

FLSP Submissions Received from Organizations

1. Father's Resource Ontario
2. Family Law Limited Scope Services Project
3. Robert Shawyer, sent on behalf of 51 family law lawyers
4. Toronto Lawyers Association
5. Indigenous Advisory Group
6. REAL Women of Canada
7. Institute of Law Clerks of Ontario
8. The Hamilton Law Association
9. Luke's Place Support & Resource Centre for Women & Children
10. Ontario Association of Collaborative Professionals
11. Community Legal Education Ontario
12. Federation of Ontario Paralegals
13. Ontario Association of Black Paralegals Establishment Committee
14. Durham Region Paralegal Network (DRPN)
15. ADR Institute of Ontario Inc.
16. Law Students' Society of Ontario
17. Hastings & Prince Edward Law Association
18. Ontario Paralegal Association
19. Women's Law Association of Ontario
20. The Barbra Schlifer Commemorative Clinic
21. The Advocates' Society
22. Canadian Equal Parenting Council
23. Durham Community Legal Clinic
24. Thunder Bay Law Association
25. Waterloo Region Law Association
26. Family Lawyers Association
27. Ontario Bar Association
28. Legal Aid Ontario
29. Equity Advisory Group
30. Society of United Professionals
31. County of Carleton Law Association
32. Superior Court of Justices
33. Sheridan College Institute of Technology and Advanced Learning
34. Federation of Ontario Law Association
35. Family Dispute Resolution Institute of Ontario
36. Ontario Federation of Indigenous Friendship Centres
37. Court of Appeal for Ontario
38. Native Child and Family Services of Toronto
39. Ontario Court of Justice
40. AJEFO

#106

Please enter your first and last name	Mark Nas
Email Address	rvalentines@gmail.com
Please make a selection below	Citizen
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Father's Resources Ontario [Facebook Group with over 10,000 members in Ontario https://www.facebook.com/FROntario]
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	Canadian Bar Association.docx
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- 1. Paralegals to be able to practice Family Law so that it can become more affordable to Canadians. The current rate for a Junior Family Lawyer is \$300/HR which remains out of reach for most Canadians average salary of \$50,000 (\$25/hr).**
 - a. Many parents are unable to afford a \$300/HR lawyer after having to pay for child support, rent, section 7 expenses, and groceries. Those that can afford it are usually financially destroyed before even getting to trial and as a result having to settle for a less than ideal settlement. Due to the high conflict of custody cases, many parents give up because they cannot afford to pay a lawyer to access their child.
 - i. Yet, these parents are too busy to navigate through the complexities of family law to self-represent as they often have full-time work commitments.
 - ii. Legal aid is also not a viable alternative for many parents as many make slightly above the legal aid limit.
 - b. Hence, it is imperative for Paralegals to be able to fully practice family law so that it becomes more accessible for more Canadians.
2. Clear and Convincing evidence on any allegations being used to limit a parent's access. Currently it's "Balance of Probabilities" which is the lowest standard of proof. Which basically means, the Judge can look at you and say "Yup, you look like an abuser".
3. Limit a Judge's discretion [the freedom to decide what should be done in a particular situation] by improving Family Law Regulations. As it currently stands, Judges make decision without a solid grasp of case law; rather they just pick and choose the parts of Family Law they like to justify their decision rather than a rigorous and factual process.
4. Reduce Judges retirement age from 75 to 65: Judges have to deal with complicated custody cases which involves hundreds of pages of small details. We need Judges that can balance conflicting evidence and legal arguments. Often times, these are lost on the older judges due to their fragility. Secondly, they bring out-moded ways of thinking.
5. Ask all politicians to support 50/50 presumption of shared parenting upon divorce. [Canadian Bar Association against this]

#120

Please enter your first and last name	Helena Birt
Email Address	helenabirtlaw@gmail.com
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Family Law Limited Scope Services Project
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)
Upload a File	FLSP Submission to LSO (2020) - FLLSS Project Steering Committee.docx
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Submissions by the Family Law Limited Scope Services (FLLSS) Project

These submissions are made on behalf of the Steering Committee of Ontario's Family Law Limited Scope Services (FLLSS) Project. This project, run by volunteer lawyers and family law academics, has developed and now maintains a web-based roster of family lawyers who provide limited scope services to separating and divorcing individuals across Ontario. The project launched with three years' funding from the Law Foundation of Ontario, but this funding will soon be exhausted.

The following organizations support the project or have actually partnered with the project since its inception:

Partner Organizations

Federation of Ontario Law Associations
Association of Family and Conciliations Courts- Ontario Chapter
The Advocates' Society
Ontario Bar Association
Family Lawyers Association
Simcoe County Family Law Lawyers' Association

Supporting Institutions

King's University College, Western University
Queens University, Kingston, Ontario Faculty of Law
Superior Court of Justice
Ontario Court of Justice

FLLSS Project Background and Data

Reviewing background information and our project data first, we are pleased to advise as follows:

1. There is growing recognition that unbundled family legal services are a valuable way to address access to family justice concerns. Current Canadian research indicates both a) how valuable unbundled family law services from an experienced family law lawyer can be, and b) how much clients wished they had known more about this service. According to one client, "I now appreciate the difference from when I did not have a lawyer assisting me through this [custody dispute] process." Dr. Rachel Birnbaum and Professor Nicholas Bala can be contacted for more specifics regarding this Ontario research. Research from other Canadian jurisdictions also shows significant bar interest in offering unbundled legal services with significant satisfaction with their roster experiences (i.e., BC and Alberta).
2. The Arizona Task Force on Delivery of Legal Services, appointed by the Supreme Court of that state, delivered a report in October 2019 - [Report on Delivery of Legal Services](#). Amongst other suggestions, the report recommends that the State Bar (the equivalent of the Law Society) and the courts undertake education for the public and lawyers on the value of unbundled services for family cases, and support efforts to promote this model. The report also addresses issues related to the possible limited use of paralegals in family cases.

3. Our project, in its third year of operation, includes a roster of more than 200 family lawyers who provide limited scope services on private retainers. Each lawyer can specify the unbundled services they provide and other personal and practice-related information, including special fee arrangements (e.g., fixed/flat fee services) and languages spoken.
4. These 200-plus roster lawyers are located in more than fifty-six different municipalities. Ninety-one of these lawyers provide services in twenty-three languages in addition to English, including fourteen lawyers who provide services in French. This data is fully set out in Appendix A.
5. The vast majority of participating lawyers provide services both in person and virtually, so services are not confined to the jurisdiction where the lawyer is located. Not surprisingly, the number of roster lawyers who provide virtual services has increased dramatically due to COVID-19.
6. The project continues to welcome lawyers to the roster on an ongoing basis. We also continue to reach out to targeted lawyer groups (e.g. AJEFO) to expand the roster's French-language capacity and cultural/ethnic diversity.
7. Although roster lawyers may charge their usual hourly rates, services are more affordable because the lawyer and client must agree in advance regarding the advice or specific tasks the lawyer is to complete. Clients therefore retain control over their legal expenses and the overall management of their disputes.
8. The FLLSS Project is entirely non-proprietary. The resources we have developed are available without restriction to any Ontario lawyers who are interested in providing unbundled family law services. The resources include a precedent retainer agreement specifically designed for use with limited scope services, best practices for providing limited scope services, and a legal issues checklist. Where appropriate, these resources were developed with input from both the LSO and LawPro.
9. The project has also helped establish two private summary legal counsel programs, although only one is currently in operation – Toronto's Advice and Settlement Counsel (ASC) program. Initially developed to provide in-court, limited access to legal advice relating to a same-day court appearance, ASC Toronto will soon be available virtually (anticipated website launch date is early October, 2020). Over fifty lawyers participate on the virtual ASC Toronto roster for a set fee of \$200/hour and an additional forty lawyers have been trained to provide these services. Unfortunately, a similar project in Barrie that provided in-person service only is not currently operational.
10. Several other channels exist to find limited scope services in Ontario, including:
 - The free www.mysupportcalculator.ca application from DivorceMate, which is widely used by self-represented litigants in Ontario. Their help page allows potential clients to easily search for lawyers in their area who take unbundled retainers;
 - Steps to Justice [Getting Help in Family Law](#) provides information on how to find a lawyer who will provide unbundled legal service that refers both to the FLLSSP and the smaller roster available from the National Self-Represented Litigants Project;

- The LSO's own [Finding a Lawyer or Paralegal](#) webpage includes a search feature for unbundled services, but very few lawyers have chosen to include this information in their listings.

11. A simple Google search now generates a multitude of family lawyers who provide unbundled family law services, which was not the case before the inception of the FLLSS Project.

Submissions for Consideration

Moving on to our submissions, we respectfully suggest the following:

1. As the essential "go-to" resource where people can get help with their legal problems, the LSO is uniquely poised to change public dialogue about how to hire a lawyer to assist with your family law dispute.
2. LSO messaging on the topic of how to hire an affordable family law lawyer or how to obtain unbundled family law legal has lagged far behind other Canadian jurisdictions. See, for example, this page from the Law Society of BC website: [LSBC - Unbundling Legal Services](#).
3. The FLLSS Project has had quick and early success with Google searches relating to unbundled legal services and family law, but less so for more general searches on how to get help with a family law dispute.
4. Despite the FLLSS Project's ongoing public outreach efforts, much more can and needs to be done on a larger scale to inform the public that there are different and more affordable ways to use a family lawyer's services. We ask that both the LSO and the Ministry of the Attorney General make immediate and sustained efforts to educate the public and dispel the general perception that they cannot afford a lawyer. This outreach is critical.
5. Moreover, the LSO as regulator has not done nearly enough to support and encourage lawyers interested in working in a limited scope service model. Educational programs have been few and far between, aside from those prepared by FLLSS Project steering committee members. No LSO resources have been developed to support this practice modality.

Concluding Summation

We respectfully call upon the LSO to return to its original commitments in the Family Law Action Plan and to take more meaningful steps to support the use of unbundled legal services in family law and other legal disputes in Ontario. Especially as a result of the FLLSS Project's early successes, we see significant potential in the ability of unbundled legal services, provided by Ontario lawyers, to contribute to access to justice by working in this innovative and more cost-efficient way.

APPENDIX A: FLSS Project Roster Lawyer Location and Languages Spoken - Oct.1 2020

Number of Lawyers on Active Roster:	208					
Specified Municipality	# of Lawyers	Regional Area	# of Lawyers	Other Languages	# of Lawyers	
Toronto	70	York	26	French	14	
Brampton	18	Peel	18	Punjabi	13	
Ottawa	12	GTA	11	Urdu	12	
Barrie	11	Durham	10	Spanish	7	
Newmarket	10	Halton	8	Russian	6	
Hamilton	9	North York	6	Italian	5	
Vaughan	9	Kitchener-Waterloo	4	Hindi	5	
Richmond Hill	7	Simcoe	4	Tamil	4	
Whitby	7	Virtual Province-Wide	3	Hebrew	4	
London	6	Eastern Ontario	2	Portuguese	3	
Burlington	5	Essex	2	Mandarin	2	
Markham	5	Lanark	2	German	2	
Oshawa	5	Renfrew	2	Farsi	2	
Aurora	4	Brant	1	Malayalam	2	
Kitchener-Waterloo	4	Dufferin	1	Cantonese	1	
Oakville	4	Elgin County	1	Croatian	1	
Scarborough	4	Hastings and Prince Edward	1	Romanian	1	
Ajax	3	Middlesex	1	Gujrati	1	
Chatham	3	Muskoka	1	Jamaican Patois	1	
Lindsay	3	Niagara	1	Kamade	1	
Sarnia	3	Oxford	1	Marathi	1	
Stouffville	3	Norfolk	1	Persian	1	
Windsor	3	Wellington	1	Serbian	1	
Woodstock	3			Sinhala	1	
Bowmanville	2	23	108	23	91	
Brantford	2					
Caledon	2					
Kingston	2					
Leamington	2					
Mississauga	2					
Orillia	2					
Pembroke	2					
Peterborough	2					
Perth	2					
Pickering	2					
St. Thomas	2					
Bancroft	1					
Brockville	1					
Cambridge	1					
Clarington	1					
Collingwood	1					
Concord	1					
Cornwall	1					
Fergus	1					
Halton Hills	1					
Komoka	1					
L'Orignal	1					
Milton	1					
Oak Ridges	1					
Scugog	1					
St. Catharines	1					
Sterling	1					
Thornhill	1					
Uxbridge	1					
Welland	1					
Woodbridge	1					
56	255					

#122

Please enter your first and last name	Robert Shawyer
Email Address	robert@shawyerlaw.ca
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	No
What is the setting of your workplace?	Small firm (2-5 licensees)
Practice area focus:	- Aboriginal Law - Family /Matrimonial Law
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Upload a File	2020-07-27_Letter to LSO Benchers Re Paralegal Report.pdf
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Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

Yes. See attached letter

2. Will the proposed scope of permissible activities enable the Family Legal Services Provider to develop a business model that is viable? If so, why? If not, why not?

Yes. See attached letter.

Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

Yes. See attached letter

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

See attached letter. However, in the event that LSO Convocation decides to license paralegals to practice in the area of family law paralegals should be allowed to practice family law either while being required to work under the supervision of a lawyer; or In the alternative paralegal's should be required to have a period of internship or articles with a lawyer in addition to mandatory training in family law.

Finally, if paralegals are going to be licensed to practice family law the questions of whether the LSO will mandate strict requirements for insurance, CPD etc. the issue of paralegals and trust accounts needs to be addressed.

Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D of the Consultation Paper.

Yes. See attached letter

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the Family Legal Services Provider?

See attached letter. Additionally, in the event that LSO Convocation decides to license paralegals to practice in the area of family law paralegals should be allowed to practice family law either while being required to work under the supervision of a lawyer; or In the alternative paralegal's should be required to have a period of internship or articles with a lawyer in addition to mandatory training in family law.

7. What length and form of experiential training should be incorporated into the licensing process for the Family Legal Services Provider to support the competencies? If a field placement is required, who will provide the placements?

2 years of formal education in addition to the obtainment of a paralegal degree and the paralegal licensing examination and a minimum of 2 years of working for a lawyer if paralegals are going to be allowed to practice family law without having to work under the supervision of a family law lawyer.

8. Is a Continuing Professional Development requirement focussed on family law appropriate for the Family Legal Services Provider?

No. Paralegals need far more in-depth training in family law before being able to provide services to the public than can be provided by simply attending short CPD programs that are generally designed to supplement a licensing foundational training.

9. Should law clerks be eligible for the Family Legal Services Provider licence? Are there other groups of professionals who should be considered?

No.

General

10. What characteristics of an Family Legal Services Provider would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

Simply put lower costs than the fees charged by a lawyer for the same service. However, paralegals can not afford to charge lower costs than lawyers because their overhead costs associated with running a paralegal practice are the same as a lawyer's in terms of rent, etc...The only slightly lower cost that paralegals would have than a lawyer maybe the licensing fess and insurance fees they pay. However, in the event that paralegals are licensed to practice a substantive area of law may very well require paralegals to pay the same amount of insurance dues that lawyers pay because of the amount of insurance a paralegal would have to carry and the LSO may very well raise the cost of a paralegals licensing fees on a yearly basis in order to cover the increased cost of regulating paralegals who are licensed to practice family law.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the Family Legal Services Provider design appropriate?

No. There are various alternatives to the model proposed by the Family Law Working Group. See the attached letter for an outline of the various alternatives.

12. Are any aspects of the proposed licensing framework unfeasible?

Yes. The reason is that simply licensing more legal practitioners to try and resolve the A2J issue in family law will not solve the problem as evidenced by the fact that the LSO has licensed more lawyers each year, which has not led to a corresponding decrease in the numbers of unrepresented litigants.

13. Is there additional information or are there other factors that should be considered?

No.

Robert Shawyer
Principal

Andrew Sudano
Associate

Peter Smith
Associate

July 27, 2020

Benchers
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

Re: *Paralegal Regulation and Family Law*

The undersigned are members of the Law Society of Ontario (LSO) who practise family law in the Province of Ontario. We are writing to you concerning the Family Legal Services Provider License Consultation (FLSPL) that the LSO released for review and comment on June 26, 2020.

As you are aware, the Treasurer of the LSO presides over Convocation and steers Ontario's legal profession forward.¹ This is an extremely important function in light of the Ontario Civil Legal Needs Project Steering Committee's Report to Convocation entitled "Listening to Ontarians", which in May of 2010 reported to Convocation that the Committee had identified access to justice as a significant issue facing the public in Ontario.²

We agree with Convocation that access to justice in the area of family law is an issue. Access to justice is an issue that requires urgent attention and paralegals should be involved in the solution. However, the recommendations contained in the FLSP License Consultation Report to Convocation are not the solution to the problem.

The solution to the issue of access to justice in the area of family law is not too simply expand the number of licensed professional offering services to the public. Rather, the solution to the issue lies in adopting one of the options outlined below, that carves out a role for paralegals, to address the issue.

Before addressing what we see as the solution to the problem it is helpful to understand how the FLSP License Consultation Report came to be. It is helpful because the background provides the context for the Report and ultimately the recommendations contained in the Report.

¹<https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/treasurers-andbenchers-of-the-law-society-of-uppe>

² Listing to *Ontarians: Report of the Ontario Civil Legal Needs Project* (May 2010) and May 31, 2010 News Release "Hon. Roy McMurtry announces research results from comprehensive study of Ontario public's legal needs"

On February 9, 2016, the Ministry of the Attorney General (MAG) requested that the Chief Justice of the Ontario Court of Justice, the Honourable Justice Annemarie E. Bonkalo, undertake a Family Legal Services Review and submit a Report that contained her findings and recommendations in regard to how family legal services could be provided by persons other than lawyers. In response, on December 31, 2016, Justice Bonkalo, submitted her Report to then Attorney General, Yasir Naqvi, and then Treasurer of the Law Society of Ontario, Paul Schabas, which was entitled “Family Legal Services Review”³.

Following Justice Bonkalo’s Report the LSO and MAG jointly committed to an action plan to improve access to family legal services⁴, which led in December of 2017, to Convocation approving the *Family Law Action Plan (FLAP)*. It also led to Convocation approving the development of a license for paralegals and other legal service providers to be able to provide services to the public in the area of family law.⁵

The *FLAP* and the approval of a license was at the time the LSO’s contribution to the joint action plan with the Province of Ontario.⁶ After Convocation approved the *FLAP* and a license, the LSO tasked its Family Law Working Group (FLWG) with developing what the FLSPL Report terms a family law service provider license (FLSP License)⁷, which led the FLWG to develop the FLSP License Consultation Report released for review and comment on June 26, 2020.

According to the FLWG, the following three principles guided the development of a proposed license for paralegals and other legal service providers⁸:

1. Access to justice: The licence should address areas of unmet legal needs in family law and have an impact on the challenges of access to justice.
2. Public protection: The activities that fall within the scope can be performed competently with appropriate education, training, licensing, and regulation.
3. Viability: The licence should form the basis of a viable practice that can attract a critical mass of candidates. It is important that the training requirements are attainable and that the prospective client pool is large enough to sustain a legal services practice.

³https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/

⁴ *Family Legal Services Provider License Consultation Report* at page 3

⁵ *Ibid* at page 3

⁶ *Ibid* at page 3

⁷ *Ibid* at page 3

⁸ *Ibid* at page 3 and 4

Additionally according to the FLWG, they also took into consideration the business models of paralegals in developing their proposal for a license.

With the aforementioned background information in mind the inescapable conclusion is meant to be (if you read the Listening to Ontarians, Bonkalo, and the FLSP License Consultation Reports, in conjunction with one another) that since there is an access to justice problem, the only solution must be one that sees paralegals and other persons licensed to practise family law. It is the only solution because the principles of (1) access to justice, (2) protection of the public and (3) viability guided the recommendations contained in the FLSP License Consultation Report.

Despite the foregoing, the solution proposed by the FLSP License Consultation Report is not the only solution. In fact, it is not a solution at all. In order for Convocation to address the access to justice problem, it must reject the recommendations contained in the FLSP License Consultation Report. Adding more licenses who are can provide services to the public will not bring down the cost of legal services for litigants involved in the family law system and will not solve the access to justice issue identified in the Listening to Ontarian's Report.

Adding more licensees who can provide services to the public will not bring down the cost of legal services. There is, absolutely, no empirical proof of that connection, and previous action by the LSO has already demonstrated that this approach does not work. Over the last approximately 20 years, the number of licensed lawyers has increased dramatically⁹ without a corresponding decrease in the cost of legal service¹⁰ (rather the cost of paralegal services has increased).

⁹Federation of Law Societies Statistical Achieves (<https://flsc.ca/resources/statistics/>) reports that between the periods 1998 through 2017 the number of lawyers in Ontario increased from 28,409 in 1998 to 58,084 as of 2017, which is the last year that data on the number of lawyers in each Province in Canada is available.

¹⁰ According to the First Report of the Civil Justice Review Team submitted on March 7, 1995 to the Honourable Roy McMurtry, Chief Justice of the Ontario Court, and the Honourable Marion Boyd, Attorney General of Ontario, the cost of a typical 3-day civil trial for an average litigant was \$38,200. (See Table 3: Cost of the typical civil case to litigant in Chapter 11, part 11.1 Cost and Value of Justice

<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/firstreport/cost.php>). Whereas in 2016, some 21 years later, according to the Honourable Justice Bonkalo, author of the 2016 Family Legal Services Review, the cost of a typical 2-day civil trial for an average litigant was \$25,036 and \$45,750 for a 5-day civil trial. (See page 13 of the Justice Bonkalo's 2016 Family Legal Services Review). Further, according to the *Action Committee on Access to Justice in Civil and Family Law Matters*, the average cost of a high cost dispute is \$54,390 and the cost of a low

Notably, there is no evidence provided in the FLSP License Consultation Report that licensing paralegals and other persons would reduce the cost of services. The FLWG admits in the FLSP License Consultation Report, “[t]here is no relevant data to support a comparison between what paralegals would charge for family law services and the amount lawyers currently charge”¹¹. Rather, the sole basis for the assertion in the FLWG Report that licensing paralegals and other persons in family law will bring down the cost of legal services is “a preliminary environmental scan of paralegal billing practices”¹².

Basing recommendations that would permanently alter the landscape of the legal profession and on a simple “preliminary environmental scan” is troubling. What makes it especially troubling is that the authors of the Report admit it is the best evidence that they have because they lack hard and quantifiable data to back up their recommendation. An environmental scan is not a substitute for verifiable data and evidence.

The authors of the FLWG Report are asking Convocation to accept their recommendations and their Reports premise that a special license will reduce the cost of legal service on the basis of evidence to follow later, if at all. According to the authors of the Report evidence will be produced, at some unspecified point in time, to support their conclusion after the LSO has “conduct[ed] surveys and focus groups to collect additional information regarding hourly rates and billing models employed by paralegals and lawyers”¹³. If Convocation were to accept, the recommendations contained in the FLWG’s Report on this basis Convocation would not be protecting the public. Convocation would not be protecting the public because it would not be addressing the root causes of the access to justice problem and would not be guaranteeing a reduction in the costs of legal services to the public. Rather, Convocation would instead be applying a Band-Aid when surgery is called for instead.

Band-Aid solutions will not solve the access to justice. It will take transformational reforms to Ontario’s family law system to do that. To that end, we propose that Convocation instead of adopting the recommendations contained in the FLSP License Consultation Report adopt one of the following three approaches:

An article by John-Paul Boyd outlined the first approach Convocation should consider. Mr. Boyd published an article in the Canadian Bar Associations (CBA) National Magazine on February 25, 2019 that suggested removing family law from the traditional court system altogether:

“...consider removing family law matters from the courts altogether.

conflict dispute is \$12,395 (<https://cfcj-fcjc.org/infographics/Cost-Of-Family-Law-Disputes/>).

¹¹ Supra note 4 at page 4

¹²Ibid at page 4

¹³Ibid at page 4

These are disputes that could be moved into a specialized administrative system offering both adversarial and non-adversarial dispute resolution alongside: education on parenting after separation, child development and conflict management; social services providing parenting, housing and employment support; and financial and mental health counselling, parenting assessments and similar services. Such an administrative system should be interdisciplinary and explicitly aimed at promoting the well-being of children, reducing conflict and promoting parents' ability to cooperate with each other. Its rules, policies and forms should be written in plain language and be tailored to the unique needs of families living apart; the rules of evidence and *stare decisis* should be simplified; and the extent of the adversarial and non-adversarial processes provided by the tribunal and the commission should be genuinely proportionate to the circumstances of each family, and the importance, complexity and value of the issues in each dispute;¹⁴

Removing family law matters from the courts altogether, as suggested by John-Paul Boyd, **would open up opportunities for paralegals in the area of family law**. Paralegals could assist families in resolving disputes through non-adversarial means for instance.

The second approach Convocation should consider adopting is the approach recommended by the Action Committee on Access to Justice in Civil and Family Matters. In the Action Committee's Final Report released in April of 2013, they "recognized the unique nature of family law"¹⁵. In their Final Report, the Action Committee stated "[t]raditionally, separation and divorce were treated as matters for the courts, but it was clear by the 1980s, if not earlier, that traditional adversarial approaches used in civil litigation had not worked well for family law cases"¹⁶. The Final Report called for a paradigm shift towards consensual dispute resolution ("CDR") methods such as mediation and collaborative practice¹⁷, **which paralegals could be involved in**. Expanded use of CDR is "probably the single most attainable, efficient and effective way to enhance access to family justice."¹⁸

The third and final approach that Convocation should consider is the approach suggested by the CBA in 2013. That year the Canadian Bar Association's Access

¹⁴ <https://www.nationalmagazine.ca/en-ca/articles/law/opinion/2019/family-justice-in-canada-is-at-a-breaki>

¹⁵ <https://flsc.ca/wp-content/uploads/2014/10/services5.pdf>, at p. 14.

¹⁶ *Ibid* at p. 14

¹⁷ *Ibid*, at pp. 6 & 20-23.

¹⁸ *Ibid*, at p. 23.

to Justice Committee (CBA) released a Report called “Reaching Equal Justice: An Invitation to Envision and Act.” (CBA Report) In the Reaching Equal Justice Report, the CBA proposes:

1. Harnessing technology to transform the Court system by automating the current processes, allowing for online filing and records management and to allow for online dispute resolution amongst other services¹⁹;
2. Transforming Courts into triage and referral centres that redirect litigants to the appropriate community based services and/or provides them with information about the proper processes in order resolve their legal issues without having to resort to full blown litigation involving a judge²⁰
3. Court employing “a wide range employ a wide range of quasi-judicial officers (i.e. paralegals) to assist litigants to achieve just and timely outcomes²¹;
4. Court becoming more customer oriented, similar to the Disney philosophy of customer service²², so that they are open to feedback from litigants and develop transparent performance evaluation measures²³;

According to the CBA Report “[t]his re-centring of courts would involve transformation and overarching innovations”²⁴. Further, the CBA Report envisions Courts becoming a community hub where litigants can go to gather information, get referrals to the services they require and act as the last resort only if all other options fail.

Transforming Courts into a community hub would require the implementation of a “team delivery of legal services” model²⁵. The implementation of a team delivery of legal services model would recognize “the importance of increased diversity and specialization among legal service providers and enhanced capacity to provide comprehensive, cost-efficient services through teams of lawyers, **other service providers (like paralegals)** and providers of related services (like social workers). Further, a team delivery of legal services would see teams “deliver more comprehensive and holistic services tailored to people’s needs.”²⁶

¹⁹Report of the CBA Access to Justice Committee “Reaching Equal Justice: An Invitation to Envision and Act” (2013) at page 76.

²⁰*Ibid* at page 86. Also see Richard Zorza, “The Access to Justice “Sorting Hat”: Towards a System of Triage and Intake that Maximizes Access and Outcomes” (2012) 89:4 Denver University Law Review 859 at 861 (<http://www.zorza.net/SortingHat.pdf>)

²¹ Supra Note 14 at page 93.

²² <https://www.disneyinstitute.com/about/expertise/customer-service/>

²³ Supra Note 14 at page 93.

²⁴ Supra Note 14 at page 84.

²⁵Supra Note 14 at page 95

²⁶Supra Note 14 at page 95

The reasoning behind the CBA Report’s recommendations is that “[e]ffective triage and referral to appropriate services and processes is key to transcending the unrepresented litigant phenomenon...”²⁷ Further, “[r]e-centred courts would develop the capacity for triage and referral that would complement and work in coordination with the jurisdiction-wide and community based networks that facilitate everyday justice. . . .”²⁸

If the adoption of the aforementioned approaches is too much too fast then we urge Convocation to recommend to the Ministry of the Attorney General either one or both of the following options:

1. The creation of an Informal Domestic Relations Trial (“IDRT”) program similar to the Informal Domestic Relations Trial program in the State of Oregon²⁹. The IDRT program is a voluntary process that requires both parties to opt in and is used to settle cases involving issues such as divorce, separation, custody, access, and child support. Further, the IDRT program is a more informal legal process. It is a more focused process because: (1) the parties speak for themselves; (2) most rules of evidence and procedure are either relaxed or waived altogether; (3) there is no cross-examination but a party can ask the judge to ask the other party certain things; and (4) the judge takes a more active role in keeping both the parties and the proceeding focused.
2. The expansion and improvement of existing programs already in place that specifically address the issue of access to justice in the area of family law. Those programs include both Court based and non-Court based programs.

The Family Court Services programs³⁰ that are already in place that have been created specifically to address the issue of access to justice in the area of family law are as follows:

1. Family Law Mediation Services;
2. Mandatory Information Program;
3. Family Law Information Centre’s; and

²⁷Supra Note 14 at page 84.

²⁸Supra Note 14 at page 84

²⁹<https://www.courts.oregon.gov/programs/family/forms/Pages/Informal-Domestic-Relations-Trial.aspx>

³⁰ <https://www.ontariocourts.ca/scj/family/court-services/>

4. The Dispute Resolution Officer Program;

The non-Court based programs specifically created to address the issue of access to justice in family law include:

1. Ontario's Family Law Limited Scope Services Project³¹;
2. CLEO's Steps to Justice Guide³²;
3. 393 Mediate³³
4. Peel Family Mediation Services³⁴
5. London Family Law Clinic³⁵

In addition to the Court based and non-Court based programs that have been created organizations have been established to ensure that family law litigants who do not qualify for legal aid funding have access to low cost legal services. Two of those organizations are Self-Rep Navigators³⁶ and JusticeNet³⁷.

The reason that Convocation should prefer this approach, if Convocation were to conclude that the CBA Report's recommendations require further study, is due to the practice of family law requiring more than just simply a knowledge of family law legislation and case law. Rather, the practice of family a service provider requires knowledge of the following other areas of law in addition to family law legislation and case law³⁸:

1. Bankruptcy and insolvency;
2. Corporate law;
3. Criminal law;
4. Constitutional law;
5. Employment law;
6. Estates planning;

³¹ <https://www.familylawlss.ca/>

³² <https://stepstojustice.ca/>

³³ <https://www.mediate393.ca/>

³⁴ <https://peelfamilymediation.org/about-us/>

³⁵ <https://www.lfcc.on.ca/>

³⁶ <http://www.limitedscoperetainers.ca/join-us/>

³⁷ <https://www.justicenet.ca/>

³⁸See the December 21, 2018 Submission of the Canadian Bar Association (British Columbia Branch) to the Law Society of BC regarding Family Law Legal Services Providers Consultation Paper at page 21

(https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/Alternate/Consultation-feedback_2018-12-28.pdf).

7. Pensions;
8. Personal injury;
9. Property law;
10. Real estate law;
11. Tax;
12. Trusts; and
13. Wills/Estates; and
14. Private international law and conflicts of Law.

In addition to the foregoing a working knowledge of accounting and valuation principles are also required.

In order to be knowledgeable in all of the foregoing areas of law and have a working knowledge of accounting and valuation principles requires a significant amount of training. That is why the FLSPL Report's recommendation of the creation of a training program that would be "a minimum of six to eight months on a full-time basis (20 instructional hours per week) or one year on a part-time basis (10 instructional hours per week)... delivered primarily in-person" is not enough. In order to ensure that the person who is delivery family law legal services is competent to provide said services requires the following:

1. They take foundational courses such as those listed above in addition to a foundational course in family law;
2. spend time working under the supervision of a lawyer who practices in the area of family law; and
3. Ideally works for a Firm that provides family law services to the public.

In addition to the above noted minimum training, once a person licensed to deliver family law services to the public is competent, they should be taking further training in areas such as 1) collaborative law³⁹, 2) mediation⁴⁰, 3) arbitration⁴¹, 4) legal coaching⁴² and 5) working with self-represented litigants⁴³

³⁹<https://oacp.co/>

⁴⁰<https://adr-ontario.ca/members-practitioners/approved-courses/mediation-courses/>

⁴¹<https://adr-ontario.ca/members-practitioners/approved-courses/arbitration-courses/>

⁴²<https://www.familylawlss.ca/legal-coaching/>

⁴³<https://www.familylawlss.ca/>

to ensure their ongoing competence in the area of family law.

Without the above noted foundational and advanced training in the area of family law, a person licensed to provide family law services cannot be truly competent to deliver family law services to the public. That is why the FLSPL Report’s recommendation of a training program is not adequate in order to ensure the protection of the public in the area of family law.

If Convocation believes it advisable, in spite of the foregoing, to create a special license to allow non-lawyers to provide services to the public in the area of family law the undersigned strongly suggest that a lawyer be required to supervise, the provision of legal services in the area of family law by a non-lawyer service provider. The reasoning for this suggestion stems from the fact that, as mentioned above, without thorough foundational and advanced training in the area of family law, a person licensed to provide family law services cannot be truly competent to deliver family law services to the public without supervision.

In closing, we call on Convocation to give serious and meaningful consideration to the alternative proposals as outlined above. The issues that regularly arise in the area of family law are important. They can be live altering. Poor or ill-considered advice can threaten the best interests of children and the financial security of those most in need. “Access to Justice” is a serious problem. It deserves a serious, empirically supported solution, not a Band-Aid – and, at that, a Band-Aid that may not even perform the required function or at reasonable cost. The public is counting on Convocation to protect them and the solutions we have offered will do just that.

Respectfully,

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Stephen Codas

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Keith Elliott

Lucy D’Ercole

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October 19, 2020

Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen St. W.
Toronto, ON
M5H 2N6

Via online submission

RE: FAMILY LEGAL SERVICE PROVIDER LICENSE CONSULTATION PAPER

The Toronto Lawyers Association (“TLA”) wishes to provide the following comments on the recommendations contained in the Family Legal Service Provider License Consultation Paper (“the consultation paper”) authored by the Family Law Working Group of the Law Society of Ontario.

OVERVIEW:

The TLA is the voice of its 3,700 members who practice law in all disciplines across the City of Toronto. Some 11% of our members practice family law. The great majority of family lawyers are sole practitioners or practice in small firms. Family lawyers represent individuals from all walks in life, often at a moment of great vulnerability financially, emotionally, and with respect to their physical safety. For many, a separation or divorce is the first time that they have had any contact with the legal system. Individuals seeking to navigate Ontario’s family law justice system encounter complex laws and procedures. Many are not legally sophisticated and do not have the resource to access their rights.

The TLA is committed to the reform of the family justice system to simplify it and to increase access to justice while protecting the vulnerable individuals caught up in that system. The TLA advocates for reform and in this submission sets out a number of changes that would further these goals.

The TLA does not support the proposal of the Family Law Working Group to establish a new profession of Family Law Service Providers (“FLSP”). This proposal will not be able to advance access to justice, may cause actual harm as currently constituted, and will divert precious resources from other more pressing access to justice issues.

The proposed FLSP model does not present the business case which would support the viability of FLSPs performing legal services for those who cannot afford lawyers. Additionally, there is no consideration of the potentially devastating effect on the practices of those members of the family law bar who currently serve low and middle income Ontarians. It should be noted that because members of the family law bar practice in small firms it has traditionally been a point of entry to the profession for racialized lawyers

and for all women lawyers where systemic discrimination barred access to other legal disciplines. Taking a step that forces many family lawyers out of business will have an immediate and negative impact on diversity in the profession.

The FLSP proposal presents a false dichotomy. The argument is that as this province has an access to justice crisis that anyone who opposes the FLSP proposal is failing to meet that crisis. The Law Society of Ontario (“LSO”) has devoted significant resources over the last few years going down the path of trying to create the FLSP as a new profession without having done the basic work of analyzing or even considering the data as to whether this new profession will solve the access to justice problem. The resources thrown at this venture have been diverted from pursuing reforms that would actually improve access to justice, reforms which are much needed. There is an opportunity now to stop pouring resources into the FLSP and to, instead, look at reforms that may make a difference and are more pressing.

The TLA has identified three broad areas of concern with the FLSP proposal. These are: (a) the failure to protect the public from unqualified practitioners; (b) the lack of a business case that the FLSP will provide services at a reduced cost; (c) the damage to the family law bar and the diversity of lawyer licensees.

PROTECTION OF THE PUBLIC FROM UNQUALIFIED PRACTITIONERS

The consultation paper provides a good review of the many areas of knowledge required to practice family law including advocacy skills, contract drafting skills, negotiation skills, as well as knowledge of substantive areas of law including: family law legislation, rules, and regulations, contract law, real property law, corporate law, restitution, income tax, evidence and so on. While access to justice issues in family law may be more pressing than other areas of law, the FLSP proposal must be balanced against the fact that family law is one of the most complex areas of law. The consultation paper proposes that FLSP practice most areas of family law. That is, that these providers advise clients on their rights, negotiate and draft contracts, argue motions, including motions for summary judgment, and conduct trials. There are narrow restrictions, but these providers are to be licensed to act in parenting disputes, and to deal with valuable assets including private businesses, RRSPs, matrimonial homes, and other property. This goes far beyond what was proposed in the Bonkalo Report,¹ which recommended that paralegals for example be restricted from acting in cases involving property and spousal support, as well as being restricted from representing clients at trials, and restricted from drafting domestic contracts “except where they are the result of mediated negotiations and are drafted in conformity with a mediated agreement.”²

All licensed lawyers in Ontario must learn the basic principles of family law legislation and jurisprudence which is a required part of the curriculum for the bar examination. Practicing family law requires knowledge of other substantive areas of law that form a core part of a law school education including contract law, business organizations, tax law, real property law, bankruptcy law, and criminal law. What may appear to be simple tasks, such as preparing a financial statement for the purposes of determining support and equalization, require a broad legal knowledge. The lawyer needs to identify the assets

¹ Justice Bonkalo, *Family Legal Services Review*, (Ontario: Ministry of the Attorney General, 2016) [Bonkalo Report].

² *Ibid.*

(including contingent assets), understand the nature of ownership of the assets, identify taxes and other contingent liabilities. The lawyer needs to understand how income is calculated for support law purposes for salaried individuals and those who own closely held corporations, which include a large share of small business owners in this province. LawPRO describes family law as “one of the most complex practice areas involving dozens of federal and provincial statutes and voluminous case law.”³ It comes as no surprise then that according to LawPRO, “[f]ailure to know or apply the law is twice as likely to occur in family law than in other areas of practice.”⁴ These are the challenges experienced by licensees with law degrees. How can we expect family law service providers with far less education to practice effectively in this field?

The consultation paper assumes that after a two-year paralegal training program which, as the Bonkalo Report notes, does not provide any curriculum to prepare paralegal candidates to deliver legal services in family law, the areas of knowledge a FLSP will need can be taught in 6 – 8 months, with a field placement of two to three months.⁵

If it were, in fact, correct that it is possible to reach competency in the diverse areas of knowledge FLSPs must learn after a two year college program and 6-8 months of study, then it would not be necessary for lawyers to obtain a three year university degree in law followed by articling or the Law Practice Program to achieve competence on the same material. In reality, it is not possible to learn these areas and to become competent based on the limited education program proposed in the consultation paper. It is possible for some rudimentary principles to be absorbed but not for any understanding sufficient to advise and represent clients. It is not possible for individuals educated in this cursory fashion to understand how to learn and apply the law as it evolves and changes. Law school teaches lawyers how to research and learn the law on an ongoing basis. The FLSP service providers will lack that basic skill, as legal research is not mentioned as part of the proposed curriculum. Where there are restrictions on FLSP service providers it is difficult to understand how they will be monitored. For example, an FLSP service provider will not be educated in restitutionary principles and not permitted to advance an unjust enrichment claim. How will the FLSP provider spot the issue that a client may have an unjust enrichment claim and know that they must be referred to a lawyer if the provider does not have a proper (or any) understanding of restitution in the first place?

Studies have shown that while paralegals can provide effective representation in certain dispute resolution contexts, they have failed to in others, such as immigration law.⁶ No other jurisdiction has licensed paralegals to such a broad scope of family law practice. There are two American jurisdictions that have established paralegals with a more limited scope than the consultation paper proposes for Ontario. They are Washington State and Utah. The Washington State program has failed. It was recently

³ “Family Law Malpractice Claims Fact Sheet” (19 July 2017) online: Practice Pro <<https://www.practicepro.ca/practice-aids/claims-fact-sheets/family-law-claims-fact-sheet/>>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Wiseman, David, “Paralegals and Access to Justice for Tenants: A Case Study” in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 173 at 174 [Wiseman].

terminated because of the costs and the small number of individuals who wished to become licensed under the program.⁷

The limited license legal technicians (“LLLT”) family law program in the State of Washington had required an associate’s degree, a three-year program at an accredited school, and 3000 hours of paralegal experience involving substantive legal work in any practice area under the supervision of a lawyer.⁸ This was eventually shortened to 1,500 hours,⁹ but LLLTs, unless specifically permitted, were not allowed to represent a client in legal negotiations, in court, in formal administrative proceedings or in other formal dispute resolution processes.¹⁰

Utah’s Licensed Paralegal Practitioner program includes family law as an area of practice. So far there are only four individuals who have qualified with four more on their way to doing so.¹¹ Licensed paralegal practitioners (“LPPs”) in Utah have only one semester of coursework in addition to their entrance requirements, but prior to being able take their qualifying exam, LPPs must work with a law firm for at least 1,500 hours in the preceding three years.¹² If LPPs are going to practice family law, at least 500 of these hours must be substantive law-related experience in family law.¹³ LPPs can be licensed to practice law in the areas of family law, debt collection and landlord-tenant disputes.¹⁴ They can file court documents, complete settlement negotiations, review court documents, represent clients in mediation, and serve as mediators, but they are prohibited from appearing in court.¹⁵

The FLSP proposal involves only 550 hours of coursework with a field placement of two to three months. The proposal does mention that there should be a prerequisite of one to three years of full-time practice experience as a licensed paralegal, but none of this experience has any family law requirement. Further, the FLSP proposal involves paralegals have a much larger scope of practice than those in the State of Washington and Utah, despite having much less of an education and experience requirement. Yet paralegals in Ontario are being tasked to do more than those in the State of Washington and Utah.

Furthermore, LLLTs themselves thought that 3,000 hours of prior experience was a correct requirement, and that in addition 500 to 1,000 hours of this requirement should be dedicated to family law.¹⁶ Some LLLTs felt that after their training they lacked enough specific family law experience to be fully

⁷ Stephens, C.J., Supreme Court of the State of Washington, Correspondence to S. Crossland, Chair of the Limited License Legal Technician Board, R.Majumdar, President of the Washington State Bar Association, and T. Nevitt, Interim Executive Director of the Washington State Bar Association, June 5, 2020,

⁸ Bonkalo Report, *supra* note 3.

⁹ “Become a Limited License Legal Technician” (2 September 2020), online: Washington State Bar Association < <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/become-a-legal-technician>>.

¹⁰ Bonkalo Report, *supra* note 3.

¹¹ Lyle Moran, “Utah’s Licensed Paralegal Practitioner Program Starts Small” December 12, 2019, *abovethelaw.com*.

¹² “New Utah rule allows practice of law without supervision of lawyer”, online: Utah State Bar < <https://www.utahbar.org/licensed-paralegal-practitioner/lpp-about/>>.

¹³ “Licensed Paralegal Practitioner Program”, online: Utah State Bar < <https://www.utahbar.org/wp-content/uploads/2020/01/LPP-Info.pdf>>.

¹⁴ *Ibid*.

¹⁵ *Supra* note 11.

¹⁶ Clarke, Thomas M. & Sandefur, Rebecca L., “Preliminary Evaluation of the Washington State Limited License Legal Technician Program” (2017) National Center for State Courts at 9 [Thomas].

competent at the start of their practice.¹⁷ The FLSP proposal is dangerously lacking in its education and experience requirements.

This proposal is dangerous to the public as the LSO's listing of these areas of knowledge and assertion that the FLSPs are competent in them will mislead individuals into trusting and retaining these providers to represent them when the providers will not have the ability to do so properly. This will lead to poor results for those who retain them. The most basic duty of the LSO is to protect the public from unqualified practitioners. This proposal fails that duty. The problem is that to qualify family law service providers sufficiently to practice family law as proposed would require an education comparable to that of existing lawyers.

There is an argument that something is better than nothing which was posed in the Bonkalo Report.¹⁸ That is, that it is better for an unrepresented litigant to have the assistance of a service provider even if that provider is not as competent. This argument fails. First, the formerly unrepresented litigant will be worse off because they have paid for a service which will be incompetently performed. That money has been thrown away. Second, the formerly unrepresented litigant will have lost the opportunity to receive special consideration from the court. Our courts have repeatedly confirmed that self – represented litigants are entitled to preferential treatment.¹⁹ This right will be lost to those who hire these providers.

There is no consideration in the consultation paper to the issue of domestic violence, beyond a mention that this would form a 20-hour component of the FLSP curriculum. Many individuals seeking family law help are financially vulnerable. Many are also victimized by physical or verbal abuse. These individuals will be particularly at risk if they are misled by the LSO into retaining unqualified service providers who will not have the knowledge to protect them from coercion or further abuse by their former partners. In particular, women's access to justice is often dependent in part on whether the legal professionals they encounter have a deep understanding of domestic violence and its harms and are alive to the complex interactions between multiple legal systems.²⁰ 20 hours is not sufficient to gain this sort of knowledge.

It would be regrettable for the LSO to fail in its duty to protect the public from unqualified advice in any field of law. To do so in family law where the individuals seeking legal services are often unsophisticated legal consumers would be particularly pernicious.

NO BUSINESS CASE THAT FLSP WILL PROVIDE SERVICES AT REDUCED COSTS

The consultation paper starts from the assumption that non-lawyer service providers will provide family law services at reduced costs. There is no evidence of any form provided to support this contention. There is, however, research to show that the assumption that paralegals are more user friendly or lower the cost of justice is not a reasonable one.²¹ Given this research, the FLSP proposal should not proceed until the LSO can substantiate whether the assumption that non-lawyer service providers will provide

¹⁷ *Ibid.*

¹⁸ Bonkalo Report, *supra* note 3.

¹⁹ *Girao v. Cunningham* 2020 ONCA 260.

²⁰ Koshan, Jennifer, Mosher, Janet, and Wieggers, Wanda, "The Costs of Justice in Domestic Violence Cases: Mapping Canadian Law and Policy" in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 149 at 164.

²¹ Wiseman, *supra* note 6 at 174.

family law services at reduced costs can be supported by evidence. The LSO has advised that since the circulation of the consultation paper an effort is being made to research the business case but will not commit to sharing this information with the TLA. This approach puts the cart before the horse. Researchers have noted that the LSO has not examined whether paralegal services are in fact more affordable since taking on its role as regulator of paralegals.²² This must be investigated before the FLSP proposal proceeds.

The avowed purpose of the FLSP program is to provide legal services for Ontarians with incomes between \$30,000 - \$75,000 per year who are otherwise not served by family lawyers whom they cannot afford. The LSO has not investigated the financial viability of these proposed practices. LLLTs in the State of Washington LLLT program charge \$125 US per hour.²³ LLLTs were found to charge higher fees than paralegals.²⁴ Their education and certification costs were US\$14,440.²⁵ This program has failed and no more LLLTs will be licensed. The problem is that competence aside, a non-lawyer service provider will have the same overhead costs as a family lawyer. That is, office rent, insurance, licensing fees, professional development, IT costs, specialized family law software, marketing, and all the other expenses of running a business. These costs will not be less than those faced by family lawyers. Insurance costs may be higher as these providers will be potentially dealing with high value property and support matters (the average home in Toronto is worth \$1 million) but have low education levels making negligence more likely. Notably, we were told that no effort was made by the Family Law Working Group to canvas the insurance market to determine if insurers are even willing to take on the risk of providing mandatory insurance to FLSPs. The upshot of all of this is that it will not be commercially viable for FLSPs to practice while charging much less than lawyers in a way that access to justice will be increased, much like LLLTs struggled to develop viable business models.²⁶

A new lawyer in Canada charges \$195 on average.²⁷ A new call family lawyer in Canada charges on average \$204.55/hour,²⁸ little more than the State of Washington LLLTs charge. The question of whether once licensed FLSPs will provide lower cost services than family lawyers is not considered in the consultation paper. Nothing restricts FLSP service providers to represent Ontarians with incomes in the range of \$30,000 - \$75,000. The proposed license will permit the FLSPs to represent clients who own homes, have RRSPs, businesses, and other investments. It seems likely that most FLSPs will gravitate to work for those clients who have the means to pay fees high enough for the FLSPs to cover their business costs and generate an income for themselves. This is supported by the fact that paralegals' fees can be substantial,²⁹ and the example of what happened in Ontario when paralegals were introduced to landlord-tenant disputes. Rather than increase access to justice for tenants, paralegals represent less

²² *Ibid.*

²³ "FAQS", online: Laura Genoves, LT PLLC < <https://www.wafamilylawtech.com/faqs>>.

²⁴ Thomas, *Supra* note 14 at 13.

²⁵ *Ibid* at 10.

²⁶ *Ibid* at 11.

²⁷ Moore, Lisa and Perlmutter, Mitchell, "Public Spending on Access to Justice: Where Do We Go from Here?" in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 69 at 76 [Moore].

²⁸ Bruineman, Marg., "Steady optimism – 2019 Legal Fees Survey", *Canadian Lawyer* (8 April 2019) online: *Canadian Lawyer* < <https://www.canadianlawyer.com/surveys-reports/legal-fees/steady-optimism-2019-legal-fees-survey/276027>>

²⁹ Moore, *Supra* note 26.

than 1% of tenants and close to 30% of landlords.³⁰ Paralegals benefited corporate landlords the most, and were not affordable or user-friendly for tenants.³¹ This was actually detrimental for tenants, meant they more often faced landlords with legal representation, and exacerbated the power imbalance between landlords and tenants.³² It is easy to see how the same outcome could apply with FLSPs. FLSPs are going to graduate towards persons who have the funds to pay them, leaving the most vulnerable and least well-off unrepresented parties who are supposed to benefit from FLSPs unserved.

The consultation paper fails to investigate or consider the operating business costs of family lawyers practicing in Ontario today. To conduct such an investigation would be helpful in determining how best to meet the needs of Ontarians whose income is in the range of \$30,000-\$75,000/year. These individuals self-evidently do not have much, if any, money available to pay for legal services. It is unlikely that any service provider, qualified or not, can advise, negotiate, draft contracts, argue motions or take trials for individuals in this income bracket and charge enough to support themselves. The answer for this group of Ontarians is not to create new licensees with substandard skills, but rather to find ways to make self-representation easier, to provide free mediation, to expand legal aid, to increase pro bono assistance, and otherwise fund family law services that these individuals cannot afford.

IMPACT ON THE FAMILY LAW BAR

The TLA understands that the LSO may be wary of giving any weight to the concern that family lawyers may be forced out of business. We understand that this is perceived to be special pleading. However, the loss of livelihoods for existing family lawyers will not just have an impact on them but also on access to lawyers for many Ontarians who currently are being served by family lawyers. This impact on the family law bar will also undermine efforts to enhance diversity in the legal profession.

There is no doubt that the introduction of this program will undermine the practices of existing family lawyers. FLSP providers will have the benefit that since 2017 the LSO has repeatedly communicated to Ontarians that non-lawyer family law service providers will be cheaper than family lawyers. The LSO will continue to promote this position because that is the basis for the entire program, albeit completely unsupported by any facts or research. The LSO has also promoted the notion that family lawyers only charge by the hour, only charge high hourly rates, do not offer fixed fees, and do not offer unbundling or coaching services. The consultation paper itself repeats some of these fallacies, with no supporting evidence. Although this is not true, it will be a tremendous marketing advantage to the FLSPs. Clients who are concerned about costs will retain FLSP service providers over family lawyers because the LSO is taking the position that they are just as competent as family lawyers and cheaper.

It is likely that more sophisticated legal consumers and wealthier legal consumers will continue to retain family lawyers. Those family lawyers who currently serve the middle-class market are the most likely to be supplanted by FLSPs. Once they have been supplanted, they will not be replaced. The result will be the de-professionalization of family law.

³⁰ Wiseman, *Supra* note 6 at 182.

³¹ *Ibid* at 185.

³² *Ibid*.

Family Law has traditionally been an entry point into practice for racialized lawyers and for women lawyers of all backgrounds. This is because family lawyers can hang out their shingle as sole practitioners or practice in small groups. Many work from their homes. The barriers to entry are lower. If family lawyers are driven out of practice, the diversity of the bar as a whole will suffer.

These concerns are all the more heightened by the COVID-19 pandemic, which has had a substantial impact on family law lawyers.³³

THE TLA's PROPOSALS FOR REFORM

The TLA is proposing changes which unlike the FLSP initiative would enhance access to justice for Ontarians:

1. Increase digitalization and remote hearings: The COVID-19 crisis has accelerated the adoption of digitalization and remote hearings. These changes should be maintained and expanded. A legal system which has no electronic filing and no remote hearings is a high cost system to the public.³⁴ Fixing the technological limitations of the justice system enhances access to justice as: (a) electronic filing and document management is easier to access for most self – represented parties; (b) remote hearings prevent wasted time (and legal fees) for lawyers forced to attend at a physical court site. For self-represented parties remote hearings reduce time taken off work. Virtual commissioning of affidavits and other documents also reduce costs and time taken away from work. There are some self-represented parties who do not have access to devices (ipads/phones/laptops) and internet access needed to handle electronic documents and remote hearings. For those people it is essential that the courts invest in laptops on site and in community hubs to ensure equal access. Online dispute resolution programs that offer alternatives to the traditional family law system have also proven to be effective in increasing access to justice.³⁵
2. Expansion of the Unified Family Court across Ontario. Unified Family Courts have specialized judges who are best able to ensure that self – represented parties receive fair hearings. Unified Family Courts are an institution capable of efficiently delivering enhanced access to free or reduced cost mediation services and family law information services to all litigants, including self – represented parties. An obstacle to the expansion of the Unified Family Courts has been construction or re-purposing of physical infrastructure. With remote hearings and electronic filing, in the interim pending the construction of new court houses, virtual Unified Family Courts should be considered.
3. Pro Bono Students Canada are launching a Family Justice Centre Ontario with volunteer private lawyers and students. This initiative should be expanded.

³³ “COVID-19 Impact Report” (2020), online: LexisNexis Canada < <https://go.lexisnexis.ca/COVIDSurveyResults>>.

³⁴ Moore, *Supra* note 26 at 74.

³⁵ Sossin, Lorne and Kapoor, Devon, “Social Enterprise, Social Innovation, and Access to Justice” in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 226 at 234.

4. Legal Aid Ontario services for family law should be expanded, with a restoration of the level of services in place until the early 1990s at a time at which, perhaps not coincidentally, there were far fewer self-represented litigants in the family law justice system.³⁶ While Justice Bonkalo thought it unlikely that Legal Aid Ontario would see any additional funding,³⁷ research has shown that public support for legal aid programs actually increases when such programs are expanded to apply beyond just lower income individuals.³⁸ Further, research has shown that better use of community resources beyond just increased funding may be available for legal aid to expand services.³⁹
5. The LSO should impose a levy on all lawyer licensees, not just family lawyers, to fund family law services for those whose incomes disqualify them from Legal Aid but who cannot otherwise afford counsel. This levy should be geared to income.
6. If the LSO concludes that there needs to be an expansion of individuals practicing family law to try to drive down the market, then the LSO should expand the licensing of foreign trained lawyers rather than creating a new category of lesser trained family law service providers. Unlike FLSP, these individuals are trained lawyers and can easily be educated as needed to meet Ontario requirements. The LSO could fast track the licensing of foreign trained lawyers who commit to practice family law for at least five years after their call to the bar.
7. The LSO should continue to support efforts to expand legal coaching and unbundling of legal services by family lawyers. There is scope for low cost delivery of these services in internet based law firms, using Artificial Intelligence. This innovation is already underway amongst Ontario family lawyers.
8. The Mandatory Information Program delivered in the family law courts to all litigants should be improved to provide more direct information and guidance.⁴⁰
9. Efforts should be made to make the legal process for family law less adversarial, as an adversarial process means the legal system is complex, competitive and labour intensive, which creates barriers to justice and makes the process complicated, expensive and slow.⁴¹ Part of this

³⁶ "Submission on expanding legal services options for Ontario families" (19 October 2019) online: Legal Aid Ontario <Submission on expanding legal services options for Ontario families>.

³⁷ Bonkalo Report, *supra* note 3.

³⁸ Currie, Ab, "The Monetary Costs of Everyday Legal Problems and Expanding Access to Justice" in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 93 at 103.

³⁹ *Ibid* at 105.

⁴⁰ Jacobs, Lesley A. & Carter, Carolyn, "Court-Ordered Family Legal Information Sessions in Ontario: A Path to Justice Approach" in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 192 at 203.

⁴¹ McHale, Jerry M, "Legal Culture as the Key to Affordable Access" in Trevor C.W. Farrow & Lesley A. Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 247 at 248.

effort should involve more of a focus on consensual dispute resolution, alternative dispute resolution, and other non-adversarial approaches.⁴²

10. Efforts should be made to reduce legal complexity in family law, as legal complexity drives legal costs and increases the time spent on legal issues.⁴³ Justice Bonkalo's Report specifically mentioned that "the family justice system is hampered by systemic issues that require significant further attention. Deep-rooted systemic issues continue to thwart simplicity, proportionality, peaceful resolution and affordability. While a simplification of processes and procedures does not fall within the mandate of this review, it has become clear to me that the complexity of the current system is a fundamental problem that needs to be rectified." The FLSP proposal does not get to the root of the access to justice problem, and so is not a solution to this most pressing access to justice issue in family law.

ANSWERS TO QUESTIONS POSED IN THE CONSULTATION PAPER

1. *Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services, if so how?*

There is no evidence that the proposed scope of permissible activities will support increased access to affordable and competent family law legal services. As the example of paralegals in landlord-tenant disputes shows, it cannot simply be assumed that introducing paralegals will increase access to justice for lower-income individuals.⁴⁴ Paralegals, like lawyers, gravitate to clients who can afford to pay for their services. The LSO has paid no direction attention to whether the assumption as to the affordability of paralegal services has been realized in practice,⁴⁵ and until this is looked at it cannot be said that the proposed scope of activities will support access to affordable legal services. Further, the scope of permissible activities cannot be performed competently without a lawyer's education. The scope proposed is far beyond that in the failed State of Washington LLLT or the fledgling Utah LPP programs, as well as beyond what Justice Bonkalo suggested. Far too much is being proposed to expect any possibility of competent services.

2. *Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?*

As the LLLT example in the State of Washington demonstrates, it is very difficult for paralegals to establish a viable business model in family law.⁴⁶ Given the strain of COVID-19 on business across the board, and especially the legal profession,⁴⁷ it is extremely difficult to imagine FLSPs succeeding in the current legal business environment. The research has not been done by the LSO on the business case for this proposed program. However, it seems unlikely that the

⁴² *Ibid* at 257.

⁴³ *Ibid* at 249.

⁴⁴ Wiseman, *supra* note 6 at 174.

⁴⁵ *Ibid*.

⁴⁶ Thomas, *supra* note 14 at 11.

⁴⁷ COVID-19 Impact Report, *supra* note 34.

business overhead costs for paralegals will be different or lesser than those for lawyers. Given that fact, as well as the very modest sums available for legal fees amongst Ontarians with incomes in the \$30,000 - \$75,000 range, there will not be a viable business model servicing that cohort. The only viable business model for the FLSP will be to displace family lawyers in serving the middle income market which will not advance access to justice, but simply de-professionalize and lower the quality of family law services in this province.

3. *Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?*

If mastery of all the proposed competencies is achieved then this might allow some level of competence, but mastery of all the proposed competencies seems extremely unlikely under the current education and experience requirements for FLSPs. With limited exceptions, the proposal is to have law practiced by those without law degrees. We believe that a three year law degree coupled with articling or completion of the Law Practice Program is necessary to advise and represent individuals competently in the area of family law.

4. *In your view, what scope of activities would best support increased access to affordable, competent, family law services?*

These submissions have outlined ten different proposals to increase access to affordable and competent family law services.

5. *Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?*

The proposed training program is not of sufficient duration and rigour to enable candidates to achieve the proposed competencies. The FLSP proposal involves only 550 hours of coursework with a field placement of two to three months. No other family law experience is required. This is far below what will be required to establish competency in the wide scope of practice being allotted to FLSPs. Some State of Washington LLLTs, who had a 3,000 hour experience requirement as well as a three-year program of study, felt that after their training they lacked enough specific family law experience to be fully competent at the start of their practice.⁴⁸ There is no way FLSPs will be competent in a much greater scope of practice with much less educational and experience requirements. What is needed for the scope of practice proposed is a three year law degree coupled with articling or completion of the Law Practice Program.

⁴⁸ Thomas, supra note 14 at 9.

6. *What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?*

In addition to the comprehensive legal training provided by a three year law degree, there must be a requirement of significant experience in family law prior to an FLSP license being provided. This was something that LLLTs themselves mentioned as being very important.⁴⁹

7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?*

No experiential training or field placement can compensate for the lack of a law degree.

8. *Is a CPD requirement focused on family law appropriate for the FLSP?*

Evidently if FLSP providers are permitted they will require ongoing professional development. As they will not have learned legal research skills they would need much more extensive professional development than lawyers.

9. *Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?*

Our view is that it is a mistake to create the FLSP license. Currently there are many skilled law clerks working in lawyer's offices across the province. Under a lawyer's supervision there is scope to expand the tasks that law clerks are permitted to undertake.

10. *What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)*

Presumably the attraction of the FLSP will be the provision of cheaper services. Currently the LSO has not researched the business case but in our view the FLSP will not provide cheaper services. Flexible billing practices, flexible payment plans, virtual delivery of services, delivery of services in multiple languages, and accessibility are all important to current family law clients and self – represented litigants. There is no evidentiary basis to suggest that FLSP will deliver these more effectively than family lawyers.

11. *Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc), is the FLSP design appropriate?*

Ontario courts are in the midst of piloting technology to allow motions and conferences to proceed virtually with electronically filed documents.⁵⁰ There is scant evidence to support that

⁴⁹ Thomas, supra note 14 at 9.

⁵⁰ "Supplementary Notice to the Profession and Litigants in Civil and Family Matters Including Electronic Filings and Document Sharing (Caselines Pilot)", (2 September 2020) online: Ontario Superior Court of Justice <<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/>>.

paralegals practicing family law will increase access to justice, but there has been considerable research to show that modernization of the court system will decrease legal costs.⁵¹

12. *Are any aspects of the proposed licensing framework unfeasible?*

The unfeasible aspects of the proposed licensing framework have been previously discussed in this submission.

13. *Is there additional information or are there other factors that should be considered?*

If the FLSP program is to be put into practice, it is an absolute must that a system for clients to assess bills from paralegals be put into place. Access to justice is not served by forcing low-income individuals to pursue claims in small court in the event of a dispute over their bill. There is currently no mechanism by which clients can contest paralegal fees.⁵² While a client can challenge a bill from a lawyer via the assessment office of the Ontario Superior Court of Justice, the current LSO recommendation regarding paralegal fees is for clients to pursue them in small claims court.⁵³ This must be rectified if an FLSP license is put in place.

Thank you for considering these comments.

Yours very truly,

A handwritten signature in black ink, appearing to read 'BH', written in a cursive style.

Brett Harrison
President
Toronto Lawyers Association

⁵¹ Moore, *Supra* note 26 at 74.

⁵² Trabucco, Lisa, "What Are We Waiting For? It's Time to Regulate Paralegals in Canada" (2018) vol 35 Windsor Yearbook of Access to Justice 149 at 175.

⁵³ *Ibid.*

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Please enter your first and last name	Catherine Rhineland
Email Address	rhinelanderc@hotmail.com
Please make a selection below	Co-Chair, IAG
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Indigenous Advisory Group
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Organization
Upload a File	20201009 Letter to LSO - RE FLSP.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

Indigenous Advisory Group

October 9, 2020

Law Society of Ontario
130 Queen Street West Toronto, Ontario
M5H 2N6

Re: Family Law Service Provider Licencing for Paralegals

On behalf of the Indigenous Advisory Group (IAG), we appreciate the opportunity to provide feedback with respect to the proposed Family Legal Services Provider License.

The Indigenous Advisory Group make the following recommendations and considerations:

Licensing:

We strongly recommend that 1) paralegal licensing include a family law component rather than requiring paralegals to complete an additional license; and 2) that current licensed paralegals be grandfathered in after completing relevant CPD requirements.

Consultation:

We recommend consultation with Indigenous community representatives who are already heavily involved with the delivery of family legal services.

We further recommend that the LSO conduct a survey with current paralegals who provide family legal services to their respective communities.

Access and further considerations:

We recommend that the parameters of the family of “modest means” appropriately encompass families within Indigenous communities who may need different assistance and access to family legal services.

We ask that training and education be provided in relation to Customary Care and Adoptions.

We ask that consideration needs to be given for remote communities that may not have any paralegals licensed to provide family legal services.

Fees, Insurance, Training

We recommend that the LSO revisit the fees and insurance payments to account for paralegals who face hardship.

We ask that the LSO consider flexibility in requiring paralegals to take additional training to qualify for the provision of family legal services. For example, distance

learning and other forms of remote or virtual training. In addition, consideration of credit for past work experience.

Other requests:

We ask that the LSO encourage the Provincial and Federal governments to create family legal service paralegal positions to service Indigenous communities.

We ask that consideration be made of the role of Elders and Senators in the Family Legal Services Provider program.

Finally, we recommend that additional consultation be considered with other agencies, communities, and organizations, including but not limited to the following:

- Tungasuvvingat (Ottawa)
- Inuit Tapiriit Kanatami
- Wikwemikong
- Nishnabi Aski Nation(NAN)
- Indigenous Justice Division
- Aboriginal Legal Services
- Indigenous Bar Association
- First Nation communities in northern Ontario
- Chiefs of Ontario
- Native Child and Family Services of Toronto (NCFST)
- Paralegals who practice in family law
- Legal Aid Ontario

We look forward to our continued work with the Law Society of Ontario. Please do not hesitate to contact the undersigned should you need clarification or have any further questions.

Respectfully,

Audrey Huntley and Catherine Rhineland

Attachment: Inuit Resources

Inuit Resources (updated September, 2020):

Completed by Tauni Sheldon: tsheldon384@gmail.com

TORONTO AREA SPECIFIC RESOURCES

Toronto Inuit Association	Toronto	https://www.facebook.com/torontoinuitassociation www.torontoinuit.com hello@torontoinuit.com	<ul style="list-style-type: none"> • Services as required
<p>Tungasuvvingat Inuit – Satellite Location</p> <ul style="list-style-type: none"> • Toronto Location – Native Canadian Centre: 16 Spadina Road, Toronto ON M5R 2S7 	Toronto	<ul style="list-style-type: none"> • Toronto Inuit Family Well-Being and Cultural Program – Sheena Taylor: staylor@tiontario.ca • Youth Life Promotion – Darryl Day: dday@tiontario.ca • National Program Coordinator – Joshua Stribbell: Jstribbell@tiontario.ca 	<ul style="list-style-type: none"> • Inuit family and community social assistance. Emergency assistance • Providing Inuit youth activities and cultural activities. Organize Inuit events • Inuit youth exchanges • Youth well-being
<ul style="list-style-type: none"> • iTUK – Inuit of Toronto urban Katimavvik 	Toronto & Southwestern Ontario	Local Facebook pages	To connect the Inuit with each other. To provide information for Inuit about urban living. To post current events in the area
		Additional Information may follow	

OTTAWA AREA SPECIFIC RESOURCES

<p>Tungasuvvingat Inuit</p> <p><i>Ontario provincewide surveys/data for the wellbeing of the Inuit in Ontario.</i></p> <p><i>Call for immediate case attention</i></p>	<p>Ottawa</p>	<p>613-565-5885</p> <p>1071 Richmond Rd. Ottawa, ON K2B 6R2</p> <p>info@tungasuvvingatinuit.ca</p> <p>www.tungasuvvingatinuit.ca</p>	<ul style="list-style-type: none"> • Family well-being & family programming • Education support • Community support program • Mamisarvik Healing Centre • Culture, youth, Elders, sports, recreation, and health program • Employment services • Restorative Justice program • Homeless services
<p>Inuuqatigiit Centre for Inuit Children, Youth and Families</p> <p><i>Ontario provincewide surveys/data for the wellbeing of the Inuit in Ontario.</i></p> <p><i>Published approved Ministry of Education list of Arctic games.</i></p> <p><i>Call for immediate case attention.</i></p>	<p>Ottawa</p>	<p>613-744-3133 ext. 213</p> <p>Early Years 224 & 230 McArthur Ave. Vanier, ON K1L 6P5</p> <p>Youth Centre 76 Queen Mary Street Vanier, ON K1K 1X7</p> <p>info@inuuqatigiit.ca</p> <p>www.inuuqatigiit.ca</p>	<ul style="list-style-type: none"> • Uqausivut culture & language program • Tasiuqatigiit Program - support away from home • Family well-being program • Elder's program • Women's Services – violence prevention • Bridging the Gap BTG Program – school board cultural services • Tukimut Program – After school program • Online educational tools for the classroom

OTTAWA AREA SPECIFIC RESOURCES

<p>Inuit Circumpolar Council Canada Office</p>	<p>Ottawa</p>	<p>613-563-2642</p> <p>75 Albert Street, Suite 1001 Ottawa, ON K1P 5E7</p> <p>www.inuitcircumpolar.com</p>	<ul style="list-style-type: none"> • Promote Inuit rights and interests on an international level • Develop and encourage policies that protect the Arctic environment • Strengthen Inuit unity • Seek active partnership in the political, economic, and social development of circumpolar regions
<p>Inuit Tapiriit Kanatami <i>National Inuit Youth Council</i></p>	<p>Ottawa</p>	<p>613-238-8181/1-866-262-8181</p> <p>75 Albert Street, Suite 1100 Ottawa, ON K1P 5E7</p> <p>www.itk.ca</p>	<ul style="list-style-type: none"> • Protecting/advancing the rights & interests of the Inuit in Canada • Research • Advocacy • Public outreach • Education on the issues affecting Inuit
<p>Pauktuutit Inuit Women of Canada</p>	<p>Ottawa</p>	<p>613-238-3977/800-667-0749</p> <p>1 Nicholas St., Ste.520 Ottawa, ON K1N 7B7</p> <p>www.pauktuutit.ca</p>	<ul style="list-style-type: none"> • Abuse Prevention • Children & Youth • Gender Based Violence • Residential Schools • Shelters & Transitional Housing *Policy sectors and policy implementations

OTTAWA AREA SPECIFIC RESOURCES

<p>Akausivik Inuit Family Health Team</p> <p><i>Call for immediate case attention</i></p>	<p>Ottawa</p>	<p>613-740-0999</p> <p>24 Selkirk St., Suite 300 Vanier, ON K1L 0A4</p>	<ul style="list-style-type: none">• Traditional complementary medicine• Family care• Physical check-ups/pain & injury• Specialist assessments• Pediatrician, Well Baby, Woman• Mental health assessment• Psychiatrist/Psychotherapy• Tuberculosis• Sexually Transmitted Infections• Doctors/nurses and Inuktitut speaking interpreters/case managers
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NUNAVUMMIUT/NUNAVUT RESOURCES

<p>Government of Nunavut (time zone changes depending on the region in Nunavut)</p> <p><u>Education/Culture & Heritage Departments</u> offers language programs, culture and history preservation, oral traditions for all Nunavummiut.</p>	<p>Iqaluit</p>	<p>1-877-212-6438</p> <p>P.O. Box 1000 Station 200 Iqaluit, NU X0A 0H0</p> <p>www.gov.nu.ca</p>	<ul style="list-style-type: none"> • Community & Government Services • Culture and Heritage • Economic Development and Transportation • Education • Environment • Executive & Intergovernmental Affairs • Family Services • Finance • Health • Justice
<p>Nunavut Tunngavik Incorporated Enrolment Administrator Department of Human Resources</p> <p>(-1 hour to Toronto time)</p>	<p>Rankin Inlet</p>	<p>867-645-5400/888-236-5400</p> <p>P.O. Box 280 Rankin Inlet, NU X0C 0G0</p> <p>www.tunngavik.com</p>	<ul style="list-style-type: none"> • Nunavut Land Claims Agreement • Nunavut Land Claims Agreement Enrolment Program • Community Enrolment Committees • Nunavut Beneficiary
<p>Iqaluit Public Health</p> <p><i>(Immediate assistance)</i></p>	<p>Nunavut</p>	<p>See: The Government of Nunavut Department of Health 867-975-4800</p>	<p><i>An easier and accessible number to call for immediate attention situations.</i></p>

NUNAVIMMIUT/NUNAVIK RESOURCES

Makivik Corporation	Nunavik/ Northern Québec	Head Office, Kuujuaq P.O. Box 179 Kuujuaq, QC J0M 1C0 819-964-2925/1-877-625-4845 www.makivik.org	<ul style="list-style-type: none"> • James Bay Northern Québec Agreement • Owning & operating profitable enterprises • Social & Economic Development • Improved Housing • Protection of Inuit Language & Culture • Protection of the natural environment • Nunavik Government
Nunavik Enrolment Office	Nunavik/ Northern Québec	See: Makivik Corporation 819-964-2925 1-877-625-4845	Nunavik beneficiary rights & claims
Avataq Cultural Institute	Nunavik/ Northern Québec	819-254-8919/8939 General Delivery Inukjuak, QC J0M 1M0	<ul style="list-style-type: none"> • Student assistance program • Inuktitut language • Archaeology/library and archives • Local cultural communities
Ullivik (Medical & Social Assistance Lodge) <i>Call for immediate case attention</i>	Montréal, Québec	514-932-9047 695 Orly Avenue Dorval, QC H9P 1E9	<ul style="list-style-type: none"> • Inuit Medical lodging • Inuit Social Assistance • Inuit staff/Inuit social worker <i>For immediate case attention</i>
Kativik School Board	Montréal, Québec	514-482-8220 9800, boul Cavendish, Suite 400 Saint-Laurent, QC H4M 2V9	<ul style="list-style-type: none"> • Nunavimmiut education • Post-secondary education • Teacher training • Commissioner Council • Online/active classroom resources

INUVALUIT/WESTERN ARCTIC REGION

<p>Inuvialuit Regional Corporation (-2 hours to Toronto time)</p>	<p>Inuvik/Western Arctic Northwest Territories</p>	<p>867-777-7000 107 Mackenzie Road Bag Service #21 Inuvik, NWT X0E 0T0 www.irc.inuvialuit.com</p>	<ul style="list-style-type: none"> • Prenatal & early childhood • Education, training and employment • Health and wellness • Inuvialuit enrolment • Inuvialuit cultural centre • For beneficiaries (also land claims & status)
<p>Social Services Inuvik (-2 hours to Toronto time) <i>Also call for immediate attention cases</i></p>	<p>Inuvik/Western Arctic Northwest Territories</p>	<p>867-777-8101 2nd Floor, Inuvik Regional Hospital 285-289 Mackenzie Road Inuvik, NWT X0E 0T0 www.irc.inuvialuit.com</p>	<ul style="list-style-type: none"> • Child & family services • Adoptions • Foster care • Family support • Child protection • Services for the aged and the handicapped
<p>Inuvialuit Cultural Resource Centre (-2 hours to Toronto time)</p>	<p>Inuvik/Western Arctic Northwest Territories</p>	<p>867-777-2595 Inuvialuit Cultural Resource Centre Northwest Territories X0E 0T0 www.irc.inuvialuit.com</p>	<ul style="list-style-type: none"> • Inuvialuit/Western Arctic learning • History of Inuvialuit • Language & language instruction • Cultural preservation • Inuvialuit games & drum dancing • Library & artifacts

NUNATSIAVUT/LABRADOR INUIT

<p>Nunatsiavut Government</p> <p><i>The Cultural Division preserves, protects, promotes and advances the Labrador Inuit Language and culture.</i></p> <p><i>Contact for social assistance/child protection</i></p> <p>(+1 hour to Toronto time)</p>	<p>Nunatsiavut/ Labrador</p>	<p>709-922-2942</p> <p>25 Ikajuktauvik Road P.O. Box 70 Nain, NL AOP 1L0</p>	<ul style="list-style-type: none"> • Culture, Recreation and Tourism • Education and Employment • Economic Development • Lands and Natural Resources • Nunatsiavut Affairs • Nunatsiavut Secretariat
<p>Labrador Inuit Land Claims Agreement</p>	<p>Nunatsiavut/ Labrador</p>	<p>See: Nunatsiavut Government</p> <p>709-922-2942</p>	<p>Nunatsiavut Inuit beneficiaries contact the Registrar of Beneficiaries at The Nunatsiavut Government</p>
<p>The Labrador-Grenfell Regional Health Authority</p>	<p>Nunatsiavut/ Labrador Region</p>	<p>1-855-897-2267</p> <p>Administration Building Labrador-Grenfell Health Box 7000 Station C Happy Valley-Goose Bay, NL AOP 1C0</p>	<ul style="list-style-type: none"> • Patient safety & quality • Baby-Friendly Initiative • Medical transportation assistance program • Triage ER • Tuberculosis

ONTARIO PROVINCIAL GOVERNMENT RESOURCE

<p>Ministry of Indigenous Relations and Reconciliation</p> <p>Ontario</p>	<p>Toronto</p>	<p>416-326-4740</p> <p>4th Floor, 160 Bloor Street East Toronto, ON M7A 2E6</p>	<ul style="list-style-type: none">• Work with the federal government• Help to access Ontario government programs• Reform land claim processes• Encourage diversity & inclusion• Programs & funding• Education strategy• Consultations• Ending violence against women• Reconciliation• Treaties• Land claims• Indigenous policies• Enhance government awareness
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FEDERAL GOVERNMENT RESOURCES

<p>RESIDENTIAL SCHOOL (IR) CRISIS LINE</p> <p>HOPE FOR WELLNESS</p> <p>SIXTIES SCOOP NETWORK</p>		<ul style="list-style-type: none"> • 1-866-925-4419 • 1-855-242-3310 • sixtiesscoopmap@gmail.com 	
<p>Indigenous and Northern Affairs Canada (INAC)</p>	<p>Toronto Indigenous Services</p>	<p>1-800-567-9604</p> <p>655 Bay Street, 3rd Floor Toronto, ON M5G 2K4</p>	<ul style="list-style-type: none"> • Northern Affairs • NHIB: Non-Insured Health Benefits: drugs, dental, vision, medical supplies and equipment, mental health counselling, medical transportation
<p>Indigenous and Northern Affairs Canada (INAC)</p> <p>Public Contact Centre INAC</p> <p>Four Arctic locations: 2 Iqaluit, Rankin Inlet, and Kugluktuk (see INAC website)</p>	<p>Postal Address: Ottawa</p>	<p>1-800-567-9604</p> <p>INAC Public Contact Centre: Terrasses de la Chaudière 10 Wellington, North Tower Gatineau, QC K1A 0H4 Postal Address: Ottawa</p>	<ul style="list-style-type: none"> • First Nations, Métis and Inuit • Northern Affairs • Inuit population and language • Nanilavut: Lets Find Them • Building Inuit economic success, including art • Devolution and land claims agreements in Inuit Nunangat • Government of Canada’s apology for the High Arctic Relocation • Success stories • INAC’s role • Circumpolar affairs and INAC • Inuit organizations listed • National Council for Reconciliation • Recognizing and implementing Indigenous rights

Qujannamiik/Nakurmiik/Quyanainni/Nakurmmek

#173

Please enter your first and last name	C. Gwendolyn Landolt
Email Address	realwcto@realwomenofcanada.ca
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	REAL Women of Canada
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)
Upload a File	Submission by REAL Women FLSP.docx
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



FAMILY LEGAL SERVICES PROVIDER CALL FOR COMMENT

November 9, 2020

Presented to:

**THE LAW SOCIETY OF ONTARIO / BARREAU DE L'ONTARIO
TORONTO, ON M5H 2N6**

Submitted by:

**C. Gwendolyn Landolt
National Vice-President and Legal Counsel
REAL Women of Canada
Ottawa Office
Box 8813 Station T
Ottawa Ontario K1G 3J1
Tel: (613) 236-4001
Fax: (613) 236-7203
Email: realwcto@realwomenofcanada.ca**

The increase in self-representing litigants in family law is a growing concern in Ontario. Nicholas Bala, Professor of Law, Queens University and Rachel Birnbaum, Professor of Social Work, Kings University College, Western University have provided empirical data on the continual and expanding presence of self-representative litigants. (The Lawyer's Daily, October 13, 2020). They surveyed 57 Ontario judges to obtain their views and experiences on self-reps. They found that almost all the judges (95%) believe that self-representing litigants increase the amount of court times required to resolve a case, 66% of judges indicate that settlement is less likely if one or both of the parties are self-reps and that most of the judges expressed concern with self-representing litigants' lack of knowledge of process and evidence.

This long-standing concern about the lack of access to justice in family law led the Attorney General of Ontario, in February 2016, to appoint Justice Annemarie E. Bonkalo to conduct a review of family legal services. In her excellent report, released in December 2016, Justice Bonkalo made several recommendations directed at the Law Society of Ontario (LSO) recommending *inter alia* a "specialized licence for paralegals to provide specified legal services in family law". The LSO responded in June 2020 recommending the establishment of a Family Legal Services Provider licence (FLSP). It recommended appropriate training for paralegals which included an education program specialising in family law, followed by an FLSP exam. In addition, the LSO's consultation report recommends a prerequisite of 1 – 3 years of full-time practise experience and/or a 2 – 3 months field placement in family law. The training in these speciality classes assures the competence of the FLSP. The LSO paper also included extensive detailed information on the areas of permissible activities for the FLSP.

There was however, a fundamental issue that was not addressed in the LSO consultation paper. It was that the FLSP should have a relationship with one or more experienced family lawyers to provide consultation to the FLSP and to take over the file if the matter should become complex, or lead to serious ramifications. This relationship would provide further protection for the client. This relationship, however, should not discredit the competence of the FLSP in any way, as it is the standard practice in the legal profession that when legal matters involve serious ramifications, consultation and referral of the file to the senior counsel is recommended.

The Advantages of FLSP

In situations where parents cannot come to an agreement on custody and access and financial support, or resolve their disputes through mediation, a paralegal may be particularly useful. Their assistance precludes issues going before a judge by costly lawyers, who present their arguments as is required, as adversaries, arguing on behalf of a client for the custody and support of a child. This may not always be in the child's best interest. Lawyers rely on information provided by their client whose perception of the facts may be distorted by emotion and deep resentment of the partner. This may lead to an inappropriate decision made by the judge. A paralegal could provide the necessary time to deal objectively and sensitively with the main

objective, which is to ensure that the best interests of the child be obtained. The FLSP would, of course, also prepare agreements and consent – court orders which would expedite the process.

It is significant that Justice Bonkalo noted in her report that the barriers to legal support in family law are not just financial, but are also issues relating to geography, culture and language, which deepens the need for consideration of other options . Legal representatives from one’s own cultural background or from an individual who speaks one’s language could be addressed by the wide availability of FLSPs.

Justice Bonkalo further stated in her report; “Because each individual is unique, with a unique set of circumstances such as race, income, education, literacy, language, religion and geographic location, it is important to keep in mind how these different variables may affect a person’s access to legal services in family law. Every individual should have the opportunity to choose service providers who can meet and respond to his or her unique needs.”

The FLSP can facilitate this diverse range of needs by way of competent legal assistance to help all litigants navigate a difficult and emotional period in their lives.

#192

Please enter your first and last name	Christina Boodhan
Email Address	cboodhan@hotmail.com
Please make a selection below	Registrar, ILCO
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Institute of Law Clerks of Ontario
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	2020.11.20 LSO FLSP submission.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

Submission by The Institute of Law Clerks of Ontario regarding the Family Law Services Provider Licence proposed by The Law Society of Ontario

The Institute of Law Clerks of Ontario (ILCO) is pleased to make the following submissions in response to the consultation by The Law Society of Ontario regarding their proposal for a Family Law Services Provider Licence.

Summary of ILCO's family law membership

ILCO has a total membership of approximately 1,500 members. Of that total, approximately 70 law clerks have specified their area of practice areas as family law. Of that subset, 9 members have applied for and received their ILCO Certified Expert designation in the area of family law.

(In order to be eligible for the ILCO Certified Expert designation, an applicant/member must have at least 10 years of experience in their area of practice. These applications also require a letter of recommendation from their supervising lawyer in which he or she confirms the applicant's level of expertise. A sample application is attached as Appendix 'A' to this submission.)

We received favourable feedback from our membership in support of the FLSP licence: in particular, from our senior membership (clerks with a minimum of 10 years of experience in family law, including 5 members with at least 20 years of experience).

Proposed Structure of Work

As law clerks are required to work under the supervision of a lawyer, a proposed model of work may include a limited retainer which would specify that the file or matter would be undertaken by a law clerk on a day-to-day basis, but all work would be supervised/reviewed by a lawyer at all times. This model may be favourable for potential clients who cannot afford to pay a substantial retainer up front (i.e. \$5,000 or more).

Scope of Permissible Activities

Basic:

- Drafting correspondence to opposing parties (unrepresented by counsel); opposing counsel, courts and third parties (such as experts)
- Preparation (drafting) of family law forms, including but not limited to
 - Financial Statements with financial disclosure
 - Procedural motions (including unopposed or consent motions)

- Orders
- Simple or uncontested divorce, including divorce set-down materials
- Preparation of support calculations under the *Child Support Guidelines* and *Spousal Support Advisory Guidelines*
- Enforcement of orders (including writ of seizure/sale and garnishment)

Intermediate:

- Preparation of bills of costs
- Advice on day-to-day issues, such as maintaining payments for joint expenses or temporary support
- Advice on general concepts, such as joint versus sole custody; equalization of net family property
- Preparation of separation agreements (stipulation: parties to the agreement would be required to obtain independent legal advice from a lawyer)

Advanced:

- Preparation for questioning
- Preparation for mediation
- Preparation for trial

Exclusions:

Our membership agrees with the LSO's recommendation that the following categories may be excluded from the Proposed Scope of Activities:

- Some income determination issues
- Equitable claims
- Third-party experts or valuers
- Unequal division of property
- Relocation/mobility
- Child abduction
- Cohabitation agreements or marriage contracts
- Where the client is under the age of 18 or mentally incapable
- Child protection matters
- Appeals
- Matters involving reproductive/fertility law issues
- Where a matter overlaps with an area that is out of scope for the FLSP licence or for paralegals under the current By-Law 4 (real estate or estates)

Competencies

ILCO recognizes that the use of the term “law clerk” may include individuals who adopt the title in name only and may not necessarily have the educational background. Conversely, they may have sufficient on-the-job or field training in order to carry out the duties of a law clerk.

Generally, most college-level law clerk programs include 2 full courses (over 2 semesters) devoted to the study of family law concepts and procedures, including the applicable legislation and court forms.

Given that the proposed scope of work for an FLSP may be quite specialized, it would be important for the LSO to establish minimum requirements for education and/or credentials to ensure that a law clerk applying for this licence has sufficient experience in order to complete the assigned work.

Recommendation:

The FLSP may be best suited to law clerks with a minimum of 10 years of experience, who have also applied for and obtained their ILCO Certified Expert designation in family law. This is consistent with the level of experience of the clerks who provided their comments in response to ILCO’s request for input towards these submissions.

Law Clerks versus Paralegals

Advantages of licencing family law clerks (versus paralegals) to perform the above and other similar tasks include:

- Law clerks have the benefit of extensive background knowledge through their educational programs, including knowledge of the family law legislation and related court forms
- Law clerks have sufficient expertise in order to analyze and summarize information

We understand that paralegals do not benefit from a similar breadth of knowledge through their educational programs of study. They may have the advantage of their LSO licence to allow them to attend at court for limited matters.

In our view, the only advantage for paralegals to undertake this work is that they have some limited standing to attend at court and make submissions in other areas of law (such small claims and criminal matters).

Recommendation:

The LSO may consider expanding access to court hearings to include law clerks at the most basic steps, such as a First Appearance hearing, or for procedural steps, such as speaking to a matter for the purposes of adjournment/rescheduling to a new date.

Target Market

The target market for services which may be provided under the Family Law Services Provider Licence may include:

- Potential clients who earn more than the minimum income threshold per Legal Aid requirements and do not qualify for a Legal Aid certificate (see Appendix 'B')
- Potential clients who require limited advice and assistance to conclude their matter, i.e. obtaining a simple divorce where all other issues are already resolved
- Family of modest means as starting point (examples):
 - single client with no dependents - maximum gross income of \$30,000 per year
 - family with 1-3 dependents - maximum gross income of \$50,000 per year

Recommendation

Qualified individuals with an FLSP would be well-equipped to assist a potential client with the following:

- Completion of court forms/drafting documents
- System navigation, such as guidance re proper level of court to commence a family law proceeding
- Legal advice: limited to possible procedure/jurisdiction
- Assistance in court: limited to procedural matters such as consent orders, adjournments or rescheduling matters
- Legal representation: limited to procedural matters

Summary

We are highly confident that the education, credentials and experience of ILCO's senior membership in the area of family law would be well-suited to provide the services under this licence.

Closing Remarks

ILCO's leadership team extends our thanks to our membership for their ongoing support but in particular, for their feedback in response to our call regarding these submissions.

On behalf of our members, ILCO would also like to extend our gratitude to Sheena Weir, Annette Diamond and their team at The Law Society of Ontario for this opportunity

to contribute towards the discussion with respect to the Family Law Services Provider Licence.

November 20, 2020

Christina Boodhan

Christina Boodhan, Registrar
for The Institute of Law Clerks of Ontario

Appendix 'A'

ILCO Certification Application Form



The Institute of Law Clerks of Ontario
20 ADELAIDE STREET EAST, SUITE 502
TORONTO, ONTARIO M5C 2T6
TEL 416.214.6252 FAX 416.214.6255
WWW.ILCO.ON.CA

ILCO CERTIFICATION APPLICATION FORM

All relevant sections of the ILCO Certified Application form (the “Application”) must be properly completed and signed. All supporting documentation listed in the Checklist must be submitted with your Application. **Incomplete Applications and supporting documentation will delay processing and may be returned.**

Completed Applications must be accompanied by an application fee of \$150.00 plus HST (the “Application Fee”) and sent via **mail or courier only** to ILCO’s office shown at the top of this page. The Application Fee may be paid by **cheque** or **money order** payable to “The Institute of Law Clerks of Ontario” or by signing an authorization to charge the Application Fee to a valid **VISA** or **MasterCard**. The Application Fee is subject to change without notice.

If you wish to pay your Application Fee by **VISA** or **MasterCard**, complete and sign the portion below.

Please Charge:	<input type="checkbox"/> VISA	<input type="checkbox"/> MASTERCARD
Fee:	_____ plus HST: _____	Total: \$ _____
CREDIT CARD NUMBER	<input type="checkbox"/>	
Expiry Date:	_____	CVS # _____
Cardholder’s Name:	_____	
Authorized Signature:	_____	

If your Application for certification is approved, you will be permitted to use the “ILCO CERTIFIED EXPERT Certification Marks” as defined in the License Agreement contained in this Application. If you are applying for certification in more than one area of law, please submit a separate Application for each area of law. Please note there will be a fee for each Application that is submitted. Certification must be renewed annually, and the annual certification renewal fee will be payable at the same time as the annual ILCO membership renewal fee.

The information collected herein shall be used by ILCO for the purpose of considering your Application and for related purposes. By submitting this Application, you consent to the collection, use and disclosure of your information by ILCO for the foregoing purpose.

PLEASE ENSURE THAT ALL REQUIRED DOCUMENTATION LISTED ON THE ENCLOSED CHECKLIST IS INCLUDED WITH YOUR APPLICATION.

ILCO MEMBER INFORMATION

ILCO Member No: _____

Membership Level: Associate Fellow Retired Extra-Provincial

***The Applicant must be an ILCO member in good standing with minimum work experience of 10 years.**

Select Salutation: Ms. Mrs. Mr.

First Name:	
Last Name:	
Home Address:	
Business Address:	
E-mail:	

Select one address to receive correspondence: E-mail Business Home

ILCO CERTIFICATION INFORMATION AND CURRENT EMPLOYMENT

Area of law for certification:	
Provide a brief description of the nature of your practice:	
Name of Employer: (firm or organization)	
Address:	
Telephone No.:	
Facsimile No.:	
Website:	

CERTIFICATION REQUIREMENTS

To be permitted to use one or more of ILCO’s Certification Marks, an individual must meet the requirements set out in Appendix “A” attached hereto (the “Defined Standard”).

STATEMENTS OF ILCO MEMBER:

1. I am currently a member of ILCO in good standing and have engaged in Qualifying Employment in the same area of law for a minimum of 10 years.
2. In the past 10 years, the positions that I have held in my area of law in which I am applying for certification are as follows:

	Year(s)	Position(s) held during Qualifying Employment & Name of Employer
<i>Example</i>	<i>2002-2007</i>	<i>Jr. Corporate Law Clerk</i> Name of Law Firm/Organization
	<i>2007-2012</i>	<i>Intermediate Corporate Law Clerk</i> Name of Law Firm/Organization
	<i>2012-present</i>	<i>Corporate Law Clerk</i> Name of Law Firm/Organization
1.		
2.		
3.		
4.		
5.		
6.		
7.		

3. While employed in the positions listed above, I have gained extensive knowledge of the practices and procedures in the applicable certification area.

PARTICIPATION IN PROFESSIONAL ORGANIZATIONS

Participation in additional organizations is not a mandatory requirement for certification. Examples of professional organizations are The Law Office Management Association (TLOMA), Ontario Bar Association (OBA), ADR Chambers, Association of Certified E-Discovery Specialists (ACEDS), Project Management Institute (PMI), etc.

4. I participate actively in the following organizations:

<u>Organization</u>	<u>Member Since:</u>

COMMITTEE AND VOLUNTEER POSITIONS

Participation in committees or volunteer positions is not a mandatory requirement for certification.

5. Currently, or in the past, I have participated in the following organizations:

<u>Organization</u>	<u>Position/Capacity</u>	<u>Time Period</u>

CERTIFICATION BY APPLICANT

By submitting this executed Application, I hereby apply to ILCO for permission to use its ILCO CERTIFIED EXPERT Certification Marks. I hereby certify that the information contained herein and attached hereto is true, accurate and complete. If I am permitted to use any of ILCO’s Certification Marks including, but not limited to, the ILCO CERTIFIED EXPERT Marks, I agree to be bound by the ILCO by-law(s), policies, Code of Ethics, and the License Agreement enclosed herewith, all of which may be in force and amended from time to time by ILCO in its sole discretion.

I consent to ILCO contacting the persons, firms and/or organizations listed in this Application to confirm the accuracy of the information set out in this Application and supporting documentation submitted herewith.

Applicant’s Signature

Date

**ILCO CERTIFIED EXPERT APPLICATION
STATEMENT OF REFERENCE**

The Institute of Law Clerks of Ontario (ILCO) has implemented a certification program for its members that will permit successful applicants to use its ILCO CERTIFIED EXPERT Certification Mark(s) with respect to their area(s) of law.

The applicant, being a member of ILCO, has applied to be a Certified Expert in their area of law, and in support of the Application, he/she is requesting that you provide to ILCO the information set out below.

Instructions:

- *To Applicant: Please submit Statement of Reference to Employer and Former Employer(s) if applicable (minimum one).*

- *To Employer and Former Employer(s): Please complete the Statement of Reference and return it to the applicant.*

Name of Applicant:	
Area of Certification:	
Name of Person completing the Statement of Reference:	
Position:	
Firm/Organization:	
Telephone:	
E-mail address:	

Please answer the questions below:

1.	How long have you known the applicant professionally?				
2.	Describe your working relationship with the applicant.				
3.	Based on your working relationship, please check the items below to describe the applicant's qualifications as an expert in their field.	Above expectations	Meets expectations	Poor	Not applicable
a.	File/project management				
b.	Document and file preparation				
c.	Analytical skills				
d.	Performance of complex legal transactions with minimal supervision				
e.	Knowledge of procedures, legislation and regulations in area of certification				
f.	Professional conduct				
g.	Rapport with lawyers, clients and other legal professionals				
4.	Based on the foregoing, does the applicant have the expertise to be certified as an expert in their field of law?	Yes <input type="checkbox"/> No <input type="checkbox"/>			

5.	Please provide any additional information which would assist ILCO in evaluating the applicant's request for certification.	
----	--	--

I hereby confirm and acknowledge that the information contained herein is true and correct, and is based on my direct working relationship with the applicant.

Name

Signature

Date

ILCO CONTINUING LEGAL EDUCATION REPORT

(Law specific courses offered at the annual ILCO Conference are approved professional continuing legal education ("CLE") hours.)

Name of Applicant:	
Area of Certification:	

Professional Development Courses:

Please note that individuals permitted to use the ILCO CERTIFIED EXPERT Certification Marks must complete one ethics course every five (5) Membership Years, and five (5) hours of ILCO recognized CLE courses within the twelve (12)-month period immediately preceding this Application or renewal of certification. Examples of CLE include but are not limited to courses offered by the OBA, CBA and ILCO and sessions provided by LSO and law firms.

For the Year: _____	
---------------------	--

	Date of Course	Topics/Issues covered	Course Provider	Hours
1.				
2.				
3.				
4.				
5.				
6.				

Please provide proof of completion for each course listed above (e.g. registration information, receipt or certificate).

CHECKLIST

Please be sure to complete this checklist to confirm that all requirements are met.

Certification Fee

- Correct payment with HST included
- If payment by VISA or Mastercard, the following information must be included:
 - Cardholder's name
 - Card number
 - Expiry date
 - CVS number (on reverse of card)
 - Authorized signature

ILCO Certification Application Form

- Applicant's name printed
- Applicant's signature
- Membership level: Associate, Fellow, Retired or Extra-Provincial (in good standing)
- 10+ years of related work experience

Statement of Reference

(A Statement of Reference is required from your current employer, at a minimum)

- Applicant's name printed
- Name of reference printed
- Reference's signature

ILCO Continuing Legal Education ("CLE") Report

- Must include a mandatory ethics course every five membership years, following approval of the Application by the ILCO Board of Directors, and five CLE hours within the twelve-month period immediately preceding this Application or renewal, with proof of completion for each CLE. Skill development courses will only count for 1 hour, such as practice management, building your practice, docketing skills, etc.

License Agreement

- Supporting Documentation:
 - Letters of Recommendation
(Must enclose a minimum of two (2) letters of recommendation from a lawyer/immediate principal that you report to having extensive knowledge of your Law Clerk experience of at least 10 years. These letters of recommendation may be in electronic communication, however, must be detailed enough to determine knowledge of the applicant's position in their organization (or previous organization) and qualification for certification. Letters of recommendation should be current.
 - Curriculum Vitae
 - Additional Supporting Documents, if applicable
(e.g. Certifications, Licences, Diplomas, service awards, guest speaking engagements, media coverage featuring applicant, etc.)

Your Application will only be processed once all requirements are met. Each Application will be reviewed by ILCO's Certification Committee.

LICENSE AGREEMENT

By submitting this application to The Institute of Law Clerks of Ontario (“ILCO”), and for good and valuable consideration, including granting or renewing your license to use the following certification marks (the “Certification Marks”):



ILCO CERTIFIED EXPERT

the receipt and sufficiency of which you, the undersigned, acknowledge, you agree to the terms as set out below (the “**Agreement**”) effective as of the date ILCO notifies you, if your application is approved, that it permits you to use the Certification Marks (the “**Effective Date**”).

1. So long as you are an ILCO member in good standing who also meets the requirements set out in *Appendix “A”* (the “**Defined Standard**”) as may be amended from time-to-time by ILCO in its sole discretion, ILCO grants you, as of the Effective Date, a limited, revocable, non-exclusive, non-assignable, non-sublicensable, license to use in Canada during the Term (as defined below) the Certification Marks as trade-marks in association with:

*law clerk services, supervision of other law clerks, administrative services for lawyers, providing continuing legal education to others; (the “**Services**”).*

2. You acknowledge and agree that ILCO is the owner of all rights, title and interest in and to the Certification Marks including, but not limited to, all trade-mark applications and registrations therefore.
3. ILCO shall have direct control over the character and quality of the Services provided by you in association with the Certification Marks. ILCO may review the performance of the Services, and your education and experience, to ensure that they meet ILCO’s standards, including the Defined Standard, at all times. Any and all use of the Certification Marks by you, including all goodwill appertaining thereto, inures to the sole benefit of ILCO. You shall use the ILCO Certification Marks in accordance with ILCO’s brand use guidelines as may be set and amended from time-to-time by ILCO.
4. You shall only use and display the Certification Marks in the form as supplied by ILCO to you. ILCO may grant or refuse approval of each specific use and display of any of the Certification Marks. You shall not use the Certification Marks to directly or indirectly indicate that ILCO endorses, authorizes, warrants or guarantees you, your company, your employer, your employees or contractors, or the services provided by any of the foregoing. You may display the Certification Marks so long as they are used in association with the performance or advertisement of the Services performed by you.
5. You shall not use a variation of the Certification Marks or any mark similar thereto. **You shall not use the Certification Marks, or any acronyms thereof, as professional designations by displaying immediately after your name (e.g. the following is INCORRECT: “Jane Doe, ILCO CERTIFIED EXPERT”).** You shall not use or display the Certification Marks in any way that is likely to prejudice ILCO’s rights or depreciate its goodwill, in the Certification Marks. You shall report to ILCO any use or display of the Certification Marks by any person that could detract from the high ideals and values of ILCO or in any way prejudices or discredits ILCO or depreciates its goodwill in its Certification Marks.
6. You shall comply with all of ILCO’s letters patent/articles, bylaws, policies, rules, regulations, and directives as published and amended from time-to-time by ILCO including, without limitation, the Defined Standard. ILCO may, at any time and in its sole discretion, suspend or terminate your license to use the Certification Marks by written notice to you for any reason including, without limitation:

breach of any term of this Agreement; failure to comply with any of ILCO's letters patent/articles, bylaws, policies, rules, regulations, or directives; or failure to pay your fees.

7. Upon termination of this Agreement, you shall immediately cease using and displaying the Certification Marks.
8. You shall do all things and execute all documents, without any further consideration, to secure and protect ILCO's rights, title and interest in the ILCO Certification Marks including, but not limited to, providing specimens of use of the Certification Marks or other materials and swearing affidavits or other legal documents. You shall not, directly or indirectly, challenge, attack, oppose, or attempt to invalidate or cancel any of ILCO's right, title or interest in or to ILCO's marks and any of its applications and registrations therefore including, without limitation, the Certification Marks. You shall not adopt, apply to register, or register, any of the Certification Marks or any mark or name confusingly similar thereto as a trade-mark, trade name, business name, or domain name.
9. The term of this Agreement is for a period of one year from the Effective Date (the "Term"). Thereafter, the Agreement may be renewed at ILCO's option for a further period if you continue to comply with the terms of this Agreement and any amendments thereto, pay all applicable fees, and continue to meet the Defined Standard.
10. This Agreement may be terminated at any time by ILCO or you upon written notification; and at any time by ILCO if it believes that you have breached any term of this Agreement.
11. Time is of the essence. This Agreement may be assigned by ILCO at any time without prior notice to you. You shall not assign this Agreement. This Agreement is binding on the parties and their successors, heirs, administrators, and permitted assigns. This Agreement may be executed and delivered electronically in counterparts, each of which is deemed an original. This Agreement is governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada. The parties attorn to the exclusive jurisdiction of the courts of Ontario and the Federal Court of Canada, as applicable. ILCO may alter or modify the terms of this Agreement unilaterally at any time, in its sole discretion, without any notice to you. You consent that any information you provide to ILCO, including without limitation any personal information, may be communicated or transferred by ILCO to any other person without any notice to you. Sections 2, 5, 7, 8, and 11 survive termination of this Agreement. This Agreement is drawn up in English at the request of all parties. *Les parties aux présentes ont expressément convenu que ce contrat soit rédigé en anglais.*

IN WITNESS WHEREOF I have set my hand this ___ day of _____, 20__.

Applicant's Signature

Date

For questions concerning how you may use and display Certification Marks under the Agreement, please contact: The Institute of Law Clerks of Ontario, 20 Adelaide Street East, Suite 502, Toronto, Ontario M5C 2T6, Attention: Membership Coordinator - Phone: 416-214-6252, Fax: 416-214-6255

APPENDIX "A"

DEFINED STANDARD

To be permitted to use the ILCO CERTIFIED EXPERT Certification Marks, an individual must:

1. be an Associate, Fellow, Ordinary or Extra-provincial member of ILCO in good standing;
2. be performing the duties of a Law Clerk on a full-time basis;
3. have been performing the duties of a Law Clerk on a full-time basis in a specific area of law, or a related area of law, for a period of not less than ten (10) consecutive years;
4. following approval of the certification application, completion of a mandatory ethics course approved by ILCO every five-membership years; and
5. have completed, within the twelve (12)-month period immediately preceding this Application, and prior to renewal each year thereafter, five (5) hours of approved professional continuing legal education.

Appendix 'B'

Legal Aid Ontario Certificate Eligibility Thresholds

(from <https://www.legalaid.on.ca/news/details-on-legal-aid-ontarios-financial-eligibility-increase-for-2019/>)

CERTIFICATE ELIGIBILITY THRESHOLDS

Number of family members	The amount of money your family earns in a year	For domestic abuse cases
1	\$17,731	\$22,720
2	\$31,917	\$32,131
3	\$37,194	\$39,352
4	\$42,726	\$45,440
5+	\$48,173	\$50,803
Single boarder	\$11,632	

#194

Please enter your first and last name	Rebecca Bentham
Email Address	rbentham@hamiltonlaw.on.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	The Hamilton Law Association
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)
Upload a File	LSO Call for Comment - Family Legal Services Provider (FLSP).pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

THE HAMILTON LAW ASSOCIATION

The Hamilton Law Association exists to enable its members to become successful, respected and fulfilled in their profession.

45 Main Street East, Suite 500

Hamilton, Ontario L8N 2B7

Telephone (905) 522-1563

Fax (905) 572-1188

Website: <http://www.hamiltonlaw.on.ca>



Family Legal Services Provider Consultation

Law Society of Ontario

130 Queen St. W.

Toronto, ON

M5H 2N6

November 23, 2020

To: The Law Society of Ontario

RE: Family Legal Services Provider (FLSP) Licensing

The Hamilton Law Association (HLA) welcomes the opportunity to participate in the Law Society of Ontario's call for consultation on the proposed Family Legal Services Provider Licence. The HLA represents the interests of its approximately 1000 members, a large portion who practice Family Law in the City of Hamilton and we trust that the Law Society of Ontario and its Benchers will give our submissions due consideration.

Position of the HLA

Family Law is a complex area of law that involves a high level of emotional and financial risk to families. These risks increase when children are involved and when the parties are from low and middle income demographics.

It is the HLA's position that the expansion of family legal services options as set out in the Family Legal Services Provider consultation paper is inappropriate at this time and will not accomplish the objective to meet the unmet family law legal needs of Ontarians.

THE HAMILTON LAW ASSOCIATION

The Hamilton Law Association exists to enable its members to become successful, respected and fulfilled in their profession.

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Concerns of the HLA

Family Law is a specialized practice area that deals with vulnerable individuals who are trying to navigate a complicated family justice system. The costs are high both emotionally and financially. Accordingly, parties require skilled and educated legal professionals that can prepare, negotiate and present their cases effectively in Family Court. Additionally, family law issues are inextricably intertwined, which each issue having an impact on other issues within the proceeding. Family Law requires an assessment of all aspects of an individual's circumstances and a failure to do so puts the individual and their family at risk.

The concern with permitting non-lawyers to draft pleadings or represent litigants in Family Court is that they may not have the necessary training to identify all of the relevant issues at play, de-escalate emotional situations and provide effective advocacy. Non-lawyers may exacerbate emotional situations and instead contribute to the tension impacting these fragile cases.

The current structure of the Family Law System in Ontario includes several pieces of legislation intertwined with one another as well as constantly evolving case law. This adds a unique dimension and complexity to this practice area. If non-lawyers are permitted to provide legal services to litigants the complicated legislative framework may be incorrectly applied and strategic thinking lost.

Family Law may also include issues of domestic violence, which adds complexity to these cases and requires specialized training and skills in order to provide litigants with proper, ethical and responsible representation. The stakes are very high in Family Law and it is not in the public interest to permit non-lawyers to take an active role that may have dire consequences.

Comments on the Guiding Principles

The Family Legal Services Provider Licence Consultation Paper outlines the Guiding Principles to be considered in the development of the licence.

The first principle is to create access to justice, and specifically to address the unmet legal needs in family law. There are lawyers who are available to assist family law litigants, both on a standard retainer and on a limited scope basis. Additionally, there are programs available to litigants through Legal Aid Ontario or other organizations which provide low cost access to information for litigants, from lawyers. The presumption that the enhanced paralegal licence will address an unmet legal need is a presumption that the services will be delivered at a lower cost.

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The consultation paper concedes that there is no relevant data to support the comparison between what paralegals charge for family law services versus lawyers. The consultation paper assumes that there will be reduced costs or more predictable costs as paralegals are more likely to accept block fees for specific steps in the process. Criminal lawyers also charge block fees for stages in a legal proceeding. Legal Aid Ontario's tariff system includes block fee for criminal lawyers but not family lawyers. Why? Because family law is unpredictable and each step can include many interrelated issues. It is noted that paralegals do charge hourly rates when matters exceed estimated blocks or become complex. The HLA is concerned that this would be the outcome in the family law context. Furthermore, as previously noted, many lawyers provide unbundled legal services and these options are available to litigants who wish to have more control over legal fees. Lower legal fees should not be the goal, at the expense of compromising competence and legal reasoning.

The second principle is aimed at public protection; specifically, to ensure that the services provided can be performed competently with appropriate education, training, licensing and regulation. Certainly, it is possible for these services to be performed competently as the lawyer members of the Law Society of Ontario do on a daily basis. Lawyer service providers have, at least, a three-year post-graduate law degree as well as a mandatory period of articles.

It is the position of the HLA that the scope of permissible activities is too extensive to be performed competently without the equivalent training of lawyers who are providing these services. Providing legal advice is complex, nuanced and fact specific. It requires an overall understanding of all factors that may have an impact on a particular issue. In the family law context, this regularly includes estate, tax, real estate and corporate law considerations.

The specific areas of law that would be within the scope regularly include issues that would fall within the out of scope activities, including income determination or imputation in many child and spousal support matters and valuations (business, real property) in the context of division of property. Any separation of a common law spouse should also include an assessment of equitable and trust claims, which would place the separation of common law spouses outside of the scope of permissible activities.

Activities that could be performed competently with appropriate training would, in our submission, include change of name applications and divorces, where the substantive issues have already been resolved by way of a Separation Agreement or Court Order.

The final principle focuses on the viability of the licence for the paralegal. As previously indicated, this assumes that community members would choose to have a licenced paralegal represent them in a family law matter instead of representing themselves or having a lawyer represent them or assist in providing unbundled services. Once again, this is premised on the

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unsubstantiated assumption that the licensed paralegal would provide equivalent services at a lower price.

In recent years, increases have been made to Legal Aid Ontario's funding, which have resulted in increased access to legal services for low income Ontarians. However, many middle-income earners are often left to represent themselves as they do not qualify for Legal Aid and do not earn enough to hire a lawyer privately. This has led to many individuals seeking out the services of non-lawyers who have incorrectly applied the law or incorrectly completed the necessary Family Court forms. Accordingly, this has become a costly mistake for individuals who have been forced to seek out the services of lawyers to correct the errors committed by non-lawyers or burdened our legal system and added both emotional and financial stress to the parties. The offering of unbundled legal services from lawyers such as the preparation of pleadings and support calculations, pre-conference independent legal advice and collaborative law to those low and mid-income earners requires further expansion.

In addition to the overarching concerns, our members also have more specific concerns with respect to the proposal that highlight why the licence, as proposed, should not proceed.

Our members are concerned that there could be increased cost to the public if an Application is commenced by a licensed paralegal but then an activity that is out of scope is pleaded in the Answer. Common examples would include a claim for income determination to address a support issue or the valuation of a matrimonial home. In these cases, the licensed paralegal would not be able to continue to represent the individual and the individual would have to seek new representation, which would likely represent increased cost and inconvenience to the litigant. One way to address this type of issue would be to require the licensed paralegal to work under the supervision of a lawyer so that, in cases where a transfer is required, the lawyer could continue to offer services to the client.

Family law is complex; every issue is entangled with every other issue and cannot be isolated and simplified. For example, you would not seek to force the sale of the matrimonial home without first considering the impact on custody and access claims. At all times, lawyers must be mindful of how the next immediate steps impact trial, while seeking to avoid trial.

We are also concerned about the potential failure to overlook that there are issues that need to be addressed that would be outside the scope of permissible activities. For example, what if a business valuation is required, but because this is outside of the scope of permissible activities the valuation is not recognized as necessary or, if it is recognized as necessary, not recommended because a change in representation would be required.

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It is our position that in the event paralegals are licensed to provide services, there should be forms required to be provided and signed by the client which outline that the individual has not received legal advice (as it is not possible to receive comprehensive legal advice when there are issues that would be out of the scope of permissible activities) and that the services the paralegal is licensed to provide are limited in scope. This would make it obvious to the client from the outset of the retainer that the paralegal has limitations in the services they can provide.

We would also submit that paralegals should not be attending at motions or trials. These touch on the heart of legal services and requires the full training, education and experience that lawyers provide. A paralegal should not be expected to understand and apply rules of evidence, especially the rules regarding hearsay.

Another area that needs to be considered is what happens if one party retained a licensed paralegal to draft a Separation Agreement. The draft is then provided to the other party, who retains a lawyer. If the draft of the Separation Agreement does not appropriately address all issues, including issues that would be out of the scope of permissible activities, the lawyer then must raise all of the issues or point out the concerns with the draft Separation Agreement. It is easy to imagine that in this situation, the spouse who retained the paralegal would have the impression that the lawyer is requesting these corrections or changes to increase their legal fees when, in fact, the lawyer is meeting their professional obligations by taking the time to complete their due diligence in effective and property drafting. In this scenario, it is very possible that the member of the public would be dissatisfied with the lawyer and our profession when the lawyer is, in fact, doing what is required of them.

The initial education requirements appear to be insufficient, particularly when the scope of activities is substantially similar to the scope of activities lawyers provided. However, the ongoing CPD is, in our submission, not adequate. Requiring only two to three hours of family law specific CPD is not reasonable.

Conclusion

It is the HLA's position that there should be a comprehensive assessment prior to looking at an expansion of family legal services to non-lawyers. Furthermore, to decrease the number of self-represented litigants, we need to promote efficiency in the Court system. Minimizing paperwork and streamlining attendances will result in reduced fees to litigants, without compromising competency or the quality of service provided to members of the public. It is important to recall

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the 2017 remarks of Justice Cohen in response to the Bonkalo Report that “something is *not* better than nothing” and it is the position of the HLA that there are many services provided by lawyers in our Association and across the Province available to assist self-represented litigants in family law proceedings.

If the Law Society intends to move forward with some of this proposal, we would strongly encourage the Law Society to start slow and monitor annually as we believe the proposal places members of the public at risk and will not accomplish the stated objectives.

Thank you for your consideration.

Yours truly,

Kathleen Bingham

Chair – Family Law Committee,
The Hamilton Law Association

Kanata Cowan

President,
The Hamilton Law Association

#204

Please enter your first and last name	Pamela Cross
Email Address	pamelacross54@gmail.com
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Luke's Place Support & Resource Centre for Women & Children
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central East, including Muskoka (Bracebridge), Victoria & Haliburton (Lindsay), Simcoe (Barrie), Durham (Whitby), Peterborough (Peterborough), Northumberland (Cobourg)
Upload a File	Luke's Place FLSP Licencing Position Paper w Endorsements (Nov 24, 2020).pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	
13. Is there additional information or are there other factors that should be considered?	
We previously submitted a document on November 19. The document submitted this time includes 2 new endorsements in our list of endorsers.	

COMMENTS ON THE LAW SOCIETY OF ONTARIO'S FAMILY LEGAL SERVICES PROVIDER LICENCE CONSULTATION PAPER

**Prepared by Luke's Place Support and Resource Centre
for the Feminist Law and Policy Reform Coalition**

Endorsed by:

Assaulted Women's Helpline (AWHL), Toronto, ON
Barbra Schlifer Commemorative Clinic, Toronto, ON
Bethesda House, Bowmanville, ON
Canadian Council of Muslim Women (CCMW), Toronto, ON
Catholic Family Services of Durham, Durham Region, ON
Centre Victoria pour femmes, Sudbury, ON
CHADWIC Home, Wawa, ON
Coalition to Empower Gender Equality, London, ON
Cornerstone Family Violence Prevention Centre, Cobourg, ON
Domestic Abuse Services Oxford (DASO), Woodstock, ON
Faye Peterson House, Thunder Bay, ON
Herizon House, Ajax, ON
Hope 24/7, Brampton, ON
Inasmuch House & Women's Services (Mission Services of Hamilton), Hamilton, ON
Interval House of Hamilton, Hamilton, ON
Interval House of Ottawa, Ottawa, ON
Lanark County Interval House & Community Support, Carleton Place, ON
Metropolitan Action Committee on Violence Against Women and Children (METRAC), Toronto, ON
Network of Women with Disabilities NOW, Ontario
Northwestern Ontario Women's Centre, Thunder Bay, ON
Ottawa Coalition to End Violence Against Women (OCTEVAW), Ottawa, ON
Sexual Assault and Domestic Violence Program – Brantford General Hospital, Brantford, ON
Sexual Assault Support Centre of Waterloo Region, Kitchener, ON
Simcoe County Violence Against Women Coordinating Committee (SCVAWCC), Simcoe County, ON
The Emily Murphy Centre, Stratford, ON
Uzima Women Relief Group International, Toronto, ON
Violence Prevention Coordinating Council of Durham (VPCC), Durham Region, ON
Woman Abuse Council of Toronto (WomanACT), Toronto, ON
Women's Advocacy Council, Barrie, ON

Women's Health in Women's Hands Community Health Centre, Toronto, ON
Women's Legal Education & Action Fund (LEAF), Toronto, ON
Yellow Brick House, Richmond Hill, ON
YWCA Hamilton, Hamilton, ON
YWCA Sudbury, Sudbury, ON

Who we are

Luke's Place Support and Resource Centre provides frontline services to women in Durham Region who are leaving abusive relationships and are involved with family law/court, and engages in research, training, education and system reform advocacy at the community, provincial and national levels. For more information: <https://lukesplace.ca/>

In 2020, we established the Feminist Law and Policy Reform Coalition to advance women's equality, eliminate all forms of gender-based violence and improve system responses to gender-based violence through engagement with all levels of government, the community, the media, the family and criminal law systems, police services, child protection services, immigration and refugee authorities and others to raise and advocate for systemic changes to laws, policies and services.

Setting the context of family violence

We share the Law Society of Ontario's (LSO) concerns about both the rate and impact of unrepresented parties on access to justice for those who turn to the family courts for assistance.

Approximately 70% of the women we work with do not have a lawyer. There is no access to justice for women fleeing abuse in this situation.

Most women continue to be subjected to ongoing abuse even after they leave their partner. Indeed, according to Ontario's Domestic Violence Death Review Committee, a woman is at greatest risk of being killed by her partner from the moment he perceives she is planning to leave him, continuing on for at least several months after separation. This, of course, is the very time families often become involved with the family law system.

Many women are traumatized as a result of past and ongoing abuse, which makes navigating their family court case extremely difficult, even if they have a lawyer and almost impossible if they don't.

In addition to the family law issues any separating couple must deal with – parenting arrangements and financial and property issues – women leaving an abusive relationship must also take steps to keep themselves and their children safe. This can involve seeking a restraining order or an order for exclusive possession of the matrimonial home, becoming involved with the police and criminal court and bringing *ex parte* motions; all of which can be complicated.

It is common for abusive men to engage in legal bullying; using the family law proceedings to intimidate, harass and manipulate their former partner in an attempt to wear her down, get her to concede to outcomes the abuser wants or, in some cases, to return to him.

When the abuser is also unrepresented – or when he chooses to self-represent – he has even greater access to his former partner; access he uses to bully and intimidate her.

All of this leads to situations where the safety of women and children is compromised in terms of both court process and court outcomes; some of which can be mitigated when the woman has strong legal representation.

Our comments on the Consultation Paper are informed by this perspective.

Access to justice

We support the three guiding principles informing the development of this consultation paper: access to justice, public protection and viability. However, while we do not oppose the licensing of Family Legal Service Providers (FLSPs) and, as we comment below, see a role for them within the family law system, we are not convinced this will fully address these principles.

Access to justice, in particular, is a complex problem; one that will not be solved – and, in fact, might be exacerbated – by the licensing of FLSPs as presently proposed by the LSO.

As Julie Mathews and David Wiseman write in *Community Justice Help: Advancing Community-Based Access to Justice*:

“Access to justice exists when people can pursue their goals and address their law-related problems in ways that are consistent with fair legal standards and processes; and can obtain, understand, and act on information and services related to the law, where necessary, to achieve just outcomes.”¹

This will take more than licensing of paralegals.

We understand true access to justice to mean that all members of the community, no matter their status, have access to quality legal representation from highly trained practitioners when they need it. This requires innovation and investment.

We are concerned that the current proposal could create a three-tiered legal system in family law: those with lawyers, those with paralegals and those with neither. Those who will be most disadvantaged in this system are those who have historically been marginalized and disadvantaged: women, new immigrants and those who are Francophone, Black, Indigenous, racialized and People of Colour.

To increase access to justice for women leaving abusive relationships requires a nuanced and multi-faceted approach. The LSO must work with appropriate stakeholders to develop and implement a comprehensive overhaul of the family law/court system, including but not limited to:

- Increased access to legal aid certificates and legal aid clinics focusing on family law;
- Support for lawyers by reducing law society fees and insurance premiums (currently totaling approximately \$5,000.00 annually) and support new lawyers by providing them with exemptions from LSO fees to reduce their overhead;
- Reduction in red tape involved in running a legal practice;
- Steps taken to reduce legal costs for those who have lawyers;
- Making family law procedure accessible to unrepresented parties by eliminating redundancies in the Family Law Rules and discontinuing the use of Regional Practice Directions;

¹ Mathews, Julie and David Wiseman. *Community Justice Help: Advancing Community-Based Access to Justice*. Community Legal Education Ontario, June 2020.

- The creation of a centralized database of newly called lawyers who charge reduced fees and a centralized network of lawyers who will provide low-bono and pro-bono services;
- Requiring all family law lawyers to engage in education/training about the dynamics of family violence in the family law context. (Indeed, this should be mandated for all law students.);
- Further research in other jurisdictions to learn whether licensing paralegals to provide family law services has increased access to justice;
- Investigating how people who cannot afford a lawyer will be able to pay for the services of a FLSP. Will LAO fund certificates? Will the financial and legal eligibility requirements be different? If LAO funds certificates for paralegal services in family law, will that mean a reduction or end to certificates for lawyers in those areas? We would not support any such outcome;
- Adequate support for Legal Aid Ontario so all those who cannot afford a lawyer and who have serious family law issues can receive a certificate to allow them to hire a lawyer;
- Increased support for programs like Ontario's Family Court Support Worker Program to ensure that women fleeing abuse have the additional, specialized supports they require as they move through the family court process;
- Enabling and supporting community justice help (for example, Family Court Support Workers) who could provide some family law legal services²
- Increased support for legal coaching and unbundled legal services.

Scope of Practice

We believe the scope of practice as proposed is too broad.

We propose that FLSPs be authorized to provide:

- Legal information
- Drafting of some legal documents
- Administrative court appearances
- Legal coaching with respect to court rules, procedures and protocols
- Legal services to parties post final order or agreement where there has been a lack of compliance by the other party

These services could be offered in the following areas of family law:

- Uncontested divorces
- Child and spousal support
- Contempt/enforcement of orders
- Separation agreements, paternity agreements, family arbitration agreements as long as the client obtains ILA from a lawyer
- Change of name applications
- Division of property, as long as there is only one home, there are no equitable or trust claims and the claim is not for an unequal division of property

We do not support FLSPs providing services related to parenting orders and decision making, restraining orders or orders for exclusive possession of the matrimonial home.

² For more details see Mathews and Wiseman paper, above

We do not disagree with the list of excluded activities as set out at pages 7/8 of the Consultation Paper. However, we note that, especially in cases involving family violence, it may be difficult at the outset to accurately identify when an issue may overlap with an area that is out of scope. For example, it is common for abusers to play one family law issue off against another: promising not to fight for parenting time or decision-making responsibility if the woman agrees to accept a reduced level of spousal support or not to make a claim for a division of family property. Further, family law issues often overlap with criminal and child protection proceedings, which complicates the legal issues in each area.

For survivors of family violence, post-separation parenting issues are the most complex, nuanced and emotional issues they face. These issues and how the family court responds to them can lead to fatal outcomes for women and children. Further, these matters often cross paths with criminal and immigration law, and can involve interjurisdictional, relocation and child protection issues. Safety concerns, both during and after the family court process are common and serious.

Excluding cases involving family violence from the scope of practice for FLSPs might, at first glance, appear to be a solution to the challenges identified above. However, we strongly recommend against such an approach for two reasons. Many women do not identify the presence of family violence until well into their family law case, which would make it difficult for the FLSP to know whether or not this issue might be disclosed or arise in the future. In addition, if family violence cases are excluded from the scope of practice for FLSPs, women might intentionally withhold this information in order to be able to retain one.

We are concerned the present model creates situations in which a client could start a case with a paralegal, but then find the paralegal unable to act for them at a later stage of the proceedings. For example, in addition to the situation discussed above where family violence is not immediately apparent:

- A paralegal starts what appears to be a custody case but the respondent raises complex property claims
- After starting a domestic family case, CAS issues arise
- A case that appears heading to resolution proceeds to trial

With respect to the specific questions posed by the LSO:

- We do not believe there is reliable research to conclude that licensing FLSPs will increase access to affordable, competent family law legal services. Paying for an FLSP will be as prohibitive for some people as paying for a lawyer. As we will discuss further below, the proposed training for FLSPs is inadequate in the area of family violence.
- We do not take a position about whether the proposed scope will enable FLSPs to develop a viable business model. While we understand the importance of this principle, we feel the focus of the LSO at this time should be directed at the impact of licensing FLSPs on litigants. Once a model has been constructed to address that, it will be time to consider business viability concerns.

Competencies

The Consultation Paper, in Appendix C, sets out 209 competencies for FLSPs, spread across eight areas. One of these – substantive family law – contains a subsection titled “Victims of

Domestic Abuse and Intimate Partner Violence,” but there is no further reference to family violence anywhere in the 209 competencies.

We recommend strongly that family violence be profiled more specifically throughout all eight competency areas. For example, there are family violence issues that relate to:

- Ethics and professional responsibility (eg, duty to report, representing a traumatized client)
- Knowledge of the law (overlapping issues with child protection and criminal law)
- Problem, issue identification, analysis and assessment (screening for family violence, risk assessment, safety planning)
- ADR (not always appropriate in cases involving family violence, safety planning)
- Litigation process (safety issues that can arise during litigation)
- Practice management issues (managing an abuser on the other side, trauma informed interviewing)
- Prohibitions

Indeed, given the prevalence of family violence in family court files, perhaps a ninth competency area should be established that speaks specifically to this issue.

With respect to the specific questions posed by the LSO:

- As discussed above, we do not believe the proposed competencies will ensure the appropriate level of competence to deliver family legal services to survivors of family violence.
- We support a more restricted scope of activities, as we have set out above.

Education requirements

We have significant concerns about the education requirements and the RFI as set out in the Consultation Paper.

Education about family violence is critical – not just for FLSPs but for all legal advisors who can potentially find themselves representing either a survivor or perpetrator of abuse within their family. Education and training for lawyers, mediators, court clerks and other players in the family law system is inadequate at the present time.

The present process to consider FLSP licensing is an ideal opportunity for the LSO to enhance its family violence education and training opportunities for lawyers.

Creating a strong education component for FLSPs, including an articling-like component, would be a way for the LSO to make a commitment to leading the way to increase education and training for all family law/court professionals. The field work (aka “articling”) could take place in a family law office, a community legal clinic or a women’s legal clinic, as long as the FLSP would be exposed to family violence cases in the course of their placement.

We propose that further consultation and discussion about both prior work experience and the articling component of FLSP family law education be undertaken by the LSO with stakeholders as these discussions continue.

The present allocation of 20 hours for “Intimate Partner Violence” (IPV) out of a total of 550 instructional hours is woefully inadequate, unless the goal is simply to equip paralegals to screen for domestic violence and then refer those individuals out.

However the overall educational training program is assigned, the IPV component must be developed and taught by IPV experts, whether or not they are part of the faculty of institutions offering the overall program. These experts should have expertise in family law and intimate partner violence, be experienced curriculum developers for both online and in-person teaching, have experience with online and in-person training and use an intersectional feminist framework that includes the expertise of the lived experiences of survivors of IPV as the basis for the curriculum.

Based on our extensive experience training lawyers as well as community workers, we have many ideas for curriculum content related to IPV that we would like to share with the LSO as this process moves along.

With respect to the specific question posed by the LSO:

- As we have discussed above, we do not believe the proposed training program provides sufficient attention to IPV
- In addition to the instructional hours, a field placement that ensures some exposure to IPV cases should be mandatory
- FLSPs should be subject to mandatory continuing professional development (CPD), including CPD that examines IPV-related issues

Recommendations

Rather than moving in the singular direction of FLSP licensing, we encourage the LSO to engage in robust and expansive consultations and collaborations with appropriate stakeholders to develop and implement a comprehensive overhaul of the family law/court system that would include:

- Enabling and supporting community justice help (eg Family Court Support Workers) to provide some family law legal services
- Changes to family law process to make it more accessible to all
- Financial and other supports for lawyers to allow them to offer more low and pro bono services
- Increased access to legal aid services; in particular, to legal aid certificates for lawyers for family law cases
- Mandatory family violence training for all family law lawyers
- Further research to determine whether licensing paralegals to provide family law services actually increases access to justice.

Conclusion

As we noted at the beginning of this submission, we share the LSO’s concerns about both the rate and impact of unrepresented parties on access to justice for those who turn to the family courts for assistance.

However, as our comments indicate, we are not persuaded that the present proposal will address those concerns and, in fact, believe such an approach may exacerbate them.

We urge the LSO to ensure a clear focus on the implications of FLSP licensing for survivors of family violence and to work with organizations, like those that have signed this submission, who have important expertise to share.

We welcome the opportunity to collaborate on any endeavours to increase access to justice for this very vulnerable population.

#214

Please enter your first and last name	Judith Huddart
Email Address	exec-dir@oacp.co
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Ontario Association of Collaborative Professionals
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Province-wide organization
Upload a File	OACP Comments on Family Legal Services Provider Licensing Model.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



Ontario Association of Collaborative Professionals

November 26, 2020

Submission of the Ontario Association of Collaborative Professionals to the Access to Justice Committee of the Law Society of Ontario

Re: Family Legal Services Provider Licence Consultation

We appreciate the opportunity to provide our comments with respect to the provision of family law services by non-lawyers.

Summary of OACP Recommendations:

The Ontario Association of Collaborative Professionals respectfully submits that the suggestion of introducing another group of professionals with lesser training requirements than lawyers receive to provide family law services is unlikely to address the concerns addressed by the Bonkalo Report in any significant way. We also have concerns about the level of competence of the proposed professionals, even if they successfully complete the training regime as proposed.

The OACP made submissions to Justice Bonkalo's committee and more recently with respect to the updates to the Family Law legislation as a result of the changes to the Divorce Act. We suggested that the Government of Ontario move the Ontario Family Law regime towards a more holistic, family-centred approach that:

- strengthens Ontario families and businesses,
- improves the effectiveness/efficiency of Family Law as experienced by Ontario families,
- reduces the growing cost to families and the government of adversarial court-sponsored process, and
- allows for family disputes in Ontario to be addressed through private, consensual dispute resolution processes outside of the court process.

We believe that the changes to the amended Divorce Act, which gave more recognition of consensual dispute resolution processes outside of the court system to resolve issues arising from marriage breakdown and separation, are more likely to assist parties to resolve their family disputes and to improve access to justice. We believe that by reducing the number of cases which have to be resolved the Courts and by improving the likelihood that matters could be

resolved before trial, or even before temporary motions are required, the court system would be more able to deal with the cases that need to be before it.

Who are we?

The Ontario Association of Collaborative Professionals represents nineteen (19) Collaborative Practice groups operating across Ontario consisting of over 600 total members offering completely customized out-of-court dispute resolution options to families working through separation and divorce. OACP Practice Group members include family lawyers, family & mental health professionals, and financial professionals. All Collaborative Professionals have taken substantial training and are certified to practice in this interest-based, child-focused, holistic approach to resolving family law matters. Like the mediation community, collaborative professionals are in place throughout Ontario assisting thousands of Ontario families seeking resolution outside of court-sponsored process. One of the key elements of Collaborative Practice is that the parties and lawyers sign a contract, in advance, agreeing not to go to court.

What is Collaborative Practice?

Collaborative Practice, otherwise known as “collaborative law” or “collaborative process”, or “collaborative divorce”, is an interdisciplinary **team** process involving two family lawyers and can include **neutral** family and financial professionals. These professionals assist separating parties to collect and understand needed family information and to reach an agreement utilizing a full range of support at a pace the family can tolerate without the use (or the anxiety) of the family court system. Collaborative Practice resolves family issues such as divorce, separation, care of children, support, division of property, and common law separations. Each unique family is provided with exactly what they need, when they need it, at an appropriate cost using a combination of legal, family, parenting and financial counselling.

Barriers to Access identified by the Bonkalo Report

1. It costs too much. In addition, to the costs of the litigation process, there are additional costs which are not directly a part of the process, such as expert fees, or travel and waiting times;
2. There is very restricted access to legal aid for the vast majority of family law participants;
3. There is a lack of knowledge of the system and the available resources for people to deal with their matters.

Potential Solutions identified in the report:

1. Holistic service models, including legal and social services;
2. Unbundling of services;
3. Public legal information;
4. Alternative (Consensual) Dispute Resolution processes.

For some reason which is unclear, the recommendations of the Report proposed to increase the number of 'legal' professionals available to clients and adopt a model which changes the amount of training required of those professionals to be permitted to provide those services as a solution to the problem identified. We reject that recommendation.

The report failed to address the underfunding and the inadequacy of the eligibility for most families of the Legal Aid system. It also ignored the potential solutions which were identified in the report which are referred to above.

We believe that a focus on the potential solutions that were identified would have a much more helpful effect and we advocate for a response which re-asserts the need to address those solutions as opposed to the recommendations made to create a specialized licence for paralegals to provide family law services.

For example, by re-directing those clients, who have been screened for appropriateness, to more supportive and holistic service alternatives, the number of unrepresented clients in court could be reduced considerably. If screening and diversion are done at an early stage, those remaining in the family court system should be able to have their matters heard in a more efficient and cost-effective manner. These families might be better able to afford legal representation or to qualify for legal aid because there would be fewer matters to fund.

In addition, by supporting the provision of unbundled services, including coaching, and by providing the option for those services to be funded by Legal Aid, where required, clients could obtain quality legal services from well trained and experienced professionals and could resolve more straightforward and less conflictual issues, leaving only the most difficult or complicated issues to be resolved in a contested court process.

Significant savings could be realized with a willingness to harness technology to transform the Court system by automating the current processes, allowing for online filing and records management, permitting many steps in the process to be managed by the use of virtual appearances and to allow for online dispute resolution, amongst other services. This appears to be happening currently as a result of the necessity to respond to the challenges of providing in person services during the pandemic.

We believe that courts could become more customer oriented, adopting a philosophy of customer service, so that they are open to feedback from participants and develop transparent performance evaluation measures.

It is inaccurate to conclude that the presence of so many unrepresented litigants currently using the system is largely caused by the high cost of legal services offered in the current system. There are many other reasons for the phenomenon. As the Ryerson Family Legal Innovation Zone Report noted, not all families need or want to be serviced in court. If there are community-based services with appropriately trained, accredited and supervised professionals who could assist with screening, education, triage and dispute resolution, only those who needed or wanted to go to court would be in the court process.

Clients need easily accessible, inexpensive or free legal information, in advance of the commencement of any court proceedings, including a consideration of all the available process options and how to access those options. This would result in more clients finding more effective options to resolve the issues which have led to their conflict. A mix of in person and web-based information, accessible in different languages would permit separating spouses to be able to speak directly with professionals who are familiar with the legal, financial, parenting and emotional issues triggered by separation. A process of neutral evaluation should be available to enable parties to assess their situation at an early stage and determine the most efficient options available to resolve their matter. The mandate of the early neutral evaluation service provider would be to encourage streamlining the matter to out of court services and processes where appropriate to do so. In our experience, couples who learn about process options and professional resources that meet their particular family's needs are empowered and more confident to choose non-court and sometime non-legal options. Information and education should be made available to clients whether or not an application is started and whether or not parties are represented by counsel. They should have access to information about all the possible dispute resolution processes; including mediation, collaborative practice, arbitration and court. This information could be provided by a wide range of quasi-judicial officers to assist potential litigants. We believe most clients could afford to pay a flat fee, on a sliding scale, for attendance at an information session prior to starting any court proceeding, with a possible exemption if grounds are established for an application based on urgency.

A type of a triage system to refer parties to resources in their community best suited to resolving their matters is an important innovation. This would assist to reduce the number of matters proceeding to court. Many of the problems which were identified in the Report would be substantially reduced if we changed focus to remove from the court process those matters and issues which would be better addressed in some other manner.

In addition, we believe that if there were better access to resources for families to deal with their financial, family relations, emotional and parenting issues, which are often the causes for family breakdown and family conflict, clients could address those issues and perhaps avoid a separation or resolve their conflicts before legal intervention became necessary.

However, on the presumption that we are unlikely to reverse the policy decisions that have been made in light of the recommendations, we also wish to provide our responses about the proposal to create a Family Legal Services Provider Licence which has been brought forward by the LSO.

Concerns about the Proposal which have been identified by our members, include:

- a) Offering to provide services at a lower cost by less qualified service providers as a means to saving money is unfair and unjust to the underfunded parties and serves to relegate them to a potentially less competent representative; It is unacceptable to lead families to believe that paralegals, particularly unsupervised, can provide a similar level of service as lawyers.
- b) There is no guarantee that paralegals will be able to provide services which are more affordable than lawyers, particularly lawyers offering services at legal aid rates or discounted rates.
- c) Adding law students and paralegals to the current court system without a concerted effort to divert people to safe, alternative resolution processes will merely serve to institutionalize a two-tier justice system in Ontario.
- d) It is doubtful that the price of the services offered by paralegals would necessarily be lower than the cost offered by lawyers or by other professionals who might be available to assist parties with their family law issues, such as therapists, social workers or financial professionals.
- e) We are not convinced that it is possible, in many cases, to identify at an early stage, the possible complex issues that may arise during a resolution process. This includes issues which are not legal in nature and which would be better resolved by other professionals with expertise in addressing those issues.
- f) We are concerned about the cost of a client having to restart if a process is commenced and it later becomes clear that it no longer fits into the permissible types of services to be provided by the FLSP. What would be the cost of having to change service providers mid-stream?;
- g) There is no indication of any expectation on the part of the FLSPs to obtain IPV training or to screen clients for IPV concerns at the outset;
- h) There is no consideration of the circumstance in which one party is represented by a lawyer and the other has an FLSP.
- i) We do not understand the justification for excluding marriage contracts and cohabitation agreements from the services that FLSPs can offer;

Answers to the Specific Questions posed:

- 1. If we accept that the assumption made by the report about competence is correct, it is possible that allowing FLSPs to offer the services proposed could lead to certain services being offered at reduced costs. However, we do not believe that the creation of a two-tiered system is in the best interests of the clients, as indicated.
- 2. We are not convinced that the proposed scope of permissible activities will enable FLSPs to develop a viable business model. We believe that they will be in competition with junior lawyers, sole-practitioners and non-lawyer

professionals as well as lawyers that already provide low-cost and legal aid services to clients. We are not sure that there is sufficient space in the market to open it up to another cohort of professionals who would provide the same services. Another concern is that it might lead to a commoditization of legal services such as the type of services that H& R Block offer in the accounting field and Wal-Mart legal services, which have not resulted in widely available legal services at a reduced cost, as promised.

3. We are very concerned about the level of competency that could be acquired in the training model that is being proposed. On the assumption that the process of training can succeed in overcoming this concern, then yes.
4. Access to affordable competent legal services is not going to be addressed by defining the activities that a particular service provider can or cannot provide. Affordability is determined by the level of the complication of the issues in dispute and the level of conflict between the parties. As stated above, it is our view that the best way to make services more affordable is to assist parties to identify the best resources available to address their particular issues and directing them to these appropriate services or process options.
5. We are concerned that the proposed training program may not compare with the level of training that the existing service providers are required to have and maintain. In addition, there is no specific indication that there will be any ongoing CPD requirement on the FLSPs, similar to what is required of lawyers. Also, there is no suggestion that there will be a significant experiential requirement, similar to articling, which would be necessary in our view as part of any training program. We note with concern that of the 209 competencies identified, only 7 are related to alternative or consensual dispute resolution options.
6. An experiential requirement would be necessary, like articling or shadowing, as is required for accredited mediators, and there should be a stronger emphasis on alternative or consensual dispute processes.
7. It should be necessary for the FLSPs to have the opportunity to learn from experience before they would be entitled to work on files on their own. We would be more supportive of allowing law clerks, who could show extensive working experience on files, with clients, being given some authority to act for clients, than permitting candidates who have only had short, theoretical training doing so. The amount of experiential time proposed as part of the licensing proposal is extremely limited and would be insufficient to allow a candidate to see a court process move to the next step in the process, let alone to see it completed in the time frame proposed. If a field placement is proposed, how would it be funded? Who would pay the person being placed? Why would it be expected that any

lawyer or law firm would be willing or able offer such placements? As a result, we are not confident that it would be realistic to anticipate that such a system would result in the desired outcome. Our concern is that there would be a large number of candidates looking for some way to meet the requirement and few if any opportunities for them to do so.

8. We would agree that there should be an ongoing CPD requirement, as there is for lawyers.
9. Yes, if the licence is available it should be available to anyone. As to the issue of whether credit for experience can be given to candidates with significant practical experience, we would suggest yes. However, we believe that some basic level of experiential training should be required of every candidate.
10. Based on the assumption that has been made in support of the concept, the appeal for unrepresented parties would be the idea that there would be a less expensive option available to them. The struggle, from our perspective is to avoid creating a two-tiered system which would result in second class service for those who cannot afford the premier service option.
11. We believe that there are better ways to improve access, as we described in more detail above. We believe that this proposal will likely create a two-tiered alternative for litigants who legitimately cannot afford services. However, we are not convinced that the perceived savings will be as significant as hoped. It will also result in more people chasing after the same business and will cause hardship for lawyers who are self-employed, just starting out or are offering non-traditional service and low fee options already. It will not likely result in a significant reduction in the number of unrepresented litigants because many of the issues which end up progressing through the court process without resolution at an early stage are complex, or the litigants are high conflict personalities, or they struggle with mental health or other complex personal challenges. Allowing another service provider to compete with the large number of existing lawyers is not going to solve those issues.

The best way to assist people to resolve their family law disputes is to ensure that out of court solutions, with appropriate mental health and emotional and financial assistance are made more readily available and that people are made aware of those resources and services. If they have the opportunity to be informed about them and access them at an early stage of the process many can be redirected from the court system altogether. Some of the changes that are finally being made to the courts, to allow electronic filing of documents, better scheduling and virtual hearings, access to electronic documents by the parties, and better sharing of documents, will have the effect of reducing delays and

expenses of proceeding through the process. These are unintentional benefits of the response to the COVID crisis and are long overdue.

12. We believe that it will be challenging to create a parallel system of training that will approximate what law school, articling and the bar exams and practical on the ground experience have provided to the lawyers that practice family law in our province. We are unconvinced that the value proposition is accurate and that the result will be a system that offers substantial savings over the less costly options that are currently being offered by some practitioners. A bigger investment in providing legal aid or reduced cost options would be a better way to spend resources than to add another level of competing professionals to the mix.

13. We would focus on making other changes to the system which would be more likely to have a positive effect on the reduction of the barriers identified in the Bonkalo Report.

We appreciate this opportunity to provide our input to the Committee. We would be pleased to participate in any efforts to improve on the proposals and particularly to work on implementing the alternatives to the FLSP that we have identified to improve access to justice for families in Ontario.

Please feel free to contact the undersigned or the Executive Director of the OACP, Judith Huddart at exec-dir@oacp.co.

Ontario Association of Collaborative Professionals

James W. Jeffcott jjeffcott@lmrlawyers.com

Immediate Past-President

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Please enter your first and last name	Julie Mathews
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Scope	
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Other Components of Licensure	
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November 27, 2020

Law Society of Ontario's Family Legal Services Provider Licence Consultation Comments submitted by CLEO

CLEO is pleased to have the opportunity to provide comments on the paper prepared by the Law Society of Ontario (LSO) proposing a model framework for a Family Legal Services Provider licence in Ontario. Our brief comments, below, focus on some of the broad aspects of the model, rather than on the specifics.

Who we are

CLEO is the leading public legal information provider in Ontario. We are an independent not-for-profit organization and specialty legal clinic, supported by several sources of long-term funding. For over 45 years, we have produced and disseminated easy-to-understand, accurate and actionable legal information to people across Ontario who face barriers to accessing our justice system, including barriers presented by income, disability, literacy, and level of skills in English or French.

We also provide training and other supports to staff at community-based non-profits across the province so that they have the knowledge, skills and confidence to help people who come to them with their law-related problems. Our extensive community and justice networks and partnerships give us an insight into the real life experiences of Ontarians, informing us of their needs and enabling us to develop information that addresses those needs.

CLEO does not provide legal advice and representation services. But we consider our activities to be a critical part of the spectrum of services accessed by people with family law problems. We provide family law information, free of charge, to people across the province through:

- ∞ Our Steps to Justice and Justice pas-à-pas websites, and our live chat service that supports those sites
- ∞ Our Guided Pathways, that help people complete their family court forms
- ∞ Our various family law print publications that are ordered, used, and handed out by hundreds of community organizations and other trusted intermediaries, and government and court offices
- ∞ Training of a wide range of community workers on issues relating to family law, including public library staff, settlement workers, workers' rights advocates, staff at MP, MPP, and city councillors' offices, and health care workers

Increasing access to justice

The need of Ontarians for more accessible, affordable help with their family law problems is profound and widespread – a crisis, according to many reports. In our view, meaningful access to justice requires action, big and small, on many fronts – and without delay; the licensing of family law paralegals is one such action but many more are needed.

One example: the need for a simplification of the family court process and related family court forms. CLEO’s extensive experience in producing plain language and people-centered resources confirms the importance of putting the “intended user” front and centre when developing processes and forms that people are expected to navigate. Creating family court forms that can be more easily understood and completed by people without extensive legal training would be a significant step forward – one that is long overdue – in increasing access to the family court system.

Enabling and supporting community justice help, as outlined in the report recently published by CLEO¹, would also be a meaningful step forward in advancing access to justice. Community organizations are already providing good quality help to people who come to them with law-related problems. A prime example is Ontario’s Family Court Support Workers Program, through which highly trained specialists provide supports to women across Ontario who are fleeing intimate partner violence as they attempt to navigate the family court process.

Supporting the licensing of family law paralegals

In the context of the access to justice crisis, CLEO generally supports the LSO’s efforts to create a new family law paralegal license. We think that the LSO needs to move forward to pilot or implement parts of its proposed model, making the best possible decisions based on the existing evidence, and should not wait until all of its questions or concerns are answered before taking action.

At the same time, once a family law paralegal program is launched, we strongly encourage the LSO to collect data to inform the justice sector on the key question of whether licensing family law paralegals increases access to justice. We share the concerns of Luke’s Place Support and Resource Centre² (“Luke’s Place”) that the LSO’s model could create a three-tiered legal system in family law, which would exacerbate existing disparities in access to justice, further disadvantaging people who live in poverty or experience other social disadvantage.

¹ “Community Justice Help: Advancing Community-Based Access to Justice”, by Julie Mathews and David Wiseman, published by CLEO July 2020.

² CLEO appreciated the opportunity to review Luke’s Place submission to this Consultation.

Data should be collected on:

- ∞ the cost of family law paralegals, particularly as compared to family law lawyers;
- ∞ the impact of family law paralegals on the number of people who are self-representing in family courts;
- ∞ the “outcomes” in cases where family law paralegals provide services (compared to the outcomes in cases where someone is self-representing, or where a lawyer is representing); and
- ∞ the harm to the public (such as records of complaints from clients) where family law paralegals provide services (compared to similar services provided by lawyers).

A few specific comments on LSO recommendations

CLEO offers the following, somewhat more specific comments on LSO’s proposal.

- ∞ We are unaware of reports or evidence that the quality of service provided by paralegals in Ontario (in areas other than family law), and by similar paralegal programs in other jurisdictions, provides a significant concern that the provision of services by licensed family law paralegals would pose a serious risk of harm to the public. However, as noted above, we think it is critical that the LSO collect data to assess the impact of a family law paralegals program on increasing access to justice.
- ∞ We are of the view³ that there are certain general activities relating to family law that paralegals should be permitted and supported to do, as any conceivable risk they pose to the public is far outweighed by their benefit. Those activities include the provision of legal information, assistance navigating the court process, assistance with the completion of family court forms, and coaching with respect to court rules, procedures and protocols.
- ∞ It will also be important to communicate clearly the list of services that family law paralegals are able to provide, when the program is launched. CLEO’s experience confirms – time and time again – the importance of ensuring that ordinary people are able to understand the services, including any limits to those services, they can expect to receive.

³ Because we do not work in the field of legal advice and representation, we do not feel equipped to offer specific comments on the scope of permissible activities, competencies, or training program components.

- ∞ In our view, the issue of the scope of services is muddied by the serious deficiency in our current legal aid system; access to legal aid certificates for family law problems needs to increase. Research documents the devastating consequences when appropriate legal assistance is lacking and basic human needs and rights are at stake, such as in adversarial adjudicative proceedings where a power imbalance exists.⁴

Other suggestions to improve the provision of and access to family law services

As well, we agree with the recommendations in the Luke's Place submission to this Consultation that speak to the need for more in-depth, high-quality education and training about family violence. We concur that such training, taught by intimate partner violence experts, needs to be enhanced and required for all family justice sector professionals, including lawyers, mediators, court clerks, and law students – as well as paralegals.

Finally, we see an opportunity for the LSO to develop (in collaboration with others) a user-friendly free referral system or database of lawyers and paralegals, that gives the public information on the extent and nature of the service provider's family law education and experience (including their standing with the LSO), and indicates whether a provider offers reduced fee, low-bono or pro bono services⁵. This would address a gap that persists relating to the difficulty people have in identifying a family law professional who is accessible, affordable, and has the requisite experience. We note that Ontario's Family Law Limited Scope Services Project and the LSO's Directory are positive steps in this direction, which the LSO can build on.

Conclusion

CLEO appreciates this opportunity to consider and comment on the LSO's framework. We would be pleased to elaborate further or discuss any questions that you might have relating to our comments.

⁴ Thus, we think that woman fleeing abusive relationships, seeking a remedy at law to protect themselves (for example, a restraining order or exclusive possession of the matrimonial home), should be able to access high-quality legal representation from a lawyer; our legal aid system needs to recognize and support that access.

⁵ We caution, though, against relying on low-bono or pro bono legal services to address the unmet need for family law help.

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Please enter your first and last name	Holly Robertson
Email Address	vp@ourfederation.ca
Please make a selection below	I am a paralegal
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Federation of Ontario Paralegals
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Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

FEDERATION OF ONTARIO PARALEGALS

Response to the Family Legal Provider Licence
Family Law Working Group of the Law Society of Ontario

Dated June 2020

Dated November 27, 2020

Submitted to:
The Law Society of Ontario

Submitted by:
The Federation of Ontario Paralegals

FÉDÉRATION DES PARAJURISTES DE L'ONTARIO

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FEDERATION OF ONTARIO PARALEGALS

Introduction

The Federation of Ontario Paralegals appreciates the opportunity to provide input as a participant in the Call for Comment regarding the Family Legal Services Provider Licence (“FLSP”) Consultation Paper by the Family Law Working Group (“FLWG”) of the Law Society of Ontario (“LSO”).

The Federation of Ontario Paralegals

The Federation of Ontario Paralegals is a professional association of Paralegals and Paralegal students in Ontario. While our association is just in its early stages, we are over 400 members strong and currently preparing for Board nominations. Our Board will be made up of seven Regional seats along with three Executive seats.

Our members work to provide legal representation and improved access to justice to Ontarians. Our members strive to continuously update and educate themselves on issues facing Ontarians to better serve their communities. Our Association is has developed and is currently enhancing its Mentoring Program - a Program that assists the newest members of the profession in their greatest time of need as well as a program that assists paralegals in learning new areas of practice within our current scope of practice.

Our mandate:

The Federation of Ontario Paralegals seeks to advance the Paralegal profession with a view to educating the public about the role Paralegals fulfill in providing access to justice within Paralegals' current scope and the benefits to Ontarians with expanded Paralegal scope.

Mentorship and education open to Paralegals that includes highlighting less common areas of practice to allow Paralegals to expand their practice and network with peers together with providing opportunities for Paralegals in various regions within Ontario to participate actively, including have a voice to concerns and issues regionally, in a province wide forum of peers that provide support and transparency.

Response to FLSP Licence

In the period of consultation available for this submission, the Federation sought input from our members, faculty in the community colleges and members of the public to provide a comprehensive response to the questions posed in the consultation paper.

FÉDÉRATION DES PARAJURISTES DE L'ONTARIO

Our responses to the specific questions the FLWG asked for answers to are provided below:

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

With few exceptions, Paralegals provide lower cost services to the public. The primary reasons for this are:

- i. A substantial number of Paralegals do not have large business overhead expenses, many work from home offices;
- ii. A substantial number of Paralegals bill student and junior Paralegal work at lower hourly rates than a Paralegal or partner bill;
- iii. A substantial number of Paralegals accept Limited Scope client retainers, bill in flat rates or block fees allowing the client greater opportunity to control their costs;
- iv. Paralegals commonly are retained for client education or coaching services in matters of Paralegal scope, allowing clients to represent themselves in a competent manner;
- v. Paralegals' education costs are generally much lower than our lawyer counterparts;
- vi. FLSP licence will increase access to the number of providers in Family Law Services; and
- vii. FLSP licence may provide more access to clients in more remote areas of the Province.

Paralegals are already educated, licenced by the LSO and insured. The framework provided for in the Consultation Paper will provide the public with an expansion of legal information services as well as competent representation within the scope of practice presented.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

We believe that the proposed scope would enable an FLSP to develop a business model that is viable.

The Federation of Ontario Paralegals had open discussions with both Osgoode PD and an Ontario College. Both providers ensure that the education proposed in the June 2020 Consultation Paper can be delivered to Paralegals at a cost between \$4000 and \$6000. This amount is equal to, or similar to existing yearly college tuitions already in place at the majority of Ontario Colleges.

FEDERATION OF ONTARIO PARALEGALS

Although Paralegal rates vary throughout the province based on the types of services offered and the years of experience of the licensee, paralegals generally offer legal services in the range of \$100 – \$150 per hour. Less experienced Paralegals offer much lower hourly rates.

The FLSP is proposed to serve those who do not qualify for Legal Aid funding and the middle-class who cannot afford a lawyer. Our assumption is that the FLSP would be serving clients in single-family households with incomes under \$90,000.00 per year.

In speaking with our members, we learned that the majority of Paralegals who intend to participate in this education do not intend to practice solely in family law services, rather, they will utilize the FLSP license to enhance or supplement their already established practices.

The LSO has proposed that Paralegals have 1 – 3 years' experience before qualifying to take the FLSP education. FLSP's would also be Paralegals who will have already incurred the costs of client management and accounting software together with together with any office equipment necessary to do their already existing jobs.

Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The proposed competencies would ensure the appropriate level of competence.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

FLSP Licence Consultation Training Program as proposed by the LSO FLWG together with a reasonable, cost effective Training Program available to all working Paralegals in the Province.

FÉDÉRATION DES PARAJURISTES DE L'ONTARIO

Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?

Yes. The current Paralegal curriculum is approximately 980 hours with 120 hours of placement. The consultation report suggests a minimum of 550 hours of education along with what appears to be 360 hours of placement. This is more than sufficient time to enable candidates to achieve the proposed competencies.

Other Components of Licensure

6. What type of prerequisite experience in family legal services provision, if any, should be required for the FLSP?

No prerequisite experience. Newly graduated students of an accredited Paralegal program may commence the FLSP education in the September after graduation in a full-time 1-year Graduate Certificate program.

- Or -

1-year experience. This means that a Paralegal entering an FLSP program either would have started his or her own business or have been employed in a legal service setting. He or she would, presumably have entry level advocacy experience, experience processing court documents and completing submissions in courts or tribunals whether oral or in writing. This experience would also have seen the Paralegal meet and manage client expectations and have participated in 12 hours of CPD's.

7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

Field placement for those with P1 experience of a minimum of 1 year – 120 hour field placement over 1 month in a law firm, FLIC office, Legal Clinic, or Family Law Service Provider Legal Clinic (similar to the LPP program) operated by an approved program.

- Or -

FEDERATION OF ONTARIO PARALEGALS

A 140 hour field placement for those with P1 experience of a minimum of 1 year, 2 days a week in a law firm, FLIC office, Legal Clinic or Family Law Service Provider Clinic operated by an approved program.

A law firm cannot be the only approved field placement provider. After attending the TLA meeting prior to submissions, the high majority of lawyers are opposed to the license and until there are FLSP's to offer field placements, we believe that it would be challenging, at best, for FLSP's to secure field placements with lawyers.

8. Is a CPD requirement focused on family law appropriate for the FLSP?

A CPD requirement focused on family law may be appropriate if it is applied similarly to the way that EDI is applied. As an example, if the requirement is that holders of the FLSP licence complete 2 hours of focused family law education on a yearly basis, these hours should be applied to the already existing requirements and not be additional requirements.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

Much like paralegals prior to regulation, Law Clerks may be educated but are not mandated to do so.

Only licensed members of the Law Society of Ontario should be able to provide legal services in the Province of Ontario.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

Self-represented litigants often experience a depletion of personal funds, instability or loss of employment caused by the amount of time required to manage their matter, emotional isolation from friends and family as their case becomes more complex and overwhelming. The following will make an FLSP appealing to self-represented litigants:

- i. Flat fee billing;
- ii. Paralegal hourly billing rates;
- iii. Unbundled services;

FÉDÉRATION DES PARAJURISTES DE L'ONTARIO

- iv. The availability for both parties in the matter to obtain representation;
- v. Access to affordable advice prior to filing with the court;
- vi. Advice/Assistance on complex court forms;
- vii. Advice on procedural and cultural aspects of self-representation (how to behave, what to wear, what to expect etc...);
- viii. Assistance with responses to opposing counsel;
- ix. Accessibility to more providers in remote areas;
- x. Availability to speak to someone with knowledge in Family Law that can provide them with a more situationally suitable referral to a lawyer when required;
- xi. Availability of cost-effective advice and assistance for self-litigants.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

We believe the design is appropriate.

12. Are any aspects of the proposed licensing framework unfeasible?

The availability to the education and the placement should be a consideration in choosing a Training Program provider for the FLSP so that Paralegals may continue operating their practices and being accountable to their already existing clients.

Consideration should be given to an LPP.

13. Is there additional information or are there other factors that should be considered?

Paralegals having the ability to practice in the proposed portions of Family Law will speed up the court process and provide access to justice.

Conclusion

The Federation of Ontario Paralegals is grateful for the opportunity to comment on the recommendations set out in the Consultation Paper. Paralegals will be a positive part of the overall solution to the Family Law service crisis in Ontario. The educational requirements outlined in the Consultation Paper will ensure that mechanisms are in place for the protection of the public and will equally ensure a quality service to the public.

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Please enter your first and last name	Deborah Moriah
Email Address	deborah@moriahparalegal.com
Please make a selection below	I am a paralegal
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Ontario Association of Black Paralegals Establishment Committee
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Ontario
Upload a File	Family Legal Service Provider_Comments_OABP.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

Ontario Association of Black Paralegals (

Establishment Committee ,

www.OABP.org

Family Legal Service Provider: Call for Comment

Prepared by April Bollers, Paralegal - P08962

SCOPE

1. *Will the proposed scope of permissible activities support increased access to affordable, * competent family law legal services? If so, how? *
 - a. It will provide accessible service that are more affordable in one way, but not another
 - i. * While these services may in fact be more affordable for middle income families due to the reduced hourly rates of paralegals, it still may not be affordable for lower income families.
 - ii. * One thing that the law society must consider is that the likely demographic of those seeking assistance from paralegals are those earning a lower income. If paralegals are meant to perform and sustain services in family law, there must be a structure in place for them to get paid for their services. Currently, Legal Aid Ontario provides certificates to low income families, however, they are restricted to seeking assistance from lawyers. Paralegals are not included in the Legal Aid framework. How then do we get paid when lower income families need our assistance?
 - iii. * Additionally, while paralegals would seek to identify as many issues as possible at the outset, some issues may not become apparent until after the paralegal is retained and the matter is well under way. As a result, a paralegal would be required to withdraw representation and refer the client to a lawyer, eliminating the cost-effect nature of the case.
2. *Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?
 - a. *In order to create a viable business, paralegals will need to have a scope large enough to allow them to complete a single matter from beginning to end without having to refer a client to a lawyer to do so. Because lawyers charge exponentially higher fees, that would eliminate the “access to justice” initiative entirely. Thinking of immigration as an example, much of the work currently cannot be done by a paralegal unless they are also certified immigration consultants (the requirements for this certification have now also

changed to the detriment of those paralegals without the extensive educational requirements).

COMPETENCE

3. *Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?
 - a. *There will have to be extensive theoretical and practical training on these 200 educational competencies, including case law studies and assignments touching on each of the competencies. If this can be achieved, the program should be sufficient to train paralegals for entry level FLSP roles.
 - b. *Additional competencies I would include are courtroom advocacy and negotiation skills with respect to the permissible agreements under this framework: offers to settle, case and settlement conferences, and in any other circumstance such skills would apply.
4. *In your view, what scope of activities would best support increased access to affordable * competent family law services? *
 - a. *Many of the listed items in the permissible scope would require access to and training to appear in the Superior Court. Unless paralegals have that access, many of these things cannot be done by paralegals. If that is the case, we then have to go back and question whether the FLSP role is in fact a viable business model.

TRAINING PROGRAM

5. *Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Educators are invited to respond to the Request for Information found at Appendix D
 - a. *Given the complexity of Family Law as a whole. This is a difficult question to answer given the varying levels of practice experience within the paralegal profession. There are many paralegals who, while having their license for many years, have had limited opportunities to put their education into practice. There are a number of reasons for this, including but not limited to, the lack of available entry level jobs upon graduation coupled with the necessity to begin earning a pay cheque right away. Oftentimes, people will settle for working a lesser job in the legal industry or working in another industry entirely

because there are limited opportunities for new paralegals to be mentored and coached in the field. While CAN is a great resource, it does not simulate real world interactions.

OTHER LICENSURE

6. *What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?
 - a. *If you have a paralegal license, you should be eligible for it. The program should be tailored for paralegals coming in at all levels. For the reasons stated above, it is not fair for some to be excluded from this opportunity simply because the market and opportunities did not favour them.
7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If field placement is required, who will provide placements?
 - a. *There is no question that firms that specialize in Family, or at least have it as one of their practice areas, should host field placements.
 - b. *This may be tricky for those who work full time jobs and cannot afford to, or won't be permitted by their employers to, take a day or two off per week or a leave of absence to complete the placement.
8. *Is a CPD requirement focussed on family law appropriate for the FLSP?
 - a. *100%
9. *Should law clerks be eligible for FLSP license? Are there other groups of professionals who should be considered?
 - a. *Any law clerk who can demonstrate that they have sufficient knowledge of family law and procedures could be eligible, however, they would need an extended study program including ADR/ mediation, written and verbal advocacy, or any other competency already held by paralegals that they don't have.

GENERAL

10. What characteristics of an FLSP would make this provider appealing to self-represented * litigants? (billing practices, cost structure, accessibility, practicality, other?) *
 - a. *I think the biggest appealing feature would be the price. Paralegals generally charge a lot less per hour than lawyers. Many also do limited retainer or unbundled services, or charge flat fees. These structures allow clients to plan financially for representation.
11. Given the recent enhancements to accessing family law (i.e. court modernization, steps to justice, etc.), is the FLSP design appropriate?

a. *The modernization and recent technological improvements to the court system makes the FLSP design even more appropriate than in the regular in-person system. We currently cannot tell with any certainty how the COVID-19 scenario will play out and how long we will have to function in this new normal. Zoom meetings are now being used in many courts to conduct conferences, trials and other types of hearings. This will serve as a cost-saving measure for clients as they do not have to travel and risk their health, but can appear virtually. Additionally, for licensees, the use of Zoom or similar applications also lowers overhead costs by eliminating the need to rent virtual office space to meet with clients, which can be quite expensive. Like there for clients, there will also be no travel costs.

12. Are any aspects of the proposed licensing framework unfeasible?

a. *I personally am concerned about the length of the program and whether it is long enough to ensure that licensees have all the skills and experience they will require to do good work in the field.

13. Is there additional information or are there other factors that should be considered?

a. *One of the major problems with this model is that it discriminates heavily against paralegals who, in most cases by no fault of their own, were not able to get a job in the field or sufficient mentoring and coaching beyond the 20-day field placement requirement, which of course, severely limits their practice experience. Additionally, for those who have been in dire straits financially and could not afford to wait for paralegal focused employment to come their way, many of them undertook alternative employment and are either at 50% licensing status or administratively suspended for not continuing to pay fees for an industry they are no longer or never were working in.

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Please enter your first and last name	Laurel Marshall
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Please make a selection below	I am a paralegal
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Durham Region Paralegal Network (DRPN)
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central East, including Muskoka (Bracebridge), Victoria & Haliburton (Lindsay), Simcoe (Barrie), Durham (Whitby), Peterborough (Peterborough), Northumberland (Cobourg)

Upload a File [2020 11 27 FLSP submissions DRPN.pdf](#)

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

Yes. Please see the DRPN submission document attached.

2. Will the proposed scope of permissible activities enable the Family Legal Services Provider to develop a business model that is viable? If so, why? If not, why not?

Yes. Please see the DRPN submission document attached.

Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

Yes. Please see the DRPN submission document attached.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

Yes. Please see the DRPN submission document attached.

Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D of the Consultation Paper.

Yes. Please see the DRPN submission document attached.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the Family Legal Services Provider?

Please see the DRPN submission document attached.

7. What length and form of experiential training should be incorporated into the licensing process for the Family Legal Services Provider to support the competencies? If a field placement is required, who will provide the placements?

Please see the DRPN submission document attached.

8. Is a Continuing Professional Development requirement focussed on family law appropriate for the Family Legal Services Provider?

Yes. Please see the DRPN submission document attached.

9. Should law clerks be eligible for the Family Legal Services Provider licence? Are there other groups of professionals who should be considered?

No. Please see the DRPN submission document attached.

General

10. What characteristics of an Family Legal Services Provider would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

Please see the DRPN submission document attached.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the Family Legal Services Provider design appropriate?

Yes. Please see the DRPN submission document attached.

12. Are any aspects of the proposed licensing framework unfeasible?

No. Please see the DRPN submission document attached.

13. Is there additional information or are there other factors that should be considered?

Please see the DRPN submission document attached.

Durham Region Paralegal Network

Response to the
Family Law Working Group of the Law Society of Ontario
Family Law Service Provider Consultation Paper Call for
Comment

Dated June 2020

Dated November 27, 2020

Submitted to:

The Family Law Working Group of the Law Society of Ontario

Submitted by:

The Durham Region Paralegal Network

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DRPN Response to the FLWG FLSP Call for Comment

Introduction

The Durham Region Paralegal Network (“DRPN”) appreciates the opportunity to provide input on the Family Law Working Group (“FLWG”) of the Law Society of Ontario (“LSO”) Family Law Service Provider (“FLSP”) Consultation Paper dated June 2020 in response to the FLWG Call for Comment.

The Durham Region Paralegal Network (DRPN)

The DRPN is comprised of a majority of Paralegals running their own businesses including sole proprietorships, partnerships, and, Professional Corporations; Paralegals working in gainful positions of employment; Paralegal graduates; and Paralegal students in the Regional Municipality of Durham. Our members strive to continuously update and educate themselves on issues facing Canadians to better serve their community. Monthly continuing professional development seminars from a variety of providers are marketed to members and LSO Paralegal examination preparatory courses are offered at a discount to Paralegal graduates (prospective licensees) of DRPN. Government, court and tribunal updates are posted to keep our members informed and current with issues facing Canadians. Open communication takes place on questions and legal issues of interest to the local community. The DRPN is a safe place to have discussions, ask questions and debate adhering to the guidelines set for Paralegals including courtesy, civility and respect. DRPN also serves the very important purpose of providing a free networking and social space for members as many independent business owners find that the traditional business networking groups can be cost prohibitive or irrelevant to the Paralegal business community.

The DRPN Contributors

When the FLWG announced that it sought input in response to the Consultation Paper, a number of DRPN members provided input using the “guiding questions” in the FLWG Consultation Paper in this response. These members providing input include:

1. Paralegals that provided Family Law legal services as Law Clerks in lawyers’ offices prior to obtaining their Paralegal licenses;

2. Paralegals that provided Family Law legal services in independent Paralegal businesses prior to Law Society of Upper Canada (as it then was) Paralegal licensing and provision of scope excluding Paralegals from providing legal services in Family Law;
3. Paralegals who have experience in mediation and coaching lay persons through the Family Law legal process;
4. Paralegals that have extensive experience advocating before Ontario courts and tribunals on behalf of clients who are, and some who are not, interesting in serving clients in Family Law in the future;
5. Paralegals employed by the local Legal Clinic who actively advocate for vulnerable persons in the areas of housing and social benefit reviews;
6. A Paralegal with both Family Law experience in a Law Firm, independent Paralegal practice and as an employee in the legal department of Children's Aid Services advocating at the tribunal;
7. Paralegal students who are very interested in pursuing Family Law as an area of practice in future licensing opportunities;
8. Paralegals and students who have navigated their own Family Law proceedings in the Ontario Court of Justice and Superior Court of Justice.

For the purposes of this submission, we felt it necessary to have consultation with a well-rounded group of members who could speak from experience as to education, scope and the viability of a business plan with the scope that the LSO FLWG has proposed.

The FLWG Consultation Paper and Recommendations - Overview

It is the position of the DRPN throughout the discussion in this paper that Paralegals are a viable, integral solution to the crisis in the Family Courts. Currently a vast number of people in Ontario will remain with no option but to struggle within this system as a self-represented party. It is the position of the DRPN that the people who currently hire lawyers, and can afford lawyers, who have comprehensive, difficult Family Law cases will continue to hire lawyers. The role of the FLSP with limited Family Law Scope would fill the need for a less costly, flexible approach to helping vulnerable clients whose only option is to self-represent in Family Law proceedings because they don't qualify for Legal Aid, or they are in the middle-income bracket that cannot afford a lawyer's representation.

The issue of Family Law Scope for Paralegals has been a practice issue for many Paralegals since the 1990's when, over time, we saw the Cory, Morris and Bonkalo Reports all recommend

some limited scope in Family Law for Paralegals. We sincerely believe that Paralegals may fulfill a valuable role in contributing to access to justice in Family Law and, for the most part, we agree with the FLWG FLSP License Consultation Paper.

DRPN Response to FLWG Recommendations via “Guiding Questions”

Scope

SCOPE: Q1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

Yes, the proposed scope of permissible activities support increased access to affordable, competent Family Law legal services with one exception we’d like noted. The FLWG has not recommended FLSP’s have scope in matters that require third party valutors; however, they have recommended that FLSP’s be permitted to assist in division of property where there is a matrimonial home. It is foreseeable in a case of division of property including a matrimonial home that an FLSP would require scope dealing with real estate agents and/or licensed real estate appraisers and we’d respectfully advise this be added as an exception.

As to affordable and competent Family Law legal services offered by FLSP’s, Paralegals currently, with few exceptions, offer legal services at lower cost to lawyers in a multitude of areas of law. The primary reasons for this are:

1. The majority of Paralegals do not have the business overhead expenses that lawyers have;
2. The majority of Paralegals bill Paralegal student and junior Paralegal work at lower hourly rates than a senior Paralegal or managing partner bill;
3. A high number of Paralegals accept Limited Scope Retainers allowing the client greater opportunity to control their costs;
4. Paralegals commonly are retained for client education or coaching services in matters of Paralegal scope allowing clients to represent themselves in a competent manner;
5. A high number of Paralegals successfully work out of their homes allowing lower overhead costs; and

6. Paralegals do not have the education costs that lawyers incur and subsequently have to recoup through hourly rates.

It is our respectful submission that all of the above would apply to FLSP's allowing for affordable, competent Family Law legal services. To our knowledge, Paralegals fulfill their CPD requirements, as those of us who searched the Discipline decisions did not find any based on the non-fulfillment of CPD requirements as a sole reason for discipline, and we are working with the assumption that there will be an additional CPD requirement attached to the FLSP license. We propose in a more specific question that the FLSP be required to fulfill 6 additional yearly CPD hours focused primarily on substantive and procedural family law.

SCOPE: Q2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not? Competence

The proposed scope would absolutely enable an FLSP to develop a business model that is viable. In our group working on this submission we had 2 Paralegals with over 20 years experience including Family Law experience prior to LSO licensing both as Law Clerks and independent Paralegals together with a Paralegal who has provided "Coaching" services and assistance to people with filling out Family Court Forms.

We could not provide a full business plan given the length of attachment, but offer the following for your perusal and consideration:

We assumed that the FLSP would incur between \$2500 - \$6000 Community College education costs by taking a program approved by the Ministry of Colleges and Universities (MTCU) if the FLSP student pays the cost directly. This cost would be lower depending on financial eligibility for OSAP, WSIB or EI funding. We do not believe that \$2500 - \$6000 is a major education cost for an FLSP to incur and would not lead to an hourly rate in line with a Family Law Lawyer who may have to recoup \$100,000 in education costs. Thus, we do not believe that a great burden would be put on the FLSP's clients in education leading to higher fees because of education costs.

We assumed that the FLSP licensing process including materials, examination, and licensing fee the first year would not exceed \$2000 i.e. assuming a \$1200 materials and exam cost and \$800 licensing fee. If Paralegals were to pay full Paralegal dues each year, subsequent dues would be in the \$2000 range to maintain a full P1 and FLSP license. That is not a major cost to recoup through business activities.

Our example below is based on consultations with more than 20 Paralegals running their own businesses, and 4 Paralegals who ran businesses providing Family Law services prior to LSO P1 licensing:

New FLSP's, through education and field placement will be introduced to the crisis in the Family Courts and to the concepts, procedures and processes of working with vulnerable clients. It will be obvious to FLSP's that their prospective Family Law clients are not in the highest income brackets (requiring the scope of a lawyer) nor do they have the financial means that Paralegals' corporate Small Claims Court clients have to pay the Paralegal at a higher rate. Further, some of the Family Law services in the scope proposed in the Consultation Paper are of a routine nature including simple joint and uncontested divorces, and assistance with the completion of Family Court forms.

Senior Paralegals in Durham with an FLSP license will their services in the range of \$100 – \$150 per hour and bill Junior FLSP services at \$75 - \$100 per hour and bill student services at \$50 per hour. Paralegals, through independent and association contracts currently work with other Paralegals saving the costs of Employee government contributions.

FLSP's will not be dealing with Corporations or the high-income bracket earners in Ontario for clients under this license because the scope does not permit same. The FLSP is proposed to serve those who don't qualify for Legal Aid funding and the middle class who cannot afford a lawyer. Our assumption is that the FLSP will be serving clients in single-family households with incomes under \$75,000.00 per year who have accumulated significant debt and do not have liquid assets to support children, meet family needs and pay a lawyer in the range of \$300 - \$600 per hour for Family Law services.

FLSP's will be offering Simple Joint and Uncontested Divorces at flat fees ranging from \$600 - \$1200. Coaching or assistance with paperwork under a Limited Scope Retainer ("LSR") would be offered at flat fees ranging from \$250 - \$400. If the FLSP were to complete five simple divorces per month, the average income from this service would total (\$600 per divorce):

\$3000

If an FLSP were to coach/guide five clients under an LSR (3 hours each @ \$100 per hour) in divorce/custody/access cases involving court paperwork or hearings, paperwork income and coaching income from this service would total

\$1500

If an FLSP were to assist 2 hourly paying clients @ \$125/h with custody/access paperwork and hearings (20 hour estimate per client including extensive pre-hearing negotiation)

\$5000

If an FLSP were to assist two LSR clients with Support Variation paperwork @ \$300 per client (paperwork and coaching flat rate), the income from this service would total

\$ 600

This total income for one month in the example is \$10,100. We note that hearing would not be complete within one month, but offer this example as an example of business viability. For research Paralegals, and it would be assumed, FLSP's, take Paralegal field placement students who conduct legal research as part of their field placement duties. This would result in a "nil" or \$50 per hour billing to the client.

The above does not include full scope retainers in divorce, custody and support matters including court representation, nor does it include domestic contracts or any coaching LSR's for divorce, custody, support or partition matters.

Working from home and having additional marketing, office equipment/supplies costs, research software licensing costs, and DivorceMate licensing costs for an FLSP would total in the range of \$750 per month. Assumption – since the LSO has proposed a Paralegal have 1 – 3 years experience before even qualifying to take the FLSP education, many FLSP's would also be Paralegals under P1 license and have incurred the costs of client management and accounting software together with office equipment that would also be used under the FLSP license scope. No Paralegals participating in this sample had monthly overhead costs exceeding \$5000 currently.

SCOPE: Q3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The proposed competencies would ensure the appropriate level of competence.

We submit that it should be required that the Mediation course delivered in the FLSP education program be approved by FDRIO and the domestic violence training in the FLSP education program also be approved by FDRIO. These courses have been approved for years and would ensure that the course trainer is qualified to provide the training, and it would ensure the highest level of competency for FLSP's graduating with the skills as a Mediator in Family Law and skills for doing an initial intake identifying domestic violence.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

We are in agreement with the proposed scope of activities proposed by the FLWG with the above-noted exception that FLSP's should have scope in dealing with third party valuers as it relates to a matrimonial home.

Training Program

Training: Q5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?

Yes, for the most part. We agree with 550 hours proposed by the FLWG.

Most courses in University and Colleges are 42 hours per week. Although we believe that the competencies must be reworked to fit the courses proposed, this is a proposed course load of 10 - 12 courses and a field placement/clinic/practicum that we believe will allow the FLSP candidates to achieve the proposed competencies.

We prefer to note that Ethics training and Advocacy training would have to focus on Family Law as both of these subjects are included in the P1 education and licensing examination and FLSP candidates should not have to pay to repeat these courses.

Training: Q6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

We propose two options:

1. No prerequisite experience. This means that a newly graduated student of an accredited Paralegal program may commence the FLSP education in the September after Paralegal graduation in a full-time 1-year FLSP Graduate Certificate program. We propose, however, that the clinical aspect of this “stream” of FLSP’s would require a 14 week, 25 hours per week (350 hour) field placement supervised by a Lawyer and/or FLSP. This would ensure that the graduate, prior to writing the FLSP license, would have a P1 license and between both programs, have completed 470 hours of field placement minimum (350 in family law).
2. 1 year experience. This assumes that a Licensed Paralegal entering an FLSP program either would have started his or her own business, or have been employed in a legal services setting. He or she would, presumably, have entry level advocacy experience at a minimum, and experience processing court documents and completing submissions in courts or tribunals whether oral or in writing. This experience would also have seen the Paralegal meet with and manage client expectations and have participated in 12 hours of CPD’s during his or her first year of licensure.

This “stream” would have the option of attending a full time program or attending a combination of in person part time or full time (evenings and weekends) courses and online courses in the

completion of the education. We propose that there are introductory theory courses that could be taught asynchronously online in combination with in person attendance for courses requiring practical application at a local Community College. This would allow Paralegals to continue to run their businesses or to maintain their employment.

We believe that Paralegals should not be forced to quit their job or close their business to obtain the education for this license as that defeats the purpose of an FLSP being cost effective and affordable, and hence, able to provide quality, lower cost services and access to justice to Ontarians.

Training: Q7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

As discussed above, we believe that the FLSP students with no previous legal experience should complete a 350-hour minimum field placement. Paralegals with 1 or more years experience should complete a minimum 120 hour field placement in a law firm, FLIC office, Family Duty Counsel office, Legal Clinic, or FLSP Legal Clinic (similar to the Ryerson LPP program) set up and managed by the Colleges.

We further believe that Paralegals with experience in Family Law that is within the previous 5 years should be exempt from the field placement requirement upon providing:

1. A letter of reference from the law firm where the Family Law experience was gained; and
2. That the letter have specific details about the scope of activity the experience was in, the number of hours completed and the quality of work of the Paralegal in that firm.

A law firm cannot be the only approved field placement provider. After attending the TLA meeting prior to submissions, the high majority of lawyers are opposed to the FLSP license and until there are FLSP's to offer field placements, we believe that very few FLSP's would be able to secure placements with lawyers.

Training: Q8. Is a CPD requirement focused on family law appropriate for the FLSP?

1. We believe a 3-hour CPD requirement per year dedicated to Family Law as part of the 12-hour P1 requirement would be sufficient. We believe these 3 hours should be focused on substantive aspects of Family Law. Lawyers have no additional CPD requirements whether or not they specialize in an area of law.

Training: Q9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

Law Clerks are knowledgeable in family law and perform many tasks under the supervision of a lawyer. Law Clerks do not have advocacy training or experience and do not operate independent businesses. We do not believe that any group other than LSO licensees should be eligible for FLSP licensing.

General

General Q10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

Billing practices, smaller office environment (less intimidating), accessibility (Paralegals often meet with clients at convenient places other than an office), ability to obtain coaching and the openness and flexibility Paralegals have to have in regard to LSR's and unbundled services together with flat rate fees.

General Q11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

Yes, the design is appropriate with relevant revisions to statute in relation to the FLSP offering services in the Superior Court of Justice.

General Q12. Are any aspects of the proposed licensing framework unfeasible?

We believe that lawyer groups will focus on FLSP's having insufficient insurance or that there would be insurance implications if an FLSP had to transfer a file to a lawyer due to a mistake or the case involving issues out of FLSP scope. We believe that there will have to be a review of E&O insurance policies in relation to foreseeable issues that may arise. Paralegal insurance is considerably lower than LawPro insurance for lawyers, and if LawPro were the insurer of FLSP's the premium should be considerably lower than a lawyer because FLSP's are only working in one area of scope that LawPro covers i.e. Not wills & estates, real estate or corporate law.

General: Q13. Is there additional information or are there other factors that should be considered?

Many Paralegals operated these businesses prior to licensing in a competent manner. Most were Family Law Clerks who became independent Paralegals. It wasn't the high-income bracket people that sought Paralegal Family Law service; it was the middle-income bracket that didn't qualify for Legal Aid, but could not afford a lawyer. Paralegals' billings were reasonable (between \$75 - \$125 per hour) and, for the most part, the high majority of Paralegals led successful practices based on word of mouth referrals because they were dealing with the less complicated, less money valued cases. Upon Law Society licensing Paralegal's clients didn't retain lawyers, they became self reps and now we have a majority of those people as the 60% in family court repping themselves and a crisis in the Ontario Family Courts.

The FLSP would speed up the court process and bring access to justice because lawyers wouldn't be dealing with as many self-represented people on the other side of cases, and Judges wouldn't be dealing with as many self-represented people on both sides of a case.

Conclusion

DRPN appreciates the opportunity to comment on the FLWG Consultation Paper regarding the FLSP License. We believe that it is imperative that the interests of the group of low and middle-income people who do not qualify for Legal Aid and cannot afford a lawyer be addressed.

We believe that the FLSP License would be positive solution to the Family Court crisis by LSO regulation and oversight there is protection for the public and alleviation of both court backlogs and the causes of court backlogs in the family legal services arena.

#263

Please enter your first and last name	Judy Shum
Email Address	ed@adr-ontario.ca
Please make a selection below	Executive Director - ADR Institute of Ontario Inc.
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	ADR Institute of Ontario Inc.
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	ADRIO_LettertoLSO_FLSPLicense_Nov30_2020.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

November 30, 2020

Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen St. W.
Toronto, ON M5H 2N6

Submitted via the online form:

<https://lso.ca/about-lso/initiatives/family-law-action-plan/flsp-call-for-comment?lang=en-ca>

Dear Members of the LSO Justice Committee,

Re: Family Legal Services Provider Consultation

Thank you for the opportunity to provide comments on a proposed Family Legal Services Provider (FLSP) Licensing model.

Sharing the goal of improving access to justice in family law, ADRIO strongly supports the LSO's initiative in creating and developing a FLSP License, and the approach of doing this through expanding the scope of paralegals.

FDRIO (Family Dispute Resolution Institute of Ontario) has kindly shared their thoughtful and thorough response with the ADRIO Board of Directors, and we would echo the caution raised by FDRIO that the FLSP License needs to be "*clearly defined and inclusive with licensees that are appropriately prepared to manage the needs and complexities of our family law clients*". ADRIO believes there are scope and access issues that need further research before decisions are made on the final design of the FLSP Licensing model.

Adding to the responses provided by FDRIO, ADRIO is putting forward the following questions related to the training for the FLSP License:

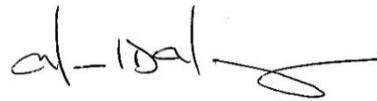
- If the FLSP training is attached to a paralegal program at any community college in Ontario, will the trainers be required to be both licensed paralegals or licensed lawyers **and** accredited/certified family mediators?
- Will there be a readily available pool of potential trainers? For a 6 to 8-month full-time program, or a one-year part-time program, a significant amount of time will be required of the trainers for content preparation.
- Who will address the administrative requirements of the Ministry of Training Colleges and Universities for rolling out a new training program?
- Will the level of interest in pursuing the FLSP training and licensing fulfill the initiative's goal and objectives?

In closing, ADRIO respectfully recommends a broad task force to finalize recommendations on the components of the FLSP License, i.e. scope of permissible activities, competencies, and education, training and assessment.

Sincerely,



Joan Cass
President, ADRIO Board of Directors



Marcel Mongeon
Vice President/President Elect, ADRIO Board of Directors



Judy Shum
Executive Director

#265

Please enter your first and last name	Victor Turcanu
Email Address	president@lssso.ca
Please make a selection below	law student
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Law Students' Society of Ontario
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	LSSO_Family Law Submission_Signed.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

November 30, 2020

Family Legal Services Provider License Consultation Paper: Comments and Feedback

In its role as the primary advocacy body for students currently completing degrees at Ontario law schools, the Law Students Society of Ontario (“LSSO”) seeks to uplift student concerns and the student perspective on matters affecting the profession. The LSSO membership encompasses representatives from the University of Windsor, Western University, The University of Toronto, Lakehead University Osgoode Hall Law School (York University), Queen’s University, University of Ottawa and Ryerson Law School.

The LSSO has reviewed the proposed model of licensing framework for a Family Legal Services Provider (“FLSP”) License. It is our position that implementing the proposed framework will benefit the Ontario community and the student legal experience across the province.

Positively Impacting the Ontario Community

There are demonstrable access to justice considerations that favour the approval of the proposed FLSP License framework. In addition to the information regarding access to family legal services in Ontario enumerated in the Family Legal Services Review Report (“the Bonkalo Report”) there are several other situational factors that the Law Society ought to consider in reviewing this proposal.

While the COVID-19 pandemic may not last in perpetuity, there are several COVID-related stressors that will affect issues of family law for the foreseeable future. Specifically, as a result of a shift to “work from home” rates of domestic violence have increased by 20 to 30 percent across Canada during the pandemic.¹ One in ten women reported that they are “very or extremely” concerned about the possibility of violence in their homes due to the pandemic.² In addition to the prevalence of domestic violence, there are also enhanced COVID-19 related concerns regarding custody, access/parenting time, and child and spousal support. For these reasons, the Ontario community is in explicit need for enhanced family law offerings.

Bolstering Student Family-Law Related Experiential Activities

From a student-facing perspective, increasing the number of active professionals in the family law area is beneficial. Since the proposed range of permissible activities outlined in the FLSP includes legal advice, drafting legal documents, representation in court or before an adjudicative body and negotiating legal interests or rights, this may allow for enhanced volunteer, or clerical opportunities in the field of family law.

¹ Joshua Saovnick, Piers Fibiger, Jonathan Deschamps, Stephane Erickson, *Not turning a blind eye: addressing domestic violence, telework, and pandemic-related employment considerations in Canada* (August 2020), online: <<https://www.nortonrosefulbright.com/en-ca/knowledge/publications/567e9fe1/not-turning-a-blind-eye-addressing-domestic-violence-telework-and-pandemic>>

² Statistics Canada, *Canadian Perspectives Survey Series 1: Impacts of COVID-19* (April 2020), online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/200408/dq200408c-eng.htm>>

Comparatively to the areas of Business or Intellectual Property law, there is a tangible shortage of family law opportunities available for law school students in Ontario. In ensuring that all areas of the law are equally accessible for experiential and volunteer experiences, law students would benefit from increased engagement opportunities.

Sincerely,
The Law Students Society of Ontario



Victor Turcanu, President



Chloé Duggal, Vice-President External

#266

Please enter your first and last name	Peter Robertson
Email Address	peter@kdalaw.ca
Please make a selection below	I am a lawyer
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Hastings & Prince Edward Law Association
What is the location of your workplace? If submitting on your own behalf, where do you reside?	East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)
Upload a File	FLSP.consult.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

Hastings & Prince Edward Law Association Response

FLSP Licence Consultation

This is the overall view of our membership after an open consultation process. We have around 60 lawyers working in family law in some capacity in our geographic area. The Hastings & Prince Edward Law Association is against the proposal as presented. We do not believe the plan as presented will address the specified goals or provide an overall benefit to the public.

FINANCIAL ISSUES

The underlying rationale for the proposal is that the number of self represented parties is too high in the family system.

The presumptive reason for this in the proposal, without any clear evidence, is that the cost of a lawyer is prohibitive and this is the primary factor in the number of self represented parties. A further leap is then made to assume that paralegals can offer a more cost-effective service in family law.

There is no clear evidence to suggest that allowing paralegals to practice family law will offer clients more cost-effective legal representation.

In our geographic area, lawyers typically offer fee structures anywhere between \$120 an hour and \$400 an hour. In addition to the standard up front retainer method of billing we frequently offer limited scope retainers, payment plans and deferred payments (e.g. awaiting sale of a matrimonial home). We do not believe paralegals will be able to offer a cheaper alternative. Even if they can offer a lower hourly rate, for which there is no evidence, our concern is that the public will then pay an overall increased cost in dealing with paralegals as there could be more time spent on their matter offsetting any lower hourly rate benefit. The cost to the client is also more than the hourly rate, including considerations such as

- a. the emotional burden of going through family transition;
- b. the time taken off from work to attend at court or with a lawyer;
- c. the outcomes (both substantive and with respect to costs awarded for or against); and,
- d. the change to their lives as arising from the outcomes.

We do not see it as being realistic to expect that the average paralegal practitioner will offer an overall outcome commensurate with average lawyer representation.

There is a threshold income the paralegal will have to generate in order to be a viable business model. We do not believe that they can offer services at a price lower than lawyers in our area accommodate, either through legal aid or the adjusted fee plans as set out above.

The numbers of paralegals who drop out of practice is comparatively very high to that of lawyers. Combined with the issues with the scope of practice set out below, the number of counsel changes is going to be increased and the overall cost for the consumer will correspondingly increase.

The rationale behind the plan is flawed and the primary benefit the plan hopes to achieve will not be achieved.

SCOPE OF PRACTICE

The plan and scope of practice is very ill conceived, unclear and without logical basis in many parts. For example, the differentiation between a marriage contract and a separation agreement, with the former being more restricted in the proposal than the latter. If anything, a separation agreement is a far more difficult domestic contract due to potential issues with domestic violence, power imbalance between the parties and the high emotions of the parties that are normally intrinsic in a separation.

The plan also completely fails to address that a Family Law lawyer must be adept in multiple areas of the law to provide a complete and adequate service. In addition to parenting and support issues, the areas of law concerning real estate, trust law, civil claims pertaining to domestic violence, estate planning, pensions and employment law can all factor in to a family law case.

Many of the lines of practice are vague and nonsensical. The line in the proposed scope of practice is not ascertainable at the outset of a case. For example, requirement for an expert witness is often hard to determine. Cases also evolve as they progress. The plan will result in massive wasted legal expense by the public as their representative cannot continue their file. The lines drawn are also confusing and not based on any practice or legal realities we can discern. If the plan is to proceed it would make more sense to have a clear and bright line for what the provider can and cannot do that can be easily ascertained at the outset of a case, otherwise the plan will certainly fail.

LEVEL OF EDUCATION AND TRAINING

It takes most lawyers at least three years of law school followed by 10 months of articling to even begin to be competent. Most require years more of mentoring to be viable in practice. They have the advantage of the time they take in their articles (usually 10 months) to gain exposure to as many different file types as they can. It is unrealistic that an FLSP could possibly gain enough exposure to the law from a 6 month or 8 month or even 12 month academic program and a brief placement. A shorter schooling period should require a correspondingly longer period of articles or mentorship from an experienced family law practitioner. At the very least, a 10 month articling program following completion of the academic program is required. Longer if the schooling requirement is only 6 to 12 months in duration. The supervision during the articling program can only be provided by a lawyer having at least 5 years of experience working in family law (similar to the current requirements of articles for lawyers) because other non-lawyer licensees have not been permitted to practice in family law to date and therefore have no meaningful way to supervise the FLSPs development.

OTHER REASONS FOR THE PROPOSAL

When initially consulted on this plan during the term of the last Liberal Provincial Government, our Association was told by the LSO representative that we had to proceed with the plan otherwise the Provincial Government was going to enforce the change upon us in any event via legislation. This is no longer the case, we have spoken to the office of the Attorney General of Ontario and they are not invested in this plan, stating it is an entirely LSO driven plan.

The LSO is looking at heavy investment into a flawed plan that will not produce the stated goals.

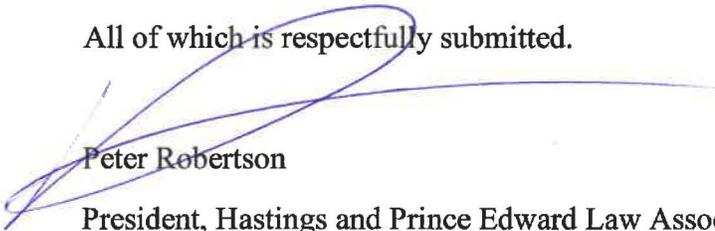
PROPOSALS

We would strongly encourage an alternative approach, in matters proceeding to Court, Paralegals, articling clerks and law students should be allowed to practice in family law under the supervision of a lawyer named on the Court record. Out of the Court situation, the FLSP could, without supervision, assist parties in the drafting of domestic contract (as people can draft their own domestic contracts in any event) or the navigation of mediation or ADR routes. This could increase cost effectiveness in many circumstances while ensuring the overall level of service is maintained and it will also avoid unworkable business models.

If the proposed plan proceeds in spite of the concerns being raised, our alternative position would be as follows:

A much more rigorous education and/or articling component is needed, together with a greatly improved and clearer scope of practice that can be determined at the outset of a case. Rather than using the entire Province as a testing ground for the plan, and given the Toronto centric nature of the issues raised in the proposal, we would suggest allowing FLSP to practice in the Ontario Court of Justice for domestic matters only. If that goes well and the stated goals of the proposal are then backed by actual evidence from the OCJ practice, they could progress to practice Province wide in the SCJ in the limited scope of only matters falling under the CLRA and Part III of the FLA (effectively what is practiced in the OCJ domestic Court). We would further suggest that this will best encapsulate the population demographic the proposal is attempting to target. If the practice in the OCJ does not produce the goals as stated in the proposal, then the FLSP could be effectively phased out by the longer-term Provincial plans to unify the Courts.

All of which is respectfully submitted.



Peter Robertson

President, Hastings and Prince Edward Law Association

#272

Please enter your first and last name	George Brown
Email Address	gbrown@georgebrown.biz
Please make a selection below	I am a paralegal
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Ontario Paralegal Association
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)

Upload a File [OPA FLSPL Submission v.5.pdf](#)

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The OPA is in general agreement with the scope of practice as proposed and is very supportive of its focus on areas where the public has struggled to acquire representation services in family court. In fact, the scope is very similar to the pre-regulation scope with the addition of matters related to child protection.

2. Will the proposed scope of permissible activities enable the Family Legal Services Provider to develop a business model that is viable? If so, why? If not, why not?

We support the following principles in determining those areas of practice where: a paralegal will be able to handle matters from beginning to end; risk and liability are minimized; and where access to justice will be maximized for the public

Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The OPA believes that training for paralegals who will be licensed to practice family law in Ontario (and who do not qualify for grandfathering) should include both a classroom component to be delivered by and through the designated paralegal programs, and a practical placement program. We encourage the placement component, where possible and practicable, to be done under the direction of a paralegal who is licensed to practice family law.

We recognize the family law training has the potential to extend the paralegal programs from a two year to a three-year program and we support the additional training and scope of practice involved. We do encourage the adoption of an online learning option for practicing paralegals who want to qualify for licensure in family law while continuing to practice in other areas. We

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

The OPA is in general agreement with the scope of practice as proposed and is very supportive of its focus on areas where the public has struggled to acquire representation services in family court. In fact, the scope is very similar to the pre-regulation scope with the addition of matters related to child protection.

Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D of the Consultation Paper.

The OPA believes that training for paralegals who will be licensed to practice family law in Ontario (and who do not qualify for grandfathering) should include both a classroom component to be delivered by and through the designated paralegal programs, and a practical placement program. We encourage the placement component, where possible and practicable, to be done under the direction of a paralegal who is licensed to practice family law.

We recognize the family law training has the potential to extend the paralegal programs from a two year to a three-year program and we support the additional training and scope of practice involved. We do encourage the adoption of an online learning option for practicing paralegals who want to qualify for licensure in family law while continuing to practice in other areas. We note that we support a family law placement component for all potential family law licensees.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the Family Legal Services Provider?

The OPA supports special family law licensure for two categories of paralegals:

- those who are grandfathered, based on extensive, recent experience in family law and,
- those who successfully complete FLSP training within one of the designated paralegal programs, along with placement under the direction of either a lawyer or a paralegal who is licensed to practice family law

7. What length and form of experiential training should be incorporated into the licensing process for the Family Legal Services Provider to support the competencies? If a field placement is required, who will provide the placements?

We recognize the family law training has the potential to extend the paralegal programs from a two year to a three-year program and we support the additional training and scope of practice involved. We do encourage the adoption of an online learning option for practicing paralegals who want to qualify for licensure in family law while continuing to practice in other areas. We note that we support a family law placement component for all potential family law licensees

8. Is a Continuing Professional Development requirement focussed on family law appropriate for the Family Legal Services Provider?

Yes we firmly believe that continuing education is appropriate for FSLPs

9. Should law clerks be eligible for the Family Legal Services Provider licence? Are there other groups of professionals who should be considered?

We believe law clerks should be included.

General

10. What characteristics of an Family Legal Services Provider would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

affordability and accessibility

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the Family Legal Services Provider design appropriate?

Yes we believe it is a bold attempt to address the current family law problem

12. Are any aspects of the proposed licensing framework unfeasible?

With respect to the matter of provision of independent legal advice, the OPA supports preserving the autonomy of paralegals, FLSPL, to practice without oversight or interference. With this in mind, the OPA supports relinquishing the right to practice in the areas of (1) adoption, (2) all matters out of Canada, (3) division of property or assets valued above the small claims court monetary jurisdiction, (4) drafting of separation agreement and marriage contracts unless the requirement for oversight in these areas by a lawyer is removed

13. Is there additional information or are there other factors that should be considered?

We fully support the grandfathered licensure of those paralegals who: have been working in family law in house with law firms or for lawyers for a minimum of 2 years (both those who worked in family law pre-regulation and more recent graduates), completed or assisted with at least 5 files in the area of family law, have a letter of attestation from a lawyer to this experience, and who agree to do CPDs in family law as part of their annual CPD requirement.

Ontario Paralegal Association FLSPS Submission

Ontario Paralegal Association input re FLSPS:

On behalf of the Ontario Paralegal Association (**the “OPA”**), the largest association of paralegals and paralegal students in Ontario, this document outlines our position on the best way to implement the Family Legal Services Provider License (**“FLSPL”**) in order to achieve the goals for which it has been developed. We appreciate the opportunity to provide input into the model licensing framework at this time and in this manner.

The FLSPL will create a new practice area for Ontario paralegals, and undoubtedly there will be a substantial number who will be interested in providing family law services. We know that those who choose to expand their practices into family law will do so with the same commitment and dedication to representing both their clients and their paralegal colleagues well, that they currently bring to all areas within the existing scope of practice.

The OPA would like to take this opportunity to thank: the Law Society of Ontario (**“LSO”**); the current and former treasurers for their unwavering support of the paralegal profession; the Paralegal Standing Committee (**the “PSC”**); the Ministry of Attorney General (**“MAG”**); the Family Law Working Group (**the “FLWG”**) and all the staff and the legal community who worked tirelessly on the FLSP for their time and work that has gone into bringing it to the point where it will soon be ready for implementation.

Background: Paralegals and family law

Expanding the delivery of family legal services to include non-lawyer licensees, such as paralegals, law clerks and law students in some ways takes us full circle. Prior to regulation, paralegals or ‘agents in court’ provided legal services in family law, including in uncontested divorces and the drafting of separation agreements, just to name a few.

OPA submission to LSO regarding FLSPL

When, in 2010, the Ontario Civil Legal Needs Project Steering Committee filed its report “Listening to Ontarians”, it identified needs associated with access to justice. At the same time, and with similar access to justice aims, the Attorney General called upon LSO (then LSUC) to regulate paralegals, in the interests of the public. At that time family law was eliminated from the paralegal scope of practice, leaving Ontarians the option of working with a lawyer or self-representing.

As more and more family law litigants began to self-represent, it became apparent that there is a place in the system for paralegals. Judges began calling on the LSO and MAG to explore ways to provide some relief to the Court by finding options for people who could not afford legal fees and/or effectively maneuver through the complex family legal system. On February 9, 2016, the Ministry of the Attorney General (MAG) requested that the Chief Justice of the Ontario Court of Justice, the Honourable Justice Annemarie E. Bonkalo, undertake a family legal services review and submit a report of her findings and recommendations regarding how family legal services could be provided by persons other than lawyers.

Her report (“Family Legal Services Review”) was submitted on December 31, 2016, to then Attorney General, Yasir Naqvi, and then Treasurer of the Law Society of Ontario, Paul Schabas. In the report, Justice Bonkalo stated that approximately 57% of Ontarians did not have family law legal representation in 2016 and that self-represented litigants did not fare well in comparison to those litigants who had representation.

Based on the report, the LSO and MAG jointly committed to an action plan to improve access to family legal services, and in December 2017, Convocation approved the *Family Law Action Plan (FLAP)* and the development of a license that would allow paralegals and other legal service providers to provide services to the public in the area of family law.

The OPA fully agrees that self-representation in the family law had become a concern for the legal profession and for access to justice. We fully supported the FLSR and the FLAP, and we support the FLSPL, in principle. The following will

OPA submission to LSO regarding FLSPL

address specifics related to how the FLSPL should be implemented and managed.

OPA Input: Overall Model

While a number of stakeholders and groups have shared concerns about paralegals being permitted to practice in family law, specifically that the public will be harmed and/or not well served, it is the opinion of the OPA, that this is far from the reality of what will happen.

We believe that concerned parties have not considered two important factors: first, that not all paralegals will practice in family law; second that those who do will have taken extensive training and/or already have extensive experience. Many paralegals already specialize in specific areas of practice and do not venture in other areas, such as paralegals who practice in Highway Traffic Act and Provincial Offences matters. This will also apply to those who will practice family law.

Paralegals who will practice in this new area will predominantly be in two categories. Those who practiced family law before regulation and went in house afterward, are experienced and well versed in all aspects of family law, including knowing where not to venture. They are passionate about providing services in family law and will serve as guides and mentors to the second category - new paralegals entering family practice after taking training in the practice area.

We also believe that concerned parties should consider that this is not the first initiative aimed at improving access to justice and alleviating court clogging for family law services. Unbundling of legal services was the initial step taken with the goal of providing those who self-represent access to varying degrees of legal support services at flat fee or capped rates to smooth their path through the system. It is our understanding that a small percentage of family law lawyers have offered unbundled services. While there are undoubtedly many reasons for this, one is a concern with potentially being liable for the way the advice provided is interpreted or actioned. This concern has been discounted as a concern by both LawPro and by the Associate Chief Justice of the Superior Court of Ontario, Frank Marracco,

OPA submission to LSO regarding FLSPL

<https://representingyourselfcanada.com/justices-speak-up-for-unbundling-the-video/>

Still, the challenge of access to justice remains, and the system will be more accessible to more Ontarians when paralegals can provide family law services within the framework of the FLSPL.

The More Likely Reality

The more likely reality of the implementation of the FLSPL is that FLSPL, lawyers and P1 will all work in a symbiotic manner to provide the best legal service that Ontarians deserve, similar to the medical profession. Many years ago, the medical profession found itself in an analogous situation as it relates to doctors, nurses and paramedics. Today, doctors, paramedics and nurses work together and in support of each other. The OPA hope that soon the relationship between lawyers and non-lawyers can rise to the level of the medical profession.

OPA Input: Scope

The OPA is in general agreement with the scope of practice as proposed and is very supportive of its focus on areas where the public has struggled to acquire representation services in family court. In fact, the scope is very similar to the pre-regulation scope with the addition of matters related to child protection.

We support the following principles in determining those areas of practice where: a paralegal will be able to handle matters from beginning to end; risk and liability are minimized; and where access to justice will be maximized for the public.

However, with respect to the matter of provision of independent legal advice, the OPA supports preserving the autonomy of paralegals, FLSPL, to practice without oversight or interference. With this in mind, the OPA supports relinquishing the right to practice in the areas of (1) adoption, (2) all matters out of Canada, (3) division of property or assets valued above the small claims court monetary jurisdiction, (4) drafting of separation agreement and marriage contracts unless the requirement for oversight in these areas by a lawyer is removed. With respect to marital contracts and separation agreements, the OPA

OPA submission to LSO regarding FLSPL

is in favor of FLSPL being able to motion the Family Court to amend or vary marital contracts or separation agreements.

OPA Input: Who will be licensed?

The OPA supports special family law licensure for two categories of paralegals:

- those who are grandfathered, based on extensive, recent experience in family law and,
- those who successfully complete FLSP training within one of the designated paralegal programs, along with placement under the direction of either a lawyer or a paralegal who is licensed to practice family law

OPA Input: Grandfathering

We fully support the grandfathered licensure of those paralegals who: have been working in family law in house with law firms or for lawyers for a minimum of 2 years (both those who worked in family law pre-regulation and more recent graduates), completed or assisted with at least 5 files in the area of family law, have a letter of attestation from a lawyer to this experience, and who agree to do CPDs in family law as part of their annual CPD requirement.

OPA Input: Training

The OPA believes that training for paralegals who will be licensed to practice family law in Ontario (and who do not qualify for grandfathering) should include both a classroom component to be delivered by and through the designated paralegal programs, and a practical placement program. We encourage the placement component, where possible and practicable, to be done under the direction of a paralegal who is licensed to practice family law.

We recognize the family law training has the potential to extend the paralegal programs from a two year to a three-year program and we support the additional training and scope of practice involved. We do encourage the adoption of an online learning option for practicing paralegals who want to qualify for licensure in family law while continuing to practice in other areas. We

OPA submission to LSO regarding FLSPL

note that we support a family law placement component for all potential family law licensees.

OPA Input: Anticipated training uptake

The OPA believes there will be significant uptake of the family law licensure among paralegals. The investment in additional training is appropriate to ensure clients are well served and commensurate with the increased scope of practice.

OPA Input: Monetary Limit

The OPA supports a monetary limit for family law cases equivalent to the monetary limit of small claims cases.

Conclusions:

Based on the opportunities the FLSPL affords for:

- access to justice for those Ontarians who find themselves in family law court, and
- the scope of practice opportunities the license will make available to qualified paralegals

The OPA is fully supportive of moving forward to implementation of the FLSPL for paralegals so long as implementation is in accordance with the specifics outlined above.

RESPECTFULLY SUBMITTED ON BEHALF OF THE ONTARIO PARALEGAL ASSOCIATION

Sarah Salisbury

Roseann Regina

Silvana Lombardo

Kyle McGraw

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Avi Rosen

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Amanda Jane Alexandre

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The FDRIO Advocacy Committee

OPA submission to LSO regarding FLSPL

June Neimeijer
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#274

Please enter your first and last name	Jennifer Gold
Email Address	jennifer@woodgold.ca
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Women's Law Association of Ontario
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central West, including Bruce (Walkerton), Grey (Owen Sound), Dufferin (Orangeville), Wellington (Guelph), Peel (Brampton), Halton (Milton)
Upload a File	WLAO Family Legal Services Provider Submission Nov 30 2020.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

November 30, 2020

Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Law Society of Ontario:

The Women's Law Association of Ontario (WLAO) is dedicated to empowering women in the legal profession by providing a collective voice and advocating for equality, diversity and change. Since 1919, WLAO has been providing leadership and support to advance the status of women in the legal profession.

WLAO welcomes the opportunity to respond to the Law Society of Ontario's consultation on Family Legal Services Provider Licence. WLAO is deeply concerned about the provision of family legal services by non-lawyers. WLAO does not support the development of the proposed FLSP licence for paralegals.

Few other areas of law are as critically important to the parties and also as inherently complex as family law. To properly advise and advocate on behalf of clients from diverse socio-economic backgrounds, family lawyers must have a breadth of legal knowledge. Proper family law advice often involves the following areas of law: tax, pension, corporate, estate, bankruptcy, criminal, and common law and equity concepts. The intersectional nature of family law is not something that can be taught in a six to eight month training program followed by a short field placement. Inappropriate or incomplete advice can have devastating and lasting consequences for families.

The proposed scope of permissible activities is unworkable and will not increase access to affordable, competent family law legal services. The proposed scope of practice seeks to artificially and neatly divide issues to exclude from the proposed scope of practice those issues that are seen as being more complex. In practice, issues are inextricably linked with one another and new issues can arise long after the initial consultation. This will necessitate changes in representation as matters evolve and will increase the cost for individuals who start working with FLSP licensees (FLSPs) who later have to retain family lawyers.

The proposed scope of permissible activities assumes that paralegals could and would offer legal services at a lower price point than the family law bar. No evidence has been provided about the viability of the business model. FLSPs would have similar operating costs as family lawyers including but not limited to professional liability insurance, software licensing fees for tools like DivorceMate, and rent. It would be imprudent to invest further resources into the development of the FLSP without evidence that the business model is viable and that FLSP services would be financially accessible by those who feel that they cannot afford a lawyer.



It is worth noting that many family lawyers already provide legal services on a sliding scale based on ability to pay. Additionally, not-for-profit organizations like JusticeNet exist to connect lawyers with people in need of legal expertise, whose income is too high to access legal aid and too low to afford higher legal fees.

The FSLP will negatively impact the businesses of family lawyers—especially those who practice in small firms or as sole practitioners. This will disproportionately impact female and racialized lawyers. Twice as many women as men practice family law.¹ The majority of self-identified racialized lawyers work in small firms or in solo practice.² The FSLP will have a direct negative impact on the diversity of the family law bar.

Paralegals could support increased access to affordable, competent family law services by working under the supervision of a family lawyer. If paralegals completed a family law training program, paralegals would have a higher degree of knowledge to be able to better support family lawyers in their delivery of legal services. Paralegals could assist with the provision of services including the following, provided the work is reviewed by a lawyer:

- Gathering disclosure and preparing simple financial statements, net family property statements, and certificates of financial disclosure;
- Drafting simple or joint divorces, where all corollary relief has been resolved by way of separation agreement or court order;
- Drafting change of name applications; and
- Drafting various other family court forms.

Should the LSO proceed to develop a FLSP, WLAO urges the LSO to consult further to protect the public from under qualified practitioners, to prevent prejudice caused by a blurry scope of practice, and to ensure the services would be affordable for underserved segments of the population.

Sincerely,



Jennifer Gold
President



Emily Kostandoff
Treasurer

¹ Law Society of Ontario, Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report (LAR) 2018, Table 10: Area of Practice by Racialization and Gender. Available at:

<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyerseng-pdf.pdf>.

² Law Society of Ontario, Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report (LAR) 2018, Table 5b: Size of Law Firm by Racialization. Available at: Available at:

<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyerseng-pdf.pdf>.



#275

Please enter your first and last name	Deepa Mattoo
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Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	The Barbra Schlifer Commemorative Clinic
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	FLSP-Submission to LSO-Schlifer Clinic.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

**Submission by the Barbra Schlifer Commemorative Clinic
Response to the Proposed Family Legal Services Provider Licence !**

Barbra Schlifer Commemorative Clinic !
489 College Street, Suite 503
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Introduction

The Barbra Schlifer Commemorative Clinic ("the Clinic") is the only Clinic of its kind in Canada, providing specialized services to women¹ from underserved communities experiencing gender-based violence. The Clinic has demonstrated commitment to assisting women from ethno-racial and socio-economically diverse backgrounds, emphasizing engaging highly marginalized communities. Our clients are often experiencing multiple and intersecting forms of marginalization, including but not limited to poverty, homelessness, racism, and discrimination on the basis of religion, country of origin, newcomer status, mental health, and disability. Since 1985, the Clinic has developed extensive knowledge and expertise serving and representing survivors of gender-based violence. This expertise has been the foundation for a vigorous history of advocacy on violence against women issues. The Clinic also works on various law reform activities, both within Canada and internationally, consulting with all government levels on policy and legislative initiatives that impact gender-based violence survivors. Based in Toronto, the Clinic has assisted more than 80,000 women. Last year we worked with 9,000 women, with more than 2,000 receiving legal services in the areas of family, immigration and sexual assault law.

The Clinic's Interest and Position

The Clinic thanks the Law Society's Access to Justice (A2J) Committee for welcoming feedback on the proposed Family Legal Services Provider Licence ("FLSP"). Family law

¹ The Clinic uses the umbrella term "woman" which recognizes that gender is self-identification that is not necessarily correspondent with assigned sex at birth. We recognize the complexity and diversity of gender and aim to be inclusive to people outside of and across the gender spectrum.

is a significant focus of the Clinic's work, including legal advice and representation, as well as support through the court process at Toronto's three family courts. We assist women with such family law issues as applications for restraining orders, orders regarding child custody and access, and child support.

The Clinic welcomes reforms that would assist survivors of violence to access justice and ensure they have representation in their family law matters. While the proposed FLSP license may bring increased access to justice for some litigants, the Clinic's position is that the current FLSP license proposal is not sufficiently informed by expertise in gender-based violence to adequately provide legal services to women who have faced violence in their intimate partnerships.

The Clinic believes that a licensee must represent women who have faced intimate partner violence, ideally a lawyer, who can expertly screen for violence, who understands the impact of violence and intersectionality in family law proceedings, who can skillfully advocate for family law outcomes that protect the safety of women and children, who can effectively engage in ongoing risk-assessment, and whose practice is trauma-informed. Further, we take the position that any current or proposed licensee should only work with survivors of intimate partner violence after they have received training in gender-based violence and trauma-informed practices.

Gender-based intimate partner violence is a persistent tragedy in Ontario. Separation and ongoing litigation are times of high risk to the safety of women and their children.

The risk of a woman being killed by a legally separated partner is six times higher than

the risk for a woman when the partners are married.² The risk of violence and death increases at the time leading to and after separation.³ Recent amendments to the *Divorce Act*⁴ and to the *Ontario Children's Law Reform Act*⁵ that address "family violence" reflect a growing recognition of intimate partner violence and its significance in family law for the safety of women and children.

The Clinic believes it is critical to the effective implementation of these legislative changes to increase all family law practitioners' expertise with an understanding of the gendered nature of family violence and by developing skills to work with survivors of violence.

Mandatory and Continuing Training on Gender-based Violence for all Licensees

The Clinic believes all licensees, including lawyers and paralegals with an FLSP licence, who seek to work with clients who have faced intimate partner violence must be adequately trained to serve the needs of survivors of violence. Core skills include screening for intimate partner violence, conducting risk assessment, identifying coercive control, managing power imbalances, implementing trauma-informed practices, and learning about power and control. In addition, a full and appropriate understanding of violence considers the many ways that violence may involve intersecting experiences affected by sex, gender identity, age, race, Indigeneity, cultural background, migrant

² Maire Sinha, "Family violence in Canada: A statistical profile, 2011" (25 June 2013) at 43 *Statistics Canada* <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2013001/article/11805-eng.pdf?st=GR9Z-Gst>>.

³ Office of the Chief Coroner Province of Ontario, "Domestic Violence Death Review Committee 2018 Annual Report" (December 2019) at 5 and 14-15, *Ontario Ministry of the Solicitor General: Office of the Chief Coroner* <<https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/DVDRC%202018%20Annual%20Report.pdf>>.

⁴ Amended s. 2(1), <<https://www.canlii.org/en/ca/laws/astat/sc-2019-c-16/latest/sc-2019-c-16.html>>

⁵ Amended s. 18(1) & 18(2) <<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-207>>

status, Deafness, disability, among others. Without these core skills, a licensee may retraumatize a client and risk ineffective advocacy that could have life-changing and safety consequences.

We encourage the Law Society to ensure enhanced continuing professional training and resources for family law practitioners working with survivors of gender-based violence.

We call on the Law Society to require as an element of professional responsibility mandatory screening for intimate partner violence with every family law client. We also call on the Law Society to include a minimum number of required annual Continuing Professional Development hours in the area of screening and/or updates in legal responses to gender-based violence in family law. In addition, the Clinic encourages the Law Society to support work with educators and experts to design pedagogies for gender-based violence and trauma-informed education that is embedded in the law school and paralegal training curriculum.

Practicing family law with survivors of violence involves its own specific set of skills and expertise. To signal this and help identify practitioners with these skills, the Clinic also supports establishing a new Law Society "Specialist in Family Law involving Intimate Partner Violence".

The Clinic would be pleased to consult on these initiatives. The Clinic has recently created a comprehensive Risk Identification and Assessment Tool (RIA)⁶ for all stakeholders working in the family court system. The Clinic also has expertise in the delivery of student education in the areas of gender-based violence and trauma-informed practice, developed over more than 20 years of training articling and Law

⁶ <https://www.schliferclinic.com/riskassessment/>

Practice Program students, law students from Osgoode Hall Law School and the University of Toronto Faculty of Law in credit programs, Pro Bono Student Canada volunteers, and summer law interns from across the province.

Permanently Expand Legal Aid for Family Law Matters Involving Domestic Violence

The Clinic believes that all survivors of violence have a right to a family law lawyer. The Clinic encourages the Law Society to collaborate with other stakeholders to ensure broader access to legal aid, legal clinics, and legal services for gender-based violence survivors. As a response to the heightened need for legal services during the COVID-19 pandemic, Legal Aid Ontario ("LAO") has expanded services to survivors of intimate partner violence by suspending financial eligibility criteria for these applicants who have need for covered family law services . This policy has helped reduce barriers to accessing justice for many marginalized survivors of intimate partner violence. The Clinic believes the policy to provide Legal Aid Certificates to all survivors of intimate partner violence for eligible family law matters should be made permanent. We believe this is an important element of a broader plan to increase access to justice for family law clients in situations of violence.

Permanently Establish the Family Court Support Worker Program

The Clinic encourages the Law Society to advocate for the permanent establishment of the current Family Court Support Worker (FCSW) Program to continue to support survivors of family violence in the family law system and contribute to the efforts to increase access to justice for these family law litigants. FCSWs have specialized experience and training working with survivors of gender-based violence and

understand the power imbalance that can undermine access to justice in family law proceedings. FCSWs are also connected to community resources that can allow for efficient referrals for survivors of violence to various services like counselling, housing, social assistance and community supports. FCSWs have the skills and training to work holistically with survivors and are excellent resources for family law practitioners, court services and the judiciary to support trauma-informed services and safe outcomes. The Clinic strongly supports the current FCSW Program to be permanently funded with multi-year, core funding throughout the province as a means to increase access to justice for survivors of violence.

Proposed Scope of Family Law Service Provider's Practice

The Clinic supports the proposed FLSP's scope of practice in the following areas: provide legal information; draft select family law documents; make appearances for administrative court proceedings; provide legal coaching on court rules, procedures and protocols; and assist parties in litigating non-compliance after a final order or agreement. The Clinic is supportive of the FLSP licensee practicing in client matters involving uncontested divorce; child and spousal support; enforcement orders; change of name applications and agreements on consent (such as separation, paternity, and family arbitration agreements) as long as the client obtains independent legal advice from a lawyer. The Clinic agrees that on these matters, advice and representation by a FLSP licence holder allows for potentially lower costs to clients and increased access to justice. This may result in more capacity for lawyers to provide services in more complex matters. As stated above, it is the Clinic's position that all licensees who provide services to clients who have faced intimate partner violence must be adequately

trained to screen for violence and effectively serve the needs of survivors of violence within their scope of practice.

Conclusion

The Clinic supports the Law Society's Access to Justice (A2J) Committee's efforts to find new and better ways to increase Ontarians' access to justice in family law. As an organization that has a long-established history of working with survivors of gender-based violence, we believe it is imperative for the Committee to consider the impact of the family law system on survivors of intimate partner violence.

#277

Please enter your first and last name	Dave Mollica
Email Address	dave@advocates.ca
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	The Advocates' Society
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	The Advocates Society Submission re Family Legal Services Provider Licence Consultation Paper.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



The Advocates' Society

La Société des plaideurs

November 30, 2020

VIA EMAIL: submissions@lso.ca

Cathy Corsetti, Co-Chair
Doug Wellman, Co-Chair
Access to Justice Committee
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Corsetti and Mr. Wellman:

RE: Response to Consultation Paper: Family Legal Services Provider Licence

As you know, The Advocates' Society, established in 1963, is a not-for-profit association of approximately 6,000 members throughout Canada, the majority of whom practise law in Ontario. The mandate of The Advocates' Society includes, among other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

Since 2016, The Advocates' Society has closely followed the issue of the role paralegals might play in the provision of family law services to Ontarians. We made submissions to former Chief Justice Annemarie Bonkalo during the drafting phase which eventually resulted in the publication of her Family Legal Services Review Report (the "Bonkalo Report"). We subsequently made submissions to the Law Society of Ontario in the lead-up to the consideration by Convocation of the issues in the Bonkalo Report.

The Advocates' Society has been committed to improving access to family justice in Ontario for many years. For example, alongside the Law Society of Ontario, we have advocated for a more accessible justice system through the implementation of the Unified Family Court across Ontario; we have consistently sought sustainable funding for legal aid, notably through the Alliance for Sustainable Legal Aid; and our members have spearheaded a number of initiatives whereby family lawyers provide *pro bono* and low-cost services to members of the public.

Within this context, The Advocates' Society has carefully considered the recommendations contained in the Family Legal Services Provider Licence Consultation Paper released in June 2020 (the "Consultation Paper"), authored by the Family Law Working Group ("FLWG") of the Law Society of Ontario (the "LSO").

The Advocates' Society commends the LSO for its commitment to access to justice. The issue of how to enhance access to family justice is complex and multi-faceted. The LSO has clearly committed resources to investigating options to address this important issue, which The Advocates' Society acknowledges.

The Advocates' Society shares the LSO's commitment to access to justice. We have therefore put a considerable amount of time and thought into the proposals and issues presented in the Consultation

Paper. To ensure we were obtaining a broad set of perspectives on these issues, we struck a Task Force made up of 15 diverse family lawyers who represent different regions, populations and types of family law practice across Ontario.

The Advocates' Society recognizes that there is a serious access to justice problem in our legal system, and the problem is most visible in family law. This leads to the following core questions:

- How do we best address the access to justice problem in family law?
- Will a new class of licensed Family Legal Services Providers (FLSPs) address this problem?
- Put another way, will a new class of FLSPs benefit Ontarians?

In considering these questions, alongside the questions set out in the Consultation Paper, The Advocates' Society has concluded that the FLSP proposal will not improve access to justice and will not benefit Ontarians. By way of high-level summary:

1. It is not clear that the introduction of a new class of paralegal licensees will help to provide better access to family justice for litigants who are currently unrepresented by legal counsel. To the contrary, we submit that the FLSP proposal would create a new class of service providers whose cost would remain out of reach for the target group of Ontarians.
2. There is significant disparity between the formal and experiential training that paralegals and lawyers receive. We submit that even a significant enhancement in training programs for paralegals would not adequately address this problem, and we are concerned that Ontarians would bear the risk of opening up a complex area of law to non-lawyers.
3. The Advocates' Society submits that the LSO's attention and resources would be better focused on promoting and expanding some new and exciting access to justice initiatives – initiatives which are already underway and already helping Ontario families get the legal assistance they need. In our view, these lawyer-led *pro bono* and low-cost services and programs can and should be scaled across the province with the benefit of promotion, resources and public education, to continue to advance access to justice in a meaningful way for Ontarians in need.

As an alternative response to the access to justice problem, The Advocates' Society recommends the following:

1. The LSO take steps to improve access to justice and protect family law litigants as follows:
 - a. The LSO focus its attention and resources on existing lawyer-led access to justice initiatives — many of which have started only in the past 1 to 2 years and have significant promise;
 - b. The LSO lead a broad education campaign about options and resources for family law litigants. This should include the development of a centralized internet-based resource for the public, as well as outreach and connection with the family law bar;
 - c. The LSO continue to advocate for the expansion of the Unified Family Court; and

- d. The LSO advocate for reform of family law court processes to advance access to justice.
2. Lawyers will continue to be responsible for providing the majority of family law services, including court attendances.
3. Paralegals and law clerks may provide some family law services under supervision by lawyers as set out in our submission.
4. If the LSO decides to proceed with the FLSP proposal in any capacity — with which The Advocates’ Society has serious concerns for the reasons detailed in this submission — then the scope of work permitted for FLSPs should be significantly narrowed, as set out at pages 21-22 of our submission.
5. If the LSO decides to proceed with a scope of work for FLSPs broader than that which we set out at pages 21-22 of our submission — again, with which The Advocates’ Society has serious concerns for the reasons detailed in this submission — then The Advocates’ Society asks for a further opportunity to weigh in on the particulars of the scope and the related competencies, education and training.

We recognize that the positions taken in this submission might be dismissed on the basis that they may come across as protectionist. The Advocates’ Society submits that it would be a mistake to discount on this basis the genuine and thoroughly considered concerns expressed across the Bar in response to the FLSP proposal. This submission is made in the context of our focus on the integrity of our profession, our focus on client and community service and our commitment to promoting the public’s confidence in the administration of justice. This submission is also informed by our membership’s long tradition of *pro bono* work and volunteerism. In particular, there are significant ways in which many family lawyers work to solve access to justice problems on their own time and at their own cost, including through discounted and sliding scale fees, unpaid work on legal aid certificate files, *pro bono* work, volunteerism on the LSO’s COVID-19 Emergency Family Law Referral Line and other hotlines, volunteerism as Dispute Resolution Officers, and the development of lawyer-led access to justice initiatives.

The Advocates’ Society also stresses that criteria for the possible development of the role of non-lawyers in the area of family law should not be any different than for the expansion of the role of non-lawyers in any other area of law. In some quarters, family law may have an unearned reputation as being facile or rote, but this has more to do with the familiarity with which people regard “domestic” disputes and the general minimization of work in the context of the family, rather than reflecting the realities of family law work.

In fact, the opposite is more likely true. Family law is an area fraught with complexities that may not be readily apparent to those who do not practise in the area. The Advocates’ Society urges the LSO to consider that the complexity of family law matters and the critical impact their outcomes have on families merit finding a truly effective solution to advance access to justice in family law.

We thank you for providing The Advocates’ Society with the opportunity to make submissions on these important issues. I would be pleased to speak with you at your convenience to discuss our position.

Yours truly,



Guy J. Pratte, Ad. E., LSM
President

C: Vicki White, Chief Executive Officer

The Advocates' Society Task Force

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Submission in Response to the Family Legal Services Provider Licence Consultation Paper

November 30, 2020



The Advocates' Society

Response to the Family Legal Services Provider Licence Consultation Paper

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1. Our Task Force

In preparing this submission, it was fundamentally important to The Advocates' Society to consult with a diverse group of family lawyers from across Ontario, in order to obtain a broad set of perspectives on these issues.

The Advocates' Society struck a Task Force made up of 15 diverse family lawyers from across Ontario. These family lawyers represent different regions of Ontario, different populations and different types of family law practice. We include lawyers from London, Ottawa, Oshweken, Kingston, Thunder Bay, Toronto and more.

In addition, our Task Force had the benefit of ongoing consultations with The Advocates' Society's Standing Committee on Advocacy & Practice, which is comprised of advocates from across Canada who practice in a broad range of areas.

The unanimous view of the Task Force, supported by The Advocates' Society, is that the recommendations in the Family Legal Services Provider Licence Consultation Paper released in June 2020 (the "Consultation Paper"), authored by the Family Law Working Group ("FLWG") of the Law Society of Ontario (the "LSO") do not address the access to justice issues in family law. It is our strongly-held view that there are other, more effective, ways of advancing access to justice that should be prioritized.

2. Access to Justice in Family Law Matters

The Advocates' Society agrees that there are access to justice issues in family law. We have reviewed the statistics set out in Justice Annemarie E. Bonkalo's Family Legal Services Review Report (the "Bonkalo Report")¹, including that 57% of Ontarians did not have legal representation in family court in 2016.

Some of the statistics relied upon by the FLWG in the Consultation Paper date even further back — from 2012 and 2013. For example, the Consultation Paper cites statistics of 74% self-represented litigants at a downtown Toronto courthouse based on data gathered in 2012 by the National Self-Represented Litigants Project (the "NSRLP").

The NSRLP has continued to track data about self-represented litigants for many years. Interestingly, in its most recent report, the NSRLP noted that the proportion of survey respondents involved in family law matters has been reducing from approximately 66% overall in 2013, to 53% in 2017, to 48% in 2018/2019.²

The Advocates' Society believes that updated information and statistics would be helpful, given the development of various programs and initiatives designed to mitigate access to justice issues (which we

¹ Justice Annemarie E. Bonkalo, "Family Legal Services Review. Report Submitted to Attorney General Yasir Naqvi and Treasurer Paul Schabas" (December 31, 2016), online: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/ ("Bonkalo Report").

² See *Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2018/2019* by B. Fragomeni, K. Scarrow and J. Macfarlane (January 2020) at page 8. (<https://representingyourselfcanada.com/wp-content/uploads/2020/01/Intake-Report-2019-Final.pdf>) (the "NSRLP 2020 Report").

will discuss further below) since the Bonkalo Report. It is possible that these programs and initiatives are having an impact and will continue to have a growing impact as they expand and are publicized.

The Society agrees with the comments in the Consultation Paper that there are various factors that lead to the high number of self-represented litigants, including dissatisfaction with legal representation and/or a preference for handling one's own matters (especially in this era of internet-based self-help).

Still, The Advocates' Society accepts that for a majority of self-represented litigants, the cost of legal services is the threshold barrier. The question is: how best to address this?

3. How to Best Advance Access to Justice in Family Law Matters

The Advocates' Society submits that adding a new tier of costly non-lawyer service providers would not advance access to justice in family law. There are other solutions available that are more responsive to the problem.

a. Most Self-Represented Litigants Cannot Afford to Pay for Legal Services

To begin, it is instructive to consider available data about self-represented litigants.

The National Self-Represented Litigants Project (the "NSRLP") has gathered income data for self-represented litigants over the past several years. Historically, the NSRLP surveys have found that the majority of those representing themselves report low income levels (below \$50,000), with most of those below \$30,000.³ In the most recent period for which data is available (2018/2019) this is consistent: 45% of respondents reported that their annual income was under \$30,000, and 22% reported an annual income of \$30,000-\$50,000 — for a total of 67% reporting annual income under \$50,000.⁴

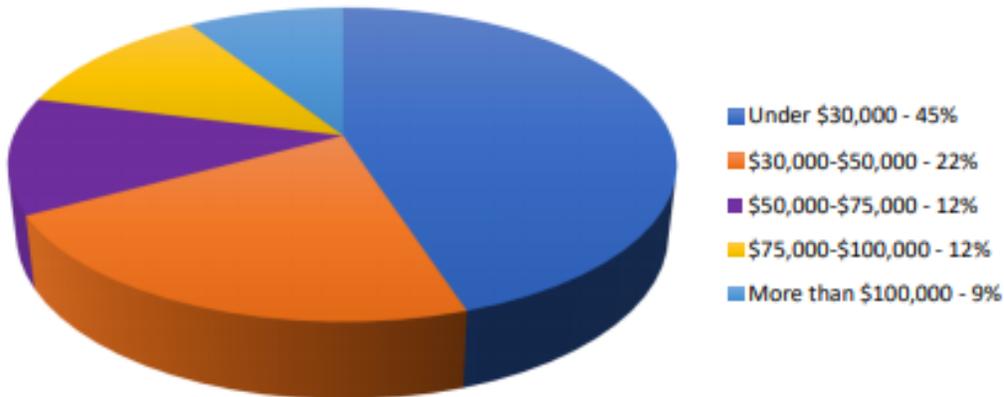
According to the NSRLP 2020 Report, 12% reported annual income between \$50,000 and \$75,000, and 12% reported annual income between \$75,000 and \$100,000. Figure 2 in the NSRLP 2020 Report depicts the breakdown of annual incomes of self-represented litigants as follows:⁵

³ *Ibid.* at page 6.

⁴ *Ibid.* at page 7.

⁵ *Ibid.* at page 7.

Annual Income Levels of SRLs



In the Consultation Paper, the FLWG considered the circumstances of “an average family of modest means involved in divorce proceedings in Ontario”, with an annual household income of \$74,287.

Respectfully, The Advocates’ Society notes that, based on data available, the vast majority (79%) of self-represented litigants earn less than this average annual income. These litigants comprise the majority of self-represented litigants populating Ontario courts.

As noted in the Consultation Paper, most of these lower-income Ontarians do not meet the financial eligibility threshold for Legal Aid funding. To qualify for legal aid in Ontario, a family of four must earn a combined income of less than \$45,440. Further, even many eligible families are denied Legal Aid. For example, Legal Aid is not available for motions to change⁶ (unless there is domestic violence), independent legal advice, separation agreements or uncontested divorces.

All of this raises very real questions about whether and how the vast majority of self-represented litigants — who earn well below the annual household income of \$74,287 considered by the FLWG — would be assisted by the FLSP proposal, even leaving aside other concerns.

The Advocates’ Society submits that the majority of self-represented litigants will not be able to afford legal services under the FLSP proposal and as such, even leaving aside other non-financial concerns, the FLSP proposal has limited ability to advance access to justice for the majority of those in need.

b. There is No Evidence that FLSPs are Materially Less Expensive

Compounding this problem is the fact that we believe that paralegals practising under the FLSP proposal would not be less expensive than many family law counsel.

On this topic, The Advocates’ Society is deeply concerned that the FLSP proposal does not appear to be based upon actual data as to the relative costs and working models of paralegals versus lawyers. In the

⁶ Notably, motions to change support are comprising increasing numbers of litigations due to the employment and income fallout of the COVID-19 pandemic.

Consultation Paper, the FLWG acknowledges that “there is no relevant data to support a comparison between what paralegals would charge for family law services and the amount lawyers currently charge”.⁷ The Consultation Paper goes on as follows:

... a preliminary environmental scan of paralegal billing practices suggests that paralegals may be able to offer family law services in varied and alternative formats. First, it appears that paralegals bill clients smaller amounts, more frequently. Second, it appears that paralegals charge lower hourly rates than lawyers. Third, while paralegals occasionally accept flat fees for matters, they are more likely to charge block fees for various steps within a matter. These differences provide clients with greater certainty than hourly billing. Paralegals do charge an hourly rate when matters exceed estimated blocks or become complex, but many do not bill for routine tasks such as emails, phone calls, or travel time.⁸

The Advocates’ Society appreciates the LSO’s acknowledgment that it “will conduct surveys and focus groups to collect additional information regarding hourly rates and billing models employed by paralegals and lawyers” as part of its further analysis of the FLSP proposal.⁹ In our view, obtaining such data is absolutely critical as any major policy shift must be founded on solid and reliable data, not appearances or assumptions. For this reason, The Advocates’ Society asks that the LSO share this data, once gathered, with full transparency, so that the data can be analyzed and considered by all stakeholders.

Further, we submit that many of the assumptions set out in the Consultation Paper excerpt above are inaccurate. For example, large and increasing numbers of Ontario family lawyers are working with alternative practice and billing models, including unbundled services, legal coaching, flat fees and sliding scales. A number of these alternative access to justice initiatives were in their infancy at the time of the Bonkalo Report. We believe that, nearly four years since the release of the Bonkalo Report, we are in a strong position to emphasize and evaluate these lawyer-driven initiatives, which are discussed further below at page 12.

We submit that decisions on how best to advance access to justice cannot be made without additional data being gathered and analyzed, including data on the current hourly rates of paralegals, analysis about whether those rates would increase under the FLSP proposal, and analysis about whether the demographic in need can afford practitioners under the FLSP proposal. In this regard, we propose that the LSO’s data collection and analysis should answer certain questions and consider certain additional factors related to the setting of legal fees, namely:

i. What rates are paralegals currently charging?

- Anecdotal evidence suggests that paralegals’ current rates vary widely, and are not so different from many lawyers’ rates for legal fees. In Ottawa, for example, paralegal rates seem to range from \$150 to \$185 per hour, while in Toronto, paralegal rates are higher, ranging from \$150 to \$295.

⁷ Consultation Paper at p. 4 (emphasis added).

⁸ *Ibid.*

⁹ *Ibid.*

- Based upon our own preliminary review of paralegal fees across Ontario (by contacting paralegals in various regions of Ontario and canvassing our Task Force members and other family law practitioners who are members of The Advocates’ Society), current paralegal rates are not sufficiently low to provide meaningful access to justice to the demographic in need.

Region	Sample Hourly Rates of Paralegals
Hamilton	\$180 - \$200
Kingston	\$125
Kitchener-Waterloo	\$100 - \$125
London	\$135 - \$200
Ottawa	\$150 - \$185
Sudbury	\$125
Toronto	\$150 - \$295
Windsor	\$125 - \$150

- Further, as the FLWG itself notes, even where paralegals charge flat fees, paralegals charge an hourly rate when matters exceed estimated blocks or become complex. Clients would not necessarily know in advance when that could happen, significantly increasing budgeted fees. Many paralegal offices contacted as a result of our research noted that fees and even hourly rates “depended on complexity” and would not be fixed.

ii. What rates are family lawyers currently charging?

- Many family lawyers in our province offer services at rates that are not materially higher than paralegals, and our research suggests that many lawyers charge at an hourly rate that is on par with or even lower than that of some paralegals in their area. This is either because their hourly rates are in this range and/or because they offer services on a sliding scale.
- For example, lawyers who work on Legal Aid matters bill in accordance with the prescribed Legal Aid Ontario Tariff and Billing Handbook. There are three lawyer rate tiers as follows:¹⁰

Legal Aid Ontario Rate Tier	Certificates issued on or after April 1, 2015
Lawyer Rate Tier 1	\$109.14

¹⁰ *Tariff and Billing Handbook*, Legal Aid Ontario, online: http://www.legalaid.on.ca/wp-content/uploads/Tariff_Manual.pdf, at pp. 2-3 to 2-4. We acknowledge that the rates are slightly higher in Northern areas of Ontario.

Lawyer Rate Tier 2	\$122.78
Lawyer Rate Tier 3	\$136.43

- Many family lawyer rates are much lower than might be expected. Market rates for family lawyers vary by region and practice niche, and many lawyers charge below-market rates.
- The Advocates’ Society developed a province-wide survey for family lawyers regarding their practice and billing models. Based on responses from over 400 family lawyers across Ontario, our findings include:
 - There is a wide range of lawyer rates in the province. Even in Toronto, there are lawyers charging less than \$200 per hour.
 - 31% of lawyers reported a standard hourly rate between \$200 and \$300.
 - 38% of lawyers reported a standard hourly rate between \$300 to \$400.
 - 74% of lawyers reported that they provide services at a rate lower than their standard rate for some clients.
 - More than 45% of lawyers reported charging less than \$200 as their lowest hourly rate.
 - Many family lawyers across Ontario accept Legal Aid certificates, provide *pro bono* services and discount their fees.
 - 47% of lawyers reported accepting legal aid certificates.
 - 40% of lawyers reported accepting *pro bono* family law files.
 - 40% of lawyers reported working with junior lawyers and offering their junior lawyer at a lower hourly rate to clients who could not afford their services. The survey indicated that most juniors charge between \$100 and \$300 per hour.
 - Many family lawyers across Ontario offer unbundled legal services, flat fee services and sliding scale billable rates.
 - 72% of lawyers reported providing limited scope services.
 - 65% of lawyers reported providing unbundled services.
 - 44% of lawyers reported providing legal coaching.
 - 41% of lawyers reported providing flat fee services.

- Many lawyers responded that they often discount their bills and set up payment plans with their clients to pay their fees over time.
- Caution must be exercised when comparing the hourly rates of paralegals and lawyers. A lower hourly rate charged by a paralegal does not necessarily entail a lower end cost to a litigant. A lawyer who charges a higher hourly rate may draw on their experience and education to resolve a legal issue more efficiently or effectively than a service provider who charges a lower hourly rate.

iii. How will the level of education, training and experience required under the FLSP proposal factor into fees?

- The rates that will be charged by licensed paralegals under the current FLSP proposal may well exceed current paralegal rates due to the additional education and training costs. We are concerned that this will make the FLSP proposal even less responsive to access to justice needs.
- Under the current FLSP proposal, services would be more complex than the services provided by the current licensed paralegal, and would require extensive additional initial and ongoing education and training. The cost of this education and training is not yet known, but it is reasonable to expect that this would be a factor in the legal fees charged by FLSPs.

iv. How will other factors – including operational expenses, technology expenses and insurance expenses – impact the fees charged under the proposed FLSP model?

- The rates charged under the current FLSP proposal may also exceed current paralegal rates based on the market and the cost of operations for a service provider (elements that are currently covered by lawyers who employ or have oversight over paralegals) — again potentially making the FLSP proposal even less responsive to access to justice needs.
- There are many costs associated with being a family law lawyer that would be necessary for a provider under the FLSP proposal. We submit that many are greater than those incurred by a paralegal.
- The practice of family law is becoming more driven by information and documents. The average family law matter is more complex now than 10 years ago, which is in turn is more complex than 20 years ago.
- The COVID-19 pandemic has compelled the courts to be electronic-document based. This will require service providers to also be electronic-document based. The computer software and hardware for a provider under the FLSP proposal will be similar to that required by a lawyer. At present, many lawyers will be required to upgrade their skill level and technology to meet the challenges created by COVID-19.
- Hardware will include computer, telephone, copier, scanner, and printer (or multi-function unit). Software will include accounting/billing/time management; DivorceMate; forms; document management; PDF software; and document assembly.

- A FLSP will require appropriate premises to facilitate meeting with clients and witnesses and information gathering. Confidentiality has to be maintained. This requires acceptable premises, including secure, sound-proof meeting rooms. The overhead cost for premises for a FLSP may be greater than for a paralegal. While there is variability in the overhead cost between lawyers, the premises costs for a provider under the FLSP proposal would be more similar to those of a lawyer than a paralegal.
- More information needs to be gathered on the insurance costs, which could be significantly higher for a paralegal under the FLSP proposal.

v. *What is the potential client base for a FLSP and what is the ability of that client base to pay a FLSP's legal fees?*

- As noted above, in the Consultation Paper, the FLWG considered the circumstances of “an average family of modest means involved in divorce proceedings in Ontario”, with an annual household income of \$74,287.
- According to the NSRLP 2020 Report, the vast majority (67%) of self-represented litigants earn less than \$50,000. 12% earn between \$50,000 and \$75,000, and 12% earn between \$75,000 and \$100,000.¹¹
- Bearing in mind that annual income is not the sole determinant of ability to hire private counsel and that the value of assets, ability to borrow and family support are some other significant factors, we have assumed that approximately 24% of self-represented respondents having an annual income within the \$50,000-\$100,000 range are the theoretical target group of the FLSP proposal.
- In reality, many of those within the income range of \$50,000-\$100,000 would not have matters within the scope the FLSP proposal — even as it is presently proposed. For example, questions of income determination are very common, especially with individuals who are self-employed. With the advent of the gig economy, many Ontarians within this income range are self-employed or “independent contractors” and will be subject to income determination issues. Any child or spousal claims for this demographic would fall outside the scope of an FLSP based on the FLSP proposal.

vi. *What is the potential for market confusion as between legal service providers?*

- If paralegals under the FLSP proposal and family lawyers are providing some of the same services — or are perceived by the buying public to be doing so — we submit that the public will pay similar fees for the two providers. We would expect that over time, paralegals under the FLSP proposal will charge fees based upon what the market will accept. As such, even if one assumes that initially the fees of paralegals were to be lower than a family lawyer, we expect that this would be a short-term situation and market forces would eventually permit, and encourage, paralegals to charge fees similar to those of family lawyers.

¹¹ NSRLP 2020 Report, *supra*, at page 7.

- In addition, Ontarians may need to shift from a paralegal provider to a family lawyer if complexity grows such that issues surface that are out of the scope of practice of a paralegal or the client lacks confidence in the paralegal.
 - As one example, custody and access matters are within the scope of the FLSP proposal. However, under the FLSP proposal this area is within the exclusive scope of a lawyer when, for example, a third party expert or relocation/mobility issue arises. Many of the issues that are within the exclusive scope of a lawyer will arise well after the initial interview and a paralegal may have been retained, resulting in increased costs by virtue of a change in representation.
 - Further, we submit that the more limited scope of the FLSP provider would likely be imperceptible to the average consumer of legal services, who may not understand his/her options or risks before proceeding to retain a paralegal provider.
 - Matters engaging other substantive areas under the scope in the FLSP proposal such as child support, spousal support, property matters, and the matrimonial home would also require a shift from a paralegal provider to a family lawyer.

c. Access to Justice Requires Access to Legal Counsel By Lawyers

The Advocates’ Society submits that access to justice must be about more than cost or filling a market niche. Access to justice must have emphasis on *justice*.

The Advocates’ Society submits that lawyers offer unique skills, expertise and judgment that are critical to the practice of law, including the practice of family law. Adding a tier of non-lawyer service providers to the family law system will not solve the main problems with the system. Rather, there is significant risk that it will exacerbate existing problems and inequities, particularly for those members of the public who are the most marginalized.

i. Lawyers are the Product of Extensive Education and Training

Lawyers have gained admission to university, completed an undergraduate degree, gained admission to law school, completed a law degree, passed the Licensing exams, and successfully completed an articling placement or the Law Practice Program (8 to 10 months). These steps are gate-keeping mechanisms that establish a series of criteria to provide assurance of educational and professional standards for lawyers. Essential skills including issue identification, legal analysis, problem-solving, effective written and oral advocacy, and ethical lawyering are extensively developed through this process. This education and training process involves a total commitment of a minimum of 8 years.

In contrast, paralegal programs are direct entry programs. While some paralegal students complete post-secondary education before entering a paralegal program, not all do. The Seneca College paralegal certificate program has “no specific entry requirements” according to its website.¹² Paralegals’ field placements are much shorter than either an articling placement or the Law Practice Program.

¹² Seneca College website (<https://www.senecacollege.ca/ce/business/legal/paralegal-certificate.html#EntryRequirements>).

Non-lawyers are not trained to assess the merit of a claim in the same way as lawyers. Assessing claims requires not only the detailed knowledge of the statutes and extensive (and ever-changing) case law, but it also involves assessing — with the specific skill set acquired in legal training — the merits of a claim in applying the facts to the law. The main focus of law school, we submit, is to teach students to look at a problem in a particular way in order to assess the legal merits of a case.

It is complicated to determine the best approach to solve any given legal problem, to overlay myriad patterns of fact against diverse legal principles, to find the best angle and approach — and, conversely but just as importantly, to identify the inappropriate and unsupportable approaches.

This skill set comes from training, experience and judgment, and it is why most cases settle and avoid the court system (or at least a trial) in the first place.

No matter the training or requirements that might be put in place for paralegals, there is no substitute to the legal education and training a lawyer undergoes before being admitted to the Bar. To suggest otherwise undermines the entire legal profession and the legal system, and risks bringing the administration of justice into disrepute.

The Advocates' Society's position is not about protectionism. Rather, it is about protecting the public from unqualified practitioners. We recognize:

- the complexity and importance of the majority of legal matters outside of the Small Claims Court realm (and in particular within the family law realm);
- the education, expertise, and judgment that lawyers bring to bear on legal matters;
- the concern that non-lawyers empowered to appear in court may command a false sense of authority (and a false sense of security) when they may not in fact offer value to clients; and
- that the most marginalized Ontarians will disproportionately bear this risk when they can least afford it, as they will be most inclined to think legal services are out of reach and seek assistance from a non-lawyer.

This latter point bears repeating: The Advocates' Society is concerned that of the Ontarians who may fall within the targeted market under the FLSP proposal, a disproportionate amount will be from marginalized populations, including women suffering from domestic violence, victims of coercive controlling abuse, racialized persons, persons living in poverty and new Canadians.

The Advocates' Society understands that some new Canadians, who were practising lawyers in their country of origin, make the decision to qualify as a paralegal in Ontario, rather than as a lawyer, due to the enormous financial cost of getting qualified as a lawyer in Ontario. The Advocates' Society strongly encourages the LSO to consider an alternative and less expensive path to bar admission for established and qualified foreign lawyers to reduce this barrier. We support qualified lawyers practising law irrespective of country of origin.

ii. Family Law Files are Complex and Important at Any Income Level

A family law legal dispute will typically have issues that affect every aspect of a person's life: their financial life, their emotional health, their home, their property and most importantly their children. Family legal disputes affect all areas of our population, including members of vulnerable populations. It is important to protect people who require legal services in this area to ensure that they have the proper legal advice and help they need from qualified and experienced professionals. While different professionals may play a role in providing legal and support services, the role each group of professionals plays must be appropriately suited to their level of competence and training.

By way of analogy, in criminal law matters, Parliament has chosen to place a limit on the role of paralegals and restrict the representation of defendants facing serious consequences in the criminal courts to lawyers. This approach should be taken in the family law context, where the implications for the parties are also serious. Lawyers with enhanced judgment, experience and training should maintain carriage and oversight of family law files.

Family law is an area fraught with complexities that may not be readily apparent to those outside the family law bar. Aside from requiring an in-depth understanding of civil procedure rules and evidentiary principles, family law involves complicated and dynamic interactions with a diverse range of other areas of the law and sometimes in conflict with those areas. Family lawyers must be able to provide advice — or at a minimum identify critical issues — within a wide range of legal fields, including tax, corporate law, insurance, contracts, employment, property, immigration, trusts, estates, criminal law, real estate law, conflicts of law and private international law. Family lawyers must be familiar with and have a good working knowledge of a wide range of statutes and regulations, including federal and provincial legislation and international treaties and conventions. Family lawyers also deal extensively with common law principles and equitable claims, including complicated issues regarding unjust enrichment, resulting trust and constructive trust. A lack of knowledge or a failure to issue-spot in a related area can have catastrophic impacts on a client.

It would be wrong to assume that only particularly complicated family law cases fall within the complex web of statutes and common law described above, or that most family law cases are “simple” and able to be dealt with by non-lawyers. It is also fallacy to suggest that “lower income” cases are more likely to be “simple”. There are significant and complicated factual matrixes that frequently intersect with family law matters, including domestic violence, coercive control, power imbalance, substance abuse, mental health problems and immigration sponsorship problems.

The issues at stake in family law matters are almost always significant:

- **Children.** This can include cases in which a parent seeks to terminate contact, or in which one parent is actively alienating a child from the other parent. These are critically important issues, which in our submission should be treated on a similar plane as criminal law issues, considering what is at stake.
- **Property.** This includes ownership and occupancy of a home, and ability to re-house.
- **Monthly Support.** These issues may have a lifelong impact on parties' ability to support themselves and their children.

- **Immigration status.** An individual’s ability to remain resident in Canada may be at stake in a family law context, especially in the most marginalized of communities.

The Advocates’ Society submits that the specific scope of services set out in the FLSP proposal goes well beyond matters that should ever be contemplated to fall within the competency of non-lawyers, as discussed further below.

iii. Non-Lawyer Representation Would Create a False Sense of Security for Clients

Another concerning aspect of expanding non-lawyer legal representation is the false sense of security that clients (and the court) would have in seeing that the client is “represented.” The Advocates’ Society submits that the concept of non-lawyer “family legal service providers” (as they are described Consultation Paper) is fundamentally problematic. The phrase is confusing to the public as it imparts the status of “legal service provider” on someone who is not in fact a lawyer. Further, it imparts an aura of authority and credibility. Clients will assume that they are getting full and proper legal advice when that will not be the case.

The Advocates’ Society submits that the populations that this proposal seeks to protect — including the most marginalized Ontario populations — are the very people least likely to understand the difference between lawyers and “legal service providers”.

d. Lawyer-led Initiatives Best Meet Ontarians’ Access to Justice Needs

The Advocates’ Society is concerned that an unintended consequence of expanding the role of non-lawyer service providers is that it may divert resources from meaningful alternatives that we submit would better advance access to justice. The Advocates’ Society recognizes that the reality is that there is a finite amount of resources to address the access to justice problem. We submit that Ontarians are better served by devoting time, attention and resources to developing and expanding existing access to justice initiatives, rather than a new and unproven alternative. This is not a failure of creativity. Rather, it is a reasonable response to some key considerations:

- The non-legal family law services model has been considered and rejected, or has been tried and failed, in multiple North American jurisdictions (e.g., British Columbia and Washington)¹³. To date, no other jurisdiction has licensed paralegals to such a broad scope of family law practice — we submit this is for good reason.
- The FLSP proposal fails to meet the needs of those Ontarians targeted by the proposal, given the cost of paralegals and the risk to Ontarians of non-lawyers practising law, as discussed above.
- There are dozens of fantastic lawyer-led initiatives to advance access to justice in family law across Ontario, across Canada and in other common law jurisdictions. The bulk of these are outside the scope of these submissions, but we discuss three key Ontario initiatives below and summarize many others in Schedule “A”. Many of these initiatives have started only in the past 1 to 2 years,

¹³ See: Law Society of British Columbia’s discontinued paralegal family law pilot project: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/paralegals/>; and the Washington State Bar Association’s decision to sunset the limited license legal technician program: <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians>.

or more recently. We submit that they could be scaled across the province with the benefit of promotion, resources and public education, in order to advance access to justice in a meaningful way.

- Further to the above, increasing numbers of family lawyers are offering different service provision and billing models, including unbundled services, legal coaching and flat fee services, which enhance lower-income Ontarians' access to legal counsel. There is a lack of public education about these alternatives, as well as the lower hourly rates of many family lawyers. A greater awareness among Ontarians about this could go a long way to advancing access to justice.
- The Bonkalo Report highlighted many of these initiatives and practice and billing models, some of which were just underway. However, at the time of the Bonkalo Report their impact was still too new to assess. It has been four years since the Bonkalo Report and The Advocates' Society submits that the impacts of these initiatives and the ways in which these initiatives could be financed and advanced should be considered in preference to the FLSP proposal.

i. Family Law Limited Scope Services (FLLSS) Project

The goal of Ontario's Family Law Limited Scope Services Project is to improve access to family justice for middle income Ontarians by promoting awareness to the public about the ability to retain lawyers on a limited basis — to assist with some aspect of their case — and connecting clients to lawyers who provide limited scope legal services.

Historically, lawyers were wary to offer limited scope services for fear of professional liability claims. The law surrounding limited scope services has developed,¹⁴ which has provided lawyers with guidance as to their role and responsibility when offering limited scope services. Many lawyers now offer unbundled services to clients.

The Project facilitates access to and the use of unbundled family law services through its website, which hosts a province-wide roster of trained lawyers willing and able to provide such services. Ontarians can search this Lawyer Directory by location, type of service sought and languages in which services are offered, to find family lawyers in their area who may be able to assist. The Lawyer Directory can be accessed at: <https://www.familylawlss.ca/lawyer-directory/>.

The project website also provides information and resources about limited scope legal services, tools for clients to help them make the most of the unbundled services that they obtain, and precedents to support lawyers who want to do this work.

The Project is an unprecedented, private-bar driven effort, with strong support from each family bar organization in Ontario as well as the courts. It is supported by a broad Advisory Committee, with representation from The Advocates' Society; the Ontario Bar Association Family Law Section; the Federation of Ontario Law Associations; the Association of Family and Conciliation Courts – Ontario Chapter; the Family Lawyers Association; experts in non-traditional legal services delivery (e.g. Lisa Eisen of Family Law: A La Carte); and researchers.

¹⁴ See for example *Trillium Motor World Inc. v Cassels Brock & Blackwell LLP*, 2017 ONCA 544.

The Project team also works with Legal Aid Ontario, the Law Society, LawPro and Community Legal Education Ontario (CLEO).

The project is funded through the Law Foundation of Ontario's Access to Justice Fund.

More information is available here: www.familylawlss.ca/

ii. Advice and Settlement Counsel (ASC) Toronto

ASC Toronto is a pilot project developed in consultation and cooperation with the 361 Bench and Bar Committee and the Judiciary and Court Services. The program is part of the larger FLLSS Project. Funded by the Law Foundation of Ontario, the FLLSS Project is working to increase the availability of limited scope services in family law in Ontario. The ASC program provides family lawyers who can assist the self-represented litigants on a limited scope retainer.

The program's goal is to help self-represented litigants in the following ways:

- attending motions;
- attending court conferences;
- assisting with negotiating consents when both parties are present;
- providing summary advice about an upcoming court conference or motion, including advice about potential settlements, drafting settlement terms offers, and court protocols;
- providing summary advice on consents at a prior session with a Dispute Resolution Officer, mediation, court conference or motion;
- providing summary advice (and coaching about next steps) before an upcoming court attendance or where a party wishes to commence or respond to a case;
- preparing "to do" lists so that a self-represented litigant can understand what steps need to be taken next; and
- supporting individuals who are not in court or who do not want to be in court with summary legal advice on their family law matter.

There are now 50 lawyers on the roster for ASC Toronto. ASC Toronto provides low-cost services at \$200.00 per hour, 5 days a week, from 9:00 a.m. to 5:00 p.m. All services are being provided virtually during the COVID-19 pandemic.

More information is available here: www.ascfamily.com

iii. Pro Bono Students Canada Family Justice Centre (FJC)

Pro Bono Students Canada, Epstein Cole LLP, and Legal Aid Ontario have partnered to launch the FJC. The FJC aims to address long-standing gaps in the family justice system by hosting virtual legal clinics for Ontarians dealing with family law issues who are unable to afford a lawyer, but do not meet the threshold to qualify for legal aid services.

At the virtual clinics, family law lawyers will supervise law students in the delivery of unbundled legal services to self-represented litigants in Ontario. The FJC will also create public legal education resources to support self-represented litigants in navigating the family law process.

The aim of the FJC, by providing virtual clinic services, is to reach clients throughout Ontario, including in remote areas where access to services has historically been limited. Whenever possible, the FJC will endeavour to support clients in accessing technology by providing referrals and instruction, and also by communicating through telephone instead of videoconferencing.

The FJC will be providing unbundled legal services in the form of summary advice and, when appropriate, assistance with document drafting. A chart detailing a client's path through the FJC is attached at Schedule "B".

More information is available here: www.probonostudents.ca/family-justice-centre

iv. These Initiatives Require Promotion, Resources and Expansion

Of the above initiatives, the Family Justice Centre launched only in September 2020; the Advice and Settlement Counsel project started in late 2019; and the Family Law Limited Scope Services Project launched its website and started the bulk of its promotion only in the spring of 2019.

These initiatives merit time to grow and develop. The Advocates' Society submits that resources are best focused on these initiatives rather than on models involving non-lawyers.

There are numerous other access to justice initiatives across the province, many of which could greatly benefit from public education and dissemination. Details of some of these initiatives are highlighted at Schedule "A".

In addition, Legal Aid Ontario provides a number of services to assist low and middle class income Ontarians. For example:

- Legal Aid Ontario provides advice and duty counsel services in every Ontario Court of Justice family court location in Ontario, and in Unified Family Court locations in the Ontario Superior Court of Justice. The Legal Aid Ontario Family Law Service Centre provides free services to parties on family law matters (including child protection) if they qualify. Legal Aid Ontario also has family law mediation services in Milton, Ottawa, Brampton, Peel and Newmarket.
- Although not a family law clinic, Aboriginal Legal Services refers family law matters to lawyers in various communities who practice family law and accept legal aid certificates. More information is available here: www.aboriginallegal.ca.

- Legal Aid Ontario lawyers at Family Law Information Centres in courthouses provide 20 minutes of free general advice, regardless of income qualification. An example is on the Six Nations Reserve, where intake is completed by Six Nations Justice and there are three Indigenous lawyers who rotate into the clinic every Tuesday from 9:00 a.m. to 1:00 p.m. More information is available here: www.legalaid.on.ca/services/family-legal-issues/

The Advocates' Society has advocated for improved funding for Legal Aid Ontario for many years. There is also need for improved public education about the availability of the above services.

Many of the existing services or models (including lawyers providing limited scope retainers, sliding scales and flat fees) remain underutilized because the general public is not aware of these options. There is a need for a public education campaign and a more centralized approach to presenting the various resources that already exist, to enhance access to justice across the province.

We submit that the Law Society of Ontario, along with the Ministry of the Attorney General and the courts, should take a more active role in linking the public and lawyers to information about initiatives around the province to help facilitate awareness about these services and initiatives, virtually all of which have been spearheaded and run by professionals who are already lawyer-members of the LSO. Many of these initiatives already have success and could be improved upon with additional funding, support and public education.

For example, many people think that using a lawyer will make their family law matter more contentious and do not realize the benefits that lawyers can provide. Or, some individuals who are not eligible for a legal aid certificate may not realize that they can access services at a clinic or duty counsel services.

Some Ontarians may not be able to afford a lawyer on a full retainer, but they may be able to represent themselves in a proceeding with the support and/or coaching of a lawyer on a limited scope retainer as needed. However, they may not know that this is an option or how to find a lawyer who accepts limited scope retainers.

We submit that many Ontarians have no idea that family lawyers in the province offer unbundled services or rates on a sliding scale — or even what those options mean. We are also concerned that there is a lack of available information about lawyers' hourly rates or how to find them. The Advocates' Society submits that the public and family law bar may benefit from a public posting of rates and services through a central repository. By offering links to these programs on the Law Society's website, more detailed profile information about lawyers on the lawyer and paralegal directory, and highlighting the services available to the public, the LSO could help facilitate these access to justice initiatives.

The LSO could use the resources at its disposal to support, strengthen and expand on existing programs and initiatives, and to partner with the bar, the Attorney General and the courts in a public campaign to promote these existing and creative access to justice initiatives.

v. Systemic Family Law and Court Reform

The expansion of Unified Family Courts ("UFC") in Ontario is an excellent response to the specialized services families require when dealing with a separation or a divorce, adoptions, child protection, among other family law issues. UFC locations provide coordinated services in family law, including duty counsel and Family Law Information Centres through which self-represented litigants can receive legal coaching.

In the 2013 McFarlane report entitled “The National Self-Represented Litigants Project: Identifying and Meeting the needs of Self-Represented Litigants Final Report”, referenced in the Consultation Paper, Professor Julie MacFarlane concludes that self-represented litigants seek this kind of legal coaching among other services. An evaluation of the impact of these coordinated UFC-based services, along with their adequacy (e.g., with respect to staffing), would be another helpful metric in evaluating access to justice solutions. Further, the UFC should continue to be expanded to all jurisdictions in Ontario.

Even within the UFC, however, it cannot be ignored that there are opportunities to streamline and simplify family law procedure as a means of reducing costs and improving access to justice. Our members operate within the court system on a daily basis. We are keenly aware that the current system has problems.

The Advocates’ Society submits that adding non-lawyer representation to the mix will only add to the problem. It will be another layer in an overburdened, underfunded, hierarchical system that is slow, unresponsive and often not the most elegant or efficient way of addressing many of the core issues confronting separating spouses.

Expanding the role of non-lawyers in family law would do nothing to change the overarching system in which we operate. Rather, it may actually encourage litigation as more “advocates” would then be available.

The Advocates’ Society submits that the optimal solution to saving costs, reducing steps and improving access to justice is to reimagine how the court system operates and to determine other mechanisms to avoid wasted procedures, processes and appearances. We are happy to consult on this point further.

vi. Inspiration Outside of Ontario

If the LSO intends to spend its resources developing new programs, then it should consider taking inspiration from programs outside of Ontario as well. A full review of options outside of Canada was beyond the scope of this submission, but two programs caught the Society’s interest:

- **MyLawBC.com** was developed by Legal Aid British Columbia as an online resolution service. The service features an online negotiation tool to help separating couples make agreements, access to online mediation to help co-parents make parenting plans and deal with child support, and guided pathways that produce personalized action plans to address common legal problems including separation and divorce.
- The **Second Acts Pilot Project** was launched by the Pro Bono Institute in the United States to create institutional support for lawyers transitioning to retirement who are interested in a second, volunteer career in public interest law, including family law for low income families. The project provided grants to public interest organizations (Legal Aid Society in New York, Boston Bar Association, Bar Association of San Francisco and Bay Area Legal Aid, and Kids Matter, Inc.) to pilot four demonstration projects to make significant use of the talents and skills of seasoned lawyers. This included creating an expert litigation panel to utilize the extensive experience of transitioning and retired attorneys to expand much needed representation and provide mentorship to less experienced volunteer attorneys. The project launched with the following message: “Due to the aging of the “baby boomer” generation, the number of lawyers aged 50 and older in the United States was expected to triple over the next two decades. This age cohort will be the largest, healthiest, and wealthiest generation of lawyers to approach senior status and will

undoubtedly reinvent and reshape the nature of transition and retirement. It has been estimated that if only five percent of these lawyers transition to public interest practice, the number of lawyers available to meet the legal needs of low-income and underserved communities will double.” The same principles could be used to seek the involvement of retiring social workers, mediators, financial experts, etc. to mentor younger less experienced professionals in Canada interested in providing support to a low to mid-level income demographic. More information is available here: <http://www.probonoinst.org/projects/second-acts/>

vii. The Role for Paralegals and Law Clerks

The Advocates’ Society supports articling students, summer students, law clerks and paralegals playing a role in the practice of family law so as to minimize costs and improve access to justice — *under the direct supervision of a lawyer*.

Law Clerks and Students. Many family lawyers in the province operate with the assistance of at least one law clerk. Those who practise in firms that are equipped to take on the responsibilities associated with supervising articling students and summer students often do so.

Law clerks and students are invaluable to the practice. They conduct a wide range of work from drafting letters, simple court documents and financial statements, to gathering and reviewing financial disclosure, to assisting with court preparations.

The key is that all of this work is completed at the direction, and under the supervision, of a practising lawyer.

Paralegals. As with law clerks, The Advocates’ Society does not oppose paralegals assisting with a wide range of work, including drafting letters, simple court documents and financial statements, gathering and reviewing financial disclosure, preparing simple agreements, and assisting with court preparations — again, provided this work is done *under the direct supervision of a lawyer*.

The Advocates’ Society is aware of a civil litigation business model in which one lawyer supervises a large number of paralegals.¹⁵ This model of supervision may be appropriate for paralegals appearing before Small Claims Court, where they are already permitted to appear independently. However, The Advocates’ Society does not support this model for delivering family legal services if the ratio of lawyer to paralegals is too low. The Advocates’ Society similarly does not support the concept of paralegals practising “in association with” a firm or lawyer, as that implies a form of supervision or endorsement by the firm or lawyer that would be misleading. It is critical that the supervising lawyer be not only *responsible* for the work of paralegals but also practically able to *review and supervise* the work in a meaningful way. The protection of the public demands no less.

The Advocates’ Society strongly believes that law clerks and students should be able to continue their work in this capacity, but their responsibilities should not include *carriage of or full responsibility* for a file. **It is critical that a lawyer in good standing maintain ultimate responsibility for the matters, for the reasons discussed above.**

¹⁵ See, for example, Toronto lawyer Jordan Farkas who operates under the name “Mr. Small Claims Court.”

Appearing Before the Court is a Distinct Responsibility. While The Advocates’ Society recognizes that law clerks, paralegals and students have a role in the practice of family law completing delegated work under the supervision of a lawyer in good standing, we do not agree with permitting the delegation of work to extend to court appearances as a general rule.

As discussed further above, this is in recognition of the complexity and importance of the majority of legal matters outside of the Small Claims Court realm (and in particular in the family law realm), the education, expertise, and judgment that lawyers bring to bear on legal matters, the concern that non-lawyers empowered to appear in court may command a false sense of authority (or a false sense of security) when they may not in fact offer value to clients (in particular clients from marginalized communities, who may be most inclined to seek assistance from a non-lawyer).

The Advocates’ Society supports articling students appearing before the court on small matters such as scheduling dates where sensitive judgment calls are not required. Again, however, this would be at the instruction, and under the supervision, of a lawyer in good standing.

e. Recommendations

In sum, The Advocates’ Society submits that Ontarians in need of access to family law justice will be best served when:

- The LSO focuses its attention and resources on promoting and expanding existing lawyer-led access to justice initiatives — many of which have started only in the past 1 to 2 years and have significant promise.
- The LSO leads a broad education campaign about options and resources for family law litigants. This should include the development of a centralized internet-based resource for the public, as well as outreach and connection with the family law bar.
- The LSO continues to advocate for the expansion of the Unified Family Court.
- The LSO advocates for reform of family law court processes to advance access to justice. The Society is happy to consult on this further.
- Lawyers continue to be responsible for providing the majority of family law services, including court attendances.
- Law clerks, paralegals, articling students and summer students assist with family law work — under the direct supervision of a lawyer in good standing, and outside of the court itself.¹⁶

¹⁶ With the exception of articling students appearing before the court on small matters such as scheduling dates where sensitive judgment calls are not required, under the supervision of a lawyer in good standing.

4. If the LSO Proceeds With the FLSP Proposal

a. FLSP Scope Must be Significantly Reduced

If the LSO decides to proceed with the FLSP proposal, contrary to our submissions, and a new class of licensees is permitted to provide family legal services under a FLSP Licence unsupervised by lawyers, then The Advocates' Society submits that it is imperative that the scope of the proposed FLSP work be significantly reduced.

The Advocates' Society is concerned that the scope of activities set out in Appendix B of the Consultation Paper is vastly too broad and will not adequately provide for competent legal services to be provided to members of the public.

In particular, The Advocates' Society submits that FLSPs should not be permitted to provide legal representation in contested matters before the court in any situation.

The Advocates' Society consulted with the family law bar to consider a scope of possible practice in the event that the LSO proceeds with the FLSP licensing despite The Advocates' Society's submissions. The Advocates' Society recommends that the scope of proposed activities be significantly reduced to include only the following – and only if high standards of education and training are met (as discussed further below):

1. Simple uncontested divorces and joint uncontested divorces, without property or contested child or spousal support issues as corollary relief.
2. Simple *uncontested* motions, e.g. motions on consent for disclosure or procedural steps by Form 14B.
3. Court appearances where there is no possibility of an Order being made without consent, e.g. first appearances or attending to obtain an order on consent.
4. Simple Form 14B motions, e.g. to change the Table Amount of child support on an annual basis, *after* it has already been established in a Separation Agreement or Court Order, and only if the payors' income is a straight T-4, Line 150 total income determination, and there are no other related issues (i.e., undue hardship, imputation of income).
5. Assistance completing financial statements, limited to minor matters other than income and valuation issues.
6. Claims relating to division of household contents, pet ownership or vehicle ownership (provided that the value is under \$35,000 or the Family Claims Court limit in the particular jurisdiction).
7. Enforcement of child and spousal support matters *in an existing Order or written Separation Agreement*, including preparation of garnishment documents, filing requirements and follow-up with the Family Responsibility Office, including assistance with completion of the Statement of Arrears and other documentation required by the Family Responsibility Office.
8. Changes of name under the *Change of Name Act*.

b. Education, Training and Competencies

The Advocates' Society submits that the list of competencies provided in the Consultation Paper is inadequate.

The type of competencies, the amount of education and training, and the nature of ongoing training and supervision will vary depending on the scope of work that FLSPs would be permitted to do. The broader the scope of proposed practice, the more extensive the competencies, education, training and supervision required.

If the LSO ultimately decides that FLSPs should essentially be "practising" family law, in our submission, the training of FLSPs should be akin to that of lawyers.

Ultimately, if the LSO decides to proceed with the proposed FLSP licensing — which The Advocates' Society opposes — then we ask for further opportunity to weigh in on the particulars of competencies, education and training required in light of a defined scope of practice.

c. Responses to Questions in the Consultation Paper

By way of summary, at Schedule "C", The Advocates' Society summarizes the responses to each of the 13 questions posed in the Consultation Paper.

Schedule "A": Key Ontario Initiatives to Improve Access to Justice in Family Law

	Program	Description	More information
1.	<i>The National Self-Represented Litigants Project (NSRLP)'s Director of Professionals Assisting SRLs</i>	NSRLP is creating a National Directory of Professionals who offer services such as dispute resolution coaching to self-represented litigants. The NSRLP has a searchable directory of professionals offering individualized assistance and services to the primarily self-represented. The NSRLP also has a "NSRLP Resource, The Nuts and Bolts of Unbundling" on their website for lawyers who wish to provide unbundled legal services to SRLs	https://representingyourselfcanada.com/national-directory/
2.	<i>Luke's Place</i>	Luke's Place connects women to family law lawyers for free summary legal advice. Women in Durham Region who have been subjected to violence in their relationship can set up an appointment with the weekly legal clinic and receive summary legal advice from a lawyer on family law issues, like arrangements for children, child and spousal support, division of property and the matrimonial (family) home, and restraining orders and separation agreements for free. There is also a Virtual Legal Services Clinic where which connects women across the province to Family Law Lawyers for summary legal advice. In addition to summary legal advice, the lawyers at this clinic help with legal documentation and preparing for court.	https://lukesplace.ca/for-women/pro-bono-summary-advice-clinic/
3.	<i>JusticeNet</i>	JusticeNet is a not-for-profit service helping people in need of legal expertise, whose income is too high to access legal aid and too low to afford standard legal fees. The legal professionals listed on the site have agreed to devote a portion of their practice to qualifying clients at reduced fees. JusticeNet is a nation-wide program available to anyone living in Canada whose net family income is under \$59,000 and is experiencing financial difficulties. Reduced fees are calculated according to a sliding scale which takes into account the number of individuals supported and amount of income from all sources (including employment income, self-employed earnings, employment insurance, worker's compensation pensions, social assistance, commissions, child tax benefits, rental income, etc.).	www.justicenet.ca/

	Program	Description	More information
4.	<i>The Family Law Workshop</i>	Two senior family lawyers in Toronto, Lisa Eisen and Susan Blackwell, have created “The Family Law Workshop”. This workshop is designed to give self-represented litigants much needed guidance on going to family court without a lawyer. The Top 10 Tips cover how to fill out court forms, negotiate with lawyers, follow court rules and much more. The workshop is designed for clients working with a lawyer on an “unbundled” basis and are provided at an affordable rate.	www.blackwellfamilylaw.ca/bflblog/2020/10/13/family-law-online-workshop-survey and here: https://familylawalacarte.ca/legal-coaching
5.	<i>Metro Toronto Family Law Services</i>	Legal Aid Ontario provides family law services to financially eligible low-income clients at community legal clinics and other locations in Toronto. Interpretation service is available.	https://cleoconnect.ca/organization/metro-toronto-family-law-services/
6.	<i>The Queen’s Family Law Clinic (QFLC)</i>	QFLC provides support to local residents in Kingston as they navigate Ontario’s family court system. Students work for academic credit, sometimes in a paid summer position, and on occasion as volunteers under the supervision of licensed lawyers. The clinic operates year round. The QFLC is funded by Legal Aid Ontario (LAO) in partnership with the Queen’s University Faculty of Law, with additional support from Pro Bono Students Canada (PBSC) and the class of Law’81. Student caseworkers provide services to low-income clientele including some who, for a number of reasons, may not be otherwise eligible for LAO assistance with Family Court matters. The clinic operates based on a limited scope retainer model by assisting litigants who represent themselves in Family Court by completing their documents, helping them negotiate the Family Court process, or referring them to other family justice resources. The QFLC works closely with and assists LAO-funded duty and advice counsel. The clinic is exclusively dedicated to family law and provides serves on a range of issues including custody, access and child support. In addition to applications, answers and conference briefs, QFLC student caseworkers welcome referrals for matters not normally covered by the LAO certificate program such as simple divorces, motions to change, motions for substituted service, affidavits for uncontested trial or other matters where student assistance may be helpful to the litigant.	https://queenslawclinks.ca/family-law

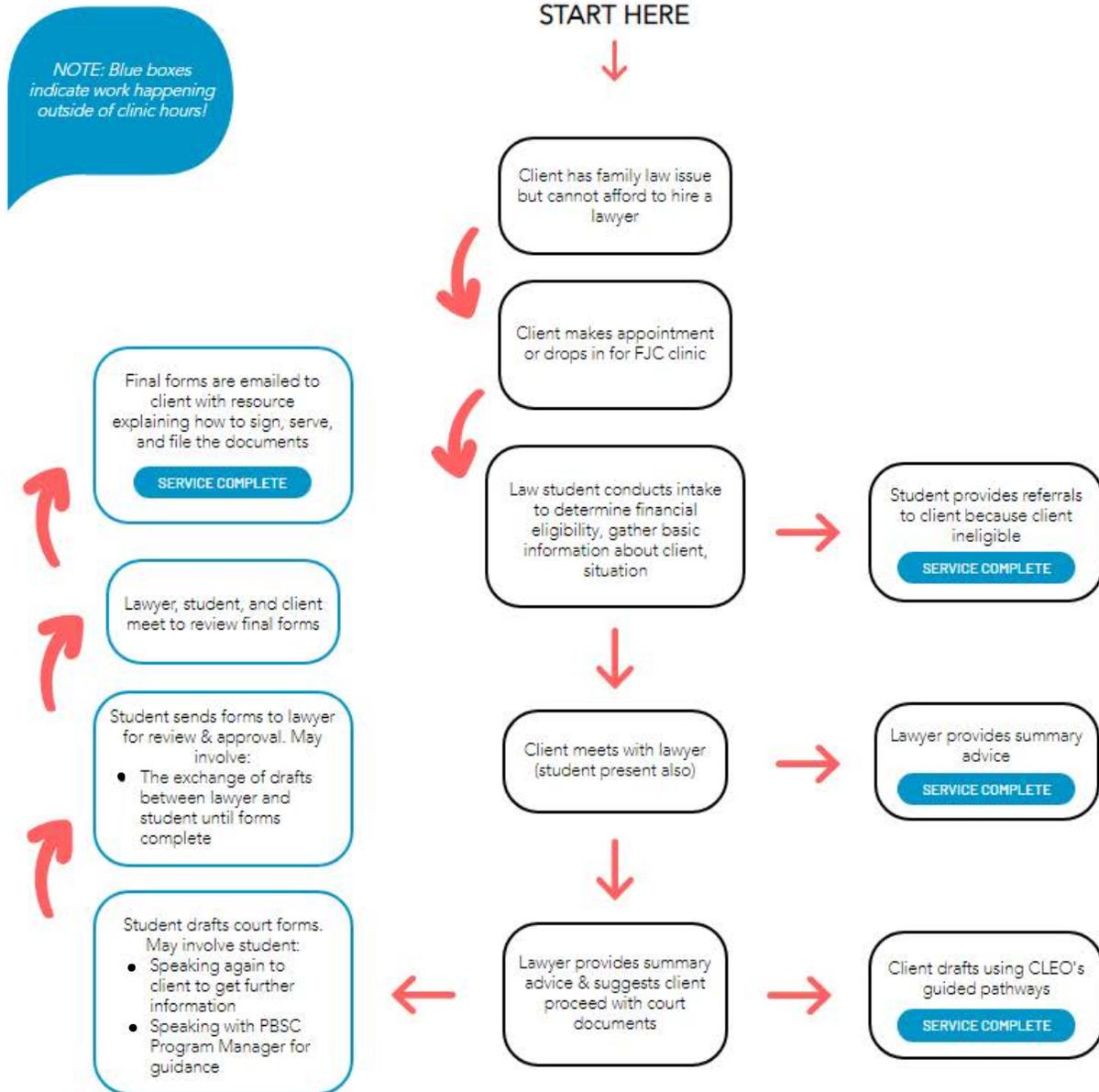
	Program	Description	More information
7.	<i>Student Legal Clinics</i>	Other Law Schools have similar programs to the QFLC. In student legal clinics at law schools across the province, Student Caseworkers are supervised by lawyers and provide services to low income families. Although the clinics may not be exclusively dedicated to family law, there are legal clinics with family law sections. Examples of student clinics offering family law services at law schools across Ontario include Downtown Legal Services (“DLS”) at the University of Toronto, Community Legal Services at Western Law School, and Community Legal Clinic at Ottawa University.	https://law.uwo.ca/legal_clinics/community_legal_services/index.html http://downtownlegalservices.ca/our-services/family-division/ https://commonlaw.uotawa.ca/community-legal-clinic/about
8.	<i>The Women’s Centre of Halton</i>	The Women’s Centre of Halton offers a free legal clinic for family law (as well as immigration and criminal defence issues) and does not screen for financial eligibility. Clients are offered half hour of free legal advice. The Women’s Centre of Halton will also be expanding their services to provide educational seminars on family law issues free of charge.	https://thewomenscentreofhalton.com/
9.	<i>Family Mediation and Resources Centre (FMRC)</i>	The Family Mediation and Resources Centre is a group of experienced family professionals in Ontario who provide support for families. FMRC hosts free information sessions at local libraries for the public. These sessions are conducted by a family lawyer and provide a general overview of the areas of law that are relevant to separation and divorce, such as the different rights for married couples versus couples who are not married but live together, the law regarding spousal support, child support and support enforcement. Sessions are held at public libraries in Durham, Milton, and Toronto. FMRC also provides reduced rate mediation sessions co-mediated with at least 1 mediator being a lawyer.	
10.	<i>Kingston Military Family Resource Centre</i>	Family lawyers in Kingston, Ontario run a free advice clinic at the Kingston Military Resource Centre (Jacques Menard and Chris Ecclestone). Clients can meet with a lawyer for a free 30 minute legal advice consultation in English or French. The Legal Advice clinic is open to all Canadian Armed Forces members and their families in the Kingston and area. The Clinic is being offered virtually during the pandemic, on Thursdays from 1:00p.m. to 3:00p.m.	www.cafconnection.ca/Kingston/Adults/Military-Families/Legal-Advice-Clinic.aspx

	Program	Description	More information
11.	<i>C.A.R.E. Hub for Separating Families: Community, Assessment, Referrals and Education</i>	<p>The group of lawyers and non-lawyer mediators from Durham, Barrie and Ottawa working on this new project is focused on trying to respond to where the client is at – on the assumption that separation is a ‘relationship breakdown with legal consequences’, not a legal problem with emotional impacts. C.A.R.E is a multi-disciplinary Triage network that helps clients create a Separation Plan at a low cost (e.g. \$150 for a 1-2 hour Separation Planning/Triage meeting). By giving clients the option of resolving their separation out of court, C.A.R.E ensures that those who need court are able to access judicial expertise more efficiently. If there are safety issues, the client is immediately triaged to a domestic violence advocate. The result is that those who do not need or want to litigate have a more affordable, cooperative and timely option.</p> <p>C.A.R.E will be Family Law Portal that was developed at the Ryerson Legal Innovation Zone and other online programs to educate clients. It also allows professionals to begin to assess the type of help clients need so C.A.R.E can refer them to relevant professional and community resources. C.A.R.E will encourage clients to complete relevant legal and other information online once the team has determined the issues they wish to address – making the process more affordable. C.A.R.E’s hope is that people will use their limited resources to make the best use of the professional services offered – and the outcome will be durable agreements and a reduction in conflict.</p>	www.familylawportal.com/start-here
12.	<i>Lawyers and Lattes</i>	Lawyers and Lattes is a legal café in midtown Toronto. The café provides various family law services at flat fees, including the drafting of Separation Agreements and assistance with uncontested divorces.	https://www.lawyersandlattes.com/legal-services/
13.	<i>Alternative Dispute Resolution</i>	Alternate dispute resolution or dispute resolution is very important component of family law. In Toronto senior lawyers act as Dispute Resolution Officers (DROs). In Ottawa, there is a virtual family law project where experienced family law lawyers offer their services to act as mediators, arbitrators and take carriage of case conferences, and in some cases, settlement conferences where approved by the administrative Justice, to assist in reducing the cost of proceeding to Court. In other areas family lawyers are offering their time as “amicus” and duty counsel.	

	Program	Description	More information
14.	<i>CLEO Connect</i>	Community Legal Education Ontario (CLEO) has a very detailed family law resources website through CLEO connect. The public can search by topic and discover in court and out of court resolutions to assist them in resolving their family law matters. The language is accessible.	https://cleoconnect.ca/legal-topic/family-law/
15.	<i>Steps to Justice</i>	Steps to Justice is a guide to law in Ontario led by CLEO with funding through Legal Aid Ontario, the Department of Justice (Canada) and The Law Foundation of Ontario. The family law website has resources for the public.	https://stepstojustice.ca/legal-topic/family-law/
16.	<i>Family Law Education for Women</i>	Family Law Education for Women provides plain language legal information on women's rights in family law matters in Ontario in 14 languages.	https://onefamilylaw.ca/

Schedule "B": A Client's Path Through the Family Justice Centre

A CLIENT'S JOURNEY



Source: The Family Justice Centre, online: <https://www.probonostudents.ca/family-justice-centre>

Schedule "C": Responses to Questions in Consultation Paper

Question 1: Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

A premise of the Consultation Paper is that a FLSP would be less expensive than family law counsel. The Advocates' Society submits there is no evidence a FLSP would be less expensive and additional data should be gathered and analyzed (pages 4 to 9). The practice of family law is complex (and increasingly so) and reflected in the cost of operation such as computer costs (hardware and software), premises and continuous upgrading of skills and knowledge. Many costs associated with being a family law lawyer would be necessary for a FLSP and greater than those incurred by a paralegal (pages 8 to 9).

The more effective way to support increased access to affordable, competent family law legal services is to continue to expand existing lawyer-led access to justice initiatives (pages 13 to 18).

Question 2: Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

The Advocates' Society submits the market for a FLSP will be modest. We submit that most self-represented litigants lack the means to hire a FLSP, just as they lack the means to hire a lawyer. This applies even if FLSPs charge less than lawyers (which we submit the evidence does not support). This is one of the key reasons that we think the FLSP proposal does not advance access to justice needs. (See for example pages 3, 4, 9 and 10.)

Question 3: Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The Advocates' Society submits that the list of 8 general areas of competencies on page 8 of the Consultation Paper and the 209 detailed competencies listed in Appendix C of the Consultation Paper are inadequate. If the LSO decides that FLSPs should essentially be "practising" family law, the competencies required of FLSPs should be akin to those of lawyers and TAS asks for a further opportunity to weigh in on the particulars of competencies (page 22).

Question 4: In your view, what scope of activities would best support increased access to affordable, competent family law services?

The Advocates' Society supports paralegals playing a role in the practice of family law, along with articling students and law clerks, so as to minimize costs and improve access to justice – *under the direct supervision of a lawyer* (page 19). The Advocates' Society reiterates its overall recommendation that the LSO not proceed with the FLSP proposal to allow a new class of licensees to provide family legal services under a FLSP Licence, *unsupervised by lawyers* (page 20). Should the LSO decide to proceed with the FLSP program, The Advocates' Society submits that the scope of the proposed FLSP work set out on page 7 and in Appendix B of the Consultation Paper is too broad and will not provide sufficient protection to the public. In particular, The Advocates' Society strongly recommends that the FLSPs should not be permitted to provide legal representation in contested matters before the court in any situation. The Advocates' Society sets out on page 24 a list of 8 possible practice activities for FLSPs and only if high standards of education and training are met (pages 21 to 22).

Question 5: Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?

The Advocates' Society submits that the 11 courses to be taken over 6 to 8 months with a potential field placement for a length still to be determined as proposed in the Consultation Paper is inadequate. The Advocates' Society's position is that no matter the training or requirements that might be put in place for paralegals, there is no substitute for the legal education and training a lawyer undergoes before being admitted to the Bar, including: having gained admission to university; completed an undergraduate degree; gained admission to law school; completed a law degree; passed the Bar exams, and successfully completed an articling placement. These gate-keeping mechanisms establish a series of criteria to provide assurance of educational and professional standards for lawyers, including developing essential skills such as issue identification, legal analysis, problem-solving, effective written and oral advocacy, and ethical lawyering. To suggest otherwise undermines the legal profession and the legal system and risks bringing the administration of justice into dispute (pages 10 to 11). The Advocates' Society submits that if the LSO decides that FLSPs should essentially be "practising" family law, the training of FLSPs should be akin to that of lawyers and asks for further opportunity to weigh in on the particulars of education and training (page 22).

Question 6: What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

The Advocates' Society submits that there is no substitute for the complete educational and experiential training completed by lawyers admitted to the Bar in Ontario. The Advocates' Society emphasizes the training undertaken by lawyers called to the Bar in comparison with that of paralegals now being considered to provide family law services (pages 10 to 11).

In the event the Law Society of Ontario decides to proceed with the proposed FLSP licensing, which The Advocates' Society opposes, we will seek an opportunity to provide a more detailed response with respect to the education and training required in light of a defined scope of practice (page 22).

Question 7: What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

It remains The Advocates' Society's view that FLSPs, like law clerks and students-at-law, should at all times be under the direct supervision of a lawyer – not for the defined term of a 'field placement' or other experiential training program, but permanently as a condition of their licence. The Advocates' Society emphasizes that supervision is required to ensure the public interest is protected and prioritized in the event paralegal work is extended to the area of family law (pages 19 to 20). As with our response to question 6, in the event the Law Society of Ontario proceeds with the proposed FLSP licensing, which TAS opposes, we will seek an opportunity to provide a more detailed response with respect to the experiential training and/or field placement required in light of a defined scope of practice (page 22).

Question 8: Is a CPD requirement focused on family law appropriate for the FLSP?

The Advocates' Society submits that in the event the FLSP licensing program proceeds, the nature of ongoing training will vary depending on the scope of work that FLSPs would be permitted to do. Given

the outstanding question as to the ultimate scope any FLSP licensing program may include, in the event the Law Society of Ontario proceeds with the proposed FLSP licensing, we will seek an opportunity to provide a more detailed response with respect to the appropriate CPD requirements for FLSPs in light of that defined scope of practice (page 22).

Question 9: Should law clerks be eligible for the FLSP license? Are there other groups of professionals who should be considered?

The Advocates' Society strongly encourages the Law Society of Ontario to consider an alternative and less expensive path to bar admission for established and qualified foreign lawyers (page 11).

Question 10: What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

The Advocates' Society submits that most self-represented litigants cannot afford to pay for legal services and there is insufficient evidence to support a view that the services of FLSPs will be materially less expensive or add value to self-represented litigants (pages 4 to 10).

Question 11: Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

The Advocates' Society submits that in the past 1 to 2 years many lawyer-led initiatives have been implemented that, if properly resourced and expanded, will promote justice in a meaningful way (pages 13 to 18).

Question 12: Are any aspects of the proposed licensing framework unfeasible?

The Advocates' Society does not consider the proposed framework feasible or optimal as set out in our submissions. We have outlined recommendations to best serve Ontarians that do not incorporate the proposed licensing framework. The Advocates' Society would welcome further discussion of the recommendations outlined at page 20 of the submission.

Question 13: Is there additional information or are there other factors that should be considered?

The Advocates' Society does not consider the proposed framework feasible or optimal as set out in our submissions. We have outlined recommendations to best serve Ontarians that do not incorporate the proposed licensing framework. If the LSO proceeds with the FLSP proposal, The Advocates' Society submits that it is imperative that the scope of the proposed FLSP work be significantly reduced. The Advocates' Society proposes a limited scope of activities FLSPs should engage in and the standard of education necessary to engage in those activities (pages 21 to 22). The Advocates' Society would welcome the opportunity to discuss these recommendations in detail with the LSO.

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Email Address	canadianepc@gmail.com
Please make a selection below	President of non-profit parent advocacy federation
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Canadian Equal Parenting Council
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Other Components of Licensure	
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Paralegals & FLSP in Ontario Family Law and Outcomes for Ontario Families

Summary: We support including paralegals as an option in Ontario for most family law issues. We support the training proposed by LSO as extensive and more than adequate. We support the concerns that paralegals should be governed as to make the profession sustainable and continuing monitoring of paralegal services to ensure the meeting of objectives of increasing access to justice and better outcomes for Ontario parents and their children. We hope that including paralegals will help encourage family law and courts reform in the direction of the Cromwell report's "consensual" processes, respect and equality for parents, and in particular an easier and less costly route for the vast majority of parents to what is overwhelmingly in the best interests of children: equal shared parenting.

LSO is to be commended for following up on the Bonkalo recommendations and proposing including paralegal services for Ontario parents and family law issues.

This brief is mostly from the viewpoint of parents, especially those going through separation or divorce with custody and access issues relating to their children.

Bonkalo's report shows relatively high satisfaction with paralegal services: in our experience these levels are higher than client satisfaction with lawyers in similar services. We expect and hope that parent satisfaction with the proposed paralegal services in family law will show similar outcomes and lead to greater accessibility for parents, greater use of conflict resolution approaches in family law, less use of procedural trickery and sharp dealing, usually associated with adversarial family lawyers, and greater confidence in a more open, diverse and fair family court system.

The educational and training for paralegals regarding family law is extensive and arguably greater than required of lawyers. We recommend that the training materials be public and reviewed to ensure that training in areas such as domestic conflicts, abuse, and parenting fitness is non-sexist and non-stereotyping. Our experience and that of many parents with legal clinics, legal aid services and training materials associated with law schools is that much is gender-biased, ideological or stereotyping, particularly in family law.

Consideration should be given to including in paralegal training references to the extensive and accepted social science showing shared parenting is almost always in the best interests of children of separation or divorce. Lawyers and law schools have been highly resistant, in general, to relating this science to the contradiction that outcomes in Ontario courts are overwhelmingly de-facto sole custody, which such science suggests is not in children's best interest. It has been suggested that paralegals are more likely to meet with parents and their children, and thus may be more likely to act in the children's interest. We recommend that LSO consider science-based references to best interests of children in training materials for paralegals.

It is important that the paralegal profession be sustainable. We suggest that if paralegals were required to work solely under lawyers that the model would not be sustainable. Similarly, if paralegals were pressured or incentivized to work exclusively for in-house advocacy organizations, FLSP is not a sustainable profession. We are concerned regarding different licensing and training standards for FLSPs working for in-house legal service organizations. An example would be women's shelter allied legal services hiring paralegals. As women's shelters and legal services are government funded, but comparable men's services are not, it creates an access to justice issue for the excluded or non-funded group. To compound this, if 40% of the budget is government funded, the HST is refunded, creating an imbalance in cost for mothers and fathers in family law litigation. We recommend that LSO include a provision that paralegals should preferably be independent professionals, and not be subject to undue pressure to represent only one sex or gender.

We support the recommendations of the Bonkalo report. In conclusion, including FLSPs as an option for parents can help meet their diverse needs through competent legal assistance through the difficult, costly and emotional process of separation and divorce in Ontario.

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#281

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Competence	
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SUBMISSIONS TO THE LAW
SOCIETY OF ONTARIO
REGARDING
FAMILY LEGAL SERVICES
PROVIDER (FLSP) LICENCE

Omar Ha-Redeye

DURHAM COMMUNITY LEGAL CLINIC



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Background

The Durham Community Legal Clinic (DCLC) is a community legal clinic, primarily funded by Legal Aid Ontario (LAO). It was founded in 1985, and provides legal services, information, education, and representation for historically marginalized and low-income residents of Durham Region. DCLC also engages in advocacy and law reform activities, in particular to ensure that our laws properly consider the perspectives of historically marginalized and low-income Ontarians. The main legal areas of service DCLC provides includes housing law, social benefits, employment, human rights, and workplace safety. DCLC does not provide legal advice in the area of family law directly, but instead can provide legal information and referrals to community resources. One example of these types of resources is Luke's Place, a non-profit organization in Durham Region focusing on improving the safety and experience of women and their children fleeing abusive relationships. DCLC is also authorized to issue 2-hour domestic violence certificates, as funded by LAO.

In early 2019, DCLC established the Durham Access to Justice Hub® (the "Hub) with the assistance of LAO. This inter-agency and inter-disciplinary initiative intended to provide legal services beyond the income thresholds and subject matter of LAO, and other social, financial, and psychological services. These cooperative relationships seek to foster better client-centred services, reduce administrative barriers and silos, and improve efficiency of services that are funded or subsidized by taxpayer dollars. Some techniques used to achieve these goals include recruitment of



volunteers to contribute towards improving access to justice, and by embedding students into workflows and innovative projects through experiential education. One example of these projects includes a Family Law Triage project, which seeks to direct families in separation to free or affordable resources in the community that would assist with family dispute resolution (see Appendix “A”). This project has already developed partners in two other geographical locations, in Barrie and Ottawa. The COVID-19 pandemic has disrupted many of these innovative programs and plans, but DCLC still intends to use the Hub in this manner to foster systemic change in the years to come.

Introduction

The guiding principle driving the development of Family Legal Services Provider (FLSP) license is access to justice in family law. There are various issues within family law and access to justice, including but not limited to: exorbitant legal fees for low-income Ontarians, the sharp rise in self-represented litigants, people resorting to non-licensees for assistance, and a backlog in courtrooms. The development of an FLSP license to address some of these issues in small part through the creation of a new legal professional, extending the responsibilities of paralegals who will receive specialized education and training, and permitting them to represent individuals outside and within family law courtrooms.

One significant contributing factor to lack of representation is financial ineligibility for legal aid. Self-representation is rarely a choice, but usually a result of



unaffordable legal counsel. According to Legal Aid Ontario (LAO) eligibility criteria, a family of four would have to make less than \$45,289 dollars to qualify for legal aid.¹ Recent research suggests that a significant proportion of court-users exceed the LAO's income thresholds, but are also unable to afford the current legal rates for a sustained period of time.² Even those who meet LAO criteria often find that the certificate is exhausted, and they have to continue in proceedings by themselves without representation. In 2011-2012, 64% of all family law litigants in Canada were self-represented. Since that time, the numbers of self-represented litigants have increased further.^{3,4} This reality raises concerns about 'two-tier justice,' where the wealthy have greater resources, access to legal representation and a meaningful chance to resolve their family disputes and settle outside the courtroom, while those with limited means are unrepresented in an already stressed family court system.⁵ The effects of this system is that the children of unrepresented parents suffer from the

¹ Financial Eligibility for Legal Aid Services, April 1 2020, Legal Aid Ontario, available at: <<https://www.legalaid.on.ca/documents/financial-eligibility-for-legal-aid-ontario/>>

² Justice Annemarie Bonkalo, "Family Legal Services Review," Minister of the Attorney General, Dec. 31, 2016, available at:

<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/>

³ Julie Macfarlane (2013). The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report. Available at: <<https://representingyourselfcanada.files.wordpress.com/2014/05/nsrlp-srl-research-study-final-report.pdf>>.

⁴ Department of Justice. (2016). Self-Represented Litigants in Family Law. Available at: <<https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html>>.

⁵ Birnbaum, R., Bala, N., & Bertrand, L. (2012). The rise of self-representation in Canada's family courts: The complex picture revealed in surveys of judges, lawyers and litigants. Canadian Bar Review, 91(1), 67-96. Available at: <<https://cbr.cba.org/index.php/cbr/article/view/4288/4281>>.



prolonged nature of legal proceedings, and the increased need for parental conflict in an adversarial system.⁶

A web-based study of lawyers with the Ontario Office of the Children’s Lawyer (OCL) reported that a majority of lawyers found cases with at least one self-represented party took on average 66 per cent more time than cases where both parties are represented.⁷ A greater burden is placed on self-represented litigants to engage in an adversarial and unwelcoming system, and they are much less likely to be aware of outside of court dispute resolution options and actually settle matters without litigation. When litigants are ill-equipped at providing legal arguments and evidence, the judge’s tasks and time required to perform is substantially greater. These findings also raise concerns over the potentially negative impacts on children whose parents are self-represented; since these cases take longer to resolve, the prolongation of proceedings and increased parental conflict may re-victimize their children.⁸

Some clients may resort to seeking assistance from non-licensees. Instead of hiring a family lawyer, many people seek guidance from friends, family and community members. Low-income populations, who are least able to afford legal representation, are most susceptible to turning to this type of support.⁹ In some communities, religious

⁶ Birnbaum, R., Saini, M., & Bala, N. (2018). Growing concerns about the impact of self-representation in family court: Views of Ontario judges, children’s lawyers and clinicians. *Canadian Family Law Quarterly*, 37(2), 121-137.

⁷ Birnbaum et al (2018), *supra* note 6.

⁸ *ibid.*

⁹ Individuals on Ontario Works (OW) may receive “guidance” from a Family Support Worker (FSW), who may encourage the OW recipient to take strategic legal steps contrary to their interests, such as initiate legal proceedings unnecessarily. See Ministry of Children, Community and Social Services.



and ethnic leaders may provide advice to vulnerable women about how to solve their family matters. In other cases, divorce doulas may use their lived experiences to assist those going through divorce proceedings.¹⁰ In such circumstances where untrained and unregulated individuals offer advice, it can be argued that “no assistance may be better than some assistance.” In this context, a new licensee may assist may of those who are unrepresented, or are obtaining guidance and advice from non-licensees.

“Ontario Works Directives.” January 2017. Available at:
<https://www.mcass.gov.on.ca/en/mcass/programs/social/directives/ow/5_5_OW_Directives.aspx>.

¹⁰ *Supra* note 2.



Submissions

Scope of Permissible Activities

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The proposed scope of permissible activities under the FLSP license include providing legal advice, drafting legal documents, providing representation in court or tribunal, and negotiating legal interests or rights in the areas of divorce, parenting orders and decision-making, child and spousal support, contempt/enforcement orders, family law agreements (separation agreements, paternity agreements, and family arbitration agreements), change of name applications, and division of property.

Engaging in any of these activities under the current family law model in Ontario is cost prohibitive for most families. For low-income populations, these options with existing models of representation are not possible at all, especially where funds from legal aid certificates are exhausted, or they are ineligible for legal aid. Any type of competent services in these areas using a more affordable model would promote and enhance the ability of Ontarians to navigate the family law system with professional assistance that they would not otherwise have.

The most expensive aspect of family disputes is obtaining legal representation in the litigation context before the courts. The adversarial nature of the proceedings is only part of the reason for this cost. The ability of parties to make last-minute



emergency motions, or to claim abuse of process where there are even minor delays in the disclosure of information, guarantees that court-based dispute resolution for family law is more resource-intensive than the alternatives. The primary mechanism for resolving family law disputes should be through alternative dispute resolution, and this has been clearly signalled through legislative intent in recent reforms to family law legislation at both the federal and provincial levels. Even the most antagonistic disputes can be properly resolved with some measure of finality through arbitration, as the more regimented nature of the process, and procedural protections afforded the parties, most resembles court-based dispute resolution. This approach would also free up the courts to focus on family law disputes which require proper judicial supervision, including cases that involve family violence, present a complex or novel issue of law, involve a vexatious litigant, or has one or both parties abusing the resources available through the court system.

Family arbitration agreements where a party is represented by a FLSP practitioner will still require independent legal advice from a lawyer, not an FLSP license, which ensures that there is still a very significant role from family law lawyers in ensuring that the rights of separating families are properly protected. The FLSP license will require extensive training on screening for power imbalances for this role to be effective outside of court, and to ensure that alternative dispute resolution mechanisms are also not misused to improperly gain an outcome that is markedly disadvantageous to the represented party, or that these out of court dispute resolution



mechanisms or not employed prematurely before all the necessary information is collected.

The role of an alternative family law practitioner assisting separating parties through the processes of negotiation and mediation, which may itself lead to the decision to employ arbitration, can be done more cost-effectively than with the support of a lawyer. One of the primary roles of the FLSP licensee would be to inform clients of these options outside of court as the preferred and superior mechanism for resolving family law disputes, as many members of the public continue to maintain broad misunderstandings of the role of the courts and their ability to effectively and efficiently resolve these disputes for separating families. These licensees will therefore promote access to effective legal services simply through their role of raising awareness and educating the public of these options, whether it be through the marketing of their services, or through initial client interviews.

The real question about the scope of services provided is whether they will be provided in a competent manner. The focus on the nature of the training program is therefore central in responding to this question about scope. Professionals from other disciplines, including social workers, financial analysts, psychologists, and others who already work within the area of family law disputes, are all able to obtain this type of training outside of law school. There is no reason why competence cannot therefore be developed for FLSP practitioners with the appropriate training, including in the ability to assess, navigate, and address power imbalances.



2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

Given the sheer volume of unrepresented parties in family law disputes currently in Ontario, there is a completely untapped market for business opportunities. As with any new service offering, there will need to be some period of time, perhaps even many years, before the public is fully aware of offerings provided by FLSP licensees. However, the family law bar, and existing licensees generally, can all play a significant role in raising this awareness of these options, and supporting them as being viable alternatives to existing models of dispute resolution relying on lawyers alone. For this reason, the visible and vocal support of lawyers, and especially those in family law, will be important for the proposed scope to allow viable FSLP business models.

Various assumptions about how these licensees would be positioned in the market that have concluded that these models would not be viable are flawed for several reasons. First, several commentators have noted that paralegals in their existing scope of practice can currently offer services at rates comparable to lawyers. Several concrete examples of paralegals doing this at the time of this consultation have even been publicly discussed. On this basis, these commentators suggest that there is no guarantee that the FSLP licensees will provide services that are more cost-effective than what many lawyers already offer. These assumptions are flawed, because they point to exceptional cases of contemporary paralegal services as an accurate sampling of a statistical mean of how paralegals currently operate. This is



not only logically incongruent, but also misleading about the current marketplace of legal services in Ontario.

Second, many of these commentators presume that FLSP licensees will be providing family law services in a similar manner as the existing family law bar. The introduction of this new license at the time of widespread regulatory reform of family law is very much an opportunity to re-imagine how these disputes are resolved, with an even heightened emphasis on dispute resolution outside of courts. This can include existing ADR mechanisms, but might also involve the use of newly created tribunals, or through community-based hubs that provide resources on how to provide complete disclosure, obtain appropriate financial, social and psychological supports that separating parties often do not receive, and ground these resolutions in communities and not the courts. The assumptions that FLSP licensees will be taking work away from family lawyers, or that the business model cannot be effective based on existing models of how family lawyers currently practice, are themselves entirely irrelevant considerations.

This shift towards using community-based alternatives can only occur though if the perspectives of traditional family law services is transformed in the mind of the public, and of the legal professions. It should only be exceptional cases that require judicial resources, and the cases that appear by court outside of those cases constitute a personal failing by the parties to fully employ the alternatives, or shortcomings by their counsel in fully informing or facilitating those options. The role of FLSP licensees to appear in court under this proposed scope should therefore not be the primary



mechanism for dispute resolution, but this conclusion should also be extended to existing family lawyers currently in practice.

Finally, those who suggest that the FLSP licensee could not develop a viable business model ignore some of the most compelling and important trends impacting family law today. The number of new lawyers who are entering family law is steadily declining. In part, this is related to the lack of articling opportunities that might train new lawyers to practice in this field, and the inability or difficulties of small and sole practitioners in being able to afford articling students in the context of their practice. A more significant factor is the rising levels of tuition in law schools across Ontario. This mounting and crushing tuition debt facing many new lawyers typically forces or compels their choices of practice area and practice context, and these decisions rarely result in a conclusion that family law is the best choice to address these financial pressures. The ability of FLSP licensees to knowledge and skills useful to the public for a fraction of the price, and to do so without the significant tuition burden of a full undergraduate education on top of a very expensive law degree, ensures that these practitioners will invariably have practice options available to them that family lawyers cannot.



Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

From a regulatory perspective, the competency of the FLSP license should be the primary consideration for the law society, even beyond the viability of business models of the new license, or how the introduction of a new license may impact the finances of the existing family law bar. Ensuring the competency of legal services is the primary function of the law society, and the main way that it protects the public interest.

The FLSP competencies are built on the existing competencies that are required for paralegal licensure. The thousands of paralegals currently providing legal services in Ontario come from many different backgrounds, including their education and training within their existing paralegal license. Some, for example, have received recognition for their professional experiences prior to paralegal licensing, and have been exempt from some of the entry-level regulatory requirements imposed on new paralegals. There are paralegals from this cohort that precede licensing who already have experience in family law prior to its exclusion under Bylaw-4. While they may still have to obtain some upgrading in their knowledge and skills given the lapse of time, it belies credulity to suppose that these individuals who have already competently



provided family law services in the past would not be able to competently do so following a subsequent period of formal education and training.

Outside these exceptions of exempted paralegals, the training received by the remainder of paralegals in Ontario is highly variable across the various institutions that provide approved educational programs in these areas. The 5-year mandatory review of paralegal education in the Morris Report in 2012 identified several deficiencies in paralegal programs across Ontario, which was followed by a concerted effort to bolster and strengthen these educational programs. However, since that time no comprehensive review of paralegal education has been conducted by the regulator. Since the foundation of paralegal education provides the base competencies which the FLSP license will be built upon, public confidence and confidence of the legal professions of this educational foundation should be reinforced.

This confidence in competency is essential to the success of the FLSP license, as the proposed competencies can only be delivered in a competent manner if they are done in conjunction with the existing family law bar, and the support of the entirety of both professions. The widespread resistance to the expansion of this scope from the family law bar actually undermines the ability to provide these services in a competent manner, especially to the extent that this resistance is manifested not by contributing to the education and mentoring of paralegal students, but rather operating in protectionist patterns that are deliberately oblivious to the extent of the current crisis in family law. Competencies for any new family law license is therefore dependent on the extent to which family lawyers currently practicing in the area recognize their



professional obligations and duties to the public to support the new license by lending their credibility and expertise to the new services provided.

The Criminal Law Paralegal Pilot Project is oft-cited as a successful example of paralegals providing a larger range of services when given the proper training and support. Paralegals under this project were required to have two years of prior criminal experience working as legal aid workers, and they were provided with training, mentorship, and substantive legal training. LAO staff confirmed that duty counsel and administrative staff working with the paralegals in their new roles under this project felt that they were able to provide more comprehensive services than they were able to before the paralegals joined their team. One respondent indicated that the paralegal working in their office provided “exceptional service to the vulnerable client population.”¹¹ Based on these experiences, the FLSP licensee should have similar ability navigate complicated issues involving vulnerable clients, when provided the proper training and experience.

Arguments against allowing paralegals to provide family law services as being overly complicated and have important ramifications for vulnerable clients have already been raised and addressed in a comprehensive review of this issue. Justice Bonkalo met with numerous tribunal adjudicators in her Family Legal Services Review, and they attested to the fact that paralegals are already working in complex areas with vulnerable members of society. Paralegals already represent vulnerable clients facing

¹¹ *Ibid.*



life-altering outcomes, including in areas where the work is complex and involves multiple statutes, and time sensitive paperwork.¹²

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

As indicated, the proposed scope of activities is already sufficiently broad to enhance access to affordable and competent family law services, as the vast majority of Ontarians are unable to obtain any affordable or competent family law services at all. Attempts during this consultation to point to new initiatives and programs by family lawyers to address the access to justice crisis, therefore suggesting that the FLSP license is unnecessary, appear to miss the mark. These efforts are laudable, but there cannot be any plausible suggestion that any one of them, or even these efforts reviewed in combination, have the potential to address the current family law crisis. Similarly, the FLSP license will not by itself address the need for affordable and competent family law services, but it is very likely that it has the potential to assist in that process.

Far too many participants in the FLSP consultation draw too heavily on their experiences as family law litigators, and have applied the same adversarial approaches to law reform and public advocacy. This approach perpetuates the same misconceptions that have created the access to justice crisis, namely that there can only be a zero-sum outcome to law reform efforts in this manner. To the extent that

¹² *Ibid.*



this approach mirrors their strategies in professional litigation-based practice, these voices project their own shortcomings and need to upgrade and refresh their competencies to practice in family law. Most family lawyers today have never received the type of training, or been evaluated for the knowledge, skills, and abilities, which would demonstrate their own competency to practice in the manner proposed for the FLSP license. The possibility here is that FLSP practitioners may be even more competent to practice family law, with a particular view towards out-of-court resolutions, in a more competent manner than many lawyers practicing family law, especially if the training programs are sufficiently rigorous and comprehensive. The scope of activities here is not as significant a concern as ensuring appropriate competence, and adequate training. The former is largely dependent on the support from existing family lawyers practicing in this area, and the latter may require greater involvement by the law society in scrutinizing paralegal education programs.

Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?

The duration and rigour of the proposed training program cannot be evaluated from the information provided in the Consultation Paper alone. This question is directly connected to the broader questions around paralegal education, as highlighted above. Additionally, there remains considerable debate as to whether this FLSP training program be delivered in an accredited college program, as with existing paralegal



education, or provided through universities. The latter has been touted as providing more rigour, but this isn't necessarily a forgone conclusion. A bigger priority is that the program be delivered in a manner that allows licensed paralegals to continue to practice, and to continue to earn an income. It's unlikely that the widespread interest in the FLSP license will result in a significant uptake if it requires paralegal licensees to abandon their practice entirely to commit to full-time studies, without earning any income on the side. The impact of tuition burden on law students, which prevents them from considering careers in family law, is equally applicable in this context.

Community colleges may be better positioned to provide this flexible and customizable education than universities, but the same concerns raised in the 2012 Morris Report would be applicable here. A plan announced in May 2019 by the Ontario government indicated that by 2024-2025, about 60% of the funds provided to universities would be based on performance over 10 metrics. These metrics would be related to skills and job outcomes, as well as economic and community impact, and were previously introduced in Ontario to the colleges. The effect of these Key Performance Indicators (KPIs) in colleges after the introduction of formal paralegal education was to use one of these metrics, graduation rates, to in some instances advance and matriculate students who were not properly prepared for professional practice, meaning administrative pressures in some limited circumstances operated to undermine the ability to instil professionalism and the appropriate knowledge, skills, and abilities necessary to practice within the existing paralegal scope of practice. The law society's licensing exam as currently constructed provides an ill-suited basis to



evaluate these same competencies, meaning that part of the explanation for friction within the legal professions and opposition to the FLSP license are based on reasonable and well-founded concerns over competency, for a small number of licensees. This concern has been echoed and shared by both lawyers and paralegals, the latter who have a vested interest in projecting competency and bolstering the reputation of the paralegal profession.

The new FLSP training program could suffer the same types of administrative pressures to matriculate participants prematurely or inappropriately. This would undermine the rigour involved, and with the implementation of similar KPIs in universities as well, this concern is independent of any institution where the training might be delivered. What is more important is that there is sufficient administrative support to decouple KPIs from professional law programs, and to assess graduation rates of these programs differently than other programs offered by the educational institution. It is in fact quite likely that some working paralegals may start the FLSP training program, and then conclude that they are either disinterested in completing the training, or have more pressing concerns or responsibilities in their existing paralegal practice. These drop-out rates would not reflect the quality of the FLSP training, as intended as a metric by the government, and instead be reflective of the inherent pressures of a professional training program for working professionals. This program will invariably require the participation and support of existing family lawyers, who have the knowledge, skills, and abilities to provide training in the proposed competencies. Ensuring the appropriate rigour is therefore achieved by family lawyers



expressing direct interest in the training of FLSP licensees, and being provided the administrative autonomy within these training programs to ensure professional standards of competency as assessed from their own professional experiences.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

DCLC takes no position on this particular issue, other than noting that many of the current practicing paralegals already have previous post-secondary education, including degrees in areas like accounting, psychology or social work, graduate degrees reflecting advanced studies, and even law degrees from other jurisdictions. The new FLSP license therefore allows the public to benefit from family law service providers who may even have more advanced training and broader experiences to properly address certain family law issues than many of the practicing family lawyers in Ontario. Complex issues of finance, social dynamics, cultural competency, and power imbalances are not properly encapsulated in family law training in law schools for lawyers, and it is very likely that the FLSP license will enrich the offerings available to the public, in many different ways.



7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

Field placements and a close relationship with existing family law practitioners are essential to the success of the new FLSP license. Family lawyers experiencing workload and financial pressures in their practice, and who are unable to take on an articling student or junior associate, may very well benefit from hosting FLSP licensees in their practice. This type of cooperation can provide mutual benefits to all those involved.

8. Is a CPD requirement focussed on family law appropriate for the FLSP?

All licensees are required to engage in CPD to maintain their license. The creation of a new FLSP license should therefore also require CPD specific to the type of license that is provided. This requirement should also help alleviate some of the concerns around competency, and provides a mechanism for the professions to provide support to the new FLSP licensees in identified areas of need on an ongoing basis.



9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

DCLC takes no position on this issue, other than noting that the new FLSP license is likely to lead to many different professionals who have extensive experiences in family law to complete the paralegal license and then the FLSP license successively. As noted above, this will invariably enrich the family law services provided to the public.

What is more relevant to the public interest than simple eligibility for an FLSP license is the definition of unauthorized practice in light of a newly regulated activity. The role of Family Support Workers (FSWs) within the legal system overlaps considerably with the scope of proposed practice for the FLIP license. FSWs have an expanded role in Durham Region, including historically (i.e. pre-pandemic) at the Access to Justice Hub, and this role may inadvertently fall within the regulated activities.¹³

¹³ Durham Region. Council Information Package. Oct. 18, 2019. Available at: <<https://www.durham.ca/en/regional-government/resources/Documents/Council/CIP/CIP-2019/CIP-10182019.pdf>>.



General Submissions

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

FLSP licensees will have the same ability as existing licensees to provide unbundled legal services, offer flat rates, or participate in innovative delivery models. They will be able to do so with less tuition burden than new family law graduates, and often with more relevant experience in underserved or overlooked areas of family law.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

There is nothing in any of the recent enhancements to family law that would suggest that the access to justice crisis will be resolved in the foreseeable future from any of these measures. The FLSP license is also not likely to resolve this crisis by itself. However, cumulatively many of these measures may collectively provide more options, and promote creative approaches towards family law dispute resolution. These efforts provide opportunities for cross-pollination of different initiatives, and the use of FLSP licensees within the framework and strategies of any enhancements planned or underway.



12. Are any aspects of the proposed licensing framework unfeasible?

In light of the COVID-19 pandemic, it is advisable to delay the delivery of this model until September 2021, or later if the pandemic continues beyond this date. FLSP licensees will require considerable hands-on in-person interaction and training, including on-site experiential education.

13. Is there additional information or are there other factors that should be considered?

The law society will receive many submissions on this topic, with most of those from lawyers and lawyer associations taking a position that would oppose the creation of a new FLSP license. This reaction is only protectionary in part, as much of the underlying concerns relate to ensuring competency of services. However, the appropriate response to those concerns is to be directly involved in the creation, development, and implementation of the new FLSP license, as described above, to ensure that professional standards of competency are incorporated and insisted upon for the new licensees.

Conclusions

Many of the clients served by DCLC are in poverty because of family separation or dissolution, are experiencing legal problems connected to family separation or dissolution, or are in inter-generational patterns of poverty that are also characterized by high levels of family conflict. Hundreds of residents in Durham Region contact

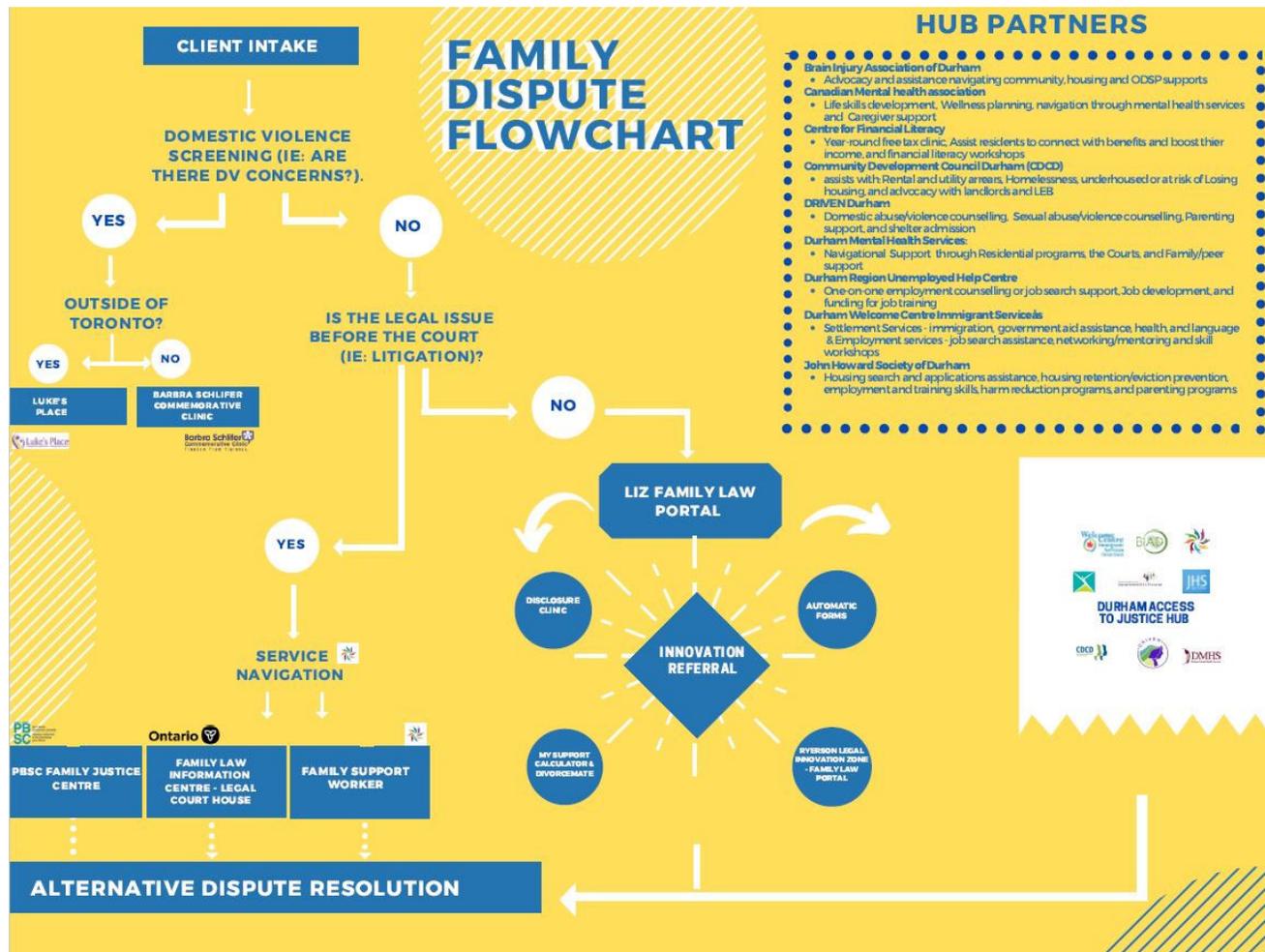


DCLC for family law services, and are informed that they can only obtain a certificate from LAO. Even then, most of these individuals are ineligible for an LAO certificate, or have already obtained a certificate and the funds have expired. Almost all of these individuals are exclusively focused on court-based resolution, on the assumption they must hire a lawyer in order to undergo family separation. This is not only contrary to contemporary trends in family law, but also invariably provides them poorer outcomes than collaborative models that could utilize the limited resources these individuals have in more productive ways. In this context, DCLC has developed the triage model described in Appendix “A,” which is still under development.

In this context, of an access to justice crisis that has not been resolved for many years, DCLC supports the creation of the FLSP license. Other parallel efforts to foster access to justice should continue and be supported, but are not a substitute to creating a new licensee, in light of other environmental factors that continue to provide challenges to acquiring cost-effective and efficient legal representation. Other innovative and creative initiatives could even be enhanced through use of FLSP licensee. This has already been observed in other contexts utilizing paralegals, including community legal clinics like DCLC, who rely heavily on paralegals in every aspect of our operations.



APPENDIX "A" – FAMILY LAW TRIAGE PROJECT





Notes:

1. DCLC does not provide parties any family law legal advice, though hundreds of residents in Durham Region call the clinic in regard to family law every year. In cooperation with the Durham Access to Justice Hub® (the “Hub”), the clinic can provide information, supports, and referrals to agencies and partners who do provide legal advice, and engages in public legal education and law reform as it relates to poverty, including in the areas of family law.
2. This project is still in development, and was expanded in January 2020 to include several partner agencies, lawyers, and mediators in Barrie and Ottawa. These cooperative relationships are essential to continuously engage in process and quality improvement, to share benchmarks and lessons, and gather collective expertise and resources.
3. The COVID-19 pandemic directly disrupted the planning and implementation of this project, starting in March 2020. In the few months of implementation, the Hub saw dozens of interested parties who utilized referrals, resources, and information provided to them. However, a considerable amount of additional training and education materials are still needed for this project to be successful.
4. The Hub is also developing a Centre for Financial Literacy, which includes free year-round tax returns. This financial information is crucial for full and early disclosure of families in separation, which can assist in early resolution and reduction in conflict. Future materials in this Centre will include budgeting, financial planning, and other crucial skills necessary for families undergoing separation.
5. Although PBSC’s program is listed here in this plan, this centre was also disrupted by the COVID-19 pandemic, and will likely not be providing services until early 2021.

#282

Please enter your first and last name	Claudia Belda
Email Address	Claudia@CRSBlaw.ca
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Thunder Bay Law Association
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Northwest, including Kenora (Kenora), Thunder Bay (Thunder Bay), Rainy River (Fort Frances)
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Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



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Family Law Legal Services Provider Licensing Model

Commentary for the LSO

By the Thunder Bay Law Association

About the Thunder Bay Law Association

The Thunder Bay Law Association (TBLA) is a voluntary organization of lawyers residing and practicing law in the District of Thunder Bay on the northwestern shore of Lake Superior.

The Thunder Bay Law Association was formed in 1905. Today the membership numbers are approximately 290 and it is administered by a 20 member Board of Directors.

The TBLA is a member of the Federation of Ontario Law Associations, and supports the submissions made by the FOLA. The TBLA had also previously made submissions on the Bonkalo report which highlighted access to justice issues and made recommendations for initiatives aimed to address the identified issues of concern with the justice system. Those recommendations included the expansion of delivery of legal services by non-lawyers, specifically, it seems, by paralegals. Though the LSO proposal does seem to exceed the boundaries anticipated by the recommendations of the report.

At this present time, we are aware that the confidence of the public in the legal system in general is at an all time low. There are significant issues that have resulted in unrepresented litigants comprising anywhere from 60% to 80% of litigants, depending on the jurisdiction. It is clear that something needs to be done. Where we disagree is what or how it should be done.

Despite disagreement by many law associations, we have to accept that the LSO will be moving forward with this new model. However, all prior concerns we put forward following the Bonkalo report still apply.

It seems that rather than focus on assisting and providing more education and support for existing practitioners to assist with access to justice and increased representation, the LSO is ignoring the fact that many lawyers, including Thunder Bay counsel already employ several strategies to reduce costs to litigants in an effort to ensure representation. Often times this includes reduction in fees which are more than competitive with paralegal fees, as advertised by them, and which are often on par with Legal

Aid fees. As we have stated before, increased funding to Legal Aid is a more likely to increase access to justice than opening up a two-tier system of justice.

There is no guarantee that this LSO proposal will advance access to justice for self represented, vulnerable or financially strapped parties. On the other hand, there a risk that it may cause actual harm to the perception of the justice system and its users, as has been the case in other jurisdiction and it will certainly divert precious resources from other, more pressing access to justice issues, which should include advances and reforms to the current Legal Aid system and representation by competent counsel.

Regardless of the above, our submissions to the call for comments can be found below:

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The TBLA believes that while there are certain areas that have been excluded from the list of permissible activities, the scope of services remains quite broad. It still allows a paralegal to assume representation in what many counsel consider to be their bread and butter files. While our initial reaction is to protect our own, we do recognize that there are many people who require assistance. If they can get it from an alternative service provider, this should make dealing with an opposing party simpler for counsel, it would assist the court by ensuring otherwise self represented parties have access to legal advice and should assist with access to justice.

However, there is nothing to suggest that this makes the system more affordable or that services are more competent. The assumption seems to be that alternative service providers would be better qualified than experienced law clerk and junior lawyers, who are already taking the bulk of those task, often at rates cheaper than those of paralegals. If also ignores the fact that the clerk and junior lawyers have supervision from senior counsel to ensure that the work completed is done properly.

At this time, many people flock to mediators to assist them in dealing with less complex issues, much like what is being proposed by the LSO for this new licensee. They also have training but it is not to the same level as that of lawyers. Often times, our experience is that substantial mistakes are made in what seems to be simple issues of property division, child and spousal support. Lawyers are then left to pick up the pieces with parties that are already upset with mistakes made and costs paid. It is not more affordable when you have to pay for things to be done properly.

Competency can be guaranteed with proper training. But in order to have proper training, alternate practitioners should be subject to the same type of training lawyers undertake. This would add an increase in cost that they would likely pass on to the public.

2. Will the proposed scope of permissible activities enable the Family Legal Services Provider to develop a business model that is viable? If so, why? If not, why not?

This is a question that should have been more deeply examined prior to getting to this step. It should have been an inherent plan of the development of the proposed licensing model now before us. It is not up to the users and the providers to determine whether this business model is viable. The LSO needs to conduct an in-depth analysis as to whether or not there really is a need for and whether people intend to use an alternative legal services provider or whether additional programs and supports would allow existing providers to fill that gap. They are the ones that need to assess whether the demand for an alternate practitioner is there. They are the ones that need to assess whether or not the broad areas that they will be permitted to participate in are actually as simple as expected. In our experience, there is no such a thing as a “simple” family matter. Often times, counsel do not even become aware of issues that may fall out of the scope of the proposed parameters until they are at case conference stage or later, if clients fail to provide relevant information. This will result in an increase in costs to the litigant and certainly a loss of confidence in the system if they are then forced to hire counsel or chose to self-represent instead

There also many times when counsel are hired for unbundled legal services which already cover the more complicated areas that the FLSP cannot do. It is unlikely that a litigant will want to pay two professionals to address their issue. Moreover, the LSO fails to take into account that, as per our own experiences with unrepresented parties over the years, that many unrepresented parties are often choosing to remain that way, not because they cannot afford counsel or assistance or because they do not qualify for Legal Aid but because they do not want to deal with any legal representation. It is mistrust in the system and the providers. A new provider class is not going to magically change that perception.

Before this proposal becomes a reality, the LSO needs to clearly answer to several questions including the following:

- a) Is there a proven demand for family law paralegal or is this a need new and junior counsel can fill?
- b) Will family law paralegals increase access to justice while protecting the public?
- c) Which markets would support full time family law paralegals?
- d) Will family law paralegals work within a law firm or independently?
- e) Is anyone going to regulate fees charged by these services providers so that it actually meets the service gap of those who are barely outside of Legal Aid thresholds but cannot otherwise afford counsel?

Nonetheless, this could be a viable business model if the intention is to have people who do this on a part time basis and the scope is more limited to areas such as uncontested divorces and form filling. These tend to be areas where the public seems to look to the internet, social workers and other third parties for assistance, many of whom do not have the training to do it correctly.

However, none of this takes into account the potentially negative effect on the practices of those members of the family law bar who currently serve people who are slightly above the Legal Aid cut off. This would certainly affect smaller firms and has the potential to make that business model a disaster. It feels like the LSO is willing to sacrifice their lawyer membership for paralegal fees.

Competence

- 3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?**

The proposed FLSP requires approximately 1 year education program specializing in Family Law, addressing 209 competencies in over 8 areas. The LSO consultation report also recommended a prerequisite of one to three years of full-time practice as a paralegal or a two-three month filed placement in family law.

If the scope of services is somewhat reigned in, this would be a satisfactory. Paralegals would already have experienced in dealing with client and other types of complicated cases from which they can draw expertise. However, having a program that is comparable to the family law portion of a law school education is not enough. That is why many students still choose to article or complete a placement program at a law firm with supervision from counsel. A two or three month field placement is not sufficient, specially now that we are dealing the reality imposed by the pandemic, which includes limited motions or limited times for motions, less availability for trial dates, limited length for conferences and materials, etc. A much longer filed placement of at least 6 months under the supervision of a senior lawyer should be required.

- 4. In your view, what scope of activities would best support increased access to affordable, competent family law services?**

This is a difficult question to answer. Even paralegals are not fully in agreement with the scope suggested by the LSO. The scope is also above and beyond what was recommended by the Bonkalo report. Nonetheless, work that can be currently completed by an experienced law clerk or duty counsel at a FLIC are likely activities in which they can provide assistance to those who need it the most and are unlikely to engage with any other legal services provided. This includes, change of name applications, drafting court forms, completing child and spousal support calculations based on straight forward income, completing uncontested divorces and providing summary or procedural advice in uncontested cases. While “simple” in nature, completing those tasks actually require broad legal knowledge to be done accurately.

Training Program

- 5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D of the Consultation Paper.**

Based on the information provided by LSO, it would seem that it is sufficient to achieve the competencies enumerated. Unfortunately, we do not feel we have a large enough paralegal presence in our jurisdiction to be able to present their point of view. In any event they are free to do that themselves.

We would hope that the training program will also emphasize training that will allow paralegals to recognize early on files that may be outside of their competency in order to prevent a waste of resources by system users who really cannot afford to pay a second professional to address their matter, thus resulting in further erosion of confidence in the justice system. Moreover, it would be expected that legal research training would also be provided but it is not mentioned as part of the proposed curriculum.

Nonetheless, this only works if the scope is reduced. If it is not the LSO is sending a loud and clear message that since the proposed limited course of student is enough to create competent family law practitioners, then it would not be necessary for lawyers to obtain a three-year university degree in law followed by articling or the Law Practice Program to achieve competence on more or less the same material.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the Family Legal Services Provider?

The proposal by the LSO does mention that there should be a prerequisite of one to three years of full-time practice experience as a licensed paralegal, but none of this experience has any actual family law requirement. It is agreed that their practice experience can assist in issues that will arise as they practice in family law but experiences in other areas of law can differ highly from what family law practitioners encounter. We believe there should be a minimum of three years of experience as paralegal or family law clerk.

7. What length and form of experiential training should be incorporated into the licensing process for the Family Legal Services Provider to support the competencies? If a field placement is required, who will provide the placements?

The preference would be that a FLSP have a training period akin to articling or a Law Practice Placement similar to the one provided locally by the Bora Laskin School of Law. However, we are cognizant that this would create a problem if they are unable to find a law firm or lawyer to supervise their placement. In that case, there would be a need for further development of a follow up program that would allow the FLSP to be immersed/observe in every step of a family law file under the supervision of the LSO.

8. Is a Continuing Professional Development requirement focussed on family law appropriate for the Family Legal Services Provider?

At least half of their required 12 CPD hours should be specifically on family law. They should attend the same CPD that lawyers must attend.

9. Should law clerks be eligible for the Family Legal Services Provider licence? Are there other groups of professionals who should be considered?

To be clear, we do not think this second class of family law legal provider should be created. However, if it is a given that it will be expanded, then law clerks should be included, especially if they have 5-10 years of experience. While they do not have experience in oral advocacy, many experienced law clerks have developed competencies specific to family law and have experience with written advocacy through the drafting of factums and such. They are already used to working under the supervision of a lawyer. The LSO has not really considered that there is already this class of service provider that has much of the experience they are trying to teach paralegals. The drawback is an increase in cost the litigant, which is contrary to the goal the LSO is trying to achieve.

General

10. What characteristics of a Family Legal Services Provider would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

The LSO is operating under the assumption that all or the majority of unrepresented litigants have chosen to remain unrepresented by the above noted concerns. That is not always the case. For those who simply do not want to engage with legal professionals, a new tier of representation is not going to make a difference. The LSO is also ignoring the fact that many lawyers already address costs by providing representation to cash litigants who are of low or middle class at rates comparable to Legal Aid or certainly cheaper than many paralegals.

Yet we can see how many people who are on the fence about obtaining representation may be swayed by the illusion of cheaper legal services that guarantee them the same type of advantages as someone with a lawyer. But this is flawed. Our own research shows that legal fees by paralegals are higher than those of junior counsel. Moreover, the education received by paralegals may cover some of the same issues, but it is not on par with that of lawyers and certainly not on par with that of a family law specialist.

Whether billing practices, accessibility and practicality are areas which differ significantly from one legal provider to the other remains to be seen. However, what is clear is that by providing two tier system the LSO is actually creating a false sense of security for litigants that may feel they are getting the same level of knowledge from a paralegal than they do from a lawyer and it is possibly creating further mistrust of the system if they pay a paralegal that was unable to perform the work. This also fails to consider that if litigants had remained unrepresented, they would have had a greater deal of deference and preferential treatment from the courts than if they were presented by a paralegal.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the Family Legal Services Provider design appropriate?

We do not think it is appropriate at this time. There are several projects to assist with access to justice in Family Law that are still in the infancy stage. It would be more helpful to support and fund the existing programs and measure their degree of success before supporting a two-tier system of representation.

Moreover, the pandemic has already resulted in substantial cost savings to represented litigants as the use of zoom means shorter appearances and the on-going reliance in technology is allowing for more immediate services.

Since the Family Law system has basically been propelled into modernization, we need time to review and measure its impact on litigants and the system.

12. Are any aspects of the proposed licensing framework unfeasible?

The model leaves it to the FLSP to decide if the issues are within his or her scope of practice. They may not always be able to determine this and work may be performed and billed when they do not have the competency to proceed with representation.

In order to address access to justice and specifically the issue of costs, is there some form of regulation that will be applied to paralegal fees to ensure they remain lower than that of lawyers? This is doubtful or it is likely lawyer's legal fees would have been similarly regulated.

Has the LSO engaged with paralegals to see if they are willing to put their practice on hold to go back to school to achieve licensing at the cost of their current income? If not, how does offering this licensing model address the lack of representation?

LSO is also operating on the assumptions that paralegals will refer to counsel when they find issues that exceed their scope of representation and that a litigant will accept it and follow through.

13. Is there additional information or are there other factors that should be considered?

The consensus is that because there are already several initiatives meant to address access to justice and not enough data provided or obtained by the LSO to support this FLSP initiative, that it should not be rushed through without allowing us to see if any existing projects will substantially affect access to justice. Instead of focusing on the two tier system, the LSO needs to put effort into supporting lawyers and the misconception that public has about representation rather than continuing to perpetuate it as an after thought to a new "more" attractive alternative.

Moreover, more efforts should be directed at increasing Legal Aid funding and income threshold as the representation crisis started with the funding crisis.

Respectfully submitted by the TBLA

#283

Please enter your first and last name	Gordon Harris
Email Address	Gharris@harrishurtline.com
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Waterloo Region Law Association
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)
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Other Components of Licensure	
General	



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November 30th, 2020

To the Family Legal Services Provider Consultation of the Access to Justice Committee:

Your committee has invited lawyers, paralegals, legal organization, and members of the public with the opportunity to provide comments about the proposed Family Legal Services Provider Licensing model. We are the Board of Trustees of the Waterloo Region Law Association. Our association represents a diverse membership of Law Society of Ontario licensees who are both lawyers and paraprofessional members of our shared profession. Below is the submission of our PARAPOWR membership group which provides an internal voice for the paraprofessional practitioners who are among of membership.

We trust that this submission is in order.

Thank you for this opportunity.

Warm regards,

Gord Harris
Secretary, W.R.L.A.

VIA E-MAIL TO : submissions@lso.ca

November 24, 2020

Senior Counsel, FLSP Call for Comment
Professional Development and Competence
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

Dear Sir/Madam:

RE: Family Legal Services Provider Licence

Please accept the following submission on behalf of PARAPOWR of the Waterloo Region Law Association in respect of the above-referenced matter.

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The proposed scope of permissible activities supports increased access to affordable, competent family law legal services in that same will promote access to justice for low-income and middle-income Ontarians presuming that the cost of paralegal services will be less than that of the services provided by Barristers and Solicitors. As such, it will address the gap that presently exists with respect to affordable access to representation in Ontario courts.

Low-income and middle-income Ontarians who do not otherwise qualify for legal aid and lack the resources to retain lawyers are left with no viable or affordable alternative other than to represent themselves and are taxed with navigating through the courts with limited or no knowledge or resources. The FLSP licence will provide a vehicle by which low-income and middle-income Ontarians, who would otherwise self-represent, to have increased access to justice with a properly trained Paralegal who, without supervision, provides representation and assistance to address their unmet legal requirements.

A caveat to the proposed scope that ought to be reconsidered is the proposal that a Paralegal, retained to draft, negotiate and prepare a Separation Agreement must then send the client off to a lawyer for independent legal advice. The proviso is antithetical to the goal of efficiency and access to justice and it would ultimately undermine the general public's confidence in the abilities of the Paralegal professionals. An individual that cannot afford to retain a lawyer becomes taxed with the obligation to retain a lawyer to review the Paralegal's drafting, negotiation and preparation of a Separation Agreement.

Further, the "Inside Scope" of permitted activities is too narrow and restrictive by design which will severely limit family law matters in which a Paralegal may practise. This is concerningly counter-intuitive to the purported goals of the proposed FLSP licensing program.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

Yes. As is the case with much of the legal profession, the vast majority of legal professionals do not devote themselves to and exclusively practice in one area of the law. Family law intersects with many other facets of the law including, but not limited to, criminal, real estate, wills and estates, et cetera.

A sustainable family law business model is achieved by the delivery of a value proposition which is the collection of products and services that meets the needs of unrepresented family law litigants. This is particularly so with the contraction of funding for Legal Aid Ontario. The scope of permissible activities proposed are segmented based initiatives that are designed to reduce

the number of unrepresented litigants in family courts. Undoubtedly the scope will evolve over time to support that goal.

The niche or framework for the scope of permissible activities should coincide with the services provided by Legal Aid Ontario for those Ontarians who do not qualify for family law legal aid assistance in the broad areas of custody, access and support as well those areas not covered by Legal Aid Ontario including, but not limited to, divorce, marriage contracts/cohabitation agreements, change of name applications and changes to wills (which is not delineated within the scope of practice but intrinsically an issue that arises upon the breakdown of a marriage).

Paralegals representing clients within the proposed scope of permissible activities can play an essential advocacy role in assisting unrepresented family law litigants access justice to enforce their rights.

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

We believe the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope and are already demonstrated by the Paralegal professional daily. We noted one competency of “Intimate Partner Violence” but is unclear whether that includes a competency for “Domestic Violence Screening”. It should.

The competencies for Paralegals to deliver legal services to self-represented low-income and middle-income Ontarians who do not otherwise qualify for legal aid and who cannot afford to retain a lawyer should be broad as noted above and dynamic so as to ensure the public’s confidence in the administration of justice.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

We believe that Paralegals with proper training will fill a void and enhance access to justice thereby freeing up valuable court time. We believe the scope of activities as delineated in the “Scope of Permissible Activities for Family Legal Services Providers” is a very positive start to the scope of activities which will continue to evolve as it is practically applied.

Training Program

5. Is the proposed training program of sufficient duration and rigor to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D.

The proposed training program should be modeled after or similar to the Family Law courses provided by law schools and taken by lawyers with necessary adjustments to account for the limited scope of practice for Paralegals and to ensure the public’s confidence in the

administration of justice. This could also include mandatory annual family law specific continuing legal education for Paralegal practitioners.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

The various machinations of what may or may not equate to prerequisite experience is infinite in nature. For a lawyer coming out of law school, there are no pre-requisites to practicing in the area of law in which he or she practices. A paralegal who has obtained his or her paralegal licence is not precluded from practicing within the scope of her or his licence. If the individual has written and passed the examination to obtain the FLSP licence, whether grandfathered or scholastically achieved, same should be sufficient.

7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

We believe there should be a grandfathering component to the granting of the FLSP licence. For example, the author of this submission on behalf of PARAPOWR of the Waterloo Region Law Association has been working as a Law Clerk since 1997, proceeded through the then available grandfather Paralegal licence process in March 2008 and has been working in a general practice law firm with the major focus on family law for twenty-three (23) years. We respectfully submit that to be grandfathered, the Paralegal should have to take an examination identical to that which the paralegals that enroll in the six (6) to eight (8) month training program (or whatever period of scholastic study is determined) must complete.

If it is determined that a field placement is required, we believe it should mirror as much as possible the articling regime. The concern with this approach, however, is that there has been so many law associations and legal professionals that have publicly decried that paralegals should not be granted any kind of licence to practice family law, that this approach could potentially result in law firms and legal professionals not hiring for the field placement, thereby frustrating a candidate's ability to meet this requirement to obtain the FLSP.

8. Is a CPD requirement focused on family law appropriate for the FLSP?

We believe a CPD component focused on family law is essential and appropriate for the FLSP to maintain public confidence in the provision of courtroom and other advocacy services to help ensure that the administration of justice does not come into disrepute.

9. Should law clerks be eligible for the FLSP licence? Are there any other groups of professionals who should be considered?

Law Clerks properly supervised and acting under the direction of a Lawyer or Paralegal should be permitted to attend for routine procedural matters such as first return dates on a Motion to Change. Law Clerks should not be considered eligible for the FLSP licence.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (Billing practices, cost structure, accessibility, practicality, other?)

The justice system is difficult to peregrinate without legal assistance. This need can be met with professional paralegal assistance for self-represented low-income or moderate-income Ontarians who otherwise cannot afford to retain counsel.

11. Given the recent enhancements to accessing family law (ie. court modernization, steps to justice) is the FLSP design appropriate?

The pandemic has exacerbated the pre-existing issue of a significant lack of access to justice by the most vulnerable of society. They are at significant risk of “falling through the cracks” because they cannot afford to retain a lawyer to assist them.

12. Are any aspects of the proposed licensing framework unfeasible?

The requirement (more detailed in Paragraph 1 supra) that the FLSP licence mandates an individual to retain a paralegal and then retain a lawyer to review the paralegal’s drafting and negotiation runs counter to that which the FLSP licence is trying to achieve.

13. Is there additional information or are there other factors that should be considered?

While noted that the Law Society of Ontario requires external input and further information, we submit that Paralegals be required to gown when appearing before the Superior Court of Justice, Family Court with some readily identifiable difference from Barristers otherwise the public itself may discern a reasonable apprehension of bias. The suggestion from the Paralegals of the Waterloo Region Law Association is that court room respect and decorum dictates that Paralegals should be called to the limited-scope FLSP provider bar and be gowned in a readily identifiable distinguishable gown from that of Barristers of the Superior Court of Justice of Ontario not dissimilar from and in fact consistent with the current gown difference between Her Majesty’s Counsel Learned at Law (Queen’s Counsel) and the remainder of the Ontario Barristers.

Alternatively, same could be achieved by distinguishable tabs.

SUMMARY

In its simplest form, the Report of Honourable Madam Justice Annemarie E. Bonkalo dated December 31st, 2016 has identified that there is a plethora of self-represented individuals that are taxing the court’s valuable time and impeding and frustrating timely access to justice. To take that one step further, there is a plethora of self-represented individuals who simply cannot afford to retain the services of a lawyer and lawyers are not filling that void by reducing fees or providing pro bono services leaving these self-represented individuals to maneuver through a complex court system with little or no knowledge.

If the judicial system, including all of its players, was to embrace the creation of an FLSP licence for Paralegals, it would serve best to assist those already not represented and who, by historical numbers, will continue to self-represent, likely in increasing numbers.

The problem has been identified. The solution cannot be no change.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Ann Marie Yantz

Ann Marie Yantz, on behalf of PARAPOWER
Waterloo Region Law Association

#286

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Please make a selection below	I am a lawyer
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If you indicated 'Yes', please tell us which organization or association you are representing:	Family Lawyers Association
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Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



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November 30 , 2020

Via online submission

Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen Street West
Toronto, Ontario
M5H-2N6

RE: Family Lawyers Association's Response to the Law Society of Ontario's Family Legal Services Provider (FLSP) License

The Family Lawyers Association was founded 26 years ago in response to the legal aid funding crisis of the mid-1990s. The FLA is governed by a seven member volunteer Board and our membership consists of 238 Ontario lawyers working primarily for low-income clients. The majority of our members accept legal aid certificates and/or are on the panel of lawyers who represent children as Agents of the Office of the Children's Lawyer in both custody and access and child protection matters. Some of our membership are per-diem Legal Aid Duty Counsel who work in the Family Court system and at Family Law Information Centres in our Court houses representing and assisting the self-represented and unrepresented. Accordingly, the focus of the FLA has always been to work towards improving Legal Aid Ontario (LAO) and protecting the rights of our most vulnerable low-income citizens.

The FLA has grave concerns about the Family Legal Services Provider License Consultation paper ("FLSPL"), authored by the Family Law Working Group ("FLWG"), that the Law Society of Ontario ("LSO") released for review and comment on June 26, 2020 and the implementation of the Family Legal Services Provider License ("FLSP license") based on the model set out in the FLSPL for paralegals (and other legal service providers, some of whom were not identified). The recommendations contained in the FLSPL to Convocation do not provide the solution to the access to justice issues identified in the report.

The FLSPL said there were three principles that guided the development of the proposed FLSP license for paralegals and other legal service providers. These were:

- a) Access to justice;
- b) Public protection; and
- c) Viability

And according to the FLSPL they also took into consideration the business models of paralegals in developing their proposal for a license.

It is the position of the FLA that the FLSPL's recommendations failed to be guided by those principles.

Preliminary Comments:

Rachel Birnbaum and Nicholas Bala's paper, Experiences of Ontario Family Litigants with self-representation provides a snapshot of those representing themselves in Family Court during the period October 2011 to March 2012. Many of their observations and preliminary comments in this paper hold true today. As stated in that paper, it is important to distinguish between the unrepresented litigants (those acting on their own who at one point may have been represented or not, but cannot afford legal representation or do not qualify for legal aid) and the self-represented litigants who chose to represent themselves because they wish to.

Statistical distinction between the two groups is needed in order to provide the best suited remedy, especially given that, as per Birnbaum and Bala's paper, 54% of self-represented litigants did not report affordability or not qualifying for legal aid as a reason for not retaining a lawyer. According to the same paper, 56% of self-represented litigants, in contrast to 5% of represented litigants, reported that lawyers always or sometimes make things worse. If the self-represented litigants, those who choose to be self-represented, believe that lawyers are part of the problem, paralegals providing the same legal services will also be perceived as being part of the problem. Given these issues, it is important to remember that the true self-represented litigant will not retain a lawyer or any other service providers to assist them with their family law issues regardless of what avenues are made available for them.

The group of litigants that should be focused on is the Unrepresented Litigants. It may be that at some point in the process these litigants were unrepresented, but this does not mean that they were unrepresented through the entire proceeding. The statistics on unrepresented litigants require further inquiry in order to determine at what stages of the litigation process litigants are finding themselves unrepresented, and the reasons why. Allowing paralegals to practice within a broad scope of family law will not necessarily address the access to justice issue if litigants are requiring representation at stages outside a paralegals' scope of practice or for reasons other than being unable to afford representation.

This is not exclusively an Ontario problem, in fact in Alberta 71% of litigants who are not represented chose to self represent and not retain counsel as per the Law Society of Alberta's Alternate Delivery of Legal Services Final Report. It is important for the LSO to study this phenomenon and work towards prompting the importance of having legal counsel when dealing with family law issues.

Paralegals are not necessarily a less expensive form of representation. Pursuant to a Globe and Mail article dated September 9, 2015 entitled "I want to be a Paralegal. What will my salary be?", starting-out rates for paralegals are between \$50 to \$75 an hour, and go up from there as stated then by Ms. Simms, President of the Canadian Paralegal Society. They have no doubt gone up from there to 2020. Some paralegals in private practice earned six-figure salaries, depending on their specialization and rate of referrals.

In 2018, in the USA, Indeed Career Guild did a survey of paralegals' annual salaries in each of the states and found they ranged from \$42,050 per year in Arkansas to \$80,470 per year in the District of Columbia. Using the average Canadian dollar value of \$.7717 in 2018, that would have been around \$52,562 to \$100,600 then and no doubt gone up now. The assumption was made that paralegals employed by others as well as those operating their own businesses were canvassed meaning in the latter case, their salaries were not their gross incomes but their net salaries after deducting expenses.

For the 46% of unrepresented litigants who have stated that their lack of representation is a direct result of not being able to afford a lawyer or qualifying for legal aid, there is no empirical

evidence that paralegals would be an affordable alternative given that, as stated in Julie Macfarlane's paper the National Self-Represented Litigants Project, 40% of these litigants earn less than \$30,000.00 a year.

Many of the issues that impede individuals from retaining a lawyer in remote regions outside of metropolitan areas, will also be carried forward when retaining a paralegal and therefore do very little to address the access to justice problem in these areas.

Scope of Practice:

The FLSPL goes far beyond what Justice Annemarie E. Bonkolo recommended in her Report dated December 31, 2016 entitled "Family Legal Services Review" that was submitted to the Minister of the Attorney General at that time, Yasir Naqvi, and LSO Treasurer, Paul Schabas. The differences are the FLSPL allows paralegals to a) go to Court, including trials; b) deal with spousal support; c) deal with certain property issues which the FLSPC deemed to be non-complex; d) deal with self-employed payors (child and spousal support) wherein income determination is not an issue, which will hardly be the case; and e) draft Separation Agreements as long as the clients receive independent legal advice from a lawyer.

There is non-recognition in the FLSPL of the complexities with a family law practice – see our submissions to Justice Bonkalo's 2016 Report submitted to the then Minister of the Attorney General, Yasir Naqi and the then Treasurer of LSO, Paul Schabas, as what seems initially a "simple" property claim can turnout not to be. If a paralegal has to get off the file and a lawyer can be hired, then there will be costs to the client. Also, the question arises why allow paralegals to draft any domestic contracts in view of the negligence claims for domestic contracts. And further in view of the claims, it will be the lawyer who provided the independent legal advice who will be subject to the negligence claims, not the paralegal who drafted the contract. Further there is no recognition in the said Report that custody/access matters are complex issues.

Methodology Used:

The FLSPL confirms they do not know if paralegals will necessarily be a less expensive form of representation as they stated “there was no relevant data to support a comparison between what paralegals would charge for family law services and the amount lawyers currently charge”. So, no empirical or provable data was obtained. No surveys were done. No Pilot Project was even done by our LSO which is paid millions of dollars in fees annually by all practicing lawyers and paralegals. The LSO would have had the available resources to have hired additional professionals and should have conducted the necessary research prior to the LSO issuing the FLSPL on June 26, 2020.

Yet in spite of not having such data, the FLSPL states “a preliminary environmental scan of paralegal billing practices suggests that paralegals *may be* (italics ours) able to offer family law services in varied and alternative formats” and “it *appears* that paralegals bill clients smaller amounts, more frequently. Second, it *appears* that paralegals charge lower hourly rates than lawyers. Third, while paralegals occasionally accept flat fees for matters, they are *more likely* to charge block fees for various steps within a matter”. To our association, what this means is the FLWG has based its recommendations in the FLSPL on speculation. The FLWG is asking Convocation to accept its recommendations and its hypothesis for the proposed special license in that they are suggesting that paralegals will reduce the cost of legal services in Ontario. This is based on evidence that will be provided later to the LSO with respect to hourly rates and billing models to be used by paralegals by means of surveys, studies, etc. This vital information should have been collected and the data represented prior to that subcommittee rendering its Report.

Changes to the Practice of Family Law as a result of the Pandemic:

The FLSPL was rendered on June 26, 2020 yet it did not address the ever-changing methods and practice directions as to how our courts are functioning during the world-wide Covid-19 Pandemic of 2020. Many of these changes will remain in effect in the future due to the convenience, independence due to non-reliance on transportation systems, and time saved by lawyers and litigants.

For some time various law associations and family law groups had made recommendations the whole Ontario Court system needed to be overhauled technologically and changed so the current Court processes could be automated, allowing for online filing and record management. The CBA Report of their Access to Justice Committee entitled “Reaching Equal Justice: An Invitation to Envision the hand Act (2013 at page 765) even advocated for online dispute solutions.

The Ministry of the Attorney General (“MAG”) started taking baby steps with changing the Civil Court system, but not the Family Court system. But it was due to the worldwide Covid-19 Pandemic in 2020 that brought a halt to everyday life as we know it, resulting in the Ontario Courts closing and suspending Court matters on March 15, 2020 except for urgent Court matters and quickly Ontario’s justice system was also forced to shift gears. The entire workforce in the Court system had to suddenly change how justice was being administered, adopting new ways of doing things and acquiring and installing the means to get it all done quickly. That meant rapidly updating procedures and creating policies to physically shut down courthouses and allow wider use of virtual hearings. And that required ramping up the technology and bridging the technological gaps.” (Marg Bruineman, “In the Covid-19 World, a new brand of Justice is being Served,” *Collingwood Today*, April 24 2020) As the Honourable Doug Downey, Minister of MAG in charge of the Court system said “We've modernized the legal system by about 25 years in 25 days. It's really quite phenomenal the work that's been done. The provincewide ability to operate remotely is supported by a \$1.3-million boost. That includes expanding the use of video technology, supplying the courts with digital recording devices, laptops and teleconference lines for audio court hearings.” Bills in the provincial legislation were also passed modernizing through remote means commissioning and notarizing. Minister Downey also launched a pilot program in Barrie to address criticism that the provincial court system still relies heavily on a paper-based process and communication through fax machines. (Bruineman, “In the Covid-19 World”)

Starting on July 6, 2020, the Family Courts reopened and Judges in Courts are hearing Court matters that were scheduled during the Pandemic period and rescheduled starting on July 6, 2020 through teleconferences and Zoom applications/virtual hearings. "There's a number of modernization issues that we had put in motion, but there was just a ton more to do and this

(COVID-19) has definitely made it go faster," said Minister Downey. With the hardware now permanently in place, Minister Downey says the next step is to advance the system further. "I've already turned my mind to that. I'm already talking to the chief justices. We all have some ideas," he said. "We know, as we move out of this, we're going to have a backlog and we need to be in front of it." (Bruineman, "In the Covid-19 World").

Judges and lawyers are working from home remotely and issues are being resolved by conference calls. The justice system is also adapting, and updates on procedures can quickly be done by filling in boxes. And Minister Downey said it continues, not just to deal with the current crisis, but also to take justice out of the past and introduce it to more modernized processes. "I have a long list of things I would like to see the system challenged with and we can move things forward. There really are so many areas that we can improve and change how the system works," Minister Downey said. "I have a chart that I work through and we just keep motoring and we're going to stay ahead of the challenges." (Bruineman, "In the Covid-19 World").

This modernization of the Court system has made it easier to file Court documents and in future, retrieve Court information. Also, much of the family lawyers' time has been freed up so lawyers could have more time to take on more clients and readjust their fees because costs in family law have decreased. Pre-COVID-19 lawyers were wasting a lot of time spending time travelling to the various Court houses; waiting in Court houses to be heard; spending money on process servers; and on staff to take care of their bricks and mortar offices while they are away all day at Court. There was no Zoom, no automation of filings and no emailing as a means of service. Covid-19 has changed all this.

The Pandemic has resulted in facilitating access to justice by providing court services by zoom, virtual applications and teleconferences to many areas outside Toronto where there are no transportation infrastructures so that litigants do not have to travel to Court to get legal advice, for their Court appearances and should not have to take off as much time from work.

**Risks and Deficiencies
Family Law Working Group
Of the Law Society of Ontario
June 2020**

The establishment of the FLSP License's purpose is to meet unmet legal needs in the area of Family Law. The FLA takes the position that licensed paralegals should only provide services under the direct supervision of a Family Law lawyer given the complexities involved in family law cases. The FLA has been consistent and remains consistent in their position with respect to in what capacity paralegals can assist families in crisis after a marriage/relationship break up. We direct the committee and the LSO to the FLA response to Justice Bonkalo's 2016 report submitted to Yasir Naqi, then Minister of the Attorney General, and Paul Schabas, then Treasurer of the LSO.

The questions posed by the FLWG presume that our Association is in favor of this initiative and this initiative will address the long-standing issue of access to justice in the area of Family Law. The FLWG recommendations do not recognize the risks and the deficiencies in their recommendations. The public can only be protected if these licensed paralegals work directly under the supervision of a family law lawyer.

A. LAW SOCIETY HAS NO INFORMATION/DATA THAT PARALEGALS WOULD CHARGE LESS THAN LAWYERS

As stated, the FLWG acknowledges there is no relevant data to support the proposition that paralegals practicing family law would charge less than lawyers. The FLWG has made assumptions but has no hard facts to support these assumptions. It is important to:

- 1) Know exactly what paralegals would charge for family law services;
- 2) Given the current state of practice under COVID 19, it is unrealistic to assume paralegals would not charge for e-mails and phone calls. Courts will remain virtual in the short and long term, so travel time is not a major issue.

- 3) The FLWG should have conducted these surveys and focus groups to collect additional information regarding hourly rates and billing models employed by paralegals and lawyers prior to rendering this wide sweeping report. As such, the Working Group has no empirical data to support their assumption that paralegals are a less expensive option than a family lawyer. Thus, there is no evidence that the licensing of paralegals in family law will actually meet unmet legal needs in family law and assist in addressing the access to justice issue.

B. EDUCATION REQUIREMENTS

The Washington Project was not successful and therefore did not provide a mechanism to meet unmet legal needs. Family Law is a complex area of law and intersects with other areas of law such as 1) bankruptcy and insolvency; 2) corporate law; 3) constitutional law; 4) criminal law; 5) employment law; 6) estates planning pension; 7) personal injury; 8) property law; 9) real estate law; 10) tax; 11) trusts; and 12) wills. In addition, training in 13) mediation; 14) collaborative law; 15) arbitration; 16) legal coaching; and 17) working with self-litigants is also needed. This is another reason why a minimum 6 to 8 month college education full-time or one (1) year education full-time delivered “primarily in person” is not enough.

The FLWG’s own Section on Competencies outlines the complexities involved in the practice. Yet, the FLWG outlines minimal educational requirements for those paralegals applying for this license. The FLWG does not cost out the educational programs required by paralegals but as with all costs, these costs will be passed onto the consumers of this service and will be reflected in the hourly rate/block fees which to date the LSO has been unable to quantify. It is the submission of the FLA the public may not understand the difference between a paralegal and a lawyer representing them and the limitations placed on the paralegal. This is what was found in the Washington Pilot Project that for e.g. the clients were sometimes confused about exactly what the licensed practitioners could do and could not do. This led to clients doing the tasks the practitioners could not do by themselves. Or they hired an unbundled lawyer. This will be a particularly important concern for the immigrant populations or challenged populations. This also places the public at risk if they chose to hire a paralegal to represent them in a family law

matter. Nor is there any evidence that their services will be less costly than retaining a family law lawyer.

The Paralegal Society of Ontario's paper, "Submissions by the Paralegal Society of Ontario and the Licensed Paralegals Association of Ontario for the Review of the Paralegal Profession", states that the admission to paralegal college programs needs to be more stringent and that applicants need to be screened for their suitability to the profession. More than 80 percent of paralegal students who responded to the Paralegal Society of Ontario's student survey agreed that a higher admission requirement for paralegal students would be beneficial for them to meet the appropriate standards of competence. The Paralegal Society of Ontario have themselves expressed concerns that lowering the passing grades to 50 percent, which took effect in 2013, for paralegal students would affect their future practical abilities and competence. Concern was also expressed over how some important subjects are too condensed to meet the pre-licensing educational requirements and finally, how there is a disproportionate ratio of compulsory legal courses versus non-legal courses. Given the issues with the current education requirements for paralegals, any expansion of their scope of practice into family law would entail an overhaul of the current system resulting in added expenses for them that will then be passed on to the client.

C. INSURANCE COSTS

Given the limited functions that paralegals are currently permitted to do at this point in time and taking into account the far-reaching areas of practice recommended by the Working Group, it can be assumed with certainty that paralegals liability insurance will increase considerably and this increased cost will be passed onto consumers and will be reflected in the hourly rates/block fees charged. Their insurance should not be provided by LAWPRO. For instance, Paralegal Insurance Canada which is found on the LSO website quotes annual insurance rates of \$650.00 plus taxes. Contrast that with lawyer annual rates through LAWPRO for a base premium in 2021 will be \$3,000.00 per year plus taxes.

Another concern is how will the public recognize the limitations of the paralegal practice in family law? This will need to be very clear in retainer agreements. If the matter becomes more complex as it often does, it will just increase costs for the client.

Family Law has the 4th largest number of LawPRO claims, resulting in \$3.8 million per year in costs as per Law PRO's 2016 Malpractice fact sheet. In the last five years 1 in 5 LawPRO claims involved a domestic contract. The number of claims continues to rise as family law becomes increasingly complex. If paralegals are permitted to practice in limited areas of family law they will be obligated to make costly changes to their insurance coverage, which will result in an increase in expenses for them that will then be passed on to the client.

Conclusion:

a) FLA Survey

Our board recently conducted a survey of our members regarding the issues raised in the FLSPL with 25% responding. The following were the results:

- 76% practice in Toronto and the rest in other areas;
- 35% have been practicing 1 to 10 years; remaining 65% have practiced 10 years or more;
- 67% are sole practitioners; 33% work in law firms of 2 to over 10 lawyers;
- 45% of those members practice family law 100%; 33% practice family law 75% to 99% of the time;
- Areas of law practiced by those who do not practice 100% family law range, also practice in the areas of estates; bankruptcy; civil litigation; criminal law; real estate; employment law; corporate law; WSIB; mental health law; immigration law; policy & legislation; and child protection law;
- A variety of legal services are provided, including research, arbitration and mediation, both as counsel and as the mediator or arbitrator;
- Members are adaptive as to how they bill for their work – they have a variety of payment packages running from flat fees to sliding fees to legal aid to employment contracts with 90% including the hourly rate as one of their forms of paying;
- Hourly rates can run as low as under \$100 to over \$500 an hour; 45% have charged \$199 or lower; 31% have charged between \$200 and \$299 an hour;
- 83% said they do provide legal services for under their usual rates;

- 10% employ paralegals; 34% work with junior lawyers who charge \$100 to \$299 per hour; 29% offer the services of junior lawyers to family law clients who cannot afford their hourly fees;
- 78% accept legal aid certificates while others (as stated earlier) create other methods of payment to assist those of modest means;
- 67% provide unbundled services in their family law practice, with 56% using them 25% of the time or less;
- 76% use limited scope retainer agreements and 57% use them 25% of the time or less;
- 26% provide legal coaching services about around the same percentage of time or less in their practice;
- 19% provide legal services to family law clients at legal aid clinics and other organizations – where they would be paid a discounted rate for their services or give of their time freely;
- 24% provide family law legal services in the Family Courts as Duty Counsel;
- 20% are participants in other forms of alternative legal information and advice which include legal hotlines; emergency advice; JusticeNet; workshops in communities, etc.
- The areas that family law files intersect with are all of the ones listed above in these Survey results;
- 97% do not support paralegals providing legal services to family law clients without supervision of lawyers;
- 54% said they are agreeable to paralegals providing certain family law legal services as long as they are supervised; 48% said they do not agree to this;
- If paralegals are allowed to provide legal services to family law clients, without the supervision of a lawyer, 47% said they should be allowed to do simple or joint divorces; 41% said make change of name applications; and 43% said attend First Appearance Court; with small percentages suggesting other legal services;
- The rate of \$450 per hour was mentioned as one rate a paralegal is known to charge which unrepresented clients could not pay; and a high flat fee was charged by a paralegal for unbundled services;
- A majority of the members added in their comments sections that family law is too complex an area for paralegals to practice.

b) Concluding Comments

Pre-Covid there were a number of court-based and non-court-based programs that were improved and expanded to provide more access to justice for family law litigants. The court-based programs were: 1) the mandatory information program which was about a 2 hour program headed many times by senior family law lawyers in some areas who were available during and after those programs to answer questions relating to family law and procedure; 2) Family Law Information Centre at which Duty Counsel with the assistance of court staff (sometimes) provide legal advice, court forms and manuals, and provide litigants with set hourly appointments drafting Court documents; 3) mediation services; and 4) dispute resolution officer program. The clinics that provided mediation services to the courts will provide more hours off-site to clients for matters that take longer to mediate or more complex matters at hourly rates geared to the incomes of the family law litigants involved. Some/many of those mediation clinics are staffed with a variety of personnel including experienced family law lawyers acting as mediators providing opportunities for clients to receive legal advice.

Data should have been collected by the FLSPL via studies and surveys conducted to determine how well these services were being utilized by family law litigants and what further improvements could have been made. Some/many of our membership who were involved in these programs found family law litigants were not taking full advantage of or utilizing these services by for example doing their Mandatory Information Program on line instead of attending the court house personally for these sessions, and as well not attending their pre-set appointments they had made at the Family Law Information Centres with lawyers and staff waiting to prepare their Court documents and obtain legal advice; or pre-set appointments to meet with mediators.

During Covid, in some areas, these court-based and non-court based services have not been as available. It is our position they should be re-opened and use virtual technology to continue their previous services.

The non-court based programs that were created to address the issue of access to justice in family law include a) Ontario's Family Law Limited Scope Services Project; b) CLEO's Steps to Justice Guide; c) 393 Mediate; d) Peel Family Mediation Services; and e) London Family Law Clinic.

During Covid, the CLEO's Steps to Justice Guide have Chat lines available for litigants to ask questions and receive information regarding court procedure. Data and information on their utilization pre-Covid and Covid should also have been collected before the Sub-Committee report was released.

Other organizations have been established to ensure that family law litigants who do not qualify for legal aid funding have access to low cost legal services. Two of these organizations are Self-Rep Navigators and JusticeNet.

The conclusion is that more has to be done and should have been done by the LSO before rolling out this model of a license in that they do not have the information required which demonstrates this license will meet unmet legal needs in the area of family law in Ontario.

Other suggestions have been provided but not all have been implemented. One program that was implemented before Covid-19 is law students assisting in clinics at 311 Jarvis Ontario court of Justice Court house and 47 Sheppard to assist family law litigants and their work with the unrepresented was supervised by duty counsel.

Another suggestion is to expand the legal aid university clinics in the law school cities of Thunder Bay, Toronto, Kingston, London, and Ottawa to provide more family law services for unrepresented litigants in this area.

All of the above serves to meet the unmet legal needs of the unrepresented in Ontario.

Yours truly,



Julia Vera
Chair of the Family Lawyers Association
On Behalf of the Board of Directors

#287

Please enter your first and last name	Lindsay van Roosendaal
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Please make a selection below	I am a lawyer
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Other Components of Licensure	
General	



OBA Submission on the Law Society of Ontario's Consultation on Family Legal Services Provider Licence

Submitted to: The Law Society of Ontario

Submitted by: Ontario Bar Association

Date: November 30, 2020



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BAR ASSOCIATION
A Branch of the
Canadian Bar Association

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BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



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Introduction

The Ontario Bar Association (OBA) appreciates the opportunity to provide this submission in response to the Law Society of Ontario's (LSO) Consultation Paper on the Family Legal Services Provider (FLSP) Licence (the "Consultation Paper") prepared by the Family Law Working Group ("FLWG")¹.

The Ontario Bar Association

Established in 1907, the OBA is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system and who provide services to people and businesses in virtually every area of law in every part of the province.

Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and delivers over 325 in-person and online professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission was prepared by members of the OBA Family Law Section, in consultation with the OBA Women Lawyers Forum. These members represent a wide range of clients within the family justice system, both in litigation and various alternative dispute resolution processes. They have significant expertise in provincial and federal family law legislation, case law, and applicable court rules across the full spectrum of family law issues.

Executive Summary

The OBA has and continues to be a strong advocate for access to justice. It is a central interest for the OBA's members and the public we serve. However, the paramount consideration of protecting the public cannot be sacrificed in pursuit of the laudable goal of providing legal services in the name of

¹ Law Society of Ontario, Family Legal Services Provider Licence Consultation Paper, June 2020. Available at <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2020/flsp-consultation.pdf>



access to justice. The objective must be to support “access” without compromising the quality of “justice.” In short, justice must be both affordable and meaningful for the people of Ontario.

The FLWG’s proposed FLSP Licence model does not achieve this objective. The proposed model goes further than the recommendations provided by Justice Bonkalo in the Family Legal Services Review², and it goes further than the task assigned to the FLWG by Convocation³.

There are several fundamental problems with the FLSP licence model as proposed in the Consultation Paper:

1. It fails to reconcile the fact that family law matters cannot be reliably identified as “simple” or “complex” at the outset, and evolve over time;
2. It does not provide a workable proposal for lawyers, paralegals and the public to distinguish between in- and out-of-scope activities;
3. It necessitates such robust training and education that its ability to deliver a competent professional that can provide legal services in a more cost-conscious manner is brought into serious question; and
4. It perpetuates a discussion that is distracting and directs investment away from other meaningful access to justice projects and initiatives.

The answer to the access to justice problem is not, in our submission, to expand the delivery of legal services to additional providers. This adds another tier to an already complicated and overburdened system, while ignoring existing problems that would benefit from scarce resources and reform. Rather, access to justice in family law can be better achieved by:

1. Simplifying and streamlining the family justice system;
2. Encouraging alternative dispute resolution processes where appropriate;
3. Supporting and enhancing the numerous access to justice initiatives already underway which assist the public in obtaining the legal advice they need from lawyers; and

² Justice Annemarie Bonkalo, Family Legal Services Review (December 31, 2016). Available at https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/

³ Law Society of Ontario, Family Law Action Plan. Available at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/2/2017/2017-dec-convocation-access-to-justice-committee-report-final.pdf>



4. Supporting and enhancing the variety of community resources, services and supports available from appropriate professionals and organizations.

The Family Law Context

The OBA's previous submissions to the Ministry of the Attorney General⁴ and to the LSO⁵ detail the critical context for this discussion, including:

- The importance of family law to the people of Ontario;
- The potentially devastating consequences of flawed or inappropriate advice;
- The inherent complexity of the legal area;
- The evolving nature of family law issues; and
- The inability to safely divide these matters into discrete issues.

Other justice participants, including the judiciary⁶, raised similar concerns.

These issues remain critical and yet have not been reconciled by the FLWG or the LSO to date. Access to justice cannot be achieved without recognizing these fundamental underpinnings, and the LSO cannot carry out its mandate to protect the public without adequately addressing this critical context.

The complexity of family law demands work on multiple fronts. The search for a single solution, by way of the creation of a FLSP licence, fails to understand that complexity and the need for a variety of responses. Further, the cost to all justice participants of the continued pursuit of an FLSP licence comes at the expense of investments in other access to justice opportunities.

Self-Represented versus Unrepresented Individuals

While the term "self-represented" is commonly used to describe those who are not represented by a lawyer, it is important to distinguish between self-represented and unrepresented individuals. Self-represented individuals are more appropriately defined as those who elect to represent themselves.

⁴ [Family Legal Services Review, Comments on MAG Consultation Paper](#) (April 29, 2016).

⁵ [Comments on the Family Legal Services Review Report](#) (May 15, 2017).

⁶ See Association of Ontario Judges submission to Justice Bonkalo (April 29, 2016); Ontario Court of Justice submission to Justice Bonkalo; Superior Court of Justice submission to Justice Bonkalo (May 16, 2016).



This could be for a variety of reasons, but is unrelated to the accessibility or cost of legal representation. Unrepresented individuals, on the other hand, are those who are unable to access legal representation, for a variety of reasons, and are the proper focus of this discussion.

The Proposed FLSP Licence Model

The FLSP licence model as proposed by the FLWG is not a viable access to justice solution, nor one that adequately protects the public. The model fails to reconcile the fundamental underpinnings of family law, including the inability to reliably assess the complexity of a matter at the outset, and artificially distinguishes between areas of family law that cannot realistically be divided in practice.

The model proposes such a broad scope that, in order to ensure competence and protection of the public, it requires very robust training. The extent of the training required makes it highly improbable that FLSPs will be able to truly serve the segment of the public that the model aims to serve.

Erroneous underlying assumptions and gaps in supporting data risk a model that creates an illusion of assisting in the access to justice crisis, while actually exacerbating pre-existing systemic issues and inequalities, and potentially creating new problems. Some systemic issues relate to the complexity of the process, the underlying adversarial nature of family court, and chronic underfunding of the courts, Legal Aid Ontario and community supports. The creation of a new license will not solve these issues and must be sensitive to this broader context.

The Consultation Paper also does not reconcile the experience in other jurisdictions, including Washington's Limited License Legal Technician (LLLT) model which was cancelled earlier this year given the significant cost of administering the program and the limited interest⁷.

⁷ Moran, Lyle. *Washington Supreme Court subsets limited license program for nonlawyers*. ABA Journal. June 8, 2020. Available at: <https://www.abajournal.com/news/article/washington-supreme-court-decides-to-sunset-pioneering-limited-license-program#:~:text=The%20court's%207%2D2%20vote,have%20considered%20approving%E2%80%94similar%20programs>.



Answers to the specific questions posed in the Consultation Paper can be found in **Appendix “A”**.

A Problematic Approach to Access to Justice

The average family of modest means

The FLSP licence model is premised on the circumstances of “an average family of modest means”. The fundamental flaw in utilizing this foundation is that the means of the parties and the complexity of the matter are not correlated. Lower means simply do not equate to simpler issues.

Some of the most complex parenting issues arise where there has been family violence or parental alienation, which we know crosses all segments of the population, including “an average family of modest means”. Many self-employed individuals also fall into this category of “an average family of modest means”; however, determining self-employment income for the specific purpose of child and/or spousal support can be very complex.

In short, considering the legal needs of an average family of modest means does nothing to narrow the scope of potential legal issues or their complexity.

Impacts for marginalized groups

The development of the FLSP licence risks further marginalizing vulnerable groups, including those with low incomes and survivors of family violence (discussed further below), by creating a three-tier system in which those with higher means can access a higher calibre (perceived or actual) of legal advice and representation, a second group can only access limited legal advice and representation, while still leaving a third group unrepresented.

This creates an inherently discriminatory system wherein women⁸ and other marginalized individuals may be more likely to remain unrepresented or be represented by non-lawyers (assuming FLSPs will, in fact, charge less than lawyers, which we dispute as detailed below), which could lead to real or perceived power imbalances.

⁸ Women in Canada have lower average personal incomes than men since 1976, the earliest year for which comparable data has been available: Statistics Canada, *The Economic Well-Being of Women in Canada: Women in Canada: A Gender-based Statistical Report*, by Dan Fox & Melissa Moyser (Ottawa: Statistics Canada, 16 May 2018) at Chart 1, online: <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/54930-eng.pdf>, at p. 4.



Cost and billing practices of paralegals

If the fundamental barrier to legal advice and representation by lawyers is cost, there is no indication that another regulated profession that is likely to be, at best, marginally cheaper will be able to overcome that barrier. The scope of proposed practice for FLSPs is so broad that the cost of education and training, coupled with insurance, software (such as DivorceMate) and other overhead costs, makes it highly questionable as to whether FLSPs will be more affordable for the targeted “average family of modest means”.

The Consultation Paper suggests that paralegals bill clients smaller amounts, bill more frequently, charge lower hourly rates than lawyers and are more likely to charge block fees. However, the Consultation Paper also acknowledges that there is “no relevant data to support a comparison between what paralegals would charge for family law services and the amount lawyers currently charge”. Lawyers’ fees vary substantially across the province and based on the experience of the practitioner. Similarly, lawyers’ billing structures also vary. Today there are significantly more lawyers in Ontario than even a few years ago who are offering options other than a traditional full retainer or billable hour model.

The model also fails to consider regional differences, including the extent to which cost is the barrier for access to legal services in different areas across the province and the appropriateness of a FLSP model as a potential remedy. The Consultation Paper references the Final Report of the National Self-Represented Litigants Project⁹ as indicating that the “most consistently cited reason for self-representation is the inability to afford to retain, or to continue to retain, legal counsel”; however, Dr. Macfarlane acknowledges in her Report the limitations of such a qualitative study¹⁰, and difficulties in accessing the selected courthouse sites in Ontario¹¹. Ultimately, only 66 self-selected self-represented individuals were interviewed in Ontario, of which only 15 were outside the Greater Toronto Area (including 14 in Windsor and 1 in Sudbury), and there was no control group. The small size and GTA-focus of the underlying sample in Ontario gives rise to concerns about basing a

⁹ Julie McFarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report” (May 2013). Available at <https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>

¹⁰ *Ibid* at p. 23

¹¹ *Ibid* at p. 17



province-wide band-aid solution on these results. The nuances of the access to justice problem are much more complex and cannot be solved by adding another questionably more affordable service provider to an already complicated system.

A Problematic Scope of Practice for FLSPs

The broad proposed scope of practice outlined in the Consultation Paper is problematic in that it attempts to include all family law issues, and then creates an unrealistic division of issues by excluding certain issues that are expected to be more complex. This approach highlights two of the fundamental elements of family law which make such an approach unworkable:

1. Family law issues are almost always intricately intertwined and overlapping; and
2. Matters which appear to be “simple” at first instance can quickly and with little warning become complex, either as additional facts are uncovered or as circumstances change.

The result is an unworkable scheme with illusive boundaries that cannot be readily understood by the public and cannot in practice be applied by lawyers and paralegals. Family law needs to be recognized for what it is: a complex area of many layered laws and rules that cannot easily fit into a box of “simple” or “complicated”.

Numerous distinctions between in- and out-of-scope activities as outlined in the Consultation Paper are impractical or unworkable in practice. For example, support issues involving self-employed individuals are within scope, while income determinations are outside of scope. In practice, self-employment income necessarily involves issues of income determination.

The OBA is also concerned about the prejudice to a client who retains a FLSP, but is required to transition to a lawyer when the matter evolves to exceed the permitted scope. The transition between professionals may result in increased costs, delayed resolution, and increased stress and emotional toll on clients who are already in a challenging situation.

With this foundation, the OBA’s comments in respect of specific areas of family law included within the FLSP’s proposed scope of practice is detailed below.



Property

Property issues are an easy example of the complexity of family law. They require the integration of substantive legal analysis across multiple legal areas, and are generally final by nature and trigger limitation periods, carrying significant risk of liability in the event of errors. Claims related to possessory rights to the matrimonial home also have significant ramifications, particularly where there are issues related to family violence or concerns about children.

In determining the equalization of net family property (NFP) under Part 1 of the *Family Law Act (FLA)* for married spouses, the following legal areas must be considered:

- *Tax law* - The requirement to deduct contingent liabilities from date of marriage and date of separation assets requires an understanding and appreciation of income tax law. Experienced family law practitioners routinely retain a consulting accountant to assist and advise on the preparation of even the most basic NFP Statements where contingent tax liabilities may exist. Actual or contingent tax issues exist on almost every file dealt with under Part I of the *FLA*, including on all registered assets, investment accounts, and capital and business property.

Further, an understanding and appreciation of the *Income Tax Act (ITA)* is essential for the treatment of the principal residence and attribution rules under sections 74.1 and 74.2 of the *ITA* for income and capital gains on property transferred between spouses or into a trust.

- *Estates and trusts law* - The definition of property in the *FLA*, and the excluded property under subsection 4(2) require an understanding and appreciation of the law of estates and trusts. Estate freezes, family trusts, trust agreements, family corporations, joint ventures, limited partnerships, and inter vivos transfers are frequent components of this analysis.

There is an inconsistency in the proposed scope in that equitable or trust claims are out of scope, but equalization of net family property is within scope where the latter requires consideration of trust interests.

- *Pension law* - The definition of property requires interests in pension assets to be included in the NFP and valued. Retaining an actuary is required for federal pension assets and is recommended to assist counsel for Ontario plans when interpreting the Statement of Family Value and drafting the correct clauses and forms required by the Financial Services Corporation of Ontario.
- *Personal injury law and civil litigation* - The exclusion of certain specified damage awards under section 4(2) of the *FLA* requires an understanding of personal injury and civil law. An understanding and assessment of the heads of damages including income loss, accident benefits, cost of future care, general and special damages, with an analysis of the pleadings, settlement and mediation briefs and notes is required.



- *Corporate law* - The value of a private corporation forms part of the shareholder's NFP and must be valued to calculate the equalization payment. This requires a comprehensive understanding of corporate law and corporate tax law. The terms and benefits of any shareholders' agreements play a significant role upon separation and may have an impact on the financial position of the family post-separation.

The same considerations apply where income from the corporation must be determined for child and/or spousal support purposes.

- *Indigenous law* - Property on Indigenous reserves is not subject to the *FLA* rules about property division. This is an extremely complex area as the division of family property on reserve may be covered by a particular First Nations' own land code under the *First Nation Land Management Act*, a First Nation's own matrimonial real property law made under the *Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA)*, or the default rules under the *FHRMIRA*.

Property issues were not included in the Family Legal Services Review Report Recommendations (the "Bonkalo Report")¹², and no analysis or justification has been provided as to why these issues have been included now.

It is the OBA's position that property claims are not an appropriate area for inclusion in the FLSP scope, regardless of any limitations that might be placed around it.

The practical reality is that many property matters may well fall outside of the proposed FLSP scope, given the limitation on third party experts who are routinely required in these matters. Further, property issues as between unmarried spouses, which require application of equitable trust law, are already outside of the proposed scope. The need for a clear and workable scope further supports exclusion of all property issues.

Spousal support

Spousal support is a complicated legal area. Application of the *Spousal Support Advisory Guidelines (SSAG)* is subject to the complex threshold legal issue of entitlement. In addition, the *SSAG* are reliant on a determination of "income" for each party which can have a large impact on the range of support amounts generated by the *SSAG* and is often an intricate issue involving many intertwined legal issues. Lump sum or fixed term spousal support awards present unique challenges, and settlements

¹² *Supra* note 2.



that include end dates and final releases carry significant risk of liability. Further, spousal support and property division intersect as property division can impact on both the entitlement to and the amount, if any, of spousal support.

It is also inconsistent for the FLSP scope to exclude income determination and tax issues, but permit spousal support claims when all spousal support cases require a detailed understanding and application of income tax law. The basic *SSAG* calculation is based on differing assumptions and applications of after-tax income (NDI) after an assessment and application of various income tax deductions, credits, and benefits. Accountants are also routinely engaged by counsel to assist in spousal support matters.

As with property issues, spousal support was similarly not included in the Bonkalo Report Recommendations, and no analysis or justification has been provided for its inclusion now.

It is the OBA's position that spousal support is not an appropriate area for inclusion in the FLSP scope, regardless of any limitations that might be placed around it.

Child support

While the *Guidelines* (the *Federal Child Support Guidelines* or the applicable *Ontario Child Support Guidelines*) are applicable in the vast majority of cases and the court has limited discretion as to when it may depart from them, the determination of child support can and often does become complicated. For example, this may occur where the income of a parent/spouse is not straightforward and requires consideration of ss. 17-20 of the *Guidelines*, where retroactive or retrospective support claims are made, or where the discretionary sections in the *Guidelines* come into play (e.g., s. 3(2) for a child over the age of majority, s. 9 for shared custody/parenting). In these circumstances, it is the OBA's position that the complexity of the issue, in light of the importance for a child, necessitates the involvement of a lawyer and is not appropriately within the purview of an independent FLSP scope.

While with the benefit of hindsight, it may be possible to identify some simpler child support matters, the practical reality of family law disputes makes it exceptionally challenging to identify such cases at the outset. Many cases may appear to be "simple" but quickly evolve to become more complex as additional facts are learned and/or circumstances change. For this reason, we cannot support the inclusion of child support issues in the FLSP scope.



Parenting

Parenting matters, including decision-making (custody), parenting time (access), relocation/mobility, and contact orders for non-parents (e.g. grandparents), are of fundamental importance and significant consequence to all family members, including vulnerable children. It is extremely difficult to ascertain how simple or complex a particular parenting dispute will be, as children's issues are fluid and multi-faceted. A child or a parent's circumstances will change over time, sometimes rapidly and with little or no warning. Parenting issues can quickly become complex and high conflict. They can also be complicated by concerns related to family violence, safety, a child's special needs, or substance abuse or mental health issues of a parent or caregiver.

It is the OBA's position that it would be clearly inappropriate for a FLSP to act where:

- A parent is charged criminally with a crime related to the other parent or the child;
- A parent seeks a restraining order, which can result in criminal charges if breached;
- A parent seeks an order for no parenting time or for only supervised parenting time;
- A children's aid society has started an investigation or a court application;
- A "litigation expert" within the meaning of R. 20.2 of the *Family Law Rules* becomes involved;
- Evidence of a "participation expert" is needed to determine parenting ability or issues affecting the best interests of the child;
- A party or a child is outside of Ontario, including child abduction or other international/Hague Convention matters; or
- Where the matter is "complex" or "high conflict" because of concerns such as addiction or parental alienation, which issues are difficult to ascertain and likely increase conflict.

We recognize that there are currently many non-lawyer mediators and parenting coordinators, often with mental health and/or social work training, providing valuable assistance to separated parties involved in parenting disputes. We also recognize that there are some parenting matters that may, with the benefit of hindsight, be considered "simpler" in nature. However, given the practical realities of family law disputes, it is impossible to identify these matters at the outset, and thus we cannot support the inclusion of parenting issues in the FLSP scope.



Family violence

The creation of the proposed FLSP licence is further complicated by the fact that family violence, which disproportionately affects women¹³ and children, adds a layer of complexity and safety concerns to a family law matter, such that we cannot support inclusion of any matter involving family violence in the FLSP scope of practice.

Survivors of family violence require strong legal representation, without limits, to help protect them from their abuser and to empower them to reach just resolutions. It is common for abusers to continue to exert power and control over their former partners by engaging in “legal bullying” either in court or out of court. There are concerns that the FLSP licence could exacerbate challenges faced by survivors of family violence or risk their safety.

That said, given the prevalence of family violence and difficulty detecting it, we do support FLSPs conducting Domestic Violence and Power Imbalance Screening (“Screening”), and in fact, support an obligation for FLSPs to screen potential clients and immediately refer the matter to a lawyer if family violence is detected. This Screening is currently required only for family law arbitrations, but is also common in mediations and can be conducted by non-lawyers. With adequate education and training, this is a role FLSPs can play.

Additional areas of discussion

There have been discussions in the bar that have recognized areas that, in certain instances, may be discrete and separable. These areas include:

- Simple or joint divorces, where all corollary relief has been resolved by way of separation agreement or court order;
- Change of name applications;
- Family Responsibility Office (FRO) enforcement matters;
- Gathering disclosure and preparing financial statements and certificate of financial disclosure, provided these documents are subsequently reviewed by a lawyer;
- Providing legal information on court process, ADR processes and family justice services intended to assist individuals dealing with issues arising from separation and divorce;

¹³ See, e.g., <https://www150.statcan.gc.ca/n1/pub/85-002-x/2013001/article/11805/11805-3-eng.htm>



- Screening for domestic violence and power imbalances (as can currently be conducted by non-lawyers for mediation and arbitration purposes with appropriate training and education); and
- Attending on administrative court appearances where there is no reasonable prospect of a substantive order being made and a lawyer is otherwise retained on the file (i.e. acting as an agent for a lawyer)

However, the Consultation Paper does not reconcile the challenges in identifying how to delineate these areas in a way that is both recognizable for the public and workable for FLSPs and lawyers, while still protecting the public. In fact, by proposing a significantly broader scope, the Consultation Paper detracts from the requisite focused discussion on whether these areas could be adequately separated out and identified, what training and education would be required, and whether it is economically feasible.

Training and Education Requirements

Ultimately, the appropriateness of any training and education requirements cannot be fully assessed until a decision has been made to move forward with the creation of an FLSP licence and the precise scope of practice for FLSPs has been definitely determined. That said, the education that would be required to ensure competency in the broad scope of activities outlined in the Consultation Paper would require a time and financial cost that would jeopardize the viability of the licence and/or its ability to make a notable impact on improving access to justice. It is our position that the competencies required for the proposed scope in the Consultation Paper cannot be achieved with the proposed training program of six to eight months of full time study, plus a short field placement.

Should the LSO proceed to develop a FLSP license, we urge the LSO to consult further on the specifics of any education, training and other licensure components once the scope of practice has been determined.

A Better Access to Justice Solution

The primary question remains how to ensure all Ontarians have access to fair resolution of their family law legal issues, regardless their personal circumstances. This requires, as described by Justice



Cromwell, access to appropriate knowledge, resources, and services to deal effectively with family legal matters.¹⁴

It is the OBA's position that access to justice is better achieved by supporting and enhancing the access to justice initiatives that enable the public to access the proper legal advice and representation they need from lawyers, in addition to a variety of other services and supports from appropriate professionals wherever necessary, to help them resolve their issues. This, coupled with system-wide changes to simplify the court process and further support and encourage out-of-court resolution (where appropriate), is required to truly and meaningfully enhance access to justice for Ontario families. It is time to refocus the discussion on meaningful and actionable access to justice.

During the 2020 Access to Justice week, LSO Treasurer Teresa Donnelly noted *"So much good work is happening on the ground to change how family law clients can get help, both publicly and privately, along the spectrum from public legal education and initial consultations on one end, all the way up to full representation"...* *"I wish to recognize the family law bar for taking on these projects in direct response to challenges that have been identified in terms of access to affordable legal representation."*¹⁵

With a stated mandate to protect the public, the LSO has an important and valuable role to play in promoting, supporting and enhancing the ongoing access to justice initiatives, in the interest in providing fair and reasonable access to competent family law advice and representation.

Attached as **Appendix "B"** is a selection of ongoing access to justice initiatives. Some initiatives are focused on providing legal information, while others are focused on access to affordable legal advice and representation. Many of these initiatives have only become available in the past few years and are continuing to develop and expand (for example, Family Law Limited Scope Services Project, Steps

¹⁴ Action Committee on Access to Justice in Civil and Family Matters, "Meaningful Change for Family Justice: Beyond Wise Words; Final Report of the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters" (April 2013) at pp. 1-2. Available at: <https://flsc.ca/wp-content/uploads/2014/10/services5.pdf>

¹⁵ The Lawyer's Daily, *Ontario family law event details recent innovations in service delivery* (October 30, 2020). Available at <https://www.thelawyersdaily.ca/articles/22015/ontario-family-law-event-details-recent-innovations-in-service-delivery>



to Justice, Family Law Guided Pathways). New initiatives are also continuing to be launched, including Pro Bono Students Canada's virtual Family Justice Centre, launching in 2021.

These programs have and will continue to significantly improve the options available for many Ontarians to access legal information and advice. Many of these initiatives would benefit from broader support and, in some cases, province-wide coordination.

Further, the COVID-19 pandemic has highlighted new opportunities for improving access to justice. The family law bar has shown great alacrity in making their services available virtually, given the restricted operations of family courts due to the pandemic. They have worked to overcome that challenges of the pandemic, and seize opportunities to support and advocate for modernization of the justice system. The increase in remote hearings enables clients to more easily and cost effectively retain lawyers outside of their jurisdiction. For those who may be unable to afford to retain counsel in a large centre like Toronto, lawyers in smaller centres, with lower rates, are now more accessible. Similarly, in regions which may be experiencing an insufficient number of available family lawyers, retaining counsel from another region is more feasible, without incurring significant travel costs. In fact, with an increase in remote hearings, family lawyers are able to reduce costs for their clients as travel time and costs are eliminated.

It is also important to recognize that access to justice in family law also does not just mean access to the court system. In its 2013 Final Report, the Action Committee on Access to Justice in Civil and Family Matters called for a paradigm shift towards non-adversarial dispute resolution methods such as mediation and collaborative practice.¹⁶ This Report identified the expanded use of these methods to be "probably the single most attainable, efficient and effective way to enhance access to family justice."¹⁷ The benefits of alternative dispute resolution processes have not been fully realized,

¹⁶ *Supra* note 14, at pp. 6 & 20-23.

¹⁷ *Ibid.*, at p. 23.



although these processes will be further encouraged by the March 1, 2021 amendments to the *Divorce Act*¹⁸ (and largely mirror amendments to Ontario legislation¹⁹).

Additionally, there are other opportunities for the LSO to explore to further support access to justice, which could include financial assistance or incentives for lawyers engaged in access to justice initiatives.

Conclusion

Once again, the OBA appreciates the opportunity to provide these comments in respect of the Consultation Paper and proposed FLSP licence framework. We look forward to continuing a discussion with you on how we can work together to improve access to justice in family law in Ontario.

¹⁸ Bill C-78, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*. Available at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-78/royal-assent>.

¹⁹ Bill 207, *Moving Ontario Family Law Forward Act, 2020*. Available at: <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-207>.



Appendix "A"

Responses to Questions Posed in the Consultation Paper

The following questions were outlined in the Consultation Paper for consideration. Below please find our succinct responses to the questions, along with references to more detailed discussion within the body of our submission.

Scope

1. *Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?*

As detailed above, it is the OBA's position that the proposed scope as outlined in the Consultation Paper will not support increased access to affordable, competent family law legal services.

2. *Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?*

The OBA has significant concerns about the assumptions upon which the framework is founded and considerable doubts about the viability of the model, given the extent of training and education that would be required to achieve competencies in the broad scope of activities proposed.

Competence

3. *Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?*

The appropriateness of the competencies cannot be fully assessed until a decision has been made to move forward with the creation of a FLSP licence and the precise scope of practice for FLSPs has been definitely determined.

4. *In your view, what scope of activities would best support increased access to affordable, competent family law services?*

On page 14 above, we have outlined areas that may warrant further consideration if the LSO elects to move forward. That said, it is the OBA's position that the development of a FLSP



licence comes at considerable risk to the public, and that access to affordable, competent family law services can be better achieved by supporting and enhancing the numerous access to justice initiatives already underway which assist the public in obtaining the legal advice they need from lawyers, and the community resources, services and supports available from appropriate professionals and organizations.

Training Program

5. *Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?*

The appropriateness of any training and education requirements cannot be fully assessed until a decision has been made to move forward with the creation of an FLSP licence and the precise scope of practice for FLSPs has been definitely determined. That said, it is our position that the competencies required for the proposed scope in the Consultation Paper cannot be achieved with the proposed training program.

Other Components of Licensure

6. *What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?*

As discussed above, the extent of training and experience required depend on the scope of practice. That said, given the highly personal and emotional nature of family law, communication and client management skills are an essential element of competency. In fact, LawPRO's Family Law Claims Fact Sheet identifies "communication" as the most common source of malpractice claims in family law²⁰. These skills are best learned "on the job", rather than "in the classroom". The same is true for practice management and ethical and professional responsibility. For this reason, experience in practice is an important element of FLSP licensure.

7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?*

²⁰ LawPro, Family Law Claims Fact Sheet. Available at <https://www.practicepro.ca/wp-content/uploads/2020/04/Family-Law-Claims-Fact-Sheet.pdf>



The Consultation Paper proposes one to three years of full-time practice experience as a licenced paralegal and/or a two to three month field placement in family law. We reiterate that the requisite training is highly depended on the scope of practice, and cannot be fully discussed until the scope is determined. Generally, however, we would suggest that a two to three month field placement on its own would not be sufficient, but would be valuable in combination with practice experience as a licenced paralegal.

Initially, field placements would need to be with a lawyer practicing in the area of family law. We recommend that, in order to be able to offer a field placement, a lawyer must have been in practice for at least five years, and have a practice that is comprised of, at minimum, 50% of family law matters. In the future, experienced FLSPs may be able to offer field placements for new FLSP candidates; however, this should be considered in the context of a broader review of the model.

Depending on the demand for the FLSP licence, consideration will need to be given to whether sufficient field placements will be available, or whether alternative experiential learning (similar to the Law Practice Program) should also be contemplated.

8. *Is a CPD requirement focussed on family law appropriate for the FLSP?*

Yes. A CPD requirement focussed on family law is not only appropriate, but essential should the LSO proceed with the development of a FLSP licence. Family law is constantly evolving and it is critical that FLSPs keep up to speed on developing caselaw, trends and best practices to ensure they remain competent.

9. *Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?*

Family law lawyers regularly rely on law clerks and articling students to assist on discrete tasks, subject to their supervision. There is a potential to consider expanding the tasks that law clerks and articling students currently perform under a lawyer's supervision. In fact, expanding the tasks that articling students could perform under the supervision of a lawyer may incentivise lawyers to take on articling students, thereby assisting in reducing the articling crisis.



The OBA does not, however, support creation of a separate FLSP licence as being a viable access to justice solution that can adequately protect the public. If such a licence is nevertheless developed and opened to non-paralegals, careful consideration must be paid to education and training requirements where the licensee does not have the same background experience as required of a licenced paralegal. The discussion and consideration of the FLSP licence to date has been focused on licenced paralegals. The proposed competencies for the FLSP licence build on the competencies of these professionals with an emphasis on specific skills required to provide family legal services. Any discussion on expanding the eligibility to other professionals necessitates an analysis of that profession's educational, professional and licencing requirements and competencies to assess their relative equivalency to that of licenced paralegals, and consideration of whether additional education or other requirements may be needed.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

As discussed above, the OBA challenges the assumption that FLSPs would, in fact, be more appealing to self-represented litigants. There is also significant risk of adding another layer of confusion for the public with a scope of practice for FLSPs that cannot be understood by the public and is not workable for lawyers and FLSPs in practice.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

Given the underlying systemic issues that the FLSP licence will not address, in combination with recent changes and ongoing enhancements to family law access to justice initiatives, we submit that the FLSP model is not an appropriate path forward at this time, particularly given the concerns it raises in respect of the paramount consideration of protecting the public. For additional discussion on a more appropriate approach to enhancing access to justice, please see the section "A Better Access to Justice Solution" above.

12. Are any aspects of the proposed licensing framework unfeasible?

Yes, as detailed in our submission, there are many aspects of the proposed licencing framework that are unfeasible, including but not limited to:



- The ability of FLSPs to provide competent legal services in a more cost-effective manner than lawyers;
- The delineation between in- and out-of-scope activities;
- The ability to categorize at the outset of a matter whether it falls in- or out-of-scope for a FLSP;
- The prejudice and cost to clients who must transition from a FLSP to a lawyer when a matter becomes out of scope;
- The ability to achieve competencies in the broad scope of permissible activities within the proposed training framework; and
- Potentially, the availability of field placements for FLSP candidates.



Appendix “B”

Selection of Ongoing Access to Justice Initiatives

I. Access to Legal Advice and Representation

Billing Models and Rates

Lawyers’ fees vary substantially across the province and based on the experience of the practitioner. Similarly, lawyers’ billing structures also vary. Today there are significantly more lawyers in Ontario than even a few years ago who are offering options other than a traditional full retainer. Many lawyers now offer alternative fee structures, designed to reduce overall legal fees, as compared to the traditional “billable hours model.” These alternative fee structures may include, but are not limited to, unbundled legal services (i.e. limited scope retainers), flat-rate fee structures, and sliding scale fee structures.

Legal Coaching

Through legal coaching, lawyers assist clients in moving their own matters forward by providing, among other things, substantive legal advice, hearings coaching, and negotiation and settlement coaching.

[Family Law Limited Scope Services Project \(FLLSS Project\)](#)

This province-wide initiative offers clients the opportunity to get legal advice where needed and act for themselves where preferred, reducing their reliance on counsel and the associated expense. The project involves more than 200 family lawyers in over 50 communities, who can be found through the project website. This project seeks to improve access to justice by offering limited scope retainers, legal coaching services, and summary legal counsel for family law matters. Because this project offers unbundled legal services, it can be more affordable for the client, and the client maintains control over what they are engaging the lawyer to do.

[Advice and Settlement Counsel \(ASC Project\)](#)

This pilot program is part of the FLLSS Project which was developed in cooperation with the 393 Bench and Bar Committee and the Judiciary and Court Services. The ASC Project gives access to counsel where litigants request it, at a lower overall cost to the litigant. This project has a roster of approximately 50 trained family law lawyers in Toronto; they provide summary legal advice to unrepresented litigants and can assist in negotiating consents at meetings where both parties are present.

[JusticeNet](#)

This is a not-for-profit service for persons who need legal assistance but cannot afford standard legal fees and are ineligible for legal aid. The lawyers listed on the JusticeNet website offer reduced legal fees to qualifying clients.

Pro Bono Lawyer and Law Student Initiatives

Some lawyers provide legal services to qualifying clients at no charge (pro bono legal services). For example, [Pro Bono Ontario](#) manages projects and services that seek to connect volunteer lawyers



and law students to assist Ontarians facing legal issues who cannot otherwise afford standard legal fees.

In January 2021, Pro Bono Students Canada will also be launching virtual legal clinics as part of the Family Justice Centre (FJC). The FJC will offer free summary legal advice for qualifying Ontario residents for family law matters. Law students will have the opportunity to participate in FJC initiatives, and will be supervised by pro bono private bar lawyers. The income eligibility thresholds for the FJC will be higher than the limits established by Legal Aid Ontario, thereby serving more families and creating greater access to justice. Since these FJC clinics will operate virtually, this may help to increase access to justice in underserved and remote communities.

Free Legal Clinics Held by Not-For-Profit Organizations

Several not-for-profit organizations, such as [The Women's Centre of Halton](#) and [Luke's Place Virtual Clinic](#), offer free legal clinics for their clients. Lawyers who participate in these initiatives volunteer their time to assist vulnerable persons who need legal assistance but cannot otherwise afford standard legal fees.

II. Access to Legal Information

Community Legal Education Ontario (CLEO)

Community Legal Education Ontario (CLEO) offers expanded public legal education and information resources, which include:

- [Step to Justice](#), a collaborative online public legal information and education project that provides step-by-step information about common family law processes;
- [Steps in a Family Law Case](#), which has three interactive flowcharts to help people understand and work through family law court processes;
- [Family Law Guided Pathways](#), which allows users to participate in online interviews to help to complete family law court forms

These CLEO resources are available in both English and French, and were launched after the Bonkolo report. CLEO also provides free print public publications on family law issues in other languages, such as Spanish, Chinese, and Tamil.

[Mysupportcalculator.ca](#)

This free online resource is a very helpful tool for self-represented and unrepresented parties, as it helps them to assess their child support and spousal support rights and obligations.

III. Other Court-Connected Services

Mediation Services at Family Court Locations

These mediation services are subsidized by the Ministry of the Attorney General. On-site mediation provides 2 hours of free mediation in advance of pending court dates, while off-site mediation is also available on a subsidized fee schedule.



[Ministry of the Attorney General Mandatory Information Program \(MIP\)](#)

This program is designed to give all litigants, whether self-represented or represented, a fulsome understanding of their rights and obligations, as well as an overview of family court processes and alternative dispute resolution mechanisms.

[FLIC Offices](#)

Family Law Information Centers provide public legal information about family law-related issues, family justice services, alternative dispute resolution mechanisms, and local community resources. FLIC offices also provide written aids as well as referrals to mediation services.

#290

Please enter your first and last name	David McKillop
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November 30, 2020

Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen St. W.
Toronto, ON M5H 2N6

Sent via online form

Re: Proposed Family Legal Services Provider licensing model

I. Introduction

Thank you for the opportunity to provide comments to the Law Society of Ontario Family Law Working Group's (FLWG) proposed model for a Family Legal Services Provider (FLSP) license¹. This submission represents Legal Aid Ontario's (LAO) Policy department's analysis about the FLWG proposal. We anticipate that LAO will provide an organizational response after the consultation process has been completed, and the particular licensing and educational and educational and training initiatives discussed in the paper have been finalized and brought into effect.

Our submission has two parts. In the introduction, we provide an overview of the supportive but cautious approach that LAO has historically taken on the question of licensing non-lawyers in the area of family law. In our approach, which has evolved over time, we have been guided, as has the Law Society, by the twin goals of expanding access to justice in family law, while still maintaining quality of service. The introduction concludes with Policy's view that, at the present time, it would be premature under the existing regulatory and educational framework to introduce a new licensing model that would permit non-lawyer licensees to engage in family law practice. We emphasize that this is very much a preliminary position, and we look forward to developing our position and analysis as we learn more through the consultation process, and from the positions taken and advice provided by other stakeholders including the FLWG.

The remainder of our response is geared to answering the specific questions posed by the FLWG consultation paper. These answers provide more detail as to

¹ Family Law Working Group of the *Law Society of Ontario*, "Family Legal Services Provider License" (June 2020) [FLWG consultation paper], online: <<https://lawsocietyontario.azureedge.net/media/iso/media/about/convocation/2020/flsp-consultation.pdf>>.

why the Policy department, while supportive of many of the aspects of the proposed FLSP model, presently still has concerns about whether the model can provide the basis for non-lawyers to act without supervision in a family law proceeding. To the extent that the consultation questions addresses issues raised in our introduction, we have simply referred back to the introduction.

Guiding Principles

Legal Aid Ontario very much appreciates and finds itself aligned with the guiding principles that the FLWG has posed for assessing the licensing model for family law practice². In particular, in drafting our response to the new license model, Policy has focused on the obvious and documented need to increase access to family justice for low-income and disadvantaged Ontarians in family law proceedings, but not at the expense of providing high quality and competent protection for the legal rights of members of these communities. As an agency responsible for public funds, we are also cognizant of the need to only support the delivery of legal services, including those in this proposal, where it is based on a sustainable and viable business model.

Access to Family Justice

A defining feature of LAO's commitment to access to family justice is its funding and staffing of family law services for low income Ontarians. This commitment to addressing the legal needs of families in difficulty, who have limited private resources to address those needs, was a central feature of the *Legal Aid Services Act (1998)*³, and will remain so with the new *Legal Aid Services Act (2020)*⁴. The new legislative regime and, in particular, the new rule-making authority under the *LASA 2020*, provides LAO with the potential for greater flexibility in implementing family law services, including the use of paralegals for these services.

In its position as a major funder and provider of family law services in the province, LAO is very aware of the access to family justice crisis where, unlike in criminal law proceedings, the majority of family law litigants are unrepresented or self-represented. It is well-known that self-represented litigants (SRLs) in family law proceedings often suffer worse results than would have been the case had they had access to legal advice or representation⁵.

The explanation for the high number of SRLs, while multi-layered, is also at its core a reflection of the high cost of lawyering in this province. Unfortunately, the

² *Ibid* at pp. 3-4. The three guiding principles are (i) access to justice, (ii) public protection, and (iii) viability.

³ *Legal Aid Services Act, 1998, S.O. 1998, c. 26.*

⁴ *Legal Aid Services Act, 2020, S.O. 2020, c. 11, Sched. 15 [LASA 2020].*

⁵ See Action Committee on Access to Justice in Civil and Family Matters, "Access to Civil and Family Justice: A Roadmap for Change" (October 2013) [Action Committee Report] at p. 2-4, online: <https://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>. Also, *supra* note 1 at p 1.

full cost of retaining a private family lawyer is beyond the budget of many Ontarians. It is this wide gap between the cost and public demand for family law services that both the LSO and LAO are trying to address, in the present FLWG proposal and in Policy's response to it.

The FLWG, in its consultation paper, quite rightly points out that Legal Aid Ontario is unable fill that gap between the legal demand for family services and the cost of those services. As evidence of this inadequacy, the consultation paper cites the income threshold for which a family of four would be eligible for certificate services⁶. It is important to note that this income threshold level is used when clients are seeking full representation, including trial representation, for a contested and complex family law matter. Other income levels may be used, or waived entirely, depending on the client circumstances such as whether they are a victim of domestic violence, or the kind of advice or assistance that is required⁷.

LAO Family Law Services: Continuum Approach

In developing its family law services, LAO has been very much informed by the need to develop a family justice services continuum approach. As documented in several reports, and noted in LAO's 2016 submission to the Attorney General about expanding legal services options for families in Ontario, the continuum approach to family law services emphasizes the need for early intervention in family law disputes by a variety of different measures, services and service providers⁸.

In support of this continuum approach, LAO provides a range of services for families in difficulties, for example, from the initial point of client contact with the family justice system by appropriate referral or public legal information, to same-day duty counsel advice and court assistance, and culminating with full service private family lawyer representation where required for contested and complex family law matters. In making tough choices about the public funding of family law services, LAO has tried to follow the advice of the influential *Action Committee Report*, that is, "court if necessary, but not necessarily court"⁹.

The range of services that can be provided by LAO is summarized as follows:

- information services, including procedural, non-case-specific information;
- referral services;

⁶ *Supra* note 1 at p. 2.

⁷ As part of its emergency COVID-19 response, LAO has waived financial eligibility requirements for family law summary legal advice, and for legal aid certificates for survivors of domestic violence. For more, please see online: <https://www.legalaid.on.ca/covid-19-legal-aid-services/>.

⁸ LAO, "Submission from LAO to the Attorney General regarding the consultation on expanding legal services options for Ontario families" (April 2016) [LAO submission 2016] at pp. 4, 5, and 10, online: <<https://www.legalaid.on.ca/documents/submission-on-expanding-legal-services-options-for-ontario-families/>>.

⁹ *Supra* note 5 at p. 11.

- legal advice services (including telephone summary legal advice and duty counsel advice about e.g. initial court proceedings, motions to change, motions, settlement, and mediation);
- document services (including document review, information, advice, and preparation);
- out-of-court mediation services and settlement conferences; and
- court-based representation (e.g. negotiations, and court appearances for adjournments, motions, and trials).

As noted, each of these service options may have different legal and eligibility requirements. At the front end of our family law services continuum, LAO financial and legal eligibility requirements may be quite flexible or waived altogether, in recognition of the relatively inexpensive nature of those services compared to the benefits that may accrue through early resolution. At the same time, as the matter moves through the family justice system — and potentially becomes more adversarial and costly from a LAO perspective — our eligibility requirements are more stringently applied to ensure that these more expensive services, including full representation by a private family lawyer through a legal aid certificate, are reserved for those who have the greatest economic and legal need.

LAO and non-lawyer service providers

In addition to differing eligibility requirements, central to LAO's adoption of the continuum approach to publicly funded family law services is the provision of different kinds of services and service providers depending on the needs of the client, and where on the continuum they may find themselves. Once again, in keeping with one of the central pillars of the continuum approach, LAO has actively developed service programs to promote the use of non-lawyers to address unmet legal needs, and help fill the recognized gap in access to legal services.

These family law service programs provide a multi-disciplinary team approach to service delivery. For example, LAO now operates ten Family Law Services Centres (FLSCs) where teams of service providers, which may include paralegals, offer a full range of family law services¹⁰. LAO has also successfully used non-lawyers in the criminal law context which includes the use of licensed paralegals providing legal aid services as part of duty counsel office teams in busy criminal court offices.¹¹

¹⁰ For more information about LAO FLSCs, please see <https://www.legalaid.on.ca/documents/family-law-service-centres-flsc>.

¹¹ Justice Annemarie E. Bonkalo, "Family Legal Services Review", Ministry of the Attorney General (31 Dec 2016) [Bonkalo Report], Part 3. 2. a. iii, online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/#top>. Also, please see LAO, "Paralegal and Mentor lawyer prove to be a powerful legal team" (21 Jan 2016), <<https://www.legalaid.on.ca/news/paralegal-and-mentor-lawyer-prove-to-be-a-powerful-legal-team/>>.

Through these programs, LAO has actively promoted the introduction of non-lawyers, including paralegals, in both family law and other areas of law practice as a way to improve access to justice. It has done so however cautiously, with an awareness of the ongoing need to ensure that the expansions of non-lawyer services are accompanied with appropriate protections to ensure that client legal needs are met, as the FLWG notes in its consultation paper, by competent legal representation¹².

Quality of Access to Justice

Often the same reports and studies that articulate the need to provide a continuum of non-lawyer services in family law, have also identified the risks with that approach. The problems that need to be resolved in family law are often highly emotionally charged. They may well involve parties who are seeking to flee an abusive relationship, and by seeking legal assistance they are very much putting themselves and their children at risk of further physical harm. At the same time, family law proceedings may be quite legally complex involving a consideration and legal knowledge of a variety of different legal and statutory regimes.

From the Policy department's perspective, these risks that accompany the introduction of non-lawyers, including paralegals, for legal aid services are particularly acute. Survivors of domestic violence who do not have their own funds to obtain representation may well feel that that they cannot leave an abusive situation without access to a private lawyer for legal representation and protection. More generally, clients may feel disadvantaged if they are provided with non-lawyer assistance, while their former spouse is able to afford full trial representation with the assistance of a lawyer. This feeling of disadvantage is only exacerbated by the fact that legal aid clients may belong to racialized and/or Indigenous communities who have historically had unequal access to justice system services, protections, and outcomes compared with more privileged communities.

II. Non-lawyer licensees as part of an inter-professional team

Traditionally, LAO has taken a supportive but cautious approach to the use of paralegals in family law. At the same time, LAO's views about the role of paralegals in the justice system, and the activities that may be taken by a licensed paralegal without formal supervision by a lawyer, has evolved. Similarly, the positions taken by the LSO and other justice system participants about this issue have also evolved.

Under the current FLSP framework's training and accreditation requirements, Policy is unable to support FLWG's proposed introduction of a new licensing model that would allow paralegals to engage in family law practice without any

¹²*Supra* note 1 at pp. 4, 9, and Appendix C.

form of lawyer supervision or oversight. Policy's position is by no means set in stone. Our views will continue to evolve as the legal, regulatory and education environment in which paralegals and lawyers operate changes, perhaps as a result of the current consultation process initiated by the LSO's Access to Justice Committee.

In the meantime, until we learn more, the approach that Policy would recommend, and that we are presently developing to complement our existing family law services, is to integrate paralegals and other non-lawyers into an inter-professional team approach for client service. Under this approach, paralegals work together with lawyers to obtain the necessary support, resources, and mentorship to ensure high quality and competent non-lawyer family law services.

Importantly, under this model, the degree of supervision by a lawyer licensee that would be provided to a paralegal licensee might differ depending on the particular activity that was being undertaken by the paralegal. It is also Policy's view that the degree or kind of supervision might differ depending on the circumstances of a client, i.e. the particular vulnerabilities of the client, the legal complexity of the issues involved, and the potential long-term or severe consequences for the client. Under this suggested approach, the issue for LAO is not to determine what types of family law matters or activities may be addressed by lawyers compared to paralegal licensees, but to identify the "...specific types of services which non-lawyers may properly provide, in an environment that offers supervision and support¹³".

At this time, it is Policy's view that an inter-professional team approach to the use of paralegals in family law practice provides the most fruitful and practical way to navigate the path between two of the guiding principles set out in the FLWG consultation paper¹⁴. It is also an approach that we believe is consistent with the often cited flexible continuum of family services model that provides a "range of accessible and affordable services and options" and "an array of dispute resolution options to help families resolve their disputes¹⁵." Finally, LAO has already found success with this approach on a pilot basis in our provision of criminal law services. As found by Justice Bonkalo, the use of paralegals by LAO in its provision of criminal law services in this pilot is "particularly instructive" to how paralegals could be utilized in family law matters¹⁶.

III. Questions

(i) Scope

¹³ *Supra* note 8, in response to question 6 of the "Family Legal Services Review" consultation

¹⁴ *Supra* note 2.

¹⁵ *Supra* note 5, Action Committee Report at p. 17.

¹⁶ *Supra* note 11, Bonkalo Report.

1. *Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?*

Given the concerns raised in the introduction, and the role of LAO in the justice system, Policy will focus its comments on whether the scope of permissible activities can support competent legal services in family law.

Policy appreciates the obvious care, and detailed assessments, which the FLWG has used in developing its proposed scope of permissible and impermissible activities for FLSP licensees¹⁷.

Our overview of the FLWG's proposed scope of permissible and impermissible activities for FLSP licensee suggests, and we would be happy to learn more from the FLWG, that the demarcation between the two categories is focused on legal complexity and the potential vulnerabilities of the client. That is, for example, where the matter involves a complex property dispute¹⁸, a FLSP licensee may not act in that family law matter. With respect to addressing particular vulnerabilities, under the FLWG proposal, a FLSP licensee may not act in child protection matters, or when a client is under the age of 18 or mentally incapable.

The Policy department agrees with the LSO focusing on legal complexity and client vulnerabilities as the criteria in determining the scope of permissible activities under an FLSP license. It accords very much with LAO's own thinking determining the level of supervision that should be exercised by lawyer licensees when working with non-lawyers in family law matters.

However, under the current LSO educational and regulatory framework, the proposed scope of permissible activities for FLSP licensees does not support increased access to competent family law services. In the present environment, and of course this may change, the list of permissible activities means that clients will be put at too great a risk in having to rely on the family law services of non-lawyers acting without appropriate family lawyer supervision.

The following examples set out some of the potential risks for family law clients if FLSP licensees are permitted to provide unsupervised legal advice and representation under the current scope of permissible activities. These risks can be particularly prevalent with legally aided family law clients. We provide these examples not to suggest that family law paralegals may not necessarily have a role to play in these cases, but that any role for a non-lawyer must — presently at least — be appropriately supervised by a family lawyer.

¹⁷ *Supra* note 1 at Appendix B.

¹⁸ *Ibid* at p. 3. The FLWG has identified the following property claims as out-of-scope for an FLSP licensee: claims involving: third party valuations; joint family ventures (e.g., common law spouses; equitable and trust claims; family or other trusts; interests in a sole proprietorship, partnership or corporation; pensions (excluding CPP and RRSP/LIRA/RIF held by a financial institution); bankruptcy; unequal division (Section 5(6) Family Law Act claims); spousal election; an Estate; or contingent assets and liabilities (excluding limited costs of disposition of the assets).

i. Engagement with complex or potentially complex issues

The proposed scope permits FLSP licensees to assist with child and spousal support claims involving, for example, questions of self-employment unless there is an income determination issue. However, many of the listed inclusions under child and spousal support usually have an income determination issue, and can be particularly complex, especially if a support payor is purposely under-reporting income. In these circumstances, representation by a lawyer, or a properly supervised paralegal, can make a real difference for the livelihood of a support recipient client and help determine whether they will be able to make ends meet or continue to live in poverty.

ii. Client is particularly vulnerable

The proposed scope permits FLSP licensees to provide unbundled family law services involving custody and access claims. Family law litigation including these kinds of claims is known to increase the likelihood and severity of domestic violence for persons who are already at-risk. In these circumstances, these family law claims are almost always high conflict and complex¹⁹. For clients who have experienced or are continuing to experience domestic violence, the in-depth legal training and experience that can be provided by a lawyer is critical to ensuring their health and safety.²⁰ This is especially important for already marginalized Indigenous and racialized family clients who are overrepresented in family law issues involving domestic violence²¹. Importantly, this need for a fully trained lawyer applies to all aspects of the litigation starting at the initial point of crisis when the lawyer is contacted, as well as during the course of the family law litigation when the abuser may be continuing to exhibit “legal bullying tactics²²”.

iii. Long term or permanent consequences for others impacted by the litigation

Even in the absence of domestic violence, extending the scope of the FLSP licence to custody and access claims generally, may result in an inappropriate parenting arrangement which may establish a status quo that has potential long-term negative impact on the parent-child relationship which, in turn, sets a foundation for a child’s sense of self, safety and stability. This impact can last well into adulthood. At the present time, without knowing more about the specific future training and regulatory framework, Policy has real concerns about extending the scope of permissible activities to family law matters that present the potential

¹⁹ LAO, “Domestic Violence Strategy” (16 July 2019) [DVS] at p. 16-17, online: <<https://www.legalaid.on.ca/documents/legal-aid-ontarios-domestic-violence-strategy/>>.

²⁰ *Ibid* at p. 2. Also please see p. 7 regarding increasing LAO’s capacity for legal representation.

²¹ *Ibid* at p. 10.

²² *Ibid* at p. 7: “Legal bullying is a problem. Some people attempt to use the legal process as a way to continue abusing their partner. This is especially likely to occur when one or both parties are self-represented. Legal bullying re-victimizes clients, prolongs cases and stalls resolution in the court system.”

for negative long-term or permanent consequences, especially where it may impact the personal health and safety of families.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

At this point, it may be premature to answer the question of the viability of a business model based on a list of permissible activities for new FLSP licensees. In anticipation of a new licensing model, this question may also be more appropriately directed to stakeholders with professional expertise in developing viable business models related to the provision of legal or public services. Based on the information currently available to us, Policy is unable to comment on the business model viability of the FLWG's current proposal.

At the same time, under the FLWG's proposal, Policy presumes that the cost of entry into family law practice for FLSP licensees may be significantly increased given the complexity and extensive scope of the permissible activities. That is, the costs of paralegal insurance and LSO membership fees will have to reflect the importance and unsupervised nature of these activities, as will the more hidden costs of post-secondary training, and field placement or work experience necessary to properly represent family law clients.

(ii) Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

As discussed above, Policy takes the position that under the present education and regulatory framework, the scope of permissible activities for the FLSP does not support increased access to competent family law legal service.

At the same time, Policy commends the FLWG in its consultation paper FLSP proposal for identifying expanded competencies around sensitivity, appropriate communication strategies, domestic violence training, and Indigenous issues in family law.

Policy recommends building on the competencies identified, as well as the purpose of the new FLSP license to increase access to family justice, by urging the FLWG to expand these competencies to include improved understanding of anti-oppression, anti-discrimination and harassment, unconscious bias, and Indigenous and non-Eurocentric world views. Given the prevalence of domestic violence in much of family law and legally aid cases²³, competencies in this training

²³ *Ibid* note 19 at p. 8: "In 2015/16 LAO saw an additional 4000 clients subject to domestic violence receive family law certificates, an increase of 56 per cent over the previous year." Also, DVS footnote 6:

subject should specifically address the gender-based nature of domestic violence²⁴. Related to this, it is important to specify training curricula focused on trauma-informed practice for legal services²⁵ including impacts of colonization and intergenerational trauma working with indigenous clients and communities.

While access to courts continues to be important in our adversarial legal system, meaningful access²⁶ to family justice also considers a move towards less adversarial processes. The Policy department would suggest for this reason that the FLWG, in developing competencies for a new FLSP license, look to provide improved understandings of out-of-court and culturally appropriate family dispute resolution processes rather than limiting competencies to, mainly, adversarial court processes.

To better prepare FLSP licensees for the breadth of current and emerging family law practice, the FLWG should more expressly explore developing competencies for the use of out-of-court family dispute resolution process such as alternative dispute resolution (ADR) and Indigenous Dispute Resolution (IDR) processes.

It is the Policy department's view that families can benefit from the multidisciplinary approaches that ADR/IDR promotes, such as by requiring a settlement conference. Beyond simply understanding that ADR/IDR exists and is available, FLSP licensure requirements that support a special focus in building competencies to undertake ADR (e.g. mediation, negotiation, collaborative law), and access to IDR, must also be introduced.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

Policy's response to this question is included in our introductory comments, as well as in our response to question 1.

(iii) Family Legal Services Provider License Consultation Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D.

LAO certificates for family law matters (excluding CYFSA) accounts for approximately 62% of all family certificates.

²⁴ *Supra* note 11, Bonkalo Report's Recommendation 8. Also, *ibid* at p. 5.

²⁵ Sarah Katz and Deeya Haldar. "The Pedagogy of Trauma-Informed Lawyering" (8 Mar 2016), online <https://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Haldar%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf>.

²⁶ *Supra* note 11, Bonkalo Report refers to Alf Mamo's definition of "meaningful access to justice" under Part 1.1.c.i.: "the ability of a citizen to bring about a solution to his or her legal problems that is (a) financially affordable; (b) timely; (c) easy to understand; and (d) easy to manoeuvre through."

We appreciate the LSO's work in considering a broad family law training program for the new FLSP license that is based on its existing paralegal education framework, as well as current family law education for other family law professionals. For foundational studies in family law practice, we welcome the practicality of the proposed FLSP training framework, i.e.: academic coursework in an accredited family law program for paralegals for a minimum of six to eight months full-time (20 instructional hours per week), or one year part-time (10 instructional hours per week); and full-time practice as a licensed paralegal for one to three years.

We agree that a specialized FLSP license should only be available for existing licensed paralegals with specialized family training, and potentially law clerks or Legal Aid Workers as described in our answer to question 9, below.

However, we have concerns about the ability for this training program to instruct about the depth and complexity of intersecting family law issues, and to prepare a FLSP licensee for unsupervised or independent family law practice, especially as it pertains to access to justice issues and serving vulnerable communities.

Given the scope of the proposed FLSP licensee activities, including potentially complex or high conflict family law matters, LAO continues to favour a longer and more intensive paralegal training program by an accredited post-secondary institution²⁷.

This is not to say that FLSP licensees must attain the same educational duration or requirements as a family lawyer, but they should have a comparable duration of training that justifies a specialized designation. Currently, the completion of an existing LSO accredited paralegal program can vary in length, for example, around 1 year or 3 semesters, to 2 or 3 years of full-time paralegal studies. By comparison, in most law schools, the minimum duration for a common law program is three academic years, with any special designation requiring the completion of several academic courses and/or experiential learning.

The kind of post-secondary education training that is offered towards in any specialized paralegal program, including the new FLSP, should try to mirror the best practices of law that are able to provide similar specialized training for law students in the area of family law. For example, the Family Law Clinic at Queen's University²⁸ provides opportunities for law students to both act as volunteers to assist in relatively simple family law matters and to participate in an intensive training experience as part of an academic program. This more intensive training for students provides academic credits for clinic work where students are able to assist with more complex family law matters under lawyer supervision, as well as opportunities for clinic work during the summer²⁹. Similarly, family law training for

²⁷ *Supra* note 8 at p. 25.

²⁸ Queen's Clinics Family Law Clinic online: <<https://queenslawclinics.ca/family-law>>.

²⁹ This is Policy's understanding of the 2019-2020 Queen's Family Law Clinic program pre-COVID-19 pandemic.

a FLSP licensee should reflect the full and specialized scope of what the FLWG is proposing.

As discussed in our response to question 3, above, since the purpose of the existence of a FLSP license is to promote access to family justice³⁰, FLSP licensee training must also include contemporary access to justice issues, including working with historically marginalized or vulnerable clients. For example, it is important that FLSP licensees working with racialized and Indigenous families understand that common assumptions, including their own, about what is proper parenting may reflect a hidden western or Eurocentric bias, which if not challenged, and set aside, may be detrimental to their clients.

(iv) Other Components of Licensure

6. *What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?*

While taking a cautious approach to the expansion of legal services for non-lawyer licensees, Policy agrees with the FLWG's proposal, as set out in the consultation paper, that one to three years of full-time paralegal practice for an FLSP licensee is appropriate for the intended FLSP applicants.

In addition, the FLSP licensing process should include a mandatory field placement to complement and complete a course of study, rather than an optional one. This field placement should be at least one school semester in duration, rather than the two to three months currently proposed in the FLWG consultation paper.

Based on LAO's experience with non-lawyer service provision in our criminal law paralegal pilot, Policy continues to support the requirement of prior experience in legal services for an FLSP licensee. In LAO's pilot, five licensed paralegals assisted in four criminal law duty counsel offices in Brampton, Ottawa, London and Hamilton. They worked as legal aid workers (LAWs) under the direct supervision of LAO criminal duty counsel, and they carried out administrative duties to routine adjournments. To participate in this project, paralegals were required to have at least two years of criminal law experience working as LAWs.³¹

By only using non-lawyer staff with prior experience in criminal law duty counsel services as part of an inter-professional team, LAO was able to ensure competent and high quality services for clients.

³⁰ *Supra* note 2.

³¹ *Supra* note 8, LAO submission 2016. Also see *supra* note 11, Bonkalo Report.

7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?*

Following our previous responses, as well our experience with LAO's criminal law paralegal pilot, Policy agrees that, as an experiential training component, FLSP licensees would greatly benefit from a mandatory family law field placement in an inter-professional team environment. This would allow the important monitoring, assessment, feedback and mentorship that is necessary to sustain long-term paralegal family law practice. With this in mind, Policy also favours a longer field placement duration as described in our answer to question 6, above.

The FLWG and family justice partners may consider developing field placement programs with LAO, family law firms, community clinics, virtual clinics, Ministry of the Attorney General Family Court Support Worker agencies, immigration settlement agencies, and other community-based organizations. Like the earlier example of Queen's Family Law Clinic, or the Integrated Practice Curriculum (IPC) at Ryerson University's Faculty of Law³², experiential family law training can be integrated with academic learning through the duration of a LSO accredited FLSP training program.

To promote access to family justice, particular effort should be made to identify opportunities for experiential in-field placements, especially in under-served Northern or rural communities. These areas may require greater use of remote and virtual experiential training, even more so during the COVID-19 pandemic. However, recognizing that under-served areas may also coincide with a lack of access to technology, the success of a remote and/or virtual field placement necessitates strong justice system and community partnerships that facilitate adequate space for local family services, as well as reliable technological access.

8. *Is a CPD requirement focused on family law appropriate for the FLSP?*

Policy agrees with the FLWG that continuing competence, through regular and mandatory CPD training, is important to maintain for FLSP licensees.

Recently, we have seen the need for enhanced CPD with the passing of Bill C-78³³, Bill C-92³⁴, and Bill 207³⁵; and with changes to family law needs of the public during the COVID-19 pandemic. To learn about developments in family law practice and to maintain quality services, on a yearly basis, a FLSP licensee should complete a CPD focused on family law in addition to existing paralegal CPD requirements.

³² Ryerson University Integrated Practice Curriculum online: <<https://www.ryerson.ca/law/program/integrated-practice-curriculum-ipc>>.

³³ Bill C-78, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, 2018.

³⁴ Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*, 2019.

³⁵ Bill 207, *Moving Ontario Family Law Forward Act*, 2020.

Since it is a specialized license, the FLWG may wish to increase its CPD proposal for FLSP licensees, currently at two or three family law CPD hours per year, to a higher amount, e.g. at least a quarter of the CPD time requirement (3 hours). An increase in focused family law CPD hours would reflect the special nature of this new license, as well as the newness of the FLSP licensee's family law practice.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

Policy supports the eligibility of law clerks to be eligible for a FLSP. Pending the confirmed scope of permissible FLSP licensee activities, Policy recommends that the FLWG consider law clerk or LAO Legal Aid Worker family law experience as a training equivalent for part of the field placement or prior work experience requirements for an FLSP license. Here, our support is based on the positive experience that LAO has had with employing law clerks, or Legal Aid Workers, in the staff delivery of services in both in family and criminal law.

Law clerks or Legal Aid Workers (LAWs) have already been integrated into the legal aid family law services continuum, particularly in our LAO staff offices (e.g. FLSCs, as described in our Introduction)³⁶. In fact, many LAO LAWs are also paralegals. Law clerks or LAWs with at least two years of supervised family law experience working as LAO LAWs have achieved comparable experience to assist with uncontested and simple family law matters³⁷. However, further intensive training, mentorship and supports would be required before LAO considers allowing these staff positions to provide unsupervised family law services.

(v) General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (Billing practices, cost structure, accessibility, practicality, other?)

Policy's response to this question is included in our introductory comments.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

Policy's response to this question is included in our introductory comments.

12. Are any aspects of the proposed licensing framework unfeasible?

³⁶ *Supra* note 8, LAO's responses to questions 7 and 8 therein.

³⁷ *Ibid*; also, our response to question 6 therein.

Policy's response to this question is included in our introductory comments.

13. Is there additional information or are there other factors that should be considered?

At this time, Policy does not have any additional information to provide.

IV. Conclusion

We hope that our submission contributes to your careful deliberation about this important issue. LAO strives to continue responding appropriately to the legal aid needs of vulnerable Ontarians. This includes working with the FLWG and the LSO's Access to Justice Committee towards improving access to family justice, and participating in the ongoing conversation about the expansion of non-lawyers in the provision of family law services.

We look forward to opportunities to engage further with you about the FLSP license. If you have any additional questions or concerns related to the above, please feel free to contact me directly.

Yours truly,



David McKillop
Vice President, Strategy and Public Affairs

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Please enter your first and last name	Nima Hojjati
Email Address	hojjati.nima@gmail.com
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	LSO Equity Advisory Group (EAG)
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Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

To: Members of the Access to Justice Committee

From: Members of the Equity Advisory Group (EAG)

Date: November 30, 2020

Re: Submissions for the Family Legal Services Provider Licence Consultation Paper

Overview

1. Members of the Equity Advisory Group (EAG) have considered the proposed Family Legal Services Provider (FLSP) licence in the Consultation Paper dated June 2020. EAG supports expanding the delivery of family law legal services to paralegals. Regulated and licensed paralegals are in a unique position to address the unmet legal needs outlined in the Family Legal Services Review Report by Justice Annemarie E. Bonkalo (the Bonkalo Report).¹ At the Law Society of Ontario (LSO), paralegals are also an exemplary model of diversity and are well suited to meet the needs of diverse communities. The Supreme Court noted in *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, that “access to justice is facilitated where clients seeking legal services are able to access a legal profession that is reflective of a diverse population and responsive to its diverse needs”.²
2. In addition to the proposed framework, EAG recommends implementing a transparency measure in the form of a Notice of Engagement (NoE) as a requirement for retaining clients and providing family law services. The NoE should be an information tool outlining the FLSP license scope of practice, the role of the LSO, licensees’ professional obligations, and regulatory resources.
3. The NoE is not a novel concept. It reflects emerging LSO practices (such as the mandatory referral fees information sheet requirement) and practices in the United Kingdom (such as the Bar Standards Board’s “client care letters”). The introduction of a new class of licensees

¹ Justice Annemarie E. Bonkalo, “Family Legal Services Review. Report Submitted to Attorney General Yasir Naqvi and Treasurer Paul Schabas” (December 31, 2016), online: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/ [The Bonkalo Report].

² *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, at para 23 (<http://canlii.ca/t/hsjpt>).

provides the opportunity to improve transparency measures aimed at protecting the public through information sharing.

Background

4. EAG's mandate is to assist the Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones (EIAC), in the development of policy options for the promotion of equity and diversity in the legal professions. Additionally, EAG has responded to several previous calls for comment or consultations from the LSO on a variety of topics including the Challenges Faced by Racialized Licensees, Alternative Business Structures, the Dialogue on Licensing, the Governance Task Force, the Tribunal Rules changes, and the Access to Justice Call for Comments (2019).
5. EAG's membership consists of individual and organizational members:
 - The individual members are Nima Hojjati (Chair), Jacqueline Beckles (Vice-Chair), Jonathan Davey (Vice-Chair), Jeffrey Adams, Krishna Badrinarayan, Lisa Borsook, Leonard Kim, Sudevi Mukherjee-Gothi, Beatriz Corona, Shibil Siddiqi, Moya Teklu and Brenda Young; and
 - The organizational members are Arab Canadian Lawyers' Association, AJEFO, ARCH Disability Law Centre, Canadian Association of Black Lawyers, Canadian Association of Somali Lawyers, Canadian Hispanic Bar Association, Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers, Law Students' Society of Ontario, Ontario Paralegal Association, Roundtable of Diversity Associations and South Asian Bar Association.
6. It should be noted that both individual and organizational members of EAG may make their own submissions regarding the FLSP license.

The Bonkalo Report

7. EAG supports the FLSP license based on Justice Bonkalo's recommendations. Appointed by then Attorney General Yasir Naqvi and Treasurer Paul Schabas, Justice Annemarie Bonkalo lead a review to:

1. Identify the legal services at different stages in a family law matter which, if provided by persons in addition to lawyers, could improve the family justice system by better enabling people to resolve their family law disputes.
 2. Identify persons other than lawyers (*e.g.* paralegals, law clerks and/or law students) who may be capable of providing those family legal services with appropriate safeguards put in place (*e.g.* education, training).
 3. Recommend procedures, mechanisms and/or safeguards (such as education, training, insurance, regulation and/or oversight) to ensure the quality of family legal services provided by alternative legal service providers.³
8. A starting point in the Bonkalo Report was the widely felt impact of self-representation at all levels of the justice system and the significant challenges to access to justice. In 2014/15, over 21,000 or 57% of Ontarians did not have legal representation in family court.⁴ According to Loom Analytics, a legal analytics company in Toronto, unrepresented litigants did not typically fare well against represented litigants either: for motions, unrepresented litigants had 124 wins and 720 losses; for applications, they had 9 wins and 56 losses; for trials, they had 30 wins and 84 losses.⁵
9. According to a survey conducted by Professors Rachel Birnbaum, Nicholas Bala and Lorne Bertrand, 65% of judges believed that self-represented litigants generally had worse outcomes on economic issues and 46% were concerned about child-related outcomes.⁶ The survey also found that 91% of Ontario family lawyers felt that having an unrepresented party on the other side of a file increased costs for the represented party.⁷ Further, 49% of surveyed self-represented litigants indicated that they did not have enough money to have a lawyer and were not eligible for legal aid.⁸

Paralegals

10. In 2007, Ontario became the first Canadian jurisdiction to regulate paralegals and the first and only jurisdiction in Canada where paralegals are licensed to work independently of lawyers.⁹ In order to become a licensed paralegal, a candidate must: (1) complete an approved paralegal

³ The Bonkalo Report, *supra* note 1, Part 1, section 1 (a).

⁴ The Bonkalo Report, *supra* note 1, Part 1, section 2 (a).

⁵ The Bonkalo Report, *supra* note 1, Part 1, section 2 (a).

⁶ The Bonkalo Report, *supra* note 1, Part 1, section 2 (a).

⁷ The Bonkalo Report, *supra* note 1, Part 1, section 2 (a).

⁸ The Bonkalo Report, *supra* note 1, Part 1, section 2 (b).

⁹ The Bonkalo Report, *supra* note 1, Part 2, section 2 (c).

program at a college; (2) pass the good character requirement; and (3) pass the Law Society's paralegal licensing exam.¹⁰

11. Paralegals can represent clients and practice in: Small Claims Court; *Provincial Offences Act* matters at the Ontario Court of Justice; summary conviction offences under the *Criminal Code*, where the maximum penalty does not exceed six months imprisonment and/or a \$5,000 fine; and before administrative tribunals, including the Financial Services Commission of Ontario.¹¹
12. Licensed paralegals are subject to regulation and discipline by the LSO. The Bonkalo Report considered whether a broader range of legal service providers, such as paralegals, should be allowed to handle certain family law matters. Justice Bonkalo noted that large bar organisations and the bench expressed considerable opposition to paralegals providing family law services while alternative, non-traditional service providers, front line service providers, not-for-profit organisations, and paralegals expressed support.¹²
13. The key concern expressed to Justice Bonkalo about having paralegals provide family law services was that the public would not be protected.¹³ Concern was also expressed about creating a second legal market or a two-tier system of justice or that there is no evidence that paralegals will charge lower fees if they are required to invest in further training, education, and insurance.¹⁴
14. The key arguments expressed to Justice Bonkalo in support of paralegal family law services was greater access to justice.¹⁵ The top reason litigants are unrepresented in court was their inability to pay for legal services.¹⁶ It was proposed to Justice Bonkalo that expanding family matters to paralegals would increase competition and options, thereby encouraging innovation, improving quality, and reducing prices.¹⁷

¹⁰ The Bonkalo Report, *supra* note 1, Part 2, section 2 (c).

¹¹ The Bonkalo Report, *supra* note 1, Part 2, section 2 (c).

¹² The Bonkalo Report, *supra* note 1, Part 3, section 2 (a).

¹³ The Bonkalo Report, *supra* note 1, Part 3, section 2 (a)(i).

¹⁴ The Bonkalo Report, *supra* note 1, Part 3, section 2 (a)(i).

¹⁵ The Bonkalo Report, *supra* note 1, Part 3, section 2 (a)(ii).

¹⁶ The Bonkalo Report, *supra* note 1, Part 3, section 2 (a)(ii).

¹⁷ The Bonkalo Report, *supra* note 1, Part 3, section 2 (a)(ii).

15. Following the review, Justice Bonkalo recommended that trained and regulated paralegals be permitted to provide family law services in the following areas: custody; access; simple child support cases; restraining orders; enforcement; and simple and joint divorces without property.¹⁸
16. Justice Bonkalo recommended that paralegals should not be permitted to provide the following services: the *Convention on the Civil Aspects of International Child Abduction* (i.e. the Hague Convention); child protection (which is outside the scope of this review); property; spousal support; complex child support in which discretionary determinations are necessary to arrive at an income amount (e.g. self-employment, undue hardship); and relocation.¹⁹

Equity and Diversity

17. In the course of her review, Justice Bonkalo noted that finding a legal representative from one's own cultural background or who speaks one's own language presents challenges for many:

“each individual is unique, with a unique set of circumstances such as race, income, education, literacy, language, religion and geographic location, it is important to keep in mind how these different variables may affect a person's access to legal services in family law”.²⁰

18. Race-based data is needed with respect to legal consumers and legal providers. However, the 2018 LSO Statistical Snapshots indicate that 38.8% of paralegals vs. 22.5% of lawyers are racialized.²¹
19. With respect to gender, 64.9% of paralegals are women (including 74.8% of Indigenous paralegals, 63.6% of racialized paralegals and 68.3% of White paralegals)²² while 45.1% of lawyers are women (including 57.2% of indigenous lawyers, 56% of racialized lawyers, and 46.2% of White lawyers).²³

¹⁸ The Bonkalo Report, *supra* note 1, Part 4, section 2 (b).

¹⁹ The Bonkalo Report, *supra* note 1, Part 4, section 2 (b).

²⁰ The Bonkalo Report, *supra* note 1, Part 4, section 2 (b).

²¹ Statistical Snapshot of Paralegals in Ontario (2018):

<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-paralegalseng-pdf.pdf> (page 3) and Statistical Snapshot of Lawyers in Ontario (2018)

<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyerseng-pdf.pdf> (page 4).

²² Statistical Snapshot of Paralegals in Ontario (2018) at page 3.

²³ Statistical Snapshot of Lawyers in Ontario (2018) at page 4.

20. Paralegals at the LSO are an exemplary model of diversity. While the noticeable difference in diversity between paralegals and lawyers must be studied and examined, it remains that paralegals are well suited to provide access to legal services that are “reflective of a diverse population and responsive to its diverse needs”.²⁴
21. In addition to cultural representation, Justice Bonkalo recognised that paralegals would provide a greater choice of legal service to those in the middle class (those who do not qualify for legal aid and cannot afford a lawyer).²⁵

Education Component – Part-time Flexibility

22. In developing the FLSP education programs, especially the part-time program, EAG encourages the LSO to consider the interests of currently licensed paralegals. The part-time program (contemplated at 10 hours a week for one year) should be flexible and accommodating to paralegals who may be practising full-time throughout the course of their FLSP training.

Notice of Engagement

23. Paralegals are regulated by the LSO and they have to meet required standards in order to practice. They do not present an increased risk to the public any more than lawyers. The LSO has recognised and tried to remedy the public’s lack of familiarity with the functions of legal regulation through a public communication campaign. At the start of the campaign, Past-Treasurer Malcolm Mercer noted:

On the public side, the public doesn’t have sufficient information on legal resources, whether that’s how to find a lawyer or paralegal or how to find legal information. When people have legal problems — divorce, child custody, need small claims court representation — they don’t know where to start and we want to help change that.”²⁶

24. The introduction of a new category of licensees presents an opportunity to increase the dissemination of information in an effort to protect the public. The need for clear information is heightened by the limitations imposed on the scope of practice.

²⁴ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para 23 (<http://canlii.ca/t/hsjpt>).

²⁵ The Bonkalo Report, *supra* note 1, Part 4, section 2 (b).

²⁶ LSO expands advertising campaign (May 2019): <https://www.lawtimesnews.com/news/general/lso-expands-advertising-campaign/263558>

25. The NoE can outline the roles of FLSP licensees and the roles of the Law Society. When a client is retained, an FLSP licensee should be required to draw their client’s attention to an electronic or physical copy of the NoE.

26. The NoE should include information about:

- (1) the scope of permissible activities (including the limits);
- (2) information about the LSO’s role and resources; and
- (3) information about licensees’ obligations under the Professional Code of Conduct and the Human Rights Code.

27. Transparency measures are not a novel practice at the LSO. Since 2017, licensees seeking a referral fee are required to provide a client with the “Law Society Requirements for Referral Fees – What Clients Need to Know” information sheet.²⁷

28. In the United Kingdom, The Bar Standards Board (BSB) requires barristers to provide their clients (or the instructing solicitor) with a “client care letter” which sets out the scope of the work, timelines, fees, and complaint provisions.²⁸ Rule rC125 of the BSB’s Code of Conduct states:

Having accepted public access instructions, you must forthwith notify your public access client in writing, and in clear and readily understandable terms, of:

- 1) the work which you have agreed to perform;
- 2) the fact that in performing your work you will be subject to the requirements of Parts 2 and 3 of this Handbook and, in particular, Rules rC25 and rC26;
- 3) unless authorised to conduct litigation by the Bar Standards Board, the fact that you cannot be expected to perform the functions of a solicitor or other person who is authorised to conduct litigation and in particular to fulfil obligations arising out of or related to the conduct of litigation;
- 4) the fact that you are self-employed, are not employed by a regulated entity and (subject to Rule S26) do not undertake the management, administration or general conduct of a client’s affairs;
- 5) in any case where you have been instructed by an intermediary:
 - a) the fact that you are independent of and have no liability for the intermediary; and

²⁷ Referral Fees: <https://www.lso.ca/paralegals/practice-supports-and-resources/topics/managing-money/fees-and-disbursements/referral-fees>

²⁸ What to expect from your barrister: <https://www.barstandardsboard.org.uk/for-the-public/finding-and-using-a-barrister/what-to-expect.html>

- b) the fact that the intermediary is the agent of the lay client and not your agent;
- 6) the fact that you may be prevented from completing the work by reason of your professional duties or conflicting professional obligations, and what the client can expect of you in such a situation;
- 7) the fees which you propose to charge for that work, or the basis on which your fee will be calculated;
- 8) your contact arrangements; and
- 9) the information about your complaints procedure required by D1.1 of this Part 2.²⁹

29. The BSB has additional transparency measures for barristers involved in the Public Access regime (services to “public/lay client”) included in online guidance documents.³⁰

30. The Solicitors Regulation Authority (SRA) also has transparency measures including online documents written for the public, such as the “Thinking of using legal services?” information sheet.³¹ These information sheets contain valuable general information about: the role of the SRA, generally expected standards required of solicitors, complaints process, and available SRA resources. The document is available in 10 languages other than English. Although the LSO has similar information available on its website, they are not as centralised or targeted as the BSB or SRA procedures.

31. Providing information directly to clients would be an effective tool in protecting the public and increasing awareness of legal resources. Similar to the UK model, this information should be translated in a wide range of languages in order to increase its public reach.

²⁹ The BSB Handbook (v 4.5): <https://www.barstandardsboard.org.uk/uploads/assets/de77ead9-9400-4c9d-bef91353ca9e5345/10eb3faa-626c-489e-a0c3e74c60a2aab6/second-edition-test31072019104713.pdf>

³⁰ Public Access Guidance for Lay Clients: <https://www.barstandardsboard.org.uk/uploads/assets/f5fc2fda-dcde-4863-a0299f6f673178f2/COMPLETED-Public-Access-Guidance-for-Lay-Clients.pdf>

³¹ SRA Thinking of using legal services?: <https://www.sra.org.uk/globalassets/documents/consumers/thinking-using-legal-services.pdf?version=4964af>

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SUBMISSION

Law Society of Ontario
Family Legal Services
Provider Consultation

NOVEMBER 30, 2020

INTRODUCTION

The Society of United Professionals welcomes the opportunity to provide comments to the Law Society of Ontario's Family Legal Services Provider Licence Consultation.

The Society of United Professionals represents more than 8,500 professional workers across Ontario, including engineers, scientists and lawyers. The Society's membership includes almost 400 staff lawyers, including roughly 140 staff lawyers practicing family law exclusively or in addition to criminal law. Our Legal Aid Ontario bargaining unit consists of research counsel, policy counsel, and family, criminal, and immigration counsel. Our clients are some of the province's most vulnerable people.

In the period between June 2018 and March 2020, Society-represented Legal Aid staff lawyers provided assistance in approximately 120,000 family law and child protection matters.¹ Our members assist clients with a broad range of family law issues, both in terms of substantive and procedural guidance as well as through duty counsel and advice lawyer services. Duty counsel assist clients in court on motions, conferences, uncontested hearings, and first appearances in child protection matters, provide pre- and post-on-site mediation advice, and help parties negotiate and draft consent endorsement requests. In some locations, and subject to local policies and resources, staff lawyers and legal aid workers provide drafting assistance for motions to change, including motion materials and conference briefs, act as advice counsel in Family Law Information Centres, and deliver telephone summary family law advice through the Summary Legal Advice Family (SLAF) program. Staff lawyers assess clients' eligibility (legal and financial) for certificate services and make these referrals for eligible clients. Legal Aid staff lawyers contribute to the court's ability to deal with matters efficiently through the range of services we provide to eligible self-represented clients, and help provide these clients with the support they need to effectively put their case before the court. Given this role, we are intimately aware of the challenges low income litigants face trying to navigate the family court system.

In these comments, we do not intend to provide exhaustive answers to the questions posed in this consultation. Rather, we have provided overarching comments, as well as a compilation of more specific comments we received from our family law practitioner members related to the questions. Additionally, while there is no complete consensus within our membership on this licence we have tried to offer multiple perspectives and suggestions based on these varying view points.

¹ <https://www.legalaid.on.ca/documents/lao-update-spring-2020-edition/>

GENERAL COMMENTS

We question the true benefit of the proposed Family Legal Services Provider (FLSP) licence. The access to justice crisis in family law is not simply a matter of a lack of access to affordable legal service providers. There are significant systemic issues which, if addressed, would do substantially more to address access to justice than the FLSP licence. The degree to which FLSP licences and other access to justice initiatives can meaningfully address the access to justice crisis hinges on addressing the systemic issues with substantive family law, legal services delivery, and the court system. While the FLSP licences, subject to the scope, limitations, and requirements that are to be finally determined, may contribute to increased access to justice, the existing systemic barriers increase the complexity, conflict, and resulting cost of family law disputes. If these systemic issues are not addressed, FLSP licensees, and the people they are envisioned to serve, will be subject to the same pressures that currently limit access to justice and family law services to the public. The substantial gap in training between a lawyer and an FLSP may actually exacerbate some of these issues, as in the case of an FLSP, the practitioner required to navigate them may be less equipped to do so.

Family law and the family court system developed in a much different social reality, with family reorganization (separation/divorce, children with more than one partner, multiple income earners per family, etc.) being far less common. While there has been some incremental development, if designed today from scratch, some significant aspects of the law and court processes would likely look quite different.

Some examples of the systemic issues that impede access to justice include:

- **Lack of Triage:** Family law cases are all subject to the same process, with little if any front-end triage, case/merit evaluation, or consistent case management. Unlike civil cases, there is no simplified procedure available for more straightforward matters;
- **Adversarial System:** The family court system, and even the means to access legal advice and support, is highly adversarial in structure. The court process is not about finding common ground or working to reduce disputes and resolve matters favourably for all parties, but rather it encourages a battle of entrenched and polarized positions. This draws out court processes and increases costs and time for all parties. In the case of parents, legal fees and costs represent a reduction in the resources available to support children;
- **Challenges and Barriers to Financial Disclosure:** There are numerous challenges and barriers to providing and to obtaining financial disclosure. These add unnecessary time and expense in the resolution of support and property matters that will in no way be remedied through the FLSP. This is obviously frustrating for support recipients, but it can also be a significant challenge for people who are unable to understand the requirements or fulfill the requirements due to literacy, mental health/disability or other issues. Policy and legislative changes to facilitate direct access to income tax information by support recipients, courts, or administrative bodies (e.g. Family Responsibility Office/Ontario Child Support Service) with appropriate conditions, could help ensure that support obligations are maintained in accordance with applicable guidelines and eliminate considerable time and expense;
- **Wasted Resources on Calculation and Changes in Income:** Similar to the above noted challenges with providing and obtaining financial disclosure, challenges in making calculations and dealing with changes in income are needed. Currently, significant judicial and individual resources are used in change motions. These resources could be saved with calculation assistance and simplified processes;
- **Alternative Dispute Resolution (ADR) Limitations:** ADR processes could reduce court backlog and costs for all parties and the court system. We believe that ADR is not being used to its full potential. The current ADR process is complex and time-consuming and cannot be

completed with only one lawyer (or FLSP) but requires the need for multiple practitioners for ADR itself, ILA and litigation if the ADR is unsuccessful. This complexity needs to be remedied especially as it creates a disparity between those with financial means and those without;

- **Lack of Proportionality and Parity in Potential Costs Awards:** While the family law rules address issues of proportionality, the structure of the family law and family court system make proportionality difficult to implement in practice. With respect to costs, a self-represented party (or potentially a party represented by an FLSP if there is any true cost savings with retaining an FLSP rather than a lawyer, see answer to Question 2 below) will be at a disadvantage given that there will not be parity in exposure to a costs award if unsuccessful. This disadvantage may make negotiation more difficult, allowing a lawyer-represented party to exert pressure on the self- or FLSP-represented party to accept a less reasonable offer without the counter-balance of comparable costs exposure. The proportionality principle rarely operates to limit the expenditure of legal fees by parties that can afford it, and this can make pursuing a merits-based court determination a big gamble, even with a reasonable position. This is one of several examples of how the current family law system facilitates the employment of positional strategies to leverage settlements limiting access to merit-based resolutions, whether negotiated or adjudicated.

These, and other systemic, procedural, and substantive issues, contribute to the time and expense required to resolve family law matters, and the often pyrrhic victories won in court. The impact of the introduction of FLSPs on the access to justice crisis, if of any benefit at all, will be limited by these and other existing systemic constraints. Again, we are concerned that, if anything, FLSPs may be less equipped to navigate these constraints.

We are acutely aware in our role as representing legal aid lawyers, as are others, including the Canadian Bar Association, that there is a large gap between those who would qualify for legal aid and those who can afford to pay for legal representation.² Financial Eligibility for family LAO certificate services as of April 1, 2020 range from \$18,795 for a household size of 1, to \$50,803 for family size 5 or larger. Cases involving domestic violence have a higher threshold by family size of approximately 40%. Ostensibly the FLSP licence is available to address this gap. However, the LAO financial eligibility threshold is so low that many who do not qualify for an LAO certificate will not be able to afford to hire a FSLP. In the range where perhaps a litigant may be able to afford to hire someone, we submit that the cost of an FLSP may not in fact be less than a family lawyer and the service provided may not be comparable. (More on this below.)

We have significant concerns about the ability of paralegals to provide advice and representation in potentially complex and volatile family law matters including those that potentially involve children, domestic violence and other intersecting and overlapping areas of law. The risks and potential implications on the lives of Ontarians by introducing this licence are significant. Moreover, the FLSP licence would be unique to Ontario. It is our understanding that no other jurisdiction in the world that has a system like the one the LSO is proposing.

Regardless of whether the FLSP license might make certain legal services more accessible, other initiatives are still necessary to address the access to justice crisis in family law in Ontario. Increased funding for Legal Aid Ontario, as a significant pillar of the response to the access to justice crisis, should remain a high priority for LSO advocacy efforts. As a consequence of recent cuts to Legal Aid Ontario, matters that are eligible for family legal aid certificates must be serious and complex and often involve issues of domestic violence or clients with particular vulnerabilities. Remedying the LAO funding crisis would allow an increase in duty counsel services for family law litigants as well as an increase in financial thresholds and available services

² For reference, the Canadian Bar Association report entitled *A National Framework For Meeting Legal Needs: Proposed National Benchmarks For Public Legal Assistance Services* calls for public legal services financial eligibility based on 150% of the Canadian Low Income Measure, which based on 2018 numbers would result in an eligibility range of \$36,274 for a 1 person household to \$81,112 for a 5 person household: https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/LLR/A-National-Framework-for-Meeting-Legal-Needs_Proposed-National-Benchmarks.pdf

for LAO certificates. In our view, this would do more to remedy the access to justice crisis than the FLSP licence would. It would also avoid a two-tiered system where only those with the highest income are able to access the knowledge, skills, and experience that only family lawyers provide. For these reasons also (that currently LAO certificates are only available for serious and complex matters and that there is a risk of a two-tiered system), it is crucial that publicly funded legal services continue to be provided primarily by lawyers, including duty counsel services only potentially augmented with services provided by FLSPs (or as is currently done, assisted by non-lawyers at LAO known as legal aid workers).

RESPONSES TO SELECTED CONSULTATION QUESTIONS

SCOPE

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

We anticipate that there may be a limited increase in access to affordable, competent family legal services with the proposed FLSP licence. However, in our view it is questionable whether the cost of those services will truly be much less (see comments to Question 2 below) than that for a family lawyer. We question whether FLSP services will be affordable and whether the licence is useful in addressing access to justice issues. At best, we expect that the FLSP licence will only benefit a very small minority of family law litigants: those falling into the narrow range of those who are able to afford to hire an FLSP but not a lawyer. Given that there may well not be much of a difference in the cost of FLSP services from that of a family lawyer (again see comments to Question 2 below), we expect the range of litigants who the licence will benefit, if it is any, will be narrow.

We are also deeply cognizant of the potential harm done in permitting paralegals to provide legal services in a legal system where there is no simplified process as briefly addressed above. Family law is a complex area of law. It is also fluid. A case may initially present with fewer complications than it truly has or will develop. Will FLSPs be competent to distinguish those cases at the outset and will they be competent to identify those cases mid-proceeding, advise their client appropriately, cease providing representation, and remove themselves from record where appropriate? This raises competency issues but also cost issues. In situations where the scope and/or competency issue arises mid-proceeding, the hiring of an FLSP may actually make litigation more expensive and time-consuming for litigants, as they will require a change of practitioner. Alternatively, the litigant may move to self-representation having already expended money on the FLSP and not wishing or being able to expend more money on a lawyer that would have to familiarize themselves with the whole case before being able to assist.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

We are concerned that FLSPs may be unable to develop a viable business model. In our view, the primary challenge is not the proposed scope of permissible activities but the costs associated with running an FLSP practice combined with the already undervalued legal services provided by family lawyers that would prevent the business model from being viable.

In order to be competitive and to serve the purpose of the FLSP initiative by the LSO (increasing access to justice by providing cheaper legal service providers), FLSPs will have to charge less than family lawyers on a per service or hourly basis. But FLSPs will still have the same overhead costs, including: licensing requirements, including specialized FLSP training, any supervised practice requirements, Continuing Legal Education obligations, professional liability insurance, LSO dues, office space and equipment, administrative staff, rent, technology and communications, research and legal texts, accounting, and more.

It is already the case that many family lawyers do not bill for all hours worked in order to keep costs down for clients and, if the client is on an LAO certificate, in order to fall within the LAO limits. Many family lawyers offer reduced fee options as well or provide services at the relatively low end of the fee spectrum. The Advice & Settlement Counsel Program (ASCP), which provides “private” duty counsel at the Superior Court of Justice in Toronto, charges \$200 per hour which is understood to be affordable.³ Significantly, the advent of the ASCP program was a direct response to funding cuts to LAO which resulted in the discontinuation of LAO funded duty counsel services at the court. Relatedly, prior to the cuts to LAO, our duty counsel members were able to provide brief procedural advice as well as assistance negotiating uncomplicated consent endorsement requests for self-represented parties in family court which helped the court run more efficiently, again highlighting the importance of appropriate funding for LAO.

Additionally, while lawyers may be able to balance out the legal aid or reduced fee services they provide with higher fee services that address the needs of more affluent clients, limitations on the scope of practice to issues that are less profitable (notwithstanding the significant personal value to clients) along with less to attract affluent clients will reduce FLSPs’ flexibility with respect to fees and their ability to develop a viable business.

One advantage FLSPs will have over lawyers in developing a viable business, relates to the cost of law school versus paralegal programs. The lack of public investment in law school education contributes to high tuition fees. Presumably, not being saddled with the enormous debt coming from the years of education required to obtain a law degree will make the business of an FLSP more viable. Rather than developing an FLSP licence, we recommend that the LSO advocate for an increase in public investment in law school education to address this issue. High tuition fees resulting from a lack of public funding makes it difficult to access a law school education, particularly for those without substantial family financial resources and/or from equity-seeking communities. It also creates a barrier for early career lawyers, saddled with what may be substantial student debt, to provide less remunerative/low-cost legal services to the public, including in the area of family law. The LSO must also advocate to reduce financial barriers to a law school education.

Even if FLSPs charge some fraction of the ASCP rate, the cost of litigating a contested family matter, especially to trial, will still be out of reach for people with low to middle incomes. Those hiring FLSPs will also lose access to family duty counsel services. At the same time, it may very well be difficult for FLSPs to maintain a reasonably profitable practice.

COMPETENCE

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

Providing family legal services requires a knowledge of “black letter” law sufficient to issue-spot intersections with other areas of law. These include: bankruptcy, corporate law, tax, estates and property law, criminal, immigration, Indigenous law, domestic violence, mental health/capacity law, youth/education law, Indigenous law, among others.

In addition to the competencies related to issues facing Indigenous clients and domestic violence, FLSPs as well as family lawyers would benefit from competencies outside of “black letter” family law and practice, including:

- Diversity of family structures - and children’s needs - related to race, ethnicity, religion, sexual orientation, gender identity, and gender expression;
- Collaborative practice models;
- Children’s rights;

³ <https://www.thelawyersdaily.ca/articles/17481/new-family-law-self-represented-litigant-project-launches-in-toronto>

- Child development and attachment relevant to determination of appropriate parenting orders;
- Mental health issues;
- Substance use/abuse issues;
- Accommodation; and
- Best practices for increasing accessibility for clients.

Key competencies developed in law school include legal analysis and critical thinking skills as they relate to legal issues. These are developed through years of academic study prior to law school and then through legal study at law school. We expect these skills and competencies will likely be difficult to replicate in a shorter and less intensive timeframe. We recommend that the LSO implement a means for FLSP candidates to develop these competencies outside of law school. These skills will be crucial for FLSPs to have any hope to flag issues outside of their scope especially given the complexity of what is in and out of scope.

We also note that family law matters often intersect and overlap with other areas of law including bankruptcy, corporate law, tax, estates and property law, criminal, immigration, mental health/capacity law, youth/education law, Indigenous law, among other areas. While we recommend that the FLSP licence require basic competencies in these areas of law, it is not likely that without the legal analysis and critical thinking skills developed in law school, that FLSPs will have the competency to spot these other legal issues and address them or refer their client to a lawyer who can. A side issue is also that in the event an FLSP does spot the intersecting or overlapping legal issue their client may be hesitant to pay for a lawyer, having already retained an FLSP, who practices in this other area of law. The client may choose to ignore a significant legal issue instead. There is also an ethical risk that the FLSP might influence the litigant to only pursue certain claims and not pursue claims that fall outside the scope in order to not lose the client.

Having identified the need for legal analysis and critical thinking skills as they relate to legal issues, and recognizing that that it will be exceedingly difficult to develop these outside of law school (or an equivalent program of training and education), is one reason for which the scope of permissible services must be limited to simple procedural matters. It is also a reason we flag the concern that family law does not have clear cut simple procedural matters (as criminal and civil law do) thereby making it near impossible to ensure FLSPs stay within scope and accountable and that clients receive high quality legal service and representation under the FLSP licence.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

Within our membership there is by no means consensus that the FLSP should actually be approved and in fact we have significant concerns. However, if it is to be approved, in order to best support increased access to affordable and high-quality family law services, we suggest the following be considered:

- Placing unbundled services within scope. FLSP assistance with financial disclosure and document drafting would be helpful. Where this is done, it may be beneficial to require that the FLSP is identified on the work product;
- Placing Interjurisdictional Support Orders Act (ISOA) proceedings within scope, as FLSPs should at a minimum be able to provide assistance with the preparation of the ISOA forms;
- Having a dollar value limit on property claims (if property issues are in scope), and requiring that clients receive independent tax advice if there are multiple properties under that limit. This could help address the liability issue and may assist in controlling the cost of insurance premiums;
- Limiting scope of practice to matters that are not highly contested or high-conflict; and
- Whether there would be a greater benefit to having FLSPs work under the supervision of a lawyer and/or do work that supports the work of a lawyer on a file thereby reducing the costs to a client but not reducing the risks and the representation obtained by the client.

TRAINING PROGRAM

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?

No comments.

OTHER COMPONENTS OF LICENSURE

6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

No comments.

7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

The following are some suggestions we have with respect to experiential training for the FLSP:

- The FLSP practicum should require training with respect to best practices for file set up, retainer agreements, and recording client acknowledgement for scope of work to be performed;
- The FLSP practicum should include development of professional written communication skills through review and analysis of precedents and drafting exercises;
- With respect to Motions to Change, substantial training materials should be developed including materials addressing jurisdictional issues, time limits, and when a fresh application may be needed as opposed to a motion to change;
- FLSPs should receive specific and detailed training for child support matters related to step-parents and undue hardship;
- The field placement supervisor should certify the FLSP's completion of a core list of tasks; and
- The length of the field placement should be longer than the 2-3 months suggested in the report. Several of our members proposed that FLSPs should have a minimum one-year placement, akin to articling, under the supervision of an experienced lawyer. At a minimum we would recommend it be five months full-time. Many family law matters take years to go through the system and a 2-3-month placement would not provide sufficient opportunity to learn and gain the experiential knowledge it is intended to provide.

8. Is a CPD requirement focussed on family law appropriate for the FLSP?

Yes. The Annual CPD requirement should be 12 hours, but we would suggest a higher threshold of 6 hours of family law-specific CPD, given the complexity and rapid developments.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

We would not support all law clerks being eligible for the advanced standing and acceleration to examination and qualification. We are unclear on the definition of law clerk being used by the LSO in considering having law clerks eligible for the FLSP licence.

We question the suitability of law clerks for the program given the breadth of education, training and experience of law clerks. Judicial law clerks, or someone with specified education/training with the Institute of Law Clerks of Ontario (ILCO) which has a set program, and with three years of full-time family law

experience, for example, may potentially be supportable for consideration. However, we would not support law clerks with high school, or a 1-year college diploma, be eligible without the LSO programming. The lack of education coupled with the lack of that substantive training would, in our opinion, impact quality of representation.

GENERAL

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

In many of our members' experience, many persons try to access LAO services not because they cannot afford to hire counsel but because they do not want to pay out of pocket; they believe they should be provided with free legal advice and representation. Our expectation is that many litigants will go to FLSPs thinking that they can avoid paying the higher costs of a lawyer. As noted above, this may not be the case and there could even be the risk the cost would be higher by going to an FLSP when it turns out later that a lawyer is needed. These litigants will not know if their matter is more or less complicated or whether or not there are out-of-scope issues or whether or not they would simply benefit from the specialized legal knowledge and experience of a lawyer.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

Steps to Justice has made a significant contribution to improving access to family justice, and has made it significantly easier for some self-represented parties to prepare legible court documents with much more relevant content. An FLSP would likely be able to prepare higher quality court documents with more relevant information than a self-represented litigant on their own. However, many self-represented litigants, including many of those likely captured in Ontario Court Chief Justice Annemarie Bonkalo's 2016 report on unmet legal needs in the family justice system,⁴ have assistance from lawyers by way of advice and/or drafting through duty counsel and other LAO staff (or *per diem*) lawyers. Those hiring an FLSP would lose this access to lawyers.

We reiterate that we do not believe that the FSLP licence is a solution to the access to justice crisis. We see it as having a very limited benefit to a very small number of litigants while doing nothing to address the fundamental systemic issues with family law accessibility.

12. Are any aspects of the proposed licensing framework unfeasible?

We have concerns with respect to the examples raised in other jurisdictions of low uptake. A lot of resources would be required to create, implement, and evaluate this type of program, particularly now in the midst of a pandemic. We need solutions that will have the highest return on investment and best address the coming deluge of backlogged cases.

13. Is there additional information or are there other factors that should be considered?

- With respect to the exclusions listed on page 7 of the consultation report, how will FLSPs determine if a client is "mentally incapable"? This exclusion should not be limited to parties who would be covered by the special party rule, and where an FLSP has less than three years of experience, any client with significant mental health concerns should be referred to a lawyer;
- Mediation agreements or reports should be listed as requiring ILA by a lawyer. ILA on agreements should be listed as an exclusion for FLSP generally;
- Motions and advice regarding partition and sale (3.7.93), encumbrances (3.7.94) and registrations on property (3.7.95) or appendix C should be out of scope for FLSP.

⁴ https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/



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Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



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November 26, 2020

To the Attention of

The Access to Justice Committee
Law Society of Ontario
Toronto, ON
M7A 2S9
rbudhwan@lso.ca

**RE: The County of Carleton Law Association Comments on the LSO Family
Legal Services Provider Licence Consultation Paper**

About CCLA

This submission is made on behalf of the County of Carleton Law Association (the CCLA). The CCLA was formed in Ottawa in 1888 by a group of 60 lawyers, and is now the second largest law association in Ontario, representing over 1700 lawyers in the Ottawa and East Region legal community. The CCLA also has paralegal members, who play an active role in our organization.

The CCLA is a member of the Federation of Ontario Law Associations, and supports the submissions made by the Federation. The CCLA wishes to add the following submissions to highlight particular areas of concern. The CCLA made submissions on the Bonkalo report which explored whether the family justice system could be improved by expanding the delivery of legal services to providers other than lawyers. As a starting point, we wish to emphasize the following which formed part of those submissions.

Submissions



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Family law is increasingly complex, requiring detailed and expansive knowledge of a large number of statutes, case law, and intersecting areas of practice such as immigration, criminal law, business law, tax law, contract law, real estate law, child protection law and employment law, as well as an understanding of the emotional and interpersonal dynamics, including racial, gender, class, and cultural awareness, sensitivity to violence and abuse issues, and the significance and relevance of mental health issues. In fact, LAWPRO repeatedly identifies family law as one of the most complex and challenging areas in which to practice.

Family law is also fundamentally important to Ontario families – the consequences of making practice mistakes can be irreparable and severe, from issues impacting the well-being of children, to the viability and health of families, and other significant human, social and financial costs. Getting it wrong can easily result in significant overall detrimental impact. Failure to know or apply the law is twice as likely to occur in family law than in other areas of practice and errors of law account for 22% of common malpractice errors in family law.¹

The complexity and importance of family law exists despite the fact that many people, including some non-family law lawyers, the media, and members of the general public, often perceive family law as simplistic. There are relatively few “simple” family law cases, however, and, significant errors can be made where a case is wrongly labelled “simple”. Such errors run counter to the goals of access to justice. It is the position of the lawyer members of the CCLA that providing people with a larger pool of licensed providers will not improve access to justice overall, whereas the position of the paralegal members is that it will afford a choice to parties who fall between those who qualify for legal aid and those who can afford a lawyer. Ongoing legal education for lawyers, combined with a robust but focused training program for paralegals who seek to obtain an FLSP licence, and ongoing CPD programming for lawyers and FLSP licensees are key to improving overall access to justice.

There appears to be an unsubstantiated assumption that expanding the role of paralegals within the family law practice will automatically improve access to Justice. Having consulted the East Region bar in an informal way, we note that many family law lawyers already make significant efforts to reduce costs by using junior lawyers,

¹ Published by Law Pro in April 2019 - [Here](#)



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articling students, and law clerks in order to improve efficiency and reduce costs to clients. This consultation suggests that current paralegals without a special designation charge between \$100 - \$185 per hour, whereas legal aid rates are between \$110 and \$137 per hour. Our consultation suggests that many lawyers of 5 years or less of call charge rates similar to legal aid rates and some senior lawyers do as well. While access to justice may be enhanced by broadening the scope of paralegal practice, the lawyer members of the CCLA do not accept the premise that having more people offering a reduced scope of service is the only answer to the access to justice issue.

Additional Solutions to Access to Justice

Improving access to justice within the family law arena requires broader consideration than just whether to allow paralegals with enhanced education to work in the area. While that is a component, the CCLA offers the following additional considerations:

- a) A number of steps are being taken to improve the family law court process and its ability to provide a more cost-effective result, such as by making case conferences more meaningful and effective at resolving the issues or moving matters forward towards resolution, using rule 2 trials, and applying principles of proportionality. These are important initiatives and will be key to improving access to justice in family law. At the same time, these initiatives make it all the more important to have family law lawyers involved so that effective and meaningful advice can be provided at each stage.
- b) Striving to improve access to justice requires a broad based view of social justice priorities, including substantive equality. The legal system does not operate in a vacuum. Initiatives to improve access to justice in family law need to consider systemic factors that impair access for a number of marginalized and vulnerable populations. Although these systemic issues may appear to be beyond the scope of this review, they have a real and significant impact on the ability of many to access the justice system. Real substantive improvement to access to justice can only be achieved by also addressing broader systemic issues.

- c) We do need better access to family law legal services provided by family law lawyers. This can be accomplished in many ways such as:
- i. More and improved access to legal aid for family law cases so that clients can have financial assistance for important legal issues and lawyers can make a reasonable living providing services on legal aid certificates. We believe that investing in funding to expand legal aid for family law services would result in a net savings to the administration of justice, taking into consideration, among other factors, the cost of judicial resources and the cost of not having access to legal advice from a lawyer (i.e. including violence issues, cost of policing and the criminal process when family law remedies are not available, the cost of correcting mistakes when poor advice is provided).
 - ii. Better financial accessibility to legal training. The deregulation of tuition for professional programs has resulted in tuition for law schools increasing exponentially in the last 10 years. It is now common for law school tuition to be \$20,000 per year and for law students to graduate with debt of over \$100,000 and more. They then have difficulty finding an articling job and becoming lawyers. There are many well trained lawyers who are keen to provide family law legal services to a wide array of clients, at competitive financial costs. Whether it is financially feasible for them to do so is obviously impacted by their debt load and the level of income they require to service that debt. If we want more access to family law legal services, we need to make it more financially feasible for well-trained lawyers to provide these services.
 - iii. Improve support for limited scope retainers and unbundled legal services. There are existing barriers to allowing family law lawyers to provide innovative legal service delivery models, including regulatory, practice and professional liability issues. These need to be reviewed and ameliorated. Limited scope retainers and unbundled legal services offer a viable and effective way to provide greater access to family law legal services and need to be supported.



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To this list, the CCLA would add that there should be greater support for mediation and collaborative law in most family law cases. Amendments to the Divorce Act and the Family Law Act, soon coming into force, require legal advisors to encourage family dispute resolution processes, defined in the Acts as negotiation, mediation and collaborative law. Clearly, both Parliament and the Legislature of Ontario have determined that access to justice will be enhanced utilizing these processes. Consequently, serious consideration should be given to making mediation mandatory in all family law cases before the courts (subject to screening for violence and power imbalances) and financial support so that litigants and non-litigants can have access to trained mediators and collaborative professionals to assist them in resolving the issues arising from the dissolution of their marital relationships. This should include a specialised mediation program through legal aid Ontario.

CCLA can report that locally, many senior family law lawyers have donated their time to train and set up a Virtual Family Law Project, which offers various hourly rates- and in some cases a sliding scale approach to fees-to the public for dispute resolution services outside of court. The services offered range from mediation to senior lawyers presiding at settlement conferences to mediations to arbitrations. These types of initiatives should be offered an opportunity to measure positive outcome before we spend considerable time inviting another group into the mix.

Questions posed by LSO

In terms of the specific questions posed by the Committee for response, the CCLA responds as follows:

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The proposed scope of permissible activity for Family Legal Services Providers (“FLSP”) may increase access to affordable, competent Family Law legal services in certain, specific family law areas of practise. These will most likely be in the most straightforward of family law cases. For instance, where a bare divorce is being claimed, a FLSP may charge less than a lawyer, although the fees that lawyers



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charge to secure a divorce (not including the disbursements) are already fairly low, (between \$500-\$800). However, there has been no data presented to suggest that a paralegal would charge less, and the proposal does not impose that FLSP must charge less. Further, a paralegal's account is not subject to an Assessment by the Superior Court of Justice like lawyer's accounts are. We submit this would need to be addressed if paralegals were to practice in Family Law.

There is no evidence that FLSPs will be able to offer legal services at a lower cost than young lawyers, or junior lawyers working under the supervision of a more senior lawyer, particularly when the overhead costs of the FLSP licence and family law practice in general are included. There is also no evidence that self-represented litigants will pay for legal services provided by an FLSP, when they are not prepared to pay a lawyer. We submit that this is data that the Law Society could obtain and by studying the other areas of practice that paralegals are currently permitted to practice in to identify: (1) whether paralegals are charging less than lawyers in that particular area of practice; and (2) what impact paralegals had on reducing the number of unrepresented parties in proceedings within that area of practice.

Cases involving simple child and spousal support where family law litigants need access to support software may also be offered by a FLSP for a more reasonable fee than lawyers, and this might increase access to this necessary information. However, our research shows that lawyers are already using law clerks and articling students at a much-reduced hourly rate to perform these services.

Routine matters such as change of name applications may benefit from FLSPs, as may simple property division, but not necessarily, as frequently these issues involve the use of experts or valuers, which is beyond the proposed scope of practise for FLSPs.

The CCLA's paralegal members believe that the proposed scope of practice is too broad, which will result in a mandatory educational program that will be prohibitive for practicing paralegals.

A reduced scope of practice proposed by the paralegal members (see Schedule "A") will facilitate the development of focused education programs of reasonable scope and duration, allowing practising paralegals to expand their areas of competence. The



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reduced scope of practice will provide access to justice to those parties who are not seeking or do not qualify for legal aid but cannot afford the services of a lawyer. Many parties whose matters are within the reduced proposed scope of practice are confused, frightened and seek guidance and support to navigate the system and deal with their former spouses on their behalf. Often these individuals are unable to afford a lawyer's rates. Their issues may not be as complicated as the matters for which a lawyer's services are required. For the parties whose issues fall within the proposed reduced scope of the FLSP Licence, obtaining advice and guidance from a paralegal might help fill the gap between those parties who are able to self-represent and those parties who need and can afford the services of a lawyer or who may need assistance with their matter from a procedural point of view.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

The CCLA has concerns that FLSP may not be able to develop a viable business model because of the bifurcated nature of practice areas. Being able to advise on only certain matters, and not all matters that arise in a family law file, will likely mean that an FLSP will not be able to take many files to completion. Clients being serviced by an FLSP will likely be resistant to having to hire two individuals to deal with their matter, because of the restricted nature of the FLSP licence. It is relatively common in family law files to have issues on the determination of income pursuant to s. 17, 18 and 19 of the Guidelines or property valuations from experts, arise on files, which will require the services of a lawyer.

Paralegals believe that the FLSP will allow them to develop a viable business model. Many individuals try to self-represent and are unable to continue or find themselves outmatched by the opposing party. Even in less complicated family law matters, the parties are dealing with great change in their living and financial situations. Emotions can be high and it can be extremely difficult for parties to view the issues objectively and logically. These clients are the ones who would likely seek out a paralegal with an FLSP license. It is submitted that these are the individuals who currently seek help from the internet, or a friend that just went through a divorce, or a "mediator" who does not know the law and is not qualified to give legal advice. This is the target market for a FLSP.

Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The proposed training program that provides for one (1) additional year of education, with 6 to 8 months of instruction, providing 20 instructional hours per week will likely provide the basic information needed to understand the basic components of Family Law. After all, this is similar to the training that a lawyer would receive taking a Family Law course in law school. However, as with most areas of practice, simple knowledge is not sufficient. Full time practical experience working in the area under the supervision of an experienced and qualified practitioner will ensure that the FLSP is capable of navigating the ins and outs of Family Law. It is the lawyer's position that a field placement with a Family Law lawyer would be optimal and should be of 6 month duration; however a placement with another FLSP would suffice. This would allow the FSLP to get a feel of the conduct of a Family Law file and to observe, negotiations, mediations and court appearances

Further, the competencies proposed will ensure sufficient competence. The list appears to be as detailed as the offerings of law school or the bar admission program. Given the seriousness of the issues in family law proceedings, including the impact on individual's finances, family structure and dynamics (custody and access), it is appropriate that the competencies be robust.

However, some competencies have already have been achieved by paralegals through their education and training, or may be outside of the reduced proposed scope practice proposed by the paralegal members in Schedule "A" such as:

- a) 1.1.4 – Managing client expectations and communicating with client;
- b) 1.1.6 – Civility;
- c) 1.1.7 - Obligations with respect to self-represented persons;

- d) 1.1.8 – Conflict of interest;
- e) 1.1.9 – Actions in situations of conflict of interest;
- f) 1.1.10 – Joint retainers;
- g) 1.1.11 – Undertakings and trust conditions;
- h) 1.1.12 – Trust funds;
- i) 2.1.24 – Partition Act;
- j) 2.1.31 – Statutory interpretation;
- k) 2.1.32 – Importance of remaining current with regarding changes to legislation;
- l) 3.8 – Contempt/Enforcement of Orders;
- m) 3.12 – Understanding and identifying domestic abuse and intimate partner abuse only – all other competencies are not necessary as upon identifying abuse, clients should be referred to a lawyer;
- n) 4.0 – Problem, Issue Identification, Analysis and Assessment;
- o) 6.4 – Trial or Hearing Preparation;
- p) 6.5 – Conduct of Trial
- q) 7.1 – Practice Management, specifically:
 - a. 7.1.197 – Law Society identification and verification requirements;
 - b. 7.1.198 – Law Society marketing and advertising rules;
 - c. 7.1.199 – Maintaining competence.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?



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The scope of activities that would support access to affordable, competent Family Law services provided by an FLSP who has undergone specialized training and study as well as a placement include obtaining simple divorces, the calculation of child and spousal support where only employment income is involved and where spousal support is not compensatory. Also, assistance with the enforcement of Orders by registering and interacting with the Family Responsibility Office would be helpful and would hopefully promote the increased receipt of support. Likewise, assistance in terminating support orders registered with FRO when clearly no longer appropriate would be of assistance. Also, FLSPs could assist with Change of Name Applications.

The paralegals have suggested an alternate and somewhat reduced scope of activities from those proposed by the LSO Family Law Working Group, a copy of which is attached as Schedule "A". There was not a consensus between the lawyer members and paralegal members of our committee with respect to the scope proposed by the paralegal members.

Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D.

The proposed training program in terms of a course of study is of sufficient duration to enable FLSP candidates to achieve the proposed competencies if the curriculum is substantially developed to cover all relevant areas of family law, including appropriate precedents and training by Divorcemate on the use of their program to calculate both child support and spousal support. Also, training and education must cover areas that the FLSP would not be authorized to practice so that they may recognize when their files may be encroaching on these areas, such as cases involved compensatory spousal support issues.

Our paralegal members are concerned that the duration of the proposed training program is too long. It will be prohibitive to practicing paralegals who will not be able to maintain their established practices while engaging in the program.



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Students in law school who take a family law course are given approximately 4 months of instruction of approximately 2 - 4 hours per week. Paralegals propose that the FLSP program should be no more than 4 months, although the hours per week may be 5 – 6 (i.e. two nights a week at 2.5 – 3 hours per night). In-person (virtual) instruction can be supplemented with assigned reading, assignments and projects. However, it is the lawyer members position that because lawyers have a more robust educational program of three years whereas the paralegal program is only one year, the FLSP program must also cover other areas of law that touch on family law such as tax, trusts and business law.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

Only licensed paralegals (P1s), who have been practicing for at least 3 consecutive years should be admitted to the FLSP program. This practical experience will assist the candidates in developing their advocacy skills in writing and before a tribunal, will provide them with a greater understanding of the use of legislation and case law in practice, not just theory, and will provide them with experience in practice management.

7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

As stated in answer to question 3, experiential training must be incorporated into the licensing process for the FLSP even though this may be a difficult requirement to satisfy, if the difficulty for articling students to find placement is any indication. A requirement that FLSP candidates obtain a field placement with a practicing lawyer could have a significant impact on the market for articling students needing to find positions. This could lead to a similar “articling crisis” for paralegals attempting to obtain a FLSP license where paralegals are unable to find adequate placements.



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Paralegals propose that instead of a placement, FLSP candidates should be allowed /required to view at least one Case Conference, Settlement Conference and/or family law trial. FLSP candidates will have already had at least 3 years of experience in practice, which is sufficient experience to prepare the FLSP candidate for court appearances. In the alternative, FLSP candidates could fulfill their experiential requirement through a program that is similar to the Law Practice Program offered in French at the University of Ottawa and at Ryerson.

Our paralegal members point out that from the experience in British Columbia requiring a field placement with a practicing family law lawyer may result in very few FLSP candidates being able to satisfy this criteria. They are concerned that it may defeat the purpose of the FLSP program to require a field placement.

8. Is a CPD requirement focussed on family law appropriate for the FLSP?

It is appropriate for FLSP licensees to be required to have 3 hours of CPD in family law, as part of their mandatory CPD of 12 hours.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

No, it is not advisable for law clerks to be eligible for the FLSP license, as law clerks do not have the training, education or experience with oral and written advocacy or practice management that paralegals do. Nor are law clerks regulated by the LSO. At this time, law clerks are utilized by lawyers to reduce the cost of legal services to clients. They work under the supervision of a lawyer, but are able to complete many administrative tasks on their own, thereby reducing the client's overall costs.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)



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Clients seeking the services of an FLSP licensee are looking for cost savings, as well as legal support. Many believe that paralegals offer lower hourly rates, more frequent billing, block fees where appropriate and often lower overhead costs. This may or may not be true. Ultimately, the market will determine what an acceptable price-point for these services is; some will choose to retain a lawyer, while others will retain an FLSP. It is the same for clients seeking help from paralegals in Landlord and Tenant matters and Small Claims Court matters.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

The recent enhancements to accessing family law will no doubt bring more access to justice to the public. Initiatives such as Pro Bono Students Canada Family Justice Centre (FJC); Advice and Settlement Counsel (ASC) Toronto; Family Law Limited Scope Services Project- to promote access to justice. The point is made that this consultation should be an opportunity for the LSO to consider highlighting and supporting these services offered to Ontarians, as a further means to support access to Justice, before we dialogue about a potentially new group of service providers and consider the licensing of paralegals.

In order to identify and measure the improvement of the current situation, we must have the ability to look at data. There is simply no data to measure the outcome at this time.

There is a general perception, which the LSO has allowed to fester and grow, that a family law lawyer is unnecessary; separated parties believe that they can work it out themselves, that a lawyer will make things more complicated, and prolong disputes to make more money, or are too expensive. An FLSP provider may be less intimidating than a lawyer and can answer basic legal questions and make an appropriate referral if necessary. An individual often has no knowledge of what the law is and what is involved in making a claim for spousal support or a trust claim. An FLSP can explain the general working of Family Law, educate a Family Law litigant and make the appropriate referral to a lawyer. Unless the LSO takes proactive steps to educate the public on the value of legal representation in family law matters, the public devaluation of both family law lawyers and/or FLSP providers may continue unabated. The



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problem of self-represented litigants may well remain despite the changes proposed to the system by way of the FLSP provider designation, the family law Courts will continue to function as “counsel of last resort”, the family law system in Ontario will continue to suffer from existing dysfunction, and the proportion of self-represented litigants within that system will not be meaningfully reduced.

12. Are any aspects of the proposed licensing framework unfeasible?

As indicated above, paralegal members are concerned that the proposed training program is too long to be feasible. A practicing paralegal would have to work part-time to be able to complete the program as proposed. For many, this loss of income during the training program would be prohibitive.

Also, lawyer members submit that the fact that a paralegal cannot assist on all aspects of a file (where there needs to be a determination of income, or a property valuation or a previous agreement or contract set aside) may be problematic and likely lead to increased costs for the client – which defeats the objective.

13. Is there additional information or are there other factors that should be considered?

Our paralegals believe that there should be consideration given to a grandfathering provision for licenced paralegals who have a combination of experience and training that will exempt them from the education requirements of the FLSP licence. The individuals may still be required to write the licensing examination before obtaining their FLSP licence and their experience will need to be evaluated before exempting them from the educational requirements.

Conclusion

The CCLA and its members, both lawyers and paralegals, are committed to improving the family law justice system in Ontario. We look forward to continued dialogue with the Law Society of Ontario, and other stake holders to further this endeavor.



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The lawyer members of the CCLA have serious concerns that expanding the scope of paralegal's practise will not meet the objective of providing more access to justice to the public. Given that there is no data presented at the onset, it will be difficult if not impossible to measure if adding the number of license providers has indeed improved the issue of access to justice.

The paralegal members of the CCLA are in support of additional funding for Legal Aid and for increased focus on mediation in family law. In addition to these measures, the paralegal members submit that the introduction of an FLSP licence, with the reduced scope of practice set out in Schedule "A", a training program and experiential component of reasonable duration, will improve access to justice.

Family Legal Services Provider Response to Call for Comment

Schedule "A"

PROPOSED REDUCED SCOPE OF PRACTICE SUBMITTED BY THE PARALEGAL COMMUNITY OF THE CCLA

CHILD SUPPORT & S. 7 EXPENSES	SPOUSAL SUPPORT
<ul style="list-style-type: none"> • This area of practice includes: <ul style="list-style-type: none"> ○ Calculating child support using the CSG Tables ○ Calculating S. 7 expenses using the CSGs ○ Sole, shared or split custody arrangements ○ Life insurance to secure support ○ Filing support order or agreement with FRO ○ Undue hardship • Within scope: <ul style="list-style-type: none"> ○ Only cases where income is derived from a paycheque received from an arm's length third party ○ Imputation of income where a party is claiming the payor is intentionally underemployed or unemployed • Out of scope: <ul style="list-style-type: none"> ○ income from corporation where party is a director or shareholder ○ dividend income ○ trust income ○ pension income 	<ul style="list-style-type: none"> • This area of practice includes: <ul style="list-style-type: none"> ○ Calculating spousal support using the SSAGs including quantum and duration ○ Life insurance to secure support ○ Filing support order or agreement with FRO • Within scope: <ul style="list-style-type: none"> ○ Only cases where income is derived from a paycheque received from an arm's length third party ○ Imputation of income where a party is claiming the payor is intentionally underemployed or unemployed • Out of scope: <ul style="list-style-type: none"> ○ income from corporation where party is a director or shareholder ○ dividend income ○ trust income ○ pension income ○ Dependant's Relief claims

<ul style="list-style-type: none"> ○ parents live in different cities, provinces or countries, where support would have to be adjusted for travel costs ○ Dependant's Relief claims 	
<p>PARENTING</p>	<p>EQUALIZATION OF NET FAMILY PROPERTY</p>
<ul style="list-style-type: none"> ● This area of practice includes: <ul style="list-style-type: none"> ○ Legal: Decision-making/custody; ○ Physical: Parenting time/access. ● Within scope: <ul style="list-style-type: none"> ○ Sole, shared and split custody (parenting time) arrangements ● Outside of scope: <ul style="list-style-type: none"> ○ Parental alienation cases ○ Cases where the court orders the involvement of the Office of the Children's Lawyer ○ Cases where one or both parties seek a private assessment or Voice of the Child Report to determine parenting ○ Cases in which the Children's Aid Society has been involved ○ Cases where the parties live in different cities, provinces or countries ○ Cases where one or more of the parties is suffering from addiction issues ○ Cases with relocation/mobility issues ○ Child abduction or other international cases/Hague convention matters 	<ul style="list-style-type: none"> ● This area of practice includes: <ul style="list-style-type: none"> ○ Calculation of the parties' Net Family Property ○ Determination of equalization payment owing ● Within scope: <ul style="list-style-type: none"> ○ All assets, debts and deductions, except as excluded below ○ Pensions specifically include pensions where the Family Law Value is calculated pursuant to the <i>Pension Benefits Act</i> and the <i>Pension Benefits Division Act</i> ○ Occupation rent ○ Exclusive possession or possession ● Outside of scope: <ul style="list-style-type: none"> ○ For the calculation of the equalization payment: <ul style="list-style-type: none"> ▪ More than one matrimonial home ▪ Real property outside of Ontario ▪ Jewelry and specialty items such as vintage collectibles, which require appraisal ▪ Business interests and corporate assets ▪ Trust property ▪ Debts between the parties ○ Claims for unequal division of NFP ○ Partition and sale

<ul style="list-style-type: none"> ○ Grandparent claims for parenting time 	<ul style="list-style-type: none"> ○ Common law spouses (joint family venture claims) ○ Equitable and trust claims ○ Claims involving a bankrupt party ○ An estate ○ Spousal election ○ Contingent assets and liabilities (excluding costs of disposition of the assets)
<p>SIMPLE/JOINT DIVORCE</p>	<p>SEPARATION AGREEMENTS AND MEDIATED SETTLEMENTS</p>
<ul style="list-style-type: none"> ● This area of practice includes: <ul style="list-style-type: none"> ○ Simple or joint divorces ● Within scope: <ul style="list-style-type: none"> ○ Simple or joint applications for divorce where custody/access, child support, spousal support and equalization of net family property have been resolved or there are no claims for these matters ○ Motions to sever divorce from collateral issues where the collateral issues are within the FLSP scope ● Outside of scope: <ul style="list-style-type: none"> ○ Simple or joint divorces where there is a motion to sever ○ Unresolved claims for collateral relief 	<ul style="list-style-type: none"> ● This area of practice includes: <ul style="list-style-type: none"> ○ Negotiating and drafting Separation Agreements and/or agreements arising out of mediated settlements or Family Arbitration ● Within scope: <ul style="list-style-type: none"> ○ Where the issues between the parties are within the permitted scope of practice for child support, spousal support, parenting and equalization of net family property ○ Where the client obtains ILA from a lawyer for the above agreements ● Outside of scope: <ul style="list-style-type: none"> ○ Where the issues between the parties are outside of the permitted scope of practice for child support, spousal support, parenting and equalization of net family property ○ Providing ILA to a party with respect to a Separation Agreement, agreements from a mediated settlement and agreements arising from a Family Arbitration
<p>OTHER PERMITTED AREAS OF PRACTICE:</p>	<p>OTHER PROHIBITED AREAS OF PRACTICE</p>

<ul style="list-style-type: none"> • Applications under the <i>Change of Name Act</i> 	<ul style="list-style-type: none"> • Paternity Agreements • Contempt/Enforcement of Orders • Setting Aside Minutes of Settlement, an Order or a Domestic Contract • Adoption • Matters involving a party under the age of 18 • Special parties where the court or the PGT has determined a party cannot represent him or herself • Child protection proceedings or where there are allegations of sexual abuse at the outset or that arise during the retainer • Declarations of parentage • Issues concerning reproductive or fertility law matters, including surrogacy contracts, known donor, IVF, frozen embryos • Appeals or motions for leave to appeal
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Please enter your first and last name	Michele Livingston
Email Address	Michele.Livingston@ontario.ca
Please make a selection below	Representing Organization
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
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What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	SCJ Final Submission Re LSO Consultation (Nov27).pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

THE HONOURABLE GEOFFREY B. MORAWETZ
CHIEF JUSTICE OF THE SUPERIOR COURT OF JUSTICE



L'HONORABLE GEOFFREY B. MORAWETZ
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SENT VIA EMAIL (treasurer@lso.ca)

November 27, 2020

Ms. Teresa Donnelly
Treasurer, Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Donnelly,

I enclose the Superior Court of Justice's submission in response to the Law Society's consultation regarding a potential scope of practice for family legal service provider licences. Please do not hesitate to contact us if you have any questions or concerns with respect to the enclosed.

Also, as you will see from the enclosed, the Court is interested in entering into a pilot project for an expanded scope of practice for articling and Law Practice Program students in this area. Please contact Senior Family Justice Stevenson or Ms. Moscoe when you are ready to begin those discussions.

Yours truly,

A handwritten signature in blue ink, appearing to read "G. Morawetz".

Geoffrey B. Morawetz
Chief Justice

Encl.

c. *Justice Suzanne Stevenson, Senior Family Judge, Superior Court of Justice*
Sheena Weir, Executive Director, External Relations and Communications, Law Society of Ontario

**Law Society Consultations – Family Legal Services Provider Licence
Superior Court of Justice Submission, November 2020**

Introduction:

Family law is one of the most common and most important areas of law that Ontarians are likely to face during their lives, whether directly or indirectly. In the Superior Court of Justice (SCJ) alone, approximately 47,000 family law cases are started each year with a resulting 140,000 annual events (including motions, conferences and trials). This includes cases that are heard in the SCJ's 25 Unified Family Court (UFC) locations. In the balance of the province, the SCJ shares jurisdiction over family law cases with the Ontario Court of Justice.

As the Law Society (LSO) consultation paper has noted, room for improvement remains in terms of access to affordable legal services for family court litigants. This is particularly true for lower and middle-income families who often have more difficulty affording a lawyer on a full retainer basis.

We see the need for greater access to legal services especially in many of the SCJ's UFC locations, which courts have exclusive jurisdiction over all family law disputes. That being said, challenges vary based on several factors including the availability and affordability of local family law services. In fact, in many communities no such gap in access to legal services exists, with local lawyers working creatively to make their services financially accessible (for example, by accepting payment plans or other flexible payment arrangements).

Thankfully, there have been a host of significant developments over the past 1-3 years which have provided Ontarians across the province with expanded access to free, high quality, legal information and assistance (e.g., CLEO's Guided Pathways and www.mysupportcalculator.ca/learn) as well as free or affordable legal advice (e.g., the LSO's emergency family referral line, Legal Aid Ontario's free summary legal advice telephone service, Toronto's Advice and Settlement Counsel (ASC) project, and Ontario's Family Law Limited Scope (FLLSSP) project). New initiatives have been announced even during this consultation period including Pro Bono Students Canada's new Virtual Family Justice Centre, which will provide free legal assistance and advice to family litigants applying a less stringent financial eligibility threshold.

More information about these innovations is attached as **Annex A**. While we have only begun to see the impact of these improvements on access to justice, the Court has found them to be very helpful resources for self-represented litigants before COVID and

particularly over the past 8 months with the transition to a predominantly virtual environment.

Summary of Submission:

We recognize that there remains room for improvement. Based on the collective and extensive experience of SCJ judges in this field of law, the Court would support the creation of a limited and clearly defined role for family legal service providers (“licensees”) as set out below. It is important to note that the SCJ’s position has been significantly influenced by the proposal for such licensees to operate independently, without supervision. Should that decision be open to reconsideration, the Court would support a broader range of involvement by these licensees in SCJ family court events.

Moreover, of the factors that the LSO has identified as informing the creation of such a licence, the Court identifies the level of conflict and complexity and the associated risk as key factors that would prescribe a more limited scope of practice than what has been proposed. The Court also questions the minimal proposed education requirements, particularly in relation to such a broad scope of practice.

Finally, the Court supports a greater role in the SCJ for articling students and Law Practice Program (LPP) students, and potentially law students, to both expand the public’s access to legal services and also to assist with the students’ experiential learning. This may also help to develop the next generation of family lawyers who are able to handle all aspects of family law and child protection cases, a related area of great need. This kind of a pilot may also help the family bar and/or government to justify creating new articling positions for students who are having difficulty finding placements.

Context:

Before explaining the Court’s submissions regarding the potential scope of practice for both family legal service providers and students in more detail, we offer the following information regarding the Court’s family law caseload:

1. As noted, the landscape has improved with respect to access to affordable family law services and the SCJ has become much more open to limited scope services over the past few years. The increase in the provision of unbundled legal services has been of a significant help to both litigants and the Court in resolving matters. Use of these services has increased particularly post-COVID with many SCJ judges referring to the FLLSSP, LAO and the LSO family law referral line in

their endorsements;

2. Family law issues at the SCJ are often very complex. Family law frequently encompasses a need to have knowledge of other areas of law including criminal, estates, trusts, tax, real estate, corporate and bankruptcy law, as well as valuation principles and assessments of notional costs of disposition. If the licensee can handle property matters but does not have an adequate awareness of the related legal issues, they are likely to be overlooked, which could result in determinations that negatively impacts litigants;
3. Domestic violence and high conflict parenting disputes are some of the most important and challenging cases that the Court faces and they have become increasingly common. Few if any are straightforward. On the contrary, they are legally and factually complex and often even temporary orders in these cases can have a long lasting and even permanent impact;
4. Even after pleadings are issued, family law cases often evolve. The issues that are presented at the outset change as the parties respond to each other's claims and cases become more complex. As a result, litigants and their lawyers will not necessarily know upfront if an assessment is required to address parenting issues or if an income valuation is needed to determine support. These proposed exclusions from the scope of practice arise frequently in SCJ family law cases;
5. In recent years, SCJ scheduling policy has increased the amount of time that is available for each family conference to maximize the likelihood of resolution of all or some of the issues, consistent with the overarching objectives of the Family Law Rules¹. Unlike criminal law, we have few administrative attendances (aside from First Appearance court at UFC or assignment courts) and meaningful progress is expected from every event;
6. Without full authority to handle the issues in an SCJ family case (which is a likely necessity for any non-lawyer licence in family law), representatives will not necessarily be able to help move SCJ matters along at each attendance. Interconnected issues may also not be able to be resolved if they involve an out of scope matter.² This undermines the Court's ability to resolve family cases at the first possible opportunity and undermines efforts to minimize delays,

¹ Rule 2 requires the court to deal with cases justly, including saving expense and time and giving each case resources that are commensurate with their importance and complexity.

² For example, time-sharing for a child must often be determined before support, particularly where shared custody is sought (which is quite common).

adjournments and escalating costs;

7. Especially with the SCJ's broad jurisdiction over family law cases, judges will be put in the position of having to take on a greater gatekeeping role regarding the paralegal's scope of practice which may also frustrate the progress of the case;
8. Of all the areas of family law, simple child support cases are the most straightforward, although it is rare in the SCJ that these issues arise in isolation. Support enforcement proceedings can also be relatively straightforward, although there is a potential for incarceration with support enforcement proceedings;
9. Even with the *Child Support Guidelines* and the *Spousal Support Advisory Guidelines*, SCJ support cases can be factually and legally complex even where the payor's income is not in dispute (which is not uncommon). These complexities arise within motions to change as much as original applications; and,
10. COVID has already brought many added challenges, but it is anticipated that it will also give rise to a significant number of new motions to change support.

In addition to the issues and suggestions raised above, the Court has significant concerns regarding the minimal approach to education and training that has been proposed for a very broad scope of unsupervised practice. This is troublesome given the level of complexity of family law cases in the SCJ and raises concerns regarding the quality of services that will be provided. The Court's submission is predicated on more expansive education and training requirements, including ideally an experiential component, to develop the necessary competency for even the reduced scope of practice that is proposed below.

Moreover, concerns arise regarding whether the proposed family legal service provider scope of practice will reduce incentives for new lawyers to practice family law, making it more difficult for SCJ litigants to find representatives who can handle all aspects of their family law dispute. This would counter the efforts made by so many in the family justice system over the past 10 years to encourage law students to enter this important area of practice (including for example the Walsh Family Law Moot and Negotiation Competitions held yearly with high participation rates from the law schools).

Further concerns arise regarding potential underrepresentation by paralegals, where litigants with means have representation from a lawyer but those without have access to paralegals with a reduced scope of practice. This is likely to have a disproportionate impact on women who have less access to the family's resources post-separation and

are more likely to self-represent out of financial necessity than men³. Moreover, the Court's obligations to address any such imbalances would be far less clear than where an imbalance arises with a self-represented litigant.

Proposed Scope:

After taking the above into consideration, the SCJ supports the creation of a new family legal service provider licence that would allow for assistance to be provided to litigants with the following family law matters:

1. Preparing financial disclosure and the related forms (e.g. financial statements and certificates of disclosure), assisting with procedural navigation and document preparation⁴;
2. Bringing procedural motions including motions relating to financial disclosure, which continue to be a challenge for litigants to address in a streamlined manner. Motions relating to timelines and service could also be included;
3. In UFC locations, attending first appearances on fast track cases;
4. Resolving any disputes regarding the division of contents of the matrimonial home;
5. Preparing uncontested divorces where the parties have entered into a separation agreement or minutes of settlement, after receiving ILA from a lawyer, that has resolved their issues on a final basis;
6. Attending to discrete proceedings that are straightforward and will not include claims for out of scope relief, for instance change of name applications and step-parent adoptions;
7. Motions to change is another area where the new licence *may* be of assistance. However, motions to change support payments can be incredibly complex and the same concerns apply to parenting claims in this context, as set out above. The scope should therefore be limited to motions to change child support without

³ Birnbaum, R., Bala, N., & Bertrand, L. (2013). **The rise of self-representation in Canada's family courts: The complex picture revealed in surveys of judges, lawyers and litigants**, see also Birnbaum, R., & Bala, N. (2020) **Judicial Perspectives on Self Represented Litigants in Family Court**.

⁴ Consideration should be given to requiring a consultation with a family lawyer before pleadings can be prepared, to ensure that the client has received advice regarding the myriad of issues that they face, some of which likely be out of scope, including limitation periods and estates implications.

discretionary considerations, consistent with the scope of the government's administrative child support service⁵. It is not recommended that discretionary categories of child support or any spousal support be in scope because of the difficulties relating to establishing a material change, as well as entitlement (if a review calls for a de novo consideration of the issue), quantum and duration; and,

8. Licensees could also help payors facing child and spousal support enforcement by the Family Responsibility Office, to help negotiate resolutions, bring refraining motions, along with the ability to bring the limited motions to change as set out above. This may help with COVID-induced support enforcement activity⁶.

To be clear, there should be *no* scope for the family legal service provider relating to SCJ parenting cases, because of their complexity as well as the importance of high conflict and domestic violence issues.⁷ Spousal support and property should also be excluded with the limited exceptions noted above.

The SCJ would also support the same scope of practice for both articling students and LPP candidates in addition to attending to (i) adjournments, (ii) consents, (iii) case conferences for fast track cases only (where no property claims have been made and the parties have not sought a divorce), including case conferences before Dispute Resolution Officers (DROs) where that program exists, (iv) motions relating to questioning, and (v) 14B motions for other procedural or uncomplicated relief.

The SCJ proposes to conduct a pilot project in 2021 to facilitate the involvement of articling and LPP students which will need to address the availability of the supervising lawyer, where necessary, to ensure that each court attendance is productive and moves the case forward in measurable ways. The Court proposes to begin discussions with the LSO regarding such a pilot, as well as the potential role for law students, as soon as possible.

⁵ Information about the scope of the administrative service is available at: <https://www.ontario.ca/page/set-up-or-update-child-support-online>.

⁶ Query whether it would be appropriate for the licensee to attend on a warrant of committal for the reasons noted above.

Additional Comments:

Returning to the LSO's Action Plan and noting the far more comprehensive recommendations to address the gap in representation from the National Action Committee on Access to Justice in Civil and Family Matters, there are many ways that the LSO and the provincial government could assist family litigants.

This includes greater support for the bar-led initiatives that are noted above, including taking on a greater role in disseminating information about these services, but also providing support to these initiatives as needed (for example providing access to space for the Advice and Settlement Counsel project).

Finally, much of the current need (at least within the court system) could be addressed by greater access for litigants to legal aid in family cases. Recent reductions in the amount of Duty Counsel services have notably impacted most if not all UFC centres, as well as several GTA SCJ courts where these services had been provided for a period of time, both generally and also in support of the DRO program. Greater access to this assistance would help litigants and the Court to facilitate timely and effective access to justice.

Conclusion:

It is very important to strike the right balance between the anticipated benefits and risks of adding an unsupervised family legal service provider licence and expanding the scope for students, without undermining the Court's efforts to bring family law cases to conclusion through as streamlined and proportional of a process as possible. This is of real concern to the SCJ which has comprehensive jurisdiction over family law matters, with some exceptions outside of the Unified Family Court⁸.

The Court would suggest a more cautious approach to expansion, consistent with the Law Society's own Family Law Action Plan, as detailed above. Proceeding in this fashion would allow the LSO to assess the impact of recent initiatives as well as an initial scope of practice, before considering any potential broader scope. It would also allow for a more detailed and updated analysis of the affordability of legal services from both lawyers and paralegals.

⁸ In jurisdictions without the UFC, for example, enforcement cases can only be heard by the OCJ.

Annex A

1. Family Law Limited Scope Services Project
2. Advice and Settlement Counsel Project
3. Community funded legal clinics (e.g. Women's Centre of Halton, Kingston Military Resource Centre, Ontario Legal Information Centre and Canadian Centre for Men & Families (Ottawa))
4. LSO's Emergency Family Law Referral Line
5. Luke's Place virtual domestic violence services
6. Legal Aid Ontario expanded summary legal advice services (financial eligibility has been waived during COVID)
7. Legal Aid Ontario funded clinics (e.g. Queens University law student clinic)
8. Family Law Library Legal Information Sessions (organized through the Family Lawyers Association)
9. The Family Law Workshop (Lisa Eisen and Susan Blackwell)
10. Steps to Justice public legal information
11. Steps to Justice Guided Pathways
12. Pro Bono Students Canada Virtual Family Justice Centre
13. Fully unbundled legal practices (e.g. family law a la carte, the family law coach and lawyers and lattes)
14. Legal Coaching services (e.g. family law coach, family law a la carte and Ottawa's Court Coach practice)
15. Legal subscription plans (e.g. myfriendlylawyer.com and law hero)
16. Reduced legal fees arranged through Employee Assistance Plans

#305

Please enter your first and last name	Michelle Mcspurren
Email Address	michelle.mcspurren@sheridancollege.ca
Please make a selection below	Representing Organization
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Sheridan College Institute of Technology and Advanced Learning
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	Comment_Sheridan.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

November 27, 2020

VIA EMAIL: submissions@lso.ca and adiamond@lso.ca

Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen St. W.
Toronto, ON M5H 2N6

Attention: Annette Diamond Senior Counsel, Professional Development and Competence

Dear Ms. Diamond:

The Sheridan College Institute of Technology and Advanced Learning (Sheridan) has prepared a response to the Request for Information (RFI) which addresses, in more detail, several of the questions posed in the Call for Comment. Please read this letter in conjunction with that submission.

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

Sheridan fully supports the development of the Family Legal Services Provider (FLSP) licence and is confident that the proposed scope of permissible activities will support increased access to affordable, competent family law legal services. The proposed educational program and rigorous licensing requirements will combine to develop the necessary competence required of an FLSP provider. With respect to affordability of these services, Sheridan anticipates that, when complete, the further environmental scan of paralegal billing practices conducted by the Law Society of Ontario will reveal that it is extremely likely that FLSP licence holders will charge clients lower rates than licensed lawyers who provide these services.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

At this stage, it is not possible to predict whether the proposed scope of permissible activities will enable the FLSP to develop a viable business model. A detailed environmental scan would likely be required before a conclusion on this point might be reached.

Competence

3. *Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?*

Sheridan has no additional competencies to propose.

4. *In your view, what scope of activities would best support increased access to affordable, competent family law services?*

The inclusion of third-party experts and valuers within the scope would best support increased access to affordable, competent family law services given that this evidence is frequently utilized in divorces as well as child and spousal support matters. In addition, the ability to represent clients who are minors or who are mentally incapacitated with appropriate guardianship in place, would best support increased access to affordable, competent family law services.

Training Program

5. *Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D.*

Sheridan has provided a detailed response to the RFI and is confident that its proposed training is of sufficient duration and rigour to enable candidates to achieve the proposed competencies. Sheridan is proposing a two term Graduate Certificate which includes a total of 623 instructional hours. Please refer to Sheridan's response to the RFI for additional information.

Other Components of Licensure

6. *What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?*

Sheridan intends to restrict admission to its Graduate Certificate to licensed paralegals who have practised as paralegals for a minimum of two years. Sheridan suggests that FLSP licence holders should possess a minimum of two years' prior experience in legal services provision.

7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?*

While it may be desirable to eventually incorporate experiential training into the licensing process for the FLSP to support the competencies, this does not seem feasible at the present time. Sheridan has observed significant resistance to the FLSP from many licensed lawyers

who practise family law, including, notably the recent Toronto Law Association response to the Call for Comment. It is anticipated that this entrenched resistance will make it extremely difficult for students to secure placements at least until such time as FLSP licensees are themselves experienced enough to act as supervisors of FLSP students.

8. Is a CPD requirement focussed on family law appropriate for the FLSP?

A CPD requirement focused on family law is not only appropriate, but essential. Sheridan fully supports lifelong learning for qualified licensees.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

Sheridan believes that the licence should be restricted to practising paralegals licensed in Ontario. This approach scaffolds FLSP educational competencies which will be built upon competencies developed in existing LSO accredited educational programs such as Sheridan's Paralegal diploma program and will ensure that FLSP licensees also have practical experience of providing legal services prior to obtaining the FLSP licence.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

In general, when more legal services providers are providing legal services in family law previously self-represented litigants may choose to retain the FLSP for a variety of reasons including affordability, billing practices, accessibility which includes the availability of licensees who may share cultural/ethnic backgrounds with their clients and who are fluent in languages spoken by those clients. Sheridan's Paralegal program has a diverse student body and it is anticipated that the FLSP Graduate Certificate program will be equally diverse.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

While laudable, these enhancements have not eliminated the need for the FLSP licence to increase access to justice particularly to persons who would otherwise be self-represented.

12. Are any aspects of the proposed licensing framework unfeasible?

Please see the response to question 7 above concerning the experiential educational component of the proposed licence.

13. *Is there additional information or are there other factors that should be considered?*

Sheridan has no additional information or other factors to submit for consideration.

Yours truly,



Michelle Roy McSpurren
B.A. (Hons.), M.A., LL. B.
Program Coordinator, Paralegal Program

#306

Please enter your first and last name	Sam Misheal
Email Address	sam@familyseparation.ca
Please make a selection below	Representing Organization
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Federation of Ontario Law Associations
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Organization
Upload a File	FOIA - Submission on FLSP Nov 2020 - FINAL.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



2020-2021
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Access to Justice Committee: Family Legal Service Provider Consultation

Submitted to: Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Submitted on: November 26, 2020

Submitted by:

Sam (Rasim) Misheal
Family Law Chair, FOLA
sam@familyseparation.ca

Thank you for providing this opportunity to The Federation of Ontario Law Associations (Hereinafter referred to as "FOLA") to provide comments regarding the Family Law Service Providers (Hereinafter "FLSP").

FOLA is an organization that represents the associations and members of the 46 local law associations across Ontario. Together with our associate member, The Toronto Lawyers Association, we represent approximately 12,000 lawyers, most of whom are in private practice in firms across the province. These lawyers are on the front lines of the justice system and see its triumphs and shortcomings every day.

These submissions serve as FOLA's comments regarding the FLSP. FOLA does not fully support the proposal of the Family Law Working Group to establish a new profession of Family Law Service Providers. The said proposal fails to demonstrate and or establish a business case that would provide an alternative to litigants or the ability to increase access to justice.

The issue of access to justice for individuals in family law disputes has received an increased attention in recent years both on a national and international level, specifically to unrepresented individuals involved in family courts proceedings. FOLA continues to be committed to initiatives that provide access to justice, and also to the ongoing reform of Ontario's family law system. Family law has been, and continues to be, a



very complex area of law where families turn to the family courts to assist them in resolving their disputes. These families hope to understand the process and have their time within the system be financially affordable.

In Justice Bonkalo’s report entitled, *“Family Legal Services Review”*¹, Justice Bonkalo recommended that *Paralegals licensed in family law should be permitted to provide legal services in custody; access; simple child support cases; restraining orders; enforcement; and simple and joint divorces without property*, while the Family Law Working Group expanded on the scope of practice beyond what was proposed without providing a business case to support same.

There should be no dispute that we must address the issues of access to justice in family law and we also must be mindful of the sociocultural shifts which have also occurred. Having said that, one must look at the overall objective rather than a quick Band-Aid solution. Chief Justice Warren K. Winkler’s opening remarks ² *“I would like to begin with a simple statement; access to a justice system does not necessarily equate with access to justice. I state this, because there is a need to continually examine our systems of justice and scrutinize them to determine whether they are providing adequate access to justice for our citizens.”* Simply put, allowing paralegals to expand their scope of practice to include Family Law without any empirical data, in and of itself does not equate or afford access to justice for Ontarians.

Furthermore, Justice Cohen of the Ontario Court of Justice stated, *“What’s at stake (in these cases) is of great magnitude,”* *“This is the most important work that we do.” The solution, she said, is a “properly funded, properly resourced legal aid system. It’s what the people of Ontario have a right to expect. . . . This is your legal system and you expect to get the same access to your legal system as everybody else gets.”*

¹ Justice Bonkalo, Family Legal Services Review, (Ontario: Ministry of the Attorney General, 2016) [Bonkalo Report].

² Law Society of Ontario, 5th annual family law summit (2011)



Additionally, *R. v. Bilinski*³, Justice Bruce Durno of the Superior Court of Justice considered the question whether the paralegal provided deficient service to the extent that the guilty verdict in this case was in doubt. In his decision, Justice Durno stated that *“The appellant has provided no evidence that the LSUC or any other regulatory body has now assured the public that the representation level is the same. Indeed, the record supports a contrary conclusion. The case-specific evidence on this appeal supports that conclusion. The appellant knew he was not retaining a lawyer. He knew the agent had less legal training than a lawyer and he knew the agent would charge less than a lawyer.”*

Answers to questions posed in the consultation paper.

1. *Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?*

FOLA is of the view that the proposed scope does not provide and/or increase access to affordable, competent legal services. There is simply no empirical data which would demonstrate this.

In 2016, FOLA retained an established research firm Corbin and Partners to conduct a study relating to the comparable market fee assessment between private practice paralegals.

This study determined that although at the surface level there is a general impression that legal fees charged by paralegals to clients are lower than fees charged by lawyers for similar services, a deeper analysis showed there were doubts and uncertainties on whether there was a significant cost difference at all⁴.

While anecdotal evidence exists to question this comparative pricing, there is a complete lack of empirical evidence on which to gauge this issue. Lawyer’s legal fees continued to be tracked, both provincially and nationally, but similar tracking has not yet been found in the regulated paralegal market.

³ 2013 ONSC 2824 (CanLII).

⁴ Reference is to Corbin Partners’ “Market Reconnaissance Study” examining fees of private practice paralegals and lawyers. This Study was commissioned by FOLA, a copy of the study can be made available upon request.



A cursory Google search found the following:

Precision Paralegal, Michelle Haigh – President of Precision Paralegal \$295.00 an Hour, Senior Paralegals \$175.00 – \$195.00 an Hour, and Junior / Intermediate Paralegals \$125.00 – 150.00 an Hour⁵.

It therefore appears that the hourly rate for paralegals is comparable to that of a new family lawyer⁶.

It appears that it has already been decided that less expensive paralegals are the answer to ongoing access to justice issues without determining whether they are in fact less expensive and will provide the access to justice being sought. It seems paralegals are the deemed answer without the necessary study to determine what the actual cause of the problem is in the first place: the cause of the problem cannot be that lawyers charge too much. That is far too simplistic for such an overarching and systemic problem.

A number of new initiatives are being implemented to assist individuals seeking counsel in family law matters. This was recognized by LSO treasurer Teresa Donnelly⁷. She stated that “So much good work is happening on the ground to change how family law clients can get help, both publicly and privately, along the spectrum from public legal education and initial consultations on one end, all the way up to full representation,” Donnelly said in introducing the 90-minute Zoom event. “I wish to recognize the family law bar for taking on these projects in direct response to challenges that have been identified in terms of access to affordable legal representation.”

⁵ <https://www.precisionparalegal.ca/our-rates/ontario-hourly-rates/#:~:text=Hourly%20rate%3A%20%24175.00%20%E2%80%93%20%24195.00%20%2F,a%20wide%20variety%20of%20matters>

⁶ Bruineman, Marg., “Steady optimism – 2019 Legal Fees Survey”, *Canadian Lawyer* (8 April 2019) online: *Canadian Lawyer* < <https://www.canadianlawyermag.com/surveys-reports/legal-fees/steady-optimism-2019-legal-fees-survey/276027> >

⁷ https://www.thelawyersdaily.ca/family/articles/22015/ontario-family-law-event-details-recent-innovations-in-service-delivery?nl_pk=9b8917ae-e321-4893-aeb2-2008377284a4&utm_source=newsletter&utm_medium=email&utm_campaign=family



Some of the initiatives across the province are Lukes Place virtual legal clinic, sliding fee scales for modest income earners, the Family Law Limited Scope Services Project, private duty counsel offered through the Advise Settlement Counsel of Toronto (a similar model is being considered in other parts of the province), the Barrie Advise Counsel project, and the initiative of the Family Justice Centre by pro bono Students Canada. Our members have indicated anecdotally that the unbundling of legal services has also been utilized by many clients as a means of reducing cost.

Furthermore, FOLA along with The Advocate Society and the Toronto Lawyers' Association has conducted a survey with family law lawyers across the province, yielding 428 responses with the following results as of November 18, 2020:

- a. 60% offered unbundled services;
- b. 66% offered limited scope retainers;
- c. 42% offered flat fee retainers;
- d. 20% offered sliding scale retainers;
- e. 72% offered limited scope retainers;
- f. 40% offered pro bono work that comprised of the following hours.
 - i. 15.5% offered between 1-19 hours;
 - ii. 15.5% offered between 20-39 hours;
 - iii. 10.5 % offered between 40-59 hours;
 - iv. 5% offered between 60-99 hours; and
 - v. 5% offered more than 100 hours.
- g. 74% offered services below their standard hour rates;
- h. 42% offered lower hourly rates between \$100-\$199; and
- i. 22% offered lower hourly rates between \$200-299.

As is clear from the data gathered, lawyers across the province have recognized that many litigants could simply not afford their hourly rates. Lawyers have therefore adjusted their rates accordingly by offering many alternative options, which include discounted rates. The data gathered above supports FOLA's recommendations made within this report. It is FOLA's position that our recommendations should be seriously considered and implemented



as opposed to moving forward with the FLSP programme as proposed. A "lesser cost" option already exists through family lawyers and therefore the FLSP programme for cost purposes becomes redundant and unnecessary.

The issue of competency will be addressed further below in response to question 3.

2. *Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?*

It is beyond scope of FOLA and its members to ascertain the viability of a business model for which no studies have been commenced. We cannot accurately determine whether a FLSP would or would not have a viable business. There are too many variables, potentialities, and contingencies for us to be able to speculate and foresee the outcome of the FLSP as proposed. It is our position, however, that the proposed scope of permissible activities is overbroad and must be narrowed substantially. This will be addressed in response to the question below.

3. *Will the proposed competencies ensure the appropriate level of competence to deliver family law legal services in the proposed scope? Are there other competencies that should be considered?*

It is our view that the Law Society is being asked to yield to pressure from the judiciary to “do something” about the ballooning number of self-represented litigants before the courts. As indicated above, it appears as though the FLSP has been seized upon as being the solution to this complex, systemic and multifaceted problem. FOLA believes an undergraduate degree, three years of law school, articling/law practice program, and ongoing CPD requirements cannot be compared to a high school diploma, a two year diploma at a community college and less than a year of “training”. For all intents and purposes, a FLSP is a *de facto* family lawyer with about a quarter of the education and training.

To ensure the appropriate level of competence to deliver family law services within the proposed scope, one must be a lawyer.

4. *In your view, what scope of activities would best support access to affordable and competent family law services?*



We must reiterate that we do not believe that the FLSP would be any more affordable than a lawyer, and our position is that the FLSP should not be implemented at all. However, in the event the FLSP is implemented, we have significant concerns about the scope of the permissible activities. They are essentially all areas of family law with very few areas being excluded.

Simple/Joint Divorces: FOLA takes no issue with the proposed scope.

Custody/Access: FOLA takes no issue with the proposed scope.

Child support: FOLA believes the only issue a FLSP should be permitted to address is employed payors where Guideline support is applicable. Self-employed income always has an income determination issue, as it would be erroneous to take the self-employed income at face value. Many factors go into forwarding an appropriate quantum to the court for its consideration when dealing with self-employed payors, and this is analogous to imputation of income as well. Self-employed recipients are also an issue when determining proportionality for section 7 expenses. Furthermore section 7 expenses in and of themselves can be a difficult issue, insofar as just because an expense occurs does not mean it is necessarily “special” or “extraordinary”.

Family law lawyers would advise that undue hardship is one of the most difficult claims to successfully assert. The factors are complex, the case law is nuanced and frankly it’s just plain difficult. It should not be within the permissible scope.

Support issues that are within the Family Responsibility Office matters can involve the default payor suffering serious consequences, such as jail term for each missed payment. It is our position that FLSP’s should not be representing clients who have custody as a possible outcome.

Spousal Support: FOLA takes the position that spousal support should be outside the permissible scope for a FLSP. There is a misconception that since the implementation of the SSAG that spousal support is now markedly straightforward. It is not. Eligibility and duration remain complicated issues with volumes of case law on both sides of every



issue. Additionally, spousal support quantum and termination dates are often encapsulated within negotiations for increased or decreased equalization payment.

Property/Matrimonial Home: FOLA takes the position that all property issues should be outside the permissible scope for a FLSP. Our concerns are not just that property issues are complicated, but that the issues are often not self-evident at the outset. How would a FLSP be able to assess whether or not there will be a joint family venture or the extent of issues relating to a matrimonial home, such as the severance of a joint tenancy? Even experienced family lawyers cannot necessarily determine whether such issues will be in play at the outset of a matter.

Additionally, there are complex evidentiary issues which could easily turn a “within” scope to an “outside” scope issue. For example, a family loan may be adequately documented to appear to be a straightforward debt but still may require discounting, thereby requiring a third-party valuator.

The consequences of not identifying, and not having the ability to identify, certain claims relating to property can be catastrophic to litigants.

Contempt: FOLA takes the position that FLSP’s should not be representing clients where jail is a possible outcome, as it is in every contempt matter. Contempt hearings are quasi criminal proceedings and the possible outcome if found guilty is a period of custody.

Setting Aside: FOLA takes no particular issue with FLSP’s being permitted to apply to setting aside Orders for lack of effective service as contemplated. However, Minutes of Settlement and Domestic Contracts are by their very nature signed by the parties and are not served. These needs to be removed from proposed Area 8.

Domestic Contracts: Given FOLA’s views on property as outlined above, it is our position that FLSP’s be permitted to draft Custody/Access/Child support Agreements, subject to our proposed caveats above with respect to Child support. We do not believe FLSP’s should be permitted to address property issues for the reasons outlined above.

Change of Name under the Change of Name Act: FOLA takes no issue with this being within the proposed scope.



5. *Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies?*

The proposed training only involves 550 hours of coursework with a short field placement. There is no feasible way, despite careful construction of coursework, that a FLSP could achieve competencies in even the limited scope FOLA would support, let alone the complete proposed scope of activities. As indicated above, the FLSP as proposed essentially creates a family lawyer, and therefore the education and training needs to be analogous to that of a lawyer.

LSO should be mindful of the initiatives that were put forth by the state of Washington which in 2015 had begun a limited license legal technician program. These individuals are licensed to provide legal advice and assistance to clients in certain areas of law, including family law, without the supervision of a lawyer. On June 4, 2020, the Washington Supreme Court decided to sunset the LLLT program because it was, for all intents and purposes, not functioning as it had been projected.

6. *What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?*

FOLA suggests that a minimum five years working as a licensed paralegal should be required before a paralegal should be permitted to apply for the limited scope FLSP. This would at least ensure that the individual has the ability to perform adequately as a paralegal before adding much more professional difficulty to their work.

7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?*

This is, practically speaking, a very difficult question to answer. There is certainly no reason a FLSP should not have to have the same requirements for articling/practice as a lawyer. A straw poll of our members show not a single lawyer was willing to supervise such an endeavour for a FLSP. Until some version of the FLSP program is functioning, there



will not be any FLSP’s to supervise future FLSP’s during their field placement. This problem needs to be solved in advance of any continuation of the development of the proposed FLSP program.

8. *Is a CPD requirement focussed on family law appropriate for the FLSP?*

FOLA believes that an enhanced CPD requirement, requiring more hours and more in depth content, would be necessary for the FLSP so as to in some way compensate for their lack of legal education.

9. *Should law clerks be eligible for the FLSP license? Are there other groups of professionals who should be considered?*

FOLA does not support the inclusion of law clerks in the FLSP license, and the reasons for this position mirror those as applied to the proposed paralegal model. Despite this, their inclusion would at least ensure consistent supervision by a licensed lawyer, which is unlike the paralegal model which is being proposed.

10. *What characteristics of the FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)*

There is no empirical evidence that any of the “appealing” aspects of the FLSP actually exist. This entire exercise is predicated on the assumption that FLSP’s will be less expensive than a lawyer but there is no evidence to support this. There is a great leap in logic between “we need access to justice” to “FLSP’s will be the answer”.

Additionally, we need to understand that there is an important distinction between individuals who wish to be self-represented and those who are unrepresented. Those who wish to be self-represented will not utilize any provider of a legal service and will continue to appear before the courts without counsel, regardless of cost.

11. *Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc), is the FLSP design appropriate?*



The recent move towards the increased use of remote courts via Zoom and other electronic means will be shown to have substantially reduced legal costs and increased efficiencies.

12. *Are any aspects of the proposed licensing framework unfeasible?*

This has been addressed fully in the answers to the previous questions.

13. *Is there additional information or are there other factors that should be considered?*

For better or worse, there is a public perception that lawyers who accept Legal Aid are not as skilled, and those who only accept private retainers are more highly skilled. With the proposed FLSP, there will be a *defacto* third tier, wherein private counsel are on the top, FLSP will likely end up in the middle and Legal Aid counsel will be at the bottom. The only thing creating this hierarchy is the amount of money the public believes each is receiving an hour for assisting their client.

Additionally, even lawyers who have practiced family law for decades are not permitted to call themselves “specialized” without going through a rigorous application process through the LSO. The FLSP in and of itself is a form of specialization which could easily confuse the public into thinking the FLSP is inherently more qualified than a family lawyer.

Finally, FOLA takes the view that any roll out of the FLSP should be done slowly and incrementally: scopes of services can be added if appropriate, but if scopes of services have to be reined back in there would have a negative impact on the public’s perception of the LSO.

Recommendations

Family Law Rules

FOLA believes that part of the underlying issue is The Ontario Family Law Rules in and of themselves. Family law practitioners across the province have raised concerns relating to the Rules, and they are viewed as placing a hurdle on the issue of access to justice and require significant reform.

There can be no doubt the Rules have caused legal costs for litigants to skyrocket and any consideration with respect to changes to the Rules should also focus on enhancing timely access to justice and reducing legal costs.



For example, Rules 17 deals with Conferences, including the case, settlement and trial management conferences. While the Rules do allow for the combination of the three conferences into one or two, the practice across the province is unpredictable and inconsistent. These three possible conferences will not necessarily provide a resolution to the matter, and the attendance at these conferences will inevitably result in a higher cost for litigants. They can also result in significant delay in the matter proceeding in a timely fashion. Regardless of whether litigants are represented by counsel or a FLSP, this problem still exists.

Additionally, Financial Forms have been added but the request for irrelevant information and requirements for obsolete forms has not been taken away. For example some of these financial forms made sense before the introduction of the Child Support Guidelines and Spousal Support advisory Guidelines but now why does it matter how much a litigant spends on magazines or pet food? The forms which are currently standard should only be required when the Court orders them and in limited circumstances,

Legal Aid

For many years Legal Aid has been viewed as the pillar in providing access to justice through both certificates for the private bar and of duty-counsel to the service of lower-income Ontarians. In recent years we have seen the various governments decrease funding towards Legal Aid, which ultimately increases the presence of self-represented individuals in court. FOLA supports the increase of funding and expansion of Legal Aid Ontario. Furthermore, FOLA’s position the financial eligibility requirements must be revisited and amended to capture those who could not afford a lawyer. For example the current test is as follow:

CERTIFICATE ELIGIBILITY THRESHOLDS ⁸

Number of family members	The amount of money your family earns in a year	For domestic abuse cases
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⁸ <https://www.legalaid.on.ca/news/details-on-legal-aid-ontarios-financial-eligibility-increase-for-2019/>



1	\$17,731	\$22,720
2	\$31,917	\$32,131
3	\$37,194	\$39,352
4	\$42,726	\$45,440
5+	\$48,173	\$50,803
Single boarder	\$11,632	

Based on the above, it is unreasonable to expect that it would be possible for an individual to earn slightly more than the level of income in the chart above and also have the ability to afford a lawyer or FLSP. The financial eligibility tests for Legal Aid must be changed to encapsulate more than just the very poorest of Ontario's residents.

Technology

There is no doubt that some would consider the COVID-19 pandemic has had an unforeseen but positive impact on access to justice as a result of the enhancement and implementation of the digitalization/ remote hearings. FOLA is of the view that the LSO should work in conjunction with the Attorney General in expanding and continuing to improve this system to allow all Ontarians an easy access to justice.

There are many benefits that can be afforded to all litigants from the increase in digitalization and remote hearings, such as online filings, instant remote hearing without the necessity for counsel and client to travel, and remote hearings are scheduled for a set time with counsel not needing to be in court the majority of the day thereby resulting in a substantial decrease in costs for clients.

In light of the above, FOLA is also of the view that almost everyone has, or can use, a telephone. Many people have smartphones, but some self-represented litigants do not have access to a telephone, electronic device, or a computer. So while technology is the new landscape in remote hearings, LSO and the AG's office must consider making investments in communities to ensure fairness. Furthermore, LSO and the AG's office can consider a



Self-Help center that may offer information and assistance regarding places where self-represented litigants can use computer equipment to participate in remote court proceedings.

Other Initiatives

The LSO and the AG's office should consider supporting and providing some assistance in the implementation of Pro Bono Students Canada and the launching a Family Justice Centre Ontario.

It is FOLA's view that the LSO, stakeholders, and the family bar expand legal coaching and the unbundling of legal services by family lawyers.

FOLA believes that Alternative Dispute Resolution should be at the forefront of an initiative driven by LSO to promote same amongst the family law bar.

FOLA is grateful for the opportunity to provide its submissions and welcome any opportunity to work with the Law Society of Ontario as it continues its commitment to address and improve Ontario's justice system.

Yours very truly,

Rasim Sam Misheal
Family Law Chair
Federation of Ontario Law Associations

#308

Please enter your first and last name	Laura Bradford
Email Address	laura@summitmediationgroup.ca
Please make a selection below	FDRIO
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Family Dispute Resolution Institute of Ontario
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Organization
Upload a File	FDRIO FLSP Submissions November 30 2020.docx.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

FDRIO Response to Family Legal Services Provider Licence

November 30, 2020

Family Dispute Resolution Institute of Ontario (FDRIO) would like to thank the Law Society of Ontario (LSO) for the opportunity to provide comments on not only the components of the proposal but contextual information that will help you determine the effectiveness of such a licence in addressing access to justice needs.

We trust that our input will be of assistance to the Law society in determining both where the proposed model is most effective, and where it can be ameliorated or altered to better serve the public's access to family law justice, equitably.

Family Dispute Resolution (FDR) professionals are frontline family law service professionals, who, because of the diversity of professional expertise, are uniquely positioned to comment on and provide recommendations of the needs and gaps in family law services.

From that perspective, we understand the inherent complexities of family law and the provision of family law services and realize that there is no magic-one-sized-fits-all solution to the access to justice problem in family law. We commend the LSO in their search for viable solutions to not only bridge the ever-widening gap, but to fill it.

FDRIO's Unique Perspective

As FDR professionals, we often find ourselves in the middle - in between clients, lawyers, other family law service providers, and family law processes. In our capacity as mediators, arbitrators, and parenting coordinators we serve both clients in a family dispute and as coaches and financial professionals, we may serve one or both. FDRIO's certified mediators also provide assistance to the court in the form of the court-connected mediation programs.

We can serve parties in a family dispute not only related to the breakdown of a relationship but all other areas including cohabitation, marriage, adoption, child protection, fertility and elder. We can meet these service demands by networking and collaborating with a range of family law service professionals who share in a singular goal – meeting the individual family's needs.

As FDR professionals, we have an exceptional opportunity to hear from all sides; their wants, needs, and concerns – from clients to the courts. It is this unique role which provides us with a substantially different perspective than our colleagues who serve only one party. And importantly we do not provide legal advice. Rather we service a great many unrepresented clients and bring valuable and neutral perspective to this discussion as a result.

We recognize the need for multi-racial, ethnic, linguistic, and spiritual service provisions and the necessary accommodations to address disparities. Working with the needs of each family requires more than just legal advice.

Our response incorporates a variety of perspectives as it relates to geography, language, and culture. It is important that there is an acknowledgement of the current disparities particularly for Indigenous and Black Canadians in the current family law environment.

From this perspective we are not only able to recognize and identify gaps in the available processes and practice of family law, and observe its (sometimes rapidly) shifting landscape, but to provide, what we believe are more holistic, family-focused areas of consideration that would improve access to timely, affordable and equitable family law justice, across all demographics.

As an organization that provides training and certification for FDR professionals, we are also comfortable speaking to the competencies, standards of education, supervision, continuing education and evaluation required by our FDR professionals, which we feel should be required of FSLPs to become and continue to be licenced to provide a limited scope of family law services.

The professional diversity of our organization, and in particular, the committee responsible for drafting this response, allows us to speak, at least experientially, on the affordability and viability of the proposed licence.

In addition, this process allowed FDRIO to address the much needed changes that we believe are required for not only FLSPs but all professionals working with families. It's important that we look to improve the quality of services provided by family lawyers to all Ontarians when addressing access to justice. We welcome the opportunity to have ongoing discussions and support the LSO in this endeavour.

Moving Family Dispute Resolution (FDR) and Access to Justice Forward

FDRIO appreciates the following vision of access to justice referred to in the Bonkalo report:

The ***“Key to this understanding of the justice system is that it looks at everyday legal problems from the point of view of the people experiencing them.”***¹

Nowhere more than in Family Law is this so relevant, so personal, so emotional and so complex.

Alf Mamo's definition of meaningful access to justice should strongly inform any access to justice discussions, proposals, processes, and services:

¹ 2013 final report of the Action Committee entitled Access to Justice in Civil and Family Matters: A Roadmap for Change.

“The ability of a citizen to bring about a solution to his or her legal problems that is (a) financially affordable; (b) timely; (c) easy to understand; and (d) easy to maneuver through.”²

In hindsight, we can now add equitable to Mr. Mamo’s description.

It is FDRIO’s belief that, if well researched, well developed, well supported and well tested, components of the FLSP proposal have the ability to support meaningful access to justice in a manner that would permit a citizen to bring about a solution to their legal problem(s) that is (a) equitable and equitably obtained; (b) financially affordable; (c) timely; (d) easy to understand; and (e) easy to maneuver through.

It is through this vision and meaningful definition of access to justice that respond to the proposal.

Addressing Assumptions

The LSO has made the following assumptions in support of the proposed new licence:

- 1) The cost of FLSP’s providing family law services will be less than the cost of retaining a lawyer for the same services because:
 - a. Paralegals bill clients in smaller amounts, more frequently than lawyers.
 - b. Paralegals charge lower hourly rates than lawyers.
 - c. Paralegals are more likely to charge a block fee for various steps within a matter.
 - d. Many paralegals do not charge for routine tasks such as emails, phone calls, or travel time when they do bill hourly rates.
- 2) Licenced FLSPs will be capable of providing the same quality of legal advice to family law clients as lawyers; or, in the alternative clients, lawyers, FDR professionals and the courts will perceive this to be true.
- 3) The family law needs of a person whose household income is less than \$75,000 is different than those whose household income would qualify them for a Legal Aid certificate program, or other limited scope or reduced fee program, or whose household income exceeds \$75,000.
- 4) Understanding the concepts pertaining to de-colonization, self-determination, addressing racism and gaps and acknowledging settler modes of Indigeneity and anti-Black racism; the cost of service will be more due to the historical disproportionate harms particularly to, these two groups.

² Alf Mamo, “Random Thoughts on Family Law Process Reform” in Barbara Landau et al, *Home Court Advantage: Creating a Family Law Process that Works* (Final Report and Recommendations from the Home Court Advantage Summit, Co-Hosted by the Ontario Bar Association, the ADR Institute of Ontario and the Ontario Association for Family Mediation. 22-23 November 2009) at 61, online: <[http://www.oba.org/en/pdf/011-0022_Family Law Process Reform Report_final_web.pdf](http://www.oba.org/en/pdf/011-0022_Family_Law_Process_Reform_Report_final_web.pdf)>.

- 5) There is a desire by practicing paralegals (and conceivably other professionals) to invest the time and expense needed to qualify for a FLSP Licence to provide the scope of services proposed.
- 6) There exists a viable FLSP business model that allows either – paralegals to practice family law under supervision (presumably of counsel) or unsupervised.
- 7) With a greater number of professional options for the public to choose from they can shop around for best fit and best cost for them, and the FLSP may be perceived to be a lower cost option.
- 8) Approach is entirely in consideration of average family of modest means, but the nature of family law is that any issue can arise, regardless of the parties' means.
- 9) This licence provides a province-wide solution presuming paralegal exist in all communities and that they will chose to become FLSP's to help underserved regions and communities.
- 10) If properly supported, the current access to justice initiatives and programs would not serve the needs of the public.
- 11) There is a public desire for a FLSP licence as opposed to a public desire for more affordable services by lawyers.

We could not reach consensus on these assumptions without empirical evidence. Some members are prepared to accept the assumptions, others oppose them. Others, still, feel that they have no ability to comment.

FDRIO welcomes the opportunity to comment on any revised proposal should further research be completed, additional findings presented, or tangible business models are established for review and comment by stakeholders.

Our response is therefore limited to the extent that the LSO proposal lacks detailed empirical research and specific proposed business models for FLSPs, including a projected budget for the program and costing of the individual licence.

The Needs of Clients

The clients of FDRIO members, whether those clients are in court or not in court, require access to legal advice, legal support and legal information that may not seem immediately apparent from a traditional legal perspective.

Independent legal advice in the following areas:	Advice on process determination in the following areas:
<p>Terms of the Process Agreement</p> <p>Implications of participating in a binding process such as Parenting Coordination or arbitration</p> <p>Implications of participating in a FDR process in the alternative to litigation, and vice versa</p> <p>Rights and obligations with respect to the legal issues in dispute</p> <p>When and how to hear the voice of their children</p> <p>The meaning and interpretation of relevant statutes and guidelines e.g./ child support guidelines, SSAGs, FLA, as they relate to the matters being addressed in the FDR process</p> <p>Converting a negotiated Consent, Minutes of Settlement or Domestic Agreement into a court order</p> <p>Whether protective orders are needed prior to starting an FDR process</p> <p>Implications of specific orders, agreements, or awards in other areas of law (conflicts of laws), and the implications of other areas of law on family law (tax, estate, criminal, insurance, privacy, elder, etc.)</p>	<p>Costs of processes</p> <p>Whether the proposed FDR process will be good for them including FV Advice on whether FDR can be a safe, empowering, and effective alternative to court</p> <p>Differences between each FDR process option and the pros and cons of each on the unique facts of each client's circumstances</p> <p>Options available to them in court that they cannot access in private FDR processes</p> <p>FV What procedural accommodations are appropriate to enable the process to take place</p> <p>The timeline for access to services in each process</p> <p>Information on how each service can address their specific family's needs differently</p>

Procedural advice in the following areas:	Process advice in the following areas:
<p>Accurately completing forms and which ones to use</p> <p>Help understanding common terms used in family law</p> <p>Help in understanding the court process</p> <p>How to prepare for the court process and what to expect</p> <p>The relevance of existing orders, agreements, and awards</p> <p>The difference between orders, agreements, and awards</p> <p>How to complete financial disclosure</p> <p>How to draft an affidavit if in arbitration</p> <p>Help understanding the FDR process</p> <p>How to prepare for the court process and what to expect</p>	<p>Court – help understanding what happens after a court order</p> <p>Advice on how to prepare effectively for the FDR process</p> <p>How to effectively participate in a parenting coordination process</p> <p>Negotiation advice and support in mediation</p> <p>When to terminate an FDR process for reasons of power imbalance</p> <p>How to safely terminate an FDR process without exposing a client or child to further risk</p> <p>Strategic advice in how to use the proposed process advantageously given the FV</p> <p>How to present in court and or FDR process</p> <p>How to navigate the rules of evidence</p>

Response to Questions

Understanding the needs of our members and family law clients, we address the specific questions raised by the LSO.

SCOPE

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The 2012 Report to the Attorney General stated “Paralegal regulation is viewed as beneficial and effective by the paralegal profession and by the public who use paralegal services. 46% cited lower costs as the reason selected over a lawyer, other reasons were simple matter, paralegal was experienced/specialist in that area of law, easier to hire and manage a paralegal than lawyer (23%).”³ If this trend holds true to family law, there may be public desire for a FLSP.

What does practical legal services look like and how important are cost and competency to the client in relation to those services? Is the importance of the FLSP licence that the client feels they received good value for their money and legal support that represents their needs uniquely? Or is the importance that the family law community feels the cost and competency is of value? In answering this we will remain focused on access to justice for the public – and in so doing, must query whether (a) if properly supported, the various initiatives and programs that have been developed since 2012, do not meet the same objectives of the FLSP proposal; (b) whether clients would not prefer being represented by lawyers as opposed to paralegals if it was as equitable, accessible, efficient, maneuverable and affordable as hiring an FLSP for the same service; and (c) if more opportunities and expansion for the role of alternate family dispute resolution processes wouldn’t offer further value to both the clients and the family law system in its quest for access to justice.

FLSPs may be able to help address unique needs by:

- ❖ Having more professionals committed to ensuring inclusion across race, culture, religion, age, gender identity, sexual orientation, background, ability, profession, and other diverse populations must enable us to increase access to justice; without adding to the current disparities; and
- ❖ Providing more options for self-determination of process; and
- ❖ Assisting in taking or keeping cases out of the courts, as well as identifying cases that should be in court.

³ Paralegal 5-year review – Paralegal Standing Committee Report to the Attorney General of Ontario – Pursuant to Section 63.1 of the Law Society Act

It is expected that paralegals; like all other family law professionals, will operate within their scope and that there will be documented consequences for operating outside of that scope. Clearly defined scope and training will ensure competency of the FLSP.

If our goal is to facilitate FDR, then we need to look at affordability and appropriateness of services.

Affordability

The issue of affordability has come up a great deal as it is a foundational piece of the FLSP proposal.

We believe that there will be public interest for any legal support at lower rates than lawyers charge currently – whether that service be provided by lawyers or by other licenced professionals. A question for the family law community is how do we stop a potential race to the bottom on cost without compromising on competence?

Although cost concerns can be seen as a protectionist view from lawyers, FDRIO has many non-lawyers, and this concern was raised by them also. The wording in the LSO paper *“The report also referenced the fact that paralegals can reduce the cost to the client.”* may not be accurate and is not a fact but an assumption.

A lower hourly rate does not equate to less cost to the client as FLSP’s may take longer to do the same task having less education and experience in providing these legal services. The limited scope nature of the FLSP proposal may also result in a multiplicity of retainers to FLSP’s and to lawyers who need to be retained to fill the service gaps the FLSP retainer cannot meet.

Does a failure of the lower cost assumption change the proposed model and/or the scope of permissible activities? More information should be gathered and evaluated to ensure uptake of this new licence is not diminished by cost.

Is the scope of the proposed FLSP licence not already addressed by other access to justice initiatives? If so, would it be more fiscally responsible to provide appropriate funding for the promotion, support, and public education about these services instead of funding an untested FLSP licence?

Appropriateness

We recognize that the current proposal is not flexible enough to capture the needs of all Ontarians.

Our BIPOC (Black, Indigenous, People of Colour) members have noted that due to the historical barriers, harms, and oppression there will be times when additional support and costs pertaining to services will have to be increased due to the disparities in family law of, particularly, Black Canadian and Indigenous community members.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

There are potential opportunities and challenges to the proposed FLSP business model in FDR.

The following paragraphs identify the range of discussion that took place during our committee meetings, without reflecting a consensus of thinking:

Potential Opportunities

- ❖ FDR clients and professionals may benefit from a FLSP with a more narrowly defined scope and the ability to provide 100% support without hand-off to a lawyer.
- ❖ We could allow for a graduated system that requires a FLSP to complete concurrent years of training, courses, and hours of experience in a graduated system that would eventually allow for FLSP's to have a broader scope
- ❖ There are areas which are 'out of scope' that may decrease the success of the FLSP model and might better be included 'in scope' in an FDR process but not in a court setting:

5. Property

b) Joint family ventures & c) Equitable and Trust claims - Common law should not be 'out of scope' and it is possible for training in legal knowledge around this. Family clients often use FDR options to avoid the complex court processes and support of a FLSP would be invaluable. Although the level of conflict/complexity is high it can be managed by a properly trained FLSP in and outside of FDR.

e) Pensions are 'out of scope' however, provincial pensions should be considered 'in scope' as they act very similar to RRSP's once the Family Law Value is received. The level of risk and conflict/complexity can be managed to low by a properly trained FLSP.

f) Unequal division is 'out of scope' however, is quite common in marriages of less than 5 years and by agreement between the parties and should be considered 'in scope'. The level of risk and conflict/complexity can be managed to low by a properly trained FLSP.

6. Home/Matrimonial Home

d) Unequal division is 'out of scope' however, is quite common in marriages of less than 5 years and by agreement between the parties and should be considered 'in scope'. The level of risk and conflict/complexity can be managed to low by a properly trained FLSP.

9. Domestic Contracts – Cohabitation agreements and marriage contracts are 'out of scope' however, should be considered 'in scope' if the issues fall 'in scope'.

Child Protection law is one of the most important areas of law. The public currently is not being adequately served and may be more effectively served by a FLSP with supervision

of a lawyer. The suggestion would be to review child protection law and review particularly for Indigenous people and Black Canadian communities. **See appendix C: FLSPs and Child Protection.**

- ❖ Viable business model for FLSPs working in a collaborative environment as part of a team.
- ❖ Viable business model for FLSPs working with lawyers as employees or in another contractual relationship. Will enable more cost-effective offerings from law firms and with supervision will expand the scope of FLSPs.
- ❖ Viable business model for FLSP's working independently for those who qualify and are experienced after meeting appropriate training and supervision/mentorship requirements.

Potential Challenges

- ❖ FDR professionals will benefit from our clients having access to regulated and trained FLSP's who can credibly and competently offer the broadest possible proposed scope of services however, the hand off to lawyers for 'out of scope' areas may diminish their viability.
- ❖ Limitations of ILA may diminish the viability of this model **See Appendix D: FLSPs and Legal Advice in FDR**
- ❖ The complicated scope distinctions may confuse and frustrate clients and diminish the viability of the FLSP.
- ❖ Lack of understanding from the public about differences between the role of a FLSP vs a lawyer. According to the Paralegal Standing Committee Report in 2012, "In spite of extensive communications work by the Law Society, public awareness has not kept pace with changes in the legal services market, particularly with respect to awareness of the distinction between services provided by lawyers and services provided by paralegals."⁴
- ❖ There are areas that are 'in scope' that may decrease the success of the FLSP model and might be better excluded from scope:

3. Child support including motions to change

a) Self-employed payors, unless there is an income determination issue is 'in scope'. There is almost always an income determination issue and it is not only the payor's income that should be included. Payee self-employed income may need to be determined for set-off child support and/or for Section 7 proportionate to income percentages. Self-employed parties should be considered 'out of scope'. The level of risk and conflict/complexity can be high here.

⁴ Paralegal 5-year review – Paralegal Standing Committee Report to the Attorney General of Ontario – Pursuant to Section 63.1 of the Law Society Act

4. Spousal Support, including variations and reviews

a) Self-employed payors unless there is an income determination issue is 'in scope'. There is almost always an income determination issue and it is not only the payor's income that should be included when establishing spousal support. Self-employed parties should be considered 'out of scope'. The level of risk and conflict/complexity can be high here.

d) If Interests in sole proprietorship, partnership or corporation is 'out of scope', that further supports all self-employed clients to be considered 'out of scope' as property interests are often comingled with income determination of self-employed. The level of risk and conflict/complexity can be high here.

- ❖ The inability to provide ILA on consent orders or Memorandums of Understanding (on 'out of scope' issues)
- ❖ If a client retains a FLSP, builds a relationship with them they may be reluctant to move on to a lawyer. If such an event is likely, clients may not be comfortable starting the process with a FLSP.
- ❖ Clients may waive their rights or not fully disclose to stay in scope and continue the process with a trusted FLSP.
- ❖ Other out of scope issues will often come to light only after a retainer has been paid and work started.
- ❖ Relying on the FLSP's client to accurately identify the scope of the other party may require the hand off to a lawyer regardless of how well the FLSP performs due diligence. (For example, if the FLSP's client does not understand the structure of their spouse's business and income determination for the spouse becomes a fundamental issue, can a FLSP continue?)

Clarity around out of scope areas should include:

- ❖ Where a parent is seeking a supervision order (access) or no access
- ❖ CAS cases
- ❖ Criminal charges present relating to spouse or child
- ❖ Criminal restraining orders present or sought
- ❖ Hague matters/international abduction
- ❖ Allegations of parental alienation
- ❖ Where a litigation or participation expert is required

FDRIO's position on scope

FDRIO members discussed the scope of a FLSP at length. At the heart of that discussion was the protection of the public interest. While there is dissent amongst members as to how narrow or broad the scope of practice should be, there is agreement that the scope should be clearly

defined that any person seeking to explain or understand the parameters of a FLSP's scope could do so with absolute certainty. The risks associated with uncertainty from a client and a practitioner perspective are simply too great.

As service providers, we are expected to be able to manage our client's expectations. A FLSP service model would be akin to a limited scope retainer for family law services. If we cannot properly delineate for clients the differences between what a lawyer can do and what a FLSP can do, we risk prejudicing our client in their proceedings (in or out of court), increasing their costs, and increasing the potential for the FLSP to be alleged to be negligent.

In family law, an error that could prejudice our client could result in the loss of a parent-child relationship, bankruptcy, or our client or a client's family member coming into harm's way. The stakes are too high for ambiguity, which has happened for centuries and resulted in the current disparities.

To that end, FDRIO strongly believes that a clearer definition of the proposed scope of practice is required for the FLSP licence to be viable. It was suggested that it may be simpler to define the 'out of scope' areas to avoid confusion and increase clarity.

Our members did not unanimously agree on what the scope should look like. It ranged from a FLSP's scope being restricted to simple, uncontested document preparation to the expansion of scope to include more property and financial issues, from including child protection to excluding self-employed parties, and everything in between.

Another discussion was that the LSO implement a restricted FLSP Licence that would permit a licensee to provide limited legal information and advice and document preparation, subject to a period of review and revision by the LSO to determine if the Licence should be terminated, continued in its current form or expanded.

COMPETENCE

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

FDRIO does not believe the proposed list ensures the appropriate level of competence to deliver family law services as outlined in the proposed scope.

In addition to the existing proposed competencies:

1. Ethics and professional responsibility
2. Knowledge of the law
3. Substantive family law
4. Problem, issue identification, analysis, and assessment

5. Alternative dispute resolution
6. Litigation process
7. Practice management issues
8. Prohibitions

We propose the following additional competencies:

- ❖ Alternate Dispute Resolution: though the subject is identified as a competency we propose it be named Family Dispute Resolution (FDR) to emphasize the important ways in which family dispute resolution is fundamentally different from ADR.

Although these areas may be touched on in defining competencies in detail, we believe these should be included as major competencies:

- ❖ Comprehensive Intake – with the complexity of ‘in scope’ and ‘out of scope’ issues, FLSPs must have competencies in vetting clients.
- ❖ Screening for family violence is a competency that does not just fall under FDR but is critical to the success of any family law services and should be a stand-alone competency.
- ❖ Client management is more than what is included under Ethics and Professional Responsibility such as dealing with difficult personalities, mental health issues, family dynamics, social and diversity issues and should be a stand-alone competency.
- ❖ Indigenous family law issues should be a stand-alone competency.
- ❖ Anti-Black racism and its impact on family law should be a stand-alone competency.
- ❖ Financial and tax knowledge is more than just understanding the guidelines and Income Tax Act, it is understanding the impact and consequences of settlement options and accurate disclosure and should be a stand-alone competency.
- ❖ Insurance and estate knowledge should each be stand-alone competencies.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

If you follow social media pages and support groups for self-represented, unrepresented, and even represented parties, the questions, concerns and fears are very much related to procedural issues (in all processes - court, mediation, parenting coordination, collaborative and arbitration) and appropriate use of and completion of forms.⁵

⁵ Examples: Facebook – Ontario Family Court – Representing Yourself, Facebook - Friends Helping Friends (Ontario, Canada Family Law Issues), Meetup.com – Variety of separation and divorce support groups.

FLSPs can play a significant role in providing legal information and advice on process determination, procedural and process related areas as described in the Needs of Clients section.

FLSPs could be in a unique position to provide process coaching and be legal advocates to clients without the concern of navigating legal advice for 'out of scope' issues.

The ability of clients to obtain greater affordable and competent ILA on mediated agreements or agreements on consent would serve not only the needs of FDR professionals and our clients, but the courts as well, filling a substantial family law services gap.

In the role of mediator, our clients are often self-represented or unrepresented. While we consistently recommend that our clients obtain ILA at all stages of the process and specifically before signing any agreement, we know that many do not do so, instead relying on a non-binding Memorandum of Understanding/Mediation Summary Report (MoU/MSR) as their separation agreement – which, oftentimes leads to greater problems down the road.

There are a variety of reasons for this 'shortcut': cost, concern that a lawyer will not support their decisions or try to change their minds and perceived power imbalances, among others.

From the court's perspective, a judge cannot advise self-represented or unrepresented litigants on the benefits or drawbacks of a mediated agreement, but neither are they in a position to assist the parties with a simple, cost efficient method to draft in enforceable terms and formalize a mediated agreement as a court order. The right to self-determination in selecting a process is granted within the family law process but is then stripped away by not allowing self-determination in the process of formalizing agreements obtained in those processes.

If the proposal for FLSPs does not include this ability we are not addressing the largest gap in services and are not providing a solution for those FDR clients going through mediation, in or out of court. It's important to note that if the MoU/MSR was drafted by a comprehensive mediator trained in mediating areas which are out of scope to FLSPs or an agreement was drafted with the help of a divorce financial professional the clients have obtained legal information and have made an informed decision to not proceed with a family law lawyer. Should the FLSP proposal address this access to justice issue in self determination of process?

Another challenge is the prohibition on FLSPs in providing ILA on Arbitration agreements, resulting from the language of the Arbitration Act Regulations 134/07 even though it is proposed that FLSPs may advise clients during an arbitration. Involvement of FLSPs in these matters should be discussed further with Parenting Coordinators and Arbitrators, FDRIO welcomes the opportunity to participate in these discussions. **See Appendix E: FLSPs and Arbitration.**

Again, our members had strongly opposing opinions on whether the FLSP scope should include the provision of ILA, and if so, whether the FLSPs scope of ILA on mediated agreements or agreements on consent should be limited.

TRAINING PROGRAM

5. Is the proposed training program of sufficient duration and rigor to enable candidates to achieve the proposed competencies?

We believe it is in the public's best interest to be supported by legal professionals who fully understand FDR processes and options and when they are and are not appropriate. Creating a collaborative approach between FLSPs and other FDR professionals will aid in finding solutions that are the most appropriate for each family, client, and situation. We therefore propose additional mandatory training for FLSPs be designed with these needs in mind. **See Appendix F: Proposed Additional Training for FLSPs.**

We acknowledge that we recommend training and criteria that is not required by family law lawyers however, we wish to express our strong desire to have this extended to any and all professionals working with families, whether or not they are regulated by the LSO.

Education, Training and Supervision ("ETS") is central to the success of the FLSP licence. We had many discussions on the extent of the ETS. We concluded that the longer the ETS period, then the higher the confidence level existing FDR professionals and the public would have in the qualifications and suitability of these new FLSPs to render competent and professional service. But as a corollary to that proposition, we realized that the longer the ETS, then the higher the cost and that would have to be passed on our clients.

To fill the gaps within the family law system, we will be obliged to carefully balance the length of the ETS with the cost. Another related point that we discussed was that the longer the ETS, the less likely it would be that many people would sign up for the program.

We would also ask that a modified program be considered for those paralegals who worked in family law before regulation and/or work within a law firm or clinic environment now.

As many of our members have multiple designations and continue to work towards others, we question whether a professional with a full time career commitment can reasonably complete a part time program of 10 instructional hours per week; plus readings and assignments, over a full year. Perhaps an additional less rigorous part-time model would allow for expanded uptake.

OTHER COMPONENTS OF LICENSURE

6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

While we are not committed to any specific length of time, we do feel that previous experience in a practical environment is beneficial before being competent to work independently with families, of which even the simple cases can be complex and highly charged. The FLSP should not be expected to initially learn to manage ethics, professional responsibility, practice management and manage the dynamics of family law cases.

We believe that those professionals with previous practical and academic training should have a process to apply for exemptions (including experiential knowledge).

7. *What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?*

We all know that training will only get you so far down the road of being competent to provide support to families. We discussed many models and while there was not unanimous agreement on any particular one, there was full agreement that experiential training specific to working with families should be considered mandatory. As FDR professionals we rely heavily on supervision, mentorship, and practical experience to gauge our competencies and support our designations.

Insight into models that were discussed:

- ❖ Minimum 100 hours of supervision over a specific period (12 months) before eligibility to write the exam to certify a FLSP.
- ❖ Provisional licence and then full licence after 100 hours of supervision is complete.
- ❖ Two-pronged approach - a private model and a clinic model for supervision. Main urban centres could have a clinic with properly trained FLSPs to work on cases for clients and another model that allows FLSP's to work with private family law professionals. Supervision would be a part of each model.
- ❖ Supervision for the first year of practice, a form of articling in essence, given the absence of paralegal institutional experience, mentorship and practical exposure in the family law field.

Important considerations and questions:

- ❖ Who will provide the supervision in the short term until there are sufficient FLSPs to provide this supervision?
- ❖ How will the disparities pertaining to BIPOC FLSPs obtaining supervisions be managed?
- ❖ Will there be a cost to this supervision, or will this be a paid position for the FLSP candidate?
- ❖ Some experiential training should take place before the designation of FLSP is achieved.
- ❖ Should there be structured or defined processes in place to build relationships between FLSPs and lawyers to ensure success?
- ❖ Experiential training can be obtained from working with professionals other than lawyers, such as social workers, mediators, arbitrators and/or parenting coordinators. Or in a court

environment with duty counsel or court-connected mediators. FDRIO is willing and able to assist in developing a program to assist with this training.

- ❖ Has the Family Law community considered the expansion of FDR processes and professionals in relation to the upcoming changes in the Divorce Act?

8. Is a CPD requirement focused on family law appropriate for the FLSP?

Yes, a minimum of 10 hours of family specific CPD per year including not only family law but intimate partner violence (IPV), FDR and anti-racism. Additionally, FDRIO recommends that this approach be implemented for lawyers practicing in family law.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

Presuming the FLSP Licence is deemed to be viable, the ability for professionals other than paralegals to be licenced should be based on their training and their experience matching the requirements. Competencies are the most important factor, not that the candidate has a paralegal designation. As it has been detailed earlier, access to justice in family law is not just access to legal advice but all process and procedural activities surrounding it.

Consider the following professionals:

- ❖ A lawyer from another country that is not yet licenced here; or
- ❖ A law clerk who has been practising family law with a lawyer for 5 years; or
- ❖ A mediator or parenting coordinator who has been practising for 10 years.

These non-paralegals have the aptitude and many of the competencies to become FLSPs and with addressing the training gaps, would be in a similar or better position to support family law clients than a paralegal who has not been exposed to family law.

As an alternative to paralegals obtaining the necessary family training to become FLSP's, those with family training should have the ability to obtain the necessary legal training to become FLSPs. FDR professionals are currently part of this community and have relationships with family lawyers and other family law professionals as well as experience working with family law clients. This alternative will round out and expand the breadth of service providers available to the public and aid in gaining traction and comfort with this new licence.

The foundation is that a professional must write the LSO exam for paralegals and then go on to meet the 550 hours of family specific training and further exam to become a FLSP. Consider a comprehensive mediator who may have many competencies of the FLSP requirements but needs to add the legal training. Should a non-paralegal professional who will only practice in family law, have a different path to the LSO exam for paralegals without the full paralegal education program to begin the process of qualifying as a FLSP?

If other professionals are eligible it is important to structure the 550 hours of family specific training to include exemptions for training already received (whether through formal education or experiential training).

GENERAL

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

Some aspects that may make a FLSP appealing to self-represented or unrepresented parties are:

- ❖ If the cost is lower than that of a lawyer, or the client believes that the FLSP offers more value for the cost.
- ❖ As educational and training requirements are less than lawyers, there may be an opportunity to significantly increase the number of professionals that family clients have to choose from.
- ❖ Not working on retainer but allowing the client to be billed and track as work is being completed.
- ❖ Clients may perceive that it is easier to approach or work with FLSPs due to less of a power imbalance (from an educational perspective).
- ❖ Negative association and cultural deference to lawyers.
- ❖ Positive association with paralegals in providing effective support.
- ❖ Fear of lawyers due to negative outcomes; including child apprehension.
- ❖ Linguistic, cultural, and racial match.
- ❖ Increase accuracy around the comprehension of the narrative.
- ❖ Perception that paralegals may be more reflective of clients themselves and their needs.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

In our view, while it may be appealing to increase the number of family law service professionals it is also pertinent to acknowledge the changing landscape of family law in Ontario

If lawyers can better meet the needs of family law clients and narrow the gap of access to justice issues through the promotion, public education and provision of more accessible family law services, as has been developed through various programs and initiatives, then there may be cause to review the design of the FSLP Licence. At a minimum, a commitment to public education, ongoing service improvements and the building of trusted relationships between family law service providers is a must.

Current Initiatives and Programs

Since the Bonkalo report was commissioned, and even in the three years that have passed since approval was granted for the development of an FLSP licence, the landscape of family law and access to family law services in Ontario have changed significantly. Several members of the legal and family law services community heard and headed the call to action of the Bonkalo report to improve access to justice and have worked tirelessly to develop programs and initiatives that would provide greater access to persons with a family law matter. Some of these programs include:

- ❖ The Family Law Limited Scope Services Project
- ❖ The Advice and Settlement Counsel of Toronto
- ❖ JusticeNet
- ❖ C.A.R.E. Hub for Separating Families: Community, Assessment, Referrals and Education

These programs offer family law services ranging from summary legal advice and information, to document drafting, limited scope retainer services and full-retainer services on a reduced fee, block-fee or sliding scale model ranging from fees as low as \$150.00 per hour. Many of these programs offer free limited scope services.

Covid-19 and the Adoption of Technology, Online Dispute Resolution (ODR) and Virtual Meetings

Of course, the biggest change to family law and the provision of family law services occurred in the wake of COVID-19. The drafters of the Bonkalo report could not have accounted for a global pandemic that, would actually have a positive effect, dragging family law processes and support models out of the dark ages.

While many of us hope for a return to ‘normalcy’ of the pre-pandemic, there are certain things which we believe are here to stay – in particular, the use of technology to support family law processes and support models.

The shift because of COVID-19 to an increase in remote hearings, mediations and arbitrations means reduced costs for attendances and the ability to retain a lawyer or other service provider out of jurisdiction. Family law processes are now more efficient and affordable than ever.

There is no doubt that there continue to be access to justice issues, particularly where not every person with a family law matter has access to the technology available to permit them to meet with a lawyer or family services professional remotely. There is also no dispute that the limits on access to the courts, and public health measures also present a dilemma for our members and families who prefer or require in-person or alternate service models. However, the pandemic has forced us to re-examine and revise how the family law community provide services to our clients.

Through certificates, training, and resources, FDRIO continues to support members moving to provide online dispute resolution services; both for professionals who have been using technology and those new to this service option.

From FDRIO’s perspective, the demand for appropriate family dispute resolution services is now greater than ever. This demand involves family law clients who are more vulnerable than ever:

- ❖ Intimate partner violence (IPV) is a widespread public health problem, estimated to occur in 12% to 40% of adult romantic relationships in Canada and accounting for nearly one quarter of violent crimes reported to police.⁶
- ❖ Acknowledgement that Indigenous peoples’ elevated risk of IPV is largely due to effect of historical trauma from past and continuing colonization⁷
- ❖ Individuals seeking the support of a family law professional during and after the pandemic may be experiencing disparities and financial hardships.

12. Are any aspects of the proposed licensing framework unfeasible?

We believe that the proposal is feasible through the incorporation of expertise to address the current gaps and disparities so that all Ontarians can have access to FLSPs.

The following are areas that need to be further examined and developed to remove barriers:

- ❖ Reasonable costs of education, training, and supervision for FLSPs; and
- ❖ Concentration on family law as it pertains to Indigenous and Black Canadians who are currently not being served appropriately; and
- ❖ Access to services for northern, rural, or remote areas; and
- ❖ Access to infrastructure and technology; and
- ❖ BIPOC members reported on the impact of racism and discriminatory practices by lawyers. The difficulties in employment can also be indicative of issues that may arise with placements for BIPOC professionals to obtain a FLSP licence.⁸

⁶ (Canadian Center for Justice Statistics, 2011; Statistics Canada, 2006). Moser, A. E., Campbell, M. A., & Campus, S. J. (2012). *Validation and expansion of the Ontario Domestic Assault Risk Assessment (ODARA) instrument: An early warning system* (Doctoral dissertation, University of New Brunswick, Department of Psychology). “the threat and impact of male violence, or the racialized abuse experienced by African Canadian women, will require very particular rules or practices to move us toward equality” (Sheehy, E. A. (1999). *Legal responses to violence against women in Canada. Elizabeth Sheehy, “Legal Responses to Violence Against Women in Canada, 19, 62-73*

⁷ Brownridge, D.A., Taillieu, T., Afifi, T. *et al.* Child Maltreatment and Intimate Partner Violence Among Indigenous and Non-Indigenous Canadians. *J Fam Viol* **32**, 607–619 (2017). <https://doi.org/10.1007/s10896-016-9880-5>.

⁸ “The creation of nation states and the system of international law and state sovereignty were informed by historical and ongoing colonial structures” (Fobear, K. (2014). *Queer settlers: Questioning settler colonialism in LGBT asylum processes in Canada. Refuge: Canada's Journal on Refugees, 30(1), 47-56*). The other issues is that, “, blacks were far more likely to be unemployed (22 percent) compared to Indians (15 percent) and Chinese (10 percent), and 76 percent of Caribbean blacks and 81 and 82 percent of Indians and Chinese, respectively, were in full-time employment” (James 2007; James, Plaza, and Jansen 1999)” James, C. E. (2009). *African-Caribbean*

13. Is there additional information or are there other factors that should be considered?

There are shared concerns with anyone practicing in family law not limited to training, disparities, regulations, supervision, cost, public education and interest, and screening. In developing the FLSP licence, the Consultation Paper states that the FLWG has focused on three components: scope of permissible activities, competencies and education, training and assessment; and, that they were informed by three guiding principles: access to justice, public protection and viability.

We should follow these three guiding principles to gauge the viability of any access to justice solution; keeping public need and protection as both the starting and ending focal points:

1) Access to justice – address areas of unmet legal needs in family law and have an impact on the challenges of access to justice.

Access to justice is a societal responsibility as a whole - and so government (MAG), the courts and LSO should, in part, fund the community clinic/hub model. Clinic/hub - mediators, counsellors, lawyers, etc. all on-site - one fee for service, as well as other programs and initiatives to narrow the gap. We acknowledge that Indigenous and Black Canadians may speak to the need for services that are offsite and within their communities.

Access to justice must be addressed in a holistic manner. One proposal at a time can support change and make a difference however, we should continually look for new and innovative ways to address unmet legal needs, with full participation from the family law community and the public.

As a family law community, we must all ensure competence in the following areas to ensure access to justice:

- ❖ Be responsive to power imbalances resulting from systemic racism, and be clear on how our processes can be designed and delivered in ways that protect clients and their children from implicit bias, re-traumatizing experiences and racist outcomes; and
- ❖ Recognize and acknowledge cultural biases resulting from systemic racism; and
- ❖ Provide advocacy, support, and advice in the context of historical and systemic issues pertaining to BIPOC children and their voice; and
- ❖ Address the disparities for groups that are negatively over-represented in child welfare – with cultural leads located at the courthouse; and
- ❖ Ensure services, processes and professionals are not contributing to disparities; and
- ❖ Provide advice and support from a trauma-informed lens; and
- ❖ Provide advocacy, support and advice ensuring inclusion across race, culture, religion, age, gender identity, sexual orientation, background, ability, profession, and other diverse populations.

Canadians working" harder" to attain their immigrant dreams: Context, strategies, and consequences. *Wadabagei: A Journal of the Caribbean and its Diaspora*, 12(1), 92.

2) *Public protection – Activities that fall within the scope can be performed competently with appropriate education, training, licensing, and regulation*

In addition to a comprehensive program of ETS, licensing and regulation for FLSPs, public education is critical to the success of this proposal. The public must be educated in the differences between FLSPs and family law lawyers.

A collaborative approach to public education for all forms of family law support, including FDR, will help alleviate fear and confusion for the public. The family law community being truly collaborative and being seen by the public as collaborative and not in siloes will provide for advancements in family law.

To ensure the public is properly protected, there needs to be an ability to evaluate the success of any FLSP Licensing program and whether it meets the objectives of meaningful access to justice.

3) *Viability – the licence should form the basis of a viable practice that can attract a critical mass of candidates. Attainable training and client pool large enough to sustain a legal services practice.*

A clear and concise scope of practice that can be easily understood by the public will be the key to uptake. If it is too difficult to explain the nuances of ‘out of scope’ issues to a client, they will not use a FLSP and will be frustrated by the FLSP’s inability to support their needs.

The lawyer-paralegal relationship is integral to the success of this new licence and the viability to the public. There must be collaboration between FLSPs and lawyers to appropriately refer clients with ‘out of scope’ needs.

For lawyers working with a FLSP on the other side, the process must be based on civility and respect for the FLSP and the client’s choice to work with that FLSP.

The client must truly have the ability to choose between being represented or assisted by a FSLP or a lawyer to ensure access to affordable and competent legal services or equitably attained.

Conclusion

The inception of a new licence to support family law clients allows us the opportunity to address the many barriers in access to justice and consciously make the decision to not reinforce systemic issues.

FDRIO cautiously supports a FLSP licence that is clearly defined and inclusive with licencees that are appropriately prepared to manage the needs and complexities of our family law clients.

We recognize that while a great deal of work has been completed, there is still work to be done.

FDRIO is committed to continuing the discussion and support of the LSO as it moves forward in its path to implement a Family Law Service Provider licence and we welcome all opportunities to participate.

Appendix A: Family Dispute Resolution Institute of Ontario (FDRIO)

The Family Dispute Resolution Institute of Ontario (FDRIO) is a not for profit organization providing training, certifications, networking and advocacy for Ontario family mediators, family arbitrators, parenting coordinators, financial professionals, coaches, and others. We actively support those entering and working in the family dispute resolution profession while increasing public awareness about the many out-of-court choices they have.

FDRIO's diverse membership includes not just lawyers, but Certified Business Valuators, Divorce Coaches, Certified Divorce Financial Planners, Paralegals, Law Students, Social Workers, Mental Health professionals and others.

Our organization sets standards for training and internship for family mediators, family arbitrators and parenting coordinators, and stand out among other dispute resolution organizations, for example:

- ❖ Our Mediation members benefit from its approval by the Ontario Ministry of the Attorney General for court-connected family mediation; and
- ❖ Our Arbitration certification is Ontario's leading family arbitration designation; and,
- ❖ Our FDR professional Parenting Coordination members hold Canada's only professional accreditation for parenting coordinators.

We are comprised of a Board of Directors and Executive, several volunteer committees and volunteer-led sections, all of which meet regularly to do the work of FDRIO and to develop policies and initiatives and share fellowship – continuously leading and participating in the charge forward toward better, more affordable and equitable access to family law justice.

FDRIO's commitment to growing the FDR field, for the benefit of our membership and the public has led to our members' ability to offer high quality FDR services, and to offer some solutions to the challenges many face in accessing affordable family law assistance.

FDRIO is committed to and serves the public interest by providing information and education to the community and enhancing public awareness of the many FDR process options available as well as the differences among them. Our goal is to promote and normalize family dispute resolution processes, so that they become the standard for appropriate cases, with litigation being reserved for those cases requiring judicial intervention and oversight.

In endeavoring to meet the public's need for affordable, efficient, and equitable access to justice, we advocate strongly for the interests of our members, and for all FDR processes, whenever possible.

It is fair to say that FDRIO welcomed the review led by Justice Bonkalo in 2016, supported the overall goals of that review and participated through a written response, much as we are doing with the LSO proposal for the FLSP licence.

Appendix B: FDRIO’s Approach to the Response

FDRIO’s Advocacy and Law Reform committee was tasked with gathering participants from our wide-ranging professional members to provide a thoughtful response to the LSO consultation paper on the Family Legal Services Provider Licence. In addition to FDRIO members, we invited the Ontario Paralegal Association to join our committee as a valued partner.

We have an active committee who meet regularly to discuss the paper and the many nuances in it. Our committee was comprised of professionals experienced in the areas of law, mediation, arbitration, parenting coordination, divorce financials, coaching, mental health, and social services and even their own personal family litigation. Our response is based on our collective experience.

Our committee raised questions, had healthy debate, considered options, and ultimately found common ground in many areas of our response. Areas where there is not unanimous, or majority agreement have been identified in our document as we feel there is value in highlighting these concerns and ideas.

In addition to committee meetings, we requested member feedback through our newsletter and emails, looked for guidance from other FDRIO committees and sections and did outreach to industry partners such as the Family Law Association of Ontario, the Federation of Ontario Law Associations and the Ontario Bar Association and invited the LSO to present to the committee.

Committee Chair, Julie Gill, would like to acknowledge the following FDRIO Members for their contribution to the committee and to this response:

Gene C. Colman	Hilary Linton
Tom Dart	Sonia Mills
Omar Ha-Redye	Allan Pootoolal
Matilda Kissi	Oasima Shah

We would also like to acknowledge the following Ontario Paralegal Association professionals for their contribution to the committee and to this response:

George Brown	Donna Mackay
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Appendix C: FLSPs and Child Protection

The most significant omission, in our view, is the Child Protection area of family law.

In the presentation that our committee enjoyed from LSO representatives, we were told that the LSO proposal embodied three basic principles: **Access to Justice, Public Protection, and Viability**. The issue of expanding representation opportunities for those caught within the child protection system raises all three of these principles.

It is well known that there are many parents who do not qualify for Legal Aid, but they cannot afford the services of a child protection lawyer. They struggle within the system. They struggle in their dealings with child protection workers. They struggle to understand the court system. They struggle to put together coherent court materials. They are totally stressed out with nowhere to turn. They frequently don't really get their day in court since the CAS just brings a Summary Judgment motion and they have no idea how to effectively defend themselves.

Child Protection law is one of the most important areas of law. An effective advocate must have a thorough understanding of the statute, the *Family Law Rules*, and the dynamic of the entire system including the court, the CAS, and other professionals who are involved. There is a dearth of well qualified lawyers in the province who practice in this area. The public currently is not being adequately served.

The LSO Proposal paper outlines the competencies at Appendix C that goes on for 11- and one-half pages. Our Committee Member, Hilary Linton, has provided an outline for a course of studies that is equally or more intensive. Will the FLSP aspirant have to go to school for three years? We hope not.

So how then do we ensure Access to Justice, Public Protection, and Viability while at the same time bring child protection practice into the permitted scope? Although not unanimous, members of the committee maintain that child protection should not be left out. But there must be extra ETS for those who wish to practice in this area.

Lawyers who wish to practice child protection law have had two intensive courses available to them in the past. These courses are for two or three days. ***Any FLSP who wishes to practice in this area should be required to attend such courses.*** The FLSP should also be ***closely mentored and supervised*** by a lawyer who is experienced in this field. If the LSO expands the role of FLSPs into Child Protection, there is a believe that it will:

1. Improve access to justice.
2. Enable the protection of the public by having dedicated and educated individuals (hopefully some will be from minority communities who do not have a good supply of moderately priced lawyers) who will have extra ETS and therefore be able to make a real difference in the child protection sphere; and,
3. Be viable for the FLSP since the extra ETS will pay off economically given the huge demand for affordable services in this area.

Appendix D: FLSPs and Legal Advice in FDR

Unless they have legal counsel present, our clients are not permitted by our Standards of Practice to finalize binding agreements in our processes. This presents a practical challenge for clients who come to mediation seeking a binding settlement and serves to limit the effectiveness of our services.

	Incoming Legal Advice/Support	Outgoing Legal Advice/Support for Self-represented or Unrepresented	ILA for Self-Represented or Unrepresented
Court connected mediation	FLSP supported preferred over un/self-represented	FLSP supported preferred over un/self-represented	If FLSP cannot provide ILA on consent orders, unlikely to refer to an FLSP
Private mediation – Comprehensive mediation (including financials)	If clients retain FLSP before or during mediation, little change to the process	Mediator could refer if issues mediated are within scope (requires appropriate training for mediators on scope of FLSP). If there is an out of scope issue, mediator would refer to lawyer	If FLSP cannot provide ILA on mediated agreements/MoU's unlikely to refer to an FLSP
Parenting mediation	If clients retain FLSP before or during mediation, support is welcome, specifically within scope financial matters (child support and section 7)	Mediator could refer to FLSP if issues mediated are within scope (requires appropriate training for mediators on scope of FLSP). If there is an out of scope issue, mediator would refer to lawyer	If only parenting mediation, likely to refer to an FLSP
Arbitration	Can a FLSP provide advice through the PC hearing?	Depending on the other answers, PCs may or may not be able to refer	Can a FLSP provide ILA for the arbitration agreement?
Parenting Coordination	Can a FLSP provide advice through the PC process?	Can a FLSP represent a client if it moves back into court? Depending on the other answers, PCs may or may not be able to refer	Can a FLSP provide ILA required for intake?
Financial support - CDFA, CDFS.	If clients retain FLSP before or during, little change to the process	Financial professional could refer to FLSP if issues are within scope (requires appropriate training for financial professionals on scope of FLSP). If there is an out of scope issue, would refer to lawyer	

Appendix E: FLSPs and Arbitration

Arbitrators need help in the following areas:

- a) Someone must provide ILA for the arbitration agreement (for a first-time arbitration, not a secondary arbitration)
- b) In providing proper ILA (or determining whether arbitration is a suitable process), the service provider:
 - a. Needs to understand all the aspects of the arbitration process – its advantages and disadvantages over the court process; and
 - b. Must therefore have a good understanding of the court process as well; and
 - c. Needs to be able to preliminarily assess the client as a candidate for arbitration – many things to consider there, some of which are:
 - i. Ensure that the client understands the legal and factual issues which need to be addressed – how sophisticated is the client?
 - ii. Help the client understand that screening is always a necessity and then to help them understand the different and best approaches to screening.
 - iii. To understand that if either party is likely not going to cooperate with the process then it is probably not a good process for the client.
 - iv. Explain the different appeal routes.
 - v. Explain the different rules around evidence and process from the court process.
- c) If the client intends to self-represent at the arbitration hearing, then the service provider will need to have a good understanding of the law, advocacy and be able to assist the client with the process – coaching, find resources such as research facilities, understanding of The Family Law Rules as they are often incorporated into an arbitration. Explain the role of the arbitrator to the client – same as the role of a judge when the client is self-represented.

In other words, the FLSP should only give advice to and perhaps represent clients where the legal or factual issues involved are simple and within the scope of the FLSP mandate. In those cases, it would also be helpful to have a FLSP represent the client at the hearing. We suggest that this would be only in relation to financial issues where the amounts involved are similar to the Small Claims Court limits.

If parenting issues are involved, then a properly qualified PC should be retained.

Appendix F: Proposed Additional Training for FLSPs

1) Parenting Coordination

Of the (current) 30 hours for Parenting Orders and Decision making, a half day should be allocated to parenting coordination; of the 7 hours for FDR, 1 hour should be allocated to parenting coordination and should include:

An overview of the PC process	Screening in the PC context
Roles and functions of PC	When not appropriate
Objectives of the process	Informed consent
Historical context	Secondary arbitration process
Practice/legislation	Case law
Qualifications	Language or Orders and Minutes
Variations in practice	Jurisdiction and challenges
Dual role (education, coaching and arbitration)	Forms of arbitration
Open versus closed	Termination
Appropriate cases	Voice of the child in the PC process

2) Ethics and Professional Responsibility

We note that only one line item in the proposed competencies addresses “diversity”. Although there is a separate section entitled Indigenous Issues in Family Law, we feel that the unique impacts of colonization and systemic racism on Black clients and clients of colour should be included in the FLSP curriculum. We recommend that at a minimum, the following additional topics be mandatory for FLSPs:

- ❖ History pertaining to BIPOC peoples in Canada
- ❖ Current disparities for Black Canadians and anti-Black racism
- ❖ Impacts of colonization on BIPOC families and children in the family justice system
- ❖ Cultural differences and systemic racism, and how they impact the perceptions, judgments, and actions of professionals in the family justice system.

We also note that there is no mandated training in what we call Family Relations. We feel that such training should be incorporated into the modules for FLSPS in such a way to cover the following topics: (please visit the [FDRIO website for the Checklist](#) for this required course for FDR Professionals:

- ❖ Family dynamics
- ❖ Family systems theory
- ❖ Attachment theory and co-dependence
- ❖ Parenting approaches – cultural, sexuality, gender, and faith-based diversity
- ❖ Family hierarchies/patriarchies/decision-making norms
- ❖ Child development
- ❖ Mental health
- ❖ The complex/high conflict separation

3) Victims of Abuse and Intimate Partner Violence

Mediation, arbitration, and parenting coordination can be safe and empowering processes for survivors of IPV if they are conducted in accordance with the best practices in screening for power imbalances and IPV. FDR professionals take extensive training in this field to become certified by FDRIO, and the principle of “Do No Harm” is in our Standards of Practice.

We believe that IPV survivors using appropriate FDR processes will benefit from legal support provided by a FLPS if that professional has appropriate training. We feel that the current required training is insufficient to meet our aspirations of the quality of legal support our clients experiencing IPV would need.

We believe that the following subject areas should be included in the mandatory training for FLSPs: (please visit the [FDRIO website for the required contents](#) of the 21 hours of training for FDR professionals)

❖ *An introduction to family violence:*

- Examples of various forms of abuse
 - Intimate partner violence
 - Child abuse
 - Elder abuse
 - Multi-party family abuse
- Differentiating between different forms of abuse:
 - Physical
 - Psychological / emotional
 - Sexual
 - Financial
 - Isolation

- Understand exacerbating factors:
 - Reproductive abuse
 - Cyber abuse
 - COVID-19 quarantine measures and the impact on FV
- Impact of intersections of IPV with racism, gender discrimination, immigration status, poverty, and other vulnerabilities.
- Research on typologies: research on ‘types’ of violence within intimate partner relationships is evolving. FLSPs should receive training on this subject from someone with current knowledge of this research. This is critical to enabling legal advisors to support their clients seeking FDR processes. Which clients are likely to benefit from FDR and which are likely to be harmed or re-traumatized by it? How can an FDR process be structured to meet the needs of an FPV survivor based on the form of violence they experienced?
- Understanding power imbalances in the context of IPV
- The Domestic Violence Death Review Committee Reports
 - “Predict & prevent”: understand risk factors of homicide/suicide

❖ **Relevant law - scope and limits:**

- New definition of family violence in new *Divorce Act*
- Ss.16(3) & (4) *Divorce Act*
- Best Interests test
- Restraining orders
- -- S.35 CLRA
- -- S.46 FLA
- Peace bonds – esp. where no cohabitation has occurred (think university students)
- Bail variations
- No contact order terms: when they permit FDR and when they do not.

❖ **Identifying and managing family violence:**

- Introduction to screening – it is ongoing
- Screening techniques
- Use of screening tools
- Documenting results of screening
- Power balance analysis
- Balancing power
- Safety planning
- Make appropriate referrals

❖ **Systemic Racism, Culture and IPV:**

- Human issues dealt with in various cultural contexts
- Cultural contexts, stereotypes, and systemic bias should be considered as part of proper power imbalance analysis.
- Acknowledging differing and evolving / fluid cultural norms as the context in which each family's power dynamics and experiences of abuse take place.

❖ ***Trauma-informed practice:***

- Understanding the traumatized client
- Interviewing traumatized clients (trauma-informed interviewing)
- Understanding the impact of clients' trauma on the children
- Understanding and identifying if children are traumatized
- Understanding inter-generational trauma
- Explaining trauma in oral/written advocacy
- Proving trauma (evidence)
- Understanding trauma-informed ADR processes

4) Family Dispute Resolution

For FLSPs to provide the most competent support to their clients, they will need to understand the nuanced and sophisticated elements of FDR.

We recommend that the title of the training be “Family Dispute Resolution” rather than “Alternative Dispute Resolution” to emphasize the important ways in which family dispute resolution is fundamentally different from ADR.

We recommend that the following topics be added to the mandatory FDR training for FLSPs:

- ❖ Conflict analysis
- ❖ Negotiation theory, strategies, and tactics
- ❖ Tools to analyze negotiation power
- ❖ Cultural awareness and bias in dispute resolution processes, including biases of FDR professionals. Awareness of impact of a western, white lens on FDR
- ❖ Impact of systemic racism on a client's behaviours, emotions, negotiation approaches and experience in FDR and considerations for process choice and design
- ❖ Full range of dispute resolution process options for clients, and analysis of differences among them
- ❖ Importance of screening for power imbalances including IPV before a process choice is made
- ❖ Understanding the impacts of each process choice on client self-determination
- ❖ Research on settlement rates, client satisfaction, compliance with outcomes and escalation of IPV in various FDR processes
- ❖ Exploration of the benefits of the court system (it is free; it is transparent and publicly accountable; judges make immediately enforceable orders; court resources such as family court support workers, police officers, OCL support, IRCs, free mediation and more) so that FLSPs can assist clients in determining whether FDR is the best option for them.

- ❖ The Arbitration Act and Regulation 134/07 setting out requirements for enforceable Family Arbitration Awards
- ❖ Screening requirements and best practices in each FDR process
- ❖ Standard terms of FDR process agreements
- ❖ Best practices and options for incorporating FDR clauses into Consents and Agreements
- ❖ Arbitration Process Requirements and Options
- ❖ Difference between Open and Closed mediation and Parenting Coordination; and different meanings of those terms in private and court-connected contexts
- ❖ Court-connected information and mediation services

5) Delivery of Education

- ❖ Make Des Ellis's *Managing Domestic Violence: A Practical Handbook for Family Lawyers* required reading
- ❖ Make the Domestic Violence Death Review Committee annual report ongoing required reading.
- ❖ Increase Family violence training to a minimum of 35 hours.
 - 10 hours of substantive law
 - 21 hours of screening and trauma-informed practice training
 - 4 hours to be split between other modules
 - Embed FV training in every module – it should be woven into the curriculum at all stages, in addition to being its own distinct, segregated topic.
 - It should be included in a variety of fact patterns throughout the course.
 - Reflective, reflexive
- ❖ Addition of 8-10 hours for decolonialization, anti-racism and cultural competency.

#312

Please enter your first and last name	Alexandra Suriani
Email Address	asuriani@ofifc.org
Please make a selection below	Representing Organization
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Ontario Federation of Indigenous Friendship Centres
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Organization
Upload a File	37. Ontario Federation of Indigenous Friendship Centres.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

**Ontario Federation of Indigenous Friendship Centres
OFIFC's Feedback**

Law Society of Ontario's Family Legal Services Provider Licence Consultation

Purpose:

The Ontario Federation of Indigenous Friendship Centres (OFIFC) is sharing feedback on the Law Society of Ontario's (LSO) proposed model for a licensing framework for a Family Legal Services Provider (FLSP) position.

About the Ontario Federation of Indigenous Friendship Centres:

The OFIFC is one of the largest provincial Indigenous organisations in Ontario representing the collective interests of 29-member Friendship Centres. Friendship Centres provide wholistic, culture-based programs and services to Indigenous people in cities and towns across the province. In Ontario, more than 85 per cent of Indigenous people live in urban communities.¹ Friendship Centres receive their mandate from their communities, and they are inclusive of all Indigenous people – First Nation, Status/Non-Status, Métis, Inuit, and those who self-identify as Indigenous. Friendship Centres play an integral role in building vibrant and diverse communities through providing programs and initiatives that span health and mental health, housing, education, family support, healing and wellness, justice, ending violence and more.

Provincial Landscape:

In Ontario, Indigenous people account for 2.8% of the population,² yet Legal Aid Ontario (LAO) reports that Indigenous people are over-represented in the justice sector—making up 7.8 percent of domestic and family law clients and 15.4 percent of *Child, Youth and Family Services Act* clients.³ Indigenous people's representation in family law and child protection court proceedings is much higher than legal aid client statistics, as there are many self-represented Indigenous people who do not meet the financial eligibility requirements for legal aid. To qualify for legal aid funding, a family of four must earn a combined income of less than \$45,440.⁴ The income eligibility threshold renders many families ineligible for legal aid, but also unable to afford legal representation, making family court proceedings exceedingly difficult to navigate.

¹ Statistics Canada, *Census 2016 Results, Data Table: Aboriginal Identity (9), Dwelling Condition (4), Registered or Treaty Indian Status (3), Residence by Aboriginal Geography (10), Age (12) and Sex (3) for the Population in Private Households* (Catalogue number 98-400-X2016164).

² Statistics Canada. 2018. *Ontario. Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. (Released July 2018). Retrieved from: <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm>

³ Legal Aid Ontario: Race-based data for legal aid certificates 2019-20. Published July 10, 2020. Retrieved from: <https://www.legalaid.on.ca/news/legal-aid-ontario-race-based-data-for-legal-aid-certificates-2019-20/>

⁴ Legal Aid Ontario. "Will Legal Aid pay for my lawyer?" Retrieved from: <https://www.legalaid.on.ca/will-legal-aid-pay-for-my-lawyer/>



The OFIFC's Indigenous Family Courtwork Program and Combined Courtwork Program operates out of 15 Friendship Centres across the province with 19 FTEs supporting the delivery of the program (see Appendix I). The Indigenous Family Courtwork program assists people who are involved in disputes either with their intimate partner or in child welfare cases. Combined Courtworkers support both family related matters as well as adults and youth charged with a criminal matter. In 2019-20, Indigenous Courtworkers supported 381 adults and youth in family court related proceedings.

LSO's Proposed Family Legal Services Provider Licence:

The FLSP licence model was developed in response to Justice Annemarie E. Bonkalo Family Legal Services Review Report (the "Bonkalo Report") that was released in 2016. The Bonkalo Report found that 57% of Ontarians did not have legal representation in family court in 2016 and subsequently did not fare as well as those represented by counsel.⁵ Additionally, the findings elucidated that the overburdened court system is further negatively impacted by the high volume of self-represented litigants.⁶ The Bonkalo Report outlined various recommendations, including a directive to review the scope and practice of paralegals who support family law proceedings. As it stands, Paralegals are not permitted to appear or provide legal services in family law cases.⁷ As the Bonkalo Report identified, there are acute unmet legal needs in family law court proceedings and the intention of the proposed FLSP licence is to increase access to justice.

The LSO developed a Family Law Working Group (FLWG) to examine and propose a framework for the FLSP licence model. The FLWG has provided a framework which outlines the scope of permissible activities; competencies; and, education and training required for this role.⁸ The scope of permissible activities include:

- Legal advice
- Drafting legal documents
- Representation in court of before an adjudicative body
- Negotiating legal interests of rights

The FLSP will be authorised to offer the above services in the following general areas of family law, with exclusions and limitations to be specified in the applicable by-law:

- Divorces
- Parenting orders and decision-making (custody and access)
- Child and spousal support

⁵ Justice Annemarie E. Bonkalo, "Family Legal Services Review. Report Submitted to Attorney General Yasir Naqvi and Treasurer Paul Schabas" (December 31, 2016). Retrieved from: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/ [Bonkalo Report].

⁶ Ibid.

⁷ Law Society of Ontario. Paralegal Licensing Process. Retrieved from: <https://lso.ca/becoming-licensed/paralegal-licensing-process>

⁸ Law Society of Ontario. Family Legal Service Provider Licence Consultation Paper. Page 7-9.

- Contempt/enforcement of orders
- Separation agreements, paternity agreements, and family arbitration agreements provided that the client agrees to obtain independent legal advice from a lawyer
- Change of name applications
- Division of property

Out of scope activities include:

- Matters involving income determination
- Third-party experts or valuers
- Relocation/mobility
- Cohabitation agreements and marriage contracts
- Regarding property, the FLSP may not act where there is more than one home, or where there are equitable or trust claims, or claims for unequal division of property

More generally, the FLSP will not, at any time, be allowed to act in the following circumstances:

- Where the client is under the age of 18 or is mentally incapable
- Child protection matters
- Adoptions
- Declarations of parentage
- Appeals or motions for leave to appeal
- Matters involving reproductive/fertility law issues
- Matters overlapping with an area that is out of scope for the FLSP licence
- Matters overlapping with an area that is out of scope for paralegals generally under the current By-Law 4
- Where legal issues or assets are outside of Ontario⁹

The FLSP competencies will build upon existing competencies required to become a paralegal¹⁰ with a specific emphasis on the specific skills required to provide family legal services. The training for the program has been informed by the LSO's paralegal education framework and an environmental scan of family law education programs. Additionally, the components of the licensure include prerequisite experience/and or field placement; licensing examination; mandatory professional liability insurance; and, continuing competence.¹¹

Analysis:

The OFIFC agrees that the FLSP licence model will support increased access to justice in family law court proceedings, through providing more affordable options for legal

⁹ Ibid. Page 7-8.

¹⁰ Law Society of Ontario, "Paralegal Licensing Process," online: <https://lso.ca/becoming-licensed/paralegal-licensing-process>

¹¹ Law Society of Ontario. Family Legal Service Provider Licence Consultation Paper. Page 9.

supports/advice. The OFIFC advocates for FLSPs to build collaborative working relationships, including developing protocol agreements, with Friendship Centre who deliver Indigenous Courtwork Programs. It is critical that Indigenous adults and families accessing the services offered through FLSPs can additionally access culture-based supports offered through the Indigenous Courtworker Program as well as the wholistic, culture-based programs offered through the Friendship Centre.

Currently, Family and Combined Indigenous Courtworkers provide essential services to Indigenous families in a similar capacity to the proposed permissible activities for the FLSP licence model. Indigenous Family and Combined Courtworkers support self-identified Indigenous people involved with the justice system understand their rights, options and responsibilities when appearing before the courts, including dealing with child welfare and family law matters. Indigenous Courtworkers are advocates, supporting direct-service users¹² with Legal Aid Ontario applications; developing an action plan and, assisting with filing out paperwork (i.e. family law forms, applications, making and/changing a motion, etc.). Additionally, Indigenous Courtworkers may be asked by direct-service users to support with child welfare matters and advocate for family reunification processes. Indigenous Courtworkers provide relevant referrals to culture-based programs offered through the Friendship Centre programs with a mandate to address traditional parenting, child development, screening and assessments for FASD and other disorders, conflict resolution and sound decision making. The Friendship Centres wholistic model of care grounds an individual and family's connection to culture and community, which is imperative to reducing ongoing engagement with the justice system.

It is critical that the education for the FLSP licence model teaches about the important role of Indigenous Courtworkers in advocating for Indigenous children and families. Indigenous Courtworkers will be grateful for additional legal supports available in family law court proceedings, however Indigenous cultural competency training for FLSPs will be necessary to support a collaborative working relationship. Moreover, as Indigenous people are disproportionately represented in family and child welfare court proceedings, it is critical that FLSPs understand Indigenous people's unique relationship with the colonial justice system and ongoing experiences of discrimination and violence. *Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls* (MMIWG) documents the linkages between colonialism, systemic violence, and the lack of institutional will for change that continues to marginalise Indigenous women, girls and 2SLGBTQQIA people in Canada.¹³ The Final Report examines the clear links between all forms of violence and the intersecting issues of homelessness, child welfare involvement, high rates of incarceration, human

¹² Individuals who have completed an intake for the program.

¹³ National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). 'Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls: Volume 1a.' Canada. 103.

trafficking and chronic and sustained underfunding for program and services for Indigenous people.¹⁴ The Final Report elucidates that all Canadians have a responsibility to learn about the true history of Canada to understand how intersecting institutions perpetuate normalised violence against Indigenous people, particularly Indigenous women.¹⁵ It is of the utmost importance that FLSPs have a foundational knowledge about Canada's colonial history and its ongoing impacts to be able to appropriately support Indigenous individuals and families navigate family court proceedings.

The OFIFC advocates for Indigenous cultural competency training that is designed and delivered by Indigenous communities and organisations to be a key component of the FLSP training. The OFIFC approaches Indigenous cultural competency training in a phased approach, recognising that this process is a continuum of learning. A phased approach allows for participants to begin with examining colonial policies and legislation that have impacted Indigenous communities, and then continue to develop an understanding of more recent events that may address or fail to address historic trauma within Indigenous communities. The OFIFC understands cultural competency as an ongoing learning process, which requires continual self-learning, reflection and engagement with Indigenous communities. Therefore, the OFIFC advocates for ongoing Indigenous cultural competency to be a part of the continuing competence that paralegals are required to complete annually. The OFIFC trains cycles of Indigenous cultural competency that build upon each other and could be utilised as a component of the 12 hours for continuing professional development.¹⁶ It is critical that FLSPs have a foundational knowledge about the Indigenous communities they are supporting, including cultural competency regarding traditional parenting practices, the role of children in Indigenous communities, and the importance of ceremonies in Indigenous children's lives.

Conclusion and Summary of Recommendations:

The OFIFC acknowledges that the FLSP licence framework will increase access to justice for individuals and families engaged in family court proceedings through providing more affordable options for legal services. Due to the disproportionate representation of Indigenous families engaged in family court proceedings, the OFIFC offers the following recommendations to ensure that the FLSP licence adequately meets the needs of urban Indigenous communities in Ontario:

1. The training for the FLSP licence must include information about the role and capacity of Indigenous Courtworkers in advocating for Indigenous children and

¹⁴ Ibid. Page 53.

¹⁵ Ibid. Page 593.

¹⁶ OFIFC's Indigenous Cultural Competency Training (ICCT), online: <https://ofifc.org/training-learning/indigenous-cultural-competency-training-icct/>

families to foster a collaborative working relationship. Additionally, FLSPs must be cognisant of the culture-based programs and services offered through Ontario's Friendship Centres to provide relevant referrals.

2. A key component of the FLSP training must be Indigenous cultural competency that is designed and delivered by Indigenous communities and organisations. It is vital that FLSPs receive ongoing Indigenous cultural competency cycles, which require continual self-learning, reflection and engagement with Indigenous communities.
 - a. A specific Indigenous cultural competency cycle that examines the traditional parenting practices, the importance of children and ceremony in Indigenous communities should be a component of the FLSP training.
 - b. The OFIFC advocates for Indigenous cultural competency training to be an ongoing component of the continuing competence that paralegals are required to complete to maintain their licence.

Appendix: List of Indigenous Family and Combined Courtwork Programs

FRIENDSHIP CENTRE	PROGRAM
Brantford Regional Indigenous Support Centre (BRISC)	Combined
Hamilton Regional Indian Centre	Combined
Indian Friendship Centre (Sault Ste. Marie)	Combined
Ininew Friendship Centre (Cochrane)	Combined
N'Amerind Friendship Centre (London)	Family & Combined
Ne-Chee Friendship Centre (Kenora)	Family
N'Swakamok Native Friendship Centre (Sudbury, Wikwemikong, Whitefish)	Family & Combined
Nishnawbe-Gamik Friendship Centre (Sioux Lookout)	Combined
North Bay Indigenous Friendship Centre	Family
Parry Sound Friendship Centre	Combined
Red Lake Indian Friendship Centre	Combined
Thunder Bay Indigenous Friendship Centre	Family & Combined
Timmins Native Friendship Centre	Combined
United Native Friendship Centre (Fort Frances)	Combined
Barrie Native Friendship Centre	Combined
TOTAL	19 FTE

#310

Please enter your first and last name	Aminah Soobratty
Email Address	aminah.soobratty@ontario.ca
Please make a selection below	Asst. to Justice Benotto
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Court of Appeal for Ontario
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Osgoode Hall
Upload a File	Annette Diamond Family Legal Services Provider.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	



COURT OF APPEAL FOR
ONTARIO COUR
D'APPEL DE L'ONTARIO

December 3, 2020

Ms. Annette Diamond
Senior Counsel
Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Diamond,

I write to you with the full support of the Chief Justice of Ontario, Chief Justice Strathy.

This letter is a response to the Law Society's call for comment on the Family Legal Services Provider Licence Consultation Paper, dated June 2020, authored by the Family Law Working Group of the Law Society of Ontario.

I have reviewed in detail the Consultation Paper as well as the detailed responses provided by Chief Justice Morawetz of the Superior Court of Justice and Chief Justice Maisonneuve of the Ontario Court of Justice.

The Chief Justice and I strongly agree with the thoughtful responses provided by these two courts, with their reservations about the current proposal and also with their suggestions about the more limited appropriate role and scope for paralegals in family law.

We also strongly support those courts' reasonable request for an incremental approach to introducing paralegals into this area of practice given the experimental nature of the exercise and the importance of the rights at stake.

I would be happy to discuss this further.

Yours sincerely,

A handwritten signature in blue ink that reads "M. L. Benotto".

Justice Benotto
Chair, Family Rules Committee

#313

Please enter your first and last name	Jefferey Schiffer
Email Address	jschiffer@nativechild.org
Please make a selection below	Representing Organization
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Native Child and Family Services of Toronto
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Organization
Upload a File	Native Child and Family Services of Toronto.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

From: Jeffrey Schiffer <jschiffer@nativechild.org>

Sent: December 10, 2020 3:57 PM

To: Subject: RE: Law Society of Ontario - Proposed Family Legal Services Provider Licence

CAUTION: This email originated from outside the LSO. Exercise caution before clicking links, opening attachments, or responding.

Good Afternoon Cara-Marie

While the proposal for FLSP licensing specifically excludes service in child protection and adoption matters,
Native Child and Family Services of Toronto (NCFST) supports measures that would enhance our community members' access to supports within the justice system.

NCFST would expect to see robust measures in place to ensure educated, qualified, ethical and accountable service.

In particular, if licensees are to provide services to the Indigenous community, there must be a dedicated education program to ensure cultural competency, in keeping with the Truth and Reconciliation Commission's Calls To Action # 25-42, 50-52, and 57.

Thanks,
Jeffrey

Dr. Jeffrey Schiffer
Executive Director
Native Child and Family Services of Toronto
30 College Street, Toronto ON M5G 1K2
Phone: (416) 969-8510

#207

Please enter your first and last name	patti cross
Email Address	Patti.Cross@ontario.ca
Please make a selection below	I am a lawyer
Are you a self-represented litigant?	No
Are you representing an organization or association through your participation?	Yes
If you indicated 'Yes', please tell us which organization or association you are representing:	Ontario Court of Justice
What is the location of your workplace? If submitting on your own behalf, where do you reside?	Toronto (GTA)
Upload a File	CJ ltr to LSO re paralegals - family law - November 17 2020.pdf
Scope	
Competence	
Training Program	
Other Components of Licensure	
General	

THE HONOURABLE LISE MAISONNEUVE
CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

1 QUEEN STREET EAST
SUITE 2300, BOX 91
TORONTO, ONTARIO M5C 2W5



L'HONORABLE LISE MAISONNEUVE
JUGE EN CHEF
COUR DE JUSTICE DE L'ONTARIO

1, RUE QUEEN EST
BUREAU 2300, CASE 91
TORONTO (ONTARIO) M5C 2W5

TELEPHONE/TÉLÉPHONE (416) 327-0612
FAX/TÉLÉCOPIEUR (416) 326-4787

November 17, 2020

Ms. Annette Diamond, Senior Counsel
Family Legal Services Provider Consultation
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

Dear Law Society of Ontario's Access to Justice Committee,

Please find attached the Ontario Court of Justice's submission regarding the proposed Family Law Service Provider (FLSP) license.

The Ontario Court of Justice continues to maintain the same position that we expressed in our letters and submissions on April 11, 2017 and May 26, 2017. We do believe that competent, properly trained and educated paralegals could assist with document preparation and document disclosure under the supervision of a lawyer. They could also assist litigants by preparing a court plan for short-focused hearings with the assistance of duty counsel for a judge's review. However, paralegals should not provide legal representation or advice to family law litigants.

You will find within this submission a further explanation of our position. Thank you for the opportunity to again voice our opinion on the FLSP license.

Yours truly,

A handwritten signature in blue ink that reads "Lise Maisonneuve".

LISE MAISONNEUVE
Chief Justice / Juge en chef
Ontario Court of Justice / Cour de justice de l'Ontario

Encl.

Family Legal Services Provider Licenses – Law Society of Ontario Call for Comments

Questions:

Scope

1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?

The Ontario Court of Justice does not support the proposed scope of permissible activities. We do not agree that the proposed scope of permissible activities will support increased access to affordable, competent family law legal services.

The reasons for our position are varied. There is an absence of data in the proposal to support the Family Law Working Group's (FLWG) proposition. Our position is that concrete data, a principled analysis and evidence must support the proposed scope of permissible activities, prior to the final development of a proposal.

Principled Analysis and Evidence:

In order to determine a scope of permissible activities to increase access to affordable and competent family law services, decisions regarding what is within the scope of a paralegal's work must be grounded in principled analysis. Regrettably, the Report does not present any evidence that paralegals will achieve the objective of filling a gap in access to justice and/or demand.

It is difficult to ascertain the criteria that the FLWG is applying to determine the scope of the paralegal license proposal. It is important to start with first principles. The FLWG should define the factors and considerations it is applying in deciding what is within and what is without the scope of a competent paralegal.

It is important that the scope of permissible activities be grounded in evidence in addition to analysis. The FLWG admits in the Report that "there is no relevant data to support a comparison between what paralegals would charge for family law services and the amount lawyers currently charge". The assertion in the FLSP consultation document that licensing paralegals will lower the cost of legal services is solely based on "a preliminary environmental scan of paralegal billing practices", which is not a substitute for hard data and verifiable evidence. Prior to expanding the scope of practice for paralegals, the FLWG needs to provide this evidence and data.

Impact on individuals relying on paralegals:

Family law is complex and a highly challenging area of law. As the Honourable Peter Cory has expressed in his *A Framework on Regulating Paralegals in Ontario*¹, important rights are at stake. Inadequate advice and representation can have deleterious effects both for the litigants and for their families.

¹ The Honourable Peter Cory, *A Framework on Regulating Paralegals in Ontario*, Ministry of the Attorney General, 2000

If the paralegals do not develop competencies and are not properly educated and monitored, they may create significant difficulties for clients. The model of service must be carefully considered.

One of the most contentious recommendations would see the Law Society of Ontario allowing paralegals to provide services for cases involving custody of and access to children. This underlying premise assumes that most family law matters where children are involved are not complex. Based on our judiciary's experience, this is fallacious.

Licensing paralegals to act on complex family matters may disproportionately affect disadvantaged women and children. Research should be obtained to determine whether disadvantaged women and children will be the beneficiaries of the FLWG's proposal. It is further important to ascertain whether the introduction of paralegals will create a three-tiered legal system: those who can retain a private lawyer, those who can rely on legal aid and those who will rely on paralegals.

The Ontario Court of Justice's position remains the same as in 2017. At that time, the Court took the following position:

[T]here are many individuals who need the court's assistance. As judges, the overwhelming percentage of *Family Law Act* and *Children's Law Reform Act* cases that are before us involve high conflict families, families experiencing domestic violence, vulnerable families with complex problems, parents and/or children with mental health issues, families with immigration issues, children with special needs, and families with housing issues. A number of these cases also involve substitute decision making under the *Health Care Consent Act* and secure treatment programs under the *Child and Family Services Act*. The vast majority of the cases at the Ontario Court of Justice involve low income families and families with literacy problems. These lists are not exhaustive.

The people who come to court to seek assistance have complex family legal issues who need proper legal advice and legal representation by lawyers. As per rule 4(1)(c) of the Family Law Rules, non-lawyers are allowed to represent parties in court, but only in special circumstances, where special expertise is required² and if the judge gives permission to the non-lawyer in advance. Judicial discretion to allow a non-lawyer to represent a litigant, however, is extremely limited and constitutes an exception to s.50 (1) of the *Law Society Act*. Sophisticated jurisprudence has developed over time regarding non-lawyers in family court. There are a number of very good reasons to limit them from giving legal advice or appearing in court. As the Superior Court of Justice held in *Mamchin v. Mamchin-Burdman*, [2006] O.J. No. 1336,

The issues are often complex, although they may not seem so at the outset. There might be experts required to provide reports on valuation of property or income. There might be an expert required under CLRA s. 30. Mediation might be a possibility. The children's issues must be given full attention and consideration. The Rules must be given due respect along with the legislation and case law. A case must proceed expeditiously. Balancing all of these considerations is not an easy task. The court expects counsel for parties to be fully capable of handling all these issues. It would be difficult to be assured that

² *Gotlibowicz v. Gillespie*, [1996] O.J. No. 1250 (Ont. Div. Ct.)

a non-lawyer could be sufficiently competent given the nature and complexity of a case is unknown at the outset.

Because of this complexity, a family's issues cannot be safely divided into specific issues. Family law involves thirty-four different statutes, two sets of child support guidelines, and two sets of rules. Many families also have income tax, immigration, and child protection issues as well as criminal code charges to deal with in addition to their family law issues. An understanding of family dynamics and interpersonal relationships is an important element of family law representation and advice. As a result, allowing a non-lawyer to handle a specific issue, such as non-contested divorces, cannot be done properly without having an appreciation and understanding of the other issues in the case. This can be demonstrated by judicial case conferences in which judges deal with many issues simultaneously. These conferences and the simultaneous handling of complex issues are extremely successful. In fact, as a result of the conferences, our courts have an extremely low trial rate of approximately 3%. Similarly, research indicates that judicial conferences save litigants money and permits resolution in a timely manner.

Professor Nick Bala of Queen's University Law School stated shortly after the Bonkalo Report was released, "The views of front-line family judges, solicited in a discrete fashion, should play a central role as government and the law society decide how to react. Given the lack of experience with broad family paralegal representation anywhere else, adoption of the more contentious recommendations will be a social experiment. A cautious approach to the paralegal experiment is appropriate given its potentially high costs to vulnerable parents and children and to the system of justice."

Throughout the Report, the FLWG operates on the assumption that a paralegal assisting a litigant would be superior to no representation at all. We dispute this assumption. This approach is problematic given that family law is complex and difficult. As stated in our 2017 submission and which remains unchanged today,

Allowing paralegals to represent family litigants in a family courtroom or give legal advice to family litigants will not help. Instead, they may compromise an already complicated and sensitive practice area. The end result will be additional steps in a case along with its corresponding costs. We believe that the outcome will not only be that the justice system is not improved but also that litigants, including the unrepresented litigant, may suffer, as a result.

Given the extensive training family lawyers engage in, most family matters do not require court intervention to bring about resolution. The result of this is that only the most difficult, complex cases require litigation. Paralegals will not have the level of education, training and skills to engage in these cases.

This is not to say that paralegals do not have a role in family law. However, paralegals must be competent, properly trained and educated. Their services should be limited to relatively simple matters unless the paralegals are under the supervision of a lawyer. As outlined in our submissions 2017, paralegals working directly with lawyers could prepare documents and be involved in document disclosure. They could also assist litigants by preparing a court plan for short-focused hearings with the assistance of duty counsel for a judge's review. We wish to emphasize again that paralegals should not be able to provide representation or give legal advice in family law without the supervision of a lawyer.

2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?

The Ontario Court of Justice has no comment.

Competence

3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?

The LSO's mandate is to protect the public but the FLWG has not provided evidence of how the public will be protected. In its Report, the FLWG states: "The activities that fall within the scope can be performed competently with appropriate education, training, licensing, and regulation." The FLWG should explain the metrics that determine how the scope of activities can be performed competently.

The suggestion that a paralegal can manage to understand and apply the law relating to child and spousal support, for example, in sixty (60) hours, is not realistic. Within the framework of family law, there are many dozens of statutes, regulations and precedents that must be scrutinized.

The list of two hundred and nine (209) competencies in Appendix C is extensive, yet there is no suggestion on how these competencies will be evaluated and monitored throughout the life of the file. This should be part of the proposal. Competency is not only about providing the training and education at the front end but also monitoring the file throughout its lifespan.

4. In your view, what scope of activities would best support increased access to affordable, competent family law services?

There is a role for paralegals in family proceedings. But it is not equivalent to family lawyers in providing legal advice or representation on several issues. Paralegals could draft forms, file documents, and refer litigants to resources.

We would like to remind you of the Ontario Court of Justice's recommendations in 2017. Our position remains unchanged:

If there is a role for properly trained, educated and competent paralegals in family law, it should be similar to law clerks who work with family lawyers. They could prepare documents and be involved in document disclosure. They must be directly supervised by family lawyers and unable to give legal advice or provide legal representation to litigants. Paralegals should also not be allowed to work with vulnerable clients, including domestic violence victims, individuals under the age of 25 and families involved with child protection agencies. Additionally, we agree that paralegals involved in a family law file should have proper insurance, independent of the supervising lawyer's insurance. It should be noted that since licensed paralegals are considered independent contractors, it will be necessary to ensure that paralegals cannot practice without the supervision of a lawyer.

An additional role for paralegals could be as front-end case managers for family cases in the justice system. They could perform the First Appearance Clerk's role by assisting litigants to create a court plan for short focused hearings with the assistance of duty counsel or advice counsel for a judge's review. Court staff currently work as the First Appearance Clerk. They are supervised by the Ministry of the Attorney and do not dispense legal advice or provide legal representation; the role for paralegals would need to be the same – they would not provide legal advice or legal representation. A court plan could be devised whereby the paralegal assists the litigants by ensuring that all documents are completed and by scheduling discreet appearances before a judge. Alternatively, paralegals could provide services as the Family Law Information Centre's (FLIC) service provider. The FLIC service provider is an information and referral coordinator (IRC). The IRC does not provide legal advice and representation but, rather, information regarding the family justice system and referrals to family service providers in the community. Currently, mediators and/or staff provided by the mediation service occupy the IRC role. Neither has any particular education or training in family law. We believe that a paralegal could provide services in this role.

Nothing in the FLWG's Report changes our opinion on the role of paralegals in family law.

Training Program

5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D.

In the court's opinion, the list of Competencies outlined in Appendix "C" is daunting and the timeframes allocated are unrealistic. The proposal does not afford enough time to address the legal complexities.

For example, the time allocated for a paralegal to understand the myriad *Acts* with associated regulations and case law relating to parenting orders and decision-making in thirty (30) hours as proposed at Appendix D is unrealistic. Similarly, to provide the depth of understanding necessary to address issues of child and certainly spousal support will take more than the suggested 30 hours.

The educational portion of the program should be followed with a practical placement either partnered with a university or college sponsored family law clinic that is supervised by a lawyer, a family law clinic operated by Legal Aid Ontario where there is direct supervision by a lawyer, or a placement with a family law lawyer. The length of such a placement should be determined by the Law Society of Ontario. This will provide the paralegal with the skills necessary to become competent in family law and will lead to a deeper understanding of the abilities needed to assist a family lawyer, including interviewing, writing, court technology, understanding and implementing the Family Law Rules, and advocacy.

Written advocacy is an essential job skill and an essential component that is missing from Appendix D. Written advocacy is the primary basis upon which an advocate's work, learning, and intellect will be initially considered in an adversarial setting and is essential for good advocacy. It equips advocates with communication and thinking skills and fosters the ability to explain and refine ideas. Written advocacy will assist paralegals to draft documents that should then be reviewed by lawyers. We should add that despite the myriad resources available to assist the self-represented litigants, forms are complex and challenging. If forms are not

completed correctly, proceedings could be rejected, dismissed or require extensive amendments. Improper forms could also trigger costs consequences. Yet there is nothing in Appendix D which focuses on this critical element.

There should also be enhanced training in the use of technology, especially considering the advances in technology given COVID-19.

Further, there should be training in ethics and diversity.

The program should also address how a paralegal will address immigration, child protection, criminal, and tax issues that can arise within a family law case.

Other Components of Licensure

6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?

For the reasons stated above, at a minimum, to qualify for a family license, a paralegal should have obtained a diploma from an accredited college program and pass competency tests, undertake a mentoring program while attending college and a training program as outlined above and below.

7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?

As stated above, the educational portion of the program should be followed with a practical placement of at least 6 months either partnered with a university or college sponsored family law clinic that is supervised by a lawyer, a family law clinic operated by Legal Aid Ontario where there is direct supervision by a lawyer, or a placement with a family law lawyer.

8. Is a CPD requirement focussed on family law appropriate for the FLSP?

Two to three (2-3) hours devoted to family law is insufficient.

The Report states that paralegals offering family law advice and services would have to maintain the yearly CPD of twelve (12) hours, of which two to three (2-3) hours would be devoted to family law. A CPD requirement focussed on family law is appropriate but two to three (2-3) hours is insufficient. Family law, like most areas of the law, is constantly in flux.

By developing a paralegal license in family law, the Law Society of Ontario is, in effect, developing a specialized area of practice for paralegals. It should be necessary, therefore, for paralegals to receive a majority of their CPD in family law to ensure competency.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

In principle, law clerks could be eligible for the FLSP licence. However, the FLWG has not defined law clerk and the required skills and experience necessary to achieve that designation. Law clerks have a variety of backgrounds and experience, many not related to family law. Transparent assessments would be required to ensure that the law

clerk has the required skills and experience to qualify for a paralegal license in family law. If the LSO determines that law clerks should receive the license, they would also need to undertake the recommended pathway outlined in this response.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

The Ontario Court of Justice has no comment.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

No, the FLSP design is not appropriate. The Ontario Court of Justice reported the following in 2017. Our position remains unchanged:

The Ontario Court of Justice conducted a wide-range consultation with our judges. Their message was very clear – paralegals should not be allowed to give legal advice or provide legal representation in family law matters. Similarly, they agreed that there should be no amendments to rule 4 of the Family Law Rules and Bylaw 4 of the LSUC's bylaws in respect of paralegals.

According to the Report, the number of self-represented litigants has decreased since 2012, when sixty-four percent (64%) of family law litigants were unrepresented at time of filing. Currently, as per the Report, forty-seven-point-three percent (47.3%) of family law litigants were unrepresented at time of filing. This decrease in the percentage of self-represented litigants can be traced back to improvements in the family justice system, including available family law information such as the Community Legal Education Ontario (CLEO) website, limited retainers, bundled services, and other services

12. Are any aspects of the proposed licensing framework unfeasible?

Please see above.

13. Is there additional information or are there other factors that should be considered?

A paralegal should be directly supervised by a family lawyer and should have proper errors and omissions insurance independent of the supervising lawyer's insurance. As Professor Nick Bala stated in a October 9, 2020 article in Lawyer's Daily:

...Law Society of Ontario proposals, which envisage a limited licence allowing paralegals to deal with certain family law matters, go too far.

"Paralegal representation in family law should be seen in the context of their working with lawyers, but not independently," Bala said.

Paralegals should be required to give the client a retainer letter indicating that the paralegal is not a lawyer, that the paralegal is limited in the advice given, and that the client can dispute the final bill.

The *Family Law Rules* should continue to require the authorization of the court for the paralegal to appear as *agent* for the client with authorization to be required in advance. The fact that paralegal representation in court is subject to the court's approval should also be made explicit on any statement released by the Law Society of Ontario (LSO). This will ensure that the court and the litigants involved in the case are aware of the level of representation provided to the party. It will also ensure that the paralegal complies with the LSO's code of conduct

Veillez saisir votre prénom et votre nom de famille. Andrée-Anne Martel

Adresse courriel amartel@ajefo.ca

Veillez faire un choix ci-dessous AJEFO

Êtes-vous une partie qui se représente seule? Non

Représentez-vous une organisation ou une association par votre participation? Oui

Où se trouve votre lieu de travail? Est, y compris Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)

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Télécharger un fichier [Réponse de l'AJEFO- permis de prestataire de services en droit de la famille.pdf](#)

Portée

Compétence

Programme de formation

Autres composantes de l'obtention du permis

Généralités

November 30, 2020

BY EMAIL

submissions@lso.ca

Access to Justice Committee
Law Society of Ontario
130 Queen St W.
Toronto, Ontario M5H 2N6

Dear Sir, Madam,

Re: Submission of the Association des juristes d'expression française de l'Ontario to the Law Society's Call for Comment on the proposed Family Legal Services Provider Licence

I am writing on behalf of the Board of Directors and members of the Association des juristes d'expression française de l'Ontario (AJEFO) in response to the consultation conducted by the Law Society of Ontario (Law Society) on the development of a Family Legal Services Provider (FLSP) licensing model.

AJEFO is an organization that has been working for nearly 40 years to facilitate equal access to justice in French for everyone across Ontario. AJEFO raises awareness, informs and educates lawyers and the general public about the rights of French-speaking litigants to receive legal services in the official language of their choice.

Initial observations

At first glance, AJEFO recognizes the need to develop an action plan to improve access to legal services in both official languages in family justice matters. AJEFO knows from experience that there are serious problems with access to justice in both official languages in all areas of law. AJEFO notes that approximately 90% of the litigants we meet with at the Ontario Legal Information Centre are not represented by a lawyer.

AJEFO also wishes to emphasize that paralegals play a well-established role in the Ontario justice system in the areas of practice in which they are authorized to provide legal services. These observations by AJEFO are in no way intended to discredit the work or skills of Ontario's paralegals.

AJEFO's general position on the new model for the issuance of FLSP

AJEFO is a member of the Equity Advisory Group (EAG) and, as such, agrees with EAG that there may be advantages to the new model proposed by the Law Society from the perspective of facilitating access to family law services by providers who reflect a diverse population and are sensitive to the different needs of that population.

Despite this positive aspect, AJEFO wishes to express some important concerns about the model proposed by the Law Society. In order to provide the best possible feedback as part of the Law Society's Call for Comments, AJEFO consulted some of its members who practise family law and created a family law *ad hoc* committee, comprised of women lawyers who practise in this area. This letter is largely based on the observations of the *ad hoc* committee and the consultations with our members.

AJEFO is not convinced that the new licensing model for FLSP is effective in meeting access to justice needs for the reasons described below. In addition, AJEFO is concerned that the scope of family law services that paralegals could provide under the model proposed by the Law Society is too broad.

In order to improve access to justice in Ontario, AJEFO recommends that the Law Society expand the range of family law services that articling students and candidates in the Law Practice Program can offer.

If the decision is made by the Law Society to implement the proposed FLSP licensing model, it is important that the implementation of this model be done in such a way as to ensure true and equal access to justice in French. Moreover, AJEFO believes that the scope of services that can be provided by paralegals under the proposed model should be narrowed and that the model should provide for articling and subsequent supervision of paralegals by a lawyer. The inclusion of a condition of supervision in the proposed model would further protect clients and facilitate, in their interest, any transfer of cases from a paralegal to a lawyer when the paralegal has reached his or her professional limits.

General comments

AJEFO brings up the following general comments regarding the proposed FLSP licensing model:

- **Complexity of family law:** In our view, the consultation paper and the proposal for the new FLSP licensing model take a simplified view of family law. Family law is complex to navigate, even when it involves so-called "simple" or uncontested procedures. In addition, family law often overlaps with other areas of law, including criminal law, business law, real estate law, estate law

and other areas. AJEFO adds that proceedings often become more complex when they are bilingual.

- **Costs and self-represented persons:** AJEFO does not believe that the new FLSP licensing model will necessarily reduce costs for the client. The consultation document does not state that the costs of paralegals will be lower than those of lawyers or that paralegals will be encouraged to provide services at lower costs. In addition, if a client needs to hire a paralegal for one task and a lawyer for another task, this could create duplication of work and higher fees.

The majority of litigants, regardless of the area of law, cannot afford to hire a legal representative, be it a lawyer or a paralegal. Consequently, in our opinion, sustainable investments are needed for grassroots projects in order to truly improve access to justice and support self-represented persons. The Law Society and the various levels of government should invest in the development and maintenance of projects and programs such as legal aid and legal information centres that provide free accompaniment to self-represented persons in the justice system. In addition, the Law Society should encourage lawyers practising family law to reduce their costs or offer flat fees (for example, offering a flat fee for simple divorce proceedings is common practice).

- **Prevention and protection of the public:** If the FLSP licence proposal is implemented, AJEFO fears that many cases undertaken by paralegals will ultimately have to be handled by lawyers once the paralegals have reached their professional limit, i.e. the activities they are permitted to undertake. In fact, it is difficult to foresee at first glance the work required in a case, and it is common to evaluate this work downwards. A transfer of a case from a paralegal to a lawyer will result in additional costs and delays for the client and will not promote quick and efficient access to justice.

In order to mitigate this risk, in addition to the imposition of a condition of supervision mentioned above, AJEFO suggests that clients who hire paralegals to provide them with family law services sign a declaration, which will have been explained to them by the paralegals, explaining the professional limitations of family law paralegals. In addition, as a precautionary measure, the Law Society should ensure that the limits of paralegals work in the area of family law are clearly communicated to the public. Moreover, AJEFO suggests that public explanatory documents, such as information pamphlets, be created by the Law Society to raise awareness of the scope of this new licence. AJEFO reiterates that these information documents must be made available in both

official languages.

AJEFO's responses to the questions in the Law Society's consultation paper

Scope

- 1. Will the proposed scope of permissible activities support increased access to affordable, competent family law legal services? If so, how?**

As indicated above, AJEFO is not convinced that the new FLSP licensing model, as currently designed, will necessarily reduce costs for the client.

- 2. Will the proposed scope of permissible activities enable the FLSP to develop a business model that is viable? If so, why? If not, why not?**

According to AJEFO, the creation of a viable business model may be possible if paralegals offer reasonable rates, but lower than lawyers' rates, and if they work with lawyers on the terms and conditions outlined above.

Competence

- 3. Will the proposed competencies ensure the appropriate level of competence to deliver family legal services as outlined in the proposed scope? Are there other competencies that should be considered?**

According to AJEFO, the proposed scope of legal services in family law matters is too broad and should be limited, as explained below in response to question 4. This would limit jurisdictional overlap and reduce the need to transfer cases to a lawyer, which would create duplication of work and higher costs for the client.

- 4. In your view, what scope of activities would best support increased access to affordable, competent family law services?**

According to AJEFO, the new licensing model for FLSP should be limited to so-called "simple" family law services, such as uncontested divorce proceedings.

Furthermore, AJEFO recommends expanding the range of services that articling students and candidates in the Law Practice Program can offer in family law, with appropriate supervision.

Training Program

- 5. Is the proposed training program of sufficient duration and rigour to enable candidates to achieve the proposed competencies? Education providers are invited to respond to the Request for Information found at Appendix D.**

The Law Society must ensure the development of a rigorous training program of sufficient duration to acquire all the skills required to competently practise family law in both official languages. In addition, this training program must include a component on inclusion and diversity. AJEFO reminds the Law Society of its obligation to ensure that the training program offered in French is of equal quality to the training program offered in English.

Other Components of Licensure

- 6. What type of prerequisite experience in legal services provision, if any, should be required for the FLSP?**

According to AJEFO, the requirements imposed by the Law Society in terms of experience must be rigorous. Before the start of the training program, AJEFO suggests that that paralegals have already completed several hours of observation and continuing professional development in the area of family law. In addition, AJEFO recommends that after completing the training program, paralegals complete a field placement with a lawyer who practises family law.

The Law Society could be inspired by the following two models: (1) the Legal Aid Ontario model and (2) the Ontario Certified Mediator model. In order to become a member of the legal aid panel, lawyers must meet specific requirements, including being able to confirm that they have a mentor (or resource person) and committing to continuing professional development for a period of two (2) years. For their part, mediators certified in Ontario must have completed at least 100 hours of supervision with an accredited mediator.

- 7. What length and form of experiential training should be incorporated into the licensing process for the FLSP to support the competencies? If a field placement is required, who will provide the placements?**

See answer to question 6.

- 8. Is a CPD requirement focussed on family law appropriate for the FLSP?**

Yes, such a requirement should be imposed. AJEFO reiterates the Law Society's obligation to make continuing professional development available to legal professionals in both official languages.

9. Should law clerks be eligible for the FLSP licence? Are there other groups of professionals who should be considered?

The proposed FLSP licensing model is already too broad for the reasons set out above.

General

10. What characteristics of an FLSP would make this provider appealing to self-represented litigants? (billing practices, cost structure, accessibility, practicality, other?)

The following characteristics could make paralegals attractive to self-represented clients:

- ➔ Provision of services in both official languages;
- ➔ Offer of reduced rates or costs;
- ➔ Practice with a firm having one (1) or more lawyers working in the area of family law to whom paralegals could easily and conveniently transfer cases if they reach their professional limits;
- ➔ Offer complementary services, such as professional coaching.

11. Given the recent enhancements to accessing family law (i.e. court modernization, Steps to Justice, etc.), is the FLSP design appropriate?

As presented in this document, AJEFO is not convinced that the new licensing model for FLSP is effective in meeting the needs of access to justice. In addition, AJEFO is concerned that the scope of services that may be provided by paralegals is too broad and that the scope of services should be limited to less complex tasks.

According to AJEFO, the most promising solution to improving access to justice in family law matters is not to have more paralegals practising in this area of law, but to offer more services through Legal Aid Ontario and to have legal information centres that accompany self-represented persons in the justice system free of charge.

In addition, as indicated above, AJEFO recommends that the Law Society expand the range of services that articling students and candidates in the Law Practice Program can offer in family law.

Another possible solution is the increased use of technology to reduce costs. Modernization efforts undertaken in the context of the pandemic should therefore continue. The use of technology often saves time and travel for lawyers and parties, which helps to reduce costs.

However, AJEFO wishes to point out that many Ontario courts have not been modernized and courts across the province operate differently. For example, the procedure for filing documents differs from one region to another. The Law Society must therefore take this into account in the implementation of the new FLSP licensing model.

Finally, AJEFO would also like to highlight the existence of CliquezJustice.ca, an AJEFO project, which offers free legal information in French in all areas of law, including family law. CliquezJustice.ca was designed by and for francophones.

12. Are any aspects of the proposed licensing framework unfeasible?

See responses above.

13. Is there additional information or are there other factors that should be considered?

See responses above.

Conclusion

AJEFO reiterates the need to develop an action plan aimed at improving access to legal services in both official languages in family justice matters.

However, in our view, the new FLSP licensing model is not the best way to achieve this goal. Nevertheless, we commend the Law Society for taking steps to improve access to justice in Ontario specifically in the area of family law.

If, ultimately, the decision is made to implement the proposed model, it is important that the implementation of this model be done in such a way as to ensure true and equal access to justice in French. This will therefore require the Law Society to work with Ontario's francophone post-secondary institutions to ensure that paralegals can be trained in French. In addition, it will be important that training programs in both languages address the ethical obligations of paralegals with respect to the language rights of their clients and, more broadly, the language rights and obligations of parents and children, as well as issues of inclusion and diversity.

Thank you for the opportunity to participate in this consultation.

Sincerely,

Mr. Marc Sauv 
AJEFO president

cc: Ms. Marie-Andr e Vermette, vice-chair of the AJEFO board of directors and chair of the AJEFO Intervention Committee, mavermette@weirfoulds.com

Ms. Julie Bergeron, chair of the AJEFO *ad hoc* committee on family law, juliebergeronlawoffice@gmail.com

Ms. Sheena Weir, Executive director, External Relations and Communications, sweir@lso.ca