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### ***Viability***

With its inclusion of divorces, parenting orders and decision making, child support, and spousal support, the Intermediate Model is broad enough to support a viable family law practice. It would provide specially trained paralegals with more business opportunities in family law than under the Narrow Model. As noted previously, a minority of the Committee said that the cost and length of the education and training program could deter paralegals from participating in the program, particularly if they have established practices and are only interested in providing discrete services such as joint or uncontested divorces. However, the Committee majority thought that paralegals would be willing to take a longer program if it supports a broad and viable practice.

### **Recommended Model**

#### ***Overview***

The majority of the Committee recommends that Convocation adopt a fourth model: the Intermediate Model with the addition of limited scope separation agreements (the “Recommended Model”). This model would allow the FLSP to draft separation agreements limited to:

- Matters within scope of the Intermediate Model: child support, spousal support, parenting orders and decision making, and T4 determined income; and
- Property limited to: one matrimonial home and its contents and bank accounts

provided that the FLSP recommend that the client obtain ILA from a lawyer. Notably, the Recommended Model differs from the Consultation Model in that the only domestic contract the FLSP can prepare under the Recommended Model is the separation agreement. In contrast, the Consultation Model would permit the FLSP to also draft paternity agreements and family arbitration agreements, in addition to separation agreements. Further, under the Recommended Model, the FLSP’s ability to address property matters is much more circumscribed: it is limited to one matrimonial home and its contents and bank accounts in the context of a separation agreement. Lastly, under the Consultation Model, the FLSP can address income determination in certain limited circumstances (i.e., imputation of income related to child support and spousal support), whereas under the Recommended Model, income determination is out of scope.

As with the Consultation Model and the Intermediate Model, the training program for the Recommended Model could be offered as a college graduate certificate program comprised of two 14-week semesters (approximately six and a half months) plus a placement. The competencies for the Recommended Model have not yet been considered

in detail but would be based on and similar to the original competency listing developed for the Consultation Model (which had 209 competencies) (refer to **Appendix B**), with modifications. A preliminary assessment suggests that there would be a total of approximately 200 competencies.

### ***Access to Justice***

According to the majority, the Recommended Model would enhance access to justice for the reasons outlined above in connection with the Intermediate Model. With the addition of separation agreements, the Recommended Model provides even greater access to justice. The submissions on the Consultation Paper recognized the public's need for assistance with separation agreements: they were cited as the third highest area of need by the public. Those experiencing marital breakdown generally want to settle their disputes outside the courtroom. Accordingly, the ability to draft limited scope separation agreements is a key component of facilitating access to justice through the FLSP licence.

The minority noted that the Intermediate Model provides the FLSP with a broad scope of activities that could assist a significant number of litigants in both attending court and settling issues in dispute. Moreover, the proposed permissible scope for preparing separation agreements is itself limited. A minority questioned whether FLSPs would be able to effectively serve clients who need separation agreements, given the limitations of the Recommended Model.

The majority pointed out that while the requirement that the FLSP recommend ILA<sup>41</sup> from a lawyer would necessitate engaging two legal professionals rather than one, it is likely that the cost would still be lower than retaining a lawyer to prepare the separation agreement from start to finish. As the survey results demonstrated, paralegals have much lower hourly billing rates than family lawyers. Also, in providing ILA, the lawyer is engaging in a discrete, limited task rather than preparing the agreement from the outset, which helps to contain costs.

### ***Public Protection***

The Committee minority and some submissions expressed concerns that the inclusion of separation agreements would increase the potential risks to clients. Since some issues that arise in a separation agreement are out of scope, clients may be tempted to minimize the extent of their assets or the severity of their issues, in the hopes that the matter could stay within FLSP scope. Moreover, some also raised the concern that separation agreements are more difficult to prepare than other domestic contracts due to potential

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<sup>41</sup> In general, ILA is provided by a lawyer who is unrelated to the client's matter, associated parties, or the lawyer or paralegal, and who does not have a conflicting interest. The lawyer is retained for the limited purpose of providing ILA so that the party appreciates the nature and consequences of the terms of the separation agreement.





within scope. For example, the checklist would capture whether the potential client has more than one matrimonial home, making it clear that the FLSP could not act for the client on a separation agreement in this situation. The Law Society could develop and provide this resource, which could be used in the FLSP training program and reinforced as a key practice tool via guidance.

### **C. DivorceMate (“DM”) and Other Resources**

DM provides software tools to Canadian family law professionals, including separation agreement precedents and clauses. This key resource is widely used by the Ontario family law bar. DM offers subscriptions that can be renewed annually. Legislative and tax updates are included in the subscription, providing certainty that the most recent information is being used.

Other resources that family law practitioners find helpful include:

- MySupportCalculator<sup>42</sup>: an online child and spousal support calculator. Many practitioners append the MySupportCalculator calculations to separation agreements;
- Association of Family and Conciliation Courts (“AFCC”) parenting plan guide and parenting plan template<sup>43</sup>: AFCC, an interdisciplinary association dedicated to the resolution of family conflict through education, innovation and collaboration, has created these resources to assist with the development of child-focused parenting plans. AFCC has detailed precedents that address challenging parenting scenarios and can be used to supplement the DM precedents;
- Government of Canada parenting plan tool<sup>44</sup>: this tool assists with the creation of parenting plans; and
- Standard clauses for family court orders<sup>45</sup>: the Ontario Ministry of the Attorney General has developed standard clauses to help individuals draft family court orders.

DM and other resources could be introduced and used in the FLSP education program, particularly during the experiential training component. The Law Society could encourage FLSP candidates to continue using resources such as these during the licensing process and after licensure, via guidance.

### **D. Independent Legal Advice**

The proposed scope of practice requires the FLSP to recommend that the client obtain ILA

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<sup>42</sup> <https://www.mysupportcalculator.ca/>

<sup>43</sup> <https://afccontario.ca/parenting-plan-guide-and-template/>

<sup>44</sup> <https://canada.justice.gc.ca/eng/fl-df/parent/ppt-ecppp/form/form.html>

<sup>45</sup> <http://ontariocourtforms.on.ca/en/family-law-rules-forms/standard-clauses/>















































































































