance Act</i> ; <i>Family Responsibility and Support Arrears Enforcement Act, 1996</i> , <i>Personal Property Security Act</i>).
2.1.30	understands statutes, regulations, and case law relevant to Indigenous family law matters (e.g., <i>Indian Act</i> , <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>).
2.1.31	applies the principles of statutory interpretation in conjunction with the case law.
2.1.32	understands the importance of remaining current regarding changes to legislation, regulations, guidelines, practice directions, and case law.
3.0	SUBSTANTIVE FAMILY LAW
3.2	Child Support, including Motions to Change
3.2.41	identifies, initially and on an ongoing basis, when child support issues are out of FLSP scope and declines to act or continue to act (i.e., claims involving (a) questions of income determination (b) third party experts ordered by the court or retained by a party, other than a mediator, parenting coordinator, or access supervisor (e.g., custody and access assessments under section 30 of the <i>Children's Law Reform Act</i>); (c) Dependant's Relief claims; (d) relocation/mobility cases; or (e) child abduction/other international cases (Hague Convention); (e) deviations from guideline amounts.

3.2.42	determines who is eligible to apply for child support (e.g., parent, eligible dependent, government agency).
3.2.43	determines who is obligated to pay child support by applying the appropriate legislation and case law (e.g., settled intention, potential for multiple payors).
3.2.44	determines entitlement to receive child support by applying the appropriate legislation and case law (e.g., "child of the marriage", dependent children, withdrawal from parental control, retroactivity, "undue hardship").
3.2.45	understands the effects of parenting arrangements on child support (e.g., 60-40 split, multiple households, shared, split households, prior families, age of children, tax credits, deductions).
3.2.46	determines payor(s)'s income (e.g., CRA Notice of Assessment, line 150 of income tax return,).
3.2.47	determines quantum of child support.
3.2.49	determines and calculates payments for special or extraordinary expenses under the <i>Child Support Guidelines</i> (Ontario), including consideration the child's contribution to special or extraordinary expenses.
3.2.50	understands principles related to termination of child support.
3.2.51	determines security for child support obligations, including jurisdiction and quantum (e.g., life insurance).
3.4	Variations, Review and Motions to Change
3.4.63	identifies, initially and on an ongoing basis, when variations, reviews, and motions to change are out of FLSP scope and declines to act or continue to act.
3.4.64	identifies a material change in circumstances or other specified threshold in a court order or separation agreement relevant to, child support.
3.6	Financial Disclosure
3.6.81	identifies, initially and on an ongoing basis, when financial disclosure issues are out of FLSP scope and declines to act or continue to act (e.g., if financial disclosure reveals income determination issues other than under s. 19(1)(a) of the <i>Child Support Guidelines</i> (Ontario)).
3.6.82	advises the client of the initial and ongoing obligation to disclose financial information (e.g., statutory, proportionality, relevance).
3.6.83	determines disclosure and supporting documentation necessary to establish income for calculating child support, including special or extraordinary expenses under the <i>Child Support Guidelines</i> .
3.6.86	completes the appropriate financial forms (e.g., with or without property claim including supporting disclosure, with support claim, certificate of financial disclosure).
3.6.87	understands and takes appropriate action with respect to non-disclosure of financial information (e.g., knows what to request, how to compel disclosure, motions to require disclosure).
	Family Responsibility Office
	understands the jurisdiction of the Family Responsibility Office (FRO) to enforce court-ordered support payments (e.g., whether FRO is responsible for enforcement or if payment can be enforced privately).
3.8.100	understands the implications of withdrawal from the Family Responsibility Office (FRO) and advises the client accordingly.

3.8.101	advises and acts on Family Responsibility Office (FRO) matters for enforcement of support orders (e.g., forms, procedures, enforcement, motions to stay or suspend enforcement and the underlying order, refraining orders, alternate payment orders, suspension of driver's licence, suspension of passport).
3.10	Change of name under the <i>Change of Name Act</i>
3.10.112	determines eligibility for change of name, including solvency, consent, and notice.
3.10.113	understands how to complete the appropriate change of name forms and follows the appropriate process.
3.10.114	understands when to use the abbreviated change of name procedure (e.g., for marriage, cohabitation, dissolution of marriage).
3.10.115	understands how to respond where the other parent(s) wishes to oppose or revoke a change of name.
3.11	Divorces
3.11.116	identifies where a marriage is void or voidable (e.g. annulment, capacity) and identifies initially and on an ongoing basis, where corollary relief, if any, is out of FLSP scope and declines to act or continue to act (e.g., income determination issues, pensions, unequal division, trust claims, third party valuations).
3.11.117	identifies the grounds for divorce (i.e., breakdown of the marriage: living separate and apart for one year, cruelty, and adultery).
3.11.118	identifies the appropriate jurisdiction in which to bring a divorce proceeding.
3.11.119	fulfills the statutory duty to advise regarding reconciliation, facilities, and negotiating support or custody through mediation.
3.11.120	understands the bars to divorce (e.g., collusion, connivance, condonation, reasonable arrangements not made for the children).
3.11.121	understands the consequences of a divorce (e.g., limitation periods, succession rights, health benefits, spousal entitlement, pension, beneficiary designations).
3.11.122	advises about the option and consequences of severing a divorce from corollary relief.
3.11.123	drafts, serves, and files an application for divorce and takes appropriate steps to obtain a final order.
3.11.124	advises the client about the availability of waiver of the appeal period for a divorce and takes appropriate steps.
3.12	Victims of Domestic Abuse and Intimate Partner Violence
3.12.125	understands and identifies, initially and on an ongoing basis, when domestic abuse and intimate partner violence issues are out of FLSP scope and declines to act or continue to act.
3.12.126	identifies power imbalances, domestic abuse, or intimate partner violence.
3.12.127	takes appropriate action when there is an imminent risk of harm (e.g., safety plan, duty to report (Children's Aid Society, police, primary care provider)).
3.12.128	takes appropriate legal steps where domestic abuse or intimate partner violence has been identified (e.g., emergency motions, <i>ex parte</i> motions, exclusive possession, restraining orders).
3.12.129	refers the client to appropriate community resources where domestic abuse or intimate partner violence has been identified.
3.12.130	understands how to draft orders related to domestic abuse and intimate partner violence with sufficient specificity, including police enforcement.

3.12.131	serves orders related to domestic abuse and intimate partner violence on all relevant police forces.
3.14	Indigenous Issues in Family Law
3.14.137	identifies, initially and on an ongoing basis, where Indigenous issues in family law render a matter out of the FLSP scope and declines to act or continue to act (e.g., child protection).
3.14.138	demonstrates awareness of the impact of self-governance and customary laws on Indigenous communities, including inherent jurisdiction, self-government agreements, and law/by-law making authority (e.g., customary marriages).
3.14.139	demonstrates an awareness of the application of s. 19(1)(b) of the <i>Child Support Guidelines</i> (Ontario) to child support orders (e.g., gross-up of non-taxable income).
3.14.140	demonstrates an awareness of the application of s. 89 of the <i>Indian Act</i> to the enforcement of support orders (e.g., exemptions).
5.0	ALTERNATIVE DISPUTE RESOLUTION
5.1	Alternative Dispute Resolution
5.1.152	identifies, initially and on an ongoing basis, when ADR issues are out of FLSP scope and declines to act or continue to act.
5.1.153	understands various dispute resolution processes (e.g., negotiation, mediation (open versus closed), arbitration, collaborative,).
5.1.154	determines whether alternative dispute resolution (ADR) is necessary or appropriate (the nature of the disputed and undisputed issues), when it can be ordered, and the potential implications of choosing to use or not use alternative dispute resolution.
5.1.155	addresses potential power imbalances in alternate dispute resolution.
5.1.156	prepares the client for alternative dispute resolution (process, forms, and dynamics).
5.1.157	applies appropriate strategies and tactics during alternate dispute resolution.
6.0	LITIGATION PROCESS
6.3	Motions and Temporary Relief Proceedings
6.3.173	understands the availability and merits of temporary relief (procedural motions, Form 14B, motions with and without notice).
6.3.174	understands how to draft, serve, and file notice of motion and any amendments, supporting affidavits, <i>facta</i> , and offers to settle the motion as necessary.
6.3.175	understands when and how to obtain an order to question the other side.
6.3.176	understands when to attend and how to conduct questioning and how to use the transcript of questioning.
6.3.177	prepares for and argues motions.
6.6	Motions to Change
6.6.191	brings a motion to change under Rule 15 of the <i>Family Law Rules</i> .
6.6.192	prepares and serves a confirmation of assignment when necessary.
6.6.193	understands the role of family support workers under s. 59 of the <i>Ontario Works Act</i> and regulations thereunder (e.g., Ontario Regulation 134/98).
6.7	Costs of Each Step in Litigation
6.7.1945	advises on the principles related to costs, offers to settle, and security for costs (e.g., Rule 24 of the <i>Family Law Rules</i> , parties' ability to fund or pay for a cost order and whether the obligation would affect the care, maintenance, or interests of the children).

6.7.195	prepares submissions on costs.
7.0	PRACTICE MANAGEMENT ISSUES
7.1	Practice Management
7.1.196	demonstrates proficiency with industry-specific software and online services (e.g., MySupportCalculator, DivorceMate, SupportMate, federal child support look-up, Ontario child support recalculation service).
7.1.197	complies with Law Society client identification and verification requirements (By-Law 7.1).
7.1.198	complies with Law Society marketing and advertising rules regarding firm name, letterhead, and FLSP scope of practice.
7.1.199	maintains competence (e.g., skill and knowledge, care and diligence, client service) and quality of service and seeks appropriate assistance when the matter is beyond the family legal service provider's abilities.
7.1.200	complies with continuing professional development requirements.